COMPLIMENTS OF

ALEXANDER ARMSTRONG

ATTORNEY GENERAL

ANNUAL REPORT

AND

OFFICIAL OPINIONS

OF THE

ATTORNEY GENERAL

OF

MARYLAND

1923

ALEXANDER ARMSTRONG

ATTORNEY GENERAL

ATTORNEYS GENERAL OF MARYLAND.

Luther Martin	1778
William Pinkney	1805
John Thomas Mason	1806
John Johnson	1806
John Montgomery	1811
Luther Martin	1818
Nathaniel Williams, Assistant Atorney General	1920
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	1867
William Pinkney Whyte	1887
John P. Poe	1891
Harry M. Clabaugh	1896
George R. Gaither, Jr.	1899
Isador Rayner	1900
William S. Bryan, Jr.	1904
Isaac Lobe Straus	1908
Edgar Allen Poe	1912
Albert C. Ritchie	1916
Alexander Armstrong	1920

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

STATE LAW DEPARTMENT.

Alexander Armstrong	Attorney General.
Allan H. Fisher	Assistant Attorney General.
J. Purdon Wright	Assistant Attorney General.
Lindsay C. Spencer	Assistant Attorney General.
Wendell D. Allen	Assistant Attorney General.
Miss Anna Davis McSherry	Stenographer.
Miss Hattie F. Fuxman	Stenographer.

OFFICES:—633-649 Title Building, Baltimore, Md.

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ANNUAL REPORT FOR 1923.

OFFICIAL OPINIONS.

Annual Report for 1923.

BALTIMORE, MARYLAND, *December 20, 1923.*

Hon. Albert C. Ritchie,
Governor of Maryland,
Annapolis, Md.

DEAR GOVERNOR RITCHIE:

The final year of my Attorney Generalship has been completed, and in accordance with the requirements of Section 8 of Chapter 560 of the Acts of 1916, I am herewith transmitting to you a report of the business and proceedings of the State Law Department during the period beginning January 1st, 1923, and ending December 20th, 1923. The report is accompanied by an itemized statement of the receipts and disbursements of the Department during the fiscal year beginning October 1st, 1922, and ending September 30th, 1923, as further required by said Section 8. The official opinions rendered by my Department during the preceding calendar year follow this report.

I am making the report as of December 20th, 1923, because my term as Attorney General of Maryland expired on that date.

ORGANIZATION.

Messrs. Allan H. Fisher, J. Purdon Wright, Lindsay C. Spencer and Wendell D. Allen, all of Baltimore City, have served as Assistant Attorneys General throughout 1923. Messrs. Fisher, Wright and Spencer have completed four years of loyal and efficient service during which they have at all times subordinated their private interests to the business of the State, and have succeeded in establishing an enviable record of professional and official achievement. The service rendered by Mr. Allen, who succeeded Colonel Woodcock on October 1st, 1922, has been equally satisfactory and his work has been highly commended by the

State officers whom he has advised. Mr. Spencer and Mr. Allen maintained their offices throughout the entire year in the headquarters of the Department in the Title Building while Mr. Fisher and Mr. Wright visited the Department daily and kept in close touch with its work.

SUMMARY OF LITIGATION FOR 1923.

Three cases argued in the Court of Appeals during the October Term, 1922, were decided in 1923. All of them resulted favorably to the State.

Orrin P. Gilpin vs. State of Maryland. Appeal from the Circuit Court of Baltimore City. Conviction for conspiracy to rob. The accused had been acquitted of a charge of robbery and when indicted for conspiracy to rob the same person pleaded former jeopardy. The appeal involved the correctness of the Trial Court on the validity of this plea. Judgment affirmed.

David Lansman vs. State. No. 101. October Term, 1922. Appeal from the Criminal Court of Baltimore City. Conviction for sale of goods on Sunday. This appeal involved the construction of the statute on this subject. Judgment affirmed.

Stanley Mogul vs. Charles D. Gaither. October Term, 1922. Appeal from the Circuit Court No. 2 of Baltimore City. In this case the plaintiff sought to restrain the Police Commissioner of Baltimore City from conducting auction sales of jewelry, raising the validity of an Ordinance adopted in March, 1922, by the Mayor and City Council of Baltimore prohibiting such sales. The Circuit Court of Baltimore City denied to the plaintiff the relief sought and from this order an appeal was taken. Judgment affirmed.

CASES ARGUED IN THE SUPREME COURT OF THF UNITED STATES

Anthony Molinari, Plaintiff in error, vs. State of Maryland, Defendant in error, No. 127, October Term, 1923.

Peter Weisengoff, Plaintiff in error, vs. State of Maryland, Defendant in error, No. 480, October Term, 1923.

These cases, upon motion of counsel for Plaintiffs in error, were consolidated and argued together. Both cases raised

the same question; Plaintiffs in error having been indicted under the local liquor law of Allegany County for the sale of liquor without a license; claimed as a matter of defense that the Allegany County law had been completely abrogated by the adoption of the Eighteenth Amendment and the passage of the Volstead law. From decisions of the Court of Appeals of Maryland affirming the convictions in the Lower Court these appeals were taken. Arguments were made in behalf of the Plaintiffs in error by Messrs. Clarence Lippel and Saul Praeger, after which the Court declined to hear the Attorney General who had appeared for the State. Messrs. Arch. A. Young and Joseph N. Ulman also appeared for the Plaintiffs in error. Judgment of the Court of Appeals of Maryland affirmed in both cases.

Criminal Cases Argued in the Court of Appeals, *January, April and October Terms, 1923.*

Eighteen criminal appeals in which the State was a party appeared on the dockets of the Court during the year. One was dismissed by appellant's counsel, before argument. One was dismissed in open court upon motion of the Attorney General, without argument. All of the remainder of these cases were argued. The State won fourteen, lost none, and four have not yet been decided.

Richard Mines vs. State of Maryland. No. 18, January Term, 1923. Appeal from the Circuit Court for Montgomery County. Upon conviction before a Justice of the Peace in Montgomery County of a minor offense Mines was serving a term in the House of Correction. His release was sought on a writ of habeas corpus supported by a writ of certiorari. From an order remanding him to the House of Correction an appeal was taken. A motion filed in behalf of the State to dismiss the appeal was granted. The Attorney General appeared for the State.

Bessie L. Pick vs. State of Maryland. No. 23, January Term, 1923. Appeal from the Criminal Court of Baltimore

City. Conviction for larceny. This case involved a motion to quash the indictment on the ground that the accused had voluntarily testified before the Grand Jury. Judgment affirmed. The case was submitted on brief without argument upon request of counsel for appellant who were ill on the day when the case was assigned.

Francis R. Kaefer, et al., vs. State of Maryland. No. 37, January Term, 1923. Appeal from the Circuit Court for Allegany County. Conviction for riot and unlawful assembly. This case involved the admissibility of certain testimony and the proper time within which to sign bills of exception. Judgment affirmed. The Attorney General appeared for the State.

Eddie Simonson vs. State of Maryland. No. 11, April Term, 1923. Appeal from the Circuit Court for Frederick County. Conviction for the sale of liquor under the local law for Frederick County. Demurrer to indictment, which raised the question as to whether the offense was charged sufficiently to bring it within the statute, was overruled. Judgment affirmed. The Attorney General appeared for the State.

Harry B. Wolf vs. State of Maryland. No. 16, April Term, 1923. Appeal from the Criminal Court of Baltimore City. Conviction for conspiracy to obstruct the due administration of justice in prosecuting certain parties in connection with the murder of William B. Norris. This appeal presented certain questions relating to the nature of the crime of conspiracy and the relevancy of testimony. Judgment affirmed. The Attorney General and Mr. Spencer appeared for the State.

Harry W. White, otherwise known as Harold W. White, vs. State of Maryland. No. 24, April Term, 1923.

Luther Smith, Seth Peterson, Ray Preter and Ernest Neely vs. State of Maryland. No. 25, April Term, 1923.

Two appeals in one record from the Circuit Court for Prince George's County. Conviction for conspiracy to rob the cashier of the Citizens National Bank at Laurel. In these cases demurrers to the indictments had been overruled and questions involving the admissibility of testimony by co-conspirators were presented. Judgment affirmed. The Attorney General appeared for the State.

Wesley Hill, Frank Thomas, Milford Thomas and James Lewis vs. State of Maryland. No. 29, April Term, 1923. Appeal from a judgment of the Circuit Court for Dorchester County. Conviction of assault with attempt to rape. The appeal presented the soundness of the rulings of the Court on a demurrer to the indictment and questions affecting the admissibility of certain testimony. Judgment affirmed. The Attorney General appeared for the State.

Peter Weisengoff vs. State of Maryland. No. 43, April Term, 1923. Appeal from the Circuit Court for Allegany County. Conviction for selling liquor in violation of the local law of Allegany County. This appeal raised the question of the survivorship of the local liquor law for Allegany County subsequent to the adoption of the Eighteenth Amendment to the Constitution of the United States and the passage of the Volstead law. Judgment affirmed. The Attorney General appeared for the State.

Max Rottenberg and Joseph Rottenberg vs. State of Maryland. No. 54, April Term, 1923. Appeal from the judgment of the Criminal Court of Baltimore City. Conviction of larceny. Appeal dismissed by counsel for appellants after briefs had been prepared and filed in behalf of the appellee.

Luther Brill, Maynard Pomeroy, William Fraker and Harry Ditmer vs. State of Maryland. No. 66, April Term, 1923. Appeal from the Circuit Court for Washington County. Conviction of assault with intent to rob, the traversers having been charged with tarring and feathering two men, known as strike breakers, during the Western Mary-

land Railroad strike in Hagerstown. The appeal presented certain questions affecting the admissibility of testimony. Upon petition filed by the State the appeal was dismissed for failure to transmit the record within the statutory period. The Attorney General appeared for the State.

Frank L. Allers vs. State of Maryland. No. 67, April Term, 1923. Appeal from the Circuit Court for Baltimore County. Conviction for burglary. The appeal involved the correctness of the ruling of the Court in denying the appellant's application for a removal of the case, and also rulings relating to the admissibility of certain testimony. Judgment affirmed. The Attorney General appeared for the State.

Stanley Kiterakis vs. State of Maryland. No. 68, April Term, 1923. Appeal from the Criminal Court of Baltimore City. Conviction of manslaughter. This appeal raised questions as to the admissibility of certain testimony. Judgment affirmed. The Attorney General appeared for the State.

Joseph Latvanas vs. State of Maryland. No. 69, April Term, 1923. Appeal from the Criminal Court of Baltimore City. Conviction of the crime of manslaughter. Appeal dismissed upon motion of the Attorney General for failure to enter the appeal within the proper time and for failure to transmit the record within the statutory period. Judgment affirmed. The Attorney General appeared for the State.

C. Graham Archer vs. State of Maryland, No. 51, October Term, 1923.

S. Burns Wilson vs. State of Maryland. No. 52, October Term, 1923. Two appeals in one record from the Criminal Court of Baltimore City. Conviction of the crime of conspiracy to cheat and defraud the customers of the brokerage firm of Archer, Harvey & Company. The appeal involved the correctness of the rulings of the trial court on

demurrers to the indictment, motions to quash the same, certain other pleadings and the admissibility of testimony. There were presented more particularly questions relating to the nature of the crime of conspiracy in Maryland and the defense of limitations to the charge of conspiracy. Sub curia. The Attorney General and Mr. Spencer appeared for the State.

George F. O'Brecht vs. State of Maryland. No. 82, October Term, 1923. Appeal from the Circuit Court for Anne Arundel County. Conviction for obstructing a public highway. The appeal arose from the action of the trial court in overruling a demurrer to the indictment and in refusing to admit certain testimony. Sub curia. The Attorney General appeared for the State.

William Winner vs. State of Maryland. No. 92, October Term, 1923. Appeal from the Circuit Court for Allegany County. Winner had shot a man and was convicted of assault. The substantial questions involved arose from the rulings of the trial court on the admissibility of testimony. Sub curia. The Attorney General appeared for the State.

Civil Cases Argued in the Court of Appeals.

April and October Terms, 1923.

Five Civil appeals were argued during the year. The State won three, lost one and one has not yet been decided.

Safe Deposit & Trust Company of Baltimore, Administrator of Samuel R. Vickers, vs. State of Maryland. No. 44, April Term, 1923. Appeal from the judgment of the Baltimore City Court. The Attorney General had ruled that the collateral inheritance tax was payable upon all income accruing during the course of administration of an estate passing to collaterals. The Trust Company, as administrator of the estate of Mr. Vickers, declined to pay the tax on income and a test case was instituted. The lower court sustained the contention of the State and this judgment

was affirmed by the Court of Appeals. The Attorney General and Mr. Fisher appeared for the State.

Robert W. Williams, Administrator c. t. a. of William F. Airey, vs. State of Maryland. No. 57, April Term, 1923. Appeal from the Baltimore City Court. The Attorney General had ruled that the tax on commissions of executors and administrators imposed by Section 115 of Article 81 of the Code was payable by each of successive personal representatives in the same estate. In the Airey estate the full tax had been paid by an administrator pendente lite. Mr. Williams, as Executor, declined to pay the tax a second time. A test case was instituted against him and judgment was entered in favor of the State in the lower Court. This judgment on appeal was affirmed. The Attorney General appeared for the State.

E. Austin Baughman, Commissioner of Motor Vehicles, vs. Philip Millstone. No. 35, October Term, 1923. Appeal from Circuit Court No. 2 of Baltimore City. Millstone opened in Baltimore City a garage from which he proposed to rent motor vehicles for periods not exceeding three days to be driven by the parties renting the same. The Commissioner of Motor Vehicles notified him that this practice violated the law on the ground that such lessee was an "owner" under the law, and that before operating the motor vehicle the lessee must have it registered in his own name. Millstone secured from Circuit Court No. 2 of Baltimore City an injunction restraining the Commissioner from interfering with his business. From the decree granting the injunction an appeal was taken by the Commissioner of Motor Vehicles but the order and decree of the lower court was affirmed. Mr. Fisher appeared for the Commissioner of Motor Vehicles.

Clarence Smith and J. Harry Green vs. Charles D. Gaither. No. 64, October Term, 1923. Appeal from the Circuit Court of Baltimore City. The Attorney General had given an opinion to General Gaither, Police Commissioner, declaring

that although the local law for Baltimore City declared ineligible for membrship on the police force any person "who has been guilty of a crime" nevertheless the appointment of Harry Ernest on November 14th, 1919, was validated by Chapter 522 of the Acts of 1922, General Gaither, therefore, declined to dismiss Officer Ernest from the Police Force and the appellants, as taxpayers of Baltimore City, filed a bill of complaint praying that the Police Commissioner be restrained from paying Ernest any salary out of the public funds. From an order and decree of the Circuit Court of Baltimore City dismissing this bill the appeal was taken. Sub curia. Mr. Fisher appeared for the Police Commissioner.

In the Matter of Walter B. Daugherty. No. 118, October Term, 1923. Appeal from the Circuit Court for Harford County, in pursuance of Section 17 of Article 42 of the Code. Order of the lower court reversed. Certain sections of the Motor Vehicle Law, authorizing the imposition by Justices of the Peace of sentences of long terms of imprisonment for certain violations of said law had been held unconstitutional by the Lower Court.

Cases Finally Disposed of in the Lower Courts.

Fifty-five cases were finally disposed of in the Lower Courts. Of these the State won thirty-one, lost twelve, and in four settlements were made which resulted favorably to the State in every particular. The remaining eight cases were condemnation proceedings. It will be noted that many of the cases lost were proceedings against the State Accident Fund in which it was deemed necessary to have hearings to enable the Industrial Accident Commission to fix the extent of liability.

Joseph V. R. Wyniger vs. Commissioner of Motor Vehicles. Appeal from an order of the Commissioner of Motor Vehicles suspending the license of Wyniger. Appeal dismissed. Mr. Fisher represented the Commissioner.

John D. Walker, et al, trading as J. D. Walker Coal Company, and Harry W. Knouss vs. Charles D. Gaither, Police Commissioner, et al. In the Circuit Court No. 2 of Baltimore City. Bill of complaint for an injunction. Bill dismissed by agreement with Ogle Marbury, Esquire, representing the Plaintiffs. Mr. Fisher appeared for the Police Commissioner.

State of Maryland vs. Safe Deposit & Trust Company, Administrator of Samuel R. Vickers, Deceased. In the Baltimore City Court. Action in assumpsit. Test case to determine whether income accruing during the course of administration of an estate is subject to the collateral inheritance tax. Judgment for the Plaintiff. Mr. Fisher appeared for the State.

Rosa Campaign vs. State Accident Fund. Before the State Industrial Accident Commission. Claimant was the sister of James C. O'Rourke, an employee of Logan B. Dyke, who was killed on November 23rd, 1922, by falling from a ladder attached to a steel stack at the Orangeville shops of the Pennsylvania Railroad Company. Although the claimant asked for total dependency, the Commission held that she was only partially dependent upon her deceased brother to the extent of 50% and awarded her $1,500.00 to be paid in installments. Mr. Fisher and Mr. Allen appeared for the State Accident Fund.

Wolf Cohen vs. Charles D. Gaither, Police Commissioner. In the Baltimore City Court. Action of replevin. Case settled by permitting the entry of judgment by consent against the defendant for the goods replevied, the plaintiff to pay the costs. Mr. Fisher appeared for the Police Commissioner.

W. Stuart Symington, Jr., vs. Edward M. Staylor, Justice of the Peace in the Traffic Court. Petition for writ of mandamus and writ of certiorari; motion to quash filed in behalf of Justice Staylor; motion granted September 10th, 1923. Mr. Fisher appeared for Justice Staylor.

Clarence Smith and J. Harry Green vs. Charles D. Gaither, Police Commissioner. In the Circuit Court of Baltimore City. Bill filed by plaintiffs, as taxpayers of Baltimore City, to enjoin General Gaither from paying a salary to Policeman Ernest out of the public funds of the State. A demurrer to the bill of complaint was sustained. An answer was thereafter filed to the amended bill of complaint which bill was thereupon dismissed by order and decree of the Circuit Court of Baltimore City. An appeal was noted to the Court of Appeals. Mr. Fisher appeared for the Police Commissioner.

Walter Kilchenstein vs. Commissioner of Motor Vehicles. In the Baltimore City Court. Appeal from an order of the Commissioner of Motor Vehicles suspending Kilchenstein's license. Appeal dismissed. Mr. Fisher appeared for the Commissioner.

Philip E. Millstone vs. E. Austin Baughman, Commissioner of Motor Vehicles. In the Circuit Court No. 2 of Baltimore City. Bill of complaint filed by Millstone to prevent the Commissioner from interfering with his business of renting cars to be driven by the lessee. Demurrer overruled and injunction made permanent. Mr. Fisher appeared for the Commissioner.

State of Maryland vs. Ellis Miller. In the Traffic Court. Before Justice Lamkin. Charge of violating Article 157-A of the Motor Vehicle law by altering manufacturer's number on an automobile. Verdict guilty. Sentence thirty days in jail. Mr. Fisher appeared for the State.

State of Maryland vs. Max Prok. In the Traffic Court. Before Justice Lamkin. Charge of violating Article 157-A of the Motor Vehicle law by altering manufacturer's number on an automobile. Verdict guilty. Sentence thirty days in jail. Mr. Fisher appeared for the State.

Mrs. James Albert Potter vs. Charles D. Gaither, Police Commissioner, et. al. In the Baltimore City Court. By

agreement with Charles C. Wallace, attorney for Plaintiff, no pleas are to be filed and the Police Commissioner is to be saved harmless from any costs. Mr. Fisher appeared for the Commissioner.

In the Matter of the Tax Appeal of the National Bank of Baltimore, from the order of the State Tax Commission, fixing an assessment on certain property alleged to belong to the Bank. Appeal dismissed. Mr. Wright appeared for the Commission.

Harvey L. Cooper, Insurance Commissioner, vs. Peoples Life Insurance Company. In the Circuit Court No. 2 of Baltimore City. Bill of complaint filed for appointment of a Commission under sub-section 7 of Section 179 of Article 23 of the Code requiring the Company to show cause why receivers should not be appointed. Matter was finally so adjusted as to place the Company in condition satisfactory to the Commissioner. Thereupon the bill was dismissed. Mr. Wright represented the Commissioner.

Frederick Sasscer, et al, vs. John N. Mackall, et. al, constituting the State Roads Commission. In the Circuit Court for Prince George's County sitting in equity. Bill of complaint brought for an injunction to restrain the Commission from proceeding further with condemnation of certain lands for the Crain Highway. Answer filed, case argued, bill dismissed. Mr. Wright represented the Commission with J. Wilson Ryon and Vincent A. Sheehy as local counsel. Appeal taken to Court of Appeals but later dismissed by agreement.

State of Maryland vs. J. Selwyn Sasscer, et al. In the Circuit Court for Prince George's County. Condemnation proceedings on behalf of the State Roads Commission. Award against State Roads Commission amounting to $463. (3 cases). Mr. Wright acted for the Commission with J. Wilson Ryon and Vincent A. Sheehy, local counsel.

State of Maryland vs. H. B. Claggett, et al. In the Circuit Court for Prince George's County. Award against State

Roads Commission amounting to $2,850.00. (5 cases). Mr. Wright represented the Commission with J. Wilson Ryon and Vincent Sheehy, local counsel.

State of Maryland vs. Fred Sasscer, et al. In the Circuit Court for Prince George's County. Condemnation proceedings on behalf of the State Roads Commission. Award against State Roads Commission amounting to $300.00. Mr. Wright acted for the Commission with J. Wilson Ryon and Vincent A. Sheehy, local counsel.

State of Maryland vs. Mary C. Bassett, et al. In the Circuit Court for Talbot County. Condemnation proceedings on behalf of the State Roads Commission. Mr. Wright acted for the State with T. Hughlett Henry as local counsel. Case settled.

Dr. Samuel C. Trippe, et al, vs. State Roads Commission. In the Circuit Court of Talbot County. Bill for injunction to restrain the Commission from relocating State road near Royal Oak. Answer filed. Case argued. Bill dismissed. Mr. Wright appeared for the State Roads Commission, assisted by T. Hughlett Henry, local counsel.

State of Maryland vs. Harrison Posey. In the Circuit Court for Charles County. Condemnation proceedings on behalf of the State Roads Commission for certain land belonging to Harrison Posey. Award $36.75. Mr. Wright represented the Commission with John F. Mudd as local counsel.

Standard Chemical Company vs. State Tax Commission. In the Baltimore City Court. Petition for mandamus commanding the Commission to abate and strike out an assessment. Answer filed in behalf of Commission by Mr. Wright. Case settled.

State of Maryland vs. Frances E. Tabler, et al. In the Circuit Court for Frederick County. Condemnation proceedings in behalf of the State Roads Commission. Award

$1,000.00. Mr. Wright represented the State with Reno S. Harp as local counsel.

State of Maryland vs. Clifford Shilling. In the Circuit Court for Washington County. Condemnation proceedings in behalf of the State Roads Commission to acquire land in connection with the change of location of a portion of the highway leading from Hagerstown to Smithsburg. Award $1,003.38. Mr. Wright represented the Commission with J. Lloyd Harshman as local counsel.

State of Maryland vs. Joseph J. Rogers. Before Justice Stanford at Central Police Station, Baltimore. Defendant was charged with practicing as a certified public accountant without a certificate. Held for action of grand jury. Was convicted in the Criminal Court of Baltimore. Mr. Allen represented the State Board of Accountancy Examiners at the Police Station.

Sarah Rose vs. Police Officer Frederick R. Fleischmann. In the Baltimore City Court. Suit for damages for alleged reckless driving of motorcycle. Verdict for Defendant before Judge Stump and a jury. The police officer was represented by Mr. Allen.

State Treasurer vs. Zerkonium Company of America, Bankrupt. In the District Court for the District of Maryland. The adjudication was made January 24th, 1922. The 1922 Franchise Tax of $120.00 was allowed to the State by Willis E. Myers, referee, after hearing and argument. Mr. Allen represented the State.

George M. Linthicum vs. Motor Vehicle Commissioner Baughman. Appeal to the Circuit Court of Frederick County from order of the Commissioner in revoking operator's license because of conviction before a Justice of the Peace for driving while intoxicated. The Court, Judge Urner presiding, dismissed the appeal and affirmed the Commissioner's order. Mr. Allen represented Commissioner Baughman.

Anna Bromwell and Husband vs. Police Officer James F. Hardesty. Two cases in the Superior Court. Verdict for Anna Bromwell of $500.00 before Judge Heuisler and a jury, and verdict for the husband for $1,000.00. Mr. Allen represented Officer Hardesty.

Charles W. Gallagher vs. Police Officer John McKenna. In the Superior Court. Suit for damages for assault and battery. Verdict for defendant before Judge Gorter sitting as a jury. Mr. Allen represented Officer McKenna.

Widow of William Stanton Davis vs. State Accident Fund and Adkins Bros., Employers. Before the State Industrial Accident Commission at Salisbury. The deceased was killed while hauling logs for Adkins Brothers. The issue was whether the deceased was an employee or an independent contractor. The Commission decided that he was an independent contractor and disallowed the claim of the widow. An appeal has been entered to the Circuit Court for Wicomico County. Mr. Allen appeared for the State Fund.

R. G. Benton vs. Automobile Commissioner Baughman. Appeal to the Circuit Court for Anne Arundel County from the Commissioner's revocation of operator's license, on the ground that Mr. Benton was incapable of properly driving an automobile because of a withered right hand, injured by fire. The jury disagreed and was discharged by Judge Moss. Mr. Allen represented Commissioner Baughman. At a subsequent date the case was submitted to Judge Moss without argument, and Commissioner Baughman was reversed and the license was restored to Mr. Benton.

Maynard Carr vs. Automobile Commissioner Baughman. In the Circuit Court for Anne Arundel County. Appeal from order revoking operator's license because of defective eyesight. Tried before Judge Moss without a jury. Case referred by the Court to Dr. Harlan of Baltimore for report to the Court. After the report Judge Moss reversed the Commissioner and restored the license to Mr. Carr. Mr. Allen represented Commissioner Baughman.

In Re: Extradition of Ross C. Wolf from the State of Pennsylvania. After hearing at Harrisburg, Pennsylvania, before Deputy Attorney-General John M. English representing Governor Pinchot of Pennsylvania, extradition was granted and the prisoner returned to Washington County, Maryland, to answer a charge of robbery. Mr. Allen represented the State of Maryland.

Ella B. Kelly vs. State Accident Fund. Before the State Industrial Accident Commission at Cumberland. The claimant, the mother of her deceased son, claimed dependency. The claim was disallowed on the ground that no dependency existed. Mr. Allen represented the State Fund.

Margaret Cosner, Alleged Widow of Joe Cosner, Deceased, vs. State Accident Fund and Manor Coal Company; and Celia Cosner, Widow of Joe Cosner, Deceased, vs. Same.

Two cases before the State Industrial Accident Commission. The Commission awarded $5,000.00 to Margaret Cosner. The State Fund asked that the case be re-opened upon learning of the wife, Celia Cosner. The Commission thereafter struck out the award and disallowed the claim of Margaret Cosner, alleged wife. The claim of Celia Cosner was disallowed because of her separation from her husband for about three years prior to his death. Mr. Allen represented the State Fund.

Maurice J. Davison vs. Automobile Commissioner Baughman. In the Baltimore City Court. Appeal from the Commissioner for refusal to grant an operator's license because Mr. Davison's left arm had been amputated above the elbow. (Mr. Davison lost his arm in the World War). The case was tried before Judge Stump and a jury. The jury disagreed, standing six to six, and was discharged. Mr. Allen represented Commissioner Baughman. Afterwards Commissioner Baughman granted a special operator's license to Mr. Davison limiting him to a Ford automobile and requiring that while driving he use a specially prepared artificial arm.

Jacob Keiffer vs. State Accident Fund. Before the State Industrial Accident Commission at Oakland, Maryland. The claimant had been awarded $2,000.00 as a partial dependant of his deceased son, and this hearing was on a claim for a lump sum, which was granted by the Commission to enable the claimant to purchase a farm for himself and his twelve children. Mr. Allen represented the State Fund.

David J. Cornick vs. State Accident Fund. Before the State Industrial Accident Commission at Hagerstown, Maryland. The claimant, a colored boy seventeen years old, and a student in a High School in South Norfolk, Virginia, proved that he was dependent upon his deceased father. The Commission awarded him $2,000.00. Mr. Allen represented the State Fund.

Sadie A. Kidwell, Widow of George C. Kidwell, Deceased, vs. M. T. and W. J. Fitzimmons and the State Accident Fund. Before the State Industrial Accident Commission. The State Fund contested the claim on the ground that the policy of insurance was not in force because of non-payment of premium by Fitzsimmons. The Commission decided the policy was in force and awarded $5,000.00 to the widow payable in weekly installments. Mr. Allen represented the State Fund.

Thomas Fletcher vs. State Accident Fund and J. J. Kirkness, Jr., Employer. Before the State Industrial Accident Commission. The claimant, a colored man 71 years old, and father of twenty-two children, the youngest of which was born in 1923, is suffering from hernia caused by falling from a plank with a wheelbarrow, and the claimant refuses to be operated on. The Commission decided that he did not have to submit to operation and awarded him compensation. Mr. Allen represented the State Fund.

Mrs. B. G. Johnston, Mother of Merrill Johnston, Deceased, vs. State Accident Fund and Charles E. Eareckson Company. The mother established one-half partial depend-

ency and was awarded $1,500.00 compensation payable $12.00 per week. Mr. Allen represented the State Fund.

Jennett Love (Colored), vs. State Accident Fund and John T. McCaslin, Alleged Employer. The Plaintiff, a dancer, was injured after her performance by lifting a flag pole. The proof showed that she was employed by James Jazz Johnson, who rented one of McCaslin's side-shows, and the claim against McCaslin and the State Fund was therefore disallowed by the Commission. Mr. Allen represented the State Fund.

Nelson Beasley vs. State Accident Fund. Before the State Industrial Accident Commission. The claimant had been awarded compensation for an injury sustained by a rock striking the claimant in the forehead. A running sore developed at the injured part of the forehead, and Dr. Bay reported to the Commission that the running sore was due to a syphilitic condition existing prior to the injury. The Commission discontinued compensation at the request of the State Fund, which was represented by Mr. Allen.

J. C. Alban vs. Automobile Commissioner Baughman. Appeal to the Baltimore City Court from order revoking operator's license by the Commissioner after Mr. Alban was convicted in the Traffic Court of driving while intoxicated. Mr. Alban also appealed from his conviction in the Traffic Court to the Criminal Court of Baltimore City, and raised the contention in the Baltimore City Court appeal that the order of revocation by the Commissioner should not stand pending the outcome of the appeal from the criminal conviction. Judge Frank held that the appeal from the criminal conviction in the Traffic Court did not operate to stay the order of revocation by the Automobile Commissioner. Mr. Allen represented Commissioner Baughman. It later developed that Mr. Alban was found "not guilty" in the Criminal Court of Baltimore City of driving while intoxicated and Mr. Alban's license was therefore restored.

John Buerele vs. Automobile Commissioner Baughman. In the Baltimore City Court. Appeal from ten days's suspen-

sion of operator's license after hearing before the Automobile Commissioner on charge of reckless driving. Judge Carroll T. Bond affirmed Commissioner Baughman after holding from the evidence that Mr. Buerele had been guilty of reckless driving. Mr. Allen represented Commissioner Baughman.

Richard Millard vs. Phillips Packing Company and the State Accident Fund. Before the State Industrial Accident Commission at Cambridge, Maryland. The claimant was injured by a heavy box falling on and cutting his shoulder, and he was awarded two weeks' compensation at $12.00 per week by the Commission. Mr. Allen represented the State Fund.

Etta Morgan, Widow of Martin M. Morgan, Deceased, vs. Cambridge Ice Company and the State Accident Fund. Before the State Industrial Accident Commission at Cambridge, Maryland. The facts showed that deceased was burned to death on a Sunday in the boiler room of Cambridge Ice Company while repairing his own Victrola spring. The Commission disallowed the claim of the widow holding that death did not result from injuries arising out of and in the course of the employment of the deceased. Mr. Allen represented the State Accident Fund.

Anna E. Jackson, Widow of Herbert G. Jackson, Deceased, vs. the Phillips Packing Company and the State Accident Fund. Before the State Industrial Accident Commission at Cambridge, Maryland. The State Fund asked for a hearing in order to protect Sadie V. Jackson, twelve-year-old daughter of the deceased by a former marriage. The Commission awarded $5,000.00 payable in weekly installments to the widow for the use of herself and Dorothy Jackson, her daughter, and Sadie V. Jackson, her step-daughter. Mr. Allen represented the State Fund.

Daniel Bevans vs. State Accident Fund. Before the State Industrial Accident Commission, Cumberland, Maryland.

Petition for lump sum. Mr. Bevans had been awarded a certain weekly compensation during total disability, not to exceed a fixed sum. The State Fund objected to the award of a lump sum. The lump sum was denied the claimant by the Commission. Mr. Allen represented the State Fund.

State of Maryland vs. Major A. Hart, Prohibition Agent. The defendant was charged with disorderly conduct before Justice Stanford in the Central Police Court, Baltimore. Hart filed a petition in the District Court asking for the removal of the case from Justice Stanford to the District Court. Judge Soper of the District Court held that Hart had the right of removal under the Federal Law. Mr. Allen represented the State.

Maryland College Corporation vs. County Commissioners of Baltimore County and the State Tax Commission. Appeal to the Circuit Court of Baltimore County. This appeal was taken by the Corporation from an order of the County Commissioners refusing to abate the 1922 tax assessment, which order was sustained by the State Tax Commission. The assessment on the books of the County Commissioners was against "Maryland College, Charles W. Gallagher Estate." The property had been owned for years by Dr. E. G. Rouse, who, in September, 1921, transferred said property to the Corporation in order to avoid the payment of State taxes, it being provided by law that Corporations owning property for educational purposes are exempt. The Corporation failed to notify the County Commissioners of the transfer until July, 1922. Judge William H. Harlan held that the assessment for the year 1922 should be stricken from the books of the County Commissioners. Edward H. Burke, Esquire, represented the County Commissioners and Mr. Allen represented the State Tax Commission.

Winnie L. Hicks, Father of George Hicks, Deceased, vs. Holt Construction Company and the State Accident Fund. Before the State Industrial Accident Commission at Federalsburg, Maryland. The facts showed that both the father and the two sisters of the deceased were partially dependent

upon the deceased. The Commission awarded $2,000.00 apportioned between the father and his two daughters. Mr. Allen represented the State Fund.

Heirs of William H. Murray vs. Crownsville State Hospital. Before the State Industrial Accident Commission. This claim was disallowed as the deceased was an inmate and not an employee of the Hospital. Mr. Allen represented the Hospital.

Raymond R. Markell vs. State Accident Fund. The claimant had been awarded $16.00 per week during disability and the State Fund stopped compensation upon the advice of Dr. Bay and Dr. Lichtenberg that the injured had recovered. Upon hearing compensation was discontinued by the Commission as of November 5th, 1923, the date that the State Fund stopped paying compensation. Mr. Allen appeared for the State Fund.

Annastasia G. Caprilla vs. Otto M. Reinhardt, M. D., Coroner of Baltimore City, et al. In the Superior Court of Baltimore City. Petition for mandamus to compel defendant to surrender the body of "John Doe" at the Baltimore City Morgue to the petitioner, as the body of Frank Caprilla alleged deceased husband of the petitioner. Mrs. Caprilla produced about twenty witnesses before Judge Gorter who identified the body of "John Doe" as the body of Frank Caprilla. Mrs. Caprilla had two life insurance policies on her husband. It developed at the trial that Frank Caprilla had broken his right arm between the elbow and shoulder in 1919. X-Ray pictures of Frank Caprilla's arm at Johns Hopkins Hospital showed a complete fracture and a poor mend. The upper bone of the right arm of "John Doe" was removed by Dr. Maldeis and produced in Court, which bone had never been fractured. This evidence, coupled with a comparison in person by Judge Gorter of the picture of Frank Caprilla and the body of "John Doe" at the City Morgue, caused Judge Gorter to decide that "John Doe" was not Frank Caprilla, and he then dismissed the petition. Mr.

Allen represented Coroner Reinhardt. (Frank Caprilla, who had been missing for three years, appeared in Baltimore a week after the above hearing and viewed his likeness at the City Morgue.)

State of Maryland vs. Edwin A. Mariner. In the Circuit Court for Worcester County. Condemnation proceedings in behalf of the State Roads Commission. Mr. Godfrey Child, special counsel, represented the Commission. Award of $750.00 against State Roads Commission.

CASES PENDING IN THE UNITED STATES DISTRICT COURT.

Macon Concrete Roller Company vs. Claiborne, Johnston & Company, Inc., In Equity. Proceeding to enjoin the Defendant from the further use of the concrete roller, in which Plaintiff claims to own patent rights, by contractors doing work upon the State roads. Intervention of the State Roads Commission to defend the suit. Answer to bill filed and also answers to Plaintiff's interrogatories filed. Case ready for trial. Mr. Wright was representing the State Roads Commission, assisted by certain lawyers, Messrs. Mason, Fenwick and Lawrence of Washington, D. C.

CASES PENDING IN THE COURT OF APPEALS.

Allen B. Lockhart vs. State of Maryland. No. 7, January term, 1924. Appeal from the Criminal Court of Baltimore City. Conviction for conspiracy to defraud the customers of Smith, Lockhart & Company. Involves questions affecting the crime of conspiracy and the admissibility of certain testimony relating thereto.

R. Tynes Smith, Jr., vs. State of Maryland. No. 8, January term, 1924. Appeal from the Criminal Court of Baltimore City. Conviction for conspiracy to defraud the customers of Smith, Lockhart & Company. Involves certain questions affecting the crime of conspiracy and the admissibility of certain testimony relating thereto.

Nathan Lasky vs. State of Maryland. No. 9, January term, 1924. Appeal from the Criminal Court of Baltimore City. Conviction of murder. Involves questions relating to the admissibility of testimony.

CASES PENDING IN THE LOWER COURTS.

Bradshaw vs. McMullen. In the Circuit Court for Anne Arundel County. Test of Mother's Pension Law.

United Railways and Electric Company vs. State Tax Commission. Circuit Court No. 2 of Baltimore City. Case stated for determination of liability of the Railway Company for bonus tax on increased stock.

Mayor, Counselor and Aldermen of the City of Annapolis, Etc., vs. State Board of Health. Circuit Court for Anne Arundel County. Bill to enjoin the construction of a filtration plant in the City of Annapolis.

David T. Benson vs. Veterinary Medical Board. Baltimore City Court. Mandamus to compel Board to grant veterinary license.

William I. Smith, et al, vs. Conservation Commission. Circuit Court for Talbot County. Bill to restrain the granting of an oyster lease. Demurrer filed by Defendants.

George Kofskey vs. State Roads Commission. Circuit Court for Baltimore County. Injunction to prevent damages to land.

In the Matter of the Mortgage from Alexander Lacey and Thomas Vincent, etc. Circuit Court for Montgomery County in Equity. Petition of State for proceeds of sale of escheated land.

State of Maryland vs. Thomas W. Simmons. In the Circuit Court for Dorchester County. Suit to recover certain

fees received by the Defendant while Secretary of State, and alleged to have been illegally retained by him. Motion filed for a bill of particulars. Argued, motion overruled. Colonel Woodcock represented the State until the time of his resignation. Mr. Fisher acted as counsel for the State thereafter.

Daisy W. Frazier vs. Dr. Henry M. Fitzhugh, President, Albert S. Cook, Secretary, Mary W. Risteau, Stuart S. Janney, Thomas H. Chambers, Sterling Galt, Emory L. Coblentz, and Dr. J. M. T. Finney, constituting the Board of Trustees of the State Normal School, Bowie. In the Baltimore City Court. Suit by dismissed teacher for salary. Demurrer filed on behalf of the trustees of the State Normal School. Mr. Fisher has appeared for the State.

Carrie B. Overton vs. Dr. Henry M. Fitzhugh, et al. In the Baltimore City Court. Demurrer filed on behalf of the trustees of the State Normal School. Suit by dismissed teacher for salary. Mr. Fisher has appeared for the State.

J. Thomas Williams vs. Dr. Henry M. Fitzhugh, et al. In the Baltimore City Court. Suit by dismissed teacher for salary. Demurrer filed on behalf of the trustees of the State Normal School. Mr. Fisher has appeared for the State.

Hiram S. Wildy vs. Dr. Henry M. Fitzhugh, et al. In the Baltimore City Court. Suit by dismissed teacher for salary. Demurrer filed on behalf of the trustees of the State Normal School. Mr. Fisher has appeared for the State.

Inez Duffin vs. Dr. Henry M. Fitzhugh, et al. In the Baltimore City Court. Suit by dismissed teacher for salary. Demurrer filed on behalf of the trustees of the State Normal School. Mr. Fisher has appeared for the State.

Frederick W. Rohrs and Annie Rohrs vs. State Roads Commission. In the Circuit Court for Baltimore County. In equity. Bill of complaint to enjoin the State Roads Com-

mission from entering upon the property of the complainants and removing or attempting to remove a gasoline pump. Answer filed by Mr. Wright.

Abram Spitz vs. State Roads Commission. In the Circuit Court of Cecil County. Action for damages to automobile which ran off the edge of concrete road. Demurrers filed on behalf of the Commission. Mr. Wright represented the Commission with William Pepper Constable, local counsel.

Josie Gelanis vs. State Roads Commission. In the Circuit Court of Cecil County. Action for damages to automobile which ran off the edge of concrete road. Demurrer filed on behalf of the Commission. Mr. Wright represented the Commission, with William Pepper Constable, local counsel.

Mary E. Stedman vs. State Roads Commission. In the Circuit Court of Cecil County. Action for damages to automobile which ran off the edge of concrete road. Demurrer filed on behalf of the Commission. Mr. Wright represented the Commission with William Pepper Constable, local counsel.

Widow of William Stanton Davis. vs. State Accident Fund and Adkins Bros., Employers. The State Industrial Accident Commission, having disallowed the claim of the widow of Davis on the ground that he was an independent contractor, an appeal was entered from its order to the Circuit Court for Wicomico County where the case is now pending.

Edward M. Hammond vs. State Roads Commission. In the Circuit Court for Howard County in Equity. Bill to restrain the Commission from installing on the State Road known as Frederick Turnpike certain pipe and from closing a bridge on said road. Answer filed. Mr. Wright acted for the Commission. Trial of this case has been delayed by reason of the illness of Edward M. Hammond.

State Board of Prison Control vs. Bromwell Brush & Wire Goods Company. In the Superior Court of Baltimore City.

Attachment for the sum of $13,081.06. Testimony taken before Leonard Smith, Notary Public at Michigan City, Indiana. Pleas filed. Demand for bill of particulars filed by the plaintiff to the defendant's claim under the first six counts and its plea of set off and demurrer, filed to the defendant's seventh count. Bill of particulars filed by the defendant. Plaintiff's exceptions to the bill of particulars filed. Defendant's reply to plaintiff's demand for bill of particulars filed. Mr. Wright has acted for the State Board of Prison Control.

Albert B. Clunan vs. Thomas J. Lindsay, Administrator, et al. In the Circuit Court of Baltimore City. Bill of Complaint for the construction of a will. Answer filed on behalf of University. Case submitted for decree except as to interpretation of fourth item of will regarding identity of Residuary Legatee. Mr. Wright represented the University of Maryland.

State of Maryland vs. Joseph Harp. In the Circuit Court of Washington County. Condemnation of land required to change course of the highway from Hagerstown to Smithsburg. Mr. Wright acted for the State, with J. Lloyd Harshman, local counsel.

John M. Sheesley, trading as the John M. Sheesley Circus, vs. Albert C. Ritchie, Governor, William S. Gordy, Comptroller, and Milton A. Reckord, constituting the State Armory Commission. Petition for mandamus to compel defendants to permit the use of the old Fourth Regiment Armory in accordance with the terms of an alleged lease executed between the Petitioner and Mr. O'Connell. Oral argument before Judge Carroll T. Bond, December 6, 1923. Petition for mandamus dismissed, but under order of Court, passed subsequently in pursuance of the provisions of Article 26, Section 44 of the Code, the removal of the case to Circuit Court No. 2 of Baltimore City was authorized.

State of Maryland vs. Hattie Hardesty, et al. In the Circuit Court for Anne Arundel County. Condemnation pro-

ceedings in behalf of the State Roads Commission for land needed in connection with the Severn River Bridge award. Proceeding before Sheriff's Jury dismissed and new proceeding, to be tried in Court, instituted.

Reynolds, Lloyd, Ward and Stevenson vs. Conservation Commission of Maryland. In the Circuit Court of Calvert County. Appeal from order of the Commission granting rights in certain natural oyster beds.

Herman Hahn vs. State Accident Fund and Laundry Company. An award of $12.00 per week during disability has been granted the claimant. A rehearing was requested by the State Fund on the ground that the claimant is malingering. The matter has been referred to Dr. Bay for report to the Commission, after which a further decision will be rendered.

George W. Drury vs. Severn Community, Incorporated, and the State Accident Fund. Before the State Industrial Accident Commission. Claim for compensation for injury to right eye. Dr. Harlan testified that he treated the left eye, and that the present condition of the right eye is not due to any injury which the left eye may have previously sustained. The case was postponed pending further examination by Dr. Harlan. Prior to making further report, Dr. Harlan died, and this case is still held in abeyance.

Demenico Piscadella vs. J. C. Budding Company and State Accident Fund. Before the State Industrial Accident Commission. An award has been granted by the Commission, and upon petition by the State Fund the question of the duration of partial disability will be heard and determined by the Commission.

Louis M. Hill vs. Administrator of Estate of Annie L. Thomas, the State of Maryland, et al. In the Orphans Court of Talbot County. Petition for the sale of property of deceased who died unmarried, leaving no heirs within the fifth degree. The State is made a party to the proceedings as it

is entitled to the balance of the estate, after the payment of all just expenses and charges, for the benefit of the public schools of Talbot County.

Anna D. Siscoverisk vs. State Board of Chiropractic Examiners. In the Circuit Court No. 2 of Baltimore City. Petition for mandamus to show examination papers to plaintiff. An answer has been filed, claiming, among other things, that this Equity Court has no jurisdiction in the premises.

State Accident Fund vs. Frank M. Wilhelm. In the Baltimore City Court. Suit for unpaid premiums.

General Milton A. Reckord vs. John C. Stansbury. In the Peoples Court of Baltimore City. Suit to recover military equipment issued to the defendant as an Officer in the Maryland National Guard.

General Milton A. Reckord vs. Thomas O. Lantz. In the Circuit Court of Dorchester County. Suit to recover military equipment issued to the defendant as an officer in the Maryland National Guard.

General Milton A. Reckord vs. William D. MacFarlane. In the Circuit Court for Allegany County. Suit to recover military equipment issued to the defendant as an Officer in the Maryland National Guard.

General Milton A. Reckord vs. Wilbur F. Saylor. In the Circuit Court of Frederick County. Suit to recover military equipment issued to the defendant as an Officer in the Maryland National Guard.

Bank Receivership Cases Now Pending.

State vs. Peoples Savings Bank of Baltimore, Inc. Mr. Page, Bank Commissioner, is acting as substituted receiver. There has been no change in the status of this receivership, and no order discharging the receiver. After each of the

two distributions there were quite a number of checks returned undelivered, and the receiver has made every effort to discover the addresses of the depositors but has been unable to do so. The amount of these undelivered checks is $794.83, and some interest has accrued to the estate.

State vs. Citizens State Bank of Govans. Mr. Page, Bank Commissioner, is acting as substituted receiver. There has been practically no change in the status of this receivership. The attorney, Mr. H. E. Parkhurst, has within the last few days, notified the receiver that Judge Duncan would consider a petition authorizing an adjustment of certain accounts, the settlement of certain costs and legal expenses, and upon an order of the Court the amount available would be distributed to the stockholders. It is hoped that this receivership will be wound up in a short time.

State vs. Savings Bank of Libertytown. Mr. Page, Bank Commissioner, is acting as substituted receiver. The receiver was advised a short time ago by Mr. Clarence W. Perkins, Receiver of the Maryland Insurance Agency, the largest debtor, that there would be certain funds available, and, as soon as this settlement is made, the amount so recovered will be distributed among the stockholders.

State of Maryland vs. Lafayette Bank. Mr. Page, Bank Commissioner, is acting as Receiver. A considerable amount of litigation has been involved in the administration of this receivership. The receiver, represented by Samuel J. Fisher as attorney, secured during the year a favorable decision from the Court of Appeals in the case of Montrose Building & Loan Association against Page, Receiver. Two cases, each entitled Penrose against Page, Receiver, and the case of Rausch against Page, Receiver, have been argued before the Court of Appeals and decisions are expected in all of them during January. The receiver on December 1st last distributed a fourth and final dividend of 25% to all depositors and creditors, making a total distribution of 100c on the dollar to all creditors. Four per cent on all saving

deposits up to the date of the receivership was also allowed and paid. The receiver now has in hand approximately $16,000.00 in cash and this amount will be supplemented by approximately $15,000.00 if he succeeds in winning the cases now pending in the Court of Appeals.

State vs. Bank of White Haven. Mr. Page, Bank Commissioner, is acting as receiver under order of the Circuit Court for Wicomico County. There has been no change in the status of this receivership. After paying depositors and other creditors in full there remained a fraction over $1,000 to be distributed among the stockholders. The directors and many of the stockholders, however, requested the receiver to institute proceedings for setting aside a certain mortgage made by the largest debtor of the bank. This was, accordingly done, and the receiver is advised by his attorney, Col. Woodcock, that the result will probably be known in January. As soon as this case is settled whatever amount there may be in the hands of the receiver will be distributed to the stockholders.

Assignments to Departments.

The Attorney General continued throughout the year to keep in personal touch with the various questions presented by the Boards and Commissions of the State. He acted as counsel for the Bank Commissioner and as usual accompanied him to Atlantic City during the month of May for the purpose of attending the Maryland State Bankers' Convention. The Attorney General also held himself in readiness to confer at any time with the heads of State Departments with reference to any matters which they deemed it advisable to present to him personally. A number of such conferences were held throughout the year.

Mr. Fisher's work as personal adviser to the Police Commissioner and the Commissioner of Motor Vehicles continued throughout 1923. His familiarity with all of the conditions affecting these departments gained through personal contact with them for a period of three years and a constant

study of their respective problems and the law relating to the same rendered his aid invaluable. Mr. Fisher appeared in a number of cases in behalf of the Police Commissioner and members of the force and also represented the Sheriff of Baltimore City in many injunction cases and other proceedings.

Mr. Fisher was largely responsible for bringing to a successful conclusion during 1923 the long pending dispute with the Baltimore and Ohio Railroad Company concerning the payment of taxes by the Baltimore Belt Railroad Company. The State claimed that the Baltimore Belt Railroad Company, being a separate railroad corporation, should pay a tax on its gross receipts and that the gross receipts of this company should not be included in the gross receipts of the Baltimore and Ohio Railroad Company. This contention was finally conceded to be correct by the Baltimore and Ohio officials, and an agreement was executed in pursuance of which the Baltimore and Ohio Railroad Company paid to the State the sum of $26,647.82 covering the balance of taxes in arrears for the years 1918, 1919, 1920, 1921 and 1922, and agreed to pay every year hereafter the sum of $5,873.30 as an annual tax on the gross receipts of the Baltimore Belt Railroad Company.

Mr. Fisher also rendered valuable assistance in preparing and arguing the appeal of the State Deposit & Trust Company from the judgment of the Baltimore Court requiring it to pay a collateral inheritance tax on income accruing during the course of administration. This case was warmly contested and the favorable decision of the Court of Appeals guarantees to the State a large annual increase, estimated at about twenty-five or thirty thousand dollars, from this source of taxation.

Mr. Wright continued to represent the University of Maryland, consulting with the officials of that institution on a number of occasions during the year. He passed on the examination of several titles for property purchased by the University and also approved its building contracts and bonds. Mr. Wright was called upon to perform many duties for the State Roads Commission. He approved 107 road

contracts totaling 194.63 miles with an aggregate cost of $4,578,759.00; six bridge contracts representing a total cost of $94,205.00, and five oil contracts affecting 288.65 miles involving a total outlay of $73,294.00. He also passed on the examination of all titles to property purchased by this department. Mr. Wright was also assigned to the State Board of Forestry. He advised the State Forester in a number of matters including the opening of a foot bridge at Orange Grove. This bridge, however, was later washed away in a freshet which conclusively settled the matters in dispute. Mr. Wright also represented the Bureau of Mines and frequently advised Mr. Rutledge, Chief Mining Engineer. Mr. Wright was present and acted as legal adviser to the State Employment Commissioner at the following hearings throughout the year:

> January 3rd, 1923, Miss Lucy A. Marshall against Helen Gordon (involving the status of a nurse at the University Hospital).
>
> April 10th, 1923, Col. Sweezey, Warden of the Maryland Penitentiary, against Joseph Patrick, a guard in the Penitentiary.
>
> June 12th, 1923, preliminary hearing on the cause of removal charges filed by Joseph Dean, citizen, against Harry Dunn and Charles Jefferson.

Mr. Wright also appeared for the State Tax Commission in all appeals from decisions of that body and represented the Department of Welfare, looking after litigation affecting that department and preparing several agreements for the employment of convict labor.

Mr. Wright conducted two hearings growing out of the administration of Maryland's Fraudulent Security or Blue Sky Law; the first being requested by the National Bonded Coal Company in connection with an order passed by the Attorney General requiring it to cease and desist from selling securities in Maryland, and the second being requested

by the M. V. All Weather Control Company in connection with a similar order passed by the Attorney General against said Company. In both hearings the original orders of the Attorney General were sustained and no further action was taken by the two companies affected thereby.

Mr. Spencer acted throughout the year as counsel to the Board of Supervisors of Election of Baltimore City and to the State Board of Health. Among other duties performed by him in behalf of the Board of Election Supervisors was the preparation of the usual instructions issued to judges and clerks of election, both as to registration and primary and general elections and instructions to voters, as well as the approval of the form of all ballots. Mr. Spencer personally attended all meetings of the State Board of Health. He rendered great assistance in the preparation of all briefs filed in criminal appeals in the Court of Appeals and also participated actively in Frederick as an assistant to State's Attorney Aaron R. Anders in the trial of B. Evard Kepner for the murder of his wife, and of Annan Horner upon certain charges growing out of the failure of Annan, Horner & Company, private bankers of Emmitsburg. Mr. Spencer also prepared for the Board of Public Works the various resolutions, advertisements and forms necessary for the issuance of the State bonds throughout the year.

Mr. Allen was very active in the trial of cases and rendered conspicuously successful service of this general character. He was frequently called upon to act in behalf of the State Accident Fund and his efforts were commended by the officials representing that department of the State. A considerable portion of Mr. Allen's time was devoted to the collection of taxes in arrears due the State from domestic and foreign corporations. A report of the collections actually made by him is hereinafter set forth in this paper.

Opinions.

The total number of pages contained in volume 7 of the Report and Official Opinions of the Attorney General during the year 1922 were only 559 as compared with 621 pages for

1921. The volume for 1923 will be very much smaller than any issued during my administration. Apparently this is a condition which always prevails in the fourth year of an administration inasmuch as the fourth volume issued by you as Attorney General was very much more limited than any of the books which preceded it. All opinions during 1923 were prepared by the Attorney General personally or examined carefully by him before receiving his approval. It has been estimated in the office that 75% of all opinions during the last four years were written personally by the Attorney General.

Blue Sky Law.

The Attorney General continued to supervise personally the administration of Chapter 552 of the Acts of 1922, commonly known as Maryland Blue Sky Law, or Fraudulent Security Act. One of the most important investigations conducted was that relating to certain subsidiary corporations of the R. L. Dollings Company. We succeeded in securing statements which were claimed by the Company to be in greater detail than any previously issued and these were being followed up vigorously when receivers for the R. L. Dollings Company and many of its subsidiary corporations were appointed by the Courts of Ohio and of other states. Invaluable assistance in this work was rendered by the Blue Sky Committee, Inc., and special mention should be made of the interest and enthusiastic support accorded at all times by Mr. Paul Y. Waters, its Vice-President. Questionnaires were mailed to a number of companies, some restraining orders were passed and conditions generally were greatly improved by the activities conducted under this law.

I feel, however, very strongly that additional legislation is needed if effective work is to be accomplished. The scope of the present law is too limited and the powers conferred too restricted to accord to the public the full protection to which it is entitled. I strongly recommend, therefore, that appropriate legislation be passed at the coming session of the General Assembly and urge that this legislation should in-

clude the licensing of all brokerage houses and their respective salesmen.

Tax Collections.

As a result of the provisions of the Re-organization Bill which became effective January 1st, 1923, the collection of delinquent taxes became one of the duties of the Attorney General's office and the positions of the special assistants for tax collection purposes were abolished. As shown by the report for 1922 the balance due Messrs. Robert A. Gracie and J. Russell Carroll, who had since 1920 been supervising these collections, was $2,993.27. When I first took charge of the office I discovered that a considerable balance was due Mr. J. Clark Murphy, who served as one of the collectors during your administration as Attorney General, and this arrearage continued to grow because of the insufficiency of the appropriations to meet the commissions allowed under the law for these collections. It was noted about December 1st, 1923, that the various balances carried by the different items of appropriations to the State Law Department were sufficient in the aggregate to liquidate the balance due Messrs. Gracie and Carroll. With your approval sufficient portions of these balances were consolidated to discharge this debt and Messrs. Gracie and Carroll were paid in full. This method of handling the matter obviated the necessity of asking the next General Assembly for a special appropriation for this purpose.

Mr. Allen had exclusive charge of all tax collections for 1923. His aggregate collections during that period amounted to $25,785.22, which compares most favorably with the results accomplished under the old system.

Title Work and Condemnation Work, Special Counsel.

Allegany County—

Prosecuting violators of the State Forestry Laws in behalf of State Forester during 1921, 1922, 1923. George Henderson, fee $25.00.

Anne Arundel County—

Condemnation proceedings against the Parks Williams estate for land required by the State Roads Commission. Ridgly P. Melvin, fee and costs $230.00.

Examination of title Ferry Farm Realty Company for land required by the State Roads Commission. James M. Munroe, fee $75.00.

Baltimore City—

Examination of title for property acquired by the State Roads Commission for garage purposes on Southern Avenue. J. Frank Batty, fee $75.00.

Caroline County—

Acquisition of right-of-way through the Wyman and Luff lands required by the State Roads Commission. Fred R. Owens, fee $100.00.

Cecil County—

Examination of title and acquisition of right-of-way through the lands of the Asbury Methodist Church (colored) required by the State Roads Commission. Joshua Clayton, fee $150.00.

Charles County—

Condemnation proceedings against Harrison Posey for land required by the State Roads Commission. John F. Mudd, fee $50.00.

Dorchester County—

Phillips O'Neill against State Roads Commission. An old case dating from 1916. Settled. Vernon S. Bradly, fee $25.00.

Frederick County—

Services rendered in connection with the Middletown bridge matter for the State Roads Commission. Reno S. Harp, fee $25.00.

Condemnation proceedings against G. Leicester Thomas for land required by the State Roads Commission. Edgar H. McBride, fee and costs $306.10.

Hemp and Doty against State Roads Commission. Trespass case, settled. Leo Weinberg, fee $25.00.

Howard County—

Examination of title of quarry property near Ellicott City acquired from Union Trust Company by State Roads Commission. James Clark, fee and costs $55.00.

Prince George's County—

State of Maryland against H. B. Claggett, et al.

State of Maryland against Frederick Sasscer, et al.

State of Maryland against J. Selwyn Sasscer, et al.

Condemnation proceedings in all three cases for lands required by the State Roads Commission.

Frederick Sasscer, et al, against John N. Mackall, et al, constituting State Roads Commission. Bill to restrain Commission from proceeding with condemnation case. J. Wilson Ryon, Vincent A. Sheehy, fees in all four cases $750.00.

Talbot County—

Samuel C. Trippe, et al, against State Roads Commission for injunction to restrain Commission from relocating State road near Royal Oak.

State of Maryland against Mary C. Bassett, et al,. Condemnation proceedings to acquire land needed by State Roads Commission. T. Hughlett Henry, fee and costs $255.80 ,in both cases.

Washington County—

State of Maryland against John Warrenfeltz. Acquisition of land required by State Roads Commission. J. Lloyd Harshman, fee $35.00.

State of Maryland against Clifford Shilling and wife. Condemnation proceedings for land required by the State Roads Commission. J. Lloyd Harshman, fee $100.00.

Special Collections.

Several shortages in the accounts of State Officials were reported to the Attorney General during the year and he succeeded in adjusting two of these accounts to the entire satisfaction of the State Officials interested therein. The Comptroller claimed that William E. Viett, the Sheriff of Montgomery County, for the years 1910-1911, was still indebted to the State in the sum of Eight Hundred and Ninety-one Dollars and ten cents ($891.10). This entire amount was finally paid by Mr. Viett without suit.

It was also reported that V. M. Sullivane, Police Justice of Cambridge, was indebted to certain State Officials and also to the County Commissioner of Dorchester County for fines collected by him for which he had failed to make an accounting. The bond of Mr. Sullivane was in the penalty of One Thousand ($1,000.00) Dollars and, by agreement, the Bonding Company paid this amount to the Attorney General, who remitted Seven Hundred and Fifty ($750.00) Dollars thereof to the Attorney for the Board of County Commissioners of Dorchester County and divided the remaining Two Hundred and Fifty ($250.00) Dollars among State Officials as follows:—

Conservation Commission	$117.81
Commissioner of Motor Vehicles	78.27
State Game Warden	53.92

Each State Official received the same proportionate amount of the entire claim represented by him.

Conclusion.

In bringing to a close my last official communication to you I desire to express again my appreciation of the cordial treatment which I have received during the past four years from all the State Officials connected with your administration. Many of them have become my warm personal friends. I have learned to entertain for all of them a high personal regard and their sympathetic co-operation in all matters in

which we were called upon to work together was of great assistance to me in discharging the duties of my own office. I wish to thank you also for your own kind consideration and the many courtesies which you have extended to me. It was a genuine pleasure to be associated with one who possessed such an intelligent and comprehensive grasp of all conditions affecting the State Government and who was animated at all times by a sincere desire to promote the welfare of the State and its people. I am very genuinely and earnestly hopeful that during the next three years you will have a pleasant and successful administration and that under your leadership the affairs of the State may be handled not only wisely and prudently but in such a manner as to bring to all of our people a finer measure of happiness and prosperity.

Very truly yours,

ALEXANDER ARMSTRONG.

Attorney General.

Cost of the State's Legal Work During the Fiscal Year Ended September 30, 1923.

Appropriation under Act of 1922, Ch. 500		$25,803.00
Appearance fees received from cases won by the State and turned into the State Treasury		160.50
Unexpended balance, 1922, carried forward to 1923		2,684.19
Reimbursement for cost of briefs in the cases of		
State vs. N. Y. P. & P. R. R.	$22.50	
Leister vs. State	30.00	
Levering vs. Supervisors	55.50	
State vs. Lansman	12.00	
Weisengoff vs. State	8.00	
		128.00
		$28,775.69
Salary of Attorney General	$5,000.00	
Salaries of Asst. Attorneys General	10,000.00	
Stenographers and Office help	3,165.00	
Rent	2,599.92	
Office Supplies	297.64	
Postage	184.26	
Annual Reports and Opinions	1,880.10	
Records, Briefs, etc.	321.75	
Telegraph and Telephone	474.26	
Miscellaneous, Water, Ice, Towels	150.41	
Office Equipment	133.45	
Books and Periodicals	201.25	
Traveling Expenses	223.57	
Extra Typewriting	107.80	
Commissions of Attorneys on Claims of the State	481.12	
		25,220.53
		$3,555.16
Less appearance fees turned over to State Treasurer		160.50
Unexpended balance, 1923, carried forward to 1924		$3,394.66
Unexpended balance, 1922, carried forward to 1923		2,684.19
Total saving for fiscal year, 1923		$710.47

OFFICIAL OPINIONS

of the

ATTORNEY GENERAL OF MARYLAND

ADMINISTRATION OF ESTATES.

ADMINISTRATION OF ESTATES—UPON FAILURE OF PARTIES ENTITLED TO APPLY FOR ADMINISTRATION, IT IS THE DUTY OF THE ORPHANS' COURT TO GRANT LETTERS—HEIRS MAY NOT PAY DEBTS AND AVOID ADMINISTRATION OR PAYMENT OF TAXES INCIDENT THERETO.

February 3rd, 1923.

George Edward Smith, Esq.,
Register of Wills,
Frederick, Md.

DEAR MR. SMITH: Your letter of February 1st asked for my opinion concerning the authority of the Orphans' Court or Register of Wills to require administration upon the estate of a decendent for the sole purpose of collecting the one per cent. tax on commissions under the following circumstances:

A resident of Frederick County recently died, intestate, seized and possessed of valuable real and personal property located in Frederick County. He is survived by a widow and five children, all adults. These parties in interest, being *sui juris*, have agreed to discharge all debts, if any, of the deceased and object to taking out letters of administration on the estate.

Section 14 of Article 93 of the Code provides that "Whenever any person shall die intestate leaving in this State personal estate, letters of administration may forthwith be granted by the Orphans' Court of the county wherein was the party's mansion house or residence, etc."

The Orphans' Court is thus vested with the *authority* to issue letters of administration upon the estate of any person dying intestate and residing within the jurisdiction of the Court. The *duty* of the court in the premises is indicated in the case of Williams vs. Addison, 93 Md. 41, where this

language is used: "The policy of the law that there should be a prompt administration of the estate is declared in the 14th section wnich directs letters of administration to be forthwith granted whenever any person shall die intestate owning personal property in this State." The provisions of this section are thus declared to be mandatory and contemplate the prompt administration of all estates.

Persons entitled to letters of administration may file a petition in court, asking for the issuance of the same, but the right of the Court to act is not dependent upon the filing of such a petition. It acquires jurisdiction as soon as the death and actual intestacy have been established. Under the provisions of Section 32, of Article 93, a widow, child, grandchild, father, brother, sister or mother are entitled to notice before the court acts with reference to the issuance of letters of administration. All other relations and creditors are not considered to be entitled unless they shall actually make application. Section 31 of Article 93 substantially answers the question presented by your letter when it declares that if "there shall be neither husband, nor wife, nor child, nor grandchild, nor father nor brother nor sister nor mother, or if these be incapable, or decline or refuse to appear, on proper summons, or notice, or if other relations or creditors shall neglect to apply, administration may be granted at the discretion of the Court. See also Dalrymple vs. Gamble, 66 Md. at page 308.

It is my opinion, therefore, that if the widow or child or some other relative or creditor entitled under the statute to ask for letters of administration on this estate fail or refuse to act, the Orphans' Court of your County may, upon its own initiative or upon the application of some outside party, grant letters of administration upon this estate to some person of its own selection. It will take this action in pursuance of a duty imposed upon it by law, not merely for the purpose of safeguarding the one per cent. tax on commissions to which the State is entitled, but also to protect, in a legal way, the rights of creditors and to administer this estate in the same manner and in accordance with the same

requirements that are prescribed by the general law of the State for the administration of estates.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

ADMINISTRATION OF ESTATES—TRANSFER OF STOCK OWNED (1) BY NON RESIDENT DECEDENT IN MARYLAND CORPORATION, (2) BY RESIDENT DECEDENT IN FOREIGN CORPORATION.

March 17th, 1923.

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

MY DEAR MR. DENNIS: I have your letter of March 16th in which you enclosed a communication from Mr. Frank E. McMillin, of Washington, in reference to the transfer of stock of a Delaware corporation belonging to the estate of his deceased wife, who was a resident of Maryland. I have answered Mr. McMillin's letter by writing to him direct.

You ask me to advise you as to the character of replies which you should make in the following cases:

First, where the party is a deceased non-resident owning stock in a Maryland corporation.

Second, where the party is a deceased resident owning stock in a foreign corporation.

In answer to your first question I beg to say that this situation arises so frequently and there are so many requests for information concerning the law of Maryland that I have made a compilation of the pertinent statutory provisions and had it printed. It is now only necessary for me to mail one of these little leaflets to the various parties writing to me on the subject. I am enclosing one of these

pamphlets herein for your information. My Secretary tells me that my supply of these leaflets is almost exhausted, but as soon as the new ones have been printed I will immediately send to your office a supply of them, so that you will be in a position to answer promptly all inquiries of this kind which are sent to you.

Second, I would suggest that in cases where the party is a deceased resident owning stock in foreign corporations, you notify the party writing to you that no waiver whatever is necessary from the Treasurer or any other State official. The proper procedure is for the executor or administrator to include the stock of the foreign corporation in the inventory of appraisement. If this stock is sold under order of Court or is distributed in kind in the final settlement of the estate, the Orphans' Court will pass an order authorizing the executor to transfer the certificate to the new owner. It will then be necessary for the executor or administrator to comply with the laws of the State in which the company was incorporated before the transfer can be made and the new certificate issued. Our law does not create any special requirements as to the transfer of stock of foreign corporations. These securities are included among the assets upon which commissions are allowed and under proper circumstances the collateral inheritance tax is payable.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

BANKS.

BANKS—LICENSEES UNDER UNIFORM SMALL LOAN LAW MAY TAKE MORTGAGES OR OTHER REAL ESTATE SECURITIES.

June 27th, 1923.

George W. Page, Esq.,
Bank Commissioner,
Union Trust Building,
Baltimore, Md.

MY DEAR MR. PAGE: You recently asked me to advise you whether licensees operating under the Uniform Small Loan Law of Maryland were deprived by that Act of the right to protect their loans by mortgages or other real estate securities.

I have been unable to find any provision in our law specifically prohibiting the taking, by any such licensee, of mortgages or other real estate securities. That the right to do so may be exercised by licensees seems to be indicated by the language of Section 14 which permits the retention of the amount required to record "any instrument securing the loan" and also by the language of sub-section C of Section 15, which requires the licensee upon repayment of the loan in full "to release any mortgage, restore any pledge, etc., given by the borrower as security."

It was suggested that in Virginia a contrary ruling had been given by the Attorney General of that State, but I have secured a copy of his opinion and find that he relied upon a certain portion of Section 19 of the Virginia Act, which reads as follows:

"Nor shall this act apply to loans for which real estate securities are given if said security is evidenced by mortgage or deed of trust."

In the face of this express provision, it was impossible for the Attorney General of Virginia to rule otherwise, but no such language was inserted in the Maryland Act, and it is my opinion that it is proper for licensees to secure their loans where they desire to do so by mortgages on real estate.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

BANKS—CHARTER OF THE COLUMBIAN TRUST COMPANY OF BALTIMORE SURVIVES AT THIS TIME—POSSIBLY MODIFIED BY CHAPTER 219 OF ACTS OF 1910.

December 12th, 1923.

George W. Page, Esq.,
Bank Commissioner,
409-411 Union Trust Building,
Baltimore, Maryland.

MY DEAR MR. PAGE: I hereby acknowledge receipt of your letter of November 8th, relative to the present status of the legislative charter granted to The Columbian Trust Company of Baltimore City, and desire to submit herewith my views on this subject.

The charter was granted by Chapter 400 of the Acts of 1902 and provided for the organization of the Trust Company with a capital stock of $100,000 consisting of 1,000 shares of $100 each. It conferred the right to organize when not less than 1,000 shares had been subscribed and at least $1.00 a share had been paid on each share so subscribed. Apparently no action whatever was taken under this charter until the spring of 1911, when six persons paid in the sum of $2,400, of which amount $1,000 was considered as representing the required payment of $1.00 per share on the 1,000 shares as a prerequisite to the right to organize. The

original organizers assigned all of their rights to a certain George B. Pumphrey. Eventually, as a result of further assignments made by Mr. Pumphrey, certificates representing in the aggregate 444 shares were issued, respectively, in the names of ten different gentlemen while a certificate for 106 shares was issued to Luther G. Gadd as Promotion Fund Stock. The above certificates were not delivered to the parties named therein, but were held, with the exception of 24 shares, under a voting trust. The $1,000 paid in as aforesaid, was used to pay a bonus tax of $125.00 and the franchise taxes, aggregating $875.00, which had accumulated during the years 1904 to 1911, inclusive. These payments were made on or about April 4, 1911.

The first meeting of the Company was held in the office of a construction company on the thirteenth floor of the Continental Trust Building. The second meeting was held two weeks later at the same place, and, thereafter, desk room and office space were secured on the first floor of the Builders' Exchange Building on North Charles Street. Subsequently the corporation had its office in the rooms used by Edward P. Hill, in the Lexington Building, and thereafter Mr. Gadd took charge of the books and papers belonging to the Company until about 1916.

The information furnished me as to the character of the office maintained by the Company is very meager, but I am assured that at the time the payments were made in 1911 and for some months thereafter the Company did definitely maintain an office in Baltimore City.

Directors of the corporation were named in 1911, and the directors in turn duly elected corporate officers by naming a President, Vice-President, Secretary and Treasurer.

The Legislature of 1910, by Chapter 219 of the Acts of that year, adopted certain legislation of an important and general nature relating to banks and trust companies. Section 50 of this Act declared that every trust company, incorporated under any law or laws of this State prior to the adoption of the Act, should be subject to its provisions, providing further, however, that no special rights, privileges or powers theretofore conferred upon any Trust Com-

pany by their respective charters should be affected "if said Companies were organized and doing business prior to the passage of the Act." The Act was approved on April 8, 1910. It is evident, therefore, that any special rights or privileges conferred upon the Columbian Trust Company of Baltimore City by its charter, which were in conflict with the general provisions of Chapter 219 of the Acts of 1910, were repealed by that Act inasmuch as the Columbian Trust Company of Baltimore City was not organized and doing business prior to 1910.

In 1912, the Legislature stipulated by Chapter 194 of the Acts of that year, now codified as Section 79 of Article 11 of the Code, that "all charters of institutions subject to the provisions of said Act heretofore granted by the General Assembly of Maryland where the franchises shall not have been availed of to the extent of forming a complete organization, and establishing an office, by the first day of January, 1914, are hereby repealed."

I feel that this provision should be strictly construed because its effect is to destroy rights previously granted by the State. The language used does not seem to be sufficiently broad to establish the necessity for a continuing organization and the sustained maintenance of an office. The formation of a complete organization and the definite establishment of an office, maintained for a sufficient length of time to be bona fide, are the only requirements essential to preserve the existence of a charter granted to banks or trust companies prior to 1912.

The Columbian Trust Company of Baltimore City, under the facts stated above, had formed a complete organization prior to January 1, 1914, by issuing stock and electing directors and officers. It had also established an office. I think the facts are sufficiently clear to indicate not only that an office was established, but that it was continued in different places for a considerable period of time.

I have no information concerning any payments of taxes by the corporation since 1911. I am informed, however, that the proper officials of the State have declared that no taxes were due and I am also informed that no steps have

ever been taken by the State to forfeit the charter for non-payment of taxes. Even if any taxes are now overdue, their non-payment does not automatically destroy the charter. Certain legal processes must be utilized to accomplish this end, and these processes provide an opportunity for the officers of the Company to pay the taxes and preserve the corporate life. It is, therefore, my opinion that the charter of the Columbian Trust Company of Baltimore City survives at this time. I believe, however, as has been pointed out above, that the powers and privileges therein granted must be read in connection with the provisions of the general law of 1910, and that if any of said powers and privileges are in conflict with the requirements or provisions of Chapter 219 of the Act of that year, they have been either amended or repealed to conform with the requirements of the general law.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

BOARD OF DENTAL EXAMINERS.

BOARD OF DENTAL EXAMINERS—BOARD MAY FIX, IN ITS DISCRETION, TIME FOR HOLDING EXAMINATIONS.

March 7th, 1923.

Dr. T. L. McCarriar,
Secretary, State Board of Dental Examiners,
1822 N. Charles Street,
Baltimore, Md.

DEAR DR. MCCARRIAR: I beg to reply to your letter of this date, requesting my opinion as to whether or not your Board can hold an examination for applicants desiring licenses to practice dentistry in the State of Maryland on May 29th, 30th and 31st, 1923.

Chapter 481 of the Acts of 1920 is the law now governing the actions of the State Board of Dental Examiners. Section 3 of this Act provides as follows:

"Said Board shall hold regular meetings in the month of June and November of every year, and special meetings as it may deem necessary upon call of the President or Secretary thereof, and upon due notice."

Section 4 of the Act sets forth the requirements necessary for any person to be eligible to apply for an examination, and the section further provides as follows:

"Any person.....may make application in writing to said Board to be examined by it with reference to his or her qualifications to practice dentistry as aforesaid, and upon his or her passing an examination satisfactory to said Board, which examination shall be in writing so far as said Board shall deem practicable, the Board shall cause the name and residence of such person to be registered in a book kept by it for that purpose, and shall issue to such person a certificate of registration, as evidence of his eligibility to practice dentistry. . . ."

The Act does not specify that examinations shall be held at the regular meetings in the months of June and November in every year. In my opinion, the time that examinations may be given is in the discretion of the Board, and you can, therefore, properly fix the time for examinations in the month of May, 1923.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

BOARD OF DENTAL EXAMINERS—MEMBERS OF BOARD MAY ACCEPT PRIVILEGE OF REGISTERING, WITHOUT EXAMINATION, IN DISTRICT OF COLUMBIA EXTENDED BY DISTRICT EXAMINERS.

April 20th, 1923.

Dr. T. L. McCarriar,
Md. State Board of Dental Examiners,
1822 N. Charles St.,
Baltimore, Md.

DEAR DR. MCCARRIAR: In your letter of April 18th, you state that some four or five years ago your Board, in the exercise of the discretionary power with which it is clothed, granted to a member of the District of Columbia Board of Dental Examiners the privilege of being registered in Maryland without being required to submit to an examination. On April 5th, 1922, in pursuance of an inquiry made by you at the request of one or two members of the Maryland Board you received a letter from the Secretary of the District Board stating that that Board had decided to extend to the members of the Maryland Board of Dental Examiners the privilege of registering in the District of Columbia. According to your letter the Maryland Board now desires an expression from me as to the propriety of an acceptance by members of the Maryland Board of the courtesy extended to them, as such, by the Board of the District of Columbia.

I am, perhaps, transcending my authority when I undertake to pass upon a proposition of the character submitted by you. It does not involve an interpretation of the law but presents a question of policy in the performance of official duties. Under Section 4 of Article 32 of the Maryland Code, the State Board of Dental Examiners is unquestionably vested with the authority to register without examination, any graduate of a regular college of dentistry. I assume that the District law contains a similar provision under which the privileges mentioned in the letter from the Secretary of the District Board were extended to the members of your Board. It is usually unwise for public officials to seek and accept for themselves special favors which are denied to others and which they secure solely because of their official position, especially if the privilege acquired carries with it pecuniary gain. I assume that it is not the purpose of the members of your Board to engage actively in their profession in the District of Columbia, and that the action taken by the two Boards is merely an interchange of courtesies which will seldom be used in any substantial or practical way. Under such a set of facts I see no reason why the members of your Board should not accept the privilege extended to them by their brothers in the District of Columbia. It is to be presumed that those members of the dental profession who have been selected by the appointing powers to act as members of the Examining Boards are graduates of a regular Dental College thoroughly experienced from a professional standpoint and that, therefore, the public cannot in any way be injuriously affected by this extension of courtesies.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

STATE BOARD OF DENTAL EXAMINERS—"PARTIAL EXAMINATIONS" — STANDARDS TO BE APPLIED TO MAKE THEM CONFORM WITH GENERAL EXAMINATIONS.

December 14th, 1923.

Dr. T. L. McCarriar,
1822 N. Charles St.,
Baltimore, Md.

MY DEAR DR. MCCARRIAR: The present law governing the State Board of Dental Examiners is known as Chapter 481 of the Acts of 1920. It authorizes the issuance by your Board of a certificate of registration, as an evidence of eligibility to practice dentistry, to every person who shall, after satisfying the other prescribed qualifications of the Act, pass "an examination satisfactory to the Board." This provision practically confers unlimited authority upon the Board as to the manner of conducting such examination, and the standards to be applied in it in determining the fitness of the candidates. Applicants are now required to take tests in fourteen different subjects and in order to pass "the examination," which embraces these fourteen tests, your Board requires them to secure an average of 75 per cent. Even though a candidate may fail in three or four different subjects, nevertheless he will be entitled to his certificate if his average amounts to 75 per cent. or better.

The only limitation placed upon your authority with reference to examinations is found in the latter part of Section 4 of the Act which declares that third year students who have completed at a recognized college of dentistry certain subjects "included in the examination given by the Board, may on application be admitted by said Board to its regular examination upon said subjects, and upon passing such examination shall be deemed to have absolved the requirements of the Board in such subjects." Soon after the passage of the Act the Board adopted the following resolution: "Any candidate who shall fail in more than two of the subjects in the partial examination shall be required to

take the entire examination again." The phrase "partial examination" refers to the examination sanctioned by the latter part of Section 40 quoted above. This examination always includes seven subjects. It has been the custom of the Board also to permit students failing in the partial examination to pass in one or two subjects, to take a second examination in those particular subjects, while this privilege has been denied to applicants taking the tests in all fourteen tests at the same time. You ask me to advise you.

1. Whether the Board may permit students failing in the partial examination to take new tests in the subjects in which they have failed as indicated above, and

2. Whether the rule of the Board requiring all students failing in more than two subjects in a partial examination to submit to another examination in all seven subjects is valid.

In the first place it is clear that the Board may apply the 75 per cent. general average rule to the examination which it is required to hold. It will be noted that the word "examination" was used. This action was probably taken advisedly by the Legislature for the purpose of declaring the entire investigation of the student's knowledge to be a single act on the part of the Board regardless of the number of subjects covered by the various tests involved. The word "examination" in the singular rather than the plural is also used in authorizing the partial examination. It is obvious that the Board must also prescribe the standard by which it shall determine whether an applicant has passed either the partial or the final examination, and the only limitation upon its authority in this respect is that it shall not ordain different standards for the complete examination and the partial examination, inasmuch as the latter is treated by the law as a part of the former. For this reason I do not think that the Board has a right to permit students in the partial examination, failing in one or two subjects, to take second tests in those subjects when the same privilege is denied the students undertaking the greater task of submitting to tests in all fourteen subjects at the same time. This in-

troduces an element of inequality which, in my judgment, is not contemplated by the law.

As to the second proposition, the answer depends largely upon the general standard of proficiency adopted by your Board which must, as was pointed out above, be applied as uniformly as possible to all candidates. If you adhere to the 75 per cent. general average test in the final and complete examination including fourteen subjects, I do not see how the rule passed by your Board can be upheld. To require a candidate to take again an examination in which he has failed in more than two subjects, implies that he need not take it again if he has failed in only one or two subjects. I feel that you must abandon this rule entirely and in lieu of it, adopt one of two alternatives:

First, you may regard the partial examination as a part of the general examination. In this event, I feel that you must require the candidate to make at least 75 per cent. in each of the tests included in such examination or consider him to have failed. If you do not adhere to this rule an applicant may successfully pass some tests and fail so far below 75 per cent. in one or two others that when his general average is taken upon the completion of his final examination, it would be discovered that, although he had attained an average of more than 75 per cent. in the seven subjects included in the final examination, nevertheless his general average was lower than the 75 per cent. mark. This is a complication which you will, of course, wish to avoid.

Second, you may on the contrary regard the partial test and the final examination as separate and distinct examinations in which event a general average of 75 per cent. in each separate examination would be all that was necessarily required. Indeed the law indicates that the partial examination shall be considered as being complete in itself. You will recall that it provides that if the applicant passes "such examination he shall be deemed to have absolved the requirements of the Board in such subjects." In other words, no matter what may happen thereafter the passing of the partial examination completely disposes of the subjects em-

braced therein. There is necessarily, however, a close relationship between the partial and final examination and the requirement of a general average of 75 per cent. in the partial examination would tend to bring that examination into as complete an accord as is possible with the final examination.

The whole question has been an exceedingly difficult one for me to handle and is one that can scarcely be determined alone by the application of legal principles. The important thing to remember in prescribing your rules is that you must accord the same treatment to all candidates and fix standards by which their standing and proficiency can be determined without inequality or discrimination.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

BOARD OF MENTAL HYGIENE.

BOARD OF MENTAL HYGIENE—POSSESSES SUPERVISORY POWERS ONLY OVER CONSTRUCTION OF BUILDING FOR CRIMINAL INSANE AT SPRING GROVE HOSPITAL — PRIMARY RESPONSIBILITY RESTS WITH MANAGERS OF SPRING GROVE.

March 1st, 1923.

Dr. A. P. Herring,
Commissioner of Mental Hygiene,
330 N. Charles Street,
Baltimore, Md.

DEAR DR. HERRING: I acknowledge receipt of your letter of February 9th, 1923, requesting my opinion as to the present responsibility for the management of the building for the criminal insane located on the property of the Spring Grove State Hospital.

Chapter 727 of the Acts of 1920 provided for the issuance of certain State bonds and the use of the proceeds thereof as follows:

"The proceeds of said loan shall be credited to the Board of Public Works and by them used, expended and applied for the following purposes, in the order and manner to be determined by them and through such agencies as they may determine or direct: . . . For the construction of a building for insane persons, with violent or criminal tendencies, $100,000."

I am advised that the Board of Public Works, pursuant to this power, designated the State Lunacy Commission as the agency to draw the plans, fix the location and supervise the construction of the proposed building for the criminal insane, all determinations of the State Lunacy Commission to be subject to the approval of the Board of Public

Works. I am further advised that the State Lunacy Commission with the approval of the Board of Public Works selected the Spring Grove State Hospital grounds as the location for the building, and that the building has been completed.

Under the Re-Organization Act of 1922, the State Lunacy Commission was abolished and the Board of Mental Hygiene was created which assumed all the rights, powers, duties, obligations and functions previously exercised by the State Lunacy Commission under Article 59 of the Annotated Code. The question you now wish me to determine is whether the responsibility for the management of this building rests with the Board of Managers of the Spring Grove State Hospital or with the Board of Mental Hygiene.

The authority given to the Board of Public Works by Chapter 727 of the Acts of 1920 was simply to determine the agency for the *construction* of a building for insane persons. Hence, so far as the powers derived through this Act are concerned, the Lunacy Commission was charged only with the construction of the building. It is, therefore, necessary to determine what general powers the Lunacy Commission had with respect to the buildings for the insane.

The duties and powers of the Board of Mental Hygiene are limited and co-extensive with the powers formerly conferred upon the State Lunacy Commission by Article 59 of the Code. These powers are supervisory in their nature. Section 18 of Article 59 provides for semi-annual meetings between the members of the Lunacy Commission and the members of the several Board of Managers of the various State hospitals for the insane and feeble-minded for the purpose of consultation and the more harmonious and effective administration of Article 59 and the protection and advancement of the interests of insane persons within the State. Section 19 of the same Article provides, in part, as follows:

"It shall also be the duty of said commission, and it is hereby given full powers for the purpose, to make investigations and examinations into and respecting and concerning all institutions, public or private, or whether the same

be incorporated or be conducted or controlled by individuals, which may be authorized by law to receive and care for insane persons, and to inquire into the nature and methods of detention, treatment, government and managements of all persons therein confined, detained or treated. Said commission shall also investigate and examine into the condition of all buildings, grounds and other property connected with any such institution or institutions, and into all matters relating to their maintenance, conduct and management; for such purpose or purposes any members of said commission, or the secretary thereof, shall have free access to the grounds, buildings, equipment and appurtenances and all books and papers relating to patients confined in any such institution, or institutions, and to said patients themselves. All persons connected with any such institution shall give such information and afford such facilities for any such examination or inquiry as the commission or its secretary may require."

This building has been placed upon the grounds of the Spring Grove State Hospital, and I am advised that the State funds for the maintenance of this building have been made through the Spring Grove State Hospital.

It is my opinion, therefore, that the responsibility for the management of the building rests primarily with the Board of Managers of the Spring Grove State Hospital, and that the duties of the Board of Mental Hygiene with respect to the building are supervisory in their nature.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

BOARD OF WELFARE.

BOARD OF WELFARE—NOT LIABLE FOR INJURIES INFLICTED THROUGH NEGLIGENCE OF ONE OF ITS EMPLOYEES—CANNOT MAKE CONTRIBUTION TO INJURED MAN FROM FUNDS SPECIFICALLY APPROPRIATED.

January 20th, 1923.

Robert D. Case, Esq.,
Secretary, The Department of Welfare,
701-702 Union Trust Building,
Baltimore, Md.

DEAR MR. CASE: You state in your letter of January 18th that the Department of Welfare has been requested to reimburse Edward Kennedy, an employee of the Davis Commission Company of Baltimore, because of injuries inflicted upon him by a bull sold by the Maryland House of Correction to the Davis Company. The accident occurred on the property of the Davis Company and there is some dispute as to whether delivery of the bull had actually been made at the time the injuries were inflicted. Even if we assume that the bull was still under the control of the employees of the Maryland House of Correction and that their negligence was responsible for the infliction of the injuries, there is no legal liability which can be enforced in behalf of an injured man against the State and, more particularly, the Department of Welfare. The right of a person assaulted by an officer of the House of Refuge to maintain an action therefor against that institution was denied in Perry vs. House of Refuge, 63 Md. 20. The leading authority on this subject is the case of State vs. Rich, 126 Md. 643, in which it was held that the State Roads Commission, being a governmental agency, was entitled to the benefit of the State's immunity from suit for personal injuries incurred by neg-

ligence in the execution of road work committed to its control. I note, however, that in the letters addressed to Warden Lankford and Mr. Coblentz included in the file submitted to me for my consideration, there is no threat of litigation but simply an appeal for a constribution toward the injured man's expenses. It may be that the employees of the House of Correction were derelict in their duty in failing to warn Mr. Kennedy that the bull was dangerous and might inflict injuries upon him, and for this reason your Board may desire to render some financial assistance to the injured man. Under the Budget system, however, it will be impossible for you to do this unless you possess some fund whose expenditure lies within the judgment and discretion of the Commission. All monies specifically appropriated must be used for the purposes designated and cannot be diverted to any other cause howsoever worthy.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

BOARD OF WELFARE—ACT AUTHORIZING BOARD TO TRANSFER TO PENITENTIARY PRISONERS COMMITTED TO HOUSE OF CORRECTION BY JUSTICES OF THE PEACE UNCONSTITUTIONAL.

March 22nd, 1923.

Honorable Emory L. Coblentz,
Board of Welfare,
701-702 Union Trust Building,
Baltimore, Md.

DEAR MR. COBLENTZ: In a recent letter you directed my attention to the Maryland statute authorizing the transfer of prisoners from the Maryland Penitentiary to the House of Correction, and vice versa, which is codified as Section

654 of Article 27 of the Code. The relevant portion thereof reads as follows:

"Whenever the State Board of Prison Control shall determine that prison discipline will be furthered by transferring from the Maryland House of Correction to the Maryland Penitentiary or from the Maryland Penitentiary to the Maryland House of Correction any person sentenced to either of said institutions for a crime committed after this Act takes effect and shall issue its warrant to the Wardens of said institution directing such transfer then the said sentence of the court shall operate to authorize such transfer by virtue hereof."

You state that under the proposed new classification of prisoners, it is possible that a considerable number of them may be transferred under the provisions quoted above, including certain parties who have been committed to the House of Correction by Justices of the Peace. You then ask my opinion as to the legality of such transfers.

I have had no opportunity to ascertain whether the statutes of other States include similar provisions. A careful examination of the authorities has failed to disclose any court decision dealing with such a proposition. In 32 Cyc. 330, reference is made to the case of Rex vs. Grant, Quincy (Mass.) 326, in which it was held that a prisoner could be removed from one jail to another by authority of a parole order. This case, however, is not a helpful precedent because the situation therein considered was very different from that submitted by you. Your problem must, therefore, be solved upon principle with special reference to the Maryland statute.

The title of Chapter 556 of the Acts of 1916 by which this provision was first enacted gives no indication whatever that the Act contains any such subject matter. It might also be contended that after a man has been sentenced to a particular institution by a court of law, he cannot be removed therefrom by order of an administrative board, such as the Board of Welfare, even under an authority expressly conferred by the Legislature.

Governor Ritchie, however, while Attorney General, in an opinion published in Volume 2, Report and Opinions of the Attorney General, 317, apparently assumed that the Act was constitutional. I will not raise any question, therefore, as to the legal right, under proper circumstances, to transfer prisoners from the Penitentiary to the House of Correction nor as to the authority of your Board to remove to the Penitentiary prisoners in the House of Correction under commitments from courts of law.

It is my opinion, however, that the Legislature could not confer upon your Board the power to transfer to the Penitentiary prisoners committed to the House of Correction by Justices of the Peace. In the case of Danner vs. State, 89 Md. 220, the Legislature had undertaken to confer upon Justices of the Peace the right to try petty larceny cases and to pass sentence therein, but the Court of Appeals held that the Act conferring this authority was unconstitutional. It was pointed out that petty larceny is in Maryland a felony and that the Legislature cannot lawfully confer upon a Justice of the Peace the right to hear and determine cases involving the commission of a felony or of an infamous crime punishable by confinement in the Penitentiary. The effect of that decision was to deny to the General Assembly the power to authorize Justices of the Peace to hear any case involving punishment in the Penitentiary. As a matter of fact, under our law a Justice of the Peace is without authority to sentence a man in the Penitentiary. When a prisoner is brought before a Justice of the Peace and elects to be tried by him, he has a right to assume that if convicted the most severe punishment that can be imposed is imprisonment in the House of Correction. Manifestly, the Legislature cannot do indirectly what the court has denied it the right to do directly. Yet this result would follow if a prisoner committed by a Justice of the Peace to the House of Correction could be immediately transferred therefrom to the Penitentiary.

I, therefore, am of the opinion that the Act of 1916 is unconstitutional in so far as it attempts to authorize the transfer to the Penitentiary of prisoners committed by Justices of the Peace to the House of Correction.

Let me call your attention also to the provision in the law quoted which limits the right of transfer to those cases only in which the Board of Welfare shall determine that prison discipline will be furthered by such transfer. Your board, therefore, would not be justified in making such transfers except in those cases in which prison discipline would be furthered thereby, and although your board is clothed with the power to determine, in its discretion, when prison discipline will be furthered by such transfers, this discretion must be exercised in a sound, careful and judicial manner and not arbitrarily or in furtherance of a purpose other than that contemplated by the statute.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

CONSERVATION.

CONSERVATION — ANNUAL LICENSE REQUIRED IN ANNE ARUNDEL TO ERECT ANY BOOBY OR BRUSH BLINDS RUNS FOR ONE YEAR FROM DATE OF ISSUANCE.

February 17th, 1923.

James M. Munroe, Esq.,
State's Attorney for Anne Arundel County,
Annapolis, Maryland.

MY DEAR MR. MUNROE: I beg to reply to your recent letter in reference to the matter of duck blinds in the Chesapeake Bay opposite the shore of Anne Arundel County. Chapter 465 of the Acts of 1906 provides that "from and after the passage of this Act it shall not be lawful for any person to erect any booby blind or brush blind within the waters of the Chesapeake Bay, opposite the shore line of Anne Arundel County, on the western side of said bay, without having obtained from the Clerk of the Circuit Court for Anne Arundel County an annual license for said blind." The Act further provides for a license fee of $5.00. This Act has been incorporated in Melvin's Code of Public Local Laws of Anne Arundel County, and your letter advises that this Code has been expressly recognized by the Legislature and has been made evidence of the Local Law of Anne Arundel County.

Section 389 of Melvin's Code is a portion of the Public Local Laws of 1888 of Anne Arundel County and provides that "all such licenses shall begin on the first day of May, in each and every year, and continue only for one year from the date thereof. . . ." This section applies to certain licenses required by the Local Laws of 1888 and the amendments thereof. Chapter 465 of the Acts of 1906 is probably a local law of Anne Arundel County, but neither its title nor

any part of the Act itself incorporated it in the Local Code of Anne Arundel County or linked it in any way with existing legislation effecting that jurisdiction. Chapter 465 must, therefore, stand by itself unless the mere insertion of it subsequently in Melvin's Code had the effect of making Section 389 of said Code applicable thereto.

Melvin's Code is only a collection and codification of existing laws relating to Anne Arundel County, and the Legislature simply made this Local Code evidence of the law. In my opinion, therefore, the provisions of Chapter 465 of the Acts of 1906 must be interpreted without any reference whatever to other Acts.

I know of no Local Law of Anne Arundel County or of any general law which provides that all licenses of the character here under discussion shall date from May 1st to May 1st.

Chapter 465 provides for an annual license. This license in my opinion runs from the date of its issuance for a period of one year.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

CONSERVATION—STATE GAME PROTECTION FUND CAN ONLY BE USED FOR PROTECTION AND PROPAGATION OF BIRDS AND GAME — THE WORD "GAME" DOES NOT INCLUDE FISH.

March 1st, 1923.

Harrison W. Vickers, Jr., Esq.,
Conservation Commissioner,
512 Munsey Building,
Baltimore, Md.

MY DEAR MR. VICKERS: Some weeks ago you stated that your Department has been considering for some time the

advisability of transferring to the State Game Warden the supervision, propagation and protection of fresh water fish. You asked me to advise you whether any monies accruing under the State Game Protection Fund can legally be used for the propagation of fresh water fish.

The latest enactment of the General Assembly relating to the State Game Protection Fund is found in Chapter 720 of the Acts of 1920. Section 70 of Article 99 of the Code as repealed and re-enacted by this statute declares that the monies in the State Game Protection Fund "shall be used solely for the salaries and expenses of the State Game Warden and his subordinates and for the protection and propagation of birds and games of all kinds." It is, therefore, apparent that the question submitted by you can only be answered in the affirmative if the word "game" as used in the statute can be so construed as to include fish. This word "game" is defined in Section 44 of Article 99 of the Code as re-enacted by Chapter 549 of the Acts of 1922. It is there declared that the term shall be taken to embrace certain enumerated animals and birds "and any other birds or animals that are protected by a closed season."

The character of animals in the legislative mind is indicated by those actually mentioned, to wit, deer, rabbit, squirrels, muskrat, otter or mink. There is nothing in this enumeration to indicate that the term "animal" was ever intended to refer to or include fish.

An examination of the statutes of Maryland indicate that the legislation relating to fish is embodied in statutes which are entirely separate and which do not have any relationship to game animals as that term is ordinarily understood.

I feel, therefore, that the word "animal" as used in the definition of the term game refers to quadrupeds and cannot be so extended as to embrace fish. The distinction between game and fish is generally recognized each of these subjects being treated separately in different volumes of Corpus Juris.

It is true that there are one or two decisions which, in construing certain statutes, include fish under the term animals, but these decisions are rare, and, in view of the spe-

cific definition of the term "game" in our own statute, are not in any way binding or helpful precedents.

The sources of the State Game Protection Fund, with a single exception, relate to animals and birds, representing either license fees paid for the privilege of hunting or fines imposed for violations of the hunting laws. The exception to which I have referred is found in Section 88 of the current codification of the Conservation Laws of Maryland published by the Conservation Commission, wherein it is declared that one-half of the fines received from violations of certain fish laws shall be paid over to the State Treasurer to the account of the State Game Protection Fund "to be used by the State Game Warden for the *protection* of fish in the waters of the State as may be provided by law." It will be noted that under this law the fines are directed to be paid to the State Treasurer. When they get into the treasury they can only be disbursed therefrom in accordance with the terms of an appropriation made in compliance with the Budget Amendment. All other legislation relating to the State Game Protection Fund directs the payment of the revenues belonging thereto to the Comptroller and authorizes the disbursement of said funds by the Comptroller upon the warrant of the State Conservation Commission.

It is my opinion, therefore, that the monies constituting the State Game Protection Fund in the hands of the Comptroller, while payable by him on warrants signed by the Conservation Commission, can nevertheless be used, after meeting the salaries and expenses of the State Game Warden and his subordinates, solely "for the protection and propagation of birds and games of all kind." As hereinbefore indicated the term "game" does not include fish, and, therefore, it is my opinion that no monies belonging to the State Game Protection Fund can lawfully be used for the propagation of fresh water fish.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

CONSERVATION — LICENSES REQUIRED IN ANNE ARUNDEL COUNTY TO ERECT ANY BOOBY OR BRUSH BLIND RUN FOR ONE YEAR FROM DATE OF ISSUANCE.

March 9th, 1923.

James M. Munroe, Esq.,
State's Attorney,
Annapolis, Md.

MY DEAR MR. MUNROE: We have carefully considered the suggestions made in your letter of February 20th, with reference to the proper construction of the Local Law of Anne Arundel County as to the time from which licenses issued in pursuance of Section 395 of Melvin's Code begin to run. As a result, we feel that there is no reason to change our view on this subject expressed in my letter of February 17th. The whole matter may be summed up in the statement that licenses may be issued for a year when the statute so provides, and that such licenses extend from the date of issuance unless it is clear from express language or necessary implication that the Legislature intended they should date from or expire upon a certain date. It seems to us that no such Legislative provision exists with reference to the booby blind or brush blind licenses authorized by Section 395. That section is a codification of Chapter 465 of the Acts of 1906 which bears no relationship to the other local statutes of Anne Arundel County, and which does not of its own terms either expressly or impliedly limit in any way the life of the annual license which it requires.

This statute must be construed as a separate and distinct piece of legislation, and in the absence of any provision indicating that the licenses which it authorizes shall date from May 1st, I am unable to impose that condition upon them.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

CONSERVATION—ILLEGAL FOR PERSON, OTHER THAN LESSEE, TO DIG OR DRIVE PILES ON LEASED OYSTER LANDS.

April 21st, 1923.

Harrison W. Vickers, Esq.,
Conservation Commissioner,
512 Munsey Building,
Baltimore, Md.

MY DEAR MR. VICKERS: In your letter of April 20th you submitted to me the inquiry received by you recently from C. W. Landon, Esq., of Oxford, Md. Mr. Landon states that a certain party has bought the land that borders on his oyster beds in Town Creek, and is preparing to dig and drive pilings on the best part of his leased ground. He wishes to know if this party has a right to carry out his plans.

Section 115 of Article 72 of the Code declares among other things that "any person who shall wilfully injure or interfere with the oysters of any land leased under the provisions of this sub-title or injure the oysters thereupon situated, or remove, alter or interfere with the stakes, buoys or monuments marking the same, shall, upon conviction, be sentenced . . ."

This statute would seem to me to be applicable and would render the parties threatening to interfere with the leased land of your correspondent liable to prosecution if, upon a trial, it could be shown to the satisfaction of a jury that the digging and driving of piles has injured or interfered with the oysters of the leased land or that the stakes, buoys or monuments have been altered or interfered with.

I feel that in the event of a prosecution, the defense would have to be one of fact, as the law apparently is sufficient to cover a proper case. I would suggest, however, that you advise the lessee, who fears that his rights will be interfered with, to employ private counsel and have him consider the possibility of applying for an injunction to restrain the

interference with his property rights. The matter could probably be best handled by this method of procedure.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

CORPORATIONS.

CORPORATIONS—OPERATIONS OF HILLMAN COAL AND COKE COMPANY CONSTITURE INTER-STATE COMMERCE — NO FRANCHISE TAX DUE FROM SAID COMPANY.

January 19th, 1923.

Charles C. Wallace, Esq., Secretary,
State Tax Commission,
Baltimore, Md.

MY DEAR MR. WALLACE: In your letter of January 15th you request me to inform your Commission whether the Hillman Coal and Coke Company should be stricken from the list of foreign corporations doing business in the State of Maryland. This company maintains an office in the Maryland Trust Building in Baltimore, in connection with the Orenda Coal Company. All of the stock of the Orenda Coal Company is owned by the Hillman Coal and Coke Company. The Orenda Coal Company, which is also a foreign corporation, conducts a retail business in Baltimore, keeps a bank account in Baltimore and has a coal yard here where coal is carried in quantities and delivered in small retail shipments to consumers. The Orenda Coal Company is, therefore, unquestionably a foreign corporation doing business in Maryland and must comply with the laws of the State governing said corporations. At the common office of the two companies orders are received by the Hillman Coal and Coke Company for carload shipments of coal or coke. These orders are transmitted to the company's general offices in Pittsburgh and the coal is then shipped from the Company's mines located in Pennsylvania and West Virginia. The Company has no mines in Maryland. All shipments are made in carload lots moving directly from the Company's mines to the purchaser. The credit of the purchaser is passed upon by the Pittsburgh office and all re-

mittances are made direct from the purchaser to the Pittsburgh office.

In view of these facts I am of the opinion that the operations of the Hillman Coal and Coke Company constitute interstate commerce, and that, therefore, it cannot be compelled to pay the annual franchise tax imposed upon foreign corporations maintaining an office and regularly exercising its franchises in Maryland. The case of the Hillman Coal and Coke Company seems to be covered by the opinion given to your Commission on May 1st, 1920, in re the Crocker-Wheeler Company.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

CORPORATIONS — DIRECTORS MUST DECLARE ACTUAL, NOT MINIMUM VALUE OF CONSIDERATION, OTHER THAN MONEY, FOR WHICH THEY AUTHORIZE STOCK TO BE ISSUED.

February 9, 1923.

Oscar Leser, Esq.,
Commissioner, State Tax Commission,
Union Trust Building,
Baltimore, Md.

MY DEAR MR. LESER: You recently presented to me, by direction of the State Tax Commission, the following question and asked for an expression of my views relative thereto.

A stock issuance statement, offered for filing by the National Asphalt Burial Vault Company, after stating that four thousand shares of the Company's common stock have been authorized by resolution of the Board of Directors to be issued for "the following consideration" (then reciting an

application for patent and describing it by date and number) set forth the following resolution of the Board.

> "Be it further resolved that in the opinion of the Board of Directors the value of said application for patent on asphalt mastic composition is at least $4,000."

You desire to be advised whether this latter statement is in compliance with Section 35-B of Article 23 of the Code. This section reads as follows:

"The Board of Directors shall, by resolution, state its opinion of the actual value of any consideration other than money for which it authorizes such stock, or convertible securities to be issued."

This statement of the law is very clear and certain and unequivocally indicates the duty resting upon a Board of Directors in a situation of this character. The resolution of the Board must state not a minimum value which after all gives no idea at all of the real value, but "the actual value of any consideration other than money," for which it authorizes stock to be issued. The exact value of the patent in question may be $40,000 rather than $4,000. The Board could just as easily have fixed the minimum at $2,000 as at $4,000 if its conception of its duty in the premises was correct. There is only one standard, however, prescribed by the statutes and that is the *actual* value of the consideration as determined by the Board of Directors. One of the purposes of this provision was to prevent fraud, subterfuge and evasions in the issuance of stock and it is a provision of such importance that it should be given a strict and literal enforcement.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

CORPORATIONS—TAXATION—MERCHANTS ACCEPTANCE COMPANY CLASSIFIED AS ORDINARY BUSINESS CORPORATION.

February 24,: 1923.

William W. Beck, Esq.,
State Tax Commission,
Union Trust Building,
Baltimore, Md.

MY DEAR MR. BECK· I beg to reply to your recent communication in which you submitted to me for my examination the certificate of incorporation of the Merchants Acceptance Company, and asked me to advise you whether this Company should be classified for taxation purposes as an ordinary business corporation or among the "moneyed institutions" excepted therefrom by Section 88-B of Article 23 of the Code.

I have examined the certificate of incorporation which you sent me and find that it confers a great number of powers upon the Company incorporated thereby, but none of the purposes and objects specified therein are sufficient, in my judgment, to make this corporation a "moneyed institution" as that phrase is used in Section 88-B. Without discussing the question at length, I hereby advise you that, in my judgment, the Merchants Acceptance Company should be classified as an ordinary business corporation.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

CORPORATIONS—CHARTER OF ROBERT EMMET HALL, INCORPORATED, PROPERLY FORFEITED—NOT A CHARITABLE OR FRATERNAL INSTITUTION.

April 10, 1923.

Honorable Albert C. Ritchie,
Governor of Maryland,
Annapolis, Md.

DEAR GOVERNOR RITCHIE: Philip M. Golden, Esq., attorney for Robert Emmet Hall, Incorporated, of Baltimore, recently called upon me, stating that you had directed him to discuss with me the matter of the forfeiture of the charter of said corporation. The facts are as follows:

Some of the members of The Ancient Order of Hibernians, in 1912, incorporated Robert Emmet Hall, Incorporated, of Baltimore, for the purpose of buying the property known as No. 720 W. Baltimore Street. The charter provided for $5,000.00 capital stock divided into five thousand shares of the par value of $1.00 each. The corporation is authorized to buy and sell real estate, to maintain reading rooms, meeting places for its members, to rent or lease lodge rooms, and to advance the best interests of its members, socially, morally, physically and financially. The corporation is a holding company for the Hibernian Lodge.

The charter was forfeited in 1919 by proclamation of the Governor for the non-payment of its franchise taxes for several years prior thereto. Mr. Golden desires to revive the corporation, claiming that the corporation is a charitable and fraternal institution.

Section 88-D of Article 23 of Volume 4 of the Code, which was the law governing the matter at the time the charter was forfeited, provided that every business corporation, except charitable, benevolent and fraternal institutions should pay annually to the State Treasurer an annual tax for its franchise to be a corporation. There is nothing in its charter to prevent this corporation from engaging in the real estate business or from deriving income from the rental of its rooms. I am advised that the corporation has no by-laws, and that consequently there is nothing to prevent the pay-

ing of dividends to the holders of stock, although in fact no dividends have ever been paid to any of the stockholders. While the stock is distributed exclusively among the members of The Ancient Order of Hibernians, there is nothing to prevent the transfer of the stock to persons outside of the order, and it is entirely possible therefore, that outsiders could acquire a controlling interest in the corporation.

The true legal character of the corporation must be determined, not by the scope and nature of its actual activities, but by the rights and privileges it acquired by its charter and which it could have exercised at any time. The corporation possesses all the rights and privileges of an ordinary business corporation, and, therefore, was subject to all the duties and obligations resting upon such an organization. One of the obligations was to pay the franchise tax to the State.

I had occasion to write an opinion on a similar question on March 13, 1920, to the State Comptroller, when the Masonic Temple Association of Cumberland, a holding company for the Masonic Lodge of Cumberland, endeavored to resist the payment of its franchise tax. In that opinion which is set forth in my Report and Official Opinions of 1920, at page 458, I held that the holding corporation for the Masons was obliged to pay this tax. In that opinion I referred to the two following cases in the Baltimore City Court, viz:—

Royal Arcanum Building Company of Baltimore City vs. Mayor and City Council of Baltimore, and Conway W. Sims, et al. Judges of the Appeal Tax Court of Baltimore City, and the Zeta Club of Baltimore City (connected with the Improved Order of Heptasophs) against the same defendants. In these two cases the same contentions were made which are now advanced by Robert Emmet Hall, Incorporated, of Baltimore, but in both cases the corporations were held to be liable for the taxes.

It is my opinion that the charter of the corporation was properly forfeited, and it is now too late to revive it.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

CORPORATIONS — CORPORATIONS HANDLING FARMERS' PRODUCE ORGANIZED UNDER GENERAL LAW MAY CONVERT INTO CO-OPERATIVE ASSOCIATIONS (CHAPTER 197, ACTS 1922)—NOT OBLIGATORY TO DO SO.

June 22, 1923.

Thomas L. Dawson, Esq.,
State's Attorney,
Rockville, Md.

.....DEAR MR. DAWSON: I beg to reply to your letter of May 25th, concerning Chapter 197 of the Acts of 1922. While it is not a part of my official duties to interpret laws pertaining to private corporations, nevertheless I will gladly set forth my personal views on this subject.

I understand that the Laytonsville Milk Producers, Inc., and the Farm Bureau Supply Company are corporations organized under the general corporations law of the State and not under the provisions of Chapter 197 of the Acts of 1922. You ask me whether or not the Act of 1922 is applicable only to those concerns where the members pool their produce for market and divide the proceeds according to the volume put into the common supply, or whether it is applicable to all companies having for their general purpose the marketing of the produce of its members.

Corporations organized under the general corporation law can convert themselves into co-operative associations or corporations under said Chapter 197 by complying with Section 493 thereof. It does not seem to me that the corporations you have mentioned are compelled to comply with Chapter 197 unless they first elect to convert themselves into co-operative corporations as contemplated by the Act.

There seems to be some conflict between the fourth paragraph of sub-paragraph (b) of Section 469 and Section 491, sub-paragraph (a). The former in defining "co-operative" provides that "proceeds from the business of such association after payment of all necessary expenses and authorized

deductions. are distributed to the members in proportion to the volume of business transacted by said members with the association." The latter provides as follows:

"Any association organized under this Act, as agent to sell the products of members, may operate upon a non-profit basis by contracting to pay the members, for products sold by said members to or through the association, the resale price minus a uniform charge to cover the expenses involved in the handling of said products; resale price to be the actual resale price or to be based upon the average price during any period for products of the same type and quality; the uniform charge for expense to be specified in the contract or made otherwise ascertainable or left for determination by directors."

However, I think the Act may be complied with by corporations organized under or amended to come under said Act, by following out either of the two methods above set forth.

In my opinion the corporations which you mention do not come within the purview of this Act, and can only come under the Act by converting themselves as provided by Section 493 which may be done at any time prior to July 1st, 1923. I construe sub-paragraph (b) of Section 496 to mean that corporations organized under the general law may come under Chapter 197 by election prior to July 1st, 1923, but I do not think it is obligatory on the corporations you mention to do so if they do not so desire.

It seems to me that the general purpose of Chapter 197 is to give the farmers a chance to organize for their own protection, but the law does not go to the extent of compelling all corporations organized under the general law and handling farmers' produce to comply with the provisions of Chapter 197. If the workings of any private corporation organized under the general law do not seem for the best interests of the farmers then they can organize on the co-operative basis as provided in the Act and by competition eliminate the ordinary business corporation.

This Act is quite lengthy and I have had a chance only to glance at it hurriedly but I have tried to interpret some of the features of the Act set forth in your letter.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

CORPORATIONS—TAXATION—BALTIMORE FINANCE CORPORATION OF MARYLAND AND MORTGAGE FINANCE COMPANY CLASSIFIED AS "MONEYED INSTITUTIONS."

September 11, 1923.

C. C. Wallace, Esq.,
Secretary, State Tax Commission,
Union Trust Building,
Baltimore, Maryland.

DEAR MR. WALLACE: In your letter of June 12th you present for my consideration two corporations, the first known as the Baltimore Finance Corporation of Maryland and the second as the Mortgage Finance Company, and after setting forth the powers of these companies conferred by their respective certificates of incorporation, you ask me to determine whether they should be classified as "ordinary business corporations," subject to a franchise tax as provided by Section 88-D of Article 23 and a tax on tangible personal property, or whether they are to be considered as "moneyed institutions," as that phrase is employed in Section 88-B and are, therefore, subject to assessment and taxation on shares under the provisions of Article 81.

Section 88-B declares that "all corporations having a capital stock shall be 'ordinary business corporations' except certain enumerated companies including water and gas companies, building and homestead associations, state, national and saving banks, or savings or moneyed institutions.

Neither of the Companies above referred to may be classified among the exempted companies unless they may be considered as "moneyed institutions." This phrase as used in Section 88-B has been construed by the Court of Appeals in the case of Industrial Corporation of Baltimore City vs. State Tax Commission of Maryland, 134 Md. 379. The Court in that case, adopting the definition found in 27 Cyc. 823, held that "moneyed institutions included those which deal in money and in the business of lending money." The Company under consideration in the case just cited possessed under its certificate of incorporation the power to lend money and to invest in stocks, bonds or other securities. The record showed that its activities had been directed to the lending and investment of money. These powers and activities were considered by the Court to be sufficient to constitute it a "moneyed institution."

An examination of the powers conferred by their respective charters upon the two companies mentioned in your letter shows that both of said companies are authorized to lend money and negotiate loans and otherwise to engage in the sale of the use of money in a manner very similar to that employed by the Industrial Corporation of Baltimore City. In view of the decision of the Court of Appeals of the State and of the construction of the term "moneyed institution" which is there enunciated, I am compelled to hold that both the Baltimore Finance Corporation and the Mortgage Finance Corporation are moneyed institutions and must, therefore, pay taxes accordingly.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

CRIMINAL LAW.

CRIMINAL LAW—FINES TO BE IMPOSED UPON THOSE FOUND GUILTY BEFORE ANY JUSTICE OF PEACE"—CONFERS EXCLUSIVE JURISDICTION IN FIRST INSTANCE ON JUSTICE OF PEACE.

January 16, 1923.

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

DEAR MR. LECOMPTE: Please pardon my delay in answering your letter of inquiry as to the jurisdiction of Justices of the Peace under certain sections of the Code, which seems to have been inadvertently placed among some other correspondence, and, in that way, overlooked.

You call my attention to the language of Sections 20 and 71 of Article 99, P. G. L., as re-enacted by Chapters 301 and 549 respectively of the Acts of 1922, under each of which sections certain fines are to be imposed upon those found guilty of the offenses therein referred to "before any Justice of the Peace." The question on which, as I understand your letter, you desire my opinion, is whether Section 12 of Article 52, P. G. L., (Vol. 3), which gives the right of jury trial to the accused (at his election), both in the first instance and on appeal, and which is in force throughout the State except in Baltimore City and in Talbot, Harford, Montgomery and Frederick Counties, is affected by the sections to which you refer in cases to which those sections apply.

It is a cardinal principle of construction that, whenever possible, every word of a statute must be given effect. Applying this principle, what effect should be given to the words "upon conviction before any Justice of the Peace?"

If the intention had been that the offenses in question should be punished in the same manner as other offenses to which Section 12 of Article 52 would apply, then the words quoted would have no effect, for this result would follow, if they had not been used. The only reasonable construction, it seems to me, is that these words were intended to confer exclusive jurisdiction on the Justice of the Peace in the first instance. As, however, the Legislature has not, in my opinion, used language clearly indicating an intention to deprive persons convicted of the offenses in question of the right of appeal, I think that this right still exists.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

CRIMINAL LAW — ISSUANCE OF SEARCH WARRANTS UNDER VOLSTEAD LAW TO FEDERAL PROHIBITION AGENTS-POWER EXISTS—ITS EXERCISE RESTS IN DISCRETION OF JUSTICE—CONTROLLING CONDITIONS.

January 20, 1923.

Oliver H. Bruce, Jr., Esq.,
Justice of the Peace,
Cumberland, Maryland.

DEAR SIR: I regret that unusual pressure of work has delayed so long my answer to your letter of December 13th.

You state that as a Justice of the Peace of the State of Maryland for Alleghany County, and as a Police Justice for the City of Cumberland, you desire me to advise you whether a federal prohibition officer may lawfully demand that you issue a state warrant for the search of a private house, business house or any other place where intoxicating liquor is alleged to be sold, stored or manufactured. In other words, you desire to know whether the National Prohibition Act,

commonly known as the Volstead Law, imposes upon you in your official capacity, any such duty in the absence of a Maryland Enforcement Law.

In the National Prohibition Act, Title II, Sec. 2, "Section 1014 of the Revised Statutes of the United States is made applicable in the enforcement of the Act and the officers mentioned in Section 1014 are authorized to issue search warrants under the limitations provided in Title XI of the Act approved June 15, 1917 (Fortieth Statutes at Large, page 217, et seq.)" It is also stated in Section 25 of the Act that: "A search warrant may issue as provided in Title XI of public law numbered 24 of the Sixty-fifth Congress, approved June 15, 1917, and such liquor, the containers thereof, and such property so seized shall be subject to such disposition as the court may make thereof."

The Volstead Law itself is considered to be the source of the authority to issue search warrants for the various purposes for which, under said Act, search warrants may be deemed necessary, although no other express references thereto are contained in the Act other than the sentences which I have quoted. Justices of the Peace are among the officers mentioned in Section 1014, and, therefore, as a Justice of the Peace, you are clothed with authority to issue search warrants. You will note, however, that such action can only be taken within the limitations provided in Title XI of the Act of June 15, 1917. For your guidance I hereby call your attention to certain sections of this Act which seem to relate more particularly to the officer issuing the warrant.

Section 3. A search warrant can not be issued but upon probable cause, supported by affidavit, naming or describing the person and particularly describing the property and the place to be searched.

Section 4. The judge or commissioner must, before issuing the warrant, examine on oath the complainant and any witness he may produce, and require their affidavits or take their depositions in writing and cause them to be subscribed by the parties making them.

Section 5. The affidavits or depositions must set forth the

facts tending to establish the grounds of the application or probable cause for believing that they exist.

Section 6. If the judge or commissioner is thereupon satisfied of the existence of the grounds of the application or that there is probable cause to believe their existence, he must issue a search warrant, signed by him with his name of office, to a civil officer of the United States duly authorized to enforce or assist in enforcing any law thereof, or to a person so duly authorized by the President of the United States, stating the particular grounds or probable cause for its issue and the names of the persons whose affidavits have been taken in support thereof, and commanding him forthwith to search the person or place named, for the property specified, and to bring it before the judge or commissioner.

Section 10. The judge or commissioner must insert a direction in the warrant that it be served in the daytime, unless the affidavits are positive that the property is on the person or in the place to be searched in which case he may insert a direction that it be served at any time of the day or night.

There are other provisions in this Act of 1917 with which I think it would be wise for you to familiarize yourself.

I desire also to call your special attention to the provision in Section 25 of the Volstead Law which declares that "No search warrant shall issue to search any private dwelling, occupied as such, unless it is being used for the unlawful sale of intoxicating liquor, or unless it is in part used for some business purpose such as a store, shop, saloon, restaurant, hotel or boarding house."

It appears from the aforegoing that you have authority to issue search warrants under the National Prohibition Act, subject to the above mentioned limitations. You ask, however, whether that Act imposes upon you the duty to issue such warrants. You will note that, by the provisions of Section 2 of that Act, Section 1014 of the Revised Statutes is made applicable, and officers mentioned in said Section 1014 are authorized to issue search warrants. Inasmuch as Fed-

eral, as well as State officers are mentioned in Section 1014, it might be argued that the intention of Congress was to impose a duty upon those persons on whom this authority was conferred.

The further question would then arise whether Congress can constitutionally impose this duty upon a State officer. By an Act passed in 1793, Congress undertook to impose in express terms a duty upon State magistrates in connection with the recovery of fugitive slaves, a subject over which the national government had exclusive jurisdiction. In 1842 this Act was before the Supreme Court of the United States in Prigg vs. Pennsylvania, 16 Pt. 539, and Mr. Justice Story, who delivered the opinion of the Court in that case, used the following language: "As to the authority so conferred upon State magistrates, while a difference of opinion has existed, and may exist still on the point, in different states, whether State magistrates are bound to act under it, none is entertained by this Court, that State magistrates may, if they choose, exercise that authority, unless prohibited by State legislation."

I have found no decision of the Supreme Court or of the Court of Appeals of Maryland which settles the question thus left open. The General Assembly of Maryland has never passed any law prohibiting the issuance by Justices of the Peace of the State of search warrants under Federal Acts upon the request of the Federal officials. The authority to issue such warrants is unquestionably vested in you, and the exercise of this power apparently rests within your sound discretion.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

CRIMINAL LAW — PENNY PEG MACHINES VIOLATE LAWS AGAINST GAMBLING.

January 20, 1923.

H. C. Jenifer, Esq.,
State's Attorney for Baltimore County,
Towson, Maryland.

DEAR MR. JENIFER: You state in your letter of January 18th that there have recently been established in your county, certain machines known as penny peg machines. They are so arranged as to allow the insertion by slot of a penny which dribbles down through a number of pegs, finally depositing itself in one of a number of squares bearing certain numbers. These numbers indicate the value of the prize won by the player. Although not so stated in your letter, it may be true that in every case some prize is awarded, but the value of the prizes apparently varies, and it is because of this uncertainty and the possibility of winning the more valuable prize that the game becomes an attraction to those who patronize it. Inasmuch as the outcome of the play cannot be foretold with accuracy and the element of chance is constantly present, the machine is in my judgment a gambling device. Under Section 185 of Article 27 of the Code every scheme or device bearing any semblance to gambling is prohibited. It is my judgment, therefore, that the use of the machine described in your letter is illegal.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

CRIMINAL LAW—COMMITTING MAGISTRATE AT LARGE IN BALTIMORE CITY HAS NO POWER TO ACCEPT BAIL WHEN THE COMMITTING POLICE MAGISTRATE FOR THE DISTRICT IS NOT SITTING.

January 29, 1923.

William A. Larkins, Esq.,
Justice of the Peace,
1212 Hanover Street,
Baltimore, Md.

DEAR SIR: I beg to reply to your letter of December 11th, 1922, asking my opinion as to whether or not you, as a Committing Magistrate at large for Baltimore City, have the legal right to accept bail for a Police Magistrate during hours when the Police Magistrate for a given district is not sitting.

Section 278-H of the Charter of Baltimore City (Revised Edition, 1915) provides as follows:

"No police justice of the City of Baltimore shall accept bail for persons charged with manslaughter, murder or any offence the punishment for which may be death; any such justice may, in his discretion, accept the bail for any person charged with the commission of any felony other than those above mentioned, and any misdemeanor the punishment for which may be confinement in the penitentiary; and whenever bail is offered for any person charged with the commission of any misdemeanor other than those already set forth, such justice shall accept the same; provided he is satisfied with the security offered."

Section 278-1 of the Charter of Baltimore City provides as follows:

"Whenever a person charged with a bailable criminal offense before a police justice desires to be admitted to bail, his recognizor shall sign and make oath to an application in which shall be stated such matters as may be required of, and required to be inserted in such application by the police justice to enable him to determine the value of the security

offered. Any recognizance acknowledged before such justice shall be good, although the defendant does not join in the same."

From the aforegoing it is discretionary with the police justice whether or not he will accept bail for a person charged with the commission of certain felonies or any misdemeanor, the punishment for which may be confinement in the penitentiary, and as to other misdemeanors the police justice shall accept bail, provided he is satisfied with the security offered. In all instances where bail is given it is the duty of the police justice to determine the value of the security offered. I find no law which authorizes a police justice to delegate this duty and power to any other justice of the peace.

Section 630 of the Charter of Baltimore City directs the Governor to classify the Justices of the Peace. In this section provision is made for the station-house justices, each one of whom is directed to keep his office at the station-house for which he is appointed, and to attend such station-house from 8 A. M. until 10 A. M. on every day of the year except Sundays and legal holidays, and from 3 o'clock P. M. until 5 P. M. on every day except Sundays and legal holidays and upon every Sunday and legal holidays from 9 A. M. until 11 A. M. This section further provides that "The attendance at any such station-house of an additional Justice of the Peace shall be regulated and controlled by the Board of Police Commissioners for the City of Baltimore, but the Board of Police Commissioners in regulating the attendance of an additional Justice of the Peace at a station-house shall not assign any Justice of the Peace to said station-house, under this section or section 637 of this said Article 4 other than a Justice of the Peace selected by the Governor to sit at a station-house in said city, as long as one of the said Justices of the Peace so assigned by the Governor shall be available for said purpose."

The aforegoing clearly indicates that it was the legislative intent to exclude from duty at the station-houses all other justices as long as a station-house justice is available.

The Police Justice may fix the amount of bail to be furnished by a person charged with a crime, and such person might be so unfortunate as not to be able to furnish bail prior to the Police Justice leaving the station-house at 5 P. M., but since the Act specifically directs said Police Justice to pass upon the sufficiency of the bail offered, the said unfortunate person so charged must wait until the next morning , if necessary, to have the police justice pass upon the bail offered.

It is my opinion, therefore, that you, as a Magistrate at large, do not have the right or power to accept bail during the hours when the Committting Police Magistrate is not sitting.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

CRIMINAL LAW—DISCHARGING FIREARMS ON PUBLIC HIGHWAY—DISTURBING PUBLIC PEACE.

February 2, 1923.

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

MY DEAR MR. LECOMPTE: You recently asked me to advise you whether or not there is any general law in force in Maryland making it a crime to discharge firearms on a public highway. In reply thereto, I beg to advise you that there is no general statutory enactment in Maryland covering this subject. However, at common law the shooting of firearms was held to constitute either a simple or aggravated assault, and it has also been held that this Act may

constitute a breach of the peace when done wantonly in the streets of the City. 40 Cyc. 869; 3 Cyc. 1023.

Section 103 of Article 27 of the Code makes it a misdemeanor for any person to act in a disorderly manner to the disturbance of the public peace upon any public street or highway in any City, town or county in the State or at any place of public worship or public resort or amusement in any City, town or county of this State. It might well be that under this statute the party discharging firearms might be considered to be acting in a disorderly manner to the disturbance of the public peace. I would suggest that you also examine Section 2 of Article 27 which contains an inhibition against acting in a disorderly manner to the disturbance of the public peace in or about certain designated places, such as steam-boats, wharves, docks or public waiting rooms, etc.

You called my attention to Wharton's Criminal Law, Volume 1, page 216, which refers to the case of People vs. Fuller, 2 Parker, Criminal Reports, page 16, New York State. This case arose in 1823 in which Fuller was charged with murder. The facts were that he had discharged a loaded gun about nine o'clock in the evening into the public highway and unintentionally shot and killed an innocent party on the road. The Court held that discharging a gun into a public highway at night is gross negligence, whether anyone is in sight or not, and if death ensues it will be held manslaughter.

I am confident that this principle would be followed by the Maryland Courts in the event that the intentional discharge of firearms upon a street or highway of the State resulted in the injury or death of a third party.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

CRIMINAL LAW—DOG LAW—UNDER CRUELTY TO ANIMALS CHARGE IMPROPER TREATMENT OF DOGS INVOLVES QUESTION OF FACT.

February 9th, 1923.

J. J. Scotten, Esq.,
Justice of the Peace, R. F. D. No. 2,
Aberdeen, Md.

MY DEAR SIR: I hereby acknowledge receipt of your letter of January 30th, in which you ask me for certain advice concerning those provisions of the game law of your county relating to dogs. I assume that the law to which you refer is a local law applicable to Harford County, and if so, I will be very glad to have you give me a reference to it. This statute is not before me at this time, and for this reason I am unable to pass intelligently upon the questions presented by your letter.

You ask generally whether it is cruelty to tie a dog in an open place in the sun or in an open place when it is cold. This question could be presented to you under a charge of "cruelty to animals" and would raise a question of fact which you will have to determine under all the circumstances of the particular case. It is impossible to lay down any fixed rule which could be safely followed under all cases of this character.

You also ask whether any person possesses the right to attempt to influence a Justice of the Peace during the trial of a case to such an extent as to prevent him from finding a verdict of guilty when the proof justifies a conviction. It is legitimate for any person representing the accused to present to a Justice of the Peace arguments in his behalf and reasons may be fully and freely stated why the accused should be acquitted. Any attempt to influence the justice other than by argument freely and openly made is, of course, improper and should be both ignored and resented by the justice. It is scarcely necessary for me to add that the decisions of a justice of the peace like those of a court should

never be influenced or affected in any way by any fear, favor or partiality in behalf of any party to a cause. Any justice of the peace admittedly deciding a case contrary to his own best judgment and because of some ulterior situation should be at once removed from office.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

CRIMINAL LAW — WHEN JUSTICE OF PEACE SHOULD ISSUE SEARCH WARRANT FOR DWELLING TO FEDERAL PROHIBITION AGENTS.

February 24th, 1923.

Lewis J. Williams, Esq.,
Justice of the Peace,
Bel Air, Md.

MY DEAR MR. WILLIAMS: I desire to acknowledge your letter of February 21st, in which you ask me to advise you whether or not it is proper for you as a Justice of the Peace of Harford County to issue a search warrant to a Federal Prohibition Officer to search a dwelling or premises in Harford County when the Prohibition Officer makes affidavit before you that the party whose place is to be searchd is illegally distilling liquor on the premises or has moonshine liquor in his dwelling or on the premises. You refer to certain provisions of your local option law for Harford County.

I do not think that they need be considered in connection with the principal question submitted by you, because the Prohibition Officers of the United States Government are concerned only with the enforcement of the provisions of the Volstead Law, and must rely upon the provisions of that Act for the authority which they seek to invoke or exercise. You will observe that Section 25 of this Act distinctly provides that "no search warrant shall be issued to search any

private dwelling occupied as such unless it is being used for the unlawful sale of intoxicating liquor, or unless it is in part used for some business purpose, such as a store, shop, saloon, restaurant, hotel or boarding house." The facts stated in your letter do not bring your case within either of the exceptions in the law quoted.

I recently expressed my views on the general question involved in a letter to Hon. Oliver H. Bruce, Justice of the Peace of Allegany County, and I am enclosing herein a copy of that opinion which will probably furnish you in large measure with the information which you desire.

It is, of course, your duty as an official of the State to issue a search warrant whenever proper application is made for one in pursuance of the authority conferred by any Maryland Statute, or under any law enforcible in the Courts of this State.

If you desire to know the extent of your duty under any special set of facts arising in connection with the enforcement of your local law I will be very glad to have you submit it to me for my consideration.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

CRIMINAL LAW — DOG LAW — MEANING OF PHRASE "CONFINED IN THE KENNEL.

March 2nd, 1923.

J. J. Scotten, Esq.,
R. F. D. No. 2,
Aberdeen, Md.

MY DEAR SIR: I have your letter of February 12, 1923, requesting my interpretation of the phrase "confined in the kennel," as used in the Dog License Law, Section 195 of Chapter 497 of the Acts of 1918, which provides as follows:

"On or before the first day of July, 1918, and on or before the first day of July of each year thereafter, the owner of any dog, six months old or over, shall apply either orally or in writing, to the County Treasurer or Clerk to the County Commissioners in Counties having no Treasurer of the county in which he or she resides or to a Justice of the Peace of any district in said county for a license for each such dog owned or kept by him, and such application shall be accompanied by a fee of one dollar ($1.00) for each male dog or each spayed female dog, and a fee of two dollars for each unspayed female dog, and provided that a kennel license shall be issued for ten dollars ($10.00) to persons owning or keeping not in excess of twenty-five dogs and that a kennel license fee of twenty dollars ($20.00) shall be issued to persons keeping more than twenty-five dogs. The said license or fee shall be the only license or tax required for the ownership or keeping of said dog or dogs. Such license shall be issued on a form prepared and supplied by the county commissioners. Such license shall be dated and numbered, and shall contain a description of the dog licensed. All licenses shall be void upon the first day of July of the following year. The county commissioners shall also furnish, and the county treasurer, or Justice of the Peace, issuing the license, shall issue, with each license, a metal tag. Such tag shall be affixed to a substantial collar. The collar shall be furnished by the owner, and with the tag attached shall at all times be kept on the dog for which the license is issued, except when confined in the kennel or when hunting in charge of an attendant."

I have ascertained from the Treasurer of Harford County that when the owner of a kennel of dogs applies for a license he is issued a tag for each dog of the kennel. The fact that an owner might always keep a dog in a kennel does not relieve such owner from the necessity of paying the license fee and of receiving a tag for the dog. If you should discover a dog confined in a kennel and then ascertain that the owner has no license for this dog, such owner is liable to criminal prosecution under Section 201 of the law.

The question which you ask me to determine is whether or not an owner is liable to criminal prosecution under the

law, who has a license and a tag for his dog, but who does not have the tag attached to the dog's collar while the dog is not confined in a kennel but tied elsewhere. If the dog's state of being tied is equivalent to being confined in a kennel, then the owner is not liable. It must be presumed that the Legislature meant what it said in using the phrase "confined in the kennel." The state of a dog being confined in a kennel is a special kind of confinement, and is not equivalent to and does not include the state of being tied elsewhere. In my opinion the owner, in the case you cite, is criminally liable.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

CRIMINAL LAW — SLOT MACHINE, YIELDING CHECKS EXCHANGEABLE FOR TRADE OR CASH, ILLEGAL.

March 8th, 1923.

L. S. Sasser, Esq.,
Town Clerk,
Capitol Heights, Md.

DEAR SIR: I regret that your letter of inquiry as to the operation of slot machines, which was directed to me at Annapolis, has not received my attention until now.

You inform me that the local Magistrate, before proceeding in the premises, desires my opinion on the question whether or not it is illegal to operate a device which you describe as follows:

"These machines are operated by putting a nickel (five cents) in the slot, pulling a handle, a set of rollers revolve and if they stop on a lucky combination the depositor gets one or more checks, dependent upon his luck. These checks can be exchanged for trade or cash at the rate of five cents

each. Of course the odds are against the depositor, for it is very seldom that he ever gets a check. I believe the machine is built to give a piece of chewing gum with each nickle, but the merchants do not keep any gum in them and so the depositor gets nothing for his money."

In my opinion this device is illegal. If no gum is obtained by the person who places his money in the machine, the scheme is in effect a lottery (see Long vs. State, 74 Md. 565, 569) and may be prosecuted under Section 302 and succeeding sections of Article 27, Annotated Code (Vol. 3). Even if a piece of gum is obtained by each person who deposits money in the machine, still, if such person may or may not obtain something of value in addition to the piece of gum, this being wholly a matter of chance, the scheme would be illegal, as constituting a "gift enterprise," as that term is used in Section 315 of Article 27. See the case cited and also Long vs. State, 73 Md. 528.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

CRIMINAL LAW—FORM OF GOVERNOR'S WARRANT DIRECTING EXECUTION OF CRIMINALS—DUTY OF SHERIFF TO NOTIFY LEGAL WITNESSES.

April 28th, 1923.

William K. Conway, Esq.,
Executive Secretary,
Governor's Office,
Union Trust Building,
Baltimore, Md.

DEAR MR. CONWAY: You recently submitted to me a form of warrant to be used by the Governor in directing the execution of criminals who have been sentenced to be hung, the

change being rendered necessary by the provisions of Chapter 465 of the Acts of 1922, which authorize the establishment of a permanent execution chamber in the Maryland Penitentiary.

Section 3 of this Act declares that "each execution shall be conducted by the Warden of the Penitentiary in the presence of the sheriff of the county or city where such felon was indicted, the physician of the penitentiary, or his assistant, and a number of respectable citizens numbering not less than six or more than twelve."

I did not see you personally when you called at the office but I understand that you wish to be advised whether the warden must make any reference to the presence of the designated parties or must provide and direct that notice of the time and place of the execution be given by the warden to each of these parties. I do not think that this is necessary. Section 5 of the same Act stated that "when the proceedings in such a case have been certified to the Governor, it shall be his duty to issue a warrant to the Warden of the Penitentiary ordering and directing him to execute such judgment at such time as in his warrant he shall appoint."

The language of the form submitted is practically identical with the provisions of the law just quoted, in that it orders and directs the Sheriff to execute the judgment at the time designated in the warrant. It is the duty of the Sheriff to carry out this order in accordance with the requirements of the law, and the obligation rests upon him without specific direction from the Governor to see that the parties referred to in Section 3 are actually present when the execution takes place.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

CRIMINAL LAW—JUSTICES OF THE PEACE CANNOT TRY CASES UNDER STATUTE REQUIRING PENALTY TO BE IMPOSED BY CIRCUIT COURT.

June 2nd, 1923.

William G. Kerbin, Esq.,
State's Attorney,
Snow Hill, Md.

MY DEAR MR. KERBIN: Your letter of May 23rd.

1. You call my attention to Section 12 of Article 52 of the Code of Public General Laws, which confers on Justices of the Peace of this State (with certain exceptions) jurisdiction to hear, try and determine "cases involving the charge of any offense, crime or misdemeanor not punishable by confinement in the Penitentiary or involving a felonious intent." You then refer me to Chapter 27 of the Acts of 1908 (page 1167), which is a local option law for Worcester County. Section 3 of this last mentioned act provides for a fine and imprisonment in the county jail or the House of Correction, "upon conviction by the Circuit Court for Worcester County" of a violation of any of the provisions of that Act. You ask whether, in my opinion, a Justice of the Peace may try and determine cases involving the charge of violating a provision of the last mentioned Act.

That part of Section 12 of Article 52 to which I have referred first appears in the Acts of 1906, Chapter 475, and was unchanged by the Acts of 1914, Chapter 482, which repealed this section and re-enacted it with amendments. So far as this provision is concerned, therefore, I think that the Act of 1914 must be disregarded and the question determined without reference thereto. The Act of 1908 being subsequent to the Act of 1906, the language above quoted from the former of these Acts must, in my opinion, prevail; that is to say, the provision as to the penalty to be imposed upon conviction in the Circuit Court must be held to indicate an intent that Justices of the Peace shall not have jurisdiction of the offenses created by that Act.

2. Your next inquiry relates to the weight which a Justice of the Peace should give to certain evidence. Questions as to the weight of evidence being mixed questions of law and fact, I do not think that I should express an opinion thereon.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

CRIMINAL LAW—ONE PARTNER CANNOT BE PROSECUTED FOR EMBEZZLING PARTNERSHIP FUNDS, WITHOUT KNOWLEDGE OR CONSENT OF HIS PARTNERS.

July 20th, 1923.

Charles J. Butler, Esq.,
State's Attorney,
Easton, Maryland.

MY DEAR MR. BUTLER: Confirming conversation with you over the telephone today.

You ask, in effect, whether one partner can be prosecuted for embezzling partnership funds which he has applied to his personal use in the absence and without the consent of the other partner, in view of the provisions of Section 21 of Article 73-A, Public General Laws.

I do not think that such a prosecution can be maintained. The Section to which you refer does not, in terms, make any change in the well established rule of the criminal law which prevents prosecution in such cases by reason of the joint ownership of all partnership property. Very extensive changes have been made with reference to the property rights of husband and wife, yet it is still impossible to convict a wife of stealing or embezzling the property of her husband and vice versa. This seems to me to be an analogous case.

Yours cery truly,

ALEXANDER ARMSTRONG, *Attorney General.*

CRIMINAL LAW—PROSECUTION FOR VIOLATIONS OF SECTION 71, ARTICLE 99, OF THE CODE, MAY BE TRIED BEFORE JUSTICE OF THE PEACE OF COUNTY OTHER THAN THAT IN WHICH OFFENCE WAS COMMITTED.

November 15th, 1923.

John H. Stanford, Esq.,
Police Magistrate,
Central Police Station,
Baltimore, Md.

MY DEAR JUDGE STANFORD: Replying to your recent verbal inquiry as to whether, under the provisions of Section 71 of Article 99 of the Code of Public General Laws, as re-enacted by Chapter 549 of the Acts of 1922, an offense arising under the terms of that section may be tried before a Justice of the Peace of a County other than that in which the offense was committed or in Baltimore City, the offense having been committed in one of the Counties, or *vice versa*.

The section referred to was first enacted by Chapter 468 of the Acts of 1918. As originally enacted, this section provided for a fine for the violation of its provisions, "upon conviction thereof before *a* Justice of the Peace of this State." When the section was re-enacted by Chapter 720 of the Acts of 1920, this language was changed to read "upon conviction thereof before *any* Justice of the Peace" and the language last quoted was retained in the re-enactment of the Section of Chapter 549 of the Acts of 1922.

I think that the substitution of the word "any" for the word "a" indicates a definite legislative intention that *any* Justice of the Peace of the State, (or, at least, any such Justice having criminal jurisdiction) shall be clothed with power to try persons charged with offenses which arise under the provisions of the Section in question.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

EDUCATION.

EDUCATION — COUNTY BOARDS OF EDUCATION EXTENDING TRANSPORTATION FACILITIES TO PUPILS NOT LIABLE FOR NEGLIGENT OPERATION OF THE VEHICLES USED.

March 28th, 1923.

Albert S. Cook, Esq.,
Superintendent, State Board of Education,
Lexington Building,
Lexington and Liberty Streets,
Baltimore, Md.

MY DEAR SIR: You have requested me to answer a question submitted to you by Mr. Fogle, County Superintendent of Schools for Talbot County. Mr. Fogle desires an opinion as to the liability of the County Board of Education of Talbot County as a result of several accidents which have occurred in connection with the use of busses furnished by the Board for the transportation of school children. You state that in some cases the Board of Education owns the vehicles used in the transportation and that in other cases the vehicles are owned by individuals to whom the Board of Education pays certain stipulated sums for their services and for the use of the vehicles. It is not made clear under what circumstances transportation is furnished by the County Board of Education to the pupils.

The service is probably rendered in discharge of the duty imposed upon County Boards of Education by Section 25-H of Article 77 of the Code in which they are directed to consolidate schools whenever practicable and to "pay, whenever necessary, for the transportation of pupils to and from such consolidated schools." I assume that the transportation to which Mr. Fogle's letter refers is transportation to and from consolidated schools, but this is an immaterial

condition in view of the conclusion which I have reached. It will be noted that the only burden placed upon the County Board is to *pay* for the transportation. It is not required to provide the busses but simply to relieve the pupils of the expense of transportation which would otherwise fall upon them.

It is true that by Section 23 of the School Law the County Boards of Education are declared to be bodies corporate, capable of suing and being sued, but the Court of Appeals in the case of Weddle vs. School Commissioners, 94 Md. 334, declared that this section does not impose an unqualified liability. The County Boards were held to be subject to suit only in respect to all matters within the scope of their duties and obligations. The opinion then points out that Boards of Education are given no power to raise money for the purpose of paying damages and are not supplied with means to discharge a judgment against them. "All of these funds are appropriated by law for specific purposes and they cannot be diverted by them. The Constitution of the State, Section 3, Article 8, provides that the school fund of the State shall be kept inviolate and appropriated only to the purposes of education."

It was, therefore, determined by the Court that the County Board of Education of Frederick County was not liable in a suit wherein the death of a pupil was alleged to have been caused by the negligence of the Board in permitting a wire to be strung across the playground of a school at a dangerous height. It is not necessary to cite other authorities.

I am of the opinion that County Boards of Education, in extending transportation facilities to pupils, do not subject themselves to liability for injuries from the negligent operation of the vehicles used in such transportation.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

EDUCATION — COUNTY BOARDS AND COUNTY SUPERINTENDENTS HAVE NO POWER TO SUMMON WITNESSES TO HEARING INVOLVING CHARGE AGAINST TEACHER—WITNESSES MUST APPEAR VOLUNTARILY—NO COMPENSATION PROVIDED.

March 29th, 1923.

Charles O. Clemson, Esq.,
Attorney for Board of Education of Carroll County,
Westminster, Maryland.

MY DEAR MR. CLEMSON: You state in your letter of March 26th that the County Board of Education of Carroll County desires at its next meeting to consider charges which have been preferred against one of the public school teachers of the county. You have requested me to answer the following questions which were submitted to you by your County Superintendent:

1. May the County Superintendent issue a summons for witnesses to testify for the petitioners and objectors to the teacher, and direct the summons to the sheriff of the county to be served, and if so does he issue the summons in the name of the County Board of Education, or in the name of the Superintendent, or in the name of the objectors or petitioners? Further, must the sheriff be paid for serving these summons and if so by whom and when?

2. Is the teacher entitled to have witnesses summoned to testify in his behalf? If so what is the form of summons for such witnesses and are such summons issued in the name of the Superintendent or in the name of the Board of Education or in the name of the teacher?

The law authorizing the suspension or dismissal of teachers is codified as Section 25-J of Article 77 of the Code. The first step in the proceeding is a written recommendation from the County Superintendent to the County Board of Education that a certain teacher be suspended or dismissed. This recommendation must be founded upon one or more of the five causes specified in the Act, to wit, immorality,

misconduct in office, insubordination, incompetency or willful neglect of duty. Upon receiving the recommendation from the County Superintendent the County Board of Education must thereupon set the matter down for a hearing and notify the accused teacher not less than ten days before the date and place set for said hearing. If the action of the County Board upon the matter, after hearing, is unanimous, its action is also final, and if the Board is not unanimous in its decision to suspend or dismiss, then and then only does the right of appeal lie to the State Superintendent of Schools. These provisions are merely a summary of the law as found in Section 25-J. No further details of procedure are anywhere prescribed in the Act. A hearing, however, is indispensable and there can be no hearing without witnesses.

It is an inherent power of *courts* to compel the attendance before them of witnesses necessary to the trial of causes before them, but, so far as I have been able to ascertain, the power to summon witnesses must be expressly conferred upon all other officials or bodies. In the absence of any definite authorization by appropriate Maryland statutes, I feel that neither the County Superintendent nor the County Board of Education possesses the right to issue summons to the Sheriff or the further right to demand that he serve any such papers placed in his hands. "It is only the duty of a Sheriff to serve or execute process delivered to him for that purpose which appears on its face to have issued from competent authority and with legal regularity." 35 Cyc. 15, 34.

No obligation, therefore, apparently rests upon the Sheriff of your County to serve any such summons, if placed in his hands, and at the same time the law imposes upon prospective witnesses no duty to obey process of this character if served upon them. Service of process and obedience to its mandate involve an encroachment upon the liberty of the individual which can only be justified by clear legal sanction.

It follows that if the County Superintendent desires to sustain his recommendation he must produce at the hearing, as voluntary witnesses appearing without summons, those persons upon whose statements he has relied. On the other

hand it must be assumed that if the teacher has witnesses who are willing to testify in his behalf, they will be sufficiently interested in him to appear voluntarily upon his request.

If expense is involved, the teacher must arrange to bear it in the same way that he must meet the burden of fees if he decides to employ counsel. I know of no public fund out of which the County Board of Education or the County Superintendent may pay the expenses of persons appearing as witnesses in a proceeding of this nature. Hence the witnesses against the teacher must not only appear voluntarily, but without compensation.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

EDUCATION — COUNTY BOARD OF CECIL COUNTY DOES NOT POSSESS AND NEVER WILL ACQUIRE RIGHT TO SELL SITE OF FRANKLIN SCHOOL IN SAID COUNTY — LAND CONVEYED UPON CONDITION THAT IT BE DEDICATED TO SPECIFIED PUBLIC USE REVERTS UPON CESSATION OF USE.

April 10th, 1923.

Hugh W. Caldwell, Esq.,
Superintendent, Board of Education of Cecil County,
Elkton, Md.

MY DEAR MR. CALDWELL: I have your letter of April 3rd in which you enclose a certified copy of a deed conveying a tract of land which is now the site of the Franklin School located near Tome Institute, Port Deposit. This school for lack of attendance has been closed for three years. You ask me to advise you whether the County Board of Education of Cecil County, with the approval of the State Superintendent of Schools, possesses the power to sell the building before it has been closed for school purposes for a period

of five years, and also whether your Board has the right to sell the ground or whether the ground reverts to the heirs of John Creswell, the original grantor.

The deed in question was executed on November 12th, 1813, by John Creswell and conveyed a certain parcel of land unto A, B and C, their heirs and representatives in trust for the use of a school and school house. The habendum clause reads as follows:

"To have and to hold the said tract, unto the said A, B and C, Trustees for the use, intent and purpose as aforesaid, to them and their legal representatives forever in trust, to and for the uses, intents and purposes; that is to say: in trust for the use of a school, and school house, for the benefit and advantage of the inhabitants of the neighborhood adjacent thereto, as long as one stone standeth upon another in the building of said school house, or so long as any three or more inhabitants of the same neighborhood may become subscribers for the use and support of a school for the education of the youth of the neighborhood to which the said school house belongs. It is hereby understood and it is the true intent and meaning of the parties to these presents, that until the said school house becomes unoccupied for the space of five years at any one time as and for a school house, that then and not till then the same and all the land hereinbefore described, and hereby given and granted shall cease to be vested in the said A, B and C, or any one or more of them, or their legal and nominated successors in trust as aforesaid for the use and uses as aforesaid, but the same shall be to them the said A, B and C and their successors for the use aforesaid forever."

It is true that Section 25-C of Article 77 (the Public School Law of Maryland) clothes the County Boards of Education with authority to "sell, with the approval of the State Superintendent of Schools, school grounds, school sites and school buildings no longer needed for educational purposes." This law manifestly relates only to land and buildings owned in fee either by the State or County. There is nothing in your letter or in the deed to show any connection whatever between A, B and C, trustees named therein, and

the representatives of the Public School system of Maryland as it exists to-day.

It is unnecessary, however, to determine whether A, B and C were or were not public officials, because, in either event, I am of the opinion that the condition expressly set forth in the deed from Creswell is binding, and that the land conveyed remains vested in the successors of A, B and C so long as the property is used for school purposes, and for a period of five years thereafter. When it has remained unoccupied for a space of five years the land, in my judgment, reverts to the heirs at law of the original grantor. It is true the deed does not so specify in express language, but it does declare that the title shall cease to be vested in A, B and C and their successors, and when, in fulfillment of this condition the title becomes divested, it must revert to the heirs of the original grantor.

Where land, *in return for a valuable consideration,* has been conveyed for specified uses it has been sometimes held that there is no reversion on the abandonment of said use, but in the deed from Mr. Creswell the consideration of $1.00 was purely nominal. The general principle would, therefore, seem to apply as laid down in 23 R. C. L. 1102. It is there stated that where land is dedicated to park purposes the fee remains in the original proprietor, and his successor in interest, and there is a possibility of revertor. It is further declared that land conveyed to a county on condition that it be used for court house purposes will revert to the grantor when it ceases to be thus used, and also that where land is granted for cemetary purposes the donor has the right of revertor which takes effect if there is an abandonment of such use of the property. See also 18 C. J. 335—1 L. R. A. N. S. 806.

When a building has been placed without reservation upon a tract of land it becomes a part thereof and passes with the land to those legally entitled thereto.

In view of the principles to which I have referred, it is my opinion that the County authorities do not possess at this time and will never acquire the legal right to sell either the

land affected by the Creswell deed or the school building standing thereon.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

EDUCATION—RIGHT OF INMATES OF ORPHANAGE ASYLUMS TO ATTEND PUBLIC SCHOOLS OF COUNTY — "GENERAL GERMAN ORPHAN ASSOCIATION OF STATE OF MARYLAND" IN BALTIMORE COUNTY.

April 28, 1923.

Dr. Albert S. Cook,
State Superintendent of Education,
Baltimore, Md.

DEAR DR. COOK: Some weeks ago you called my attention to the following facts:

An Orphan Asylum, whose official name is now "The General German Orphan Association of the State of Maryland, Incorporated," has its principal office and Orphanage in Baltimore County where it houses and cares for a large number of orphan children. Most of these orphans, prior to becoming inmates of the institution, were children of residents of Baltimore City, although they are received not only from Baltimore City, but from any other section of the State. If my information is correct, the Orphanage was formerly located in Baltimore City, but in order to gain the advantage of fresh air and open country, lands were purchased in Baltimore County and a larger and more commodious building was erected thereon. The question of law which you present to me is this: Whether the inmates of this Orphanage have, by virtue of being such, the right to attend the appropriate public schools in Baltimore County.

On behalf of the Orphan Asylum certain additional facts are brought to my attention as follows: Nearly all of the children in the particular Asylum are in truth orphans; in other words, either both parents of the children are dead or the surviving father or mother is required to sign an order in which the care and custody of the children is absolutely yielded up and surrendered to the Orphan Asylum. In no case is a child accepted until, after a rigid investigation, it is ascertained that there is no one who can legally be compelled to care for the child, and provide for its education, and that it is imperative for the child's interest and advantage that he be admitted to the Orphanage. Some of the children have been received upon commitment from courts possessing the necessary jurisdiction. By Chapter 223 of the Acts of 1894, the Orphanage institution was granted the right to become the guardian of the person of and stand in loco parentis to all of the orphans who are properly inmates of its asylum. The charter of the Orphanage requires it to send the children to the public schools of the *State* for their education, and by Section 162 of Article 77 of the Code, a penalty is attached for the failure to comply with the provisions of this Section relating to Compulsory School Attendance.

I have set out the facts somewhat fully and have given a great deal of consideration to the question propounded. It is a very serious one affecting the entire educational system of the State. It also has a direct and immediate relation to the welfare of young children who, by force of circumstances, are without natural parents and whose destinies must, therefore, be watched with great care by the State and its administrative officers.

The Public School Law of Maryland (Article 77, Section 43) declares that elementary schools shall be kept open for not less than one hundred and eighty actual school days and for ten months in each year, if possible, *and shall be free to all white youths between six and twenty years of age*, and (Article 77, Sec. 63) declares further that "all white youths between the ages of six and twenty-one years shall be admitted into such public schools of the State, the studies of which they may be able to pursue."

Section 162 of the same law makes it mandatory that "every child residing in any county of the State between the ages of seven and thirteen shall attend some public school during the entire period of each year that the public schools of the county are in session" unless they are receiving proper instruction elsewhere, and the same duty is laid upon children of more mature age to attend the public schools each year for shorter periods of time. These expressions of the legislative will are very sweeping, and if construed literally are broader than similar statutes in other States as will be disclosed by subsequent references herein. In view of the fact, however, that in Section 65 of Article 77 it was deemed necessary to confer upon children living remote from the school of the district in which they reside the right, with the consent of the County Superintendent of Schools, to attend school in an adjoining district, the courts would probably contrue our statutes to confer school privileges in a given county only upon those children residing therein. I will assume for the purpose of this opinion that this is the true meaning of our school law. The sole question, therefore, to be determined is whether the children of the Orphanage in question are residents of Baltimore County in such manner as to entitle them to enjoy the benefits and privileges of Baltimore County's public schools.

Analagous questions have been considered and passed upon by various courts of the country, and these decisions unquestionably determine that children may not be transplanted from one school jurisdiction to another for the primary purpose of securing the superior advantages offered by the school system of the latter district. Upon a careful analysis of these cases, however, I feel that they rest upon one or the other of the following considerations:

First, the children in question have living parents responsible for their maintenance and capable of providing it. Under such circumstances it has been determined that, although the children actually live and sleep in the district where the orphanage is situated, they are nevertheless residents of that district where their parents dwell, and the burden of their education is not allowed to be shifted by a mere

transfer of their bodily presence to another district. Such a case is

Lake Farm vs. District Board of School of
School District No. 2, 146 N. W. 115.

Second, certain private institutions, whether the parents of the children are living or not, hold themselves out as educational institutions and receive children not merely to supply their bodily needs, but ostensively for the purpose of training their minds as well. It has been held very properly that such institutions may not assemble a number of children under the false pretense of providing for their education and then shift the burden upon the local school authorities.

Commonwealth, ex rel. Fry vs. School Directors
(Pa.) 26 L. R. A. 501.

Third, it has some times happened that children who, by reason of their destitute circumstances, have become charges upon a certain community, have been committed by the proper authorities of that community to a family or institution located elsewhere. Under these circumstances, the courts have determined that they remain charges upon the jurisdiction which has committed them, and that this jurisdiction must be responsible for their education.

See Shelton Poor House Asso. vs. The Town of Shelton,
72 Vt. 126.

Black vs. Graham (Pa.) 44 L. R. A. (N. S.) 693.

Under this principle of law, I feel that any children who have been residents of Baltimore City, and have been committed by the authorities of Baltimore City to an Orphanage in Baltimore County remain charges upon Baltimore City which would otherwise be under obligation to provide for their care, maintenance and education, and which cannot relieve itself of the burden and transfer it to Baltimore County through the mere passage of a court order.

I do not consider, however, that the case now being considered by me is controlled by any of the principles hereinbefore set forth. Most of the children in the Orphanage in

question are orphans in fact. They have no living parents, and, therefore, no other home which can be considered, even constructively, as their place of residence. In some instances where the parents are living, these parents have relinguished in formal and binding papers all rights whatever to the children. The Orphanage thereafter stands in loco parentis to such children. Its charter requires it to send them to the public schools of the State. It does not secure the presence of the children within its walls upon any false promise of private education. It does not receive them as a matter of business and for its own pecuniary profit, but what it actually does is to substitute itself for the parents of the children and thereafter discharge in behalf of the children under its care every parental obligation. It provides food and raiment. It furnishes care and discipline. It offers the only home which the child has, and it seems to me that the situation is exactly the same as that of a child being received into a private home and made a member of its household. From the time the child is received into the Orphanage, it becomes a resident of Baltimore County, all ties connecting it to other jurisdictions are finally severed and thereafter its life is identified exclusively with the life of the new community of which it has become a part. The change is as complete as if the natural parent had transferred his residence into Baltimore County. Where such a status has been established, I feel that the children are entitled to avail themselves of the educational facilities offered by the county wherein they have established their new residence. It would be manifestly impractical to send children gathered together from different parts of the State back to the sections from which they came each day or each week for school purposes. The mandatory requirements of the State's Compulsory School System and the charter of the institution itself compel the attendance of these children at some public school and the only practical solution is their attendance in the school in the county where they now reside. There are authorities which sustain this view.

In the case of State ex rel. School District Board vs. Thayer, State Superintendent, 41 N. W. 1015, the court said:

"The contention of learned counsel is that a minor child who has father or mother, or both, living can have no residence for the purpose of the privilege of a public school different from the resident of the father, if living, and the mother after the death of the father." This may be the general rule, but there are exceptions. When the minor has poor parents, the poverty of his parents renders it absolutely necessary in many cases that a home for this minor child should be found in a place different from the residence of the parent and under the construction of learned counsel such unfortunate children, for whose benefit our free schools were specially instituted, would be deprived of the benefit of them. Of course, said the court, the transfer must not be made solely for the benefit of education. In this case the boy had been sent to reside as a member of the household with a family living in another district. This family furnished him with all the necessities of life, discharging fully the obligations ordinarily resting upon the parents and he became, therefore, while with them, a resident of the district. I feel that the children living at the German Orphanage occupy a similar relationship to it.

In New Hampshire the scholars can only attend the schools of the district of which they are inhabitants.

In School District vs. Pollard, 55 N. H. 505, the Court said:

"I think the fact that certain children were inmates of the County Poor House during all of the time and that they had no home or domicile elsewhere is sufficient to make them residents within the meaning of the law." He added also that all children of the Orphans Home of Franklin County were permitted to attend school in the common school house of the district in which the Orphanage was located. I am making the same point here that those children living at the Orphanage in Baltimore County, who are without home or domicile elsewhere, are entitled to avail themselves of the educational facilities of Baltimore County.

In New York the law is that common schools shall be free to minors residing in the district. An orphan was placed

in a private home and treated as a member of the family. The Court in the case of People vs. Hendrickson 109 N. Y. Supp. 403, declared that the lady of this home stood in a parental relationship to the orphan and that the orphan, as a child residing temporarily in the district, was entitled to receive free education therein. The Court stated that this rule would apply unless it appeared that the parents or legal guardian of the child in question had a distinct residence elsewhere, which gave it the right to free tuition, in which case, of course, the residence of the child would follow that of the parent or guardian. In the Hendrickson case, as in the case being considered by me, no such distinct residence on the part of the parent or guardian existed.

See also, Yale vs. West Middle School District (Conn.) 13 L. R. A. 161.

I have not overlooked the burden which may apparently be placed upon the tax payers of Baltimore County by the conclusion which I have reached. It seems to me, however, that it is one of those inevitable hardships which are some times incident to our systems of education and taxation. Exceptional cases occur from time to time which apparently lack elements of fairness. The presence of this splendid institution in Baltimore County is not without its advantages, however, to the people of that community. It offers an asylum perhaps for the orphans of Baltimore County. The funds with which the institution is supported and maintained are provided from sources without the county, and, I assume, are expended almost exclusively within it, stimulating and aiding many of its business interests. A number of the children who are trained and educated in this school will naturally establish themselves in the community in which their younger years have been spent, and in many instances will become useful and helpful citizens thereof. It is my conclusion that all children who have been voluntarily received into the German Orphanage and have neither parents nor guardian nor other persons responsible for them but who are being cared for solely by the Orphanage and are under it exclusive and complete control are residents of

Baltimore County and, as such, are entitled to participate in its public school privileges.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

EDUCATION — COUNTY BOARD HAS RIGHT TO SELL SCHOOL PROPERTY — MAY TAKE MORTGAGE FOR PART OF PURCHASE PRICE — MAY EXECUTE LEASE FOR OFFICE FOR COUNTY SUPERINTENDENT — RENT TO BE PAID BY COUNTY COMMISSIONERS.

May 2, 1923.

Albert S. Cook, Esq.,
State Superintendent of Schools,
Lexington Building,
Baltimore, Md.

DEAR MR. COOK: At the request of the County Superintendent of Schools, you recently submitted to me the following facts and requested me to pass upon the three questions presented thereby:

The County Board of Education of Queen Anne's County purchased an improved property in the town of Centreville, adjoining the Primary School. It was planned to use part of the land in connection with the Primary School and to occupy the old building, or a new building to be erected on the site, as an Administration Building for the Schools of Queen Anne's County. This idea, however, was abandoned and recently the County Board of Education has agreed to sell the entire property to the Masonic Order of Centreville for a purchase price of $4,500, one thousand ($1,000) dollars to be paid in cash, and the balance to be secured by a purchase money mortgage to be given to the Board of Education of Queen Anne's County by the Masonic Order. One

of the conditions of the sale was that the Board of Education should enter into a lease covering a period of five years for an office for the Board of Education on the first floor of the new building which the Masonic Order expects to erect on the land. According to your letter, the rental for this office is to be paid by the County Commisisoners of Queen Anne's County. I will now consider your three questions.

First. Does the County Board of Education possess the power to sell this property? This power is expressly conferred by Section 25-C of the State-wide Public School Law which reads: "They (the County Board) may sell, with the approval of the State Superintendent of Schools, school grounds, school sites and school buildings when no longer needed for educational purposes." The Board unquestionably possesses the power to sell. I have already suggested to you in a former ruling that while it is not necessary for you to do so, it might be advisable for you to join in the deed to establish permanently a record of your approval of the sale. Subject to your confirmation the power to determine whether the land to be sold is no longer needed for educational purposes lies, of course, in the discretion of the County Board.

Second. Does the County Board possess the right to accept a mortgage as part payment for this property? The section of the school law which I have quoted confers upon the Board the right to sell and the meaning of the phrase "to sell" is raised by your second inquiry. I have found no judicial interpretations of this language, but a sale is defined in 35 Cyc. 27 to be "an agreement whereby the seller transfers to the buyer the property in goods for a money consideration called the 'price' which buyer pays or *agrees to pay.*" In Bouvier's Dictionary a sale is declared to be "a contract by which property is transferred by the seller to the buyer for a fixed price in money paid or *agreed to be paid* by the buyer" and later it is stated that "if property is transferred there is a sale though the price be not paid."

The language quoted clearly indicates that the payment of the purchase price at the time of the passage of title is not a necessary prerequisite of a sale. In other words a sale is

complete although the payment of the whole or part of the purchase price is deferred. The right to sell seems, therefore, to mean the right to pass title to property for a stipulated price even though all of the purchase money is not paid in full.

Applying this principle in the case before me, it follows that the County Board of Education is authorized to transfer the title to property where the amount of the purchase price is agreed upon, although the payment of a portion of it is deferred. I see no reason, under such circumstances, why a County Board which is declared by Section 23 of the School Law to be a body corporate, may not protect itself as to the deferred payment by accepting a mortgage for that amount covering the premises conveyed. If the County Boards, in disposing of school property, are given some latitude of authority, they will frequently be able to secure terms and conditions far more advantageous than those obtainable in a cash sale. Under proper safeguards the County Board will not impair its position by accepting a substantial payment and taking a first mortgage upon a property which it formerly owned, because in case of default, it can reacquire the property through foreclosure proceedings and also retain possession of the original payment less the cost of foreclosure and the accumulated interest and taxes. Care should be exerecised, particularly in the case which you present, to guard against any impairment of the mortgaged property through the removal of buildings.

Third. Does the County Board have the right to enter into the proposed lease with the Masonic Order? Section 74 of Chapter 382 of the Acts of 1922 reads as follows:

"The County Board of Education shall provide the office of the County Superintendent of Schools with ample, convenient and comfortable quarters." This language, in my judgment, places upon the County Board of Education the duty of supplying and equipping the office of the County Superintendent, which office, I take for granted, will be used by the County Board for the holding of its own meetings. The duty of providing an office impliedly confers the power to contract for the same. In making its requisition upon the

County Commissioners, the County Board of Education may include the rental of such an office among the other items for which the Board of County Commissioners will be expected to make provision.

To this extent the obligation to provide the rent is imposed upon the County Commissioners.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

EDUCATION — E. F. BRADLEY, MEMBER OF DORCHESTER COUNTY BOARD HOLDS OFFICE FOR SIX YEARS FROM MAY, 1918.

May 11, 1923.

Honorable Albert C. Ritchie,
Governor of Maryland,
Annapolis, Md.

DEAR GOVERNOR RITCHIE: Under date of May 8th, you request my opinion on the following state of facts:

In 1912 Governor Goldsborough appointed Mr. E. F. Bradley and Mr. Oliver Spedden as members of the Dorchester County School Board for terms of six years each from May 1912. These terms, therefore, expired in May 1918, but no appointments were made to fill either of the vacancies thus occurring until January 1920, the appointees of Governor Goldsborough being allowed to hold over. In January 1920 Governor Harrington appointed Mr. Bradley "for a term of six years from May, 1918," to succeed himself, and in April, 1920, you appointed Mrs. Fletcher for a term of six years from May, 1918 to succeed Mr. Spedden.

At the time of those appointments the law applicable to this subject was contained in Section 6 of Article 77, P. G. L., as re-enacted with amendments by Chapter 506 of the

Acts of 1916. This section, so far as it applies to Dorchester County, provides for a School Board of six members, each to be appointed for a term of six years from the first Monday of May next suceeding their appointment and to hold office until their successors qualify. The terms of office of persons who are members of the Board at the time when the Act takes effect (June 1st, 1916) are not to be affected by its provisions, and the length of the first six regular appointments is to be so designated by the Governor that there shall thereafter be one regular vacancy and one regular appointment each year, and it is specifically provided that the Governor shall appoint in the first instance only two members, one of whom he shall designate to hold office for the term of six years, and the other for the term of five years from the first Monday in May, 1918. After the appointment of Mr. Bradley and that of Mrs. Fletcher had been made and their commissions issued, you concluded that, under the provisions above mentioned, one of these appointments should have been for five years from May, 1918, instead of six years. You, accordingly, had the records in the Governor's office changed so as to show Mr. Bradley as holding for a term of five years from May, 1918, instead of six years. Apparently, Mr. Bradley was not notified of this change and still holds a commission for six years from May, 1918.

You inquire whether in my opinion, his successor should be appointed in May, 1923, or in May, 1924.

In January, 1920, when Governor Harrington appointed Mr. Bradley for a term of six years from May, 1918, he did just what the statute authorized, that is to say, he appointed one member of the Dorchester County School Board for a term of six years from May, 1918. When, afterwards, you appointed Mrs. Fletcher for a term of six years from May, 1918, you did an act which was not authorized by statute, inasmuch as the only appointment which you had a right to make was for a term of five years from May, 1918.

My conclusion, therefore, is that Mr. Bradley's appointment for a term of six years from May, 1918. being valid when made, could not afterwards be changed, and that his term will not expire until May, 1924.

I should add that your letter states that the appointment of Mrs. Fletcher was made by Governor Harrington, and that it was he who subsequently changed the records in the Governor's office with regard to the appointment of Mr. Bradley. You have, however, since the receipt by me of your letter, corrected these statements by oral communication.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

EDUCATION — NO AUTHORITY FOR INSPECTION OF PRIVATE SCHOOLS UPON REQUEST—ALL CHILDREN MUST ATTEND SOME SCHOOL FOR PERIODS VARYING WITH THEIR AGES. IF SUBSTANTIAL EQUIVALENT OF PUBLIC SCHOOL STANDARDS ARE MAINTAINED, PRIVATE SCHOOLS MAY ADD OTHER COURSES.

May 24, 1923.

Mr. K. A. McRae,
Executive Secretary,
Southern Maryland Immigration Commission,
College Park, Maryland.

DEAR SIR: I beg to reply to your recent letter in which you enclosed correspondence between your Commission and Mr. J. H. Black, of Morden, Manitoba, referring to the question of educational requirements in the State of Maryland, with particular reference to the application of these requirements to the children of a Mennonite Colony which you are endeavoring to locate in the State. Mr. Black expressed considerable doubt concerning the establishment of this Colony in Maryland, because of the insistence of the Mennonites upon a certain degree of freedom in educational matters. You have asked me to discuss the following phrases of the situation.

1. Inspection of schools on request of the particular sect.
2. School attendance.
3. A certain standard of instruction.

First. I find no provision of the Maryland School Law requiring or authorizing the inspection of private schools on the request of the particular sect maintaining the same.

Second. It is unquestionably true that the citizens of Maryland enjoy absolute religious freedom and that there would be no interference on the part of State authorities with Mennonite Colonists in connection with their religious belief or the practice thereof, nevertheless, under the laws of the State pertaining to public education, certain uniform requirements must be satisfied. It is provided in Section 162 that "every child, residing in any county of the State, being seven years of age, and under thirteen years of age, shall attend some public school during the entire period of each year that the public schools of the County are in session; unless it can be shown to the County Superintendent of Schools that such child is elsewhere receiving regular and thorough instruction during such period in the studies usually taught in the public schools of the county to children of the same age." Similar provisions requiring attendance for shorter periods of time on the part of older children are also set forth in the law. It is thus made perfectly clear that, under the educational policy of our State, all children must attend school, and the time during which the attendance is necessary is that established for the public school system. The Mennonites would, however, be at liberty to establish and maintain private schools, and by sending their children to such schools during the prescribed periods, would completely satisfy the law.

Third. The statement just made is subject to the one condition that the standards maintained in the private schools must be the substantial equivalents of those fixed for the public schools of the State. I believe that this requirement means that those subjects which are taught in the public schools must also in a substantial way be taught in the private schools, but private schools are not prohibited from adding additional subjects of their own selection to the

regular curriculum. If, therefore, German is not required or taught in the public schools, there in nothing in the law to prevent it from being one of the courses of instruction in the schools maintained by the Mennonites. This principle would apply to any other subject which they might desire to teach in addition to the regular courses.

In this connection, however, it should be borne in mind that Section 67 of the School Law provides that "school books shall contain nothing of a sectarian or partisan character." This provision seems to be sufficiently sweeping to include all school books used in the State and not merely those employed in the public schools.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

EDUCATION — COUNTY SUPERINTENDENT NOT REQUIRCD TO ASK FOR BIDS FOR PUBLIC SCHOOL FUNDS—MUST EXERCISE DISCRETION IN ENDEAVORING TO SECURE HIGHEST RATE OF INTEREST — WHEN HIGHEST BID TO BE ACCEPTED.

June 2, 1923.

Hugh W. Caldwell, Esq.,
Superintendent, Board of Education of Cecil County,
Elkton, Md.

MY DEAR SIR: In your letter of May 29th you set forth in full Chapter 473 of the Acts of 1918, codified as Section 78-A of Article 77 of the Code, which reads as follows:

"The County Superintendent of Schools as treasurer of the County Board of Education in the several counties is hereby authorized and directed to deposit daily all public funds and moneys which shall come into his hands for or on account of the public schools, in such bank, banks, or banking

institutions in his county which will agree to pay the highest rate of interest, in no case to be less than 2 per cent. per annum, compounded semi-annually, upon the daily balances, such bank, banks or banking institutions to be selected and designated by the County Board of Education of said county. The interest received on the deposits shall be credited semi-annually to the school funds and become a part of said funds to be accounted for by the superintendent of schools in the same manner as the other school funds."

You then submit to me two questions which I will answer in the order in which they were presented by you.

First. Is the Board of Education required to solicit bids annually?

You will notice that the law does not require a submission of bids but merely imposes upon the County Superintendent the duty to deposit school funds in that bank "which will agree to pay the highest rate of interest." The school officials, therefore, must be constantly on the alert to secure the highest possible interest return on the fund under their control. The procedure to be followed, however, is largely a matter of discretion on their part. If they decide to call for bids, I feel that both from the standpoint of the Board of Education and of the competing banks, it would be proper to require the submission of such bids annually. I assume that the banks in making their bids will wish to do so for a prescribed period rather than to assume an unlimited obligation. At the same time, the Board of Education should remain free to make such changes in its banking arrangements from time to time as the best interests of the County may require. A year is an arbitrary but convenient period during which definite relationships of this character may be established.

Second. Is the Board of Education required to accept the highest bid, or is it left to the discretion of the Board?

I feel that the Board is required to accept the highest bid subject to the condition necessarily implied that, in the discretion of the Board, the bid is submitted by a bank sufficiently strong to ensure full protection. Any doubt on this

subject could, in the Board's discretion, be remedied by the requirement of a bond.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

EDUCATION—GOVERNOR PROPER PARTY TO EXECUTE DEED TO SCHOOL BOARD OF BALTIMORE COUNTY FOR PROPERTY OF ASSOCIATION OF MARYLAND LINE (ACTS 1912, CH. 359).

December 5, 1923.

William P. Cole, Jr., Esq.,
Towson, Maryland.

MY DEAR MR. COLE: In your letter of December 3rd, you called my attention to Chapter 359 of the Acts of 1912 by which the "proper officials of the State of Maryland" were authorized and directed, whenever thereafter the Association of Maryland Line should agree with the School Commissioners of Baltimore County for a transfer of any portion of the property occupied by them at Pikesville, not exceeding three acres, to unite in the execution and delivery to the said School Commissioners on behalf of the State of Maryland of such deeds for the property as might be requisite for that purpose. You state that the School Board has had a large school building on a portion of this property for a period of ten years, and was under the impression that the title has been perfected. You discovered that no deed for this property has ever been executed and expect to present a deed for execution as soon as certain surveys of the property have been completed. You desire me to advise you as to what officials, under the language of the Act, are authorized to execute this deed for the State of Maryland.

To the best of my information, no official of the State of Maryland possesses any general authority to execute in its

behalf, deeds conveying to third parties real estate formerly owned by the State. It is usually necessary before any such conveyance is made to secure special authorization therefor through the medium of a statute enacted by the General Assembly for the particular purpose. I feel, however, that inasmuch as the Governor is the Chief Executive of the State, and is the official usually designated to sign and acknowledge a deed in behalf of the State, that he should be regarded as the proper official to represent the State in the transfer authorized by Chapter 359 of the Acts of 1912. However, as the Board of Public Works has general supervision over the property of the State, and is sometimes empowered to execute deeds in its behalf, I suggest that the safest course for you to pursue would be to prepare a resolution covering the subject and have it passed by the Board of Public Works naming the Governor as the proper party to sign and acknowledge your deed. The Governor can then act in the capacity as Governor and as the party specially designated by the Board of Public Works, and under such circumstances, I feel that the validity of your deed can never be questioned.

I am confident that the Governor will not sign the deed until it has first been approved by this Department, and, therefore, would suggest that you submit it here before referring it to the Governor.

With best wishes, I am,

Sincerely yours,

ALEXANDER ARMSTRONG, *Attorney General.*

ELECTIONS.

ELECTIONS—PEOPLE'S PARTY, SOCIALIST PARTY AND SOCIALIST-LABOR PARTY—ENTITLED TO NOMINATE CANDIDATES FOR BALTIMORE MUNICIPAL ELECTION WITHOUT PETITION—PARTY DESIGNATION LIMITED TO ONE WORD.

January 13, 1923.

Mrs. Donald R. Hooker,
President, Just Government League of Maryland,
817 N. Charles Street,
Baltimore, Maryland.

DEAR MRS. HOOKER: I regret that pressure of other matters has prevented an earlier reply to your letter inquiring as to the status of the People's Party, the Socialist Party and the Socialist-Labor Party.

You state that, at the general election of 1921, William N. Purdy, a candidate of the People's Party for the office of Clerk of the Criminal Court, polled 2500 votes, and you ask whether that fact will permit the People's Party to name candidates for the Mayoralty and the City Council without petition. You ask also whether the Socialist Party and the Socialist-Labor Party may nominate candidates in the coming municipal election without petition.

Under the terms of Section 41 of Article 33, Annotated Code, a party "whose highest candidate at any election held within two years next preceding the holding of such convention polled more than one per cent. and less than ten per cent. of the entire vote cast in the State, county or other division or district for which the nomination is made," may nominate by convention. Assuming that the highest candidate of each of the above-named parties for an office for which all voters of Baltimore City were entitled to vote at the election held in November, 1921, polled the required percentage of votes, which I believe to be the fact, then those Parties can nominate in convention candidates for the office

of Mayor and for other offices for which all voters of Baltimore City are entitled to vote.

In the case of members of the City Council for whom only the voters of a district are entitled to vote, the question must be determined by ascertaining the percentage of votes received by the candidate of each of these parties in that part of the city embraced within the boundaries of each district, which it would undoubtedly be difficult, but probably not impossible, to ascertain.

I should add that the name of a candidate cannot be placed on the ballot as representing the "Socialist-Labor" Party, as Section 55 of Article 33 provides that the party designation shall consist of one word only. See 6 Opinions of Attorney-General, p. 181. I believe that the practice has been to use only the word "Labor" in designating the candidates of this Party.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

ELECTIONS—COUNTY COMMISSIONERS—APPOINTEE OF GOVERNOR TO FILL VACANCY SERVES OUT UNEXPIRED TERM. UNDER FEWER ELECTIONS BILL, THIS TERM INCLUDES AN EXTRA YEAR.

February 5, 1923.

Wesley Thawley, Esq.,
Attorney for the Board of Election Supervisors
of Caroline County,
Denton, Md.

MY DEAR MR. THAWLEY: You stated in a recent letter that one of the County Commissioners of your county had died and asked me to advise you whether the person appointed to fill the vacancy thus created would hold office until the next general election or until the expiration of the term for which

the deceased member of the Board was elected. The only statutory provision which I have been able to find dealing with this situation is embraced in Section 3 of Article 25 of the Code. It declares that "In case any office of county Commissioner shall become vacant in any county by death, resignation or otherwise, the governor, if such vacancy shall occur during the session of the senate, shall by and with the advice and consent of the senate, appoint, and if such vacancy shall occur during the recess of the senate, he shall appoint a proper person or proper persons to fill such vacancy or vacancies, etc."

The County Commissioners are elected for terms of four years and I assume that the member of your Board who recently died was elected at the election of 1921. In the absence of any constitutional or statutory provision to the contrary, I am of the opinion that the person designated by the Governor to fill the vacancy will succeed by such an appointment to all of the rights, authorities, privileges and powers of the member whose place he has been designated to fill, including the right to serve out the unexpired term.

In this connection, however, I must call your attention to the provisions of the Fewer Election Amendments to the constitution passed at the last General Assembly and ratified by the people at the polls in November, 1922. By Section 5 of the new Article 17 thus added to the constitution, it is provided that "the terms of all State and County officers heretofore elected by qualified voters and whose successors would not be elected until the Tuesday next after the first Monday of November, 1925, shall be increased by one year and their successors shall be elected for the regular term at the election to be held on Tuesday next after the first Monday of November, 1926."

Under this provision the term of your deceased member, if he had survived, would have been extended to the Fall of 1926, and it is my opinion that the gentleman appointed to fill his place will likewise serve until the Fall of 1926.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

ELECTIONS—ALL COLUMNS IN ELECTION BOOKS INDICATING WHETHER VOTER HAS VOTED FILLED—METHOD OF PROVIDING ADDITIONAL COLUMNS IN SAME BOOKS.

February 17, 1923.

William M. Storm, Esq.,
Attorney for the Board of Election
Supervisors for Frederick County,
Frederick, Md.

MY DEAR MR. STORM: You state that in the election books now in use in Frederick County, all of the spaces toward the right of the pages providing for the notation of those who vote at the different elections have been completely filled. You state further that you anticipate that a new general registration in the counties will probably be authorized by the General Assembly of 1924, and ask whether it will not be proper to draw two vertical lines in the column under the general heading "remarks" in each registration book of the county thereby providing two additional columns of squares to cover the primary election and general election of 1923. You suggest this method of procedure as a substitute for the alternative of purchasing an entire new set of registration books for Frederick County.

Section 17 of Article 3 as found in Volume 1 of Bagby's Code provides in sub-section H that "the Board of Registration shall note the answers of the prospective voter to the questions, when and in what court he was naturalized and also in the column headed 'remarks' when and where he was so previously registered." If you will look at Chapter 1 of the Acts of the Extraordinary Session of 1920, Section 7, you will find that the Board of Registry is required to note under the column headed "remarks" whether the applicant is male or female. If the various boards of Registry of Frederick County have performed their duties in accordance with the requirements of the law, it is very evident that many of the spaces under the column headed "remarks" are already filled. I do not see, therefore, how it would be prac-

ticable to utilize this space for the purpose and in the manner indicated in your letter. It would certainty be improper to make any erasures of entries correctly noted when the applicant originally appeared and if such entries are allowed to remain, confusion would inevitably follow.

A somewhat similar problem was presented to me some weeks ago and the solution of the difficulty which then appealed to me to be practicable and proper was set forth in an opinion given by me to Clarence M. Roberts, Esq., under date of May 15, 1922. You will find a copy of this opinion enclosed herein. If there is any further information which you desire on the subject or if any other legal questions arise in connection therewith, I will be very glad to have you write to me with reference thereto.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

ELECTIONS—VOTER MAY TRANSFER FROM ONE PRECINCT OF BALTIMORE CITY TO ANOTHER PRECINCT OF SAID CITY ON DAYS OF REGISTRATION PRECEDING THE MUNICIPAL ELECTION.

March 1st, 1923.

Max Ways, Esq.,
Supervisor of Elections of Baltimore City,
Baltimore, Md.

DEAR SIR: Referring to your inquiry as to whether a voter may transfer from one precinct of Baltimore City to another precinct of that City on the days of Registration preceding the municipal election, these Registration days being April 2nd and April 9th of this year, in the same way and subject to the same limitations that such transfer could be made at an intermediate Registration in the Fall.

In my opinion this can be done. The provision of law whereby these days of Registration are established is contained in Section 17 of the Baltimore City Charter, from which I quote as follows:

"Prior to every municipal election, as provided for in this Article, there shall be, on the first and second Mondays of April, a supplementary registration of voters of Baltimore City, which registration shall be under the supervision of the Supervisors of Election, and conducted in conformity with the provisions of the law then in force relating to the registration of voters."

This provision is very similar to that contained in Section 17-A of Article 33, P. G. L., relating to Registration in the counties on the Tuesday preceding a primary election, which last mentioned section reads:

"On the Tuesday preceding any primary election to be held in any year in this State and which shall occur after the enactment of this law, each Board of Registration shall meet at the place designated by its Board of Supervisors of Election, and shall proceed in the manner set forth in Section 17 hereof, to make a registration of all the voters in its precinct or district, as the case may be, who have not previously registered and who may be entitled to vote at the next general election and shall present themselves before said Board of registration, and such person or persons so registered shall be entitled to vote at all primary and general elections held thereafter provided that nothing in this section shall apply to Baltimore City, nor affect the law now in effect governing the registration of voters therein."

With regard to the section just quoted, my predecessor wrote, under date of August 29, 1919:

"Transfers can be made on the registration day preceding the primary. Section 31 of Article 33 provides that the Certificates of Transfer shall be granted by the Board of Registry when in session, or by the Board of Supervisors before the session of the Board of Registry. The Board of Registry is, of course, in session on the registration day preceding the primary, and, therefore, any transfer issued on that day should be issued by the Board of Registry. If,

however, the applicant already has a transfer certificate issued by the Board of Supervisors, then I see no reason why he may not present that to the Board of Registry on the registration day and be transferred."

I think that the same practice should be followed with regard to the days of Registration preceding the municipal election, except, of course that, as Section 27 of Article 33, relating to Baltimore City, does not contain provisions similar to those contained in Section 31 of that Article for the issuance of removal certificates by the Board of Supervisors, what is said in the above quoted opinion as to certificates issued by that Board is inapplicable, and the applicant for registration must produce a certificate signed by a Board of Registry.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

ELECTIONS — RESIGNATION OF STATE SENATOR — DUTY OF GOVERNOR TO ISSUE WARRANT FOR ELECTION OF HIS SUCCESSOR.

March 8th, 1923.

Honorable Albert C. Ritchie,
Governor of Maryland,
Annapolis, Md.

MY DEAR GOVERNOR RITCHIE: You state in your letter of March 3rd that you have received and accepted the resignation of Senator Tydings as State Senator from Harford County. You ask me to advise you whether it is your duty to issue a warrant of election to fill the vacancy thus created.

I feel that this duty is imposed upon you by Section 13 of Article 3 of the Constitution. It provides that in the event of the resignation of a Senator during the session of the

Legislature a warrant for the election of his successor shall be issued by the President of the Senate. If, however, the vacancy occurs during the recess of the Legislature, it is then made the duty of the Governor to issue the necessary warrant of election. It would seem that in any event the warrant is necessary. If no meeting of the General Assembly intervenes between the time the vacancy occurs and the next regular election for members of the General Assembly, the Constitution prescribes that the election thus ordered shall be held on the day of the next regular general election. It is only when the General Assembly meets prior to such general election that it becomes necessary for the Governor, in issuing his warrant, to provide for holding the election to fill such vacancy upon a day other than that prescribed by law for such general election.

In pursuance of your request, I am enclosing a form of warrant which I believe will be sufficient to meet the present situation.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

ELECTIONS—NO DUTY ON CLERK OF SUPERIOR COURT OF BALTIMORE CITY TO MAIL CERTIFIED COPIES OF MUNICIPAL ELECTION RETURNS TO GOVERNOR, SECRETARY OF STATE AND TREASURER.

March 23rd, 1923.

Stephen C. Little, Esq.,
Clerk of the Superior Court,
Baltimore, Md.

MY DEAR SIR: In your letter of March 14th you requested me to advise you whether you are required to send to the Governor, the Secretary of State and the Treasurer certi-

fied copies of the election returns from the municipal election when certified to by the Board of Canvassers.

The legislation governing this matter is embodied in Section 83 of the election laws of Maryland. By this section the Board of Canvassers are required to transmit the statements made by them to the Clerk of the Circuit Court for the County or the Clerk of the Superior Court of Baltimore City, as the case may be, who shall enter the same of record. In this way a definite record is made of all the election returns for the particular jurisdiction represented by the Board of Canvassers. So far as local officers are concerned, it was not necessary to go further and the law does not do so.

It does declare, however, that in the "case of elections of Presidential electors, Representatives in Congress, Senators, and Delegates to the General Assembly and of other State officers, except Governor or State's Attorney, the said Clerk shall prepare three certified copies under his seal of said office of said statements of certificates," and within five days after the adjournment of the Board of Canvassers he is required to mail them respectively to the Governor, the Secretary of State, and to the Treasurer.

You will observe that these certied copies are only required in connection with the election of the particular officers which are mentioned in the law. In all other respects the recording by you of the report of the Canvassers is the final step in Baltimore City of all elections. It, therefore, follows that it is not necessary for you to mail the certified copies in the manner above mentioned to the Governor, Secretary of State and Treasurer in elections which are purely municipal.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

ELECTIONS—COLUMNS MAY BE CREATED BY DRAWING RED LINES IN SPACE IN ELECTION BOOKS HEADED "REMARKS" IF NO FORMER ENTRIES ARE INTERFERED WITH.

March 9th, 1923.

John W. Grove, Esq.,
Supervisor of Elections,
Frederick, Md.

MY DEAR SIR: I have your letter of March 8th in which you call attention to the ruling recently given by me approving the placing of printed strips over the columns headed "remarks" in the various election books of your county for the purpose of furnishing in the primary and general election in 1923 columns in which may be indicated those who have voted. You state that before becoming familiar with this ruling you had already ruled columns in the space headed "remarks" in many of your books, stamping in red ink in each column "Primary, 1923" and "Voted, 1923." You ask me to advise you whether the work which you have done may be utilized or whether it must be discarded.

The conclusion reached by me in the opinion to which I have just referred was based upon the assumption that the various registration officers had made appropriate entries in the column headed "remarks," and that, therefore, it would be impossible to use this space in the registration books without removing certain original entries. If, as a matter of fact, you have been able to draw your new columns without in any way interfering with entries previously made in the registration books, I see no reason why the columns you have prepared should not be used at the 1923 elections. The object to be attained is the furnishing of the two additional columns in which a record of those voting in 1923 can be preserved without interfering with the previous entries in the registration books. The method by which this result is accomplished is more or less immaterial.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

ELECTIONS—AFFIDAVITS TO CERTIFICATES OF INDEPENDENT NOMINATIONS (SECTION 43, ARTICLE 33) CANNOT BE MADE BEFORE NOTARY PUBLIC. SIGNERS OF SUCH CERTIFICATES NEED NOT IN BALTIMORE CITY SWEAR THEY INTEND TO VOTE FOR PERSON NAMED THEREON.

April 19th, 1923.

Max Ways, Esq.,
President, Board of Supervisors of Elections,
Court House,
Baltimore, Md.

DEAR MR. WAYS: Last week I received your letter of April 12th, enclosing a communication received by your Board from DeCourcy W. Thom, Esq., Vice-President of the campaign committee of the Citizens' Party, who propounded two inquiries as to which you requested my opinion.

1. May the affidavits, required by Section 43 of Article 33 of the Code, to be made "before a Justice of the Peace," be made before a Notary Public with the same legal effect under said Section as if made before a Justice of the Peace?

2. Is the provision contained in Chapter 296 of the Acts of 1902, which declares that the signers of a certificate of independent nomination for an office to be filled by the voters of Baltimore City shall make oath before a Justice of the Peace that they intend to vote for the person nominated by the certificate, still effective in and applicable to Baltimore City?

The day after I received your letter, I replied thereto briefly answering both of your questions in the negative. I now wish to submit to you in writing my reasons for reaching these conclusions.

1. Section 43 of Article 33, Bagby's Code, the last enactment of which will be found in Chapter 399 of the Acts of 1922, provides that the affidavits required in connection with a certificate of nomination, shall be made before a Justice of the Peace. In this connection my attention was called to Section 3 of Article 66 of the Code, which reads as follows:

"Each Notary Public shall have the power to administer oaths according to law . . . in all matters and cases of

a civil nature in which a Justice of the Peace may administer an oath in the same effect. . . ."

By reason of this Section it was urged that the affidavit in question may be taken before a Notary Public as well as a Justice of the Peace. This suggestion might have some force if Section 3 of Article 68 had been enacted after the adoption of Section 43 of Article 33. It appears, however, that the former section was enacted in its present form in 1843 while the later section was first enacted in 1896, as Section 38 of Chapter 202 of the Acts of that year.

In a case wherein the court was dealing with a section of the law which provided that oaths might be administered by Justices of the Peace and with another section which conferred upon the Mayor the same powers and jurisdiction as a Justice of the Peace, and wherein the Court held that the Mayor could, under the provisions of the last mentioned section, administer oaths, attention was specifically directed to the fact that the last mentioned section, relating to the powers of the Mayor, was enacted after the section conferring upon Justices of the Peace the power to administer oaths.

Robinson vs. Benton County, 49 Ark. 49.

Not only is Section 43 of Article 33 the later law, but it is most significant that in Section 42, the immediately preceding section of the same article, the acknowledgements therein required are authorized to be taken "before any official duly authorized to take acknowledgments." When the General Assembly thus deferentiated as to the officer empowered to take acknowledgements and affidavits in two succeeding paragraphs of the same law it must be presumed that it did so deliberately and designedly rather than accidentally. The number of Justices of the Peace is very much more limited than that of Notaries Public. A Justice of the Peace is an official clothed with ample and more serious powers and I feel that the Legislature probably had some definite reason for requiring the particular affidavit mentioned in Section 43 to be taken before a Justice of the Peace, particularly in view of the further stipulation in that sec-

tion that the persons making the affidavit must be personally known to the Justice before whom it is made.

My conclusion, therefore, is that the affidavit required by Section 43 must be taken before a Justice of the Peace, and cannot legally be made before a Notary Public or any other officer. The same view was taken by Ogle Marbury, Esq., then Assistant Attorney General, in an opinion given by him under date of October 14th, 1919, (4 Rep. and Op. Attorney General, page 62).

2. It is important to notice the title of Chapter 296 of the Acts of 1902. It declares that statute to be an Act to add three new sections to Article 33 of the Code "to be called Sections 152, 153 and 154, sub-title 'Primary Elections,' regulating primary elections in this State," and also to repeal all public local laws relating to primary elections in Baltimore City, Baltimore County and Montgomery County.

In Section 1 of the Act, the proposed new Sections 152, 153 and 154 of Article 33 were, respectively, enacted into law. Section 2 of the Act repealed the existing laws on the subject relating to primary elections in Baltimore City and Montgomery County, and then this language appears: "Provided, however, that nothing contained in this Act shall be taken to repeal or modify the provisions of the existing law providing for and regulating the manner of making independent nominations for any office, except that the individual signatures required under Section 38 of Chapter 202 of the Acts of 1896 shall be required to accompany the same by an affidavit made before a Justice of the Peace, and so certified to by him and signed by the affiant to the effect that he, the said signer of such certificate of nomination, intends to vote for the person or persons to be nominated thereby."

By this provision the General Assembly attempted to modify in an affirmative manner the law relating to Independent Nominations, whereas there was not the slightest indication of any such purpose in the title. The scope of the Act, as indicated by the title, was limited to the enactment of three new sections relating to primary elections, and to the repeal of other designated legislation. The title is, therefore, misleading. As a result the attempted amendment of

the Act of 1896 quoted above is, in my opinion, unconstitutional as being in contravention of that portion of Section 29 of Article 3 of the Constitution which declares that "every law enacted by the General Assembly shall embrace but one subject and that shall be described in its title."

Chapter 296 of the Acts of 1902 sought to modify Section 38 of Chapter 202 of the Acts of 1896. The latter section has been repealed and re-enacted on two subsequent occasions by the General Assembly of Maryland, first by Chapter 751 of the Acts of 1914, and again by Chapter 399 of the Acts of 1922. It may well be contended that those more recent enactments, which cover the subject of nomination of independent candidates and provide for the style and character of the certificates of nomination, impliedly repeal that portion of the Act of 1902 which is now being discussed. I do not consider that it is necessary for me to pass upon this phase of the matter, however, because of my conviction that this portion of the Act of 1902 has, from the time of its passage, been unconstitutional.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

ELECTIONS—SIX NEW SENATORS TO BE ELECTED FROM BALTIMORE CITY IN 1923 AS RESULT OF CREATION OF NEW DISTRICTS. OTHER OFFICIALS TO BE CHOSEN. DOUBLE PLATOON SYSTEM ORDINANCE NOT TO BE PLACED ON BALLOT.

May 29th, 1923.

Mr. Max Ways,
President, Board of Supervisors of Elections,
Court House,
Baltimore, Md.

DEAR SIR: Your letter of May 18th.

1. You ask me to advise your Board as to what State Senators of Baltimore City are to be elected at the coming

election, with particular reference to Senator Benjamin W. Fox, who was elected in 1921 from the then Fourth Legislative District for a period of four years.

Section 2 of Article 3 of the Constitution, as originally adopted, was as follows:

"Section 2.—Each County in the State, and each of the three Legislative Districts of Baltimore City, as they are now, or may hereafter be defined, shall be entitled to one Senator, who shall be elected by the qualified voters of the Counties, and of the Legislative Districts of Baltimore City, respectively, and shall serve for four years from the date of his election, subject to the classification of Senators, hereafter provided for."

This was amended by the Act of 1900, Chapter 469, ratified November, 1901, so as to read:

"Section 2—The City of Baltimore shall be divided into four legislative districts, as near as may be, of equal population and of contiguous territory, and each of said legislative districts of Baltimore City, as they may from time to time be laid out, in accordance with the provisions hereof, and each county in the State shall be entitled to one Senator, who shall be elected by the qualified voters of the said legislative districts of Baltimore City, and of the counties of the State, respectively, and shall serve for four years from the date of his election, subject to the classification of Senators hereafter provided for."

The provision for classification of Senators to which reference is made in the passages above quoted is contained in Section 8 of the same Article, and is as follows:

"Section 8—Immediately after the Senate shall have convened, after the first election, under this Constitution, the Senators shall be divided by lot into two classes, as nearly equal in number as may be. Senators of the first class shall go out of office at the expiration of two years, and Senators shall be elected on the Tuesday next after the first Monday in the month of November, eighteen hundred and sixty-nine, for the term of four years, to supply their places; so that, after the first election, one-half of the Senators may be chosen every second year. In case the number of Sena-

tors be hereafter increased, such classification of the additional Senators shall be made as to preserve, as nearly as may be, an equal number in each class."

According to the classification first adopted in accordance with the terms of the section last quoted, the three Legislative Districts of Baltimore City elected Senators in 1871 and every fourth year thereafter. Thus in 1899, they elected Senators whose terms expired in 1903. In 1902 the Legislature laid out the boundaries of the four districts for which provision had been made by the above quoted amendment ratified in 1901, and provision was made for the election of a Senator from the Fourth District in 1905 and every fourth year thereafter.

Section 2 was again amended by Chapter 7 of the Acts of 1922, ratified in the same year, to read:

"2. The City of Baltimore shall be divided into six legislative districts as near as may be of equal population and of contiguous territory, and each of said legislative districts of Baltimore City, as they may from time to time be laid out, in accordance with the provisions hereof, and each county in the State, shall be entitled to one Senator, who shall be elected by the qualified voters of the said legislative districts of Baltimore City and of the counties of the State, respectively, and shall serve for four years from the date of his election, subject to the classification of Senators hereafter provided for."

In 1922, Section 4 of the same Article was also amended by Chapter 20 of the Acts of that year, and the last mentioned section, as so amended, directs that "the Board of Supervisors of Elections of said City shall fix the boundaries of the six legislative districts, subject to the limitations contained herein, and shall give adequate notice of the same, and the boundaries so fixed shall remain until altered or changed by the General Assembly."

Your Board has accordingly divided Baltimore City into six Districts, the boundaries of none of these Districts being the same as those of the Fourth District as formerly laid out, that being the District which Senator Fox was chosen to represent.

It seems to follow that, by reason of the provisions of Section 4, as amended, and the action of your Board pursuant to that amendment, the District which Senator Fox was chosen to represent has ceased to exist as a political entity, and that there is no longer any political sub-division or constituency which he can be said to represent. The people of each of the newly created Districts are entitled to be represented in the Senate by those whom they may elect in November of this year.

For the purposes of this opinion, I assume, of course, that your Board has been guided by the provisions of Section 4, and has fixed the boundaries of the several Districts subject to the limitations therein contained.

I am not unmindful of the provision contained in Section 5 of Article 17 of the Constitution, as proposed by Chapter 227 of the Acts of 1922 and ratified in the same year, to the effect that "the terms of all State and county officers heretofore elected by qualified voters, and whose successors would not be elected until the Tuesday next after the first Monday of November, nineteen hundred and twenty-five, shall be increased by one year," nor of the provisions of Section 13 of the same Article, which reads:

"In the event of any inconsistency between the provisions of this Article and any of the other provisions of the Constitution, the provisions of this Article shall prevail, and all other provisions shall be repealed or abrogated to the extent of such inconsistency."

My opinion is not altered, however, by a reading of these passages, the first of which can have no application to the case of Senator Fox, who will have no successor as Senator from the Fourth District as formerly laid out.

2. Your second inquiry, as to whether the Ordinance of the Mayor and City Council of Baltimore, relating to the Two Platoon System in the Fire Department, is to be placed on the ballot at the coming election, I have no hesitation in answering in the negative; first, because the Ordinance in question does not so provide, and secondly, because if it did, such provision would be void.

Levering vs. Supervisors, 129 Md. 335.

I am told that it is possible that an amendment to the Charter of Baltimore City, providing for the Two-Platoon System may be proposed. If such an amendment should be certified to your Board, I shall be glad to pass upon it, when referred to me.

3. You next ask what offices are to be filled at the coming election and what Constitutional Amendments, Laws and Ordinances are to be placed on the ballot. The officers to be elected, so far as can now be ascertained, are the Governor, Comptroller, Attorney General, one Judge of the Supreme Bench, three Judges of the Orphans' Court, State's Attorney, Sheriff, City Surveyor, Register of Wills, Clerk of the Baltimore City Court, and, in each Legislative District a Senator and six members of the House of Delegates.

Such Constitutional Amendments and other questions submitted for popular approval to the voters of the State as may be properly certified to you by the Secretary of State in accordance with the terms of Section 52 of Article 33 of the Code and such questions of local concern as may be properly certified by the Register of Baltimore City under the provisions of the same section should be placed on the ballot, if not subject to any constitutional or legal objection. I shall be glad to pass on such questions as they may be presented.

With regard to the only question of this kind so far submitted to me which concerns the Charter Amendment proposed by Resolution No. 21 of the Mayor and City Council, a copy of which is returned herewith, I find that resolution, as certified, to be in proper form in all essential respects, and beg to advise you that the amendment thereby proposed should be placed on the ballot.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

ELECTIONS—VOTING BY MAIL IN NORTH BEACH ELECTIONS, NOT BEING SANCTIONED BY CHARTER, CANNOT BE AUTHORIZED BY COUNCIL.

June 2nd, 1923.

Hon. Edward Widdefield,
Mayor of North Beach,
1944 Calvert Street,
Washington, D. C.

DEAR SIR: Your letter of May 16th, to which pressure of official matters has prevented an earlier reply.

You ask whether the Council of North Beach can provide by ordinance that ballots may be cast by mail at the coming election.

Chapter 152 of the Acts of 1922, which amended the Charter of North Beach, provides for the holding of elections. It does not provide in terms that ballots must be cast by the voters in person but it seems to me that an intent that they shall be so cast is evidenced by the following provision:

"Sec. 8. And be it enacted, That in case a vote be challenged, the judges of election shall forthwith hear and pass upon the qualifications of such person as an elector under this Act. An appeal may be taken from the decision of the judges to the Council, which shall, for the purpose of considering such appeals, be in session on election day from 6 o'clock P. M. until the closing of the polls."

The intent of the Legislature, as shown by the language above quoted, being that ballots shall be cast by the voters in person, the Council cannot, in my opinion, provide by ordinance for a different method of casting them.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

ELECTIONS—REGISTRATION OFFICIALS CANNOT SIT PART OF THE DAY IN ONE PLACE AND THE BALANCE OF THE DAY IN ANOTHER PLACE IN THE SAME DISTRICT.

July 18, 1923.

George L. White, Esq.,
Oakland, Md.

DEAR MR. WHITE: Your letter of July 12th. You ask whether, in my opinion, it would be possible for the Supervisors of Elections to arrange for the registration officials of District No. 8 in your County to hold the registration during part of each registration day at Red House, where it has been held in the past, and to sit during another portion of the day at Kempton, twelve miles away for the purpose of registering voters who reside in the vicinity of the latter place. You do not state whether Kempton is in the same election district, but, even assuming that it is, I do not think that the plan which you suggest would comply with the intent of the law.

Section 31 of Article 33, Public General Laws, provides that the registration officials "shall hold a session from 9 A. M. to 9 P. M." The holding of two sessions at widely separated points within this period, during a part of which the board of registration would, of necessity, not be in session at all, would, it seems clear to me, not constitute a compliance with this requirement, and I feel compelled so to hold, much as I regret the inconvenience to which the inhabitants of Kempton are put by reason of the existing situation.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

ELECTIONS — GOVERNOR'S APPOINTEE AS SHERIFF TO FILL OUT UNEXPIRED TERM NOT INELIGIBLE TO BECOME CANDIDATE TO SUCCEED HIMSELF.

July 18, 1923.

Honorable Albert C. Ritchie,
Governor of Maryland,
Annapolis, Md.

DEAR GOVERNOR RITCHIE: You state in your letter of July 14th that the Sheriff of Talbot County has recently resigned, and ask me to advise you whether the man who accepts from you an appointment for the unexpired term, will render himself ineligible to become a candidate for Sheriff at the election this Fall.

Section 44 of Article 4 of the Constitution declares that "there shall be elected in each county in every second year one person * * * * to the office of Sheriff. He shall hold his office for two years, and until his successor is duly elected and qualified; shall be ineligible for two years thereafter; shall give such bond, exercise such powers and perform such duties as and how or may hereafter be fixed by law."

I think that the purpose of the Legislature, gathered from all of the provisions of this Section, was that no man who had offered himself to the people as a candidate for Sheriff and had been elected by them should be eligible to succeed himself. It was evidently intended to prevent a sheriff from becoming every two years a candidate and thereby perpetuating the tenure of his office. This reasoning would not apply to an appointee who fills out an unexpired term, and in my opinion, such an appointee may lawfully become a candidate to succeed himself.

In a note in 29 Cyc. page 1384, reference is made to the case of Carson vs. McPhetridge, 15 Ind. 327, where it was decided that a constitutional provision similar to that quoted above did not include "the time served in the office under a pro tem appointment or a simple holding over to fill a

vacancy." This decision is in complete accord with the conclusion which I have reached.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

ELECTIONS—CANDIDATE FOR CHIEF JUDGE MUST FILE CERTIFICATES OF NOMINATION WITH SUPERVISORS OF ELECTION IN EACH COUNTY OF THE CIRCUIT.

July 18, 1923.

The American Sentinel Co.,
Westminster, Md.

GENTLEMEN: In your letter of July 16th you ask me to advise you whether a candidate for Chief Judge of a Judicial Circuit has to file a certificate with the Secretary of State or with each of the Boards of Supervisors of Elections of the counties composing the circuit.

The law dealing with the subject of certificates of nominations for primary elections is embodied in Section 183 of Article 33 of the Code. Each candidate for nomination for public office at a primary election is there required "to pay the sum of twenty-five ($25.00) dollars for each county or legislative district of Baltimore City in which his name appears upon the ballot." An exception is then created in favor of the Governor, Attorney General, Comptroller and Clerk of the Court of Appeals, who are required to file their certificate with the Secretary of State at Annapolis, but Judges are embraced within the provisions of the general law and in my judgment, must file their certificates in each county of the Circuit in which their names will appear upon the ballot.

Section 44 of Article 33 which states that "certificates of nominations shall be filed with the Secretary of State for the

nomination of members of congress or of candidates for offices to be filled by voters of the entire State or of any division of a greater extent than one county," is intended, I think, to apply to nominations made at conventions, primary meetings or upon petition as provided by the sections of the law immediately preceding, but has no reference to the selection of candidates in accordance with our general primary system.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

ELECTIONS — PRIMARY LAW APPLICABLE TO ALL NOMINATIONS FOR LOCAL COUNTY OFFICES—NO PROVISION FOR NOMINATIONS BY CONVENTIONS.

July 30, 1923.

Galen L. Tait, Esq.,
Republican State Central Committee,
P. O. Box 585,
Baltimore, Md.

DEAR MR. TAIT: In your letter of July 27th, you ask me to advise you whether there is any way under existing law by which candidates for local offices may legally be nominated by County Conventions. The election law of the State makes no provision whatever for party conventions for the selection of local candidates. The only method prescribed for the selection of such candidates is the primary system, and in the event that candidates fail to avail themselves of its privileges, nominees must be selected by the local party committees. Of course party conventions may be held informally and the persons selected at such a convention may, by subsequently filing the usual certificates of nomination and otherwise complying with the primary law, become the party candidates.

There is no method, however, by which other candidates can be prevented from entering the primaries and precipitating a primary fight. So far as I know, all of the counties of the State are subject at this time to the provisions of the primary law. If the people of any county are not satisfied with the requirements of this law, I see no reason why the Legislature may not grant such counties an exemption in so far as selection of local candidates is concerned.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

ELECTIONS — TERRITORY NOW EMBRACED IN 7TH AND 8TH ELECTION DISTRICTS OF ANNE ARUNDEL COUNTY TO NOMINATE ONLY ONE CANDIDATE FOR COUNTY COMMISSIONER FROM EACH PARTY.

August 1, 1923.

Senator A. T. Brady,
Counsel to Election Supervisors,
Annapolis, Md.

MY DEAR SENATOR: In your letter of July 25th, you request me to answer for you the following interesting question:

Chapter 13 of the Acts of 1901, Extra Session, provides that there shall be seven County Commissioners of Anne Arundel County chosen biennially for a term of two years each. Under this law seven Commissioners were nominated at the primaries and voted on by the entire County without regard to election districts. The method of selecting party candidates for County Commissioner was changed by Chapter 114 of the Acts of 1920. By this statute it was provided that "at the Primary Election held in Anne Arundel County, at which candidates are to be selected for the position of County Commissioners, *the voters of each of the seven dis-*

tricts of said County, shall determine for themselves who shall be their candidate to be voted for at the General Election, and, therefore, the names of the persons who file their papers for the position of County Commissioner, in accordance with the General Primary Election Laws, shall be placed, by the Supervisors of Elections in said County, only upon the ballot in the district where the candidate resides, etc." . At the time the law from which I have quoted, (Section 182 B, Chapter 114 of the Acts of 1920) was adopted, there were only seven districts in Anne Arundel County. In 1922, however, by Chapter 498 of the Acts of that year, the creation of a new election district was authorized and as a result one of the original seven districts has now been divided into two districts making eight districts in all. The territory formerly embraced within the eighth district is now included in the seventh and eighth districts. You ask me to inform you what procedure shall be followed by the Board of Supervisors of Elections at the coming primary election in view of the rather complicated situation outlined above.

It is perfectly clear that the law authorizes only seven County Commissioners for Anne Arundel County, and that only seven County Commissioners can be chosen at the general election. I feel, therefore, that under the general law of the State, each party is entitled to name only one candidate for each of the seven positions to be filled, which means that each party is entitled to seven nominees for the office of County Commissioner. This being true it is necessary to reconcile this limitation upon the nominating power with the fact that there are now eight instead of seven districts. In 1920 when the law requiring nominations from election districts was first passed the Legislature had in mind the seven election districts of Anne Arundel County as they then existed, which means that the territory embraced in the district then designated as District No. 8 was entitled to one nominee from each party. It is true that this territory is now divided for general election purposes, into two districts, but in my judgment it remains a single unit for the purpose of nominating candidates for County Commissioner. In

other words the territory which previously was entitled to make a nomination retains the same authority, and at the coming election, must furnish a nominee from each party. The practical result is that candidates from the 1st, 2nd, 3rd, 4th, 5th and 6th election districts will be placed only upon the ballots used in those particular districts, whereas candidates from the territory now embraced in the 7th and 8th election districts will be placed on the ballots used in both of those districts. The first, second, third, fourth, fifth and sixth election districts will each furnish a nominee from both parties for County Commissioner, whereas a single nominee will be selected from the 7th and 8th election districts by each party. This conclusion, in my judgment, preserves to the voters of the 7th and 8th districts exactly the same rights which were conferred upon them by the Act of 1920, while being in full accord with all other existing legislation affecting the choice of County Commissioners for Anne Arundel County.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

ELECTIONS — WHERE HIS LEGISLATIVE DISTRICT HAS NOT EXISTED FOR A YEAR, CANDIDATE FOR SENATOR FROM BALTIMORE CITY ONLY REQUIRED TO HAVE RESIDED IN BALTIMORE CITY FOR YEAR PRECEDING ELECTION.

August 7, 1923.

Benjamin B. Baker, Esq.,
Member of the House of Delegates,
Equitable Building,
Baltimore, Md.

MY DEAR MR. BAKER: In your letter of August 7th, you present to me the following facts which you desire me to consider in connection with the question of your eligibility as a candidate for the State Senate from the recently formed 5th Legislative District of Baltimore City.

Prior to January 1st, 1923, you resided in the 5th precinct of the 13th Ward formerly included in the 2nd Legislative District of Baltimore City, and now a part of the 4th Legislative District. You are a registered voter in the 13th Ward, but will, at the appropriate time, transfer to the 3rd precinct of the 15th Ward in which you now reside, having moved there on January 1st, 1923. This precinct is included in the 5th Legislative District of Baltimore City as that district was created by the election Supervisors of Baltimore City on or about February 1st, 1923, in pursuance of the recent amendment to the Constitution authorizing the 6th Legislative District in Baltimore City. It is your purpose to become a candidate for the Senate from the 5th District if under the above state of facts you may legally do so.

The situation is apparently controlled by the provisions of Section 9 of Article 3 of the Constitution wherein it is declared that the candidate for Senator must have been at the time of his election a citizen of the State of Maryland and have resided therein for at least three years preceding the date of election, and in addition thereto have resided during the last year thereof in the Legislative District of Baltimore City which he has been chosen to represent provided "such Legislative District shall have been so long established." The Constitution then states that "if not, then the Senator must have resided in the City from which in whole or in part the Legislative District may have been formed." In my judgment this language means that if, as in the case presented by your letter, the particular district which you desire to represent has not been in existence for a period of one year on the date of election, it is then only necessary for the candidate for Senator to have resided in Baltimore City for one year prior to the date of election. This condition you have fully satisfied, therefore, in my opinion you are eligible to become a candidate for Senator from the 5th Legislative District.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

ELECTIONS — REGISTRATION DAY BEFORE PRIMARY — "DECLINED" AND "INDEPENDENT" VOTERS MAY AFFILIATE ON THAT DAY AND VOTE IN THE PRIMARY—THIS PRIVILEGE NOT POSSESSED BY THOSE ALREADY AFFILIATED.

August 8, 1923.

The Crisfield Times,
Crisfield, Md.

GENTLEMEN: I have your letter of August 6th. Under the primary law provision is made for one day of registration prior to the primary election. On this day a voter who is registered as "Declined" or "Independent" may declare his affiliation and become affiliated with one of the political parties. He may not, however, change his affiliation from one party to another party on this day, but must comply with the general provision that all such changes must occur at least six months prior to the day of election. The reason for this rule is that where a man is marked "Declined" or "Independent" he is considered never to have become affiliated at all and may, therefore, declare for the first time his affiliation. Where, however, a definite affiliation has been made the law prohibiting a change of affiliation less than six months prior to election day becomes applicable. It follows that the voter marked "Declined" or "Independent" who on the registration day preceding the primary declares his affiliation may on the primary participate in the election of the party with which he has affiliated.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

ELECTIONS — SUPERVISORS OF ELECTIONS CANNOT TAKE ACKNOWLEDGMENTS TO CERTIFICATES OF CANDIDACY— CANDIDATE IN PRIMARY WITHDRAWING HIS NAME PRIOR TO PRINTING OF BALLOT ENTITLED TO RETURN OF DEPOSIT.

August 18, 1923.

William M. Storm, Esq.,
Counsel, Board of Supervisors of Elections,
Frederick, Md.

DEAR MR. STORM: I beg to reply to your letter of August 14th.

1. I find no law authorizing the Supervisors of Elections to take the acknowledgements of candidates to certificates of nominations filed by them in accordance with the provision of Chapter 160, Acts of 1916, and in the absence of such definite provision, I should say that no such authority exists.

2. As to the right of a candidate who has filed nomination papers and made a deposit and who afterwards withdraws his name before the Primary election takes place to recover his deposit, I would say that such a candidate is entitled to do so, if he withdraws prior to the printing of the official ballots.

6 Opinions of the Attorney General, page 203;

2 Opinions of the Attorney General, page 163.

I endeavored to reach you on the telephone to-day, but was unable to do so.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

ELECTIONS—CITIZENSHIP DEPENDENT UPON FACT OF RESIDENCE, NOT UPON REGISTRATION AS VOTER—ELIGIBILITY FOR SHERIFF.

August 23, 1923.

Clarence M. Roberts, Esq.,
Counsel to Supervisors of Elections
for Prince George's County,
Upper Marlboro, Maryland.

MY DEAR MR. ROBERTS: Your letter of August 22nd.

You inquire as to the eligibility of a candidate for Sheriff who was born in Prince George's County and was a qualified voter therein prior to October 15, 1918, and was on that day stricken from the registration books, having moved to Wilmington, Delaware, some time before; who returned to Prince George's County in October, 1918, and on October 31 of that year declared his intention to become a citizen and voter of the State, and has remained continuously in Prince George's County since the last mentioned date, and re-registered September 2nd, 1919, since which time he has been a qualified voter in that county.

Section 44 of Article 4 of the Constitution as amended by Chapter 845 of the Acts of 1914, contains the following provision:

"There shall be elected in each county in every second year, one person, resident in said county, above the age of twenty-five years and at least five years preceding his election, a citizen of the State, to the office of Sheriff."

The question presented for decision, therefore, is whether the person to whom you refer will have been a citizen of this State for five years immediately preceding the election to be held in November of this year.

That a person may be a citizen without being a voter was decided in Minor vs. Habbersett, 21 Wall. 162. That the Constitutional provision above quoted was not intended to disqualify a person on the ground that he had not been a

qualified voter for five years preceding his election is evident from the terms of that section itself, for it is clear that a person who was only a few days above the age of twenty-five could not, under the provisions of Section 1 of Article 1 of the Constitution have been a qualified voter for five years. Moreover the distinction is clearly made in the case of Pope vs. Williams, 98 Md. 59, in which the Court said (p. 67): "to become a citizen of the State a person must reside therein and to entitle him to a franchise he must have resided within the State at least one year and in a district six months before the election."

Under the express terms of the Fourteenth Amendment to the Constitution of the United States, "all persons born or naturalized in the United States, subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." The whole question, therefore, would seem to resolve itself into an inquiry as to when the residence in this State of the person mentioned, after his return from Wilmington began; and, in the absence of evidence to the contrary, this would seem to have begun not later than October 31, 1918, in view of his declaration on that date, and of the fact that he has remained in Maryland since that time.

See Pope vs. Williams, Supra.

So far as I can judge from the facts before me, therefore, I am of the opinion that the person to whom your letter refers possesses the qualifications required by the above quoted provision for the office of Sheriff.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

ELECTIONS—LEGAL REQUIREMENTS AFFECTING CERTIFICATES OF CANDIDACY MANDATORY — CANDIDATE'S AFFIDAVIT THAT HE IS QUALIFIED NECESSARY.

August 25, 1923.

R. H. Archer, Jr., Esq.,
Counsel, Supervisors of Elections of Harford County,
Bel Air, Maryland.

DEAR SIR: Your letter of August 22nd, enclosing copy of certificate of candidacy to the office of Sheriff of Harford County filed by R. S. Atkin, with a request that I render an opinion as to whether it is proper to place the name of the applicant on the official ballot to be voted at the primary election to be held September 10th.

Following the certificate which should have been signed by the candidate is a form of acknowledgement which, under Section 184 of Article 33, Public General Laws, should have been signed by an officer duly authorized to take acknowledgements. The only signature which appears on the paper is that of the candidate which appears at the end of the acknowledgement. Therefore, even if this signature is to be taken as applying to the certificate of candidacy, there is nothing to show that Mr. Atkin acknowledged that certificate before any one.

In 20 Corpus Juris, on page 115, I find the following:

"The primary election laws of the various states impose certain requirements on a candidate at a primary election, such as filing with a designated official, a certain number of days before the primary, a paper in some prescribed form announcing his candidacy, swearing that he is qualified, making a statement of his membership in, and support of, the party whose nomination he seeks, causing his name to be printed on the official ballot as a candidate for the nomination, and filing the names of persons selected as his campaign committee. Such requirements are mandatory, and compliance with them is essential to enable the candidate to be voted for at the primary election and to have his name

printed on the official ballot at the general election as the nominee of one of the principal political parties."

You will note that one of the requirements noted in the above quotation as some times imposed, is that the candidate shall swear that he is qualified. I do not see that there is any valid ground of distinction between an affidavit of the kind mentioned and an acknowledgement; therefore, it would seem that the requirement that the certificate of candidacy be acknowledged is mandatory.

For this reason, I feel compelled to hold that the certificate as filed is invalid, and that Mr. Atkin's name cannot be placed upon the primary ballot.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

ELECTIONS — VOTER REGISTERED AS PROGRESSIVE CANNOT VOTE IN DEMOCRATIC OR REPUBLICAN PRIMARY BY CHANGING AFFILIATION ON REGISTRATION DAY IMMEDIATELY PRECEDING—SIX MONTHS RULE APPLIES.

August 28, 1923.

L. C. Quinn, Jr., Esq.,
Crisfield, Maryland.

DEAR SIR: Your letter of August 25th, in which you ask "whether or not a voter who is affiliated as a 'Progressive,' which party no longer exists, can affiliate with the Democrat or Republican party on registration day, and participate in the primary at the following primary election, the same as a voter who is affiliated as Independent or Declined."

The last paragraph of Section 182 of the Election laws is as follows:

"No person or voter after having had his affiliation registered shall be permitted to make any change in his party

affiliation unless the same shall be made at least six months prior to the day of the primary election."

This language is explicit and contains no exception, and I think it must be followed. You suggest that the Progressive party has ceased to exist, and this may now be obvious in the case of that party, but it is difficult to say just when it ceased to exist, and to allow election officials to determine whether any particular party had gone out of existence at a given time would, in my judgment, be a dangerous practice.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

ELECTIONS—METHOD OF NOMINATING STATE CANDIDATES FOR OFFICES LEFT UNFILLED IN PRIMARY.

September 14, 1923.

Hon. Galen L. Tait,
Chairman, Republican State Central Committee,
201-205 Southern Hotel,
Baltimore, Maryland.

DEAR MR. TAIT: Your letter of September 12th.

You request my opinion as to the method of nominating candidates for the positions of Comptroller and Clerk of the Court of Appeals.

Section 188 of the Election Laws provides for the filling of vacancies occurring otherwise than by death or resignation of the person nominated, for which latter cases specific provision is made in Section 201. The passage in Section 188 to which I have referred will be found on page 133 of the Registration and Election Laws, and is as follows:

"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."

I do not know what the rules and regulations of the governing body for the Republican Party in the State provide with regard to this matter, but I should say that a safe method would be for the State Central Committee to nominate a candidate for Comptroller, as has already been done with regard to the candidate for Clerk of the Court of Appeals, and then have the action of the committee with regard to both these nominations confirmed by the convention. If this method is followed I should say that it would be difficult, if not impossible, for any question to arise.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

ELECTIONS—CANDIDATE UNOPPOSED FOR NOMINATION MUST FILE THE STATEMENT REQUIRED BY SECTION 170, ARTICLE 33, COVERING HIS EXPENDITURES.

September 14, 1923.

Hon. William H. Forsythe, Jr.,
Ellicott City, Md.

MY DEAR JUDGE FORSYTHE: Referring to the verbal request made by you on behalf of Judge Thomas for an opinion as to whether a candidate for public office who is unopposed in the Primary election and thus nominated without a contest, must file the certificate required by Section 170 of Article 33, Public General Laws.

The first paragraph of the Section above mentioned is as follows:

"Every candidate for public office, including candidates for the office of Senator of the United States, shall within thirty days after the holding of the primary election held to nominate for such office, make out and file in the office of the Clerk of the Circuit Court of the county in which such candidate resides, or with the clerk of the Circuit Court of Baltimore city, if such candidate resides in said city, the statement hereinafter provided."

The last paragraph of the Section reads:

"The provisions of this section, including the provisions with respect to the time of filing said reports, shall be mandatory and not directory and must be strictly performed as above prescribed."

In view of these explicit provisions, I think that the statement in question must be filed even where the candidate is unopposed. To hold otherwise would not only violate an explicit provision of law, but would, I think, be dangerous as well. It is quite possible that a candidate might make expenditures in anticipation of opposition which did not develop, and it would be unsafe, under such circumstances, to excuse him from making the required statement on the ground that, actually, he received the nomination without a contest.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

ELECTIONS—NO DECLARATION OF AFFILIATION POSSIBLE ON ELECTION DAY.

September 20, 1923.

Irvin Owings, Esq.,
Hyattsville, Md.

DEAR SIR: Yours of September 18th. Section 186 of Article 33 of the Code prescribes the conditions under which

party affiliations may be declared and changed. There is no provision for the declaration of affiliation on election day and, therefore, while a person registered as an Independent may on the the registration day preceding the primary, declare his affiliation and identfy himself definitely with one of the parties, he cannot exercise this privilege on election day itself.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

ELECTIONS—VACANCY ON TICKET MAY BE FILLED BY MAJORITY OF MEMBERS OF PARTY STATE CENTRAL COMMITTEE FOR THE COUNTY — DEFEATED CANDIDATE IN PRIMARY ELIGIBLE FOR NOMINATION BY THIS METHOD FOR ANOTHER OFFICE.

October 11, 1923.

Charles O. Dulin, Esq.,
President Board of Supervisors,
of Elections for Anne Arundel County,
Annapolis, Md.

MY DEAR MR. DULIN: Your letter of October 9th.

You request my opinion with regard to a question which you feel you cannot consistently submit to your counsel, Hon. A. Theodore Brady, he being a candidate for the office of State's Attorney on the Democratic ticket and this question relating to the Republican nomination for that office.

A certificate of nomination of W. Hallam Claude, Esq., for the office of State's Attorney, signed by four members of the State Central Committee, one of whom signs as Secretary, has been filed with your Board, said State Central Committee for said County consisting of six members, four of them, therefore, constituting a majority. In this connec-

tion you call my attention to the provisions of Section 42 of the Election Laws. This section, however, has no application. It refers to nominations made by conventions as defined by Section 41. Section 41 defines the convention to which these sections refer as "an organized assemblage of delegates or voters, representing a particular party or principle, whose highest candidate at any election held within two years next preceding the holding of such convention polled more than one per cent. and less than ten per cent. of the entire vote cast in the State, county or other division or district for which the nomination is made." This cannot apply to the Republican Party, whose highest candidate at every election held in Anne Arundel County within the last two years has certainly polled more than ten per cent. of the entire vote cast in that county.

The language applicable to the present situation would seem to be that contained in the last sentence of Section 188 of the Election Laws, which will be found on page 133 and which is as follows:

"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."

The certificate signed by four members of the Republican State Central Committee for Anne Arundel County, of which you enclose a copy, seems to indicate that the nomination of Mr. Claude was made in the manner for which the rules and regulations of that body provide, and I think, therefore, that it comes within the terms of the language thus quoted. It follows that, in my opinion, Mr. Claude has been duly nominated.

You also inform me that Arthur B. Carter, who was a candidate in the recent primary for the nomination of Sheriff and was defeated, has been nominated by the State Central Committee for the office of Judge of the Orphans Court. You

refer to Section 43 of the Election Laws, which contain this language:

"No person who has been a candidate for nomination by a political party at the primary election preceding a general election, shall be nominated for an office to be filled at such election in the manner prescribed by this section."

There is nothing in this language to prevent the nomination of Mr. Carter by the Republican State Central Committee, acting under the terms of the language above quoted from Section 188. The provision contained in Section 43 from which you quote forbids the nomination "in the manner prescribed by this section" of any one, who has been a candidate for nomination at the preceding primary election. The provisions of Section 43, however, relate exclusively to certificates of nomination signed by a prescribed number of voters and have no application whatever to the filling of vacancies in accordance with the rules and regulations of the governing bodies for the respective parties in the counties, city or State, which subject is covered by the language quoted from Section 188.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

ELECTIONS—CANDIDATE'S EXPENDITURES LIMITED BY NUMBER OF QUALIFIED VOTERS AT THE NEXT PRECEDING ELECTION WHEN THAT SAME OFFICE WAS ACTUALLY FILLED.

October 24, 1923.

Messrs. Bond & Parke,
Westminster, Md.

GENTLEMEN: Your letter of October 18th, in which you quote the following language:

"The payments, expenditures, promises and liabilities which any candidate for nomination or for election may make or incur * * * shall not exceed in the whole ten dollars for each one thousand * * * of the registered voters qualified to vote for *the office* in question at the *next* preceding election *therefor*."

You ask whether the words "the next preceding election therefor" should be construed as referring to the next preceding election at which the office in question could have been filled or to the next preceding election at which that office actually was filled.

I feel constrained to adopt the second construction, although I realize that its application will, in certain cases, produce somewhat peculiar results. It would, perhaps, have been better if the Legislature had adopted language which would admit of the first construction, but I feel that the language which has been used cannot be so construed, without placing an interpretation upon that language wholly at variance with that which it would naturally bear.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

ELECTIONS—IF VOTER PLACES IN ONE OF THE SQUARES ON THE BALLOT A LONG LINE AND A SHORT LINE WHICH DO NOT TOUCH, THE ENTIRE BALLOT MUST BE REJECTED.

November 14, 1923.

Frank A. Kremer, Esq.,
Judge of Election,
5th Precinct, 23rd Ward,
Baltimore, Md.

DEAR SIR: Your letter of November 10th directed to the Board of Supervisors of Elections, has been referred to this

office for reply. You ask whether a ballot should be counted, when the mark in one of the squares opposite the name of a candidate consists of a long line and of a short line which does not cross the long line. In the copy submitted by you the short line does not even touch the long line, but, irrespective of whether it touches it or not, if it does not cross it, my opinion would be the same.

Section 73 of the Election Laws distinctly provides that, "if there shall be any mark on the ballot other than the cross mark in a square opposite the name of a candidate, or other than the name or names of any candidate written by the voter on the ballot as provided in Section 54, such ballot shall not be counted."

It seems obvious to me that, if one line does not cross the other, the two lines do not result in a "cross mark," and, therefore, if such a mark appears anywhere on the ballot, the whole ballot should be rejected.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

FISCAL.

FISCAL—MEANING OF "SPECIAL ACCOUNT"—ALL RECEIPTS OF TITLE DEPARTMENT OF COMMISSIONER OF MOTOR VEHICLES TO BE PAID MONTHLY TO TREASURER — EXPENDITURES TO BE MADE OUT OF THE APPROPRIATIONS OF THESE SPECIAL FUNDS.

January 12, 1923.

J. O. McCusker, Esq.,
Comptroller's Office,
Annapolis, Md.

DEAR SIR: On December 19th you notified the Title Department, supervised by the Commissioner of Motor Vehicles, that it had never submitted to your office any payrolls or vouchers for disbursements payable out of the appropriations to said Title Department for the fiscal year 1923. It seems that the Title Department had been paying all salaries and expenses directly out of the receipts derived by it from the titling of cars, and without any reference to your office or the Treasurer of the State, and inasmuch as doubt thereupon arose as to the proper course to be pursued in this matter by the Title Department, you subsequently requested me to express to you my views relative thereto.

The issuing of certificates of ownership for motor vehicles was originally authorized by Chapter 407 of the Acts of 1920, now codified in the Motor Vehicle Law as Section 157 of Article 56. This law provided that the receipts derived by the Commissioner of Motor Vehicles from the titling of cars should be set aside and retained by him in a separate fund and used, "first, to meet the additional expenses of his office necessitated by the registration and recording therein required; the balance of such fund to be used by him in the employment of additional assistants, deputies and meas-

ures to prevent, so far as reasonably possible, the theft of automobiles and disposition of stolen automobiles in this State, and for no other purpose." Under the plan originally adopted, therefore, the Commissioner of Motor Vehicles was allowed to retain all fees received by him in connection with the titling of cars and directed to expend the same for the purposes designated. This procedure did not in any way conflict with the Budget Amendment to the Constitution, because the money never passed into the Treasury of the State. It was not necessary, therefore, for the officials in charge of the Titling Department to submit monthly to the Comptroller's Office payrolls or vouchers covering their expenses.

A complete change, however, was accomplished by the Re-organization Bill, known as Chapter 29 of the Acts of 1922 which, in my judgment, repealed the provisions of the titling law which I have quoted above. In Section 7 of Part 2 of Chapter 29, it is provided that "every department, institution or other governmental agency shall account monthly to the Comptroller and pay to the Treasurer all fees, revenues, collections and income of every kind received by it, and the same shall be credited by the Comptroller, in a special account, to such Department, Institution or governmental agency unless a special account is already by law prescribed for such receipts; and such receipts shall become available to and be used by such department, institution or governmental agency only upon warrant of the Comptroller, in accordance with law." The expression "unless a special account is already prescribed by law for such receipts" means, in my judgment, a special account in the Treasury Department of the State and does not refer to the separate fund or account created in the hands of the Commissioner of Motor Vehicles by the titling Act of 1920. The requirements of the Re-organization Bill are clear and mandatory and unquestionably impose upon those in charge of the Titling Department the duty to return monthly to the Treasurer of the State all monies in their hands. The purpose of the General Assembly to have the Titling Department conducted hereafter in accordance with the same principles and meth-

ods already pertaining to and controlling the other Departments of the State is further demonstrated by the appropriations to the Title Department made in detail to that Department in the Budget Bill for the fiscal years 1923 and 1924. (See Acts 1922, Chapter 500, pp. 1332 and 1435). These appropriations are directed to be paid from the special receipts and special funds of the Title Department. Therefore, it is my opinion that all receipts of the Title Department should be paid monthly to the Treasurer to be credited by him to a special fund or account in favor of the Title Department. It is also the duty of the officials of that Department to submit monthly to the Comptroller, payrolls and vouchers for the expenses of the Department and to receive monthly from the Treasurer a check covering the same, payable, in accordance with the Budget appropriations, out of the special funds of the Title Department.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

FISCAL—COUNTY COMMISSIONERS OF CHARLES COUNTY ENTITLED TO REGULAR COMPENSATION AND IN ADDITION THERETO FIVE DOLLARS PER DAY FOR REASSESSMENT OF PROPERTY.

January 13, 1923.

F. Stone Posey, Esq.,
Attorney at Law,
LaPlata, Md.

DEAR SIR: I acknowledge receipt of your letter of recent date asking my opinion as to whether or not the three County Commissioners of Charles County are enitled to receive compensation at the rate of $5.00 per day for actual services rendered in connection with the reassessment of

property in Charles County as provided by Section 252 of Chapter 629 of the Acts of 1916, in addition to the $6.00 per day for each day said Commissioners shall be engaged in the discharge of their duties, but not to exceed $200 per year as provided by Chapter 527 of the Acts of 1920.

Section 14 of Article 25 of the Code provides that "the County Commissioners of the several counties shall each receive $3.00 per day for each day they shall be engaged in the discharge of their duties, and mileage at the rate of ten cents for every mile over five miles from their places of residence."

Chapter 629 of the Acts of 1916 relates to the matter of assessment of property in the respective counties of the State, and Section 252 thereof provides that "each County Commissioner of a county having three Commissioners shall receive $5.00 per day for actual service rendered in connection with the reassessment of property in their county." This Act adds six new sections to Article 87 of the Code title "Revenue and Taxes," and makes no mention of Article 25 of the Code, title "County Commissioners." In my judgment the compensation provided for the work required in the reassessment of property is in addition to the compensation provided by the general law relating to County Commissioners.

Chapter 427 of the Acts of 1920 adds a new section, num-49-A to Article 9 of the Code of Public Local Laws, title, "Charles County," sub-title "County Commissioners," increasing the compensation of the County Commissioners of Charles County. I quote this section as follows:

"The County Commissioners of Charles County shall receive $6.00 per day for each day they shall be engaged in the discharge of their duties, but not to exceed $200 per year and shall be allowed no mileage."

The title of this Act contains the clause "Increasing the Compensation of the County Commissioners of Charles County." It is possible that the Commissioners could be entitled in reassessment work at the rate of $5.00 per day to a total of more than $200 in the course of a year. Such being the case, the compensation of the Commissioners

would not be increased, but the Legislature clearly intended that the compensation should be increased. Therefore, in my judgment, the Legislature, by the Act of 1920 did not intend to interfere with the Commissioner's pay for reassessement work.

It is my opinion that said Chapter 427 of the Acts of 1920 operates as an amendment to Section 14 of Article 25 of the Code. The Legislature must have had said Section 14 in mind, because the mileage at the rate of ten cents per mile provided for in Section 14 is expressly prohibited in said Chapter 427 which provides that "and shall be allowed no mileage." Since the Act operates as an amendment of the general law as to County Commissioners, it embraces in my opinion, the general duties of the County Commissioners and not the additional and special duties involved in reassessment work.

It is my opinion, therefore, that the Commissioners of Charles County are entitled to $6.00 per day for each day they shall be engaged in the discharge of their duties, (other than in the reassessment of property) but not to exceed $200 per year, and $5.00 per day for actual services rendered in connection with the reassessment of property in Charles County.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

FISCAL—GIFTS BY LICENSED RACING ASSOCIATIONS TO COUNTY FAIR ASSOCIATIONS—NOT ALLOWABLE AS OPERATING EXPENSES OR DISBURSEMENTS.

January 25th, 1923.

Honorable William S. Gordy, Jr.,
State Comptroller.
Annapolis, Md.

DEAR MR. GORDY: Certain duly licensed Racing Associations, acting in pursuance of authority previously obtained

from the Racing Commission, distributed among the various County Fair Associations of Maryland from their 1922 receipts, sums of money aggregating $30,000. At the joint conference held recently at which you and two members of the Racing Commission were present, you asked me to advise you how these items should be cared for in the annual accounting between the Associations and the Racing Commission representing the State. If they are charged as expenses, the net revenue of the Associations in question will be reduced to the extent of $30,000 and the 15% tax accruing to the State will be correspondingly diminished. If they are not so charged, they will, of course, be considered to have been paid out of the net revenues without, in any way, affecting the amount of the tax to which the State is entitled.

The law dealing with this subject is embodied in Section 12 of Chapter 273 of the Acts of 1920. It directs every licensed association or corporation to return each year to the Commission, on or before the 20th day of December, "a full statement, under oath, of their receipts from all sources whatsoever during the calendar year, and of all expenses and disbursements, all itemized in manner and form as shall be directed by the Commission, and with such allowances as may be approved by the Commission, showing the net revenue from all sources derived by such associations or corporations engaging in or conducting the horse racing. The cost of any alterations, additions, changes or improvements made or proposed upon the property owned or leased by any such person and used by it for the convenience and comfort of the public and of the horse owners, with the approval of the Commission, shall be deducted as running expenses in such statements."

Under this language the legitimate deductions to which the licensees under the Act are entitled to credit are "all expenses and disbursements" and "such allowances as may be approved by the Commission." I am unable to draw any real distinction between the words "expenses" and "disbursements." The word "expense" is defined in the Century Dictionary to mean "that which is expended, laid out

or consumed, especially money expended;" while the word "disbursement" is declared to mean "money paid out, an amount or sum expended." The two words, have, therefore, substantially the same meaning. It may be that, as used in the section quoted, the word "expenses" was intended to embrace obligations incurred, while the word "disbursements" referred to payments actually made. In any event, I feel that the Legislature, by their use, meant to cover only such charges against the Associations as might arise in connection with the holding of their respective racing meets and which might legitimately, therefore, be considered as operating burdens. The phrase "such allowances as may be approved by the Commission" was intended to have a definite meaning and to embrace those outlays of money which in an ordinary business would be deemed capital expenses, not chargeable to operation, but which, by reason of the uncertain future of the racing business, cannot be considered to add permanently to the value of the property and assets of the Associations. The nature of such allowances is specifically indicated in the last sentence of the section quoted above.

I cannot conceive, however, how the payments made during 1922 to the County Fairs of the State could in any way be regarded as expenditures involved in or necessitated by the racing business which the Associations are licensed to conduct. It has been suggested that one of the purposes of Chapter 273 of the Acts of 1920 which established the Racing Commission and clothed it with authority to license racing was to foster and develop the breeding of horses in Maryland and that by the distribution of money among the County Fairs this purpose was promoted. This argument is not helpful, however, because the statute itself neither directly or indirectly discloses any such legislative design. If the payments made to the County Fairs during 1922 were legitimate deductions the amounts could be increased from year to year and the scope of such donations could be so easily enlarged that the State could practically be deprived of a source of revenue which the statute itself was designed to create.

I feel that it was contemplated that very liberal allowances should be made for monies expended in the conduct of the racing meets themselves or upon any matter in any way affecting the same, but that donations of the character under discussion cannot lawfully be placed in the category of expenses or disbursements, and can only be made by the Associations from their own funds subsequent to the discharge of their tax obligations. For the reasons stated, it is my opinion that the thirty thousand dollars donated to the County Fairs must be included in the net revenues constituting the basis upon which the tax accruing to the State will be calculated.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

FISCAL—PLACING OF INSURANCE ON STATE PROPERTIES CENTRALIZED—NO OBLIGATION RESTING ON ANY BOARD TO COMPLY WITH REQUEST OF BOARD OF PUBLIC WORKS THAT APPROPRIATIONS FOR INSURANCE BE TURNED OVER TO SAID BOARD.

February 9th, 1923.

C. W. Perkins, Esq.,
Secretary, Board of Managers,
Maryland Training School for Boys,
10 South Street,
Baltimore, Md.

DEAR MR. PERKINS: This question was submitted to me at the request of the Board of Managers of the Maryland Training School for Boys in your letter of January 26th.

"What is the responsibility of the Board of Managers for the proper preservation of the School as public agent and trustee for the State of Maryland, and what are our duties under the following conditions?"

In the Budget Bill of 1922 an appropriation of $4,000 covering interest and insurance was made to the Maryland Training School for Boys for each of the years 1923 and 1924. On November 17th, 1922, the following letter was received by your Board from the Budget Accountant:

"As we advised the School in October, the State Treasurer has taken over all insurance matters, the policies being filed with the Treasurer and premiums paid out of a fund appropriated to the Treasurer for that purpose. The Board of Public Works authorized the transfer to the State Treasurer's fund any allowances to the various State departments and institutions for insurance for the fiscal years 1923 and 1924. In the appropriation to your school is an allowance for $4,000 for interest and insurance. What we want to know is how much of the $4,000 is to be used for the payment of interest. The balance of course we will have to transfer to the State Treasurer's insurance fund."

After receiving your letter I wrote to Governor Ritchie asking for further information as to the action taken by the Board of Public Works and for the legal basis of such action if it contemplated the transfer to one official of appropriations made in the Budget to another official. Governor Ritchie stated in his reply that "the Board of Public Works determined that the placing of insurance policies ought to be centralized so that one office in the State would have a record of any policy which any of the State departments or institutions carries."

He pointed out that the present budget in accordance with this policy, makes an appropriation to the State Treasurer of $30,000 for State Insurance. He also stated that "in a number of instances, the appropriations are still continued to different institutions for the same purpose and the Board of Public Works will be very glad if these institutions would voluntarily transfer their appropriations to the State Treasurer in line with the Board's policy of having all State insurance placed by him," but adds that "if any of the institutions do not wish to do this, there is no obligation upon them to do so, and in that event they will

continue to place their own policies and pay the premiums out of their own appropriations."

I have never seen a copy of the resolution passed by the Board of Public Works relating to this matter, but it is evident from the letter of Governor Ritchie that it was intended to be in the nature of a request rather than an order to different officials and boards of the State, and, therefore, since an appropriation for insurance purposes was made directly to your Board in the Budget Bill, it is entirely optional with you whether you will comply with the request of the Board of Public Works and permit your insurance to be placed by the Treasurer of the State or whether you will retain the appropriation and use your own judgment in determining all questions of this nature.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

FISCAL—GASOLINE TAX MUST BE PAID BY STATE OFFICIALS AND EMPLOYEES—NO EXEMPTION IN THEIR FAVOR.

February 20th, 1923.

Walter N. Kirkman, Esq.,
Chief, Bureau of Personnel and Accounts,
16 W. Saratoga Street,
Baltimore, Maryland.

MY DEAR MR. KIRKMAN: You have requested me in your letter of February 16th to advise you as to whether or not the Departments of the State Government can obtain an exemption from the payment of the gasoline tax which was imposed by Chapter 521 and 522 of the Acts of 1922. Under these statutes every person selling gasoline, defined in the Act as a "Dealer," is required to pay to the State a license tax of one or two cents per gallon on all motor ve-

hicle fuel sold by him, he in turn being permitted to pass the tax on to the purchaser of the gasoline by adding it to the purchase price, it being the purpose of the law as disclosed in its preamble that the tax shall fall ultimately upon those consuming it in the propulsion of motor vehicles on the highways of the State. Provision is made for exemption from the tax by Section 10 of the Act, and this exemption is extended to motor vehicle fuel used for the purpose of operating or propelling stationary gas engines, trucks used for agricultural purposes, motor boats, airplanes or air craft, cleaning or dyeing or some other commercial use other than the operation of motor vehicles upon the highways of the State. No other exemptions whatever are authorized. The practical operation of this law makes it necessary for the dealer who sells the gasoline whether to a State official or some private individual to so fix his price as to include the tax thereby passing the tax on to the purchaser of the gasoline and making it necessary for said purchaser, if he is entitled to an exemption, to recover the tax in the manner prescribed in the Act.

As indicated above, however, State officials and employees are not included among those to whom the exemption is granted by the Act, and therefore the Comptroller, whose office handles all exemption claims, is absolutely without authority to recognize any claim for exemption presented to him by a representative of the State.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

FISCAL—POWER OF THE COUNTY COMMISSIONERS OF GARRETT COUNTY TO BORROW MONEY AND ADVANCE SAME TO STATE ROADS COMMISSION FOR ROAD PURPOSES.

March 24th, 1923.

William R. Offutt, Esq.,
State's Attorney,
Oakland, Md.

MY DEAR MR. OFFUTT: I have just received your letter of March 22nd, in which you asked me to give you my opinion as to the right of the County Commissioners of Garrett County to borrow $25,000 for the purpose of advancing that amount to the State to be used by the State Roads Commission to complete during the coming summer two miles of unfinished road in Garrett County. You state that the County Commissioners are in a position to borrow this money without interest by giving their order as evidence of the same.

Upon the receipt of your letter I called up Mr. Mackall, Chairman of the State Roads Commission, and learned from him more of the details of the proposed arrangement. It seems that the people of your county are very anxious that the two miles of unfinished road should be built at once, because it connects up your county with an improved highway of West Virginia. The cost of this work will be $50,000, of which $25,000 is to be raised this year by taxation and the residue by the proposed loan which can be arranged with the banks of the county without interest.

Mr. Mackall states that the State Roads Commission will not give to the county a note or other certificate of indebtedness for this money, because it has no power to borrow money and issue in return therefor any such paper. The State Roads Commission will simply pass a resolution binding itself to return to the County Commissioners of Garrett County the sum of $25,000 out of Garrett County's portion of any money that may be appropriated by the Legislature of 1924 for road making purposes.

Two possibilities immediately suggested themselves to me. First, the General Assembly of 1924 may not appropriate any monies for the building of new highways. In this event, the State Roads Commission would not be in a position to return the $25,000 received by it this year and, of course, would not do so. Second, even if the proper legislation was passed and the State Roads Commission was willing to return the $25,000 it is possible that some citizen may undertake, by mandamus proceedings, to force the State Roads Commission to use Garrett County's portion of the available funds for the actual building of some new road rather than for the discharge of the financial obligation which it is now proposed to create. Both of these possibilities are remote, but in dealing with matters of this kind, have to be considered.

It should also be remembered that Boards of County Commissioners are boards of limited jurisdiction, possessing no powers other than those expressly conferred or incident thereto.

I have had no opportunity to review the local legislation applicable to Garrett County, but I doubt whether there is any statute clothing your Board of County Commissioners with the right to borrow money.

I hesitate, therefore, to furnish you with any formal opinion because in the absence of further suggestions from you, it would probably be adverse to the course which the Commissioners evidently desire to pursue. Many situations arise, however, where everybody affected is satisfied that certain steps be taken even though they do not come strictly within existing provisions of law. The probabilities are that, if your Board entered into this arrangement with the State Roads Commission, all of the people in your County would approve of it, and the money would promptly be returned within the course of a year.

I shall be very glad to hear from you further if you desire to have me go into the matter with greater care.

With kindest personal regards, I am

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

FISCAL—AUCTIONEERS IN BALTIMORE CITY—TERMS EXPIRE ON MAY 1ST AFTER MEETING OF GENERAL ASSEMBLY—LICENSES MUST BE ISSUED FOR SUCH TERMS—FULL FEE PAYABLE, WHETHER LICENSE BE FOR FULL YEAR OR A PORTION THEREOF.

March 31, 1923.

Honorable William S. Gordy, Jr.,
Comptroller,
Annapolis, Md.

MY DEAR MR. GORDY: Some days ago you wrote to me for advice concerning the license years of auctioneers appointed by the Governor to serve in Baltimore City and the amount of fees which it is necessary for such auctioneers to pay. Among other questions you presented the following: An auctioneer commissioned at the present time tenders payment of the yearly license fee to this office; what year should be stipulated in the license? If a license is issued for a shorter period than one year what fee should be charged, the full annual fee or a proportionate part of the annual fee?

The state of the law on these subjects is somewhat confusing. Section 240 of the Charter of Baltimore City, Revised Edition, 1915, declares that "the Governor, by and with the advice and consent of the Senate, shall biennially appoint as many auctioneers in the City of Baltimore as he may think proper, not to exceed thirty." Section 241 requires each person so appointed, whose sales shall not exceed $150,000, before entering upon the duties of his office, to furnish a bond in the penalty of $5,000, and "also to pay to the Treasurer of Maryland the sum of $450.00, as a license." By the provisions of Section 249, the State Treasurer, upon being satisfied that the bond has been filed and upon receiving the required license fee, is authorized "to issue a general or special license to such person as the person may be entitled to, for the term of one year from the date of such license." It is by reason of this last provision, that the license shall be issued for a term of one year from its date, that the difficulties of administration have arisen.

If licenses good for a year could be issued at different times during the year, there would be no regularity or certainty concerning the tenure in office of the various auctioneers in Baltimore City. I think, however, that the provisions of Section 249 must be construed in the light of the constitutional requirement embodied in Section 13 of Article 2 of that instrument. It is there specified that "all civil officers appointed by the Governor and Senate shall be nominated to the Senate within fifty days from the commencement of the regular session of the Legislature; and their term of office shall commence on the first Monday of May next ensuing their appointment and continue for two years and until their successors, respectively, qualify according to law."

The auctioneers of Baltimore City are civil officers controlled by this section of the Constitution. The Governor is directed by and with the advice and consent of the Senate to appoint them biennially. If the appointment must be made during the sessions of the Senate, they must be made biennially and when made under these circumstances they must be for terms which begin on the first day of May next ensuing. It could not have been contemplated that the Governor, during the session of the Senate, should appoint, with its approval, auctioneers for Baltimore City whose terms would not begin for ten or eleven months or perhaps even later. Yet this would be one of the results which would inevitably flow from a literal application of Section 249 of the City Charter. It is, therefore, my opinion that the terms of all of the auctioneers of Baltimore City expire on May 1st of the year during which the General Assembly sits in regular session, regardless of the date upon which the appointment itself is actually made.

I understand that the prevailing practice is to make all commissions issued to auctioneers expire on the first Monday of May. Although the appointment is for a term of two years, nevertheless for practical purposes it dates back to the first Monday of May of the first and third years of the Governor's term during which the General Assembly sits in regular session and runs for two years from that date.

Under this construction of the law the terms of all auctioneers in Baltimore City expire on the same day with the result that the Governor, with the advice and consent of the Senate, can biennially make a complete set of new appointments in accordance with the spirit and purpose of the law, the terms of the said new appointees to begin on the first day of May next ensuing.

The commission issued by the Secretary of State as an evidence of appointment and the license issued by the Treasurer as a permit to do business are separate and distinct papers. Nevertheless the real authority issues from the commission and cannot be enlarged or extended by the license. Therefore, I feel that the license should correspond, so far as possible, with the commission and that no license can be issed for a period extending beyond the first of May next ensuing.

The next question to be determined is the amount of fee to be paid by a licensee whose term is shortened to a period of less than a year by reason of delayed appointment. Section 249 clearly indicates that the license to be issued shall be good only for the period of a year and the amount of the license fee to be paid is declared in Section 241 to be $450.00. This sum is unquestionably required to be paid annually by all auctioneers appointed for the full term.

It has been suggested, however, that where the term is for a period of less than a year there should be an apportionment of the license fee. I find no warrant in the law for such a conclusion. The right to serve as an auctioneer in Baltimore City is a privilege granted by the State. The privilege is received by the appointee *cum onere*. In my judgment the law means that every auctioneer must annually pay the sum of $450.00, and if, for any reason, his appointment begins after May 1st and his term of service is thereby curtailed, the same fee is required. This principle is one of common application in the ordinary affairs of life. It is recognized by many statutes, among them, Sec. 146 of Article 81 fixing the tax on sheriff's commissions. The tax is the same even where an appointee is named to fill an unexpired term.

My conclusions, therefore, are:

First: That the term of every auctioneer in Baltimore City expires on the first of May next ensuing after the regular biennial session of the General Assembly.

Second: The license of every such auctioneer can only be issued for a term expiring on the first of May next ensuing after the date of its issuance.

Third: The fee to be paid is $450.00, whether the license is issued for a full year or a portion thereof.

The same principles apply in the enforcement of the other sections of the Baltimore City Code wherein different license fees are required under different conditions from Baltimore's auctioneers.

I have assumed that you desired these questions to be determined in accordance with the law now in force and without reference to any changes which may subsequently arise by reason of the Fewer Election Amendment to the Constitution.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

FISCAL—TAXATION. BALTIMORE BELT RAILROAD COMPANY SEPARATE CORPORATION. TAXABLE ACCORDINGLY. METHOD OF COMPUTING GROSS RECEIPTS TAX. AMOUNTS DUE. NO INTEREST OR PENALTIES TO BE CHARGED. CHARTER OF COMPANY NOT FORFEITED. SETTLEMENT OF CONTROVERSY.

April 26th, 1923.

Honorable Albert C. Ritchie,
Governor of Maryland,
Annapolis, Md.

DEAR GOVERNOR RITCHIE: In your letter of May 2nd, 1921, you referred to me certain matters concerning the forfeiture of the charter of the Baltimore Belt Railroad

Company. As you will recall, the question of the gross receipts tax which this corporation should pay has been a matter of controversy for a number of years. The records in our office disclose that you gave careful attention and much thought to the matter when you were Attorney General. Similar requests have, from time to time, been received by me from the State Tax Commission. I thought it proper, under all the circumstances of the case, to co-ordinate these several requests and make a complete examination of the entire situation, so that I could submit to you in concrete form my views as to the law and my thoughts as to a proper basis of computing the tax for the future.

The Baltimore Belt Railroad Company was incorporated under the general laws of Maryland in 1888. Apparently, the Belt has never operated as a railroad. It is a mere land owning corporation, leasing its properties and franchises to the Baltimore and Ohio Railroad for a definite annual sum, to wit, $240,000.00 per annum. This sum of $240,000.00 per annum represents 4 per cent. income on $6,000,000.00 of the company's bonds. The Belt Company has practically ceased to exist as a separate corporation. The Baltimore and Ohio Railroad Company collects all moneys for freight and passenger traffic over the Belt lines, and inasmuch as the Baltimore and Ohio Railroad Company owns all the common stock of the Belt line and all of its bonds, it operates over the Belt line just as if the Belt were an integral part of the Baltimore and Ohio System. However, the Belt has existed as a distinct corporate entity. No question of taxation would arise, if it were not for the fact that, by the Act of 1878, Chapter 155, the State of Maryland has entered into a compact or agreement with the Baltimore and Ohio Railroad Company to the effect that the gross receipts tax, in so far as the Baltimore and Ohio Railroad is concerned, shall not exceed the ratio of one-half of one per cent. Other railroad companies pay a different tax, which is levied by virtue of Article 81, Section 167 of the Code, and this tax is a progressive one, beginning at one and one-quarter per cent., and ending at two and one-half per cent. Therefore, it becomes important to determine

whether or not the Belt line can be considered a part of the Baltimore and Ohio Railroad for the purposes of the gross receipts tax.

After a very careful study of the question, I have come to the conclusion that the Belt line is a separate corporation and cannot avail itself of the benefits of the Act of 1878, supra. I, therefore, find that the Belt Line Railroad for the years, which will be more specifically set out below, must pay the same rate of taxation to the State of Maryland as other railroads pay, for example, the Pennsylvania System, and the Western Maryland. However, an examination of the tax returns of the Baltimore and Ohio Railroad discloses the fact that the Baltimore and Ohio, which has acted upon the theory that the Belt is part of their system for the purposes of taxation, has already paid the special tax of one-half of one per cent. For that reason the Belt is entitled to a credit for whatever its parent company has already paid on its behalf. Inasmuch as I have determined that the Belt cannot take advantage of the Act of 1878, supra, I must therefore, consider the effect of the Belt's alleged failure to comply with the gross receipts tax law during the years 1917 and 1918. There were several attempts by competent State authorities to forfeit the Belt's charter. The machinery of the law to invoke such forfeiture was put in motion, and, in 1921, the Belt was proclaimed in default for the taxes alleged to be due for the year ending January 31, 1918. Therefore, it becomes necessary for me to determine whether or not the Belt line now exists as a corporation of this State or whether it has ceased to exist as such because of the forfeiture of its charter.

In approaching the question of forfeiture there are certain well known rules which must guide us and restrict our actions. The courts unanimously hold that, where property is being sold to pay taxes, or where a forfeiture of any kind is sought to be inflicted, every pre-requisite to such forfeiture must be fully and completely met by the party or state attempting to invoke such forfeiture. The underlying reason for this rule is obvious. Where substantial and valuable property rights are sought to be forfeited by any of the ad-

ministrative bodies of the State, the courts will strictly construe against the State such attempt, and, unless each and every requisite of the statute is fully and completely complied with, the forfeiture cannot be declared. There was an attempt to forfeit the Belt charter in each of two taxable years, namely, the year ending January 31, 1917 ,and the year ending January 31, 1918. We shall consider these in their order.

As to the year ending January 31, 1917, we find that the Belt duly filed its return under the gross receipts tax law, as required by that law, and, on the basis of that return, which stated that it had no receipts, the State Tax Commission assessed receipts of $500,000.00. The State Tax Commission, so far as its records disclose, did not set the matter down for hearing, nor did the Commission notify the Belt line to submit other returns, nor did it follow the procedure set out in Article 81, Sections 167, et. seq. The Commission, apparently, proceeded under Section 168, and took the position that the Belt line had neglected or refused to make a return. Proceeding upon that theory, the Commission assessed the tax in the manner outlined by Section 169 and fixed the amount of the gross receipts and revenues of the Belt for the taxable year. In this we think the Commission erred. The Belt did not refuse nor did it neglect to file a return,—I am now holding that the Belt's return was based on an erroneous conception of the law, but the return was nevertheless filed and the Commission had ample power to set the matter down for hearing and make such investigation of the Company's books as it saw fit in order to determine the tax, but, in my judgment, the facts outlined did not give the Commission the right to invoke Section 169, which they undoubtedly did. The same general situation was repeated for the taxable year ending January 31, 1918, except that the gross receipts assessed against the Belt were $750,000.00 instead of $500,000.00.

Whether or not we determine that this assessment of the tax, which is undoubtedly the basis of the right of forfeiture, did not fully comply with the statute, no notice was given to the Belt and no hearing was had. However, as to the

year ending January 31, 1917, in so far as forfeiture is concerned, this question is immaterial because the Belt was never proclaimed as required by statute, and, therefore, no forfeiture could possibly result.

As to the taxable year ending January 31, 1918, I have no hesitation in ruling that no forfeiture resulted in this year. It is a matter of public knowledge that the railroads during this year were under federal control. The Congress of the United States, acting under competent authority, took over all the railroads, and merged such railroads in such a manner as to best promote the public welfare at home and to expedite the moving war materials and troops for the prosecution of the war against the German Imperial Government. During this period the railway officials ceased to have any powers whatsoever. The corporation's power to function was suspended. Whatever powers the corporation had became merged in the powers of the United States Government. The corporate assets were not returned to the railroads until March 1, 1920. It is perfectly clean and it requires no citation of authorities to show that the State of Maryland could not invoke a forfeiture of any kind whatsoever against the United States of America, nor could the State of Maryland impose a penalty upon the United States of America. It follows from this that the right to forfeit cannot be invoked against a corporation whose corporate powers were suspended by the paramount law of the nation. If the corporate powers were suspended for a certain definite, precise period, it follows that the corporate duties were suspended for a like period. I have, therefore, no hesitation in holding that the Belt, by turning over its franchises and its powers to the United States Government, which, in legal contemplation, was the seizure of private property temporarily for public use, secured immunity during that period from losing its charter by forfeiture. The Belt, as such, had no power whatsoever and no corporate activities to perform. The Maryland law regarding forfeitures of railroad companies' charters must be considered as suspended during the period set forth above, for otherwise a most anomalous situation would result. The ques-

tion of forfeiture of the Belt line's charter would, therefore, fall on this ground, even if the various pre-requisites required by the gross receipts tax law had been followed, which, as I have stated above, is not the case.

Inasmuch as the Belt's charter is now a valid and existing charter, and, inasmuch as the Belt is now under its own officers and directors, exercising its corporate franchise and powers, it is proper that I should state what, in my judgment, is the proper method for computing the gross receipts tax. To my mind, the question is a very simple one. The entire basis of an additional assessment against the Belt is founded upon the fact that the Belt is a separate corporation for purposes of taxation and is not an integral part of the Baltimore and Ohio System. That basis carries with it the necessary principle that the Belt's gross receipts, if any, are the gross receipts which the Baltimore and Ohio Railroad theoretically, but does not physically, pay. As stated above, the Belt is not an operating company, and, therefore, obtains itself no receipts from the operation of its line. However, assuming that the Belt Railroad and the Baltimore and Ohio Railroad are separate corporate entities, I must regard the transaction as being slightly different from what is actually done. Theoretically, in my judgment, the Baltimore and Ohio Railroad pays the Belt $240,000.00 per annum, and, by the same transaction the Baltimore Belt Railroad Company pays out the same $240,000.00 to meet the interest on its bonds. This does not, in fact, happen, because the Baltimore and Ohio Railroad owns the bonds and it would be merely foolish bookkeeping for the Baltimore and Ohio to physically pay $240,000.00 to the Belt and then have the Belt immediately repay the $240,000.00 to the Baltimore and Ohio. However, in legal contemplation, the Belt does repay $240,000.00 of the gross receipts. Therefore, the proper method of computing the tax would be to apply the sliding scale set forth in Article 81, Section 167, which would result in an annual tax against the Belt, according to the present scale, of $5,873.30. The tax is payable by the Belt for the following years:

The taxable year ending January 31, 1917
The taxable year ending January 31, 1918
The taxable year ending January 31, 1919
The taxable year ending January 31, 1920
The taxable year ending January 1, 1921
The taxable year ending January 1, 1922

In each of these years the Belt is entitled to a credit for the sum paid by the Baltimore and Ohio Railroad Company. This sum is one-half of one per cent. on the gross earnings which the Baltimore and Ohio has already paid for traffic carried over the Belt line. It is computed in this manner. The entire mileage of the Baltimore and Ohio Railroad, including the Belt's mileage, for each individual year, is computed. Then the mileage of the Belt is computed. The ratio between the gross earnings of the Baltimore and Ohio Railroad is then reduced to the gross earnings per railroad mile in Maryland, and these gross earnings per railroad mile in Maryland are multiplied by the mileage of the Belt. This gives the amount which the Baltimore and Ohio Railroad Company has already paid as a gross receipts tax on behalf of the Belt, to the extent of one-half of one per cent. The sum thus arrived at is a credit to the Belt and amounts in the years ending:

January	31, 1917,	to	$1,154.67
January	31, 1918,	to	1,311.45
January	31, 1919,	to	1,399.28
January	31, 1920,	to	1,619.26
January	1, 1921,	to	1,691.88
January	1, 1922,	to	1,415.44

It will thus be seen that the credit which the Belt is allowed varies in accordance with the gross receipts tax per mile of the Baltimore and Ohio Railroad. However, the gross receipts tax on the Belt's gross receipts is constant. As stated above, the Belt's gross receipts per annum are $240,000.00. In accordance with the Code, Article 81, Section 167, the rate of tax is one and one-quarter per cent. on the first thousand dollars gross receipts per mile. The Belt has 7.24 miles in Maryland. Therefore, on the first $7,240.00

the gross receipts tax is one and one-quarter per cent., or $98.50. The rate of 2 per cent., computed on the second thousand dollars in the same manner as the one and one-quarter per cent. is computed above, gives a tax of $144.80 and 2½ per cent. on the balance, which balance is, of course, $225,520.00, gives a tax of $5,638.00. These three sums, $98.50, $144.80 and $5,638.00, give a total result of $5,873.30 which, as stated above, is constant throughout the entire number of years under consideration. From this total sum of $5,873.30, the amount already paid by the Baltimore and Ohio Railroad should be deducted, which, for the first year, as stated above, was $1,154.67, leaving a net result of $4,-718.63. The other years are computed in the same manner, and it is unnecessary to set out the calculations in detail. However the total amount due by the Belt line is the sum of $5,873.30, multiplied by six (as there were six years), or a total of $35,239.80, less the sum of the credits for each year, which amounts to a total credit of $8,591.98, thus making the total net tax now due for these six years, $26,647.82.

There remains to be considered the question of interest and penalties. The legal questions involved are all new questions in this State. The officials of the Belt line have indicated to me that they will accept my conclusions as to the law. There is a grave question in my mind whether the State could collect any penalty or interest, because the imposition of the tax in such years as it was imposed was not, in my judgment, in strict accord with the law. Not being in strict accord with the law, it is very doubtful whether any penalties could be imposed. Interest in such a case, if imposed in the nature of a penalty, might well be disallowed by the courts, and if imposed as interest, would be in the discretion of the judge or jury who happened to sit in the case . The acceptance by the Belt Line officials of my conclusions on the law is conditioned upon the State waiving interest and penalty charges. The Belt Line officials and those of the parent company, the Baltimore and Ohio Railroad, have shown a willingness to co-operate with the state in reaching a proper basis of taxation. After carefully reviewing the entire case, I fail to find any attempt to evade the pay-

ment of any tax which is justly due. I feel that the officials, on the contrary, have shown public spirit and a desire to contribute their just proportion toward the expenses of the State, through the medium of taxation. Because of the great uncertainty of the numerous questions involved in the controversy, I have no hesitation in recommending, without any reservation whatsoever, that the State accept the tax as outlined above in full payment of all gross receipts taxes due by the Belt, up to and including the year ending January 1, 1922.

Beginning for the gross receipts tax year ending January 1, 1923, it is my thought that the Baltimore Belt should make the regular return or report to the State Tax Commission (which report has been held in abeyance for several years pending an adjustment of the controversy) upon the theory above outlined, and that the tax for the gross receipts tax year ending January 1, 1923, which is payable in July next, will be the full amount above mentioned, to wit, $5,873.30. It is, of course, to be understood that, as this suggested solution contemplates payment of gross receipts taxes by the Belt as a separate entity, hereafter its parent company, the Baltimore and Ohio, will not, as heretofore, use the mileage of the Belt in determining its receipts in Maryland, for otherwise there would be a duplication of taxes.

I, therefore, recommend that you, as Governor of the State, authorize me to accept this compromise agreement, which is in accord with my views as to the law, and that you recommend to the Comptroller that, upon receipt of the amount set forth above, he execute to the Belt Line Railroad a full and complete release in proper form, giving the Belt full acquittance and release for all gross receipts tax prior to 1923, in accordance with the powers given to the Comptroller by the Act of 1920, Chapter 365.

Yours very sincerely,

ALEXANDER ARMSTRONG, *Attorney General.*

FISCAL — EXCESS OF MOTOR VEHICLE RECEIPTS, OVER AMOUNT NAMED IN APPROPRIATIONS PAYABLE TO STATE ROADS COMMISSION—MEANING OF "ITEM" IN BUDGET AMENDMENT—WHERE METHOD OF ASCERTAINING AMOUNT IS PRESCRIBED ACTUAL AMOUNT OF APPROPRIATIONS NEED NOT BE NAMED.

May 10, 1923.

Honorable William S. Gordy,
Comptroller,
Annapolis, Md.

DEAR MR. GORDY: In Chapter 500 of the Acts of 1922, known as the Budget Bill, there appears among the appropriations from the State Roads Commission a final item in this language:

"37 For Maintenance and Re-construction of State and State-aided Roads, all the moneys received from the Motor Vehicle Department Receipts, after the appropriations made for the Motor Vehicle Department, and the Traffic Court and from Special Funds have first been paid; the amount hereby named being an estimate only, and it being the intention that this appropriation shall be the whole of said balance, whether the same be more or less than this estimate. For 1923".....$1,605,388.00

You state that it is probable that the receipts from the Motor Vehicle Department will exceed the estimate upon which the appropriations payable out of such receipts were made. The total appropriations designated as payable out of motor vehicle receipts other than the item of $1,605,388 as set forth above, aggregate $1,352,815. Many of these

appropriations appear on pages 1330 and 1331 of the Laws of 1922.

You call my attention to all of these facts, and then ask me to advise you whether you are limited to the disbursement of $1,605,388 to the State Roads Commission for maintenance and re-construction of State and State-aided roads or whether you may disburse to the Commission the excess receipts after reserving the appropriations aggregating $1,352,815.

There can be no question concerning the intention of the Legislature on this subject. The language in the Budget Bill is so clear and unequivocal as to indicate that it was inserted for the specific purpose of authorizing the payment to the State Roads Commission of any excess of receipts from the Department of the Commissioner of Motor Vehicles. The only possible question which could arise would be as to the right of the Legislature to make an appropriation in the form adopted in this instance rather than in one limited to a specified figure. The constitutional provisions affecting the Budget are found in Section 52 of Article 3 of that instrument. Under paragraph 3 of sub-section 2 of Section 52, the Governor is required to deliver to the presiding officer of each house the budgets and a "bill for all of the proposed appropriations of the budgets clearly itemized and classified." Subsequently the General Assembly is clothed with power to amend this bill by increasing or diminishing items relating to the General Assembly, by increasing items relating to the Judiciary, and by striking out or reducing the other items therein.

I feel that all of these requirements have been fulfilled by the appropriation referred to in your letter. In the first place the proposed appropriation was classified under the head of State Roads Commission. It was "itemized" in that it was a separate appropriation made for a specific purpose and fixing the amount itself or a definite method for determining the same. The word "item" which appears so frequently in the Constitution does not, in my judgment, have a more restricted meaning and require that an appropriation shall always be made for a fixed amount. The nature

and extent of the appropriation here being discussed was sufficient to enable the General Assembly to strike out or reduce it if so desired.

Inasmuch as I find no mandatory provision of the Constitution to have been violated by the appropriation referred to in your letter, I am of the opinion that the intention of the Legislature therein expressed must be recognized and enforced, and that the excess of fees from the Department of the Commissioner of Motor Vehicles, over and above the specific appropriations made therefrom, must be paid by you to the State Roads Commission.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

FISCAL — ADJUSTMENT OF CLAIM OF FORMER EMPLOYEE AGAINST CROWNSVILLE STATE HOSPITAL.

May 11, 1923.

Dr. Robert P. Winterode,
Crownsville State Hospital,
Crownsville, Md.

MY DEAR DR. WINTERODE: I acknowledge receipt of your letter of May 9th, in reference to the claim of R. J. Weaver for $36.94 for wages which he alleges are due him. Part of his claim is for $16.94, being fifteen days salary retained by the Hospital as a guarantee of the applicant's good intentions to comply with the State Hospital requirements, and to submit in writing his resignation giving two weeks notice, this provision being set out in the agreement of August 4, 1919, signed by the applicant R. J. Weaver. The balance of his claim is for $20.00 being salary for two weeks vacation which he did not take.

You advise that Mr. Weaver quit your employ without notice on September 30th, 1920. In my opinion, therefore,

Mr. Weaver forfeited the $16.94 which was retained by the Hospital.

I infer from your letter that you have an established practice at the Hospital of giving two weeks vacation to employees with pay, but that Mr. Weaver did not take a vacation from August 4th, 1919 to September 30, 1920, the term of his employment. You further stated that you would have given him his vacation if he had continued in the service of the Hospital. It is my opinion, under the circumstances, that the Hospital would be justified in paying Mr. Weaver $20.00, being one-half a month's salary, in full settlement of his claim.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

FISCAL — WILLIAMSPORT WATER BONDS MUST BE IN FORM AUTHORIZED BY THE LEGISLATURE.

May 22, 1923.

Mr. Abel Wolman,
Chief Engineer,
Department of Health,
16 W. Saratoga St.,
Baltimore, Md.

DEAR SIR: Your letter of May 16th, addressed to Mr. Spencer of this office.

You request an opinion with regard to the following matter:

By Chapter 306 of the Acts of 1922, the Burgess and Commissioners of Williamsport are authorized and directed to borrow money on the credit of that town to an amount not exceeding $100,000, for the purpose of constructing water works, this money to be raised by the issuance of serial

bonds. This Act has been submitted to and approved by the voters of the town.

You state that the corporate authorities of the town have requested you to ascertain whether it will be possible for them to change the form of the bonds from that prescribed in the Act to that of long term sinking fund bonds.

It seems to me that the statement of this question is almost equivalent to the answer. No bonds could have been issued, unless their issuance had been authorized by the Legislature, and, therefore, the form of the bonds which has been prescribed in the Act conferring this authority must be followed.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

FISCAL—STATE GAME PROTECTION FUND—MONEYS BELONGING TO THE FUND ON SEPTEMBER 30, 1922, SHOULD BE RESTORED TO NAME OF COMPTROLLER—SHOULD BE DISBURSED BY HIM UPON WARRANT OF CONSERVATION COMMISSIONER — NOT CONTROLLED BY RE-ORGANIZATION BILL OR BUDGET AMENDMENT.

June 2, 1923.

Hon. William S. Gordy, Jr.,
State Comptroller,
Annapolis, Md.

MY DEAR MR. GORDY: Some weeks ago I received from Mr. LeCompte, State Game Warden, a letter in which he referred to an unexpended cash balance of $31,000, or more, in your hands on or about September 30, 1922, standing to the credit of the State Game Protection Fund. Mr. LeCompte stated that you are unwilling to permit the expenditure of the whole or any part of this amount, on the theory that you

have no power to disburse it unless there is a specific appropriation thereof in the Budget Bill. Since the receipt of Mr. LeCompte's letter we have held several conferences in which the Governor, Mr. LeCompte, Mr. Vickers, you and I participated, and I now desire to present to you my views upon the entire situation.

The last Legislative reference to the State Game Protection Fund is found in Section 70 of Chapter 720 of the Acts of 1920. This section directs the Clerks of the Circuit Courts of the County and the Clerk of the Court of Common Pleas of Baltimore City, on the first days of each and every month to transmit to the Comptroller all monies received by them as license fees for certain hunting licenses authorized to be issued by them. The statute then stipulates that " the said amounts so received by the Comptroller shall be placed to the credit of a separate fund to be known as the "State Game Protection Fund" and shall be disbursed by the said *State Comptroller* from time to time on warrants signed by the Conservation Commission of Maryland. The monies in said Fund shall be used solely for the salaries and expenses of the State Game Warden and his subordinates, and for the protection and propagation of birds and game of all kinds." I am informed that these monies, like all other monies received by you, have been promptly turned over by you to the State Treasurer, and by him credited to the State Game Protection Fund. No such procedure, however, was authorized by the statute with reference to these fees. Under the law quoted it became your duty to retain these fees and to deposit them in your own name to the credit of the State Game Protection Fund. The error which has been made in the past should be corrected as promptly as possible. Authority for such procedure is found in the case of McMullen vs. Zouck, 130 Md. 541. In this case a large sum of money standing at the end of the fiscal year to the credit of the State Roads Commission had been reverted to the General Treasury by the Comptroller who declined, upon discovering subsequently that there were outstanding obligations of the Commission against this balance, to restore the money to the credit of the Commission.

The Court held that even though no notice of the outstanding obligations had been given by the Commission to the Comptroller, nevertheless the existence of such obligations made it improper for the Comptroller to revert the Commission's balance to the General Treasury, and ordered that the Fund be restored to the credit of the State Roads Commission. In the same way the balance standing to the credit of the State Game Protection Fund which has been erroneously entered in the name of the State Treasurer should be charged back into your own name as Comptroller.

The situation, therefore, from a legal standpoint is exactly the same as if the $31,000 cash balance had always remained in your hands.

In the Budget Bill passed in 1922 appropriations aggregating $100,000 were made to the State Game Department, and were directed to be paid from special funds. If, as a result of the recrediting of the State Game Protection Fund as indicated above, insufficient special funds remain in the Treasury applicable to the Appropriation made in the Budget (See page 1261) the appropriation *pro tanto* fails. Current receipts of course, flowing into the Treasury would tend to re-establish these funds. The State Game Department will not be deprived, however, of the money which it requires to conduct its operations, because under the provisions of Section 70 of Chapter 720, quoted above, it is made your duty to disburse "the State Game Protection Fund from time to time on warrants signed by the Conservation Commission of Maryland." This Commission has been supplanted under the Re-organization Bill by the Conservation Commissioner. It is, therefore, my opinion that, within the limits of the fund now in your hands, it is your duty to honor warrants signed by the Conservation Commissioner and issued by him against the State Game Protection Fund for the purposes of the State Game Department.

This view is not in any way affected by the Re-organization Bill which directs every department and other governmental agency to account monthly to the Comptroller and pay to the Treasurer all "fees, revenues, collections and income of every kind received by it," because this provision

obviously refers to new monies received after January 1st, 1923, when the Re-organization Bill became effective. In the same way Section 3 of Chapter 500 known as the Budget Bill is also inapplicable. It provides that "if any additional funds from any source whatever in excess of the appropriations herein made shall come into the hands of the department, board, commission, officer or institution of the State, the same may be expended, etc. with the approval of the Governor. Any such excess not so expended shall revert to the Treasury of the State at the end of the fiscal year in which the same is received." This law embraces only those revenues which are received after October 1st, 1922, when the current fiscal year began and when the $31,000 fund was already complete in your hands, having accrued during the preceding fiscal year. The similar provision contained in the Budget Bill of 1920 is not controlling because Chapter 720 of the Acts of that year was a later Act and, therefore, takes precedence.

The principal conclusions are, therefore, first, that the State Game Protection Fund should be established in your name as Comptroller; second, that disbursements therefrom should be made from time to time by you upon the warrant of the Conservation Commissioner. This procedure on your part is not in conflict with the Budget Amendment because this Amendment is applicable only to appropriations from the Treasury of the State. The State Game Protection Fund being retained in your hands and not passing into the Treasury is not affected by the constitutional limitation.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

FISCAL—INDEMNITY BOND AGAINST LOSS OF PROPERTY OR FUNDS THROUGH COMMISSIONED OFFICERS—RANKING LINE OFFICER AUTHORIZED TO PAY FOR SAME OUT OF OFFICIAL FUNDS—BOND FORM APPROVED.

June 20, 1923.

General Milton A. Reckord,
Maryland Trust Building,
Baltimore, Maryland.

MY DEAR GENERAL RECKORD: I beg to reply to your letter of May 26th enclosing proposed bond of the Maryland Casualty Company to the State of Maryland indemnifying the State against loss of property and funds through commissioned officers.

I have carefully gone over this bond and feel that it is very desirable from the standpoint of the State.

Section 11 of the Militia Law of 1922 gives the Ranking Line Officer the right to require bond from such persons as he may designate. You can, therefore, require commissioned officers who are accountable for property to furnish bond. Section 12 of the same Act authorizes an officer of the Militia to incur an expense to be paid by the State, provided authority is first obtained from the Ranking Line Officer. It is quite possible, therefore, that you would have authority to pay such premiums out of State funds under your control. The proposed bond is in the nature of a blanket bond and dispenses with the necessity of an individual bond for each officer.

It is my opinion that the bond can be accepted by the State and you can pay the premium out of your official funds.

There may be some question as to the legal right of the State of Maryland to sue the Bonding Company in case of a loss which the Bonding Company might refuse to pay. It is my opinion that the Bonding Company would be estopped from defending such a suit on the ground that the State had no legal right to sue. However, I suggest that you ask the Bonding Company for a letter to the effect that, in the event

of a suit by the State of Maryland, the Bonding Company will not avail itself of the defense that the State has no legal right to sue under this bond. I have approved the bond and return it herewith, with the understanding that you will receive the above mentioned letter from the Maryland Casualty Company.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

FISCAL — RECEIPTS OF AN INSTITUTION NOT SPECIFICALLY APPROPRIATED BY BUDGET MAY BE RETAINED WITH APPROVAL OF GOVERNOR—NO POWER TO RECEIVE SUCH FUNDS AFTER THEIR PAYMENT INTO TREASURY.

June 22, 1923.

Joseph N. Ulman, Esq.,
Treasurer, Montrose School for Girls,
Reisterstown, Md.

MY DEAR MR. ULMAN: I am in receipt of your letter of June 18th in which you state that in preparing the budget for the institution described therein as the Maryland Industrial Training School for Girls, you estimated that the receipts from your work room for the fiscal year would be $3,000. The budget, however, took no account of receipts from sales of farm products because it was impossible at that time to submit any estimate of the returns from this source. On February 2nd, 1923, you received from the sale of hay, the sum of $203.41, and at once remitted this amount to the State Treasurer. You are now about to receive a further sum of $200 or $300 from the sale of hay and corn, and you expect to remit these sums in the same manner to the Treasurer immediately upon receiving them. You state in your letter that you think that, upon proper application,

you ought to be reimbursed in the amount of payments made by you covering returns from the sale of farm products and also in the amount of work room receipts in excess of $3,000, and ask me to advise you in the premises.

I feel that the latest expression of the Legislative will covering the situation presented by your letter is embodied in Section 7 of Part 2 of Chapter 29 of the Acts of 1922, known as the "Re-organization Bill." Every institution is required by this section to account monthly to the Comptroller and pay to the Treasurer all revenues, collections and income of every kind received by it. It was in pursuance of this provision that you remitted promptly the proceeds derived from the sale of your hay. You will find in the latter part of this section a proviso that "the Comptroller, with the approval of the Governor shall have the power, and it shall be his duty, to exempt from the operation of this section such fees, revenues, collections and income of any department, institution or other governmental agency as he may, from time to time, determine should in the public interest be so exempt." If you have obligations which you feel should be met out of the monies which you expect to derive from the sale of your hay and corn, or other farm products, I think you ought to take up the matter at once with the Comptroller and if possible secure from him an exemption of these monies. The procedure is indicated by the provisions of Section 7.

As to the monies already paid by you into the Treasury of the State, I know of no method by which they can be disbursed therefrom other than that described in the Budget Amendment to the Constitution. Under this amendment the Budget Bill was passed and its appropriations to your School for the fiscal year 1922 are found on pages 1390 and 1391 of the Laws of 1922.

By these appropriations you are entitled to receive $16,000 from special funds. If the special funds exceed that amount the difference cannot be used by you at this time. It becomes a part of the general funds of the Treasury and subject to the general appropriations therefrom. Within the limits of your appropriations from general funds you are

also entitled to receive monies directly from the Treasury, but there is no legal method known to me by which these limits can be exceeded.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

FISCAL — BONDS ISSUED BY ANNE ARUNDEL COUNTY SANITARY COMMISSION — ISSUED UNDER VALID ACT AND PROPER ORDERS OF PUBLIC SERVICE COMMISSION.

July 12, 1923.

Webster C. Tall, Esq.,
905 Fidelity Building,
Baltimore, Md.

MY DEAR MR. TALL: I am in receipt of your recent letter and of the letters enclosing communications from Fred. M. Warnken, Esq., Chairman of the Anne Arundel County Sanitary Commission, and Gillet & Company of Baltimore City, asking me to pass upon the legality of $66,000 Anne Arundel County Sanitary District 5% Bonds due July 15, 1953, which have been recently purchased by Gillet & Company from the Commission.

The Anne Arundel County Sanitary Commission was created by Chapter 245 of the Acts of 1922. I have examined this statute with care and believe that it is constitutional and clothes the Commission with power to issue bonds. A statute very similar in character was upheld by the Court of Appeals in the case of Dahler vs. The Washington Suburban Sanitary Commission, 133 Md. 634. I have examined the course of this Act through the Legislature, and find that the procedure was regular in every particular. The Act requires that all bonds must first be approved by the Public Service Commission of Maryland. The petitions

filed before that body and the orders passed by it sanctioning the issuance of the bonds in question are in proper form. It is my opinion, therefore, that the bonds in question are issued in pursuance of a valid Act of the General Assembly of Maryland, and in pursuance of orders duly passed by the Public Service Commission of Maryland.

I have not had an opportunity to examine the records of the Anne Arundel County Sanitary Commission, and, therefore, cannot pass upon their correctness as relating to this matter. The Act also declares that the total issue of bonds authorized by it shall never exceed ten per centum of the total assessable basis of property assessed for county taxation purposes within each of the sanitary districts. This involves a question of fact upon which I have no information and with reference to which I cannot make a ruling.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

FISCAL—GOVERNOR AND ATTORNEY GENERAL HAVE NO CONTROL OVER EXPENDITURE OF PROCEEDS OF BONDS ISSUED FOR SANITARY PURPOSES BY A MUNICIPALITY UNDER ORDER OF BOARD OF HEALTH.

July 12, 1923.

Honorable Albert C. Ritchie,
Governor of Maryland,
Annapolis, Md.

MY DEAR GOVERNOR: I desire to acknowledge receipt of your recent letter in which you enclose a resolution passed by the Mayor and Council of Crisfield and relating to the use by the municipality of Crisfield of the balance now standing to the credit of its sanitary fund.

Section 277 of Article 43 of the Code provides that when a municipality has been ordered by the State Board of

Health to raise certain funds for sanitary purposes, the municipality may, with the approval of the Governor and Attorney General, raise such funds by issuing bonds. The approval of the Governor and Attorney General is only required in connection with the original issuance of bonds. These officials have nothing whatever to do with the expenditure or use of the money raised from the sale of the bonds, and, therefore, it is perfectly clear that there is no power possessed at this time by you as Governor or by me as Attorney General to approve such an order as is requested by the Mayor and Council of Crisfield.

Section 277 directs that the proceeds derived from the sale of such bonds "shall constitute a sanitary fund and shall be used for no other purpose than for carrying out the order or orders of the State Board of Health."

It is very doubtful whether the State Board of Health possesses the right to sanction the use of any of the money in the Crisfield case except for sanitary purposes, but if the representatives of the municipality confer with the State Board of Health on the subject, it may be possible to make some arrangement which the State Board of Health can approve without exceeding its legal powers.

I will transmit a copy of this letter to Mr. Quinn, and assure him of my willingness to co-operate in any way possible in working out the problem by which Crisfield is now confronted.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

FISCAL—MARYLAND MEDICAL COLLEGE A CHARITABLE AND BENEVOLENT INSTITUTION—NO BONUS TAX PAYABLE—TITLE TO REAL ESTATE GOOD.

July 12, 1923.

Harry J. Hopkins, Esq.,
Office of Comptroller,
Annapolis, Md.

DEAR COLONEL HOPKINS: I desire to submit my views upon the matter presented to me by your letter of July 7th.

The Maryland Medical College of Baltimore City was incorporated in the year 1898 under the general laws of the State of Maryland and the charter was duly recorded in Baltimore City. This corporation subsequently turned over all of its assets to the Hospital Association, Inc. which in turn conveyed certain property to theFranklin Square Hospital. A question has now been raised as to the title of this property, because of the fact that the Maryland Medical College of Baltimore City never paid a bonus tax. I was asked to determine whether the payment of such a tax was necessary.

Under the existing law of the Code of 1916 (Art. 23, Sec. 88-A) every corporation of Maryland, having capital stock, except railroad companies, is required at the time of its incorporation to pay a bonus tax. The Maryland Medical College of Baltimore City was a corporation with capital stock, but the law controlling this question in 1898, when the Maryland Medical College of Baltimore City was incorporated, exempted from the payment of the bonus tax, "cemetery companies, companies created for purely benevolent and charitable purposes, railroad companies or homestead associations."

I have examined the Certificate of Incorporation of the Maryland Medical College of Baltimore City, and find that its object was to "create and maintain a college for the purpose of teaching medical science or any other science or art which the Directors of said college might deem advis-

able and proper for the purpose of conferring degrees upon those persons who might become proficient in said science or art or any of them."

It is true that the corporation had an authorized capital stock but I have discovered upon investigation that this stock was only issued for the purpose of protecting the individuals who advanced money to meet the expenditures necessitated in the organizing and establishing of the medical college. The increase in capitalization was made for the same purpose so that those who had advanced funds to the college would have something to represent their indebtedness. The contributions of the medical college's friends were practically gifts, although represented by stock certificates. The real purpose of the organization, as represented by the certificate was, in my judgment, benevolent and charitable and it follows that no bonus tax was payable.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

FISCAL—WARDEN OF PENITENTIARY ENTITLED TO RECEIVE EXECUTION EXPENSES FROM COUNTY COMMISSIONERS AS SOON AS LATTER CAN LAWFULLY PROVIDE THE NECESSARY FUNDS.

August 17th, 1923.

Claude B. Sweezey, Esq.,
Warden, Maryland Penitentiary,
Baltimore, Md.

MY DEAR COLONEL SWEEZEY: You recently presented to the County Commissioners of Somerset County a bill for $425.00 covering expenses in connection with the execution of George Shelton.

The Board of County Commissioners acknowledged the receipt of your letter and stated that provision for the account in question had been made by them in the 1923 levy in June, payable on January 1st, 1924, and that your account, together with all similar bills against Somerset County would be paid by the Board on the last mentioned date. You have asked me to advise you whether the attitude of the Somerset County authorities is correct.

Chapter 465 of the Acts of 1922 which directs the execution of all criminals in Maryland at the Penitentiary provides that upon the submission by the Warden of the Penitentiary of an itemized statement of expenses to the County Commissioners of the County where the convict was indicted "it shall be the duty of said County Commissioners to order the immediate payment of said bill."

I feel that this section of the law must be read in connection with other statutory requirements, and that the effect of such a construction is that the bill shall be paid by the County Commissioners as soon as they can do so, having due regard to the law regulating the disbursement by them of county funds. I do not have before me the local statutes of Somerset County. I assume, however, that levies are made for specific purposes and that the money raised in this manner must be applied to the purposes designated. Therefore, unless the County Commissioners of Somerset County have a general purpose account from which your bill may be paid at once, I feel that they performed their full duty when they levied as promptly as possible to provide the funds necessary to discharge your obligation if, in addition thereto, they pay the bill at the earliest possible moment when the funds so levied are available.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

FISCAL—TRANSFER OF CERTIFICATE OF STOCK OF STATE OF MARYLAND—PROCEDURE UPON DEATH OF LIFE TENANT WHERE CERTIFICATE HAS BEEN ISSUED TO LIFE TENANT, "SUBJECT TO PROVISIONS OF WILL OF" THE ORIGINAL TESTATOR.

September 11th, 1923.

Honorable John M. Dennis,
Treasurer of Maryland,
Baltimore, Maryland.

MY DEAR MR. DENNIS: You recently submitted to me for my consideration certain correspondence which you have had with Judge Dawkins relative to the transfer of a certificate of stock of the State of Maryland and ask me to advise you as to the proper procedure to be followed by you.

The stock was issued in the name of "John Hall for life subject to the provisions of the will of Thomas F. Weale." The will of Mr. Weale provides in the event of Mr. Hall's death, that the property so held under the will shall go to the wife and daughter of Mr. Hall. Mr. Hall recently died. He leaves a widow, Mrs. Sophie E. Hall, while the daughter mentioned is Mrs. Frances Hall Ford.

No certificate of stock can be transferred unless the transfer is duly authorized by the written approval of the person or persons holding the title thereto and duly empowered to direct a transfer. The first inquiry is, therefore, as to the person or persons who are now entitled under the facts presented by you to authorize the transfer of the stock in question. Obviously the personal representative of Mr. Hall cannot do so as he held it for life only and the title is now vested elsewhere. I assume that when the certificate of stock was originally issued, Thomas F. Weale was deceased, and it seems to me that the proper form to have been followed in connection with the issuance of the stock was to have placed it in the name of John Hall for life, and after his death, to Mrs. Sophie E. Hall and Mrs. Frances Hall Ford. If this had been done it would not have been neces-

sary to issue a new certificate at this time. The failure to issue the certificate in proper form does not, however, affect the location of the title which, upon the death of Mr. Hall, passed to Mrs. Hall and Mrs. Ford. I feel that these ladies are the only persons authorized to direct the issuance of a new certificate. I would, therefore, suggest that you secure their signatures to the transfer upon the back of the certificate of stock in question, which transfer accompanied by a copy of the letters of administration granted upon the estate of Mr. Hall, constituting proof of his death, and also a certified copy of the will of Mr. Weale and an affidavit from some responsible party that Mrs. Sophie E. Hall and Mrs. Frances Hall Ford are respectively the wife and daughter of John Hall, will fully authorize the cancellation of the present certificate by you and the issuance, in lieu thereof, of a new certificate in the name of Mrs. Sophie E. Hall and Mrs. Frances Hall Ford.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

FISCAL—STATE GAME PROTECTION FUND—TO BE DISBURSED BY COMPTROLLER ON WARRANTS SIGNED BY CONSERVATION COMMISSIONER—NOT AFFECTED BY RE-ORGANIZATION BILL.

September 21st, 1923.

J. O. McCusker, Esq.,
Budget Accountant,
Office of Comptroller,
Annapolis, Md.

MY DEAR MR. MCCUSKER: On June 2nd, 1923, I ruled that the unexpended cash balance of $31,402.06 which stood to the credit of the State Game Protection Fund on September 30th, 1922, should not have reverted to the Treasury but

should have been held by the State Comptroller in a separate fund to be disbursed by himself from time to time upon the warrant of the Conservation Commissioner. You state in your letter of September 19th that according to your understanding the Re-organization Act which became effective on January 1st, 1923, applies to the receipts of the State Game Department as well as to the receipts of other departments and that after said date any income to the credit of the State Game Protection Fund should go into the general treasury and be held for payment out of the treasury of appropriations to the State Game Department.

The provision of the Re-organization law which you have in mind is evidently found in Section 7 of Article 2 of the Bill which declares that "every department, institution or other governmental agency shall monthly account for to the Comptroller and pay to the Treasurer all fees, revenues, collections and income of every kind received by it, and the same shall be credited by the Comptroller, in a special account, to such department, institution or governmental agency, unless a special account is already by law prescribed for such receipts, and such receipts become available to and be used by such department, institution or governmental agency only upon warrant of the Comptroller in accordance with law."

It is perfectly clear that from and after January 1st, 1923, the Section quoted above applies to all fees, revenues, collections and income of every kind received by the State Game Warden. The difficulty, however, is that the greater portion of the income which constitutes the State Game Protection Fund is derived from sources over which the State Game Warden has no control and is not identified.

Section 70 of Chapter 72 of the Acts of 1920 which has never been repealed, unless by implication, directs the Clerks of the Circuit Courts of the counties and the Clerk of the Court of Common Pleas of Baltimore City on the first day of every month to transmit to the Comptroller all monies received by them as license fees for certain hunting licenses authorized to be issued by them, which amounts, so received by the Comptroller, are required to be placed to

the credit of a separate fund to be known as the "State Game Protection Fund" and to be disbursed by the State Comptroller on warrants signed by the Conservation Commissioner. These fees are clearly not embraced within the provisions of Section 7, quoted above, because that section only applies to fees received by the governmental agency which makes the monthly accounting, and by which they are subsequently expended.

In the case presented by you, the fees are not received by the State Game Warden or any one associated with him, but by the various Clerks of Court mentioned above. It would appear, therefore, that the provisions of Section 70, Chapter 720 of the Acts of 1920 continue in force and provide a special method of procedure with reference to the particular fees with which they deal. I am, therefore, of the opinion that these fees, as they are received from time to time by the Comptroller, must be credited by him to the State Game Protection Fund and must be disbursed by him upon warrant signed by the Conservation Commissioner.

I would remind you, however, that these monies are only to be used for the salaries and expenditures of the State Game Warden and his subordinates and for the protection and propagation of birds and games of all kind.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

FISCAL — REVENUES FROM TWO-CENT GASOLINE TAX ARE MOTOR VEHICLE RECEIPTS AND AS SUCH MUST BE DISTRIBUTED, IN PURSUANCE OF THE GENERAL BUDGET APPROPRIATIONS, ONE-FIFTH TO BALTIMORE CITY, AND FOUR-FIFTHS TO THE STATE ROADS COMMISSION.

December 13th, 1923.

Honorable Philip B. Perlman,
City Solicitor, Court House,
Baltimore, Maryland.

MY DEAR MR. PERLMAN: You presented in your letter of November 30th a most interesting question affecting the

revenues to be received by Baltimore City and the State Roads Commission under the appropriations to them in the budget from motor vehicle receipts.

The budget bill passed by the General Assembly of 1922, covering the fiscal years 1923-1924, made an appropriation to Baltimore City in the following language:

"To Baltimore City, one-fifth of the receipts of the Motor Vehicle Department after deducting the expenses of that Department and of the Traffic Court; the amount hereby named being an estimate only, and it being the intention that the exact amount of this appropriation shall be one-fifth of said receipts, whether the same be more or less than this estimate."

After thus appropriating one-fifth of the net receipts of the Motor Vehicle Department to the City of Baltimore, the budget bill appropriated the residue of said net receipts to the State Roads Commission in the following language:

"For maintenance and reconstruction of State and State-aided roads, all the moneys received from Motor Vehicle Department receipts, after the appropriations made for the Motor Vehicle Department and the Traffic Court and from Special Funds have first been paid; the amount hereby named being an estimate only, and it being the intention that this appropriation shall be the whole of said balance, whether the same be more or less than this estimate."

Under the old law which authorized the Commissioner of Motor Vehicles to charge 60 cents per horsepower for the markers and certificates of registration issued to motor vehicles having pneumatic tires and the other fees prescribed in the motor vehicle law, no difficulty whatever was presented. All of the monies paid for the use of the highways of the State and all fines imposed for violations of the laws relating to the same came eventually into the hands of the Commissioner of Motor Vehicles, and, therefore, were clearly embraced within the term "Motor Vehicle Department Receipts." The General Assembly of 1922, however, by Chapter 522, imposed a tax of 2% per gallon on all motor vehicle fuel sold or used in the State of Maryland, said tax to be payable on and after January 1, 1924. This tax

is made payable to the State Comptroller, who is required forthwith "to pay to the State Treasurer all monies thus received." The State Treasurer is directed to create a special fund thereof and to "disburse the same in accordance with the appropriations thereof made by the General Assembly." No specific appropriation whatever of these revenues was made by the General Assembly. The serious phase of the matter results from Section 12 of Chapter 522 which directs the Governor, in accordance with the method therein outlined, to decrease the registration fees imposed by the motor vehicle law embodied in Article 56 of the Code. The rate of decrease was to be determined by the estimated return from the two cent tax, it being the purpose of the Act that the total revenues resulting from the tax and the license fees at the new and reduced rate should be approximately the same as those which would have been derived from the old license fees in the event that no tax had been levied. In pursuance of this Section the Governor has already announced a reduction of the horsepower rate for 1924 from 60 cents to 32 cents.

The question is whether or not on and after January 1, 1924, Baltimore City and the State Roads Commission will be limited to one-fifth and four-fifths, respectively, of the net receipts actually passing through the hands of the Commissioner of Motor Vehicles in accordance with the literal terms of the Act or whether or not there shall be embraced within these figures the proceeds yielded by the two cent gasoline tax.

Under the old system the monies necessary for the maintenance and repair of the public highways of the State were derived almost exclusively from the charges imposed upon those licensed to use said highways or fined for their misuse. It will be found upon an examination of Chapter 522 that its title declares it to "be an Act to provide a portion of the revenue necessary for the maintenance and reconstruction of the public highways of the State by imposing a tax on motor fuel as herein defined." In the latter portion of the title the statute is declared also to be an Act "providing for the raising of another portion of the revenue

necessary for the maintenance and reconstruction of the roads and public highways of the State by the charging of fees for markers and certificates of registration for motor vehicles, and providing a method of determining the charge per horsepower which shall constitute the basis of such fees." The true purpose of the statute is also indicated in its preamble where this purpose is declared to be a method of raising revenue which will more equitably and generally distribute the burden of maintenance and reconstruction to the public roads and highways of the State. It is further declared in the preamble that the tax levied upon each gallon of motor vehicle fuel purchased for use in motor vehicles is the equivalent of and in its practical effect a license fee and tax upon the motor vehicle itself. Elsewhere it is declared in the preamble that the tax provided by the Act, "with the license fees and taxes provided by other laws of the State of Maryland," renders more nearly perfect the proper compensation to be paid by motor vehicles for the use of facilities provided by the State.

These sentences and others that might readily be quoted with equal appropriateness indicate that the purpose of the Legislature was to establish a new method by which a portion at least of the charge made by it for the use of its highways was to be imposed upon the traveling public. The revenue derived from the two cent tax was clearly intended to be employed for the purpose of maintaining and reconstructing the public highways of the State. The General Assembly evidently considered them to be "Motor Vehicle Receipts." They were to be paid exclusively by the owners of motor vehicles and in connection with the use of motor vehicles over the highways of Maryland.

It is true that the language of the appropriations made to Baltimore City and the State Roads Commission refer to "Motor Vehicle Department Receipts," but in a broader sense, having reference to the law as it had existed prior to the adoption of the budget, it was intended to refer to the State's entire motor vehicle receipts all of which were then collected by the Motor Vehicle Department. In my judgment, the General Assembly of 1922 intended its ap-

propriations to include not merely those motor vehicle receipts which happened to pass through the department of the Commissioner of Motor Vehicles, but all fees or revenues of any kind which might be embraced under the general term "Motor Vehicle Receipts," regardless of the party receiving or collecting the same. It would require very positive and explicit language to convince me that a contrary design was in the mind of the Legislature.

As has been already pointed out, the General Assembly failed to make any specific appropriation of the revenues to be derived from the two cent gasoline tax. Assuming that this was not an oversight, the action of the General Assembly may be attributed to either one of two theories: First, it wished the fund to accumulate, and there is apparently no sound reason to justify any such legislative design, or, second, it assumed that, in passing the budget bill, it was doing all that was necessary to appropriate these revenues to Baltimore City and the State Roads Commission. The latter view is, I think, the correct one. Any conclusion different from that which I have announced herein would completely disrupt the general financial scheme disposing of the receipts from motor vehicles and providing for a proportional allotment thereof to Baltimore City and to the State Roads Commission for the maintenance and reconstruction of the State highway system.

It is, therefore, my opinion that there should be charged against the monies actually passing through the hands of the Motor Vehicle Department the expenses of that department and of the Traffic Court, and that the residue should be divided—one-fifth to Baltimore City and four-fifths to the State Roads Commission, and further that all of the revenues collected by the Comptroller and placed by the Treasurer in a special fund in pursuance of the requirements of Section 5 of Chapter 522, shall be disbursed in the same proportions of one-fifth to Baltimore City and four-fifths to the State Roads Commission.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

HEALTH.

HEALTH—STATE BOARD OF HEALTH NOT REQUIRED TO PERFORM ENGINEERING WORK FOR STATE AIDED HOSPITALS OR SANATARIUMS IN ABSENCE OF SPECIAL STATUTE OR APPROPRIATION.

January 18th, 1923.

Abel Wolman, Esq.,
Chief Engineer, Department of Health,
16 W. Saratoga Street,
Baltimore, Md.

DEAR SIR: I acknowledge receipt of your letter of January 12th, 1923, stating that it will probably be necessary for the Jewish Home for Consumptives, located at Mount Pleasant, Baltimore County, Maryland, to reconstruct its sewage disposal plant. You advise that this is a State-aided institution receiving an annual appropriation of $12,000, and you ask me to advise you whether or not your Board, upon request to carry out the proposed engineering work, is empowered or directed by law to do so.

In my opinion Section 271 of Article 43 of the Code governs in this matter. This section provides that:

"The State Board of Health shall, when requested, consult with and advise the authorities of Counties, and municipalities, and persons, having or about to have systems of water supply, drainage, sewerage, or refuse disposal, as to the most appropriate source of water supply, and the best method of assuring its purity, or as to the best method of disposing of drainage, sewage or refuse, with reference to the existing and future needs of all communities or persons which may be affected thereby. It shall also consult with and advise corporations, companies and individuals engaged or intending to engage in any manufacturing or other busi-

ness whose sewage may tend to pollute the waters of the State. It may also conduct experiments relating to the purification of water and the treatment of sewage or refuse. No county, municipality, corporation company or individual shall be required to bear the expense of such consultation, advise or experiments. Information that may be given shall be only of such preliminary nature as to outline the best course to pursue, and in no case shall the State Board of Health be required to prepare plans, specifications or detailed estimates for any improvement, unless it be specifically delegated to do so by the Governor or Legislature, and adequate special appropriation be provided for the purpose."

I find no act of the Legislature directing the State Board of Health to prepare plans, specifications or detailed estimates for a sewage disposal plant for the Jewish Home for Consumptives, nor do I find any special appropriation of the Legislature for this purpose.

In the absence of a direction of the Governor or Legislature and an adequate special appropriation as set forth in the above section, it is my opinion that your Board could not be required to act in this matter.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

HEALTH—DISCHARGE OF SEWAGE INTO STREAMS—POWERS OF BOARD OF HEALTH UNDER CHAPTER 810 OF ACTS OF 1914 NOT LIMITED BY DECISION IN NEUBAUER VS. OVERLEA REALTY COMPANY.

June 22nd, 1923.

Mr. Abel Wolman,
Chief Engineer, State Board of Health,
Baltimore, Md.

DEAR SIR: Your letter of June 11th. You call my attention to the opinion of the Court of Appeals in the case of Neubauer vs. The Overlea Realty Company, No. 42, October Term, 1922, filed January 9, 1923, and reported in the

Daily Record on March 28, 1923, and ask whether that opinion prevents the State Board of Health, acting under Chapter 810 of the Acts of 1914, from permitting the emptying of sewerage into a stream under conditions similar to those described in the opinion.

Without reviewing at length the somewhat detailed provisions of the Act of 1914, it is perhaps sufficient to say that its principal purpose seems to have been to enable the State Board of Health to establish general systems of water supply, drainage, sewerage and refuse disposal, and to call attention to Section 4 of that Act, which requires "every county, water, sewerage or sanitary district authority, municipality, corporation, company, institution and individual supplying or authorized to supply, at the time of the passage of this Act, water, sewerage or refuse disposal service to the public, or owning water or sewerage systems, or refuse disposal plants, serving or authorized to serve the public" to "file with the State Board of Health a certified copy of the plans of its water supply or sewerage system, or refuse disposal plant" within six months after the passage of the Act.

In the Neubauer case the Court of Appeals decided that the disposal of sewerage there involved was not permissable under the circumstances there existing. The Court specifically referred to the fact "that there is no general water supply in that section (using the word in its territorial sense) and no drainage system," and, as it does not appear in the opinion of the Court that the appellee (The Overlea Realty Company) had complied with the provisions above quoted from Section 4, I must assume that there was nothing in the Record to show a compliance with those provisions.

This being so, my conclusion is that there is nothing in the opinion to which you call my attention that limits the powers of the State Board of Health, when acting under the provisions of the Acts of 1914, Chapter 810.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

HEALTH—HAY SCALES OWNED BY STATE A NUISANCE. DUTY OF OFFICIALS TO ABATE.

July 28th, 1923.

Hon. Philip B. Perlman,
Secretary of State,
Annapolis, Md.

DEAR MR. PERLMAN: I acknowledge receipt of your letter of July 23rd, enclosing notice of July 19th of the Health Department of Baltimore City to the State Comptroller, that a nuisance exists on premises No. 2034 Frederick Avenue, consisting of grass, weeds and filth on the lot, and requiring the nuisance to be abated. This nuisance exists on property of the State known as the Western Hay Scale.

I reported to Governor Ritchie under date of June 16, 1923, as to the condition of all three of the present State Hay Scales in Baltimore City. In that report I described the run-down condition of the Western Hay Scale property, and recommended that a bill be presented at the next session of the Legislature directing a sale of this property.

In response to your request for advice as to abating the nuisance, I beg to reply that I find nothing in Section 552 et seq. of the 1915 Revised Edition of the Baltimore City Charter authorizing the use of any money for the general upkeep of the lot surrounding the scales. However, this is State property and there is an obligation on the State to keep the lot free of nuisances as far as it is able to do so. Mr. Henry F. Schwab of 2021 W. Frederick Avenue, Baltimore, Md., is the present inspector in charge of the Western Hay Scale appointed by the Governor. In my opinion the Governor should notify Mr. Schwab, the inspector, of the complaint, and direct him to abate the nuisance. The expense attached to cutting the grass and weeds and removing same, together with the filth from the lot, should not be very great. The inspector could pay the necessary charges thus incurred out of income derived from the scale.

I return herewith the notice of the Health Department.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

HEALTH—POLLUTION OF PUBLIC WATERS BY SEWAGE FROM MOTOR BOATS—BOARD OF HEALTH UNABLE TO GIVE PRACTICAL RELIEF.

September 29, 1923.

John Francis Miller, Esq.,
State Board of Health,
16 W. Saratoga Street,
Baltimore, Md.

DEAR SIR: My assistant, Mr. Allen, advises me that he had a conference with you relative to your letter of August 11th, concerning the nuisance at Betterton, caused by the discharge of sewage into the water by the passengers of motor boats and other small crafts.

I understand that you desire a confirmation of the verbal opinion which was given you. Whether or not a nuisance exists is, of course, a question of fact which lies, in a large measure, in the determination of the Board of Health. However, the present health laws seem inadequate to cope with the conditions existing in the Bay at the shore of Betterton. It would be extremely difficult to determine who is the offender.

Section 104 of Article 43 provides as follows:

"If any person, firm or corporation, on whom a notice to abate a nuisance has been served, refuses or neglects to comply with any of the requirements thereof, within the time specified in such notice, or if the nuisance, although abated since the service of the notice, is likely to recur on the same premises, the State Board of Health may, through its proper officers, make or cause a complaint, relating to such nuisance, to be made to any judge of the Circuit Court for the county in which such nuisance shall exist, or to the judge of the circuit court or circuit court No. 2 of Baltimore City, as the case may be; and such judge shall thereupon issue a summons requiring the party or parties on whom the notice was served to appear before him, and, if satisfied, after hearing said party or parties, or ex parte, in case of the de-

fault of any of them to appear, that the alleged nuisance exists, or, although abated, is likely to recur on the same premises, he shall make an order on such person, firm or corporation requiring him or them to comply with any or all the requisitions of the notice, or otherwise to abate the nuisance within a time specified in the order, or an order both requiring abatement and prohibiting the recurrence of the nuisance, as far as practicable."

It can be readily seen that since the offenders are transient it would be impracticable to serve notice on each offender.

It seems to me that this condition could be better coped with by the local authorities of Betterton and Kent County.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

INSURANCE

INSURANCE—MINIMUM DEPOSIT OF COMPANIES EMBRACED BY SECTION 9 OF INSURANCE LAW — AMOUNT NOT INCREASED BY ENLARGEMENT OF CAPITALIZATION.

June 21, 1923.

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

MY DEAR MR. COUDON: Section 97 of the Insurance Law, as re-codified in 1922, describes a class of mutual co-operative or assessment industrial insurance companies authorized to have a paid up capital of less than fifty thousand ($50,000), but not less than ten thousand ($10,000) dollars. In Section 21 of the same law it is declared that the companies falling within the class described by Section 97 shall deposit with the Insurance Commissioner, as security for the purposes designated in the section, bonds, coin or treasury notes or securities having a market value of not less than ten thousand ($10,000) dollars nor more than one hundred thousand ($100,000) dollars." You state that your department has always construed it to mean that an Insurance Company capitalized at less than fifty thousand ($50,000) dollars, but not less than ten thousand ($10,000) dollars, would have to deposit with your department securities of not less than ten thousand ($10,000) dollars in value. You recently requested to be advised whether a company that had capitalized at ten thousand ($10,000) dollars and put up securities of ten thousand ($10,000) dollars should be compelled to make an additional deposit commensurate with any increase of capital over and above the original ten thousand ($10,000) dollars.

Section 97 established a definite class of insurance companies. The amount of deposit required from any member of this class of companies is fixed by Section 21 as being not less than ten thousand ($10,000) dollars nor more than one hundred thousand ($100,000) dollars. I can find nothing in the law which determines the official or the method by which the exact amount of deposit between these two companies is to be determined. I assume that the matter is one falling within the discretion of the Insurance Commissioner and that perhaps he could cover it at any time by the issuance of a regulation dealing with the subject. In the absence of any departmental ruling, however, I feel that any company falling within the class established by Section 97 can only be required to meet the minimum provision of Section 21. There is apparently no legal justification for the suggestion that the amount of deposit is to be increased commensurately with any increase of capitalization.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

INSURANCE—TITLE COMPANY, GUARANTEEING TITLES OF MORTGAGES, NOT REQUIRED TO MAKE DEPOSIT WITH STATE TREASURER.

June 22, 1923.

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

MY DEAR MR. COUDON: You recently asked me to determine for you whether a Title Company proposing to guarantee the titles of mortgages is required to make a deposit with the Treasurer of the State of Maryland. I do not think so. The law on the subject, which is embodied in Section 20 of the

Insurance Laws, declares that every domestic company writing life, health, accident, liability, compensation or casualty insurance or fidelity or surety bonds, excepting certain enumerated companies must, as a condition precedent to the right to transact business, assign to and deposit with the Treasurer of the State of Maryland certain bonds, coin or treasury notes of the United States, etc. having a market value of not less than ten thousand ($10,000) dollars.

A Title Company does not, in my judgment, fall within the companies referred to above. In other words, it is not a company writing life, health, accident, liability, compensation or casualty insurance. Such companies issue policies limited in amount binding them to make certain specific payments. A Title Company, however, guarantees the title agreeing either to make good the title in case of subsequent discovery of the defect or to protect the holder against loss without limit. While the Title Company may be considered an Insurance Company, I do not feel that it is embraced within the classes in Section 20, and, therefore, it is not subject to the provision requiring the one hundred thousand ($100,000) deposit.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

INSURANCE — INSURANCE COMPANY WITH CAPITAL OF $100,000 CANNOT DO BUSINESS UNTIL THAT SUM HAS BEEN PAID IN.

June 22, 1923.

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

MY DEAR MR. COUDON: In your letter of June 22nd you ask me to furnish you with an official interpretation of the

meaning of certain requirements of Section 18 of the Maryland compilation of the Insurance Laws. Under this section the capital stock of all Insurance Companies incorporated under the laws of the State, with the exception of certain enumerated classes, is limited to not more than two million ($2,000,000) dollars and not less than one hundred thousand ($100,000) dollars. You ask me to determine how much stock must be paid in as a minimum in the class for which one hundred thousand ($100,000) dollars is named.

I understand that the question arises in connection with a Title Company which proposes to guarantee the title of mortgages. Assuming that such a company is an Insurance Company falling within the class of companies referred to in Section 18, I think that its minimum capital stock is one hundred thousand ($100,000) dollars. Section 30 of the Insurance Laws declares that no company incorporated under the laws of Maryland shall transact any business of insurance until, among other things, the Insurance Commissioner shall have examined its officers under oath to ascertain "whether or not the capital required of the company and authorized by its charter, according to the nature of the business proposed to be transacted by it, has been paid in cash and is held by the Board of Directors subject to their actual control in accordance with the provisions of the charter of the said company, or has been invested by them in securities authorized by this Article." Under this provision, it would seem clear that it is mandatory upon the company to pay in cash its minimum authorized capitalization or the full one hundred thousand ($100,000) dollars in the specific case mentioned in your letter.

Even if the express provision of Section 30 had not been contained in the law, my conclusions upon the subject would be the same. There would be no occasion to provide a minimum capitalization for a company conducting the business of an insurance company and then permit it to do business with only a small portion of such capitalization actually paid in. The purpose of the law in fixing a minimum capitalization is to guarantee to the public a certain degree of protec-

tion, and this result would be entirely destroyed unless the authorized minimum had been paid in full.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

INSURANCE—ALL BUSINESS TO BE CONDUCTED AND POLICIES TO BE ISSUED IN CORPORATE NAME—SPECIFIC CASES ARISING UNDER THIS PROVISION.

December 3, 1923.

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

DEAR MR. COUDON: Your letter of the 13th ultimo came duly to hand.

I note that you request a ruling on the following cases under Section 27 of Article 48-A of the Code of Public General Laws, which provides that "Every Insurance Company, foreign or domestic, shall conduct its business in this State in its own proper or corporate name, and the policies or contracts of insurance issued by it shall be headed or entitled only by its proper or corporate name."

First, that of the Hartford Fire Insurance Company of Connecticut, in which two policies are issued to expire October 9th, 1924, on furniture belonging to John P. Rye, 2012 St. Paul Street, the first of which policies is backed "Policy No. 42872 of the Hartford Fire Insurance Company of Hartford, Conn., issued through New York Underwriters' Agency, A. and J. H. Stoddart, General Agents;" which policy is properly countersigned by A. Roszel Cathcart & Co.; and the second of which is backed "No. 59583, Hartford Fire Insurance Company, Hartford, Conn.," countersigned

by William J. Donnelly of the Maury & Donnelly Agency of Baltimore and that the face of both these policies reads "Hartford Fire Insurance Company of Hartford, Conn.," and the company assumes the risks.

Second, two policies issued by the National Union Fire Insurance Company of Pittsburgh, Pa., for the same assured, one of which is a straight National Union Fire Insurance contract backed and faced as such; and the other is faced as a straight contract of the National Union Fire Insurance Company of Pittsburgh, and is backed "National Union Fire Insurance Company of Pittsburgh, Pa., issued through the Duquesne Department."

These cases, to wit, the policies issued by the Hartford Fire Insurance Company and by the National Union Fire Insurance Company of Pittsburgh, Pa., are, in my opinion, properly issued by the companies in their proper and corporate names and comply with Section 27 of Article 48-A.

You then refer to another case in which the policy in question is headed "United States Underwriters' Policy, underwritten by the United States Fire Insurance Company and the North River Insurance Company." This policy does not purport to be the joint policy of these companies and the liability of each company is specifically set forth. This policy I consider is a policy of the United States Underwriters' and if intended to be an obligation of the United States Fire Insurance Company and the North River Insurance Company does not comply with Section 27 of Article 48-A, as the policy clearly is not written in the proper or corporate names of the company.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

LABOR.

LABOR—CHILD LABOR LAWS—HONEST BELIEF BY EMPLOYER THAT CHILD HAS ATTAINED LEGAL AGE—NO DEFENSE IN CRIMINAL PROSECUTION.

November 24, 1923.

Dr. J. Knox Insley,
Commissioner of Labor and Statistics,
Baltimore, Maryland.

MY DEAR DR. INSLEY: In your letter of November 23rd, you asked me to advise you whether in prosecutions for violations of the Child Labor Laws of the State, knowledge on the part of the employer of the actual age of the minor employees must be proven by the State, or, putting it in another way, whether proof of lack of knowledge on the part of the employer is a sound defense. I have taken Section 23 of Article 100 as the basis of the opinion which I now desire to submit to you. It reads "No female under sixteen years of age shall be employed, permitted or suffered to work, in any capacity where such employment compels her to remain standing constantly."

In Section 37, it is declared "that any person, firm . . . who permits or suffers any child to work in violation of any of the provisions of the Act shall, upon first offense, be punished by a fine, etc." It will be observed that the word "knowingly," or its equivalent, does not appear in Section 37, and, therefore, the statute makes it a crime for an employer to permit any female under sixteen years of age to work in any capacity where such employment compels her to remain standing constantly.

The general principle on this subject is stated by Mr. Wharton in his work on Criminal Law, 11th Ed. Vol. 1, Section 108, as follows:

"When a statute makes an act indictable, irrespective of guilty knowledge, then ignorance of fact, no matter how serious, is not defense." In Section 109 the same author stated: "It has been repeatedly held that in cases of selling intoxicating liquor to minors, in which knowledge is not a part of the statutory offense, ignorance in this respect, coupled even with an honest belief that the vendee was of full age, is no defense, *and the same rule applies in all cases in dealing illegally with minors.* A number of cases are cited to support this conclusion.

It is also stated that many analogous cases have arisen under statutes making it indictable to abduct or seduce girls under a specific age. Here also the author declares it is no defense that the defendant mistook the girl's age. As stated in one of the cases cited, the crime does not depend upon the knowledge of the defendant of the fact that the child was under ten years of age, but upon the fact itself.

In 23 Cyc. page 194, in discussing sales to minors, the principle sustained by the weight of authority is declared to be "that the seller of liquor is bound to determine for himself, at his peril, whether or not the purchaser is a minor and if he sells to one in fact under age, he is criminally liable, although he was actually ignorant of the fact, and although he honestly believed that the purchaser was of full age."

While some cases from other jurisdictions sustaining the opposite view were cited, there can be no question concerning the state of the law on this general subject in Maryland. The Court of Appeals of this State in the case of Carroll vs. State, 63 Md. 551, involving a prosecution for unlawfully selling to a minor, declared that "In an indictment for the violation of a statute, it is not necessary to allege the scienter unless, by the statute, it is made an ingredient that the thing shall be knowingly and wilfully done, to make the act an offense." In the course of the opinion the Court declared that "It is no answer to say that the licensee may sometimes be imposed upon and made to suffer when he had no intention to violate its provisions. This is a risk incident to the business which he undertakes to

conduct, and as he receives the gains connected therewith, he must also assume all hazards." In Ford vs. State, 85 Md. 465, the same Court, in following Carroll vs. State, quoted from the opinion of that case, and declared that "Ignorance of a fact necessary to be known in order to avoid a violation of the law, will not excuse."

I know from my own experience in the criminal courts that where certain statutory crimes are created in pursuance of the police powers of the State, and the word "knowingly," or its equivalent is not employed in the statute, lack of knowledge has never been recognized as a sound defense. Proof of the facts declared by the statute to constitute the crime has always been held sufficient to justify a conviction.

It is, therefore, my opinion that if the State proves that a particular employer actually employed a female who was, in fact, under sixteen years of age, and permitted her to work in any capacity where her employment compelled her to remain standing constantly, the State is entitled to a verdict of guilty. The fact that the girl signed a paper declaring herself to be sixteen or over, or that the employer honestly believed her to be over sixteen will not constitute a valid defense. The employer is bound at his peril to know that the girls whom he permits to remain standing constantly in the course of their employment are actually sixteen years of age or over.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

LICENSES.

LICENSES—GARAGE—NECESSARY FOR GARAGE IN WHICH AUTOMOBILES OFFERED FOR HIRE ARE STORED.

March 23, 1923.

James Y. Claypoole, Esq.,
Clerk of the Court of Common Pleas,
Baltimore, Md.

MY DEAR MR. CLAYPOOLE: Some days ago you requested me to pass upon a question submitted to you by W. Howard Hamilton, Esq., involving the licensing of garages. Mr. Hamilton represents a Taxicab Company which conducts the usual taxicab business, storing its cars in a large garage on Cathedral Street. The cabs are subject to call by residents of Baltimore and others, and for the service rendered the Company charges a fare. Mr. Hamilton wishes to know whether the provisions of Chapter 294 of the Acts of 1920 apply in the case of his taxicab company. This statute provides that no corporation in this State shall keep a *garage* for the hire of automobiles until it shall first have obtained therefor the license authorized in the Act.

The term "garage" as used in this provision is defined to mean "a place of storage for hire or a place where there is kept for hire any automobile, the motive power of which shall be gasoline, etc." The terms of the law apparently cover the precise situation presented, because the taxicab company unquestionably maintains a garage and the cars owned by it are operated for hire. I assume that the point made by Mr. Hamilton is that the garage in question is merely a place where the automobiles owned and operated by the Company are kept when not engaged in active service, and that when offered for hire they are stationed along the street or at some regular stand. This interpretation of

the law would be a mere evasion of its terms. The automobiles stored therein are owned and operated for hire and I have no doubt that in many cases orders are received at the garage and immediately filled by automobiles standing therein. I feel that the license is necessary.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

LICENSES—MOVING PICTURES—SPECIAL FEE OF FIFTY DOLLARS CHARGEABLE TO ITINERANT EXHIBITORS.

April 20, 1923.

George A. Deakyne, Esq.,
Clerk, Circuit Court for Caroline County,
Denton, Maryland.

DEAR SIR: In your letter of April 10th you quote from a letter recently received by you and request me to answer for you the question therein propounded. The letter reads as follows:

"I have a Moving Picture Show of Religious and Educational pictures. I give entertainments for the benefit of schools and lodges and churches in all small towns, and show in the above mentioned places on a 50-50 basis. Please inform me if I would be compelled to take out a license in your State or County if I give entertainments in churches, schools or lodge halls and give a 50-50 percentage from the proceeds of my show to the school or lodge, etc."

I feel that the inquiry of your correspondent is answered by the final paragraph of Section 163 of Article 56 of the Code. This section requires all regular motion picture houses to secure an annual license and prescribes the rates therefor. It then states that for "all moving picture shows or vaudeville shows or other performances given where the

operating individual, firm or corporation received any portion of profit therefrom, there should be a license fee of $50.00 per week." This special provision was evidently deemed necessary to cover the case of the itinerant exhibitor of motion pictures who might come, from time to time, into competition with the regularly operated houses. Just as a very much larger fee is charged hawkers and peddlers so, on the same theory apparently, an increased license fee is imposed upon the exhibitor of motion pictures who has no permanency of location and none of the responsibilities of overhead charges.

In my judgment, the gentleman who wrote to you must pay you the license fee of $50.00 whether he shows a single time or every night during the week.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

LICENSES—MOVING PICTURE MACHINE, ETC. NOT REQUIRED WHEN EXHIBITIONS ARE GIVEN EXCLUSIVELY FOR BENEFIT OF MEMORIAL HALL ERECTED AS TRIBUTE TO WORLD WAR SOLDIERS.

April 21, 1923.

Eli G. Haugh, Esq.,
Clerk, Circuit Court,
Frederick, Md.

DEAR MR. HAUGH: I beg to reply to your request for my opinion as to whether or not the Everhart Post No. 51 of the American Legion located at Middletown is required to take out a license to exhibit moving pictures in The Memorial and Town Hall at Middletown.

My opinion is based on the following facts which you present to me. The Memorial and Town Hall at Middle-

town has been built by subscriptions from citizens of the community; title to the Memorial Hall grounds and building is vested in a commission of eight citizens who act as trustees; the building has not been completely paid for, and the Everhart Post No. 51 desires to exhibit moving pictures in this building, the entire proceeds of which will be applied toward the payment of the indebtedness incurred in the construction of the Memorial building, and no part of the proceeds will be used for any other purpose.

Section 165 of Chapter 704 of the Acts of 1916, codified in Article 56 of Volume 4 of the Code, regulates the issuance of licenses for moving picture exhibitions. The Act provides certain license fees "for the exhibition of any automatic moving picture machine, phonograph, graphophone or similar musical machine *except for benevolent, charitable or educational purposes,* where the price of admission to such exhibition does not exceed the sum of five cents." The Act then provides a different schedule of license fees where the price of admission is ten cents or more. The Memorial Hall was erected by voluntary subscriptions as a lasting token of respect and admiration for the sons of the community who engaged in the World War. The building was not erected for financial gain, and in my opinion it stands for benevolent purposes. In a sense, too, the building will be of educational value to future generations who can witness the testimonial erected in commemoration of those patriotic citizens. No doubt the building will contain reading rooms and the hall will be used for lectures and for public gatherings for educational purposes, For these reasons, therefore, it is my opinion that no license is required by the Post to exhibit moving pictures for the payment of the indebtedness on the Memorial Hall.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

LICENSES—RESTAURANT LICENSE NECESSARY EVEN THOUGH OWNER OR OPERATOR OF RESTAURANT DOES HIS OWN COOKING.

you whether a person conducting an eating house in a town

Mr. W. Brooks Hunter,
Justice of the Peace,
Hyattsville, Md.

DEAR MR. HUNTER: You recently requested me to advise you whether a person conducting an eating house in a town of less than 5,000 population and doing his own cooking is required to have a restaurant or eating house license, and if so, to further advise you as to the amount of said license.

The law is codified in Section 182 of Article 56 of the Code states that "every person conducting a restaurant or eating place shall pay an annual license therefor, the rate to be ten ($10) dollars where the city or town has less than 8,000 inhabitants." The town to which your letter refers, therefore, having less than 8,000 inhabitants would fall within the $10 class. No exemption is created in favor of the owner or operator of the restaurant who does his own cooking. The license is required for every restaurant without exception, provided it is situated in a town or city.

You also ask me to inform you whether a person who deals in perishable goods such as cakes, pies, etc., is required to take out a dealer's license. The law relating to this subject contains an exception in favor of the grower, maker or manufacturer of the articles sold. Therefore, in the case which you mentioned no trader's license will be necessary.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

LICENSES—TRADER WITH WAREHOUSE HAVING ONE LICENSE REQUIRES NO ADDITIONAL LICENSE FOR SHOW ROOM WHERE NO GOODS ARE SOLD.

May 5th, 1923.

James Y. Claypoole, Esq.,
Clerk of the Court of Common Pleas,
Baltimore, Md.

MY DEAR MR. CLAYPOOLE: In your letter of May 4th you enclosed a communication recently received by you from Lyon Conklin & Co., Inc., asking you to advise them whether it is necessary for them to have a trader's license for their show room at 209 W. Saratoga Street. Their letter states to you that at this location they have certain of their products on display. No goods, however, are delivered from this room as it is merely a sales office where orders are taken. All goods are carried in stock and delivered from the warehouse and office of the company in another section of the city. You have requested me to pass upon this question for you.

The leading Maryland decision on the subject of traders' licenses in Salfner vs. State, 84 Md. 303. The Court held in this case that a person holding a trader's license in one city or county is not authorized under it to sell or deliver goods from a wagon in another county, the wagon in such a case being a fixed place of business within the purview of the statute.

In discussing the matter, the Court stated in its opinion that the statute requiring the trader's license "restricted the carrying on of business in a fixed place to a locality covered by the license, but does not prohibit selling by sample when deliveries are subsequently made."

As I understand the case presented by you, a trader's license has been taken out by the Lyon, Conklin & Co., Inc., based upon the value of the goods in their main warehouse and the Saratoga Street shop is merely a place where sales are made by sample for subsequent delivery. This privi-

lege seems to be covered by the decision in the Salfner case, and I am of the opinion that no additional license is, therefore, required for the Saratoga Street store.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

LICENSES—CORPORATION MUST SECURE TRADER'S LICENSE. LAW APPLIES TO WHOLESALE AS WELL AS RETAIL BUSINESS.

May 10, 1923.

Charles J. Butler, Esq.,
State's Attorney for Talbot County,
Easton, Md.

MY DEAR MR. BUTLER: You requested me to advise you in your letter of May 8th whether or not the Easton Wholesale Grocery Company, a corporation, is required to procure a trader's license. The corporation claims that inasmuch as it pays a State tax on its capital stock of $100,000, it ought not to be required, in addition to the payment of that tax, to procure also a regular trader's license.

The language of Section 38 of Article 56 of the Code requiring trader's licenses apparently answers your inquiry. It is there provided that no person *or corporation,* other than the grower, maker or manufacturer, shall barter or sell or otherwise dispose of, or shall offer for sale any goods, chattels, wares or merchandise within this State without first obtaining a license, etc."

It must have been contemplated that corporations as well as individuals selling or offering for sale goods, wares and merchandise should take out the license. The Legislature must be presumed to have known when it inserted the word "corporation" that all corporations are required to pay a

franchise tax annually. There is no double taxation in the requirement that a corporation shall also take out a trader's license. This is a special fee required by the State for the privilege of carrying on the business of a trader.

The tax on capital stock, however, is a franchise tax which every corporation pays to the State annually for the privilege of being a corporation and continuing its corporate existence. A corporation engaged in the retail grocery business would unquestionably be required to secure a trader's license, although it would also be necessary for it to pay the franchise tax. I know of no reason why a distinction should be drawn in favor of the wholesaler. The only exemption granted is in favor of the grower, maker or manufacturer. If the Easton Wholesale Grocery Company falls within any of these classifications, the license is not required, otherwise it is my opinion that it must secure said license.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

LICENSES—SAME PARTY CONDUCTING TWO RESTAURANTS IN SAME TOWN. TWO RESTAURANT AND TWO CIGARETTE LICENSES AND ONE TRADER'S LICENSE NECESSARY.

May 25, 1923.

J. Clayton Kelly, Esq.,
Clerk of the Circuit Court,
Salisbury, Md.

DEAR MR. KELLY: In your letter of May 23rd, you state that a person who has already taken out a restaurant license, female trader's license and cigarette license in connection with a restaurant conducted by her in your county, has informed you that she expects to open a lunch counter in another part of the same town. She desires to know whether

the existing licenses will be sufficient for this purpose, or whether it will be necessary for her to secure additional licenses covering her second place of business.

Section 182 of Article 56 of the Code requires each person "operating or conducting a restaurant or eating place, before doing so, to take out a license therefor." The clear meaning of this language seems to me to mean that there must be a separate license for each restaurant or eating place.

Inasmuch as Section 59 of Article 56 requires that the cigarette license shall be posted in a conspicuous place in the place of business, it is evident that there must be a separate license for each place of business, otherwise this provision of the law could not be complied with.

Under the decision of the Court of Appeals of Maryland in the case of Salfner vs. State, 84 Md. 299, a trader's license large enough to cover all of the goods, wares, chattels or merchandise in the various stores of a trader is sufficient if said stores are located within the same county.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

LICENSES—TRADER CONTINUING BUSINESS AFTER MAY 1ST WITHOUT LICENSE. WHEN ISSUED LICENSE MUST BE DATED BACK TO MAY 1ST. FEE TO BE PAID.

May 31, 1923.

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

MY DEAR MR. SHAFFER: In your letter written on May 28th you called my attention to a paragraph of the opinion given by me on September 7th, 1921, to Mr. Roderick Clary, Supervisor of Assessments in Cumberland, in reference to the issuance of traders' licenses. This paragraph reads as follows:

"If the trader operates his business at any time during the month of May succeeding the expiration of his old license, and applies for his new license at some later date during the new license year, the Clerk must date his new license from May 1st and charge him a license fee covering the entire year."

After reflecting upon the matter carefully, I see no reason to change this ruling and feel that the suggestions contained therein should be followed. If a trader conducts his business during the month of May and thereafter without a license and subsequently discovers his failure to secure a license and then applies for the same, the Clerk must issue him a license dating it from May 1st of the current year. There is no provision in the law distinctly providing for the license fee which must be paid under such circumstances, but I feel that the most practical way of dealing with the situation is to permit the applicant to pay the same amount which he would have paid had he filed his application at the proper time. This plan is not only a simple and reasonable one, but according to information given me this morning from the Comptroller's office, represents the prevailing practice.

Of course, such a payment and adjustment will not relieve the delinquent trader from any penalties which may have been incurred in the event that proper action is taken to enforce them. I feel, however, that the State authorities are more concerned about collecting the amounts actually due the State on account of licenses than they are about instituting criminal proceedings and imposing penalties.

This and similar matters were the subject of certain correspondence last fall between the Clerk of the Court of Common Pleas of Baltimore City, the Comptroller's office and my Department.

I am enclosing a copy of a letter written by me at that time to Mr. Claypoole, Clerk of the Court of Common Pleas.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

LICENSES—WHOLESALE HARDWOOD EXPORTERS. NO LUMBER SOLD IN MARYLAND. TRADER'S LICENSE UNNECESSARY.

July 5th, 1923.

James Y. Claypoole, Esq.,
Clerk of the Court of Common Pleas,
Court House,
Baltimore, Md.

MY DEAR MR. CLAYPOOLE: You recently asked me to furnish you with an opinion on the question presented in a communication received by you from Price & Heald of Baltimore City. This partnership is engaged in the Hardwood Export Trade. It carries no stock at its Locust Point warehouse, all of its lumber is sold abroad by its brokers and none is offered for sale in any part of the State or disposed of in any way within the limits of the State. The partnership, whenever possible, makes its export shipments through the port of Baltimore.

Under all of the circumstances, I do not feel that it is necessary for this partnership to secure a trader's license. The law requiring such a license makes it unlawful for any person or corporation to barter, sell or otherwise dispose of or to offer for sale any goods, chattels, wares or merchandise within the State until the license has been secured. My understanding of the methods employed by Price & Heald in conducting their business is that the firm does not barter or sell or otherwise dispose of or offer for sale any of its stock within the State. If this be true, no license is required.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

LICENSES—PLUMBER'S LICENSE NOT NECESSARY FOR OCCASIONAL GRATUITOUS PLUMBING SERVICES.

September 28th, 1923.

Abel Wolman, Esq.,
Chief Engineer, Department of Health,
16 W. Saratoga Street,
Baltimore, Md.

DEAR MR. WOLMAN: In your letter of September 27th, you requested me to advise you whether a person other than a registered plumber may legally do certain plumbing work for a friend provided he does so without compensation. An examination of Sections 223, 224 and 225 of Article 43 of the Code which relate to this particular subject, indicates that they were intended to apply to those persons who engage in the plumbing business, that is, who use plumbing as a means of earning money. The sections also relate to contracts for plumbing work involving pay for themselves. For example, the opening lines of Section 223 declare that it shall be unlawful for any person, firm or corporation to *employ* workmen to do plumbing work, etc. In the case you cite there is no employment whatever. The man doing the plumbing work is simply rendering gratuitous assistance to a friend. Licenses are required on the part of all those who "work at the plumbing business" which to my mind indicates engaging in plumbing work for some compensation. Therefore, I am of the opinion that no license is required in the case that you mention. I wish to call attention to the fact, however, that any remuneration received by the person performing the service would bring him within the operation of the law. His services must be absolutely free, and if he is rewarded in any way either directly or indirectly he will violate the law.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

MOTOR VEHICLES.

MOTOR VEHICLES—COMMERCIAL CREDIT COMPANY ENTITLED TO RECEIVE DEALERS TAGS.

January 19, 1923.

Andrew B. Linhard, Esq.,
Registrar, Department of Commissioner
of Motor Vehicles,
Baltimore, Maryland.

DEAR MR. LINHARD: In your letter of January 18th, you ask me to pass again upon the eligibility of the Commercial Credit Company of Baltimore to receive dealers tags.

This matter was presented to me in the Fall of 1920, and in an opinion under date of September 28th, I held that the company was not entitled to be treated by you as a dealer. I was very careful to say in this opinion, however, that it was based solely upon the facts then presented to me which included merely the statement that the Commercial Credit Company was a finance company advancing money with automobiles as security and protecting itself by a chattel mortgage or other lien, and the further statement that the Commercial Credit Company only sold such automobiles as were repossessed by it because of default in payment.

I see no reason whatever to change that opinion in view of the facts upon which it was based. I am now informed, however, by the attorney for the Commercial Credit Company that the company has taken out a dealer's license, paying a tax based on an average outstanding merchandise of not less than $10,000. It has a garage located in the basement of the Mid-City Garage on South Charles Street where it stores its automobiles and from which point it sells them. It buys automobiles whenever it finances a sale of a car by a dealer to a purchaser, for under its Conditional Sale Con-

tract, it retains title to the car and the purchaser only acquires an equity in it. The title is vested in the Commercial Credit Company. The Company has sold as high as 25 cars in a single week. All cars owned by it and offered for sale are cleaned and repaired, and placed in an attractive position for sale in the garage above mentioned. In connection with the sale of these cars, the company is represented by a half dozen salesmen who serve on a commission basis and who bring their prospective customers to the Mid-City Garage for the inspection of its cars.

Under these circumstances I believe that the Commercial Credit Company is entitled to be considered as a dealer. It is not necessary that a dealer should sell new cars. He may deal exclusively in second-handed cars, and inasmuch as the Commercial Credit Company maintains a garage and show room, constantly keeps for sale second-handed cars and is a regularly licensed trader, I can see no reason why, when engaged in such activities, it should not be treated as a dealer. The fact that the principal objects of the company are financial in character does not deprive it of the privilege possessed by it under the law to engage also in the sale of automobiles. I assume that the charter of the company is sufficiently broad to confer this privilege.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

MOTOR VEHICLES — GARAGE CANNOT ENFORCE LIENS AND ACQUIRE TITLE BY APPROPRIATING CAR—NO NEW CERTIFICATE TO BE ISSUED UNTIL TITLE HAS PASSED BY JUDICIAL SALE.

January 19, 1923.

Andrew B. Linhard, Esq.,
Commissioner of Motor Vehicles, Office,
Baltimore, Md.

MY DEAR MR. LINHARD: The counsel for the Central Automobile Company, hereinafter called the Company, has re-

quested you to issue to said Company a new certificate of title for a Stearns touring car. This car was left with the Company by its owner to whom the original certificate of title had been issued. A bill for repairs and storage having accumulated to a point where, in the judgment of the Company, it exceeded the value of the car, the Company, for the purpose of enforcing the lien conferred upon it by Chapter 418 of the Acts of 1918, appropriated the car. You ask me to advise you how to proceed under these circumstances.

The Motor Vehicle Law does not contain any express provision sanctioning the issuance of new certificates when the original certificate is still outstanding. It was realized, however, that there were occasions when it might be necessary, in order to give full effect to other important provisions of law, to issue new certificates of ownership. In an opinion to the Commissioner of Motor Vehicles dated June 7, 1921, and reported in Volume 6, Report and Official Opinions of the Attorney General, page 387, this subject is fully discussed with particular reference to the procedure to be followed when the ownership of cars is changed by judicial sales. You were advised that the applicant for a new title should prove that he had acquired the same in accordance with the requirements of law; that he had made demand upon the former owner of the car to transfer the original certificate and that the owner had failed or refused to do so. The other details of the procedure were also carefully outlined. See also letter addressed to Mr. Schroeder under date of December 30, 1922, in which the right to issue a new certificate of title was extended to embrace the specific case of a purchaser of an automobile sold publicly by a garage keeper to enforce his lien. We only, however, recognized the necessity for the issuing of new certificates of title where, in accordance with existing provisions of law, the title to a car had actually passed from the former owner to a new owner. Upon examination of Chapter 403 of the Acts of 1918 which confers rights upon garage owners and creates liens against cars in their favor, I do not discover any justification for the appropriation of any car subject to a lien without sale or other judicial proceeding. Title to a car cannot be secured simply

by taking the car into possession and, therefore, when the Company in the case which you present asks you to issue to it a new certificate of title I do not think that it is entitled to receive the same, because it cannot demonstrate that the title to the car in question has legally been acquired by it. For the reasons given the application made to you by the Central Automobile Company should, therefore, be denied.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

MOTOR VEHICLES—NON-RESIDENT MAY SECURE MARYLAND REGISTRATION TAGS BY MEETING REQUIREMENTS OF MOTOR VEHICLE LAW.

February 17, 1923.

Colonel E. Austin Baughman,
Commissioner of Motor Vehicles,
Baltimore, Md.

DEAR COLONEL BAUGHMAN: You enclosed with your letter of February 14th, copy of a communication received by the Governor of Maryland from the Quebec Liquor Commission, Police Department, Montreal, Canada, in which he was asked to furnish a Maryland motor car license to the said Quebec Liquor Commission. The Comptroller of the Police Department of the Commission, who wrote the letter, suggested that, if provided with a Maryland license, his inspectors would be better prepared to stop bootlegging because of their ability to approach the large holders of liquor stock inasmuch as these holders sell their liquors with little hesitation to persons carrying an American license on their cars.

The law relating to the issuance of license tags and distinguishing markers and numbers for motor vehicles is embraced in Section 140 of the Motor Vehicle Law. It provides that every owner of one or more motor vehicles before the

same shall be operated in Maryland shall make his application and pay the required fee and thereupon receive from you a distinguishing number or marker and a certificate of registration together with two duplicate plates or markers bearing the letters "Md." and the number or mark assigned to the motor vehicle in question.

I find nothing in this law to prevent the issuance of such certificate of registration, duplicate tags or markers to a non-resident of Maryland, who has in all respects complied with the provisions of the Act. If, therefore, the Comptroller of the Police Department of the Quebec Liquor Commission files his application in due form, pays the requisite fee and otherwise complies with the provisions of the Maryland law, he will be entitled to receive from you the tags or plates which he desires. Of course, there is no authority whatever for the issuance of such tags or markers gratuitously or in any other manner than that definitely fixed by the law. After the tags have been received by a non-resident, they will, of course, be beyond our control and we cannot prevent their use for any purpose to which their owner desires to devote them.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

MOTOR VEHICLES—THE SUBSTITUTION OF A NEW MOTOR WITH NEW SERIAL NUMBER REQUIRES NEW REGISTRATION CERTIFICATE.

February 21, 1923.

Thomas D. Roberts, Esq.,
Justice of the Peace,
Laurel, Maryland.

MY DEAR SIR: I have been informed by Ogle Marbury, Esq. in his letter of February 12th, that you desire me to submit to you my views on the following question.

The owner of a 1917 Ford touring car which had been properly registered and titled, discovered that his motor was wearing out, bought a new motor from a second-handed dealer and substituted it in place of the original motor. The removal of the old motor carried with it the registration number which is always on the engine block in a Ford car, and resulted in the putting in of a new registration number. The owner of the car did not report the change to the office of the Commissioner of Motor Vehicles. Later the operator of the car was arrested, and charged with failing to carry a registration certificate under the provisions of Section 140 of the motor vehicle law. The question presented by you is whether the possession of the registration certificate originally issued for the car was sufficient or whether it was necessary to have a new registration certificate in view of the fact that the car had, at the time of the arrest, a new engine and a different engine number. This question was passed upon by me in an opinion given to Colonel Baughman on July 31, 1920, reported in Volume 5, Report and Official Opinions of the Attorney General, 369.

I there stated that "the Motor Vehicle Law comtemplates complete identification of each car registered. The method adopted by your office for identity will necessarily fail unless the serial number on the motors remain unchanged and correspond with the motor number on the registration certificate. The substitution of a new motor necessarily involves a change in number.

In my opinion the use of auxiliary motors is not prohibited under the Maryland law provided the auxiliary motor is registered, as required by law, and has its own individual numbers. The registrant, must, therefore, when installing an auxiliary motor substitute the markers issued to that particular motor on the motor car."

The effect of this opinion, which I now desire to re-affirm, is practically to declare that the engine is the motor vehicle which is registered. It is the distinctive part of a motor vehicle and that part alone which possesses positive identity. If the removal and substitution of engines were permitted without change of registration numbers inevitable

confusion would follow, and the spirit of the law as well as its letter would be frequently violated. It is because of the law's purpose to insist upon positive identification that Section 157-A was inserted therein which prohibits the defacing, alteration or obliteration, etc. of any identifying marker, serial number, etc.

In my judgment, the gentleman to whom your letter refers was guilty of a violation of the provisions of Section 140 if he failed to produce a registration certificate corresponding with the number upon the engine in his car at the time of his arrest.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

MOTOR VEHICLES—COMMISSIONER HAS POWER TO REQUIRE LICENSED OPERATORS TO PASS SPECIAL EXAMINATION BEFORE RECEIVING CHAUFFEUR'S LICENSE.

March 8, 1923.

George W. James, Esq.,
Justice of the Peace,
Cambridge, Md.

DEAR MR. JAMES: Your recent letter stated that Calvin G. Twilley of your County to whom an operator's license had already been issued by the Commissioner of Motor Vehicles, mailed a check for $3.00 to that official and requested the issuance to him of a chauffeur's license. He was notified that it would be necessary for him to pass another examination before a chauffeur's license could be issued to him, and you have asked me to advise you whether this procedure is authorized by law.

There is no express provision in the law requiring such an additional examination. Section 143 of the Motor Vehicle

Law requires every person desiring to receive a chauffeur's or motor vehicle operator's license to obtain first an examination permit or instruction license. It then provides that upon surrendering "the instruction license and undergoing a satisfactory examination as to his qualifications, such person shall be entitled to receive the license applied for, upon payment of fees, etc." You will note that this language impliedly indicates that an examination is a prerequisite to the issuance of any license which has been applied for. It is further stipulated that the applicant shall pass a "satisfactory examination."

I think that in view of the fact that the law itself fails to go into greater detail with reference to this important matter, the Commissioner of Motor Vehicles under the power conferred upon him by the Act to prescribe rules and regullations may declare, not only that there shall be a satisfactory examination for chauffeur's licenses, which would seem to be in accord with the statute itself, but also the nature and character of this examination. Such a regulation was promulgated a number of years ago, and has been regularly enforced ever since. The applicant for an operator's licensé is only required to demonstrate his familiarity with the rules of the road, and his ability to drive an automobile. A driver desiring to become a chauffeur, however, must, in addition to these other qualifications, prove that he is familiar with an automobile's mechanism and has a knowledge of its major parts. I feel that this difference is thoroughly justified by reason of the additional responsibilities which a chauffeur assumes.

In view of this situation, I am returning herein the papers and check which you sent to me.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

MOTOR VEHICLES—PRIVATE DRIVEWAY FROM THE RIGHT IS NOT "A ROAD" UNDER THE ACT CONFERRING RIGHT OF WAY.

March 21, 1923.

N. L. Lea, Esq.,
Coca-Cola Bottling Works,
Frederick, Md.

MY DEAR SIR: In your letter of March 14th, you request me to advise you whether the Motor Vehicle Law fixing the relative rights and duties of motorists at intersecting roads applies to a private driveway leading from the rear of private property. The particular question involved is whether a car entering a public highway from a private driveway on the right possesses the right-of-way over a car approaching the intersection of the public highway from the left.

It is contrary to the practice of this office to submit official rulings to private individuals or corporations, and I would not be in a position to respond to your request in this instance unless supported therein by a letter from Mr. Anders, State's Attorney from your County, except for the fact that I have already ruled on this particular point in an opinion to W. S. Quinn, Esq., Justice of the Peace at Crisfield, under date of February 3, 1921, in which I used the following language: "I have your letter of the 28th ult, in which you ask my opinion whether a private lane or road leading from a farm house, and obstructed by brush, should be considered an intersecting road as that term is used in Section 163 of the Motor Vehicle Law.

"I do not believe such a lane is a road as that term is used in the above section. In Section 137 it is stated that the terms 'highway,' 'roads,' 'public highways,' or 'public roads,' shall include any highway or thoroughfare of any kind used by the public whether actually dedicated to the public and accepted by the proper authorities or otherwise." This definition, while broad, would not include a private lane such as you describe."

The particular facts in your case may be somewhat different, but the language quoted above will supply you with my view on the general principle involved.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

MOTOR VEHICLES—ISSUANCE OF DUPLICATE CERTIFICATES—COMMISSIONER OF MOTOR VEHICLES MUST BE SATISFIED OF THE TRUTH OF ALL ESSENTIAL FACTS SUBMITTED.

March 21, 1923.

Andrew B. Linhard, Esq.,
Registrar of Titles,
Office of Motor Vehicle Commissioner,
Baltimore, Md.

MY DEAR MR. LINHARD: In your letter of March 15th, you state that Mr. E. John Fisher of Frederick has requested you to issue a new title for a Nash Touring Car under the following unusual circumstances.

The original title No. 269,674 was issued to Mr. Fisher for motor number 96,091. Mr. Fisher claims that the car was stolen from him the latter part of 1922, and that in response to a newspaper advertisement in a Pittsburgh paper mailed to him by some unknown person, advertising a 1922 Nash Touring car for sale, he went, on January 2nd, 1923, to Pittsburgh, met a short dark man whose name he has forgotten, who took him to the place of business of the alleged previous owner, name also unknown, but described as a tall thin man with a black mustache. Mr. Fisher claims that he paid $800.00 for the car in the presence of these two men, and that he thereupon mailed the receipt for this money with a copy of the advertisement and application for a new title to your office. All of these papers, however, were mysteriously

lost in the mail. He claims that he cannot relocate the place of business where this transaction occurred because he was led there during the night by the back way. He is also unable to produce a copy of the advertisement. He brought the car back from Pittsburgh to Frederick and there it was soon identified as the car which had been stolen from him. However the motor number had been changed to read #95891, and the serial number had been also changed from 211,122 to 211,123. It has been suggested to you that the alleged theft of the car was permitted for the purpose of collecting insurance, which, however, the Insurance Company declined to pay.

I discussed the issuance of duplicates of title in an opinion given to the Commissioner of Motor Vehicles on June 7, 1921, and there determined that although the Motor Vehicle Law was silent on the subject, new title certificates might, under certain circumstances, be issued. As for example, where a car is sold at a judicial sale and the original owner refuses to assign the certificate of title. I suggested, however, that in all cases a most searching investigation of the facts should be conducted by your office, and advised you to issue a new certificate to the present holder of the car only when your Department was satisfied from the information secured that justice required such action by you. The very remarkable facts which you have presented to me and which lack in almost every particular satisfactory verification, do not, in my judgment, create a case where the Commissioner of Motor Vehicles would be justified in issuing a duplicate certificate. Mr. Fisher claims that the car in his possession is the same car stolen from him in 1922, for which the original certificate of title was issued to him. If this claim can be substantiated to the satisfaction of your office the original motor and serial numbers can be restored and the certificate of title held by Mr. Fisher will fully protect him in the operation of this particular motor vehicle. I do not think, however, that a duplicate certificate should be issued unless the Commissioner is thoroughly satisfied with the

correctness of all of the essential facts upon which the claim of the present title is founded.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

MOTOR VEHICLES—TRACTION ENGINE 114 INCHES IN WIDTH CANNOT LEGALLY OPERATE ON STATE HIGHWAYS—TRAILERS DRAWN BY TRACTION ENGINE MUST CARRY MARKERS—TRACTION ENGINES MUST BE REGISTERED—NEED NOT CARRY MARKERS.

March 22, 1923.

Colonel E. Austin Baughman,
Motor Vehicle Commissioner,
Baltimore, Md.

DEAR COLONEL BAUGHMAN: In your letter of March 17th, you enclose a letter from E. P. Vinton, Justice of the Peace, Cambridge, Md., in which he asks that the questions set out below be answered. You state that you understand that the traction engine in this case was drawing an ordinary four wheel wagon of the two horse type which was loaded with coal, wood and other merchandise. The questions which have been propounded will be answered in the order set out in the Justice's letter.

1. Whether the operation of a traction engine 114 inches in width, over a State highway is a violation of the law. The engine has been in operation for fifteen years.

Section 149, sub-section 2, of the Motor Vehicle Law, provides in part as follows: "No motor vehicle in excess of 90 inches in width, except traction engines, shall be operated on any highway of this State, and no traction engine in excess of 100 inches in width shall be operated on any such highway." The answer to this question, therefore, is that the operation of a traction engine 114 inches in width, over the

State highway is in violation of Section 149, sub-section 2 of the Motor Vehicle Law.

2. Whether the propelling of a trailer by said engine is in violation of the law if markers and certificate of registration have not been issued for the trailer.

My answer to this question is that such a trailer is required to comply with Class G of Section 141 of the Motor Vehicle Law, and is required to procure a certificate of registration and to display identification markers. It is true that in the case of threshing outfits, clover hullers, hay balers, binders and other similar farming implements not designed for hauling purposes, no fee is chargeable by the Commissioner of Motor Vehicles, but the certificate of registration must, nevertheless, be obtained and the identification markers must be displayed, because by Section 134 the term "motor vehicle" includes a trailer, and by Section 140 all motor vehicles must procure certificates of registration and display identification markers.

3. Whether operating said engine without registration or identification markers is a violation of the law.

This question is answered by an opinion given to you dated September 20, 1920, and reported in Volume 5, Report and Official Opinions of the Attorney General, page 377. The portion of the opinion relevant to the precise question now before me is as follows:

"The Legislature, by Chapter 506 of the Acts of 1920, amended Section 141 of the Motor Vehicle Law, by adding the following exception to Class H, 'this charge' (i. e., $25.00 for each tractor or traction engine), 'shall not apply, nor shall registration tags be required to be displayed on a traction engine used for hauling on an unimproved road or for drawing or propelling agricultural or farming implements not designed for hauling purposes upon any highway.'

"It will be observed that the exemption referred to in the paragraph above does not include exemption from registration; it merely relieves the owners of such tractors or traction engines from the payment of the fee and the displaying of the registration tags. Section 140 of Article 56 of the Code (the Motor Vehicle Act), provides as follows: 'Every

owner of one or more vehicles, before the same shall be operated in this State and except as hereinafter otherwise provided, shall fill in and file with the Commissioner of Motor Vehicles, on a blank furnished by the Commissioner, an application as shall be required by the Commissioner.' The words 'Motor Vehicle' include tractors and traction engines (Sec. 134). Section 140 provides also that 'any person who fails to carry the certificate of registration provided for by this section * * * shall be deemed guilty of a misdemeanor, and shall, upon conviction, be subject to a fine of not less than $10.00 nor more than $100.00,' " etc.

Justice Vinton states in his letter that counsel for the traverser maintains that Judges Urner, Thomas and Worthington have declared the Motor Vehicle Law unconstitutional as to traction engines. That is not correct. It is true that Judges Urner, Thomas and Worthington have construed the Motor Vehicle Law as applied to traction engines, but there is nothing in their decisions inconsistent with the views herein stated. The writer of this opinion is familiar with these decisions, and the conclusions reached in this opinion are in entire harmony with the decisions of Judges Urner, Thomas and Worthington.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

MOTOR VEHICLES—NEW CARS DELIVERED TO MARYLAND DEALERS IN WASHINGTON—MAY BE DRIVEN INTO MARYLAND UNDER REGULAR OR SPECIAL DEALERS' TAGS—ALL SUCH CARS MUST BE TAGGED.

March 24th, 1923.

Colonel E. A. Baughman,
Motor Vehicle Commissioner,
Baltimore, Md.

MY DEAR COLONEL BAUGHMAN: At the request of the Automobile Club of Maryland you have presented to me the

following situation. Because of inadequate railroad facilities a large number of Buick cars are shipped from the manufacturing plant in Flint, Michigan, on gondolas, coal cars, flat cars, etc., in trainloads, to the Buick Motor Company at Washington for distribution from that point. The Buick Motor Company is strictly a factory branch and was established for the sole purpose of distributing automobiles on behalf of the factory. Complaint is made because the Buick Motor Company has been required to secure titles covering all cars which are delivered in Maryland before these cars are permitted to be driven out of Washington over the highways of this State. It is also declared that cars are permitted to come direct from the factory in the West under "in transit" tags, but that the use of these tags is not permitted upon the cars delivered to the dealers in Washington by the Buick Motor Company. You have asked me to express my views upon the questions involved.

In an opinion given to you on Mary 14th, 1920, and reported in Volume 5, Report and Official Opinions of Attorney General, page 354, after calling attention to the fact that our law grants reciprocity only to those non-residents who have complied with the laws of the State of their residence, I ruled that persons operating new cars en route from the factory in Michigan who were not actual residents of that State by which their "in transit" plates were issued, but lived elsewhere, could not derive from such "in transit" licenses the privilege of driving their cars over the Maryland roads. The same point, however, is not raised by the facts submitted by you because the persons driving the cars received from the Buick Motor Company are apparently dealers resident in Maryland, or their agents, also residents of this State. Two questions are, therefore, presented.

1. Is it necessary for Maryland dealers receiving cars from the Buick Motor Company in Washington under the circumstances set forth herein, to secure certificates of title for their cars before operating them in Maryland? The answer to this question is found in the concluding portion of the first paragraph of Section 157 of the Motor Vehicle Law which reads as follows: "Provided, however, that no

certificate shall be required in the case of new motor vehicles sold by manufacturers to dealers as the term "dealers" is defined in Section 134 of this Article." This clause has been construed to cover new motor vehicles acquired by dealers from the manufacturers, while en route from the factory to the dealer's place of business. I feel that the delivery in Washington by the manufacturer's agent is equivalent to a delivery by the manufacturer himself, and that therefore no certificates of title are required.

2. Is it necessary for the cars delivered in Washington to carry tags or markers of any kind while being operated from Washington to the dealer's place of business? There is no exception to the general requirement that all cars operating over the highways of Maryland must carry registration tags or markers. The various dealers of the State, upon complying with the provisions of the Act, are authorized to receive dealers' tags which may be placed interchangeably upon any car owned and operated by said dealers. They may also avail themselves of the privilege granted them in Class D, Section 141, of the Motor Vehicle Law, of securing special sets of registration tags to be used on new vehicles being brought under their own power from a factory to a dealer in the State.

I am of the opinion that it is necessary for all cars delivered in Washington to Maryland dealers to carry some registration tag or marker upon them while they are being operated over the Maryland roads. The only tags available for this purpose are the regular dealers' tags or the special dealers' tags to which I have just referred, and it is my opinion that the use of a set of dealers' tags of the one class or the other is absolutely essential except where regular tags issued for the particular car are used upon its initial trip into Maryland.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

MOTOR VEHICLES — LOST TAGS — CAR MAY BE OPERATED WITHOUT TAGS IF APPLICATION FOR DUPLICATE HAS BEEN MADE WITHIN TWENTY-FOUR HOURS.

March 24th, 1923.

Colonel E. Austin Baughman,
Motor Vehicle Commissioner,
Baltimore, Md.

DEAR COLONEL BAUGHMANN: In your letter of March 22nd, you request me to interpret the law regarding that portion of Section 147 of the Motor Vehicle Act which reads as follows: "And provided also that when it clearly appears that the registration number has been lost by accident and application for a duplicate has been made within twenty-four hours thereafter, no penalty shall be imposed."

The meaning of this Section of the Motor Vehicle Law is this: that where it clearly appears that the registration number, that is the identification marker, has been lost by accident, and where it further appears that an application has been made for a duplicate within twenty-four hours from the time the identification marker is lost, the machine may be operated on the public highways by its owner and no penalty may be imposed because the motor vehicle is not displaying identification markers. The underlying principle seems to be clear. The Legislature probably contemplated that identification tags would be frequently lost, and at times it would be a great inconvenience to the motorist if he were required to refrain from operating his car until duplicates were procured. In all such cases the automobile is necessarily registered, and if the owner uses due diligence by applying for new markers within twenty-four hours after the markers were lost, the Legislature has seen fit to exempt the owner from the necessity of displaying markers until such times as your office can supply him with new ones.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

MOTOR VEHICLES—OPERATOR WHO PERMITS AN ANIMAL TO STEER A CAR, GUILTY OF RECKLESS DRIVING.

March 24th, 1923.

Colonel E. Austin Baughman,
Motor Vehicle Commissioner,
Baltimore, Md.

DEAR COLONEL BAUGHMAN: In your letter of March 22, you set out the following facts: An automobile bearing the identification markers of another State was being operated by a trained bear. The owner of the car was sitting next to the driver's seat directing the bear's movements. A local justice of the peace in passing upon these facts ruled that there was nothing in the Motor Vehicle Law to prevent the operation of a car by any sort of animal, and that therefore no action should be taken. You ask me to give you my opinion as to whether or not the decision of the Justice of the Peace was correct.

It is very difficult to understand upon what theory the Justice arrived at the conclusion set forth in your letter. The man sitting beside the bear who was, to all intents and purposes, the real operator of the car, was guilty of reckless driving of the plainest type in permitting an animal to steer the car or manipulate any of the levers or brakes. It requires no argument to reach this obvious conclusion. An operator of any automobile who permits an animal to drive it, even though the operator direct the animal's movements, would be doing an act which, in my judgment, constitutes a menace to public safety and renders such an operator guilty of a violation of Section 149, sub-section 1 of the Motor Vehicle Law.

Moreover, the police authorities of any county or municipality have the right to prevent any act or conduct on the part of a man or animal which in any way endangers public safety. In my judgment it is not only within the power of the Police Department or similar agency to prevent a trained

bear from running an automobile on the public highway, but it is clearly their duty to do so.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

MOTOR VEHICLES—DEALER MAY NOT USE HIS REGISTRATION TAGS IN DRIVING CAR TITLED IN NAME OF ANOTHER.

April 19th, 1923.

Colonel E. Austin Baughman,
Commissioner of Motor Vehicles,
Baltimore, Md.

MY DEAR COLONEL BAUGHMAN: An interesting hypothetical question was propounded by your letter of April 12th, as follows:

A is a registered dealer, B is an individual who has duly titled his Ford car, but has not yet licensed it, and does not intend to do so until July 1st, 1923. His car is, however, out of order and he requests A to come and get it in order that the needed repairs may be made. A comes, puts his dealer's tags on B's car and drives it to his repair shop, where, after making the needed repairs, he drives it around to see if the car is in order, and then takes it back to B, using his dealer's tags.

Section 141, Class D, of the Motor Vehicle Law provides, among other things, that "dealers' registration tags shall be interchangeable among the cars owned or used by such dealers during the current year in which issued." Your question is—can A, in view of this law, legally place his tags on a car titled in B's name, and drive it upon the highways of the State A similar situation might be presented if the car in question was of more expensive make and the dealer takes possession of it and drives it temporarily, with

the consent of the actual owner, in connection with his own business for demonstration purposes. In such a case the dealer would be using the car and the character of the use would be that contemplated by the language of Section 141 Class D, which has been quoted. The real inquiry, therefore, is whether a dealer may legally drive a car titled in the name of another by placing thereon his own dealer's registration tags.

An examination of Section 157 of the Motor Vehicle Law indicates that certificates of title shall be issued solely upon the application of the car's owner, and that no registration tags for such car shall be furnished unless the applicant therefor shall first receive a certificate of title. In other words, it is contemplated that the registration tags and the certificate of title shall be issued to the same party, and that the ownership of the car, as evidenced by the outstanding certificate of title, and of the tags carried by the car, shall be identical. To permit a car titled in one name to be operated under tags issued in another name would be fraught with serious consequences and such a practice, in my judgment, is impliedly prohibited.

In the case cited by you an apparent hardship is inflicted upon the owner who desires his car to be repaired, but this difficulty can be met either by taking out his registration tags during the second quarter of the year or by waiting until July 1st, to have his car moved for repair purposes. The adoption of any other construction would make it possible for dealers to replace with their own dealers' tags the registration tags issued for a particular car whenever they might desire to do so upon the theory that they were using said car for their own purposes.

Such a practice would lead to many abuses and possibly deprive the State of considerable revenue to which it is entitled and which it would otherwise fail to receive.

For the reasons indicated, I am of the opinion that B does not possess the right to use his dealer's tags on A's car.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

MOTOR VEHICLES—STATE POLICEMEN, NOT SWORN AS DEPUTY SHERIFFS, LACK POWER TO ARREST EXCEPT FOR VIOLATIONS OF MOTOR VEHICLE LAW.

May 24th, 1923.

Colonel E. Austin Baughman,
Commissioner of Motor Vehicles,
Baltimore, Md.

DEAR COLONEL BAUGHMAN: In your letter of May 14th you state that certain members of the State Police Force have been requested to assist county sheriffs in making arrests. In some of the cases the State policeman has not been appointed a deputy sheriff in the county in which he has been requested to make the arrest. Of course, if the violation for which the arrest is made is one within the purview of the Motor Vehicle Law, no question arises, and I do not interpret your inquiry to refer to such cases. In all other cases whether a warrant is issued or not, the State Policeman, if he has not been sworn in as a deputy sheriff of the particular county in which the arrest is to be made, has no power other than that of a private citizen to assist in making the arrest. This rule is laid down by the text books and authorities. For example, see 35 Cyc. Sheriffs and Constables, page 1528.

This conclusion seems also to be justified by the case of Turner vs. Holzman, 54 Md. 148, in which the Court of Appeals held that the Sheriff has the power to keep the *peace* within his county.

In so far as civil process is concerned, the rule is somewhat different. A deputy sheriff by virtue of Code, Article 75, Section 44, may serve a writ directed to him by the Court of his county, even though the writ is served by him in one of the other counties of the State. However, this power is limited to civil process.

In my judgment the State Police Force should give assistance to the sheriffs whenever requested to the full extent as their other assignments and duties permit. How-

ever, their activities should be limited to giving assistance and the actual arrest must be made by the Sheriff.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

MOTOR VEHICLES—CAR INJURED WHILE DRIVEN BY OFFICER MAKING ARREST. OFFICER PERSONALLY LIABLE IF NEGLIGENT. NO LIABILITY ON DEPARTMENT OF MOTOR VEHICLES.

March 24th, 1923.

Colonel E. Austin Baughman,
Commissioner of Motor Vehicles,
Baltimore, Md.

MY DEAR COLONEL BAUGHMAN: I beg to reply to your letter of March 6th in which you state that an officer of the State Police Force arrested a truck driver in Cumberland for failing to carry a mirror as required by law. It was then discovered that the driver of the truck did not possess an operator's license. Whereupon the officer making the arrest took personal charge of the truck, and in attempting to drive it shifted the gear from low into reverse, thereby causing serious damage to certain of its mechanical parts. The cost of making the necessary repairs was $278.75. You have asked me to advise you whether your Department is legally liable to reimburse the owner of the truck to the extent of this damage.

If the officer making the arrest who took charge of the truck was acting in the performance of his duty when he did so and was not, as a matter of fact, guilty of any negligence or carelessness, he is not personally liable. If, however, it can be proven that the officer was guilty of negligence while operating the truck, he will be personally liable

even though he was acting at the time within the scope of his duty. An officer must perform his duty with care and due regard to the rights of others, and the fact that he was acting in an official capacity does not authorize him to indulge in negligence to the injury of the person or property of others. The owner of the truck, however, has no claim for redress against you individually, as a State officer, or against your department as a result of this injury.

The case of Watkins vs. Rich, 126 Md. 643, definitely determines that an official or commission of the State is entitled to the benefit of the State's immunity from suit for personal injuries, occasioned by negligence in the execution of official duties. The same rule would apply in the case of damage to property.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

MOTOR VEHICLES—JUSTICES OF THE PEACE LACK AUTHORITY TO SIT ON SUNDAY.

June 14th, 1923.

Colonel E. Austin Baughman,
Commissioner of Motor Vehicles,
Baltimore, Md.

DEAR COLONEL BAUGHMAN: I am in receipt of your letter of June 12th, in which you inform me that the Justices of the Peace in Frostburg, Cumberland and Hancock are unwilling to render service on Sundays, and that as a result the State police operating in that section are prevented, in a large measure, from functioning on that day. You ask an expression of my views on this situation.

It is my opinion that you should accept conditions as you now find them without making any complaint with reference thereto. It is certainly not the duty of the Justices

of the Peace to sit on Sundays and their right to do so may be seriously questioned in view of the provision in 37 Cyc. 588 that "in the absence of a permissive statute, a Judge or Magistrate has no authority to hold court or conduct a trial on Sunday." Most of the Justices of the Peace in the State are officiating regularly on Sunday, and you will perhaps be pursuing the wise policy if you accept their services, and raise no question concerning the propriety of the attitude of the few Justices who decline to sit on that day.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

MOTOR VEHICLES—CUMBERLAND CITY ORDINANCE TAXING MOTOR VEHICLES TRANSPORTING PASSENGERS AND FREIGHT FOR HIRE INVALID.

November 15th, 1923.

Colonel E. Austin Baughman,
Commissioner of Motor Vehicles,
Baltimore, Md.

MY DEAR COLONEL BAUGHMAN: I beg to acknowledge receipt of your letter of November 19th, having attached thereto a communication received from the City Clerk of Cumberland, advising you that City Ordinance 992, in subsection 13, provides for the imposition of a tax in addition to that prescribed by the General Motor Vehicle Law upon motor vehicles used in the transportation of passengers or frieght when a charge for the same is made. You requested me to pass upon the validity of the ordinance so far as it affects motor vehicles.

I am not familiar with the provisions of the Charter of Cumberland, but will assume, however, that the General Motor Vehicle Law of the State is of later date than Cum-

berland's charter. If this be true and no question of express or implied revocation is involved, I beg to advise you that in my judgment the Cumberland ordinance is absolutely invalid, so far as it affects motor vehicles. You will observe that license fees are provided for horse driven vehicles, and this portion of the ordinance is not affected by the Motor Vehicle Law. When, however, Cumberland attempts, through the medium of this ordinance, to impose an additional license fee upon motor vehicles, I feel that there has been a clear violation of that provision of Section 133 of the Motor Vehicle Law which declares that "no City of the State shall have the right to make or enforce any local ordinance which shall impose upon the owner or operator of any motor vehicle any tax, registration fee, license fee, assessment or charge of any kind for the use of a motor vehicle upon any public highway of this State."

In making an exception in favor of the passage and enforcement of reasonable traffic regulations by cities and towns the same law expressly excludes any regulations that involve charges of any kind for the use of the highways of the towns and cities in question.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

MOTOR VEHICLES—RATE PER HORSE POWER AFTER JANUARY 1, 1924, FOR MOTOR VEHICLES TRANSPORTING PERSONS FOR HIRE.

December 18, 1923.

Colonel E. Austin Baughman,
Commissioner of Motor Vehicles,
Baltimore, Maryland.

MY DEAR COLONEL BAUGHMAN: I desire to answer your letter of December 8th enclosing a communication received

by you from William E. Byrd, Esq., attorney for the Automobile Funeral Association of Baltimore, in which Mr. Byrd questioned your right to charge at the rate of One Dollar and twenty ($1.20) cents per horse power for 1924 licenses to be issued by your Department for motor vehicles operating for the purpose of transporting persons for hire. The same point has also been raised by several other attorneys who have presented their views to me in person.

It is provided in the Motor Vehicle Law of the State, Section 141, Class F, that "One Dollar and twenty cents ($1.20) per horse power or fraction thereof shall be charged for markers and certificates of registration in the case of motor vehicles operating for the purpose of transporting persons for hire upon any of the public highways of this State, and the said charge shall be in lieu of all other taxes, fees or charges of every kind upon said motor vehicles or upon the receipts of those operating the same except the taxes imposed upon the same as personal property." It is now claimed that Chapter 522 of the Acts of 1922, commonly known as the two cent gasoline bill, operates to reduce the rate of $1.20 per horse power.

Inasmuch as the 1924 rate in the case of all motor vehicles having pneumatic tires has been reduced, as a result of the proclamation of the Governor from sixty cents per horse power to thirty-two cents per horse power, it is insisted by some interested that the rate for all motor vehicles embraced within Class F should also be lowered to the extent of twenty-eight cents, making it ninety-two cents per horse power; whereas, by others interested, it is insisted that the rate for Class F vehicles should be reduced in the same proportion as the rate for Class A vehicles has been reduced, making the new rate sixty-four cents per horse power, while a third view is that the Class F rate should also be thirty-two cents per horse power. I now desire to submit my views to you upon this question.

Its solution depends almost entirely upon the legislative intent as manifested by the language used in Section 12 of Chapter 522. It is this section which provides a reduction of the charge for markers and certificates of registration

and which prescribes the method by which the amount of the reduction shall be ascertained by the Governor. The section first imposed upon the Commissioner of Motor Vehicles the duty of reporting to the Governor the total receipts from the registration of "Gasoline propelled motor vehicles including motorcycles" for the period of one year. The Governor is later directed to compute the difference between the net receipts from the registration of gasoline propelled Motor Vehicles" and double the net revenue derived from the one cent tax on motor fuel. The law then states that if double amount of net revenue derived from the one cent tax on motor fuel shall exceed the net receipts of the registration of "gasoline propelled motor vehicles" the Governor shall certify that fact to the Commissioner of Motor Vehicles and thereafter, beginning January 1st, 1924, the registration fees imposed by Article 56 of the Code of Public General Laws in the case of "gasoline propelled vehicles *equipped with pneumatic tires*" shall no longer be charged or collected, but, in lieu thereof, the Commissioner of Motor Vehicles shall charge and collect a registration fee of one dollar in the case of "gasoline propelled motor vehicles *equipped with pneumatic tires* owned by a resident of this State, and intended to be operated herein." It will be noted that for the purpose of comparing the revenues produced by the one cent tax and the revenues produced by the old system of registration, the phrase "gasoline propelled motor vehicles" is regularly used. This phrase is clearly broad enough to include all motor vehicles of every kind and description which are propelled by gasoline. When, however, the legislature described the Class to be affected by the result of the computation and the new system made effective by the Act, it used for the first time the phrase "gasoline propelled vehicles equipped with pneumatic tires."

This difference in language was clearly not accidental, because it is repeated in the succeeding sentence where, in the event that double the yield of the one cent tax is less than the net receipts on the registration of "gasoline propelled motor vehicles," the Governor is directed to ascertain the ratio which the difference bears to such receipts from regis-

tration and to apply this ratio "to the sixty cents per horse power now charged in the case of the registration of the "*gasoline propelled motor vehicles equipped with pneumatic tires,*" for the purpose of determining the number of cents per horse power necessary to make up such difference. The Governor is further directed by the Act to certify the figures so ascertained to the Commissioner of Motor Vehicles, and it is provided that from and after January 1, 1924, "said figures shall be the same per horse power to be charged and collected in the case of all "*gasoline propelled motor vehicles equipped with pneumatic tires,*" required by law to be registered in this State in lieu of the rate of horse power now authorized by law." It is insisted that the phrase which I have underscored embraces the motor vehicles included in Class F, and that, therefore, the old rate of one dollar and twenty ($1.20) cents is no longer applicable.

It may well be the fact that practically all motor vehicles used to transport persons for hire are gasoline propelled motor vehicles equipped with pneumatic tires, but from a legal standpoint, I do not believe that such cars are included among the vehicles described as "gasoline propelled motor vehicles equipped with pneumatic tires." That phrase appears only in Class A of Section 141 of the General Motor Vehicle Law, and to such vehicles exclusively is the rate of sixty cents per horse power made applicable. If the reasoning urged was applied to the old law, motor vehicles transporting persons for hire would fall within the general description of motor vehicles having pneumatic tires, and would, therefore, be subject to the sixty cent rate rather than the $1.20 rate. There was never any doubt that the General Assembly in creating Class A and including therein all motor vehicles having pneumatic tires established a group that was definitely defined, and that it created an entirely different group in Class F, when it included therein all vehicles used for transporting persons for hire whether equipped with pneumatic tires or not, In Class A, the test is whether the motor vehicle has pneumatic tires. In Class F the test is whether the motor vehicle is used for the purpose of transporting persons for hire upon any of the high-

ways of the State. When, therefore, the General Assembly with great care referred in the two cent gasoline tax law to motor vehicles equipped with pneumatic tires, and more particularly to the sixty cent per horse power rate charged for the registration of gasoline propelled motor vehicles *equipped with pneumatic tires*, I feel that it intended to refer exclusively to the vehicles embraced within Class A of the General Motor Vehicle Law, and to make the proper reduction of rate apply solely to the vehicles embraced within that Class. It is very probable that the legislature realized that the two cent tax would in all probability yield an aggregate sum less than double the amount derived from the one cent tax. This result would be in accord with the long established principle of economics. It is manifestly the purpose of the law, however, that the total yield from both the two cent law and the license charges shall not fall below the amount formerly received under the old system. To cover this difference the Legislature evidently decided to make no reduction of license charge in the case of motor vehicles used for hiring purposes, but on the contrary to compel them to pay the original license fee and in addition the two cent tax. There is no legal impropriety in such a proposition because it lies within the power of the Legislature to fix the license fee to be paid by all hiring cars without any reference to the fees required for cars privately owned and driven. It cannot be imagined that the Legislature which was so careful to refer to the sixty cent horse power rate formerly used for Class A and clearly indicated the exact manner in which that rate was to be lessened should have made no definite provision whatever for a reduction in the rate applicable to Class F. The logical inference is that no reduction whatever in Class F was intended. From a practical standpoint this conclusion may seem to create a discrimination against motor vehicles used for hiring purposes which is both harsh and unreasonable, but it is not my province to discuss the wisdom of the legislature but merely to ascertain and declare its actual purpose and intent. I feel that the legislature intended the reduction of rate to apply only to those cars to which the sixty cent rate was formerly applicable.

It is, therefore, my conclusion that the 1924 rate for motor vehicles operated for the purpose of transporting persons for hire upon the highways of the State, being those cars embraced within Class F of the Motor Vehicle Law, will continue to be the rate of One Dollar and twenty ($1.20) cents per horse power.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

PAROLE COMMISSIONER.

PAROLE COMMISSIONER—HIS POWERS IN CASES OF MALES AND FEMALES SENTENCED TO VARIOUS REFORM SCHOOLS.

August 4th, 1923.

Hon. Edward M. Parrish,
Parole Commissioner,
Morris Building,
Baltimore, Md.

DEAR SIR: I beg to acknowledge receipt of your favor of the 20th ult. In your letter you desire to be furnished with the powers other than visitorial which are conferred upon you in cases of males and females sentenced to the various reform schools, who may be seeking paroles or pardons, and you refer particularly to the following institutions: Maryland Training School For Boys, St. Mary's Industrial School House of Reformation for Colored Boys, Maryland Industrial Training School for Girls, House of Good Shepherd, Maryland Industrial Home for Colored Girls.

I have examined the law and I find your powers are controlled by Section 7-F of Article 41 of the Code of Public General Laws of Maryland, to be found in Volume 4, wherein it is provided that:

"It shall be the duty of the Advisory Board of Parole (of which you are the successor under sub-section C of Section 3, part 2 of the Acts of 1922, Chapter 29, known as the Reorganization Bill,) to collect all information that may aid it in determining the advisability of recommending to the Governor the conditional pardon of any person sentenced under the laws of Maryland, and wherever said Board shall, upon examination, be of the opinion that both the interests of the State and the interests of any prisoner sentenced under the laws of Maryland would be best subserved by a

conditional pardon, it shall be the duty of said Board to lay before the Governor for his consideration these facts and circumstances which induced their conclusion in that respect."

Under the above quoted part of Section 7-F, your powers are clearly defined and apply to all persons sentenced "under the laws of Maryland." This would, in my opinion, include all persons sentenced to serve in any of the institutions to which your letter refers and which are quoted herein.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

POLICE COMMISSIONER.

POLICE COMMISSIONER OF BALTIMORE CITY—WHEN LIST OF NOMINATIONS MUST BE SUBMITTED BY BOARD OF POLICE EXAMINERS — DATE FROM WHICH ONE YEAR PERIOD SHOULD BE COUNTED.

May 26th, 1923.

H. Lester Muller, Esq.,
Secretary, Board of Police Examiners,
Baltimore, Md.

DEAR MR. MULLER: Important legislation affecting the Police Department of Baltimore City was embodied in Chapter 507 of the Acts of 1922, known as the Police Reorganization Act. Among the sections of the law which were repealed and re-enacted was 745-D. This section makes it the duty of the Board of Police Examiners to ascertain by competitive examination the qualifications of every candidate for appointment to or promotion in the police force, and "to report to the Police Commissioner for the City of Baltimore graded lists of those persons whom they deem qualified for such appointment or promotion from which graded lists all nominations for appointment to or promotion in said police force shall hereafter be made by the said Board of Police Examiners for the City of Baltimore, all such nominations for appointment to or promotion in said police force shall be made in the order in which the names of the nominees appear upon such graded lists." It is then provided that such graded lists and nominations for appointment shall "last and be in effect for one year from the date the said graded list and nominations were furnished and made as herein provided, and null and void after the expiration of twelve months, unless said graded lists and nominations are sooner exhausted by appointment, promotion or rejection by the Police Commissioner."

You state that one of the other effects of Chapter 507 was to abolish the grade of Round Sergeant by the promotion of Round Sergeants to the grade of Lieutenant, as a result of which there remained no eligible list for promotion to the rank of Lieutenant from Sergeant. The examination in this grade was always held in May or June and the list became effective on the first of July. The Board of Examiners, therefore, held an examination in May, 1922 for this grade, making the list effective on July 1st, 1922.

On November 22nd, 1922, the entire list was nominated to the Commissioner. Assuming that the list so furnished is good until July, the Board is now prepared to hold another examination early in June, and the questions that you, therefore, present to me are as follows:

"Do nominations furnished by the Board of Police Examiners stand good for a year from the date thereof? Will it be proper to hold the contemplated examination?"

Chapter 507 became effective on June 1st, 1922. It specifically provided that the graded lists and nominations for the grade of lieutenants heretofore furnished and made should expire on December 31st, 1922. It is evident that the Board of Examiners, realizing that the lists for lieutenants in existence at the time of the passage of the law would be immediately exhausted on June 1st, when the law became effective, and, therefore, without waiting for that contingency to happen ordered a new set of examinations in May, and it was the list created by this examination which became effective on July 1st, and was nominated to the Commissioner on November 22nd.

The real question seems to be whether the one year is to be counted from the date when the list became effective or the date when the list was nominated to the Commissioner. I think the one year requirement was inserted in the law to prevent the lists from becoming stale prior to appointment, and to secure the selection of only those men for appointment and promotion who have within twelve months passed an examination. It, therefore, would be improper, in my judgment, to submit a partial list to the Commissioner, and when that list had been exhausted, to submit another list

and so on until the entire original list created by the examination had been exhausted. This practice would result in an improper extension of the period of time over which a list, resulting from an examination, remained effective. It is obvious, however, that the list cannot be submitted from the date of the examination. I think, therefore, that it is proper to select a date occuring a reasonable time thereafter, during which the results of the examination can be ascertained, as the date upon which said list becomes effective, and that it is thereupon the duty of the Board of Examiners to submit at one time to the Commissioner the entire list of candidates whom they wish to nominate for promotion. Regardless of the time when this list is actually submitted, I feel that the twelve months should run from the date selected as the time when the list becomes effective, and that upon the expiration of that period of one year, all graded lists furnished during the year remaining open become null and void, rendering necessary a new examination.

Of course, if the list is exhausted earlier through appointment, promotion or rejection, it is then within the power of the Board of Examiners to hold another examination for the creation of a new list which in turn would remain operative for a year.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

POLICE COMMISSIONER OF BALTIMORE CITY—RIGHT TO PROHIBIT PARKING OF CARS IN AN ALLEY BY GENERAL REGULATION—FORMS OF REGULATION SUGGESTED.

April 20, 1923.

General Charles D. Gaither,
Police Commissioner,
Baltimore, Md.

DEAR GENERAL GAITHER: In your letter of April 18th, you stated that all the merchants doing business in proper-

ties on Baltimore Street between Calvert and St. Paul Streets, which front in the rear, on what was formerly Bank Lane and is now called Wilkes Alley, have requested you to prohibit the parking of pleasure cars in this alley. They apparently desire that vehicles shall only be permitted to stand in this alley for the purpose of loading and unloading freight or merchandise. You have called to my attention Section 1 of Article 7 of Ordinance 139 of the Mayor and City Council of Baltimore, as a possible basis for action on your part. This section clothes the Police Commissioner with the power to make and enforce "special regulations with regard to the traffic at certain hours when the safety or conveniences of the public will best be subserved thereby.

I do not believe it would be proper for you to promulgate a regulation which draws a distinction between pleasure cars and trucks in connection with the use of this alley. I see no reason why there should not be a general regulation prohibiting the parking of any cars in the alley during certain hours for a longer period than half an hour. This would in all probability eliminate the passenger car which is now parked there and abandoned by its owner for hours at a time, whereas the trucks that come and go with their commodities seldom remain as long as thirty minutes, or, as another alternative, you could announce a general regulation prohibiting the parking of any car for any period of time unless attended by its driver. Other ways of accomplishing the same result through the medium of a general regulation may perhaps suggest themselves to you. Such a regulation would be justified by the terms of the ordinance quoted, because it will not only reduce the danger in the event of fire, but will also tend to keep the alley open for general traffic and thereby increase the convenience of the public.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

POLICE COMMISSIONER OF BALTIMORE CITY—"SAFETY ZONES" NOT DEFINED BY LAW—THEIR EXISTENCE A QUESTION OF FACT — POWERS OF COMMISSIONER WITH RESPECT THERETO.

July 5th, 1923.

General Charles D. Gaither,
Police Commissioner,
Court House,
Baltimore, Md.

MY DEAR GENERAL GAITHER: In a recent letter you enclosed a communication received by you from the Automobile Club of Maryland asking you to construe as "safety zones" the spaces alongside the track of the United Railways & Electric Company at Roland Park, inside of the posts erected at the intersection of streets, etc. by that company as well as the loading and unloading platforms of said Railway Company along the roads of the suburbs.

You state that you entertain some doubt as to the right of your Department to designate these places as "safety zones" and by such action to relieve drivers of the requirements to stop in the rear of street cars traveling in the same direction which have stopped to take on or discharge passengers, and ask me to advise you with reference thereto.

The subject of "safety zones" was discussed recently by the Court of Appeals in the case of Dashiell vs. Jacoby, the opinion of the Court being printed in the Daily Records on June 26th, 1923. In the course of this opinion, the Court used the following language:

"The statute does not define 'safety zones,' does not say what shall be deemed such, or who shall determine how they shall be controlled. It certainly does not in terms authorize the Court to say what a safety zone is, and people may well differ about it. Some might deem themselves very much better protected from automobiles and other motor vehicles by being on a platform erected above the level of the street than by simply having guardrails or chains on posts placed on the level of the Streets.

"It would seem that there ought to be some person or body authorized to determine what they should be in different localities, as it is unquestionably very dangerous to have automobiles and other motor vehicles running by street cars, which are taking on or letting off passengers. Anyone who uses street cars to any extent has probably observed that some drivers of automobiles are particularly careless and indifferent to the safety of others getting on or off street cars, but if there is a platform built, as we understand the one in question to be, passengers getting off the cars can stand on the platform until they have the opportunity to see whether an automobile or other vehicle is approaching, and might be better protected than by some other arrangement. But, however, that may be, the difficulty is that there is nothing in the statute or elsewhere, so far as we have found, which defines what a safety zone is, and that being so, we do not see how the Court could say as a matter of law, that the platform was not a safety zone, within the meaning of the statute."

It is evident, therefore, that the designation by your Department of "safety zones" does not have the effect of making them such as a matter of law. In every case under existing legislation, it must be determined as a question of fact, whether a particular place is actually a "safety zone." It will probably be proper to offer in testimony when such a question is in issue, the fact that your Department has consented to the recognition of a certain place as a safety zone, and the further fact that in pursuance thereof, such a place has been actually treated as a safety zone by the Railway Company, and the public generally.

I feel that you have as much right, therefore, to designate as "safety zones" the spaces referred to in the letter from the Automobile Club of Maryland, as you have to create the safety zones which you have already established in the City. The final determination of the matter rests within your own discretion.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

STATE INDUSTRIAL ACCIDENT COMMISSION.

STATE INDUSTRIAL ACCIDENT COMMISSION — INDEPENDENT CONTRACTOR MUST PROTECT HIS OWN EMPLOYEES BY POLICY ISSUED TO HIM—CANNOT CONTRACT WITH ANOTHER TO ASSUME THE RESPONSIBILITY.

January 11, 1923.

James E. Green, Esq.,
Superintendent, State Accident Fund,
Equitable Building,
Baltimore, Md.

MY DEAR MR. GREEN: Your letter of January 6th presented to me the following facts:

The Cohn & Bock Company, of Princess Anne, Maryland, which is engaged in manufacturing building material, berry crates, etc., has contracted with a Mr. E. Walton Pusey to go into the woods and saw and stick lumber at $4.00 per thousand feet. This wood is now owned by the Cohn & Bock Company, having been recently purchased by it from a Mr. Harrington, who will deliver it on the logways of his saw mill and permit this mill to be used by Mr. Pusey in carrying out the latter's contract. The Cohn & Bock Company has notified you that it has agreed to protect the men of Mr. Pusey in its own compensation policy, but will not include therein Mr. Pusey himself as Mr. Pusey is not to be paid wages for the work to be performed by him, but will expect to make a profit on the contract price above mentioned.

I assume that Mr. Pusey will employ and discharge the men used by him in carrying out this contract with the Cohn & Bock Company, will pay them and have absolute control over them. If this be true, he is the employer of these men and the Workmen's Compensation Law imposes

upon him and upon him alone the duty to protect them through a policy of insurance issued in his name. Mr. Pusey cannot relieve himself of this duty by any contract. His employees, if injured, will acquire no rights against a third party, and no protection under any policy issued to such party. They must look to Mr. Pusey and to his insurer for their compensation.

I, therefore, feel that the arrangement above suggested cannot legally be carried out. A separate policy must be issued to Mr. Pusey protecting those who are employed by him. The issuance of such a policy will not only meet the requirements of the law, but will tend to remove any uncertainty as to the status of Mr. Pusey as an independent contractor. It will, of course, be entirely proper for the Cohn & Bock Company, in its contract with Mr. Pusey, to agree to pay, in addition to the $4.00 per thousand feet, the premiums on any compensation policies which, under the law, he will be required to carry by reason of his contract. These policies, however, must be issued to Mr. Pusey personally and he alone will be primarily liable for the premiums due thereon.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

STATE INDUSTRIAL ACCIDENT COMMISSION—GOLF CLUB NOT CARRIED ON FOR PECUNIARY GAIN—ITS EMPLOYEES NOT COVERED BY ACT.

February 21st, 1923.

State Industrial Accident Commission,
Equitable Building,
Baltimore, Maryland.

GENTLEMEN: I beg to reply to your letter of January 18th, asking my opinion as to whether or not a Country

Golf Club would be compelled to carry compensation insurance in this State. I note from the correspondence attached to your letter that this question arises at the instance of The Town and Country Golf Club, Incorporated, with club house and links at Bethesda, Montgomery County, Maryland. I have not seen the charter of this corporation, but the correspondence indicates that it is a non-stock corporation, organized for social and pleasure purposes, for the benefit of its members, and not operated for pecuniary profit.

I understand that the club-house is in charge of a steward who in turn employs the necessary house-men, waiters and cooks, and that the Club employs directly the necessary help to keep the golf course and grounds in condition. I presume that the Club grants authority to the caddies to work and exercise the right to discharge them, while the caddies are paid for their services by the members whom they serve.

While I regard the determining factor of this matter to be whether or not this corporation is operated for pecuniary gain, before taking up that question I will make a few observations on the many interesting features of this matter.

The steward is apparently the agent of the Club in employing the house-men, waiters and cooks. But the services of those employed at the Club house are not in my opinion extra-hazardous within the meaning of our Workmen's Compensation Act. An employer, however, may employ workmen in extra-hazardous employment and at the same time may employ other workmen in employments not extra-hazardous, in which case the provisions of the Act apply only to the extra-hazardous employments, unless by joint election the employer and the employee engaged in work not extra-hazardous subject themselves to the provisions of the Act. Within the meaning of the Act, therefore, it is possible that the men employed to keep the grounds in condition and the caddies may be engaged in work that is extra-hazardous.

An interesting case, and the only one of its kind that has come to my attention, arose in California, in which a caddy was deemed to be an employee, within the California Workman's Compensation Statute of 1913, of the country club

whose members utilized his services in playing golf, though he was paid by the players he served through the Club's Caddy Master. The decision was based on the fact that the employment and discharge of the caddy during all of the time he was not actually in the service of a member was wholly under the control of the club. (See Claremont Country Club vs. Industrial Accident Commission of California, 163 Pacific, 209). The Court in its opinion drew an analogy with the waiters of a hotel, who sometimes receive no compensation save the tips from the guests, and who in some known instances actually pay the hotel for the privilege of acting as waiter. In this California case an award to the caddy by the Commission of $1,170.00 and some expenses, was approved upon appeal. However, the California Act did not distinguish between employers operating for and those not operating for pecuniary gain.

In my opinion the men engaged in keeping the grounds in condition as well as the caddies are engaged in extra-hazardous employment within the Maryland Act.

However, Section 63, paragraph 4, of the Act, provides:

"Employment includes employment only in a trade, business or occupation carried on by the employer for pecuniary gain."

The term "pecuniary gain or profit" may be defined as follows:

"Pecuniary profit is a term used with reference to a corporation which means for the pecuniary profit of its stockholders or members." Santa Clara Female Academy vs. Sullivan, 116 Illinois, 375; cited in 30 Cyc. 1328.

While the Workman's Compensation Acts of the various States are exactly similar in a great many respects, they are not uniform in excluding from the operation of the Act those employers not operating for pecuniary gain. New York's Act, however, is similar to Maryland's in this respect. Schneider in his work on Workman's Compensation Law, at page 128, cites a New York case holding that the harvesting of ice for a farmer for farm purposes and not as a business or for pecuniary gain, is not within the New York Act. By

way of argument it would seem that if a farmer doesn't cut ice for pecuniary gain within the meaning of the Act, surely a Golf Club conducted for the pleasure of its members is not operating for pecuniary gain.

It is my opinion that under Section 63, paragraph 4, above cited, the Golf Club is not carried on for pecuniary gain, and that none of its employees are entitled to the benefits of the Workman's Compensation Act.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

STATE INDUSTRIAL ACCIDENT COMMISSION — METHODS OF DISTRIBUTING APPROPRIATION COVERING UNPAID CLAIMS UNDER MINERS' AND OPERATORS' RELIEF FUND.

March 5, 1923.

Senator George Louis Eppler,
State Industrial Accident Commission,
Baltimore, Md.

DEAR SENATOR EPPLER: In your letter of February 28th you called my attention, in behalf of the State Industrial Accident Commission, to the appropriation contained in the Executive Supplemental Budget embodied in Chapter 500 of the Acts of 1922, (page 1337) which reads as follows: "For unpaid claims under the Miners' and Operators' Relief Fund, to be expended under the direction of the State Industrial Accident Commission, $3852.45." It seems that House Bill No. 36 introduced at the 1922 session of the General Assembly by Mr. Stevenson of Allegany County, authorized and directed the State to pay to the Allegany County Commissioners from the State Accident Fund the sum of $3852.-45, for and on behalf of certain claimants in Allegany County, this amount being composed of the balances due

and unpaid on death claims arising under the Miners' and Operators' Relief Fund established in 1910 and repealed in 1914. The bill set out an itemized list of the claimants and the amounts due each respectively. It failed of passage, but the aggregate amount referred to therein was, after full investigation on the part of Governor Ritchie, included by him in his supplemental budget. You ask me to advise you as to the proper and legal method to be pursued by the State Industrial Accident Commission in receiving and distributing the appropriation to which I have referred.

It occurs to me that either one of two methods would be entirely proper. The State Industrial Accident Commission after making a thorough investigation of the legality and correctness of the various claims could file with the Comptroller over the signatures of members of the Commission and the seal of the Commission, a list of the parties entitled, in the judgment of the Commission, to participate in the distribution of this appropriation, together with a statement of the amount due respectively to each of said claimants. Acting upon this authority the Comptroller could then distribute directly to the claimants protecting himself by taking the receipt of each claimant at the time of payment. As an alternative procedure, the State Industrial Accident Commission could include in one of its requisitions upon the Comptroller, a request for the payment to it of the whole or a certain portion of this appropriation according to an itemized list set forth in said requisition showing the names of the parties considered by the Commission to be entitled to participate in the distribution and the amount due each respectively. The Commission, upon the receipt from the Comptroller of the amount requested could then make distribution, demanding proper vouchers at the time of payment to the claimants.

It is perfectly apparent, from the amount and history of this appropriation, that the Governor and the General Assembly intended that the money should be distributed to the various parties mentioned in Mr. Stevenson's bill and in the amounts therein set forth, provided the State Industrial Accident Commission after investigation approved of their

respective claims. The only possible question left open was the manner of distribution and I feel that either one of the methods suggested herein will be protective both of the Commission and the office of the Comptroller.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

STATE INDUSTRIAL ACCIDENT COMMISSION — DISTRIBUTION OF MINERS' AND OPERATORS' RELIEF FUND.

March 9, 1923.

Senator George Louis Eppler,
State Industrial Accident Commission,
Baltimore, Md.

DEAR SENATOR EPPLER: I have just received your letter of March 8th, relative to the payment of the claims against the Miners' and Operators' Co-Operative Relief Fund. You state in this letter that after checking over all the claims you have discovered that they exceed by the sum of $402.51 the amount appropriated in the Budget for 1923 for this purpose. This appropriation was, however, to be disbursed under the supervision and direction of the State Industrial Accident Commission, and only such claims can ultimately be paid therefrom as have first been approved by the Commission. I assume that your power extends not only to the claim itself, but also to the amount thereof and that therefore you will be at liberty to make such adjustments as will bring the aggregate of claims allowed within the total of the appropriation. I know of no other method by which the situation can be handled promptly. I feel certain that the various claimants will be perfectly satisfied to agree to slight reductions in their claims if assured of immediate payment of the major portion thereof.

With kindest regards, I am,

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

STATE INDUSTRIAL ACCIDENT COMMISSION—EMPLOYEES OF SANITARIUM FOR NERVOUS AND MENTAL DISORDERS COVERED BY ACT IF DUTIES EXTRA-HAZARDOUS—ALL NURSES AT SUCH A SANITARIUM PROTECTED, INCLUDING THOSE EMPLOYED BY INSTITUTION BUT PAID BY PATIENT.

March 10, 1923.

James E. Green, Esq.,
State Accident Fund,
Equitable Building,
Baltimore, Md.

MY DEAR MR. GREEN: Your letter of March 6th presented to me the following facts: A sanitarium, conducted for pecuniary gain, is owned and operated by a specialist in nervous disorders for the reception and treatment of persons afflicted with such troubles. Frequently the patients who are received by this Doctor in his sanitarium are mentally deranged, and the purpose of the treatment given them is to relieve, and, if possible, correct entirely their disordered mental condition. At this sanitarium two classes of nurses are employed; in the first catagory should be placed those nurses who are retained regularly upon a weekly salary which is paid by the sanitarium. It is possible that bills for their services may be made against the patient, but the sanitarium derives a profit from the services rendered by these nurses. There is another class of nurses who may or may not be regularly employed by the sanitarium. A list of these nurses is kept on record and they are called upon to render exclusive service to individual patients, for which services the patient pays, the sanitarium deriving no profit from such services, although it pays the nurses weekly and charges the full amount on the bill of the patient. Other employees of the sanitarium are cooks, chambermaids, laundresses, attendants and persons who attend to the grounds and furnace, etc.

You ask me to answer two questions; first, which employees of this sanitarium are covered by the Workmen's

Compensation Law? Second, is the nurse of the second class above mentioned covered by the Act, and if so, who is the employer of such a nurse? It is practically impossible for me to answer in any definite and precise way your first inquiry. If the employees mentioned by your letter are engaged in employments which are entra-hazardous they are, of course, embraced within the meaning of the Act. Whether the employment in a particular case is extra-hazardous is a question of fact depending upon the circumstances and conditions relative to the particular employment. The legal result may be completely altered by a very slight modification of the facts, and I think you must wait until concrete cases present themselves before I can advise you with any degree of exactness. For example, laundresses who use modern machinery would unquestionably be engaged in an extra-hazardous employment, whereas if they resort to the old fashioned method of soap, water and washboard their work can scarcely be said to be attended with danger.

With reference to your second question, I beg to say that I feel that all of the nurses, without reference to the particular class to which they belong, are engaged in an extra-hazardous employment because of the nature of the trouble from which most of the patients are suffering, and the constant menace of attack to which they are subjected. The first class of nurses are the employees of the sanitarium. It is my opinion that the sanitarium is also the employer of the second class of nurses under the peculiar circumstances mentioned in your letter. It is true that every dollar of these nurses' salaries ultimately comes from the patient, but the patient does not pay the money directly to his nurse. On the contrary she receives her salary regularly from the sanitarium itself; she is selected by its management from a list of nurses which it creates and maintains, she is subject to its rules, regulations and discipline and is in every respect one of its employees brought into the institution by direction of its management to render in its behalf a service to one of its patients. Such a nurse could not possibly be employed in the sanitarium without its management's acqui-

escence and approval, and her services could be terminated at any time by the same authority. It has been held in California that the Workmen's Compensation Law of that State applies to a nurse who is an employee of the Hospital in which she works even though the hospital makes a special charge to the patient for the nurse, and only pays that amount to the nurse when it has been paid by the patient. Williamson vs. St. Catherine's Hospital, 11 N. C. C. A. 497.

The legal situation of such a nurse is closely analogous to the golf caddie who is secured and controlled by the Caddie Master, but who renders his service to the player and derives his entire compensation from the player. Nevertheless such a caddie has been held to be protected by the Workmen's Compensation Law of California.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

STATE INDUSTRIAL ACCIDENT COMMISSION—CHAPTERS 303 AND 529 OF THE ACTS OF 1922 TO BE CONSTRUED TOGETHER—PROVISION ELIMINATING $2000 SALARY LIMIT REMAINS EFFECTIVE.

May 22nd, 1922.

James E. Green, Esq.,
Superintendent, State Accident Fund,
Equitable Building,
Baltimore, Md.

MY DEAR MR. GREEN: I beg to answer your letter of May 16th, in which you request me to pass upon the following question:

Chapter 303 of the Acts of 1922 made changes in certain sections of the Workmen's Compensation Act, among them sub-section 3 of Section 63. This Act was introduced as

House Bill No. 50, and the bill as originally printed shows that the sole purpose of amending sub-section 3 or Section 63 was to strike out the words "or any employee whose salary is in excess of $2,000.00 a year," thus eliminating the salary limit of $2,000.00 and conferring the benefits of the law upon all employees, regardless of the amount of salary received."

Chapter 529 of the Acts of 1922 was passed for the sole purpose of amending sub-section 3 of Section 63 of the Workmen's Compensation Act. It was introduced as House Bill No. 250, and the original bill shows that the language of the section as it then stood was followed literally, including the clause: "or any employee whose salary is in excess of $2,000.00 a year," and that a new section was then added, giving the whole Act certain extra-territorial effect.

These bills were signed by the Governor on the same day. Chapter 303, having been passed as an emergency measure, became effective at once. Chapter 529 will not become effective until June 1st, no reference to this subject having been contained in the Act itself. It will thus be seen that the language of Chapter 529 is in direct conflict, as to the $2,000.00 salary limit, with the provisions of Chapter 303, and, if given effect, will work a repeal of the very reform accomplished by the same Legislature by its inclusion in Chapter 303 of an amendment of sub-section 3 of Section 63.

As a matter of first impression, I was inclined to think that my ruling must be controlled by the decision of the Court of Appeals in the case of State vs. Davis, 70 Md. 237. In this case it appeared that the General Assembly of 1886 had passed on different days two Acts relating to marriage licenses with provisions irreconcilably inconsistent. Both Acts were approved, however, on the same day. It was held that in the absence of evidence to the contrary these statutes would be presumed to have been approved in numerical order and that the Act bearing the larger chapter number would be considered the latest expression of the legislative will. In that case the first Act, known as Chapter 261, became effective on June 1st, whereas the later, designated as Chapter 497, went into effect in accordance with its own

express terms on the first day of July. It was held that the first of these Acts became effective on June 1st, and was, therefore, the law for one month, when it was superseded by Chapter 497.

See also Musgrove vs. B. & O. R. R. Co. 111 Md. 629.

These cases seemed, at first sight, to be closely analogous to that presented by your letter. In both of them, however, the Court dwelt on certain considerations with regard to the general effect of the legislation there in question which are not relevant to that now under discussion, and in neither of them was the history of the respective Acts, in their passage through the Legislature, noticed in detail.

In the later case of Baltimore vs. German-American Fire Insurance Co., 132 Md. 380, the decision turned largely upon this question of legislative history, the Court laying particular stress upon the fact that the earlier bill with which that case was concerned "had not passed the Senate, in which it was offered, and, of course, had not reached the House, at the time the later bill was offered in the House." For reasons springing from these considerations, the Court held that there was no intention to be implied, from the passage of the later bill, to repeal the amendments introduced by the earlier bill into the pre-existing law, but that the two Acts must be construed together.

It would seem that, in the case now before me, a still stronger argument for this view is presented. The history of the two Acts is as follows:

CH. 303—HOUSE BILL 50.	CH. 529—HOUSE BILL 250.
First reading Jan. 18—Journal 62.	First reading Feb. 9—Journal 207.
Second reading, Feb. 8—Journal 183.	Second reading Feb. 14—Journal 272.
Third reading Feb. 10—Journal 245.	Third reading Feb. 20—Journal 338.

SENATE.	SENATE.
First reading Feb. 13—Journal 141.	First reading Feb. 21—Journal 220.
Second reading Mar. 22—Journal 638.	Second reading (amended) Mar. 29 — Journal 836.
Third reading Mar. 30—Journal 895.	Third reading Mar. 30—Journal 906-7.
HOUSE.	HOUSE.
Return from Senate Mar. 31—Journal 1190.	Return — concurrence in amendment—Mar. 31—Journal 1187.

From the above, it appears that the later bill was introduced in the House of Delegates on the day before that body had passed the earlier bill, that both bills passed the Senate on the same day, and that, on the very day on which the House concurred in the Senate amendment to the later bill, it had before it, as part of the same message from the Senate which showed this amendment, a statement that the earlier bill had finally passed the Senate.

Although in the opinion filed in the case last cited no mention was made of the earlier cases to which I have referred, I feel that the principle laid down in that case should be applied to the facts now before me. These facts are to be distinguished from those presented in State vs. Davis, *supra*, in which the later Act was more comprehensive than the earlier Act, whereas here the reverse is true.

Bearing in mind this distinction and basing my conclusion on the decision in Baltimore vs. Fire Insurance Co., *supra*, I hold that Chapter 303 and Chapter 529 of the Acts of 1922 are to be construed together, and that the language quoted at the beginning of this opinion which was eliminated from sub-section 3 of Section 63 by Chapter 303, was not restored to that sub-section by the subsequent passage of

Chapter 529. The elimination of the salary limit, therefore, stands.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

STATE INDUSTRIAL ACCIDENT COMMISSION—STATE FUND MAY REIMBURSE ITSELF BY SUIT AGAINST OWNER OR DRIVER OF CAR RESPONSIBLE FOR INJURIES TO INSURED EMPLOYEE.

June 9th, 1923.

James E. Green, Jr., Esq.,
Superintendent, State Accident Fund,
Baltimore, Md.

MY DEAR MR. GREEN: In your letter of June 8th you ask me to advise you as to the action which may be taken by the State Accident Fund to reimburse itself for compensation now being paid to a certain William Snowden under the following circumstances:

On May 22nd, 1923, Snowden while driving an automobile for his employer, George F. Obrecht, was struck by the tongue of a wagon of the Wernig Transfer Company. The wagon of the Wernig Transfer Company was coming east on Pratt Street and as it approached Howard Street, one of the two horses attached to it was struck by a Ford automobile which turned out of Howard Street into Pratt. As a result of this collision, the horses of the Wernig Transfer Company were frightened and ran away. Its driver was thrown off and injured, and the wagon itself collided with the Obrecht truck, causing the injuries to Snowden which are the basis of the compensation now being paid him.

In my judgment the Wernig Transfer Company cannot be held responsible to George F. Obrecht, employer, and the

State Accident Fund, Insurer, for the expenses imposed upon them as a result of the injury sustained by Snowden. There is no indication whatever of any negligence on the part of the Wernig Transfer Company or its employee. The fault apparently lies exclusively with the driver of the Ford car and the whole occurrence was an unpreventable accident so far as the Wernig Transfer Company was concerned entirely beyond the anticipation or control of the driver of his wagon. I, therefore, feel that it will be necessary for you to ascertain if possible the owner or driver of the Ford machine and impose the liability upon him.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

STATE INDUSTRIAL ACCIDENT COMMISSION—MARYLAND LAW DOES NOT COVER MASTER AND CREW OF VESSELS ON NAVIGABLE WATERS.

July 20th, 1923.

Honorable Robert H. Carr,
Chairman, State Industrial Accident Commission,
Equitable Building,
Baltimore, Md.

DEAR MR. CARR: In your letter of July 17th you inform me that in the case of Charles Williams, deceased, which is now pending before the Commission, the following facts have been brought to your attention:

"That the said Charles Williams met his death by drowning in the waters of the Patapsco River while acting in the course of his employment. That his employment consisted of operating a scow in the Baltimore harbor; that the deceased constituted the entire crew of the scow." You request me to inform you whether the State Industrial Accident Commission has jurisdiction over this case.

My opinion is that the State Industrial Accident Commission does not have jurisdiction over this case. By the Act of Congress approved June 10, 1922, amending Sections 24 and 256 of the Judicial Code, the jurisdiction of the Industrial Accident Commissions was extended over navigible waters, but the master and crew were expressly excepted from the provisions of this Act. The decisions of the Supreme Court of the United States construing the former Act and the amendment of June 10, 1922, will be found in Volume 7, page 379 of the official opinions of the Attorney General of Maryland.

The reasoning set forth in that opinion is applicable to the present case. Whether or not the Maryland law is broad enough to cover the case in question becomes immaterial, because if the Maryland law is broad enough, under the decision cited in the opinion in Volume 7, *supra*, it is unconstitutional as to masters and crews.

It is unnecessary to add that this opinion is limited to cases where the employee is either the master or one of the crew. As to other employees, the rule is stated in the opinion in Volume 7, *supra*.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

STATE INDUSTRIAL ACCIDENT COMMISSION—GOVERNMENT EMPLOYEES NOT COVERED BY MARYLAND ACT.

November 13th, 1923.

State Industrial Accident Commission,
Equitable Building,
Baltimore, Md.

GENTLEMEN: I beg to reply to the letter of October 19th from your Secretary, Mr. Brown, in which he enclosed a

letter of October 17th from the Superintendent of the United States Naval Academy at Annapolis, to your Commission, requesting certain information relative to government employees at the Naval Academy.

The letter asks for information covering compensation laws of Maryland, if any, that apply to the government employees at the Naval Academy working in the Commissary Department, Tailor Shop, Midshipmen's Store on the Naval Academy grounds at Annapolis, and at the Naval Academy Dairy Farm at Gambrills, in Anne Arundel County.

The Workmen's Compensation Act covers employees of the State, County, City or any municipality, engaged in extra hazardous work as well as, of course, the employees of any individuals or corporations. However, the Act does not cover the employees of the United States Government. In fact, I do not think that the State of Maryland could legally pass an act covering government employees.

I return herewith the above mentioned letter of October 17th.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

STATE INDUSTRIAL ACCIDENT COMMISSION—RIGHT TO COMPENSATION OF PERSON INJURED WHILE EMPLOYED BY STATE FORESTER TO FIGHT FOREST FIRES.

November 23rd, 1923.

F. W. Besley, Esq.,
State Forester,
Baltimore, Md.

DEAR SIR: I desire to answer your letter of November 8th in which you refer to the citizen of Frederick County who was severely burnt last spring while assisting a State Forest Warden in fighting a forest fire.

Section 35 of the Workmen's Compensation Law as amended by Chapter 303 of the Acts of 1922 declares that "Whenever the State . . . shall engage in any extra hazardous work, within the meaning of this Act, whether for pecuniary gain or otherwise, in which workmen are employed for wages, this Act shall be applicable thereto."

I think that under this provision the party who was burnt while employed by the State to fight a forest fire, might have a claim for compensation. At any rate, I think the statute quoted may be considered as a basis for an allowance of his bill for his medical services, and I would suggest that in pursuance of Section 7, Chapter 161 of the the Acts of 1910, the bill for $69.00 be considered as one of the expenses incurred in fighting and extinguishing a fire under the direction of the Forest Warden.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

STATE INDUSTRIAL ACCIDENT COMMISSION—EMPLOYEES AT MIDSHIPMEN'S STORE, TAILOR SHOP AND NAVAL ACADEMY DAIRY FARM—APPLICABILITY OF MARYLAND COMPENSATION LAW DEPENDS UPON PLACE WHERE DUTIES ARE PERFORMED AND NATURE OF SUCH DUTIES.

November 28th, 1923.

A. E. Brown, Esq.,
Secretary, State Industrial Accident Commission,
Equitable Building,
Baltimore, Md.

DEAR SIR: I have just received your letter of November 26th, accompanied by a communication addressed to you by Rear Admiral Wilson, Superintendent of the Naval Academy at Annapolis.

He desires to know whether or not the employees of the Midshipmen's Store, Tailor Shop and the Naval Academy Dairy Farm are protected by the Maryland Workmen's Compensation Law.

The employees of these organizations are not government employees, are not paid by the Government and are not accorded any privileges usually conferred upon government employees. The amount involved in operating them is prorated monthly and charged against the account of each Midshipman. It does not appear in the law where these employees actually render their services.

If the store, the shop and the farm are all located without the government reservation and upon land which is included within the territory over which Maryland has full jurisdiction, the provisions of the Workmen's Compensation Law would unquestionably apply. The real test would be whether or not the particular activities constitute extra-hazardous employment within the meaning of the law. Of course if any of these enterprises are conducted within the area owned by the United States Government, I do not think that the Maryland Commission would have any jurisdiction.

I have not gone into the matter in great detail, but have merely expressed my general views on the subject.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

STATE PURCHASING AGENT

STATE PURCHASING AGENT—MUST MAKE ALL PURCHASES OF MATERIALS, SUPPLIES, MERCHANDISE, ETC., INCLUDING PURCHASES WITH FUNDS DERIVED FROM SALE OF BONDS.

May 25th, 1923.

Walter N. Kirkman, Esq.,
Central Purchasing Bureau,
Baltimore, Md.

MY DEAR MR. KIRKMAN: In a recent letter you asked me to advise you whether the law under which your Board operates exempts from purchase by your office articles of equipment, such as furniture and institutional furnishings, when the cost of the same is paid by the Board of Public Works out of the receipts from the sale of State bonds. Your letter does not present any specific case or indicate by whom the purchases in question are to be made. It may be that the authority to buy the equipment is lodged by the Act in the Board of Managers of the Institution receiving the same, although the purchase money is to be provided by the Board of Public Works.

From a reading of the whole Act, it seems clear to me that the Legislature intended that all purchases of supplies and materials for the benefit of the State should thereafter be made solely and exclusively through the Central Purchasing Bureau. The language used in Section 3 could not be more sweeping or emphatic. It declares that "from and after January 1st, 1921, every State officer, Board, Department, Commission and Institution hereafter called the 'using authority' shall purchase all materials and supplies, merchandise and articles of every description through and with the approval of the Central Purchasing Bureau."

No doubt concerning the applicability of this provision would arise except for the fact that the procedure outlined in subsequent sections of the Act does not seem sufficiently comprehensive to embrace the case which you present. Section 4, after providing for the furnishing of invoices by the Contractor, their approval and transmission to the Comptroller, declares that "such invoice shall be the authority for the Comptroller to pay the amount due thereon out of the amount appropriated therefor by the General Assembly in the Budget Bill."

It is suggested that the operation of the Act is thereby limited to expenditures made from Budget appropriations. It is obvious, however, that the law has a wider scope because, in the succeeding section, it is made unlawful for any using authority "whose salaries and expenses are paid from the fees of his office," to pay for any articles purchased unless the invoice has been approved by the Purchasing Bureau.

I feel that these latter provisions merely provide the procedure to be followed in connection with the particular purchases to which they apply, but they do not limit the underlying requirement of the law that all purchases shall be made with the approval of your Board. I am not passing upon any specific case which you may present later, if you so desire, but I do rule as a fundamental proposition that all purchases of materials, supplies, merchandise and articles made by any State officer, Board, Department, Commission or Institution should be effected through and with the approval of the Central Purchasing Bureau.

Of course, you will understand that if the Act of the Legislature authorizing the issuance of bonds either expressly or by necessary implication directs the manner in which the proceeds of the bonds shall be expended and the agency through which such expenditures shall be made, an entirely different situation will be presented.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

STATE ROADS COMMISSION

STATE ROADS COMMISSION—FUNERAL PROCESSION CROSSING HAVRE DE GRACE AND PERRYVILLE BRIDGE NOT ENTITLED TO TOLL EXEMPTION.

April 10th, 1923.

John N. Mackall, Esq.,
State Roads Commission,
Baltimore, Md.

DEAR MR. MACKALL: A novel and interesting question was presented by your letter of April 5th. It was accompanied by a communication from James J. Doherty, an undertaker of Wilmington, Del., who stated that he was charged $4.45 for a hearse and five automobiles and the passengers therein when crossing the Havre de Grace and Perryville Bridge, now owned by the State, and $3.95 upon his return with the hearse and four automobiles and the passengers therein. You desire to be informed whether any duty rests upon you to rebate to Mr. Doherty the amount of toll paid by him. Your inquiry raises the question as to the right of funeral processions to cross, without charge, the Havre de Grace and Perryville Bridge.

Mr. Doherty's claim of exemption is based upon the provisions of Section 213, Article 27, Volume 3 of the Code, which is a codification of Chapter 24 of the Acts of 1867, and reads as follows:

"No turnpike, bridge or ferry company, and no proprietors of any turnpike or other road, bridge or ferry, shall collect any tolls upon any carriages or other vehicles or horses going to or returning from any funeral; every toll gatherer who shall knowingly collect any tolls contrary to the above provisions, or who shall knowingly refuse to allow any horse or vehicle going to or returning from a funeral to pass without payment of toll, shall forfeit and pay for every such of-

fense a sum of not less than fifty dollars and not more than one hundred dollars, one-half to the informer and the other half to the State; and the company or other parties owning such road, bridge or ferry shall also be responsible for the same."

A careful analysis of this statute has led me to the conclusion that it was intended to apply solely to private companies and proprietors and not to the State itself when acting in a proprietary capacity. At the time the statute was passed, toll roads, bridges and ferries were owned and operated exclusively by individuals or combinations of individuals, the State having not yet entered this sphere of activity. It could scarcely have been contemplated that an agent of the State, acting in behalf of one of the State's administrative commissions, and under its direction, should be subject to prosecution by the State, acting through its prosecuting officials, for an act done in the performance of his duties. The owner of the bridge, by the final clause of the statute, is made responsible for the fine, which would mean that the State would be obliged to pay a fine, one-half of which would go to the informer and the other half be returned to itself. Under the Budget System no such payment would be authorized unless an appropriation had been made for the purpose, and in any event it is highly improbable that the State should undertake to subject itself to the payment of a penalty on a criminal charge.

I think that the question is also answered by a consideration of Chapter 494 of the Acts of 1922, under which the State acquired the Havre de Grace and Perryville Bridge. Section 9 of that Act confers upon the State Roads Commission the authority to charge such tolls to all users of the bridge for vehicular traffic as may be determined by the State Roads Commission itself, but within certain limits set forth in detail in the Act. This section contains no exception whatever in favor of funerals, and having been passed as recently as 1922 takes precedence over a statute adopted in 1867.

I do not think, therefore, that you can be compelled, as Chairman of the State Roads Commission, to refund the

tolls which were received by you from Mr. Doherty. You will note, however, that while the Act of 1922 prescribes maximum limits for the tolls that may be charged by the State Roads Commission, no minimum restriction is imposed upon the discretion which the Commission may exercise in this matter. It has unquestionably been the policy of the State since 1867 to require all private individuals and organizations controlling roads, bridges and ferries to refrain from making charges to funeral processions and those attending funerals. The spirit of this provision, which has apparently met with public approval for so long a period, will be observed by you if, in the exercise of the discretion with which your Board is clothed, you can see your way clear, until there has been further legislation on the subject to grant the usual exemption to those attending and returning from funerals, and to the funeral procession itself.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

STATE ROADS COMMISSION — ADDITIONAL WIDTH OF CONCRETE ROAD TO BE ADDED BY MAYOR AND COUNCILMEN OF FROSTBURG TO BOTH SIDES OF ROAD CONSTRUCTED BY STATE—PROPER PROCEDURE IN LETTING BIDS AND CONDUCTING WORK.

June 28th, 1923.

Paul L. Hitchins, Esq.,
Attorney at Law,
12 Water Street,
Cumberland, Md.

MY DEAR MR. HITCHINS: In your letter of June 16th you state that the State Roads Commission intends to construct a fifteen foot concrete road in the center of West Main

Street in Frostburg, from Percy Cemetery Alley to the corporate limits in a westerly direction, and that the Town intends to pave on each side of the center strip for the purpose of making an improved street not less than twenty-eight feet nor more than thirty-two feet wide. Mr. Mackall, Chairman of the State Roads Commission, desires to let the contract for the entire street, including the portion to be constructed by the town. In behalf of the Mayor and Council of Frostburg, you ask me to advise you whether this procedure would result in invalidating the street paving liens established by the provisions of Section 153 of Chapter 31 of the Acts of 1922 by which the Charter of Frostburg was recently amended.

In view of the fact that I represent the State Roads Commission, and there may be some possible conflict either now or in the future between this Commission and the municipality of Frostburg, I am reluctant to furnish you with an official ruling on the question presented. I submit, however, the following informal expression of my views.

Under Section 153 the Mayor and Councilmen of Frostburg are clothed with "full power and authority, whenever in their judgment the public interests or convenience may require, to have any street . . . or part thereof, in said city, graded, paved, curbed and to apportion the expense of such improvement . . . among the owners of lots fronting on said streets, so that one-third of such expense shall be borne by the owners of each abutting lot on each side of said street, and the remaining third of such expense shall be paid by said city."

It is later provided that any sum of money levied by the Mayor and Council on the owners of the property for paving or otherwise improving streets, shall become a preferred lien upon said property in the same manner as city taxes. The usual rule is that no charge of this character can actually become a lien upon the property of an individual unless the procedure outlined in the statute establishing the lien, has been strictly followed.

You will observe that the authority conferred upon the Mayor and Councilmen extends to the paving not only of a

street, but any part thereof. I do not think that this language need be restricted to a complete cross section of any street, but feel that it includes as well any vertical section less than the entire width which the Mayor and Councilmen may select. Therefore, the Mayor and Councilmen are apparently empowered to authorize the paving of two strips either 6½ or 8½ feet wide bounding on each side of the fifteen feet of concrete road to be laid by the State Roads Commission. The language of the Act is that the Mayor and Council shall have the power and authority to have any street paved. It is my opinion that the duty rests upon the Mayor and Councilmen to exercise their discretion in the letting of any such contract, and that they do not possess the power to delegate to others any authority possessed by them in this connection. Therefore, the Mayor and Council cannot, in my judgment, legally permit the State Roads Commission to let a contract for the entire width of the proposed improved street which will become an obligation against the Municipality or the basis of a lien on the property of certain of its citizens. I see no reason, however, why the State Roads Commission, and the Mayor and Council of Frostburg should not ask for bids covering their portions of such streets and, if possible, let the contracts to the same contractor, who could charge said governmental agencies with the construction costs due from each of them respectively. Under such circumstances the City's liens against the adjoining property owners will not, in my opinion, be impaired and the uniformity of construction which the city desires will be secured.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

STATE ROADS COMMISSION — SANITARY COMMISSION OF ANNE ARUNDEL COUNTY POSSESSES AUTHORITY TO OPEN STATE ROADS WITHOUT CONSENT OF STATE ROADS COMMISSION.

July 5th, 1923.

J. N. Mackall, Esq.,
Chairman, State Roads Commission,
Garrett Building,
Baltimore, Md.

MY DEAR MR. MACKALL: I desire to answer the question presented to me in your letter of July 2nd.

The general law of the State provides that no opening shall be made in any State Road without first obtaining permission from the State Roads Commission. By Chapter 245 of the Acts of 1922, a Sanitary Commission was created for Anne Arundel County, and in Section 18 of this statute the following language was used:

"That said commission may enter upon any state, county or municipal street, road or alley, or any public highway, for the purpose of installing, maintaining and operating the water supply, sewerage and drainage systems provided for under this Act, and it may construct in any such street, road or alley or public highway, a water main, sewer or drain, or any appurtenance thereof, without the receipt of a permit or the payment of a charge; provided, that whenever any state, county or municipal highway is to be disturbed the public authority having control thereof shall be duty notified, and provided further that said highway shall be repaired and left by the commission in the same, or a not inferior, condition to that existing before being torn up, and that all costs incident thereto shall be borne by the commission."

You ask me to advise you whether the Sanitary Commission of Anne Arundel County now possesses the authority to make openings in the State Roads without obtaining the consent of your Commission.

Inasmuch as the Act of 1922 was passed subsequent to the general law requiring the issuance of a permit by the State Roads Commission before any opening can be made in the State roads, I am compelled to hold that it must prevail, and that it works a pro tanto repeal of the general law. The effect of the Act is to create a special exception in favor of the Sanitary Commission of Anne Arundel County. The language employed by the Legislature in dealing with the subject is clear and explicit, and cannot be given its natural and obvious meaning without bringing it into direct conflict with the requirements of the general law. The Legislature apparently felt that the State Roads Commission would be protected by the notice required to be given it and by the obligation placed upon the Sanitary Commission of Anne Arundel County to restore the highways opened by them to the condition which existed prior to the time they were torn up.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

TAXATION.

TAXATION—GASOLINE TAX—NOT COLLECTIBLE ON GASOLINE MOVED BY OWNER FROM ONE POINT TO ANOTHER IN THE STATE AND THEN TRANSPORTED BEYOND STATE AND SOLD THERE—IF SALE AND DELIVERY ARE COMPLETE IN MARYLAND TAX IS DUE.

January 10, 1923.

A. Hunter Boyd, Jr., Esq.,
General Attorney, Baltimore & Ohio Railroad Co.,
Baltimore, Maryland.

MY DEAR SIR: In your letter of January 2nd, you ask me to advise you whether gasoline handled under the conditions hereinafter set forth will be subject to the tax on gasoline authorized by the Maryland Acts of 1922. An oil company operates a refinery in Baltimore along the Baltimore and Ohio Railroad tracks. This oil company proposes to establish a station in Maryland as close as possible to the District of Columbia line to which station shipments of gasoline will be moved in tank cars from Baltimore and from which station the gasoline will be handled in tank trucks for delivery to tanks in the District of Columbia. From these District of Columbia tanks sales will be made to consumers.

The gasoline tax laws require all dealers, as defined in the Act, to pay the tax on all gasoline sold or used in Maryland. The oil company in question is undoubtedly a dealer, but the gasoline handled by it under the circumstances set forth in your letter will not, in my judgment, be sold or used in the State. It is certain that no sale will occur here because the company will retain title to all gasoline handled by it in this way until the same has passed in the District of Columbia. In shipping the gasoline from Baltimore to Montgomery County and then transporting it into the District of Columbia, it is simply moving its own product for

its own purposes from one point in the State to another and finally across the State line into another jurisdiction. This change of location of gasoline is not, in my judgment, a "use" of the same as contemplated by the Act. That term was evidently intended to apply to the consumption of gasoline for the operating or propelling purposes for which it is usually employed. For the reasons stated, therefore, I believe that no tax can be imposed upon the gasoline handled in the manner indicated in your letter.

I have assumed that the gasoline will be hauled from the Maryland station of the oil company near the District Line into the District in trucks controlled and operated by the oil company. If this be the case and if, as your letter states, the actual sale of the gasoline takes place after it has crossed the line into the District of Columbia, the problem which you present is comparatively simple. Even if the sale has actually been made under contract with the Washington consumers prior to the movement of the gasoline into the District, no tax is collectible because of the immunity granted by Section 9 of Chapter 521 and Section 8 of Chapter 552, respectively, the language of these sections being identical and as follows:

"Said license tax shall not be imposed on motor vehicle fuel exported or sold for exportation from the State of Maryland to any other State or nation."

This provision was essential because of the interstate commerce clause of the federal constitution. It should be observed, however, that the test of the exemption is that there has been a "*sale* for exportation" rather than a *purchase* for exportation. In other words, the law is concerned with the dealer and with sales made by him. In granting its exemption it contemplated that the dealer shall not only sell for exportation but shall actually export. This exportation may be accomplished through actual carriage into another jurisdiction, by delivery for shipment to a common carrier or by some other appropriate method. If, on the contrary, an oil company sells its product and actually delivers the same to the purchaser in Maryland the transaction must be regarded as one which is intrastate in character rendering

the vendor liable for the tax. It is no answer to say that the purchaser, after acquiring the gasoline, transports it beyond the confines of Maryland into another jurisdiction and there disposes of it to the ultimate consumer, and that he notified his vendor that he expected to make such a disposition of the gasoline purchased. Therefore, if the tanks used to transport the gasoline from the Maryland station of the oil company into the District of Columbia are controlled and operated by the purchaser rather than the oil company, the delivery in Maryland will be complete and the tax collectible.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

TAXATION—TAX ON EXECUTORS' COMMISSIONS CHARGEABLE AGAINST GROSS ESTATE.

January 10, 1923.

E. E. Friend, Esq.,
Register of Wills,
Oakland, Md.

DEAR MR. FRIEND: You ask me to advise you concerning the problem which you presented in your letter of January 3rd as to whether the tax on executors' commissions fixed by the statute at "one per cent on the first $20,000 of the estate and one-fifth of one per cent on the balance of the estate" is chargeable against the gross amount of the estate or only against the net amount thereof. This law is codified as Section 115 of Article 81. The language used is precisely similar to that found in Section 5 of Article 93, where the Orphans' Court is authorized to allow commissions to executors and administrators of "not under two per cent nor exceeding ten per cent of the first $20,000 of the estate and on the balance of the estate not more than two per cent." The

word "estate" as used in the latter statute has always been construed to mean gross estate whenever used without any other words of limitation or restriction, and should, I think, always be accorded that meaning. If in either of these statutes the Legislature had intended to refer to the net estate, language appropriately expressing that purpose would have been employed. The history of Section 115 of Article 81 clearly indicates also that the word "estate" used therein was intended to mean gross estate. Originally the tax on executors' commissions was one-tenth of the commission allowed and whenever the maximum allowance of ten per cent was made by the Orphans' Court, the tax resolved itself into one per cent of the gross estate since the commissions themselves were always charged on this basis.

The change of method calculating the tax was to guarantee to the State the payment of the maximum tax and it could never have been intended that since the re-enactment of Section 115 of Article 81 in 1916, the tax should only be laid on the net estate rather than the gross estate which would have resulted in a great reduction in the amount of taxes ultimately received by the State.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

TAXATION—COLLATERAL INHERITANCE—MONEY PAID IN SETTLEMENT OF CLAIM OF DIVORCED WIFE RECOGNIZED HER EITHER AS WIDOW OR CREDITOR—NO TAX PAYABLE.

January 11, 1923.

James J. Lindsay, Esq.,
Attorney at Law,
412 Equitable Building,
Baltimore, Md.

DEAR MR. LINDSAY: Your letter of January 9th requested an opinion from me upon the question presented by the fol-

lowing facts: Charles W. Greeble in 1906 entered into an agreement of separation with his wife, Josie Greeble, under which, among other things, the said Greeble covenanted to pay to his wife the sum of $50.00 per month during their joint lives, and in which the wife waived any interest that she might thereafter have as wife, widow, heir, etc., in the property of the said Greeble. A number of years later Greeble instituted divorce proceedings in the Circuit Court of Baltimore City, notified the defendant, Josie Greeble, by order of publication and after prosecuting the suit in regular order finally was granted a decree divorcing him a vinculo matrimonii from the said Josie Greeble. Greeble died on September 5th, 1918, leaving a last will and testament under which you qualified as executor, and by the terms of which all of his estate, amounting to $75,000, was beupon the wife, Josie Greeble, notified you, as executor, through her counsel, that the monthly installments called for by the agreement had not been paid for a long period of time; that the agreement itself was null and void and that she did not and would not recognize the validity of the divorce decree, but would claim her share in the estate of Mr. Greeble as his widow; and that if the decree and agreement were sustained she would then demand the payment to her of all of the accrued and unpaid monthly installments. A new agreement was then made between yourself as executor and Mrs. Greeble, which was subsequently approved by the Orphans' Court of Baltimore City, in pursuance of which $14,000 was to be paid to Mrs. Greeble in full satisfaction of all claims of any character, kind or description which she might have against the estate. I assume that it was understood that Mrs. Greeble was to receive a net sum of $14,000, because that amount was paid to her, and in the final closing of the estate $1,000 of the residue was retained by you to cover any collateral inheritance tax which might thereafter be determined to be due for and on account of the payment made to Mrs. Greeble. This $1,000 is still in your hands, although the estate was, in all other respects, closed in 1919. You have asked me to advise you whether there is, in my judgment, any collateral tax liability.

I do not think so. It is true that the exact status of Mrs. Greeble with reference to her husband at the time of his death and her rights in his estate thereafter were never legally adjudicated, but the claim filed by her was made either in the capacity of widow or creditor, or both, and the $14,000 could only have been paid to her, with the sanction of the Court, upon the theory that it was in settlement of her demands as widow or creditor. The amount received from an estate by a creditor thereof is never subjected to the tax and a widow is expressly exempted by the terms of the statute from the payment of the tax upon property owned by her husband and passing to her upon his death. The case appears, therefore, to be one in which no tax liability exists.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

TAXATION—DUTY OF COUNTY COMMISSIONERS TO LEVY FOR STATE TAXES FOR 1923 AT RATE OF 30 1/13 CENTS ON $100.00.

January 19, 1923.

County Commissioners of Baltimore County,
Towson, Maryland.

Gentlemen: The Legislature of Maryland by Chapter 310 of the Acts of 1922 required the County Commissioners of each County to levy State taxes for the year 1923 at 1/13 of one cent on each $100 of assessable property, for the purpose of meeting the interest on the amount of certificates outstanding (issued by virtue of said Act) and also to meet and redeem so much of the principal maturing in each of said years as provided in said Act. By Chapter 489 of the Acts of 1922 the County Commissioners of each County of the State were directed to levy an aggregate of $.30 on each

$100 for the year 1923 for the purposes enumerated therein. The items making up this aggregate are set out in Chapter 489 and do not include the item for which the levy of 1/13 of one cent was directed by virtue of Chapter 310.

I have been informed by Hon. Edward H. Burke, counsel for the County Commissioners for Baltimore County, that your Board has merely made the levy of $.30 as required by Chapter 489, but has made no provision to meet the requirements of Chapter 310. I am writing this letter to call Chapter 310 to your attention, and to request you on behalf of the State of Maryland to make an immediate levy as required by Chapter 310.

Will you kindly have this matter formally passed on by the Board of County Commissioners and notify me of the action taken.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

TAXATION—GASOLINE TAX—GASOLINE SHIPPED TO STORAGE TANKS IN STATE—THENCE IN BULK TO CERTAIN DEALERS OUT OF STATE—NO TAX PAYABLE.

January 19, 1923.

J. O. McCusker, Esq.,
Comptroller's Office,
Annapolis, Md.

MY DEAR MR. MCCUSKER: You enclosed in your letter of January 13th, a letter received by the Comptroller under date of January 3rd from the Washington Accessories Company, presenting the following question arising under the gasoline tax laws. The Washington Accessories Company, hereinafter called the Company, buys gasoline from a refinery outside of the State of Maryland. This gasoline is

shipped by way of railroad tank cars from the refinery to the storage tanks of the Company at Bethesda, Maryland. From this point it is transferred in the Company's tank trucks to certain dealers in the City of Washington. The question upon which you request me to pass is whether, under these facts, the refinery will be required to pay the tax. Your letter is obscure as to the location of the refinery, and makes no definite statement as to where the sale of the gasoline delivered at Bethesda actually occurs. I will assume, however, for the purposes of this opinion, that, inasmuch as the refinery is located outside the State, the sale of its gasoline to the Company also takes place outside of the State, and that having thus sold its product it ships the same in interstate commerce into Maryland, delivering it at Bethesda.

The gasoline tax under the terms of Section 2 is only imposed upon motor vehicle fuel "sold or used" by dealers in the State of Maryland, and this requirement, in my judgment, is not sufficiently broad to cover the transaction to which your letter refers. I, therefore, feel that the refinery owes no tax. If the Company, having thus received the gasoline, makes no sale of it in Maryland, but transfers it in bulk into the District of Columbia and there disposes of it, there is a similar immunity from the payment of the tax.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

TAXATION—TAXES OF BANKRUPT CORPORATION, WHOSE CHARTER HAS BEEN FORFEITED, REMAIN COLLECTIBLE FROM TRUSTEE.

February 9, 1923.

J. O. McCusker, Esq.,
Budget Accountant,
Office of Comptroller,
Annapolis, Md.

MY DEAR MR. MCCUSKER: You tell me in your letter of February 5th that the charter of the Street Ginger Ale Company was forfeited for non-payment of taxes under proclamation of the Governor, dated May 12th, 1922. This company had been adjudicated a bankrupt and you have now received from the trustee a check for $477.85 paying all tax claims of the State which have accrued up to and including the year 1921. I think it is safe to assume that the adjudication in bankruptcy took place in 1921. You ask me to advise you whether it is proper for you to receive this payment into the Treasury.

The forfeiture of charters of corporations who are delinquent in the payment of their State taxes "after a space of two years from the first of January next after the expiration of the calendar year during which the said taxes become due and payable, "is authorized by Section 99 of Article 81 of the Code. The purpose of this section is to impose upon the corporation in default a very drastic penalty, but it is expressly provided at the close of the section that nothing contained therein "shall be held or construed to repeal, supersede or in any manner affect any remedy or provision of law for the collection of any and all taxes, and the interest and penalties due thereon."

The debt, therefore, remains alive even though the corporate life is extinguished through the forfeiture of the charter. In the particular case which you cite, the company was already in bankruptcy when the forfeiture took place. The bills of the State have probably already been filed with

the trustee and in my judgment there is no doubt whatever concerning the right of the State to receive and obtain the distribution made to it in satisfaction of its claims.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

TAXATION — COLLATERAL INHERITANCE - - UNCONDITIONAL GRANT OF LAND TO GREAT-NEPHEW—SUBJECT TO LIFE ESTATE IN GRANTOR—NOT TAXABLE.

February 17, 1923.

C. S. Parran, Esq.,
Register of Wills,
Prince Frederick, Md.

DEAR MR. PARRAN: It appears from your letter of February 16th, that a large land owner of Calvert County, recently deceased, conveyed during his lifetime his home farm to his great-nephew, reserving, however, to himself a life estate in said property. You wish to be advised whether a collateral inheritance tax is now due from the great-nephew upon the real estate thus acquired by him. In my judgment no tax is due.

Section 120 of Article 81 of the Code, which authorizes the imposition and collection of the collateral inheritance tax, declares that only those estates shall be subject thereto which pass from any person who may die seized and possessed thereof. While it is true that the decendent retained in himself a life interest, the remainder interest in the farm became vested in the great-nephew immediately upon the execution and delivery of the deed, and of this interest the original owner did not die seized and possessed. This general principle is, I think, recognized in the case of Smith vs.

State, 134 Md. 473, in which the grantor, after reserving a life interest, had transferred by deed the property in question to collaterals. The Court of Appeals required the tax to be paid in this case, not because the grantor had retained a life interest, but because there had been reserved, first, a power of revocation at any time after a specified period, and second, a power of testamentary disposition. These reserved rights, taken in connection with the retention during the grantor's lifetime of the beneficial use and enjoyment of the property, preserved in the grantor absolute control over the property for the present as well as for the future. It was apparently conceded, however, that if there had been no reservation on the part of the grantor of the power to revoke the deed and of the power of testamentary disposition, the estate would have been exempt from the tax. No such reservations were apparently made in the deed referred to in your letter and, therefore, the general principle applies and the property must be treated as any other property passing by grant from one party to another.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

TAXATION — COLLATERAL INHERITANCE — LEGACIES FOR MASSES TO RELIGIOUS CORPORATIONS ARE TAXABLE— NOT PART OF THE FUNERAL EXPENSES.

March 17, 1923.

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

MY DEAR MR. JACKSON: In your letter of March 10th you quote two items from the will of Jane B. Walbach, late of Baltimore City, deceased, and ask me to advise you wheth-

er the legacies therein made are liable to the payment of the Collateral Inheritance Tax. The language employed in the two items is practically the same. The testatrix bequeathed in Item 2 unto the Redemptorists or the Superior thereof, a body corporate located at Saint Anne de Beaupre, Province of Quebec, Canada, the sum of two thousand dollars ($2,000) and in Item 15 unto St. Joseph's Passionist Monastery of Baltimore, the sum of three thousand dollars ($3,000). Both of these bequests are directed to be expended equally for Masses for the repose of the soul of the testatrix, and the souls of her father, mother, brother and a certain friend. Item 19 of the will directs the executor to pay the Collateral Inheritance Tax on all legacies from the residue of the estate.

The Maryland law imposing the Collateral Inheritance Tax is found in Section 120 of Article 81 of the Code. It directs that all property passing from a person dying seized and possessed thereof to a Collateral by instrument intended to take effect in possession after the death of the maker thereof shall be subject to the tax. The only exceptions in the statute are in favor of the father, mother, husband, wife, children and lineal descendants of the person owning the property from whom it passes. There is no exemption of bequests or distributions to religious corporations. Therefore, the tax is payable upon the legacies referred to in your letter unless there are certain rules of construction establishing, by implication, exceptions and necessitating a different conclusion.

I have ruled that under proper conditions a bequest in satisfaction of an obligation of the testator existing during his lifetime and collectible as an ordinary debt from his estate is exempt from the tax. The bequests now being considered do not fall within this category. They do not represent in any way an indebtedness of the testatrix during her lifetime and I know of no method by which any person in his will may create an obligation contingent upon his death which will be immune from the tax. The legacy here is a direct gift to the religious corporations. It has been held under a similar state of facts in the case of In Re Didion's

estate, 105 N. Y. Supp, 924, that the provisions for Masses are merely collateral and incidental.

It might be suggested that these bequests should be considered as a part of the funeral expenses. Our statutes do not contemplate any such expenditures for funeral purposes. In the case of In Re McEvoy estate, 98 N. Y., Supp. 437, where a bequest had been made to a priest of a certain amount to be used in saying Masses for the testatrix and for certain named persons, the court used the following language:

"Certainly the bequest for Masses to be said for others than the testator cannot be part of the funeral expenses of the testator. A Mass is not peculiarly a part of the funeral services like unto the office of the dead. In the religion of the Holy Catholic Church Masses are celebrated for the good of those who are dead, but in no sense is a Mass so celebrated necessarily a part of the funeral service."

It is my conclusion that the tax is payable on both of the legacies referred to in your letter.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

TAXATION—COLLATERAL INHERITANCE—DEVISE TO DAUGHTER-IN-LAW TAXABLE.

March 21st, 1923.

William I. Davis, Esq.,
Register of Wills,
Prince George's County,
Upper Marlboro, Md.

MY DEAR MR. DAVIS: I beg to acknowledge receipt of your letter of March 20th, in which you ask me to advise you whether a collateral inheritance tax is due from the

executors of the last will and testament of William A. Linthicum, late of your county, deceased, under the following circumstances: Mr. Linthicum in his will directed his executors to sell his real estate and divide the proceeds by giving one-fourth to a son, one-fourth to another son, one-fourth to a grandson, and the remaining one-fourth to a daughter-in-law. The real estate has already been sold and the executors are about to make the distribution in accordance with the terms of the will.

It is perfectly clear that the share of the proceeds of the real estate to be distributed to the two sons and grandson will be exempt from the tax, because children and lineal descendants of the testator are especially excepted by the terms of Section 120 of Article 81 which authorizes the collection of this tax. The daughter-in-law, however, is a collateral and as such must pay the tax upon any property received by her from her father-in-law's estate.

It is my judgment, therefore, that a tax of 5 per cent must be assessed against that portion of the proceeds of the sale of the real estate now in the hands of the executors for distribution to the daughter-in-law.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

TAXATION—PROCEEDS FROM SALE OF REAL ESTATE DIRECTED BY WILL TO BE SOLD ARE BASIS FOR ALLOWANCE OF COMMISSIONS TO EXECUTOR AND FOR TAX ON SAID COMMISSIONS.

March 23, 1923.

William I. Davis, Esq.,
Register of Wills,
Upper Marlboro, Md.

MY DEAR MR. DAVIS: In your letter of March 20th, you submitted to me a paragraph from the last will and testa-

ment of William A. Linthicum, late of Prince George's County, deceased, and asked me to advise you whether the proceeds from the sale of real estate of the testator made by his executors are liable for the State tax of one per cent. In his will, Mr. Linthicum first used the expression "I hereby empower my executors to sell all real estate of which I may die seized and possessed" and later in the same paragraph adds these words "And I direct my said executors to sell my real estate as soon as may be convenient after my death." He then provides for a division of the proceeds among his two sons, a grandson and a daughter-in-law in equal proportions.

It is a well recognized principle of law that a clear and unequivocal direction by a testator in his last will and testament that his real estate be sold by his executors operates to convert his realty into personalty. It is stated in 9 Cyc. 839, that where real estate is devised with explicit directions in the will that it be sold and the proceeds distributed, such directions operate as an equitable conversion of such realty into personalty. The same proposition is supported by the Maryland decisions.

In Smithers vs. Hooper, 23 Md. 273, the following language appears in the opinion of the court: "The real estate is not devised as such but is directed to be sold, and the proceeds thereof are disposed of by the will as money. The effect of these provisions was to convert the real estate into personal assets." See also

Jones vs. Plummer, 20 Md. 412.
Stake vs. Mobley, 102 Md. 408.

It is also a generally recognized principle that where there is an imperative direction to sell, the conversion takes place as from the death of the testator, unless the conversion is expressly ordered to be made at a specified time in the future or upon the happening of a particular event. 9 Cyc. 837.

The following statement occurs in the syllabus of the case of Reiff vs. Strite, 54 Md. 298. "The real estate being directed to be sold for the purpose of distribution its con-

version into personalty is to be regarded as complete from the death of the testator."

I have no hesitation, therefore, in determining that the land directed to be sold by Mr. Linthicum and actually sold by his executors became converted into personalty and that the proceeds derived from said sale now constitutes a portion of the personal assets of his estate upon which commissions may be allowed to the executors and the tax of of one per cent on executor's commissions may be collected by the State.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

TAXATION—GASOLINE TAX NOT ENFORCIBLE AGAINST SHIPMENT FROM ONE POINT IN MARYLAND TO ANOTHER POINT IN MARYLAND BY ROUTE EXTENDING BEYOND THE STATE.

March 31, 1923.

Edward F. Johnson, Esq.,
Fidelity Building,
Baltimore, Md.

MY DEAR MR. JOHNSON: In behalf of the Standard Oil Company you wrote to me several weeks ago calling my attention to the fact that all shipments of gasoline by your Company to Bethesda, Maryland, moved from Baltimore through Laurel to Washington and thence to Bethesda. You then ask me to advise you whether such shipments of gasoline will be immune from the Maryland tax imposed by virtue of the provisions of Chapters 521 and 522 of the Acts of 1922. In both of these statutes it is expressly declared that the tax shall not be imposed on motor vehicle fuel when exported or sold for exportation from the State

of Maryland to any other State or nation. In the absence of any such express provision, the State would be without power to tax shipments in interstate commerce. The question, therefore, arises whether the shipment is interstate in character if both termini are within the State of Maryland, but the goods while in transit move beyond the borders of the State.

This question has been definitely settled by the Supreme Court of the United States in the case of Hanley vs. Kansas City S. R. Co., 187 U. S. 617, in which it was determined that a State railroad commission cannot, without violating the commerce clause of the Federal Constitution, fix and enforce rates for the continuous transportation of goods between two points within the State where a large part of the route is outside of the State or territory." The same court in the Lehigh Valley R. Co. vs. Pennsylvania, 145 U. S. 192, had apparently announced the opposite view, but this case was subsequently distinguished on the ground that although the route followed entered another State the Pennsylvania State tax could be imposed upon receipts representing the proportion of the transportation within that State.

I have previously ruled that a shipment from one point in Maryland to another point in Maryland by a route which entered another State is interstate commerce, 5 Report and Official Opinions of the Attorney General, 260. This view seems to be sustained by the authorities, and I am, therefore, of the opinion that the gasoline shipped to Bethesda from Baltimore by way of Washington is exempt from the tax.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

TAXATION—APPEAL FROM ACTION OF STATE TAX COMMISSION FIXING TAX ON GROSS RECEIPTS OF A CORPORATION TO STATE TREASURER AND COMPTROLLER (THE STATE BOARD OF APPEAL) SURVIVES.

May 1st, 1923.

Hon. William S. Gordy, Jr.,
State Comptroller,
Annapolis, Md.

DEAR MR. GORDY: The State Tax Commission in the exercise of the power vested in it by Section 168 of Article 81 of the Code, determined the gross receipts of the Eastern Shore Trust Company for the year 1922 to be $164,026.00, and calculated the State tax due from said corporation on its gross receipts to be $4,100.65. An account of this tax was transmitted by the State Tax Commission to the Comptroller, who, in pursuance of the duty imposed upon him by Section 171 of Article 81, proceeded to notify the Trust Company. The Trust Company, feeling aggrieved by the action of the State Tax Commission, within thirty days after its notification, filed an appeal with the Comptroller of the Treasury and the State Treasurer, unofficially designated as The State Board of Appeal. In doing so it relied upon an authorization for such an appeal incorporated in Section 171 of Article 81, in the following language:

"Any such corporation or Company, may, within thirty days after such notification, appeal from such ascertainment and assessment to the State Comptroller and State Treasurer, stating in such appeal the reasons and grounds for such appeal, and the State Comperoller and the Treasurer shall as and assessment of the state tax commissioner is erroneous Treasurer shall both be of opinion that such ascertainment and assessment of the state tax commissioner is erroneous and ought to be changed, they shall change the same accordingly and the ascertainment and assessment so agreed upon by the comptroller and treasurer shall be final; but if either the comptroller or treasurer shall agree with the tax commissioner as to the correctness of the ascertainment and

assessment so made by him then the appeal shall be dismissed and the original ascertainment and assessment shall be and remain as the true ascertainment and assessment for such year."

Both you and the State Treasurer have requested me to advise you whether any duty now rests upon you to recognize this appeal and to act officially in connection therewith.

Section 171 of Article 81 was enacted by the General Assembly in its present form by Chapter 559 of the Acts of 1890 prior to the establishment in 1914 of the State Tax Commission. The contention is made that the right of appeal provided by Section 171 has ceased to exist since the creation of the State Tax Commission. It is conceded that there has never been any direct repeal of that portion of Section 171 upon which the Eastern Shore Trust Company now relies for its appeal, and if it has ceased to be operative this result has been accomplished solely by reason of an implied repeal. The Court of Appeals has repeatedly held that repeals by mere implication are never favored. In the tax case of Mayor and City Council vs. German American I. Co., 132 Md., 380, it used this language: "If the subsequent act can be made, by any reasonable construction or intendment, to stand with the previous legislation, that construction will always be adopted. It is only when there is a plain, unavoidable and irreconcilable repugnance between the Acts that the later is said to repeal the former by implication." It is unnecessary to cite other authorities to sustain a principle so generally recognized. It will, therefore, be necessary to examine the provisions of the statute establishing the State Tax Commission and defining its powers and duties for the purpose of ascertaining whether any of its provisions are in such conflict with Section 171 as to accomplish an implied abolition of the appeal thereby authorized.

The State Tax Commission was created by Chapter 841 of the Acts of 1914. Section 2 of that Act, now codified as Section 246 of Article 81 of the Code, abolished the office of State Tax Commissioner and conferred upon the newly established State Tax Commission all of his duties and powers.

Under the law existing at that time, found in Section 168 of Article 81, all companies subjected to a gross receipts tax were required to report to the State Tax Commissioner and this official thereupon "calculated the state tax due from such corporation or company on its gross receipts or revenue for the year." Thereafter the calculation of the State tax was a duty which devolved upon the State Tax Commission. It has been suggested that the abolition of the State Tax Commissioner from whom the appeal to the Treasurer and Comptroller lay, necessarily abolished the appeal itself. This contention, in my judgment, is unsound. The appeal sanctioned by Section 171 was not from the State Tax Commissioner himself, but from the order passed by the State Tax Commissioner fixing the amount of state tax due. The effect of the law creating the State Tax Commission was to place upon that body, rather than upon the State Tax Commissioner, the obligation of passing this order. The order, however, remained a necessary step in the procedure, whether fixed by the State Tax Commissioner or the State Tax Commission, and it therefore follows that the appeal from the order was in no way affected by the change of the official by whom the order was passed.

Very broad powers were conferred upon the State Tax Commission and its jurisdiction was far more extensive than that possessed by the State Tax Commissioner. Its decisions on questions of fact are final and conclusive.

Baltimore vs. C. & P. Tel. Co., 131, Md. 50

Appeals from its decisions on questions of law only to the proper Courts are not only authorized by the Act, but have been recognized as valid by the Courts. The Commission, however, must always act within the jurisdiction conferred upon it, and while its decisions on questions of fact are final this provision of the Statute only applies in those classes of cases where this authority is distinctly conferred. An examination of Section 239 of Article 81 indicates that the right of appeal on questions of law as there conferred only lies from orders affecting assessments of property whether real estate or tangible or intangible personal property. All of the decisions which have been rendered by the Court of

Appeals involving a construction of this Statute have been in cases where the State Tax Commission has either made originally or passed upon in its appellate capacity, an assessment of personal property or real estate.

Mayor & City Council vs. C. & P. Tel. Co., 131, Md. 50;

Postal Tel. & Cable Co., vs. Harford County, 131, Md. 96;

Hyattsville vs. C. & P. Tel. Co., 131, Md. 589;

N. C. R. R. Co., vs. Baltimore, 132, Md. 497;

Baltimore vs. G. A. Fire Insurance Co., 132, Md. 380;

Industrial Corporation vs. State Tax Com., 134, Md. 379;

Fidelity & Deposit Co., vs. Gorman, 134, Md. 332.

Nowhere, however by express language or necessary implication is the right of appeal to the Courts granted from the action of the State Tax Commission determining the State tax due on gross receipts. When the State Tax Commission acts under Section 168 of Article 81 it calculates the tax itself, fixing the exact amount of dollars and cents which the taxpayer owes. Acting either in pursuance of its original or appellate jurisdiction conferred by Section 239 of Article 81, it merely determines the assessment upon which the tax is to be laid by the various taxing jurisdictions. The appeals affecting assessments arising under Section 239 are not, according to my judgment, in conflict with the appeal authorized by Section 171 to the Comptroller and Treasurer where the taxpayer is dissatified with the amount of tax on gross receipts as calculated by the State Tax Commission. There is no irreconcilable conflict, therefore, between the provisions creating the State Tax Commission and the provisions of Section 171. My attention has been called to the case of Consumers' Ice Co. vs. State, 82 Md. 132, which arose while the Comptroller and Treasurer unquestionably possessed appellate jurisdiction. According to this decision redress could be sought in the Courts, even though no appeal

had been taken to the Comptroller and Treasurer, because the State Tax Commissioner had clearly exceeded his authority in making the original calculation, and his order was, therefore, null and void. It is perfectly clear that in a suit based upon a calculation absolutely without foundation in law, the taxpayer could avail himself in Court of his proper remedies. In the case presented by you, however, the appeal was taken and, therefore, it is not necessary for me to determine whether or not the taxpayer possessed also the right under proper circumstances to seek redress either as a plaintiff or a defendant before the Courts. Prior to 1914 the shares of an ordinary business corporation were assessed and taxed and an appeal to the Comptroller and Treasurer was authorized whenever the officers of the corporation felt dissatisfied with the assessment. (See Sections 162-165 of Article 81 as published in Volume 2 of the Code.) The whole system of taxation of corporations was changed, however, by Chapter 328 of the Acts of 1914 which abolished the taxation of shares of corporations and substituted the direct tax on their personal property. It has been suggested that inasmuch as the effect of this Act was to curtail seriously the number of appeals which could be taken to the Treasurer and Comptroller, that the State Board of Appeal became *functus officio*. This reasoning is not convincing. The curtailment of the jurisdiction of an appellate board does not abolish the board itself if it continues to be charged with the performance of duties other than those which have been abolished.

I have been unable to find any provision of existing law which in my judgment is in such conflict with the language of Section 171 as to repeal that section and deprive the taxpayer of the privilege of appeal there granted. In my opinion the obligation rests upon you and the Treasurer to hear and determine the appeal which has been prayed.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

TAXATION—COUNTY COMMISSIONERS HAVE NO FUNCTIONS TO PERFORM IN CONNECTION WITH STATE TAXES.

May 2nd, 1923.

Honorable John M. Dennis,
Treasurer of the State of Maryland,
1009 Union Trust Building,
Baltimore, Md.

DEAR MR. DENNIS: In your letter of April 27th, you asked to be informed whether there is any law in Maryland defining the financial responsibility of the Boards of County Commissioners of the various counties of Maryland, with relation to the collection of State taxes, and with particular reference to their individual liability in the event of any dereliction in the performance of their duty.

Your inquiry is couched in general terms, and I am not certain whether you have any particular situation in mind. The Board of County Commissioners of the various counties do not have any functions to perform in connection with the State taxes. It is true that they are clothed with powers of assessment and finally determine the assessable basis upon which both County and State taxes are levied. They have nothing whatever to do with the collection of State taxes which are usually received by the County Tax Collector or County Treasurer. In many of the jurisdictions the Tax Collector is appointed by the County Commissioners, but he and his bond thereafter become responsible for a true and complete accounting for all monies received by him in his official capacity.

I am unable, therefore, at this time to think of any function which must be performed by the Board of County Commissioners in relation to State Taxes or of any liability resting upon them in connection therewith.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

TAXATION—COLLATERAL INHERITANCE—PAYABLE ON APPRAISED VALUE OF REAL ESTATE LESS AGGREGATE OF OUTSTANDING LIENS.

May 10, 1923.

Perrie E. Waters,
Register of Wills,
Rockville, Md.

DEAR MR. WATERS: In your letter of May 9th you asked me to advise you whether, in the appraisement of real estate covered by a mortgage for collateral inheritance tax purposes the mortgage should be considered and deducted from the appraised value.

The answer to your question is found, I think, in the language of Section 120 of Article 81, wherein the collateral inheritance tax is imposed on "every hundred dollars of the *clear value* of such estate, money or security." It was never contemplated that the tax should be paid on any interest in property greater than that owned by the grantor or decedent, but that it should be collected on the basis of the property or interest actually received by the collateral. The express provision that it shall be laid only upon the "clear value" of the estate distinctly evinces such a purpose. I think it has always been the practice to deduct from the appraised value of real estate the aggregate of the outstanding liens and to pay the tax on the difference which represents the clear value of the interest in said property passing to the collateral.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

TAXATION—GOODS SENT INTO MARYLAND FOR CONSIGNMENT REMAIN THE PROPERTY OF THE CONSIGNOR UNTIL SOLD AND CONSTITUTE PART OF THE "CAPITAL" OF THE CONSIGNOR EMPLOYED IN MARYLAND.

May 10, 1923.

Honorable Oscar Leser,
State Tax Commission,
Union Trust Building,
Baltimore, Md.

MY DEAR JUDGE LESER: Your letter of May 8th presents to me in behalf of the State Tax Commission the following facts:

The Pennsylvania Rubber Company of America, Inc., a Pennsylvania corporation, has reported to you that the nature of the business transacted by it in Maryland is the "sale of manufactured rubber goods." In reply to your question asking the value of "merchandise and raw material" held in Maryland on January 1st, 1923, the company replied "stock consigned," and fixed the value of such consigned goods as of January 1st, 1923, at $12,024.53. It also reported furniture, fixtures and automobiles as the only other tangible personal property held by it in Maryland. Its total Maryland sales for 1922 were $233,871.16.

You then ask me to advise the Commission whether in my opinion this consigned stock constitutes part of the capital employed by the corporation in Maryland. You suggest that there may be an analogy between transacting business with the property of others and transacting business with funds supplied by others, stating that in the latter case you invariably treat such funds as capital employed in Maryland.

It is unquestionably correct to treat as the capital of a corporation employed by it in Maryland, all funds received by it from any source and actually used by it in this State. Such funds, when borrowed or otherwise acquired become the property of the corporation, and, therefore, a part of its capital. For the purposes of ascertaining capital, the con-

signment of goods is, however, the exact opposite of the borrowing of funds because instead of title passing to the recipient of the money acquired through loan or otherwise, the title of goods consigned remains in the consignor. I am not familiar with the method by which the Pennsylvania Rubber Company conducts its business in this State, but I assume that it has Maryland representatives to whom it consigns goods, and that the title to these goods remains in the Rubber Company until sold by the consignee acting as the Rubber Company's agents. If this be true, the value of these goods must be considered a part of the capital of the Pennsylvania Company employed in Maryland. The capital invested in consigned goods is the capital of the consignor, and it is, therefore, my opinion that the value of the consigned goods as of January 1st, 1923, must be included in the capital employed in Maryland on that day by the Pennsylvania Rubber Company.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

TAXATION—COLLATERAL INHERITANCE—PAYABLE ONLY ON NET PROCEEDS FROM SALE OF REAL ESTATE AFTER PAYMENT OF DEBTS.

May 11, 1923.

William F. Bricker, Esq.,
Register of Wills for Carroll County,
Westminster, Md.

MY DEAR MR. BRICKER: The following are the facts presented by your letter of May 10th in connection with an inquiry as to the basis upon which the Collateral Inheritance Tax should be paid:

Lizzie O. Steele died leaving a last will and testament in which she devised to her brother two designated parcels of

real estate, and to her nephew the rest and residue of her estate. All of the property of the testatrix has been duly appraised. The real estate comprised the two parcels devised to the brother consisting of a farm, appraised at $6780 and a wood lot appraised at $400, and also a town property included in the residue of the estate appraised at $3,000. The personal property proved insufficient to discharge the debts of the testatrix and upon a creditor's bill a trustee was appointed by the Circuit Court for Carroll County, sitting in equity, who sold all of the real estate. The entire proceeds from the sale of the town property and $1,200 out of the purchase price received from the farm and wood lot were consumed in the payment of debts.

Your question is whether the Collateral Inheritance Tax shall be collected on the appraised value of the real estate without any deduction for debts and costs or whether it can be charged only against the residue remaining for distribution. The Collateral Inheritance Tax is imposed by virtue of the provisions of Section 120 of Article 81, and it is there declared that the tax shall be levied on "every hundred dollars of the *clear value* of such estate, money or security." It is true that succeeding sections of Article 81 provide for a separate appraisement of all of the real estate of the decedent, and Section 130 declares that "the appraisement thus made shall be deemed and taken to be the true value of said real estate upon which the tax shall be paid."

The provisions of the law which I have quoted must be read together and harmonized if possible. I do not think that Section 130 means that in all events and under all circumstances, the tax is to be collected upon the whole amount of the value of the real estate determined by the appraisement. Ordinarily, real estate becomes the property of the heirs and devisees immediately after the death of the decedent, and in such cases it was necessary that some method of fixing the value of such real estate for taxation purposes should be prescribed.

Usually the personal property is sufficient to discharge the debts, and the duty imposed upon the executor by Section 121 to pay the collateral tax on "every hundred dollars

he may hold for distribution among the distributees or legatees" indicates that the purpose of the law is to tax only that property which passes to the distributee after the payment of debts. When it becomes necessary to subject the real estate also to the discharge of the decedent's obligations, I feel that the same principle applies in view of the absolute requirement that the tax shall only be laid upon the clear value of the estate. It has been suggested that only mortgage liens shall be deducted from the appraised value of real estate, but I see no reason why a distinction should be made between liens of record and debts which subsequently, by reason of equity proceedings, become charges upon the real estate. It would certainly be impossible to collect the tax from the beneficiaries if no balance remained to pass to them. For the same reason I feel that they cannot be charged with the tax where an amount less than the tax on the appraised value remains for distribution, all of which seems to indicate that it was only contemplated that the collateral beneficiary should pay on the basis of the property actually received by him.

It is my opinion that the tax cannot be collected upon the appraised value of the real estate, but only upon the residue of the net proceeds derived from the sale of the real estate which are distributed by the trustees to the collateral beneficiaries.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

TAXATION—COLLATERAL INHERITANCE—DEVISEE ADVANCING AMOUNT NECESSARY TO PAY CREDITORS—TAX PAYABLE ON APPRAISED VALUE OF REALTY LESS AMOUNT ADVANCED.

May 15, 1923.

William F. Bricker, Esq.,
Register of Wills of Carroll County,
Westminster, Md.

MY DEAR MR. BRICKER: Several days ago you called to my attention a situation which had arisen in Carroll County, where in the settlement of an estate it has become necessary, through a creditor's proceeding in the Circuit Court, to sell a portion of the real estate of the decedent for the satisfaction of his debts. In the will of this decedent, a division of specific real estate had been made. You now inform me that this real estate was not sold, but that the balance of cash required to satisfy the creditors will be advanced by the devisee. You then ask me to advise you on what basis this devisee should pay the collateral inheritance tax.

When real estate passes to such collaterals it is necessary to determine its value for tax purposes according to a prescribed standard, and this standard, the Legislature, in Section 130 of Article 81, has declared to be the appraisement thereof made in pursuance of the terms of the Act. The tax, however, is only collectible upon the clear value of the estate passing to collaterals, and in my judgment, there must be deducted from the appraised value such an amount as it may be necessary for the devisee to advance for the payment of creditors and costs.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

TAXATION—COLLATERAL INHERITANCE—PROPERTY DEVISED AS HOME FOR DAUGHTERS, WITH RIGHT TO SELL AND DISTRIBUTE AMONG TESTATOR'S "CHILDREN"—TAX LIABILITY DEPENDENT UPON MEANING OF "CHILDREN."

May 26, 1923.

Oden B. Duckett, Esq.,
Register of Wills,
Annapolis, Md.

DEAR MR. DUCKETT: Your letter relating to the Fanny H. Murray will, and asking me to determine whether any collateral inheritance tax is now due from the beneficiaries thereunder, came when I was still engaged in work at the Court of Appeals and was originally placed in the hands of one of my assistants. It has only recently come to my personal attention. I have examined the whole matter very carefully and beg to submit my conclusions as follows:

Mrs. Murray left surviving her at the time of her death four daughters, including Elizabeth C. Murray, two sons who are still alive and married, and the children of a deceased daughter, Mary C. Ellzey. By her last will Mrs. Murray directed that her property known as Cedar Park should be the home of her *unmarried* children, adding these words, "but I do not want it ever to become a burden to them so that if *they* should think best to dispose of it to do so, then the proceeds to be equally divided between all the children." The four daughters living at the time of Mrs. Murray's death, all of whom remained unmarried, maintained their home in the Cedar Park property. Three of them have since died, leaving wills in which they left their residuary estate to collaterals. The surviving daughter now proposes to exercise the power of sale and dispose of the Cedar Park property. You ask me to inform you whether any collateral inheritance tax is due as a result of the wills of the deceased daughters.

The situation presented is a very unique one. I think that upon the death of Mrs. Fanny H. Murray, the unmarried daughters took a life estate in the Cedar Park property

liable to be terminated by a sale and that the remainder interests were vested in all of Mrs. Murray's heirs-at-law liable to be divested by the exercise of the power of sale. I feel also that Elizabeth C. Murray, the surviving unmarried daughter, retains the right to exercise the power of sale and may convey a good title to the property. When the sale has been completed and the purchase money paid the real question in the case is presented when Miss Murray undertakes to make a distribution. Does the word "children" mean those children who were living at the time of the death of the original testator or only those children who survived at the time of the exercise of the power?

Before any question of collateral inheritance tax is raised, a far more important question must be determined, and that is, who are now entitled to participate in the distribution of this fund? If the participants in said fund are those children who were living at the time of the death of the testatrix it may well be that the wills of the deceased daughters control the proportionate share of those daughters in the fund, in which event a collateral inheritance tax would be payable. If, however, only those children now living take the fund, no tax will be payable because they are lineally related to the original testatrix. In view of the fact that private interests are at stake and that the question which you have asked me to pass upon necessarily involves the determination of the rights of individuals, I feel that it would be unfair and perhaps improper for me to act officially in the matter. In my judgment Miss Murray should file a bill in the Equity Court requesting the Court to construe the will and determine those parties who are now entitled to participate in the distribution of this fund. The order of the Court in such a proceeding would practically determine whether there is any liability for a collateral inheritance tax. If you have any further suggestions to make in the matter, I will be very glad to hear from you again.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

TAXATION—COLLATERAL INHERITANCE—GIFT TO SISTER OF HOME AND EQUIPMENT FOR YEARS, WITH RIGHT IN TESTATOR'S SONS TO LIVE IN HOME AND TAKE IN REMAINDER—METHOD OF DETERMINING TAX.

June 9, 1923.

J. H. Millar, Esq.
Trust Officer,
Mercantile Trust & Deposit Co.,
Baltimore, Md.

MY DEAR SIR: I beg to reply to your letter of May 25th, in which you submit to me for my consideration a certain inheritance tax question presented by the will of William R. Bartgis, late of Baltimore City, deceased. It is not usual for this Department to render opinions to private corporations, but you state that the Judges of the Orphans' Court of Baltimore City have been unable to reach a conclusion as to whether any tax is due, and have suggested that the matter be referred to me for determination.

In the second clause of his will Mr. Bartgis used this language: "I tender to my beloved sister, M. Grace Price, the use of my home, consisting of house and grounds known as 2600 Roslyn Avenue, Baltimore, Md., and all the furniture and household effects of which I may be possessed at the time of my death, for the period terminating with the age of twenty-five years old of my two sons, in the event she accepts the above offer, it is understood there is to be no charge for same, but it is required of her to pay all running expenses on said property and keep same in as good condition as when she takes possession, and that my two sons are to have free access to home and board, until they reach the age of twenty-five years."

The time at which the two sons of the testator will both have arrived at the age of twenty-five years is definite, and therefore, the effect of the second clause of the testator's will is to give to his sister an interest in his home, furniture and household effects for a period of years with remainders in his two children. The situation, therefore, is one which

seems to be covered by the provisions of Section 134 of Article 81 of the Code, inasmuch as the interest devised to Mrs. Price is an interest less than an absolute interest and she is a person who is not exempted from the tax. Her interest, in my judgment, is therefore subject to a collateral inheritance tax and the real difficulty will arise in ascertaining the basis upon which the tax should be laid. It is the duty of the Orphans' Court of Baltimore City to determine, on application of Mrs. Price, the value of her interest, and they should do so, in accordance with the terms of the statute by deducting from the whole value of the estate so much thereof as shall be the value of the interest therein of the testator's two sons. In other words, the Court must determine the value of the remainder interest of the two sons and also the value of the right conferred upon the two sons to have free access to home and board in the Roslyn Avenue property during its occupancy and use by Mrs. Price. The difference between the value of the entire property and the aggregate value of the interests acquired under the will by the two sons is the basis upon which the tax must be collected. I realize that it will not be an easy task to determine these valuations, but the Court must perform its duty in this respect according to its own best judgment in the light of all available information on the subject.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

TAXATION—COLLATERAL INHERITANCE—BEQUESTS TO CHARITABLE INSTITUTIONS TAXABLE.

June 27, 1923.

Mrs. Margaret Pastorfield,
Register of Wills,
Denton, Maryland.

DEAR MRS. PASTORFIELD: In your letter of June 26th you requested me to advise you whether a bequest made to the

Children's Aid Society and Brethren Home of Neffsville, Pa., is subject to the collateral inheritance tax.

You will observe upon an examination of Section 120 of Article 81 of the Code that all estates passing upon death to any "person or persons, bodies politic or corporate, are made taxable" except only those created to or for "the use of the father, husband, wife, children and lineal descendants of the grantor, bargainor or testator, donor or intestate. The bequest to which your letter refers does not fall within the excepted classes and therefore is taxable. In other words all bequests are taxable except those passing to lineal relatives. The fact that the beneficiary is a charitable institution creates no exemption in its favor.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

TAXATION — COLLATERAL INHERITANCE — UNCONDITIONAL GRANT OF LAND TO COLLATERALS WITH RESERVED LIFE ESTATE IN GRANTOR—NO TAX PAYABLE.

July 11th, 1923.

John D. Hollyday, Esq.,
Register of Wills for Washington County,
Hagerstown, Maryland,

MY DEAR MR. HOLLYDAY: I am in receipt of your letter of July 7th. You state that Daniel W. Cearfoss, who recently died in Washington County, by deed "dated January 7th, 1914, conveyed to his niece, his undivided interest in certain real estate, reserving to himself "a free and unrestricted estate in and to all of said parcels for and during the period of my natural life." You ask whether it is now necessary for the niece to pay a collateral tax upon the real estate received by her from her uncle.

In Volume 4 of the Report and Official Opinions of the Attorney General, page 148, Governor Ritchie, then Attor-

ney General, ruled under a similar state of facts that the tax was payable.

I am unable, however, to concur in this conclusion. It is true that the actual enjoyment of the property was reserved to the grantor during his life, but the deed vested in the niece an interest in remainder which was absolute and irrevocable, and which became at once subject to her deed or will. In this respect the case differs from that discussed in the case of Smith vs. State, 134 Md. 473. The Court of Appeals in holding the property there involved subject to the tax clearly based the liability upon the power of revocation and the power of testamentary disposition specifically reserved in the deed. The inference is clear that in the absence of such reservations the interest in remainder transferred by deed to collaterals would have been immune from the tax.

It is, therefore, my opinion that the niece of Mr. Cearfoss received under his deed to her an interest which vested at once and which is not at this time subject to the tax.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

TAXATION—SALE BY ONE MARYLAND CORPORATION TO ANOTHER MARYLAND CORPORATION OF GASOLINE WHICH IS COMPOUNDED BY SECOND CORPORATION AND RESOLD, PARTLY IN AND PARTLY OUT OF THE STATE GASOLINE TAX PAYABLE—NO REFUND ALLOWED.

July 14th, 1923.

J. O. McCusker, Esq.,
Comptroller's Office,
Annapolis, Md.

DEAR MR. MCCUSKER: You requested me to give careful consideration to a letter sent by the Prudential Oil Corpora-

tion and by you transmitted to me. A supplemental letter was sent by the same corporation and also a letter from their counsel, Mr. R. E. Lee Marshall. All these letters referred to an opinion written by me on October 7th, 1922, and reported in Volume 7, Official Opinions, at page 449. These letters request me to reconsider the opinion of October 7th, because it is stated that the effect of my opinion has caused a loss of a certain class of business to Maryland corporations engaged in the sale and refining of motor fuel oils.

I have made a very careful re-examination of Chapters 521 and 522 of the Acts of 1922, popularly known as the one cent and two cent gasoline tax bills. I have intentionally delayed this opinion in the hope that I would find that my former opinion was erroneous, so that these companies would not be injured, as they alleged, by my ruling. However, a complete re-examination of the entire subject convinces me that the opinion as heretofore written is correct and being of that opinion, I think it proper that I should state my views with particularity.

In writing this opinion, the references will be to Chapter 521, the One Cent Gasoline Bill. Chapter 522, the Two Cent Gasoline Bill does not become effective until January 1st, 1924. The question arises upon the following facts. The Prudential Oil Corporation, located in Baltimore City, is selling gasoline to other large industries in Baltimore City. This gasoline is compounded by the buyer, and then exported beyond the borders of the State of Maryland. The question for determination is whether or not the tax is payable by the corporation which sells the gasoline to be compounded in Baltimore City, and if it is payable, can a refund be validly claimed.

In my opinion of October 7th, I ruled that such tax was payable and that when the gasoline was exported, there was no right to a refund of the tax already paid.

Where gasoline is sold in interstate commerce, no tax is payable to the State of Maryland. The Prudential Oil Company imports its gasoline from other States. Therefore, when the oil reaches the tanks of the Prudential Oil Cor-

poration no tax is payable, but when the Prudential Oil Corporation sells to another Oil Company in Baltimore City, then the Prudential Oil Corporation becomes a dealer as defined in Section 1, paragraph C, because the term "dealer" is defined as any person, firm or corporation who imports or causes to be imported gasoline and such other volatile and inflammable liquids produced or compounded for operating or propelling motor vehicles, as herein defined for use, distribution or *sale* and *delivery in,* and after the same reaches the State of Maryland. The admitted facts are that the Prudential Oil Corporation imports and sells the gasoline in Maryland and delivers it in Maryland after it reaches Maryland.

Section 8 of the Act provides that it is unlawful for any person, firm or corporation to receive and accept any shipment in intrastate commerce from any *dealer* (and as we have seen above, the Prudential Oil Corporation is a dealer). The purchaser must comply with Section 8 and a compliance with Section 8 is impossible unless the tax is paid or assumed by the dealer.

But it is contended that Section 9 is inconsistent with this view, and at first blush there may seem to be some weight to this argument. Section 9 reads as follows: "Said license tax shall not be imposed on motor vehicle fuel when exported or sold for exportation from the State of Maryland to any other State or nation." However, the Prudential Oil Corporation does not export the oil itself nor is it sold for exportation from the State of Maryland. It is sold for *compounding within the State of Maryland.* When it is compounded, it is then exported or sold for exportation from the State of Maryland, but before it is compounded under the terms of the Act, the tax is earned and inasmuch as the tax is earned and the compound is subject to taxation, the tax cannot be refunded or abated except in the method provided in the Act.

Refunds are provided for in Section 10. These refunds are only allowed to persons, firms or corporations who shall buy or use motor vehicle fuel for the purpose of operating or propelling stationary gas engines, tractors used for agri-

cultural purposes, motor boats, airplanes or aircrafts, or for cleaning or dyeing or other commercial use of gasoline. Obviously, the refunding section is not broad enough to cover the case under consideration.

My attention has been called to the case of Fahey vs. Baltimore and Ohio Railroad Company, 139 Md. 161, which is said to be in conflict with this opinion. An examination of this case will disclose that it has no decisive bearing on the question under consideration. If the case has any relevancy at all to this question it strengthens rather than weakens my convictions. In this case the Court of Appeals of Maryland determined, following Supreme Court decisions, that a shipment is to be classified as foreign, interstate or intrastate commerce according to the essential character of the commerce. The essential character of the commerce and not its mere accident determines its classification. But in the case at bar, we have a local company purchasing gasoline from its next door neighbor. When this purchase is thus made, it has no characteristic of interstate commerce whatsoever. It is the mere purchase of a basic ingredient of a compound by one local company from another local company. It is a completed sale of gasoline shipped in intrastate commerce. When the second company secures the delivery of this gasoline it compounds it with other liquids which it possesses. After it is thus compounded, it is sold to whoever will buy it. Some of it is sold in Maryland. Another portion of it is sold in interstate commerce and perhaps a third portion remains unsold on the compounding company's premises until a customer is secured. That customer may be within or without the State of Maryland. The sale of this portion may be interstate or intrastate commerce. The essential character of the commerce cannot be said to be interstate. It has taken on no essential characteristics whatsoever, except a local sale of gasoline from one corporation to another. As to the portion sold beyond the borders of the State of Maryland, I cannot possibly hold that there is a continuity of shipment from the Prudential Oil Company to the ultimate purchaser. This continuity of shipment is an essential characteristic of interstate com-

merce, and while it is true that mere incidents or accidents will not change the essential characteristics of the shipment, still there may be as a basis a continuity of shipment, otherwise the commerce must be classified as intrastate commerce. This view is supported by

Myers vs. Baltimore County, 83 Md. 385;
Gulf Co. vs. Texas, 204 U. S. 403;
Chicago vs. Iowa, 233 U. S. 334;
Kelley vs. Rhoads, 188 U. S. 1;
Pittsburg vs. Bates, 156 U. S. 577;
Brown vs. Houston, 114 U. S. 622.

These cases show the limitations of the doctrine of continuity of movement in commerce, and the facts of these cases are more nearly analogous to the facts of the case under consideration than Fahey vs. Baltimore & Ohio Railroad, supra, and the decisions of the Supreme Court cited in the first part of the opinion in the Fahey case, supra. I am bound by the decision of the Court of Appeals of Maryland in the case of Fahey vs. Baltimore and Ohio Railroad Company, but in my judgment, the facts in the case at bar are so essentially different from the Fahey case that that decision is not applicable.

I can perhaps distinguish the facts in the Fahey case best by changing the facts in the case at bar to meet the Fahey case. For example, if the Prudential Oil Corporation sold the gasoline to a corporation of the State of Virginia for delivery in Virginia and, as an incident to the transportation of such gasoline from the Prudential Oil Corporation to the Virginia Corporation the gasoline was required to be enriched by certain ingredients supplied by its neighbor, the United States Industrial Chemical Company, and if this compounding was limited to that particular shipment and it took place as a mere incident or accident of transportation, an entirely different situation might arise and my decision might be otherwise, but in the case under consideration the facts are reversed. There is an out and out sale in Maryland of gasoline from the Prudential Oil Corporation to the United States Industrial Chemical Company, and it is this sale which makes the gasoline sold subject to the tax.

I reached this conclusion with some reluctance, because of the hardship which it may impose. In the drafting of the statute this situation was not foreseen, and it may be unfortunate that no provision is made for a refund in such cases. However, the statute must be interpreted according to the words which the Legislature used and these words being clear and unambiguous, I must construe them according to their plain meaning. I cannot permit any personal views which I may hold as to the expediency of legislation to override the legislative intent as expressed by the words which the Legislature used.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

TAXATION—WHERE DISTILLED SPIRITS ARE STORED IN GOVERNMENT WAREHOUSES, THEIR SITUS FOR PURPOSES OF TAXATION IS THE ORIGINAL DISTILLERY, WHETHER THE SAME BE NOW OPERATED AS SUCH OR NOT.

July 26, 1923.

State Tax Commission,
Union Trust Building,
Baltimore, Md.

GENTLEMEN: In your letter of June 22nd, you request me to determine the situs of distilled spirits for purposes of taxation.

Section 220 of Article 81 of the Code reads in part as follows: "The said State Tax Commission shall fix the value of such distilled spirits for the purpose of taxation under this sub-title * * * and the said State Tax Commission shall without delay transmit and certify the said valuation by mail to the Comptroller of the Treasury and also to the Appeal Tax Court of Baltimore City and the Board of County Commissioners in the Counties where the distilleries are

situated, and all distilled spirits upon the valuation and return so made shall be subject to State, Municipal and County taxation as all other personal property located within the bounds of the State, City or County * * *."

You have called to my attention the facts in two specific cases which are as follows: 1. Distillery A is located in Carroll County; the distilled spirits are stored in Baltimore City; all of the spirits appear to be owned by the Company itself. 2. Distillery B, formerly located at 11th and O'Donnell Streets, Baltimore, Md., (new annex of Baltimore City); the distilled spirits are stored within the old limits of Baltimore and apparently no part of the distilled spirits is owned by Distillery B.

The statute prescribes (Section 220, supra) that such spirits shall be taxed at the location of the distillery, and the question which, therefore, arises is: What is the proper situs for taxation, first, when the spirits are in a warehouse in some other locality than the distillery, and, second, where it appears that the distillery no longer exists and that the distilled spirits are located in a taxing district other than the district in which the distillery was formerly located.

Section 220 of Article 81, supra, was originally enacted by Chapter 704 of the Acts of 1892, and because of certain defects in the Act of 1892 it was re-enacted with amendments by the Act of 1900, Chapter 320. At the time of the original enactment and the amendatory act of 1900 the law concerning the manufacture and sale of distilled spirits was very different from the present law. The Volstead Act was not in force at that time and the manufacture and sale of distilled spirits were regulated by Federal laws which were largely revenue measures. The revenue was collected by means of what was known as bonded distillery warehouses. The object of the bonded distillery warehouses was to enable the distiller to keep the spirits distilled by him in storage until they possessed the requisite age for consumption. The payment of the federal tax was deferred during this period and the rights of the government were protected by the complete supervision of the process of distillation and by control over the product until the tax was paid.

The provisions of the Federal statute are contained in Section 3247 to 3344, title "Internal Revenue," sub-title, "distilled spirits," which will be found in 3 Federal Statutes, Annotated, page 630 et seq., 2 U. S. Compiled Statutes, page 2104, et seq.

The main features of the system for the payment of an internal revenue tax were the collection of a tax per gallon, gauging and stamping being done by government officials; permission to keep the spirits for not exceeding eight years without paying the tax in bonded distillery warehouses *on the distiller's premises,* but under the control of a government storekeeper; that no one but the distiller was *recognized by the government;* that no one but the distiller could withdraw the spirits from bond, and the government did not make delivery to the holder of a warehouse receipt or keep any record of or supervision over such receipts; that on payment of the tax the spirits must be immediately removed from the bonded warehouse; that the government officials keep the keys of the distillery warehouse and could enter it in the absence of the distiller, but the distiller could not enter except in the presence of a government storekeeper. See Merchants National Bank vs. Roxbury, 196 Federal, 103, and special report of John Hinkley, Esq., Special Master.

The statutes declared (Section 3271, U. S. Compiled Statutes, 1901, page 21-22) "every distiller shall provide, at his own expense, a warehouse to be situated *on and to constitute a part of his distillery premises* and to be used only for the storage of distilled spirits of his own manufacture until the tax thereon shall have been paid * * * and such warehouse when approved by the Commissioner of Internal Revenue on report of the collector is hereby declared to be a bonded warehouse of the United States to be known as a distillery warehouse and shall be under the direction and control of the Collector of the District and in charge of an internal revenue storekeeper assigned thereto by the Commissioner."

Inasmuch as the business of distilling and storing spirits was conducted in this manner and under these restrictions,

it is highly probable that the Legislature, in drafting the tax upon distilled spirits, Code, Article 81, Sections 218 to 228, framed our law to meet the situation created by the Federal law. In other words, the Legislature must have known the conditions under which whiskey was being distilled, stored and sold. It will be observed that the United States Government looked to the distiller and the distiller alone for this tax. True, the distiller might have sold the whiskey by means of warehouse receipts or may have hypothecated the whiskey as collateral for a loan and deposited with the lender negotiable warehouse receipts. Even though the distiller ceased to be the owner of the whiskey so far as title was concerned, the United States Government for purposes of taxation and supervision looked upon the distiller and the distiller alone as the owner. Apparently the Legislature of Maryland intended to do likewise. An examination of the Act of 1892, Chapter 704, and the Act of 1900, Chapter 320, discloses that Section 220 is part of a comprehensive scheme for the assessment and collection of a tax upon distilled spirits. Section 218 of Article 81 taxes distilled spirits at the same rate as other personal property. Section 219 requires each distiller and "every owner or proprietor of a bonded or other warehouse in which distilled spirits are stored, and every person or corporation having custody of such spirits" to make certain reports to the State Tax Commission. In Section 220, supra, we find the same words used, that is to say, "owner," "distiller," "proprietor" or "custodian." However, later on in Section 220 in fixing the situs for taxation the following words are used: "Where the distilleries are situate." We, therefore, have an act taxing distilled spirits in the hands of the distiller, the owner, proprietor or custodian, but the situs for taxation is not the situs of the distillery or warehouse, but merely the situs of the distillery.

By Section 221 the right of appeal is given to any distiller, owner, proprietor or custodian, and likewise in Sec-222 it is made the duty of the distiller, owner, proprietor or custodian to make certain reports concerning deliveries as required by said section, and then Section 222 provides:

"Said delivery report to be made to the Tax Commission of this State who shall without delay transmit a copy of such report by mail to the Appeal Tax Court of Baltimore City, and to the Board of County Commissioners of those counties in which the distilleries are situate, and said distiller, owner or custodian shall also * * * make said report in duplicate to the collector or other proper officers designated by law to receive and collect taxes for the county or city in which said distillery is situate, etc., etc."

The presumption is that the Legislature had a definite purpose in using the word "distillery" in Sections 220 and 222. If the word "distillery" were only used in one of these sections it might be argued that it was used inadvertently and that the intention was to use the words "distillery" or "warehouse," or it might be contended that the Legislature by the use of the word "distillery" used it in a broad sense and intended to include the warehouse which was at that time required by the Federal statutes to be connected with and a part of the distillery, but the Legislature in two separate sections, one of which was re-enacted ten years later, used merely the word "distillery," and this fact coupled with the Federal law which was then in force convinces me that the Legislature used the word "distillery" intentionally and advisedly.

We must give to the word "distillery" its ordinary every day meaning. True, Federal legislation has changed the conditions surrounding the manufacture and sale of distilled spirits. As a result of these changed conditions the Maryland law becomes increasingly difficult to construe. It was passed to meet certain conditions and these conditions have, as we have seen, changed. But I have no authority to legislate, and for me to add something to the law which is not found in the language which the Legislature used, would be beyond my power and would set a dangerous precedent. The law should be amended at the next session of the Legislature to such an extent as is necessary to meet the new conditions arising out of the passage of the Volstead Act and the establishment of concentration warehouses.

In my opinion the Legislature of Maryland following the Federal statutes recognizes the distiller as the owner of the distilled spirits. The true owner is never known because the warehouse receipts pass by delivery. Some arbitrary method of fixing the situs for taxation was required for this species of property which is almost *sui generis*. The Legislature of Maryland fixed the situs of the distillery and not the situs of the spirits themselves as the determining factor. This is done in clear and unambiguous language. —In the case of Smith vs. State, 66 Md. 215-217, the Court of Appeals said: "If the language of a statute is plain and unambiguous there is no room for construction, there being nothing to construe." In Wilson vs. State, 21 Md., page 8, the Court of Appeals said: "The words of the act are first to be resorted to, and if these are plain in their import they ought to be followed." In Maxwell vs. State, 40 Md. 273, at 291, the Court of Appeals said: "We are first to consider the words employed and interpret them according to their plain ordinary and natural import, having some regard to their order and grammatical arrangement. If they are clear, precise and unambiguous the Legislature must be understood to mean what is plainly expressed." And in Cearfoss vs. State, 44 Md. 403, 407, the Court said: "Statutes should be interpreted according to the most natural and obvious import of their language, without resorting to subtle or forced construction for the purpose of either limiting or extending their operation . . . When the meaning is plain, the act must be carried into effect according to its language or the Courts would be assuming legislative authority." And in Hawbecker vs. Hawbecker, 43 Md. 516, 519, the Court said: "But it must be a very clear case of intent to justify a departure from the words of the law. It would be dangerous and unwarrantable for a Court to grope for an intent, or to make one from their own ideas of policy and morals, and on that ground say that a particular case is withdrawn from the operation of the plain and unambiguous language of a statute."

In a memorandum submitted with the request for the opinion there are some questions raised as to the constitu-

tionality of the statute if it is construed in the manner in which I have determined to construe it. The act of 1892, Chapter 704 was declared unconstitutional in the case of Monticello Company vs. Baltimore, 90 Md. 423, but the infirmity of this act was cured by the Act of 1900, Chapter 320. This act was assailed in numerous cases and its constitutionality was uniformly upheld. See Carstairs vs. Cochrane, 95 Md. 498, affirmed Carstairs vs. Cochrane, 193 U. S. page 10. Hannis Distillery Co. vs. Baltimore, 216 U. S. 285. Hannis Distillery Co. vs. Baltimore, 114 Md. 678. See also Merchants National Bank vs. Roxbury, 196 Federal, 103.

My opinion, therefore, is that in the case of Distillery A, the situs for purposes of taxation is Carroll County, Maryland, irrespective of the ownership of such spirits. In the case of Distillery B, the situs for purposes of taxation is the new annex of Baltimore City. In other words, where the spirits are in the warehouse in a taxing district other than the one in which the distillery is located, such spirits should be taxed as of the situs of the distillery. Where the distillery no longer exists the spirits should still be taxed at the situs of the distillery. The mere fact that the distiller has ceased to manufacture cannot alter the situs for purposes of taxation. In so far as the taxing authorities are concerned, the distilled spirits are still owned by the distillery and the mere fact that it has ceased to operate as a manufacturing or distilling company is not material. In cases where the distillery was operated by a corporation and the corporation has been dissolved it may very well be that a different rule would result. However, that question is not before me for decision at this time and it must be understood that I do not intend to express my opinion as to the rule in such a case.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

TAXATION—NO TAXES COLLECTIBLE WHEN PROPERTY OWNED BY BALTIMORE CITY AT TIME OF IMPOSITION OF TAX BY TAXING AUTHORITIES OF BALTIMORE COUNTY.

July 30, 1923.

Thomas G. Hunter, Esq.,
Treas. and Collector of Taxes for Baltimore County,
Towson, Md.

MY DEAR MR. HUNTER: You state in your letter of July 17th, that the Baltimore County Water Company, which formerly owned certain real estate in Baltimore County, conveyed the same to the Mayor and City Council of Baltimore by deed dated September 30, 1921, which deed I assume was immediately recorded. The County Commissioners of Baltimore County in making up their levy books during the months of September and October, 1921, included this property in the assessable basis for the year 1922. After acquiring the property the City continued to operate it, employing the same officers and agents as were formerly connected with the Water Company, and collecting rents from residents of Baltimore County as well as Baltimore City. No formal notice of the conveyance to the city was ever given to the County Commissioners, nor was any request made to have said property stricken from the books. Demand having been made upon the city for payment of taxes for the year 1922, payment was refused. Inasmuch as you are compelled to collect State taxes on this property in the event that it is not exempt, you ask me to advise you as to your duty in the premises.

Under Section 4 of Article 81, property belonging to any incorporated city or town of the State is exempted from taxation. The taxes which you are seeking to collect are for the year 1922. It is provided in Section 48 of Article 81 of Volume 4 of Bagby's Code, that the State taxes levied in pursuance of Section 28 of the same Article shall be due and payable on and after the first day of July in the year in which they are levied. Section 28 makes it the duty of the various Boards of County Commissioners throughout

the State "annually before the third Tuesday of April to impose the State taxes prescribed by law." It is apparent that the State taxes for 1922 did not at any time prior to January 1st, 1922, become a lien or charge upon any property whatsoever. In other words, such taxes became burdens or liens on or after January 1st, 1922. On that date and for three months prior thereto the title to the property to which your letter refers was vested in the Mayor and Council of Baltimore. I feel that there can be no doubt that such property was exempt at the time the taxes for 1922 were levied, ownership at the time of the imposition of the tax rather than ownership at the time of the preparation of the assessable basis being the determining factor.

It is, therefore, my opinion that no State tax is collectable from this property.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

TAXATION—COLLATERAL INHERITANCE—TAX IS OBLIGATION OF COLLATERALS FROM THE TIME THEY TAKE THE PROPERTY—NOT BARRED BY LIMITATIONS.

July 31, 1923.

William T. Davis, Esq.,
Register of Wills,
Upper Marlboro, Md.

DEAR MR. DAVIS: At the request of Hon. William S. Gordy, Jr., State Comptroller, I herewith submit my views upon the question presented by you to Mr. Gordy in your letter to him under date of March 20th.

In or about January, 1919, Thomas W. Smith, a resident of Washington City, died there, leaving a last will and testament in which he devised to his two brothers certain real estate located in Prince George's County, Maryland, and

worth approximately $20,000. The estate was administered in the District of Columbia by the Washington Loan and Trust Company of Washington, named in the will as the executor and trustee. You state that the matter was never brought to the attention of the Orphans' Court of your County by the Trust Company, and that no administration upon this estate was ever taken out in Prince George's County.

The title of the brothers of the testator to the real estate in Maryland came to them solely through the will, and inasmuch as it was necessary in order to establish this title, to file an exemplified copy of the will in Prince George's County, it is rather strange that the attention of the Orphans' Court of that county was never in any way directed to the death of Mr. Smith or to the disposition made by him of his estate. Mr. Smith, however, has now been dead for more than four years, and you have asked to be advised whether there is any law under which you can now compel the executor to take out administration in your County, and whether the collateral inheritance tax upon the real estate in question can now be collected.

These facts present a unique situation. The collateral inheritance tax is not a tax on the property, but is a tax that collateral kindred must pay for the privilege of succeeding to property by inheritance or under a will. This rule is laid down in the case of Wingert vs. State, 129 Md. 30, and Fisher vs. State, 106 Md. 119. Primarily, therefore, the collaterals who take the property are liable for the tax.

Section 132 of Article 81 of the Code imposes upon the executor or administrator the duty to collect the tax from the parties liable to pay the same, and then to pay said amount to the Register of Wills, who in turn remits to the State Treasurer; and the same section gives the Orphans' Court power, upon failure of such payment to the administrator or executor, to order the executor or administrator to sell sufficient of the real estate to pay said tax, said power to be limited, however, to a period of four years after the death of the testator. This section assumes that administration has been granted on the estate of the deceased and

merely provides in such cases for an easy and expedient method of collecting the tax from the party primarily liable, but this section does not in any way limit the collection of the tax to the method therein provided.

Section 131 of Article 81 of the Code merely provides that the amount of the tax shall be a lien on the real estate for the period of four years from the date of the death of the decedent who shall have died seized and possessed thereof. Sections 131 and 132 do not release in any way the liability of the collateral who is primarily liable to pay the tax.

The case of Montague vs. State, 54 Md. 481, is somewhat analogous to the present case. The Court discussed the payment of the tax due by a collateral legatee on personal property passing through the hands of the administrator. Section 121 of Article 81 requires the administrator to deduct the tax from the personal estate before distributing the shares collaterally. The Court, however, said: "In our opinion if an administrator or executor actually pays over money of his decedent to a collateral distributee or legatee without retaining therefrom this tax, it becomes, to the extent of the tax, money had and receved by him for the use of the State, and an action like the present may be maintained against such distributee or legatee therefor."

The obligation of a collateral to pay the tax accrues at the time of the taking of the property by the collateral, and limitations do not run against the State. In the present case, therefore, it is my opinion that the two brothers are personally liable to the State, for their respective shares of the collateral tax. If, after the amount of the tax is properly determined, the debtors refuse to pay the same, I shall be glad to advise you further as to the procedure for collecting this tax.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

TAXATION—THE WORDS "CAPITAL EMPLOYED" AS USED FOR DETERMINING THE FRANCHISE TAX OF A FOREIGN CORPORATION MEAN CAPITAL ACTUALLY IN MARYLAND AND ACTUALLY EMPLOYED BY THE CORPORATION, WHETHER IN MARYLAND OR OUT OF IT.

August 14, 1923.

State Tax Commission,
Union Trust Building,
Baltimore, Md.

GENTLEMEN: In your letter of August 1st, you request me to give you my opinion on the meaning of certain words used in Article 23, Section 93 of the Code. This section imposes a franchise tax on foreign corporations varying with the "capital employed" by the corporation in this State. I have had occasion to construe these words in two opinions, the first of which will be found in Volume 5, page 453; the second in Volume 6, page 509 of the official opinions.

Certain corporations contend that the effect of these opinions is to impose the tax only on such capital as is physically in the State and actually employed in the State. The constructions thus placed upon these opinions are not correct. These opinions hold that for the purposes of the *franchise tax* the basis for computation is capital actually in the State and capital employed by the corporation. In other words, all assets of the corporation within the State of Maryland must be considered in computing the basis for the franchise tax. Such assets must be employed by the corporation, but they need not be employed within the State. In other words, if a corporation of the State of Virginia exercises its franchise in Maryland and has $100,000 deposited in a bank in the State of Maryland, that $100,000 must be considered in determining the basis for the franchise tax, even though that $100,000 is employed by the corporation for transacting its business in the State of West Virginia. The capital in such a case is employed by the corporation, and it is within the State of Maryland. These are the only requisites. As to whether or not such capital is employed in the State of Maryland is, to my judgment, immaterial.

Therefore in making up the basis for the franchise tax, you are to consider the cash on hand in Maryland and the amount on deposit in Maryland whether or not such assets are actually employed by the corporation for the transaction of its Maryland business. Accounts receivable, bills and notes held against Maryland debtors should also be taken into account in computing the Maryland franchise tax.

One of the corporations has computed its entire cash in hand wherever situate and added this amount to its money deposited in bank and then has divided this total among the different States in which it does business, allowing Maryland a little over $6,000. This is not the proper method for computing the franchise tax. The total amount of cash actually in Maryland or on deposit in Maryland on the first day of January should be considered along with other assets as the proper basis for computing the franchise tax.

One of the corporations contends that the situs of such intangible property as cash and bank balances is generally understood to be in the State where the corporation was incorporated, and, therefore, not taxable in the State of Maryland. The corporation is confusing the general property tax with the foreign corporation franchise tax, and it is unnecessary to cite authorities to show that the corporation is in error in this contention.

It must be understood that the scope of this opinion is limited to cash on hand in Maryland, bank deposits in Maryland and accounts receivable in Maryland and, therefore, the opinion carries no implication that other assets are not to be considered in computing the basis for the franchise tax of foreign corporations. On the contrary, as in the opinions cited above, it has been distinctly held that such other assets are to be considered, and this opinion in no way alters or modifies the two opinions cited above.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

TAXATION—COMMISSIONS MUST BE ALLOWED EXECUTORS—TAX PAYABLE OUT OF SAME—NO COMMISSIONS NO TAX.

August 15, 1923.

Richard Davis, Esq.,
Register of Wills,
Howard County,
Ellicott City, Md.

MY DEAR MR. DAVIS: You state that John C. Stafford who had been appointed administrator of Luke A. Stafford, deceased, was subsequently removed by the Orphans' Court of your county because of his failure to perform certain duties. He was required to state an account of his administration setting forth the assets received by him and the expenditures made by him. He complied with this order, but the Orphans' Court declined to allow him any commissions. You now wish to know whether it is your duty to charge Mr. Stafford with the State tax on commissions.

Section 117 of Article 81 of the Code in my judgment makes it mandatory for the Orphans' Court in every case to allow commissions to executors and administrators, and I am unable to find legal authorization for the action of your court in refusing to make any allowance of commissions to Mr. Stafford. The only discretion in the matter which is granted to the Court is to determine what the rate of commission shall be between the minimum and maximum rates fixed by Section 5 of Article 93 of the Code.

The tax to which your letter refers is imposed by Section 115 of Article 81 upon commissions which have been allowed to executors or administrators. It is collectible only out of such commissions, and, therefore, if no commissions have been allowed, no tax is collectible.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

TAXATION — COLLATERAL INHERITANCE — SECURITIES IN MARYLAND BELONGING TO NON-RESIDENT DECEDENT FOLLOW SITUS OF OWNER AND ARE NOT TAXABLE.

September 11, 1923.

Dr. Edwin R. Downs,
Register of Wills,
Baltimore, Maryland

DEAR SIR: I beg to submit my views upon a question recently presented to me by Messrs. Marbury, Gosnell and Williams, in pursuance of a suggestion emanating from you.

Mrs. Sara C. Houstoun recently died in Augusta, Georgia, leaving an estate worth from $125,000 to $150,000 and consisting almost entirely of stocks and bonds. Mrs. Houstoun was originally a resident of Georgia. For a number of years, however, she resided in Baltimore City and when here rented a safe deposit box from the Commonwealth Bank of Baltimore. In 1918 she left Baltimore permanently and resided until the time of her death with her daughter, in Augusta, Georgia. After her death, it was discovered that securities of the appraised value of $26,410.28 were located in Mrs. Houstoun's safe deposit box at the Commonwealth Bank. Under her last will and testament she left to collaterals two cash legacies aggregating $8,000. Her executor, who duly qualified in Georgia, was also granted ancillary letters by the Orphans' Court of Baltimore City. The question is whether any collateral inheritance tax is due to the State of Maryland.

The case of State vs. Dalrymple, 70 Md. 294 is helpful in determining this question. In that case a citizen of California, who had become entitled to an undivided interest in his brother's estate in Maryland, died before the brother's estate could be settled. Maryland letters of administration were thereupon issued in the Californian's estate, and subsequently, the Maryland administrator received a distribution from the estate of the Maryland brother. All of the Californian's property under his will passed to collaterals, and the Court held that a collateral inheritance tax was pay-

able. It is apparent, however, that at the time of the Californian's death the property in Maryland in which he was interested was actually in the State since it consisted solely of the portion of the unsettled estate of his brother.

In the case under consideration the securities in Maryland actually belonged to Mrs. Houstoun, and I know of no reason why the general rule which declares that personal property follows the situs of the owner is not applicable. In the Dalrymple case the Court refers with approval to Orcutt's case, 97 Pa. St., page 179, where a decedent of New Jersey had, during his life time, deposited with the Pennsylvania Trust Company for safe keeping, certain United States Bonds. The Court declared that these bonds were constructively at least in the possession of the testator at the time of his decease.

It is evident also that the executor of Mrs. Houstoun in Georgia can readily pay from the estate in his hands in that jurisdiction the two legacies to collaterals and this is another reason why the property in Maryland, all of which will apparently pass to lineals, should not be chargeable with the payment of the tax. In my opinion, under the facts presented, no collateral inheritance tax is due from the estate of Mrs. Houstoun.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

TAXATION—TAX ON EXECUTORS' COMMISSIONS—COMPUTED ON GROSS VALUE OF THE ESTATE.

September 18, 1923.

Robert J. McCauley, Esq.,
Register of Wills,
Elkton, Maryland.

MY DEAR SIR: I desire to answer the question presented to me by your letter of September 17th.

The administrators of Elwood Balderson, late of your county, deceased, recently filed their first and final account in which they charge themselves with the amount of the inventory and all the receipts of a farm belonging to the deceased, amounting in all to $22,862.56. They claim credit for payments, including operating farm expenses, aggregating $13,036.34. The net amount of the estate was, therefore, $9,826.22. In stating the account you charged the administrators with a State tax of one per cent of $20,000 and one-fifth of one per cent on $2,862.56, making a total State tax of $205.73. The administrators, however, claim that they should have been allowed this tax on the net proceeds of the estate and not on the gross assets. You ask me to determine for you which position is the correct one.

The law on the subject is found in Section 115 of Article 81 of the Code which declares that the tax to be paid by executors and administrators shall be an amount "equal to one per cent of the first $20,000 of the estate and one-fifth of one per cent on the balance of the estate." This tax being a tax against the executors and administrators is deductible from the commissions received by them. The commissions are unquestionably laid upon the gross estate and I know of no reason why the word "estate" should have a different meaning in the law fixing the amount of the tax. The only consistent interpretation is that in both cases the word "estate" means gross estate and I think your attitude in the matter is entirely sound.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

TAXATION — TAX ON EXECUTORS' COMMISSIONS — COMMISSIONS NOT EARNED UNTIL STATEMENT OF ACCOUNT— LAW THEN IN FORCE DETERMINES AMOUNT OF TAX.

October 15, 1923.

William T. Davis, Esq.,
Register of Wills,
Prince George's County, Md.

DEAR MR. DAVIS: I beg to reply to your letter of October 5th. You state that the will of Charles E. Coffin was admitted to probate on June 11th, 1912, and that F. Snowden Hill was granted letters testamentary by the Orphans' Court of Prince George's County, and that on August 19th, 1913, the executor filed his first administration account in which the executor was allowed 5 per cent commission, and that on September 29, 1923, a sale of the real estate was made which was reported to the Orphans' Court on October 7, 1913, and finally ratified by the Court on November 6, 1913, and that the executor is now ready to pass his second and final administration account.

You ask my opinion whether the executor should pay on the commissions which may be allowed in his second account the tax as provided by Chapter 559 of the Acts of 1916, now appearing as Section 115 of Article 81 of Volume 4 of the Code, or as provided by Section 115 of Article 81 of Volume 2 of the Code.

Prior to Chapter 559 of the Acts of 1916 the State tax on commissions was one-tenth of the amount of the commissions allowed to the executor or administrator. The act of 1916 repealed and re-enacted the former law and fixed the tax on commissions as one per cent on the first $20,000 of the estate and one-fifth of one per cent on the balance of the estate.

This particular point does not appear to have been decided by the Court of Appeals of Maryland. However, the case of Gaines vs. Reutch, 64 Md. 517, throws some light on the subject. That case dealt with Chapter 470 of the Acts

of 1884, codified as Section 5 of Article 93 of the Code, which changed the pre-existing law by providing for a commission to an administrator of not less than two per cent or more than ten per cent on the first $20,000 of the estate, and not more than 2 per cent on the balance of the estate. Prior to the passage of the Act of 1884, the executor had passsed two accounts, the first distributing $18,520.03 and the second account distributing $31,509.28, on each of which the Orphans' Court allowed the executor 8 per cent commission. The third account was passed after the passage of the Act of 1884, and the Orphans' Court allowed a commission of 8 per cent on the third account. Some of the parties interested in the estate objected to the allowance of the 8 per cent commission on the third account, claiming that according to the Act of 1884 only 2 per cent could be allowed, because commissions had theretofore been allowed on the portion of the estate totaling more than $20,000. The Court of Appeals helds as follows:

"The Act of 1884 provides that it shall take effect from the date of its passage. That date was April 8th, 1884. The first and second administration account of the appellee were passed before that time, and he was entitled to the compensation the law then allowed. So far as his right to compensation had accrued and been fixed in his administration accounts passed prior to the Act of 1884, it cannot be disturbed. But the portion of the estate unadministered and covered by the third account falls within the operation of the Act of 1884. All previous statutes relating to commissions were repealed by it, and no other standard existed. As the portion of the estate previously settled had been administered under the laws then in force, it cannot be computed with the portion unadministered when the Act of 1884 took effect. Every account settled after that Act became operative falls within its provisions, and the amount of the estate represented in appellee's third account, $8,082.02, must be computed as the first fractional part of the initial amount of the estate on which commissions are to be computed under the Act of 1884. As this amount is less than $20,000, and under the Act of 1884, the Court in its discretion may, up to

that amount, allow from two to ten per cent and has allowed eight per cent which is within the maximum amount which they may allow on the first $20,000 of an estate coming within the operation of the Act of 1884, its action was clearly authorized, and is not a subject of review."

In the account in the Coffin estate, which is about to be filed, the State is entitled by way of tax on commissions to one per cent on the first $20,000 and one-fifth of one per cent on the balance of the estate, if there be any balance.

I feel that the fact that the executor sold the real estate in 1913 does not affect this view. The Court of Appeals stated in the case of Kealhofer vs. Emmert, 79 Md., page 252, that executors' commissions are not earned until the account is passed by the Court. Therefore, I believe that the tax in your case should be computed according to the terms of the law in existence at the time the second account is passed.

If the commissions had been earned by the executor prior to the passage of the Act of 1916, then no doubt the law relative to the tax on commissions in existence prior to 1916 would apply, but since the commissions are not fixed and earned until the filing of the account, it is my opinion that the present law is applicable.

It might appear at first sight that the old law applies under the rule laid down in State vs. Safe Deposit and Trust Company, 132 Md., page 251. That case dealt with the question of the proper amount of collateral inheritance tax. Chapter 695 of the Acts of 1908 increased the collateral inheritance tax from 2½ to 5 per cent. The testator died prior to 1908, leaving his estate to his wife for life with remainder to certain collateral heirs. The widow died after the passage of the Act of 1908, and the Court of Appeals held that the 2½ per cent rate was applicable, because the title of the collateral heirs or remaindermen accrued upon the death of the testator though the possession of the property was to be deferred during the lifetime of his wife. It was because of the fact that title accrued prior to the Act of 1908 that the old rate of 2½ applied.

As distinguished from the 132 Md. case, in the case you present you will note that the commission to which the executor is entitled does not accrue at the time of the sale of the real estate and its conversion into cash, but only accrues at the time of the passage of his second administration account.

The State will therefore be entitled to a tax based on the provisions of Chapter 559 of the Acts of 1916.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

TAXATION — COLLATERAL INHERITANCE — ASSIGNMENTS TO TRUSTEES FOR BENEFIT OF COLLATERAL WITH RESERVED POWER OF REVOCATION AND CANCELLATION — TAX PAYABLE.

November 16, 1923.

Edwin R. Downes, Esq.,
Register of Wills,
Baltimore, Md.

DEAR DR. DOWNES: You recently requested me to pass upon certain collateral inheritance tax questions growing out of the trusteeship carried on by the Safe Deposit and Trust Company of Baltimore under certain assignments of Philip Lindemeyr, who died on January 25, 1923. Under one assignment Mr. Lindemeyr directed the Trust Company to pay to his sister, Ida Lindemeyr, the sum of $65.00 per month, directing further that when the fund in the hands of the Trust Company, valued at the time of Mr. Lindemeyr's death at $9,768.07, had been reduced to about $500.00, the trustee should use this balance in securing admission for the sister in some home for the aged. Under another assignment Mr. Lindemeyr made a similar provision for his broth-

er, Walter Lindemeyr, directing the payment of $90.00 per month out of the income and principal during the brother's life. This fund at the time of Mr. Philip Lindemeyr's death amounted to $8,900.38. Provision was made for the disposition of the residue of both funds after the death of the brother and sister, respectively, to certain designated charities.

In both assignments Mr. Lindemeyr reserved the right to alter the terms of the trust created, to substitute new and other trusts therefor, and the right at any time to revoke and cancel in writing the trust upon which the trust property was held either in part or in whole. Under the two assignments, payments to the sister and brother, respectively, began during Philip Lindemeyr's life, and the question which you wish me to determine is whether it is proper for the Safe Deposit and Trust Company, as trustee, to pay the collateral inheritance tax upon the value of these funds as of the date of the death of Mr. Philip Lindemeyr.

I do not have before me copies of the various assignments, and I am not certain, therefore, that, under the language employed therein, they were to become effective upon the death of Mr. Philip Lindemeyr. I assume, however, that this was the expressed intention of Mr. Lindemeyr, although with his acquiescence the income from the respective funds was paid over during his lifetime to the sister and brother. The payments thus made during his lifetime were, in effect, gifts *inter vivos* as between Mr. Lindemeyr and his brother and sister. As long as he lived, however, Mr. Lindemeyr possessed the right to revoke his assignments, take possession again of the property constituting the two trust funds, and to make such other distribution of said property as he might desire. Under these circumstances the rights of the sister and brother did not become definitely fixed and the two assignments did not become finally operative beyond any power of revocation until Mr. Lindemeyr's death. I, therefore, feel that the question presented by you is controlled by the same principles which were applied by the Court of Appeals in the case of Smith vs. State, 134 Md. 473. This case decided that where a person makes a deed of trust, retain-

ing under its terms the net income for life, and reserving the power of revocation at any time, the tax is chargeable against those taking in remainder.

It is my opinion, therefore, that the duty rests upon the Safe Deposit and Trust Company to pay the collateral tax on the full value of the trust funds on the date of Mr. Lindemeyr's death.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

TAXATION — COLLATERAL INHERITANCE — NO TAX PAYABLE ON TESTAMENTARY GIFT TO AN ADOPTED CHILD.

November 16, 1923.

Russell P. Smith, Esq.,
Register of Wills,
Cambridge, Md.

MY DEAR MR. SMITH: I have your letter of November 15th, in which you ask whether it is your duty to collect a collateral inheritance tax from property devised by a decedent in your County to an adopted son who was not related by blood in any way to the decedent.

I think that the question is answered by the provisions of Section 74 of Article 16 of the Code, wherein it is declared that the effect of a decree of adoption "shall be to entitle the child so adopted to the same rights of inheritance and distribution as to the petitioner's estate as if born to such petitioner in lawful wedlock." It is the evident purpose of the law that a child that is formally adopted shall stand in the same relationship to the parents, so far as all property rights are concerned, as if born to said parents as a natural child. In contemplation of law, therefore, an adopted child is a lineal in exactly the same manner as a natural child,

and it is my opinion that no tax is collectible from property bequeathed or devised to an adopted child. I am assuming, of course, that all of the legal formalities necessary for the adoption of a child have been fully complied with, otherwise, of course, the child in question is not the adopted child and is entitled to none of the rights or privileges conferred by law upon an adopted child.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

TAXATION — COLLATERAL INHERITANCE — LEGACY TO COLLATERAL AS COMPENSATION FOR FUTURE SERVICES TAXABLE—NO TAX DUE ON INCOME PAID OVER FOR SUPPORT OF GRANTOR'S DAUGHTER AND HER GUARDIAN.

November 21, 1923.

Dr. Edwin R. Downs,
Register of Wills,
Baltimore, Md.

MY DEAR DR. DOWNS: In accordance with your request, I beg to express herein my opinion as to the several collateral inheritance tax questions raised by the will of Philip M. Tabb, Jr., late of Baltimore City, deceased. Mr. Tabb placed the title of all of his property in trustees charging them with the duty of paying the net income therefrom to his sister-in-law, Nannie H. Ferguson, during her life, for the support and maintenance of herself and the testator's daughter, Marianne Tabb, and upon the death of his sister-in-law, to pay the entire net income to his cousin, Hester Tabb Brown, for the support of herself and his said daughter, substituting in turn for Mrs. Brown, in the event of her death, a cousin Mrs. Walke, and, after her death, a friend, Harvey C. Brown, with the final direction that upon the death of the daughter the entire estate was to be divided

into four parts among certain collateral relatives. In addition to the general provisions outlined above, the following language appears in the will: "Upon the death of my sister-in-law, or upon my death, should she predecease me, I request my dear cousin, Hester Tabb Brown, wife of Harvey C. Brown, to assume the guardianship of my daughter, as she has promised to do, and to do for her as her own dear sister, and in the event that she shall accept such guardainship, I direct my said trustees to pay to her, out of the corpus of my estate the sum of $10,000 as a small remuneration in advance, for the care and trouble she assumes in accepting such guardianship."

Letters had passed between Mr. Tabb and Mrs. Brown, indicating that Mrs. Brown had been informed of the above provisions which Mr. Tabb was contemplating for his will and had indicated her willingness to acquiesce therein at the proper time.

Mr. Tabb died on November 5th, 1922, and his sister-in-law on January 9, 1923. The income from the estate was greatly exceeded by the payments made by Mr. Tabb during his life and, after his death, by his representatives, to physicians and nurses for the services rendered by them to the sister-in-law. Upon the death of Miss Ferguson, Mrs. Brown formally accepted the guardianship of the daughter. The questions presented are as follows:

1. Is a collateral inheritance tax payable upon the income, if any, due Miss Ferguson, the testator's sister-in-law?

2. Is a collateral inheritance tax payable upon the $10,000 bequest to Mrs. Brown?

3. Is a collateral inheritance tax payable upon any portion of the income payable to Mrs. Brown during the life of Marianne Tabb?

I desire to answer these questions in the same order.

1. We are not in any way concerned with any payments made in behalf of Miss Ferguson by Mr. Tabb during her lifetime. After his death Miss Ferguson became entitled to all the income for the support of herself and the testator's daughter. The executors, of course, had the usual period during which to close the estate and to turn over

the residue to the trustees. Any income accruing during the short period of Miss Ferguson's survivorship of Mr. Tabb was very limited and would have been applicable to the care and maintenance of Miss Ferguson and Miss Tabb. Although the testator directed that the entire income shall be turned over to the various parties designated as the respective guardians of his daughter for the joint support of the guardian and the daughter, nevertheless I feel that the sole thought of the testator was to provide for his feeble-minded daughter who was personally unable to attend to any business in her own behalf, and to devote the income from the trust fund to her benefit. From this standpoint participation in the enjoyment of the income by the guardian must beconsidered in the nature of compensation for services rendered and as being merely incidental to the general plan of the testator to devote his estate to his daughter's welfare. In other words, the trustees were practically directed to use the income to employ a guardian or attendant for the daughter. Under these circumstances I consider the income must be paid over from time to time for services rendered and not as a legacy passing directly to the beneficiary under the will. In my judgment, therefore, no tax is due on income accruing for the benefit of Miss Ferguson.

2. The bequest of $10,000 made to Mrs. Brown was a direct gift to her and, although the testator declares it to be a small remuneration in advance for the care and trouble which she assumed in accepting the guardianship, it cannot be regarded as the satisfaction of an existing obligation. Mrs. Brown had no such agreement with the testator which would have entitled her to present and sustain a claim for the $10,000 against the estate. Mr. Tabb would have been at liberty to change his mind the day before his death and could have refrained from making any gift to Mrs. Brown whatever. Mrs. Brown, on the other hand, could have declined to accept the guardianship. I know of no legal principle by which a testator, in bequeathing a designated sum to a collateral, can relieve the collateral from the payment of the tax by declaring the bequest to be in compensation

for future services. The situation is entirely different from the income provision already discussed because that income accrues from time to time, and is paid over as the services are rendered.

While there are authorities which hold that existing obligations may be discharged through the medium of a will and that such bequests are not taxable (Gleason & Otis inheritance taxation, page 287) these ruling are confined exclusively to the recognition of obligations which are definitely binding upon the testator at the time of his death. The situation presented by the $10,000 gift to Mrs. Brown is a totally different one, and, in my judgment, it will be necessary for Mrs. Brown to pay the tax.

3. The reasons outlined in discussing question one are applicable also in answering question 3. Mrs. Brown in earning a participation in the enjoyment of the income from the testator's estate. If she does not render the proper service from time to time I feel confident that the trustees can be relieved, by proper judicial action, from the necessity of paying the income to her. If the testator had authorized the trustees to secure some proper party to care for his daughter and directed that the income should be turned over to such party for the support of said party and the daughter, little doubt could have existed as to the exemption from tax liability. The fact that the testator indicated the persons whom he desired to act as guardian instead of permitting them to be selected by the trustees, does not, in my judgment, alter the situation.

It must be remembered also that the estate will first be settled by the executors who will turn over the corpus of the trust to the trustees for the benefit of the testator's daughter. It is the executors who are chargeable with the payment of any tax out of the corpus of the estate. No such duty rests upon the trustees as to income received by them and applied to the benefit of a lineal. I do not believe therefore, that any duty rests upon either the trustees or Mrs. Brown to pay a tax on any portion of the estate which

will be received by Mrs. Brown from the trustees under said will.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

TAXATION — COLLATERAL INHERITANCE — WHEN DEED OF TRUST RESERVES NO POWER OF REVOCATION OR TESTAMENTARY DISPOSITION BUT AUTHORIZES TRUSTEE TO USE PART OF PRINCIPAL FOR BENEFIT OF GRANTOR, IF NECESSARY, NO TAX IS PAYABLE.

November 22, 1923.

Dr. Edwin R. Downs,
Register of Wills,
Baltimore, Md.

DEAR DR. DOWNES: In pursuance of the request contained in your letter of recent date, I desire to submit my conclusions concerning the collateral inheritance tax liability of the trust estate in the hands of the Safe Deposit and Trust Company of Baltimore under the deed executed by Mrs. Cora W .Johnson.

Mrs. Johnson's deed was made in 1909. She transferred to the Trust Company certain property described therein, directing the Company to hold the same in trust and to pay over the net income from time to time to herself during her natural life. Specific directions were contained in the deed as to the disposition of the trust property after Mrs. Johnson's death, among various collateral relatives. No power of revocation or of testamentary disposition was reserved to the grantor by the deed which was absolute in its terms, and unconditionally and unequivocally divested the grantor of the title to her property. Only under one section of the deed could any possible question be raised as to the tax liability and that is the provision authorizing the trustee

"to pay over or use for the maintenance and support and comfort of the grantor in addition to the net income, such portion of the principal or corpus of the trust as at any period of the life of said grantor the trustee in its judgment and discretion may deem proper."

I do not believe this section renders the property liable to a tax. The grantor reserved no rights to herself. The discretionary privilege accorded the trustee of using a portion of the fund for the grantor's maintenance and support was limited to an immediate use of certain portions of the fund and did not permit the diversion of any of the property to any third parties other than the beneficiaries named in the deed itself. The rights of such beneficiaries were definitely fixed by the deed and their title to the property was clearly vested in them subject to be divested only in the event and to the extent that the trustee should deem the use of portions of the fund essential for the comfort and maintenance of the grantor. In my judgment, no tax is due.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

TAXATION — COLLATERAL INHERITANCE — DEED OF TRUST RESERVING POWER OF REVOCATION UPON CONSENT OF TRUSTEES OR COURT OF EQUITY — TAX DUE UPON PROPERTY PASSING THEREUNDER TO COLLATERALS.

November 22, 1923.

J. Edwin Downes, Esq.,
Register of Wills,
Baltimore, Md.

MY DEAR SIR: I beg to reply to your letter of November 15th, and, in accordance with the request contained therein, to answer the collateral inheritance tax question arising in connection with the estate of Mrs. Margaret A. Millholland.

Mrs. Millholland, in April, 1919, executed a deed to two trustees under which she conveyed and assigned to said trustees all of her property in trust, to pay the net income therefrom to herself for life, with discretionary powers in the trustees to use so much of the principal of the trust as might be necessary for her own support, maintenance and care. Upon the death of Mrs. Milholland the trustees were directed to divide the residue of the trust estate among collaterals in accordance with the amounts named therein.

The deed contained this provision: "That at any time during the lifetime aforesaid of the said Margaret A. Millholland, with the consent of the said Trustees, but only with their consent, or in case of the refusal of such consent, without good reason, upon the order of any equity court having jurisdiction in the premises passed upon the petition of the said Margaret A. Millholland, against the said Trustees without the necessity of having any other parties to the proceedings, the said Margaret A. Millholland shall have the right to change or amend in any particular the terms of the trust hereby created or to revoke the same altogether, but not so as to affect any action previously taken by the Trustees or the survivor of them under any of the powers herein granted."

Mrs. Millholland recently died in Baltimore. The deed of trust was not changed or amended in any way during her lifetime. The trustees are now prepared to distribute the estate among the beneficiaries, all of whom are collaterals and desire to know whether any collateral inheritance tax is due the State.

The case of Smith vs. State, 134 Md. 473, establishes the general princple that where a grantor conveys property to trustees for the benefit of himself for life and thereafter to collaterals, reserving in said deed a power of revocation, the gift to collaterals is subject to a collateral inheritance tax. In that case the power of revocation was retained by the grantor to be exercised solely by her. It, therefore, preserved for herself complete personal control over her estate during her lifetime. The deed executed by Mrs. Millholland introduces a new feature in that the power of revocation

could only be exercised by her with the consent of the trustees or the approval of the Court. It will be noted, however, that the consent of the beneficiaries in remainder was not required and this, I feel, is the real test. So long as the rights of the collateral distributees are not definitely and finally established by the deed of trust, but remain subject to the control of the grantor or of persons other than the distributees, there is no such conclusive disposition of property and vesting of title thereto as will relieve it from the collateral inheritance tax obligation. To hold otherwise would mean that a grantor could execute a deed of trust conveying property to trustees of his own selection and subject to his control, whose assent to a subsequent revocation would be assured whenever requested by the grantor. As a result the State could easily be defrauded of taxes to which it was justly entitled. In my opinion the collateral inheritance tax is now due upon the entire amount in the hands of the trustees passing to collateral beneficiaries.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

TAXATION — COLLATERAL INHERITANCE — A LEGACY TO WHICH RESIDENT OF MARYLAND IS ENTITLED DURING HIS LIFE UNDER WILL OF NON-RESIDENT, BUT REMAINING UNPAID UNTIL AFTER LEGATEE'S DEATH, IS SUBJECT TO TAX IF IT PASSES TO RESIDENT LEGATEE'S COLLATERALS UPON SETTLEMENT OF HIS ESTATE.

December 8, 1923.

Dr. Edwin R. Downs,
Register of Wills,
Court House,
Baltimore, Maryland.

DEAR SIR: You recently requested my opinion as to the collateral inheritance tax liability of a fund of $5,000 be-

longing to the estate of Letitia McKean Buchanan, late of Baltimore City, deceased. The fund in question will pass to collateral relatives of Miss Buchanan. Its history is as follows:

Roberdeau Buchanan, who died in Washington City in 1916, executed a will in June, 1910, in which he devised all of his property to his wife, whom he named as his executrix, for and during the period of her natural life, and after the death of his wife, he devised an interest, amounting to $5,000 in a certain property in that city, known as 2012 Hillyer Place, N. W., to his cousins, Letitia McKean Buchanan and Alice L. Buchanan. By a codicil executed in 1912 he revoked the paragraph of his will mentioning the Buchanan cousins and, in lieu thereof, substituted this language:

"I do hereby request that if my cousin, Letitia McKean Buchanan, of Annapolis, shall survive me, then my executrix, as soon as she can arrange for it conveniently, shall pay to her the sum of $5,000. This represents the amount which I received from the estate of my aunt, the late Letitia E. Buchanan of Baltimore, and which she wished, according to a codicil to her last will and testament, might be voluntarily bequeathed to those of her nieces who remained unmarried." In the same paragraph of the codicil the testator declared that, if his house, known as 2012 Hillyer Place, was not sold during the lifetime of his wife, if she survived him, or if it be sold and any of the proceeds of the sale remain invested after her decease, and after paying the above sum of $5,000 and charging the same against the said house and lot or the proceeds thereof, such surplus or residue of said house and lot, or of the proceeds thereof, as might remain, should be divided equally among certain cousins.

Miss Letitia McK. Buchanan died in Baltimore in 1917 before receiving from the executrix of Roberdeau Buchanan the legacy of $5,000. The question is whether or not the collateral distributees of her estate must pay a collateral tax on the $5,000 which will now pass to them.

My conclusions are as follows:

1. In spite of the fact that Roberdeau Buchanan, in the codicil to his will, used the word "request" in giving the

legacy to his cousin,, Letitia McK. Buchanan, I feel that the will and codicil disclose an intention on the part of the testator to impose an imperative direction upon his executrix to pay over the $5,000 to Letitia. In other words, the gift of $5,000 was not left to the generous discretion of the executrix, but was as clearly a direct bequest as if the testator had used positive and unequivocal language to accomplish the same result.

2. Roberdeau Buchanan, in fixing the time for the payment of the bequest to Letitia, directed his executrix to pay the $5,000 "as soon as she can arrange for it conveniently." The language of the second paragraph of the codicil convinces me that Mr. Buchanan expected this sum of $5,000 to be paid over to his cousin during the lifetime of his wife, and not, as has been suggested, after her life estate had come to an end. The injunction to pay is directed to the wife, as executrix, and the payment is to be made as soon as the wife can conveniently arrange for it. I feel, therefore, that the payment must be made by her as executrix and that the testator expected her to turn over the legacy with greater promptness than the usual settlement of an estate would require. In other words, she was not to wait until the statement of her account in regular course, but was to make the payment as soon as she could conveniently arrange to do so.

3. The language in the second paragraph of the codicil indicates that the gift to Letitia was a legacy of $5,000 in cash to be paid to her in money and without reference to any particular source from which the fund was to be derived. It has been suggested that this fund was a direct charge against the Hillyer Place property, and, therefore, partook of the nature of realty. I do not agree with this contention.

The reference to the $5,000 legacy in connection with the Hillyer Place property was only made for the purpose of determining the amount to be distributed to the cousins named in the closing sentence of the second paragraph. Letitia was entitled to her legacy of $5.000 regardless of whether the Hillyer Place property was sold or not and with-

out reference to whether or not that property was used as a source from which to provide the fund necessary to discharge the legacy. The fact that the $5,000 was actually paid to the administrators of Letitia McK. Buchanan out of the proceeds of the sale of the Hillyer Place property, does not, in any way, alter the legal aspect of the matter.

4. As a result of the conclusions announced above, we have a direct and positive bequest of a pecuniary legacy of $5,000, made by Roberdeau Buchanan, of Washington City, to Letitia McK. Buchanan, of Baltimore, which had not yet been paid to Letitia at the time of her death, because, let us assume, the time for the statement of an account in Roberdeau's estate had not arrived. Is such a fund taxable in Maryland in the hands of Letitia's administrators in the settlement of her estate and the distribution of said sum among her collaterals? From the moment a will is probated a legatee to whom a legacy is given by positive and unconditional language acquires a vested interest therein which can only be divested in the event that claims of creditors intervene. Proof of this fact is furnished by the right of the legatee to assign his legacy or an interest therein. It can also be attached by the legatee's creditors. An assignment properly executed and recorded or an attachment duly laid must be honored in the final settlement of the estate. The right of the legatee is a chose in action, not enforceable perhaps against the executor during the statutory period allowed for the settlement of the estate, but enforceable thereafter. In this respect the right of the legatee does not differ from that of any other holder of a claim whose payment is deferred and where enforcement of payment must be postponed until the debt's maturity. Under these circumstances I feel that the legal fiction of mobilia sequuntur personam applied and fixed the situs of the Buchanan legacy at the domicile of its owner in Maryland. It was, therefore, property of which, under the statute, (Art. 81, Sec. 120 of the Code) the decedent died "seized and possessed, being in this State." It is not necessary that the property be actually situated in Maryland. It is sufficient if it be here in legal contemplation. See State vs. Fusting, 134, Md. 351.

Counsel for the executor has cited this case and the case of State vs. Helser, 128 Md. 228. The property involved in them was either real estate or an interest in real estate located in a foreign jurisdiction, and hence their reasoning is inapplicable here. Certain New York cases, although apparently in conflict with my conclusion, are distinguishable. The Pennsylvania decision, however, (Mulliken's estate, 206 Pa. St. 149) seems to be exactly in point. The Court there held that a sister in Pennsylvania, who died several weeks after her New York brother, inherited at the moment of her brother's death, and as a result her interest in his estate was taxable in Pennsylvania.

The question of a double taxation is not involved. It would not, in any event, be a fatal objection to my conclusion. (See 15 L. R. A. n.s. 150 note). Even if, in the case before me, a tax may have been due in the District of Columbia on the $5,000 legacy as it passed to Letitia, the legatee in Maryland, the imposition of another tax on this portion of Letitia's estate, passing in the settlement of her estate to her collaterals, is an entirely different matter. If Roberdeau Buchanan had resided in Maryland and his estate had been settled here, no question could arise, under the Dalrymple case, as to the necessity resting upon the executor of such estate to pay a collateral inheritance tax.

It is, therefore, my final conclusion that the sum of $250.-00 is due from the administrators of Letitia McK. Buchanan's estate to the State of Maryland as a collateral inheritance tax on the $5,000 legacy received from her cousin, Roberdeau Buchanan, and now passing to her own collateral kindred.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

TAXATION — COLLATERAL INHERITANCE — LIFE TENANT UNDER WILL SUES ESTATE AS CREDITOR—COMPROMISE OF SUIT INCLUDES RELEASE OF LIFE ESTATE—NO TAX PAYABLE ON AMOUNT OF COMPROMISE.

December 13, 1923.

George Edward Smith, Esq.,
Register of Wills,
Frederick, Md.

DEAR MR. SMITH: You state in your letter of December 7th, that an estate is now being settled in the Orphans' Court of your County in which the testator bequeathed to one of the legatees a life interest in $2,000 with remainder to revert to the residuum of the estate. The legatee, however, filed a claim of $5,000 against the estate, and when it was resisted by the executors suit was instituted. Before trial the claim was compromised for $3,000, with the further agreement that the plaintiff should also release her life interest in the legacy for $2,000. You wish me to advise you whether any collateral inheritance tax is due the State on account of the $2,000 legacy, and if so, how much.

The legatee, as a creditor, instituted suit against the estate for $5,000. I do not know what form the settlement took and whether a judgment for the $3,000 was actually entered against the estate, but in any event the amount paid represents, in my judgment, the sum necessary to liquidate the claim of a creditor. The money paid to the plaintiff under these circumstances was received by her as a creditor and became her absolute property. She had a right in making this settlement as a creditor to relinquish her life interest in a legacy. It would be exceedingly difficult to determine what part of the $3,000 received absolutely was represented by a life interest in her $2,000 legacy if this were necessary. I feel, however, that the $2,000 legacy was absolutely extinguished when the claimant released her interest in it, and inasmuch as the money paid to

her was received solely in the capacity of a creditor, no tax whatever is due thereon.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

TAXATION—SECURITIES OWNED BY FOREIGN CORPORATION AND KEPT IN SAFE DEPOSIT BOX IN MARYLAND ARE PART OF ITS CAPITAL EMPLOYED IN MARYLAND FOR PURPOSE OF DETERMINING ITS FRANCHISE TAX.

December 14, 1923.

Charles C. Wallace, Esq.,
Secretary, State Tax Commission,
Union Trust Building,
Baltimore, Maryland.

DEAR MR. WALLACE: I desire to answer the question presented to me in your letter of November 9th in behalf of the State Tax Commission. A West Virginia corporation, doing business in Maryland and regularly registered and qualified, in answering one of the interrogatories of the Commission, propounded for the purpose of ascertaining its capital employed in Maryland, has advised the Commission that a great part of its intangible personal property in Maryland on January 1st, 1922, and also as of January 1st, 1923, was composed of the following:

U. S. Liberty Loan Bonds
U. S. Saving Certificates
U. S. Certificates of Indebtedness
Baltimore City Stock
Bonds of the State of Maryland.

The corporation has suggested that inasmuch as the property embraces the obligations of the United States, the

State of Maryland and Baltimore City, and is held in safe deposit boxes in Baltimore it should not be considered as "capital employed" in Maryland, as that phrase is used in Article 23, Section 95 of the Code. The Commission desires to be informed whether or not in arriving at the capital employed by the State of Maryland for the purpose of calculating the franchise tax thereon, it should include the securities in question. I beg to call your attention to two opinions dealing with this general subject previously renddered by me and published, respectively, in Volume 5, page 453, and Volume 6, page 509, of the Reports and Opinions of the Attorney General. In the second of these opinions, it is pointed out that the term "capital", as defined in Bouvier's Law Dictionary, means "the actual estate, whether in money or property, owned by an individual or corporation", and also to be "the fund upon which it transacts its business, which would be liable to its creditors and, in the case of insolvency, pass to a receiver." The various securities enumerated in your letter as belonging to the corporation in question are all embraced within these definitions of the term "capital". They are a part of the "property owned by the corporation"—they would be liable to its creditors and "in case of insolvency would pass to a receiver." They are all within the State of Maryland. Some question may be raised concerning the significance of the term "employed" as used in the statute imposing the tax. In my judgment, however, this word was not used for the purpose of limiting the capital in question to that involved directly and regularly in the daily activities of the corporation, but referred to all capital owned by the corporation and used directly or indirectly in the prosecution of its business.

If a company possesses securities of much value which it places for safe keeping in a safe deposit box, it may withdraw them from time to time and use them as collateral in securing temporary loans; the ownership of such securities will be reflected in its statement and enable it to secure a larger credit; the income from such securities must be included in its annual corporate return to the Federal government, and in many other ways such securities, from a prac-

tical standpoint, may be regarded as capital actually employed in the business. If, as a matter of fact, the securities are in Maryland and are owned by the corporation, I feel that they are covered by the phrase "capital employed" by the corporation in Maryland.

The fact that the securities in question are all obligations of the United States, the State of Maryland and the City of Baltimore does not, in any way, affect this conclusion. No direct tax obligation is sought to be placed upon the securities themselves. Their value is merely included in the basis upon which, under the law, the rate is applied to ascertain the amount of tax which the corporation is required to pay to the State for the privilege of exercising its corporate rights within our borders. In this connection, I would sugguest that you refer again to the opinion published in Volume 5. The capital employed in Maryland by a foreign corporation is not taxed as such, but is used by the State as a means of determining the value of the privilege extended by the State to foreign corporations. The rates decrease as the amount involved increases and no hardship whatever is imposed upon a foreign corporation by the procedure thus authorized. In my judgment all of the securities referred to in your letter are to be included in the capital of the corporation employed in the State of Maryland for the purpose of determining the amount of the franchise tax due from said corporation.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

UNIVERSITY OF MARYLAND.

UNIVERSITY OF MARYLAND—ITS NAME, ORGANIZATION AND GOVERNING BODY—METHOD OF EXECUTING CONTRACTS.

January 17, 1923.

S. M. Shoemaker, Esq.,
Chairman of Regents of the University of Maryland,
Fidelity Building,
Baltimore, Md.:

MY DEAR MR. SHOEMAKER: In regard to the University of Maryland and the proper method of executing contracts in behalf of the University, I beg to submit the following:

The Re-organizaton Bill, Chapter 29 of the Acts of 1922, creates the Department of the State Board of Agriculture and the Regents of the University of Maryland. The heads of this department continue as constituted and organized when the Act took effect January 1, 1923. All the rights, powers, duties, obligations and functions conferred by any and every provision of law upon said Board or upon the said Regents, or upon both or either, continue unaffected by this Act.

Chapter 480 of the Acts of 1920 merged the University of Maryland, incorporated by the Act of 1812, Chapter 159, as amended by the Acts of 1882, Chapter 88, with the Maryland State College of Agriculture, incorporated by the Acts of 1916, Chapter 372, and the name of the consolidated corporation is *University of Maryland.* The Act of 1920 provided that "the government of the University of Maryland, after said consolidation shall become effective, as hereinafter provided, shall be vested in the Board of Trustees, provided for by Section 2 of said Act of 1916, Chapter 372, which Board shall thereafter be known as the *Regents of the University of Maryland.*" By the said Act the Regents

are directed to exercise with reference to the University of Maryland and to every department of the same, all the powers, rights and privileges and be charged with all the duties and obligations which then appertained to them, with reference to the Maryland State College of Agriculture. The Regents in addition to the aforegoing powers are clothed with all the powers possessed by the Regents of the University of Maryland under the Charter of the University of Maryland.

Under Chapter 372 of the Acts of 1916, the Board of Trustees of the Maryland State College of Agriculture were given power and authority, among other things, to elect, by a majority vote of the whole Board, consisting of nine members, an executive head of said College, who might attend all meetings of the Board. In the latter part of Section 5 of said Chapter 372 of the Acts of 1916, it is provided that "*no corporate business shall be transacted at any meeting unless at least five of the Trustees are present.*"

Chapter 159 of the Acts of 1812 provided for the creation of a University by the name and under the title of "The University of Maryland," said University being composed of The College of Medicine of Maryland, The Faculty of Divinity, The Faculty of Law, and The Faculty of the Arts and Sciences. The Act further provided that the members of the said four faculties, together with the Provost of said University, and their successors, shall be and are hereby declared to be one corporation and body politic, to have continuance forever, by the name and style of the "Regents of the University of Maryland." The said Regents and their successors, among other things, were authorized and empowered to sue and be sued.

Chapter 88 of the Acts of 1882 is merely supplementary to Chapter 159 of the Acts of 1812, and authorizes the Regents of the University of Maryland to grant degrees, diplomas and certificates to students of dental surgery, pharmacists and other cognate branches of medical science in said University.

I have gone into the history of the University with the

view of tracing the corporate name and names and determining the governing power or powers.

To summarize, the name of the corporation is "University of Maryland." The governing body is "Regents of the University of Maryland." The powers of the executive head of the University (formerly college) are limited to the administrative work of the University, and, therefore, the executive head, viz.: The President of the University, is not authorized to enter into contracts for the University outside of his administrative field.

In order for the Regents of the University of Maryland to transact business at a meeting there must be at least five of the Regents present. When it is agreed by the Board of Regents that the University should enter into a contract, the Board, by proper motion, seconded and carried, can authorize and direct the Chairman of the Board of execute the contract, and the style of execution should be as follows:

UNIVERSITY OF MARYLAND

By.....

Chairman of Regents of the
University of Maryland.

Trusting that this outline may be of some service to you, I am,

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

UNIVERSITY OF MARYLAND—FEED STUFF LAW—INSPECTION FEE CHARGED PRIMARILY FOR INSPECTION, SAMPLING AND ANALYSIS—NOT APPORTIONABLE—MARYLAND RETAILER SELLING PRODUCT OF FOREIGN COMPANY CAN BE COMPELLED TO REGISTER OR BE PROSECUTED.

February 28, 1923.

Dr. N. E. Gordon, State Chemist,
University of Maryland,
College Park, Md.

DEAR DR. GORDON: Pursuant to the requests made during the recent visit to my office of yourself and Mr. L. E. Bopst, Chemist in charge of the State Feed Department, I beg to submit my opinion as to certain features of Chapter 124 of the Acts of 1920, known as the Feed Stuff Law of Maryland. Section 83 of said Act provides as follows:

"Each and every manufacturer, importer, jobber, firm, association, corporation or person manufacturing, selling, offering or exposing for sale or distributing any commercial feeding stuffs as defined in Section 80 of this Article, shall pay to the Maryland State College of Agriculture an annual inspection fee of twenty dollars ($20) for each brand of commercial feeding stuff sold, offered or exposed for sale or distributed in this State and receive therefor a license to sell such commercial feeding stuffs until the first day of January next following; said fees to constitute a fund for the payment of the cost of the inspections, sampling, analysis and other expenses incident to putting into effect the provisions of this Act."

You ask whether or not the annual $20.00 inspection fee can be apportioned for the actual number of months and days for which a license is effective, viz.: From the date of its issuance until the first day of January thereafter. It is true that under the General License Law, Section 1, Article 56, of Volume 4 of the Code, when a trader's license is issued during a month subsequent to May first, a ratable sum is charged therefor. But the fee charged by the Uni-

versity of Maryland is for making the inspection. It becomes a part of a fund devoted to the payment of the cost of the inspections, sampling, analysis and other expenses. The expense of making an inspection and an analysis is the same whether they be intended for use during twelve months or only one month. It is true that the $20.00, in addition to being an inspection fee, also entitles the applicant to a license to sell. But only one such license need be issued, whereupon all persons in the State may sell the same commodity. The right of all other persons to sell is conditioned by Section 85 of said Chapter 124 upon one person having first filed the statement required by Section 82 and having paid the *inspection fee* (of $20.00) as required by Section 83. In my judgment the Legislature intended this fee to be primarily a charge for inspection, sampling and analysis, rather than an exclusive charge for a license to sell. The fee cannot be apportioned, in my opinion, regardless of the time of the year at which the inspection is made.

You further present a state of facts in which a Maryland retail merchant is selling a certain brand of linseed oil meal manufactured by a Wisconsin concern, which is put up in 100 pound bags, each bag carrying a tag setting forth the requirements mentioned in Section 81 of said Chapter 124 of the Acts of 1920. These tags, you advise, are in compliance with the Wisconsin law which is similar to the Maryland law. You further state that you have requested the manufacturer in Wisconsin to register this brand of linseed oil meal in Maryland, but that the manufacturer refuses to do so. You further advise that you have analyzed a sample of the linseed oil meal handled by the Maryland retailer and that it meets the Maryland requirements. You now ask whether or not the University of Maryland has any power, first, to require the Maryland retailer to have this brand registered and to pay the inspection fee therefor, and, second, whether or not in the absence of registration and the issuance of a license, the Maryland retailer is criminally liable under the provisions of the Act if he continues to sell this unregistered linseed oil meal.

Answering the first question, although Section 83 above quoted requires that each person selling or offering for sale any commercial feeding stuffs *shall pay* to the Maryland State College of Agriculture (now the University of Maryland) an annual inspection fee, Section 85 of the same Act qualifies this provision as follows:

"Whenever a manufacturer, importer, jobber, firm, association, corporation or person manufacturing or selling a brand of commercial feeding stuffs shall have filed the statement required by Section 82 and paid the inspection fee, as required by Section 83 of this Act, no other agent, importer, jobber, firm, association, corporation or person shall be required to file such statement or pay such fee upon such brand."

It is possible that other retailers may be selling the same brand of linseed oil meal at various places throughout the State. The State, however, is entitled to one inspection fee, and it is immaterial, so far as the State is concerned, which person selling this commodity pays the fee, whether it be a non-resident manufacturer or a resident retailer. You have acted quite properly in giving the non-resident manufacturer the opportunity to have this brand registered in Maryland, but upon the failure or refusal of the manufacturer to so register, there is nothing in the Act to prevent action against the resident retailer.

It is my opinion, therefore, that, since you have made the analysis and are prepared to register this article and to issue a license upon receiving the fee of $20.00, you can collect this $20.00 from the Maryland retailer whose commodity you have already inspected.

Answering the second question, an abstract of Section 88 of said Act provides as follows: "Any person who shall sell offer or expose for sale any commercial feeding stuff without having attached thereto or printed thereon the analysis and statement as required by the provisions of this Act . . . who shall sell, offer or expose for sale or distribute in this State any commercial feeding stuffs as defined in Section 80, without complying with the requirements of the provisions of this Act . . . shall be deemed guilty of a vio-

lation of the provisions of this Article and upon conviction thereof shall be fined not more than $100.00 for the first violation and not less than $100 for each subsequent violation." Under the facts which you have submitted to me the retail merchant, in my opinion, is criminally liable, and a warrant for his arrest could properly be issued by a Justice of the Peace in the County where the offender resides, for a violation of the provisions of Chapter 124 of the Acts of 1920.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

UNIVERSITY OF MARYLAND—FEED STUFF LAW—BRAN AND MIDDLINGS MUST BE REGISTERED — INSPECTION AND LICENSE FEE PAYABLE TO UNIVERSITY.

March 16, 1923.

F. H. Ankeney, Esq.,
Cumberland Chamber of Commerce,
Cumberland, Md.

DEAR SIR: I acknowledge receipt of your letter of March 9th, 1923, requesting my advice as to the authority on which the State Chemist claims an inspection and license fee on the bran and middlings manufactured by one of the members of your body.

I have had a conference with Dr. N. E. Gordon, State Chemist, and L. E. Bopst, Esq., the Chemist in charge of the Feed Department, and we have gone into the matter thoroughly.

Chapter 124 of the Acts of 1920 which is the present Feed Stuff Law of Maryland, defines the term "commercial feeding stuffs" as all feeding stuffs used for feeding live stock and poultry, except the following; . . . (b) The

unmixed meals made directly from and consisting of the entire grains of corn, wheat, rye, barley, oats, buckwheat, flaxseed, kafir and milo."

The State Chemist advises that prior to the enactment of the 1920 law the Department had considerable trouble with the adulteration of bran and middlings, and that this law was passed with the express purpose of including bran and middlings among those feeding stuffs which must be registered. The State Chemist has also furnished me with a pamphlet giving definitions of feeding stuffs as adopted by the Association of Feed Control Officials of the United States. The definition therein of "meal" is as follows: "Meal is the clean, sound, ground product of the entire grain, cereal or seed which it purports to represent." "Wheat bran" is defined as follows: "Wheat bran is the coarse outer covering of the wheat kernel as separated from cleaned and scoured wheat in the usual process of commercial milling." "Middlings" is defined as follows: "Standard Middlings consists mostly of fine particles of bran, germ and very little of the brous offal obtained from the 'tail of the mill.' This product must be obtained in the usual commercial process of milling and shall not contain more than 9.5 per cent crude fiber."

Under these definitions, bran and middlings are not classed as "meals" and hence cannot be styled "unmixed meals" as contemplated in the exception set forth in the Act. Furthermore they do not consist of the *entire grains* of wheat, and do not, therefore, come within the exception.

In my opinion, therefore, bran and middlings must be registered, and the University of Maryland is entitled to the inspection fee of $20.00 as provided in the Act, whereupon each brand can be registered and a license issued therefor.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

UNIVERSITY OF MARYLAND—FEED STUFF LAW—TWO FEEDS WITH DIFFERENT NAMES BUT SAME INGREDIENTS AND CHEMICAL ANALYSES, UNIVERSITY ENTITLED TO TWO INSPECTION FEES.

March 16, 1923.

Dr. N. E. Gordon,
State Chemist, University of Maryland,
College Park, Maryland.

MY DEAR DR. GORDON: I acknowledge receipt of your letter of March 16th in reference to the Feed Stuff Law of Maryland as set forth in Chapter 124 of the Acts of 1920. You outline the following facts, viz.:

A manufacturer in Maryland puts out two feeds, one branded "Red Star Fine Feed" and the other branded "Red Star Course Feed," each having the same chemical analysis and containing the same ingredients, the former being used for small chickens and the latter being used for larger chickens. The manufacturer sells and distributes these brands in Maryland. The State Chemist is given a sample of each and makes a separate analysis of each. Under the aforegoing facts you ask whether or not these brands should be registered separately and whether or not the University of Maryland is entitled to an inspection fee of $20.00 for each of the two brands.

The Act provides for an annual inspection fee of $20.00 which, in my opinion, the Legislature intended as a charge for inspection, sampling and analysis. The State Chemist is given two distinct specimens of feeds and can only ascertain that the ingredients are the same after the work of inspection, sampling and analysis have been performed. The State Chemist has, therefore, performed twice the amount of work which he would have performed in the analysis of one brand only. It is, therefore, my opinion that the University of Maryland can charge an inspection fee of $20.00 for each of the two brands, whereupon each

brand should be registered separately and a separate license issued for each of the two brands.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

UNIVERSITY OF MARYLAND—FEED STUFF LAW—UNIVERSITY NOT REQUIRED TO WAIT 60 DAYS AFTER CLOSE OF CALENDAR YEAR TO COLLECT INSPECTION FEE.

May 11, 1923.

Dr. N. E. Gordon,
University of Maryland,
College Park, Md.

DEAR DR. GORDON: Pursuant to your request made recently through Mr. L. E. Bopst of your department, I beg to submit my opinion as to certain features of the Fertilizer Law, Chapter 244 of the Acts of 1922.

You ask whether or not in view of Section 16 of the Act, the University of Maryland must wait sixty days after the close of a calendar year to collect the inspection fee of $10.00.

Section 16 of the Act provides as follows:

"That if any person, firm, or corporation, subject to the provisions of this Act shall fail to file the statement required in Section No. 3 herein regarding the tons of fertilizer sold, and to pay the inspection fee, provided therefor in this Act, within sixty (60) days after the close of the calendar year, the same shall subject said person, firm or corporation, to a penalty, upon conviction, of one hundred dollars, and two hundred dollars for each subsequent week that said inspection fee remains unpaid. Prosecution therefor to be entrusted to the State's Attorneys as in the preceding section provided and brought in the name of the State of Maryland, and the penalty recovered when paid, to be turned into the fertilizer fund of the University of Maryland."

Section 3 of the Act provides in part as follows:

"That every importer, manufacturer, manipulator, dealer or agent before selling, offering or exposing for sale, within the State of Maryland, any fertilizer shall pay to the University of Maryland a fee of $10.00 per brand for each brand registered under Section 2 of this Act."

Section 16 merely provides a penalty for failure to pay the inspection fee within sixty days after the close of the calendar year. The University of Maryland, however, is entitled to the $10 inspection fee before any brand is sold, offered or exposed for sale by every importer, manufacturer, manipulator, dealer or agent, and in my opinion, therefore, the University of Maryland does not have to wait until sixty days after the close of the calendar year to collect the $10.00 inspection fee.

You further ask me what procedure is necessary to obtain a conviction against a violator of this law. A warrant for the arrest of a violator can properly be issued by a Justice of the Peace in the county where the offender resides for a violation of the provisions of Chapter 244 of the Acts of 1922. You will note that the State's Attorney of each county is named in Section 15 and 16 as the Prosecuting Officer on behalf of the University of Maryland, in case of a violation of the various provisions of the Act.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

MISCELLANEOUS.

MISCELLANEOUS—MARYLAND HISTORICAL SOCIETY NO LONGER BOUND BY RESTRICTIONS ATTACHED TO ITS STATE APPROPRIATION—MAY USE ITS DISCRETION IN DISTRIBUTION OF PRINTED VOLUMES OF MARYLAND ARCHIVES.

January 12, 1923.

Louis H. Dielman, Esq.,
Chairman, Library Committee,
Maryland Historical Society,
201 W. Monument Street,
Baltimore, Md.

DEAR SIR: In your letter of January 8th, you ask for my views upon a question presented by the following statement of facts. The General Assembly, by Chapter 138 of the Acts of 1882, constituted the Maryland Historical Society the custodian of certain provincial records, archives and documents of the State of Maryland, directing those of historical importance to be edited and published under the supervision of the Society and granting for this purpose an appropriation. Provision for the publication of these papers was thereafter made by special act by each succeeding General Assembly from 1884 to 1914, inclusive. Each of these Acts in making its appropriation directed also the distribution of the publications amongst various State officers and historical societies. In 1916 the appropriation for this purpose was included, as item 116, in Chapter 223 of the Acts of that year, known as the "Omnibus Bill." This Act, like all of its predecessors, contains the proviso to which I have referred and which appears in practically the identical language in all of the preceding Acts and reads as follows:

"And provided further that ten copies of each volume of the archives published by the Maryland Historical Society

shall be bound in cloth and deposited in the State library, for the use thereof, and that the said society be, and it is hereby authorized, without being required to pay therefor, to send a copy of each of the volumes that have been or may be published to the respective State Librarians of the several States and also to each of the Circuit Courts of the several counties of the State, to the Court of Appeals, the Land Office, the Library Company of the Baltimore Bar and such library or Historical Societies as may be approved by the Maryland Historical Society."

Thereafter the appropriations for this purpose to the Maryland Historical Society were included in the Budget Bills of 1918, 1920 and 1922, the phraseology used in Chapter 500, of the Acts of 1922, being as follows:

"To Maryland Historical Society:
Expenses for publication of Archives of Maryland, $5,000
For preservation and calendering Maryland Archies, $1,000

None of the restrictions or conditions appearing in the earlier Acts were attached to the appropriation. Under these circumstances you ask me to advise you what limitations, if any, are imposed, under existing law, upon the Maryland Historical Society, in the distribution by exchange of the printed volumes of the Maryland Archives.

Each of the acts of Assembly to which I have referred is, in my judgment, separate and distinct from the others and must be read and construed independently. The money appropriated by the earlier Acts could only be legally used by you in the manner, for the purposes and under the conditions prescribed therein. The restrictions of the earlier Acts, however, have no continuing effect beyond the use of the money appropriated therein. Inasmuch as the Legislature in 1916 deliberately abandoned the procedure which had been followed year after year since 1884 by failing to attach to the appropriation to your society any of the requirements as to distribution formally used, it evidently intended to relieve you of the restrictions and limitations by which your activities in this matter had theretofore been circumscribed and to permit you to conduct the publication and distribution of the Maryland Archives in accordance

with the sound judgment and discretion of the Society. I assume, and I imagine the Legislature also assumed, that the plan of distribution followed by your Society for so many years would not be abandoned, but would be subjected only to such modifications and extensions as present conditions might require.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

MISCELLANEOUS—MARYLAND OPTOMETRIC ASSOCIATION MAY CHANGE ITS NAME WITHOUT SACRIFICE OF POWERS POSSESSED UNDER EXISTING LAW.

January 13, 1923.

J. Fred Andreae, Esq.,
Secretary, State Board of Examiners in Optometry,
800 Lexington Building,
Baltimore, Md.

MY DEAR MR. ANDREAE: Your letter written in December, and asking whether the Maryland Association of Optometrists may change its name to the Maryland Optometric Association without rendering inoperative certain provisions of the Maryland law authorizing the appointment of a Board of Examiners in Optometry, has just recently come to my attention.

You evidently have in mind Section 252 of Article 43 of Volume 3 of the Code which declares that the Governor shall appoint a Board of Examiners in Optometry consisting of five members to "be selected from a list of ten names endorsed by the Maryland Association of Optometrists." While I do not feel that it is expedient from the standpoint of this law that the Maryland Association of Optometrists should change its name as above indicated, and I feel that such

action should not be taken at this time unless pressing reasons for doing so exist, I am nevertheless of the opinion that even though the change is authorized, your Association can continue to submit the list of ten names required by the law. It is the particular Association which the Legislature had in mind regardless of the name by which it might, at any given time, be designated. The list when submitted should indicate that it came from the Association formerly known as the Maryland Association of Optometrists, even though signed by the Maryland Optometric Association.

A commission might be issued designating an unmarried woman for a public trust. The authority thus conferred could still be legally exercised even though through marriage the appointee's name might be changed. I feel that the situation which you present is analogous, and that the change suggested by you, if made, will not deprive your Association of the power conferred upon it by the law mentioned.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

MISCELLANEOUS—LEGAL WEIGHTS FOR BITUMINOUS AND ANTHRACITE COAL—SALE OF 2000 POUNDS OF BITUMINOUS COAL AS A TON ILLEGAL.

January 19, 1923.

Charles J. Butler, Esq.,
State's Attorney,
Easton, Md.

MY DEAR MR. BUTLER: The answer to your letter of January 6th, has been delayed because of efforts which I have been making to secure for you certain information which does not appear in the law itself. You desire me to inform

you as to the legal weights for bituminous and anthracite coal. The last action of the Legislature on this subject is found in Article 97, Section 24, Volume 3 of the Code where the standard weight for mineral coal in Maryland is declared to be 2240 pounds for one ton.

I have endeavored to reach a former fuel administrator in Maryland and other parties familiar with coal regulations, and I have been unable to find any regulation having the force and effect of law authorizing the selling of 2000 pounds of bituminous coal as and for a ton. The practice seems to be to sell such a weight of coal either as a net ton or as so many pounds, but if this weight of coal is sold as a ton the dealer, in my judgment, trangresses the plain provision of law.

In Section 154 of Chapter 307 of the Acts of 1922, known as the "Mining Code," it is declared that "two thousand pounds avoirdupois shall constitute one ton of coal," but this standard is, in my judgment, intended to be effective at the mines and is created for the purpose of determining the basis upon which the compensation of miners shall be determined rather than to fix the weights at which coal shall be sold to the ultimate consumer.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

MISCELLANEOUS — LEGISLATURE MAY LAWFULLY REQUIRE STATE'S ATTORNEY BY ACT PASSED AFTER HIS ELECTION AND QUALIFICATION TO SERVE AS COUNSEL TO BOARD OF COUNTY COMMISSIONERS AND COUNTY SCHOOL BOARD WITHOUT INCREASE OF SALARY.

January 26, 1923.

William R. Offutt, Esq.,
State's Attorney for Garrett County,
Oakland, Md.

MY DEAR MR. OFFUTT: I acknowledge receipt of your letter of January 13th, 1923, asking my opinion as to the le-

gality of Chapter 92 of the Acts of 1922, imposing additional duties upon the State's Attorney for Garrett County by requiring him to act as attorney and counsel for the County Commissioners and the County Board of Education of Garrett County without any additional compensation. I note that this Act was passed after your election and during your term of office.

Section 9 of Article V of the Constitution of Maryland, as amended by Chapter 624 of the Acts of 1912, and ratified by the people November 4th, 1913, provides in part as follows: "The State's Attorney shall perform such duties and receive such fees and commissions or salary, not exceeding $3000, *as are now or may hereafter be prescribed by law.*"

The Constitution determines the term of office of the State's Attorney, fixes the maximum amount of fees and commissions or salary, gives him certain authority to collect money, and fixes the penalty of his bond to the State of Maryland, but the Constitution does not define, determine or limit the nature of the duties to be performed by the State's Attorney. The Legislature is clearly empowered by the Constitution to prescribe additional duties for the State's Attorney to perform.

The question then arises whether or not the duties of attorney and counsel for the County Commissioners and for the County School Board are of such a nature that they may properly be imposed by the Legislature upon a State's Attorney. The Board of County Commissioners and the Board of Education have jurisdiction in a political sub-division of the State. The State's Attorney is a State officer representing the State in the same political sub-division, the county. In view of the fact that the duties to be performed by you under the new law are both legal and public and that they are to be rendered in behalf of the same people whom you are charged to serve by reason of your State's Attorneyship, I feel that they fall within the general scope of the work of your office.

The question also arises whether or not these additional duties may be imposed upon a State's Attorney subsequent to his election and during his term of office. The State's

Attorney takes office with notice of the provisions of the Constitution above quoted, that he shall perform such duties as are now or may hereafter be prescribed by law. Further, I quote Section 595 of Mechem on Public Officers, as follows:

"Public offices and the rights and duties attached to them being created by law, it is, as has been seen, except in certain cases protected by the Constitution, entirely within the discretion of the Legislature to increase or diminish the duties of a public officer at pleasure. The fact that, during the term of an incumbent, the duties are increased by the addition of others falling within the general scope of the office, *without increasing the compensation,* does not relieve the officer from his duty of performance."

The aforegoing quotation from Mechem refers to the case of Andrew vs. U. S., 2 Story, (U. S. C. C.) 202, in which the Court said: "But where duties are required to be performed by a Collector or other public officer, strictly official, and falling within the ordinary range thereof, although they may be conferred by laws subsequently passed after he came into office, or may be cumulative upon the original duties of the officer, he must be deemed to take and hold the office *cum onere;* and, however inadequate the compensation may be for his labor and services, he must content himself that the salary and fees allowed by law, and look to the bounty of Congress for any additional reward."

It is my opinion, therefore, that the Legislature may properly prescribe as part of your services the additional duties mentioned in Chapter 92 of the Acts of 1922.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

MISCELLANEOUS — NO ADEQUATE AUTHORITY TO TRANSFER THIRTY-ACRE TRACT, KNOWN AS "LAKE BROWN PROPERTY," TO RICHARD S. BROWNING.

February 5th, 1923.

Fred. A. Thayer, Esq.,
Oakland, Md.

MY DEAR MR. THAYER: Your letter of January 30th relating to the conveyance to Richard S. Browning by the State of Maryland of the tract of land situated in Garrett County, known as the "Lake Brown" property, presented the whole matter to me in a very different light. If you will refer to Chapter 639 of the Acts of 1916 which confers upon the Board of Public Works the authority to sell the Lake Brown property, you will find that the tract is described as containing seventeen (17) acres more or less and as being the same land which was conveyed to the State of Maryland by deed from Richard T. Browning and wife under date of June 27, 1894, and recorded in Liber E. Z. T., No. 24, Folio 366. It was my impression, and I think I was so informed, that the deed thus referred to actually conveyed to the State a piece of land containing thirty (30) acres and that the reference in the Act to seventeen (17) acres was a mistake. Upon this state of facts I ruled that the true construction to be placed upon the Act was that the Legislature intended to authorize the sale of all the land embraced in the deed referred to.

I now discover, however, that the deed recorded in Liber E. Z. T., No. 24, actually conveyed to the State only seventeen (17) acres and that the acreage described in the Act of 1916 was, therefore, correct. I am now unable to discover any authority whatever for the conveyance by the Board of Public Works of the entire thirty (30) acres owned by the State in Garrett County when the Act of 1916 clearly and unequivocally grants an authority to convey only seventeen (17) acres.

I am not unmindful of the fact that the other tract containing thirteen (13) acres conveyed to the State by Rich-

ard T. Browning and wife by deed dated May 28, 1896 is, according to my information, of very little value. I assume that the real purpose of the legislation passed in 1916 was to authorize the conveyance of the entire thirty (30) acres owned by the State by the authority granted apparently extends only to the seventeen (13) acre parcel. I think it is important from Mr. Browning's standpoint that he should not accept the deed conveying to him a title that could be questioned. The next Legislature will, I am sure, be glad to pass a confirmatory act and it is my suggestion that Mr. Browning wait until such an authorization can be procured and then receive from the State a deed for the entire thirty (30) acres. I will be glad to hear from you further with reference to the matter, and want to assure you that it is my desire to protect fully the interest of Mr. Browning, whose money has been received by the State. I will retain all papers relating to this matter until I hear from you. It is fortunate that Mr. Browning had not recorded the deed delivered to him by the State because it is apparent upon investigation that it does not convey to him any title whatsoever. It was prepared from a copy submitted to me indicating that the tract described therein contained thirty (30) acres. You have sent me a similar copy changing, however, the thirty (30) acres to read thirteen (13). This description, however, is taken from the deed of May 28th, 1896, which is not referred to in the Act and as to which no authority whatever is conferred.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

MISCELLANEOUS—POWER OF JUSTICE OF PEACE TO TAKE ACKNOWLEDGMENTS AND AFFIDAVITS—SEALS NOT REQUIRED.

February 9, 1923.

K. G. Potter, Esq.,
Waynesboro, Pa.

MY DEAR SIR: In your letter of February 7th you requested me to advise you whether it is necessary for a Jus-

tice of the Peace of Maryland to attach his seal to all acknowledgments and affidavits taken by him with a statement as to the time when his commission expires.

Justices of the Peace in Maryland do not use seals. A deed may be acknowledged before a Justice of the Peace of the county in which the land conveyed by it is located, in which event it is only necessary for the Justice to sign his name and official title. If the title is acknowledged out of the county in which the land is located, the acknowledgement may be taken by a Justice of the Peace, but in this case the official character of the Justice must be certified to by the Clerk of the Circuit Court or Superior Court of said County under his official seal. The same rule applies to the taking of affidavits in the county where the Justice lives. As to his powers to take affidavits for use out of the county, the statutes differ and it is usually safer to use a Notary Public for this purpose. It is not necessary to indicate the date of the expiration of the term of the Justice.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

MISCELLANEOUS—STATE BOARD OF EXAMINERS OF NURSES—TITLE "REG. NURSE" CAN ONLY BE USED BY PERSONS RECEIVING CERTIFICATES FROM BOARD—THIS CERTIFICATE, NOT CERTIFICATE FROM SCHOOL, GIVES AUTHORITY TO PRACTICE—EXAMINATIONS MAY BE EITHER WRITTEN OR ORAL.

March 9, 1923.

Miss Helen G. Bartlett,
President, State Board of Examiners of Nurses,
1211 Cathedral Street,
Baltimore, Md.

MY DEAR MISS BARTLETT: I beg to reply to the request for my opinion as to certain phases of the law relating to

registration of nurses made upon the occasion of the joint visit to my office of yourself and Miss Packard, Secretary and Treasurer of your Board.

You advise that one party who does not have a certificate as a registered nurse is using the title "Reg. Nurse" in the telephone directory and ask whether or not this is such a violation as to make the party criminally liable under the Act.

Section 205 of Article 43 of Volume 4 of the Code (being Section 5 of Chapter 527 of the Acts of 1916) provides as follows:

"A nurse who has received his or her certificate according to the provisions of this Act shall be styled and known as a "Registered Nurse." No other person shall assume such title or use the abbreviation R. N. or any other letters or figures to indicate that he or she is a graduate, certified or registered nurse."

The abbreviation appearing in the telephone directory indicates that such person is a Registered Nurse, and it is my opinion, therefore, that such party is criminally liable under Section 7 of said Chapter 527 which provides for a fine upon conviction of not more than five hundred ($500.00) dollars.

You further ask whether or not a nurse who has graduated from a Training School of Nurses and has received her diploma, but has not received a certificate from your Board, can practice professional nursing as a "Graduate Nurse?"

Section 5 of said Chapter 527 provides as follows:

"And it shall be unlawful after June 1st, 1906, for any person to practice professional nursing as a "Registered Nurse" without a certificate from the State Board of Examiners, and that it shall be unlawful after June 1st, 1917, for any person to practice professional nursing as a graduate, certified or registered nurse without a certificate from said State Board of Examiners."

In my opinion it is clear from the language of this Act that a person cannot practice professional nursing as a Graduate Nurse without having first become a Registered

Nurse by taking your examination and receiving a certificate from your Board.

You further ask whether or not the Board, in its discretion, can give written or oral examinations or both? The Board may issue a certificate as a "Registered Nurse" under Chapter 527 of the Acts of 1916 or a certificate as a "Licensed Practical Nurse" under Chapter 274 of the Acts of 1922.

The qualifications necessary for a certificate as a "Registered Nurse" are now set forth in Chapter 230 of the Acts of 1922, which repealed and re-enacted with amendments Section 4 of Chapter 527 of the Acts of 1916 ,and provides, in part, as follows:

"It shall be the duty of said Board of Examiners to determine, and said Board is hereby empowered in its sound discretion to determine, the qualifications of all applicants for registration."

Since this language does not prescribe a written examination, it is my opinion that the Board, in its sound discretion ,can give an oral examination instead of a written examination.

In prescribing the qualifications for a certificate as a "Licensed Practical Nurse," Chapter 274 of the Acts of 1922 provides in part as follows:

"It shall be the duty of said Board of Examiners to determine, and said Board is hereby empowered in its sound discretion to determine, the qualifications of all applicants for registration as licensed practical nurses; and each applicant shall furnish evidence satisfactory to said Board of Examiners that he or she is eighteen (18) years of age, is of good moral character, can read and write the English language, and has received a certificate from an institution in which not less than a nine months' course of training with a systematic course of instruction is given to the satisfaction of said Board of Examiners."

In this case also I think that the Board in its own discretion can give either a written or oral examination, provided, however, that the Board has ascertained that the applicant can read and write the English language. It is not

necessary, however, that the examination be written in order for the Board to ascertain that the applicant can read and write.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

MISCELLANEOUS—SECRETARY OF STATE CAN NOT REGISTER PARTNERSHIP NAMES—HIS POWER LIMITED TO REGISTRATION OF LABELS, TRADE MARKS AND FORMS OF ADVERTISEMENTS.

March 22, 1923.

Hon. Philip B. Perlman,
Secretary of State,
Annapolis, Md.

MY DEAR MR. PERLMAN: Your letter of March 20th was accompanied by a communication from the Hagerstown Leather Company addressed to you and reading as follows:

"We enclose check for 1 dollar and request that you kindly register the name of this firm (the Hagerstown Leather Co.) as a partnership doing business in the State of Maryland. The registration of our name is desired for the purpose of protecting the exclusive use of same in the State."

You then ask me whether the request of your correspondent can legally be complied with under the Trade Mark Law of Maryland.

This law known as Chapter 357 of the Acts of 1892 authorizes any person, association or union of workingmen to adopt for their protection any label, trade mark or form of advertisement announcing and denoting that goods to which such label, trade-mark or form of advertisement may be attached are manufactured by such person or by a member or members of such association or union. Section 3 of

the Act provides that any such person, association or union may file for record in the office of the Secretary of State, the label, trade-mark or form of advertisement adopted by it leaving two copies, counterparts or fac-similes thereof with the Secretary of State. The Secretary is then authorized to deliver to such person, association or union a duly attested certificate of the record of the same for which he shall receive a fee of $1.00.

A careful examination of the language of the Act which I have substantially set forth above indicates that the Act was designed to guarantee to the manufacturers of goods full protection in the use of any label, trade-mark or advertisement adopted for the purpose of identifying said goods in the mind of the public and announcing the plant in which said goods were produced. The Act apparently contemplated the use of a distinct design or particular form, label or advertisement as distinguished from the mere name of the manufacturer. This is indicated by the requirement of Section 3 that "two copies, counterparts or fac-similes thereof" be filed with the Secretary of State.

I must, therefore, advise you that you do not possess authority to register simply the name of the partnership which has written to you. If, however, this firm will adopt some label, trade-mark or form of advertisement which it will use hereafter in connection with the sale of its manufactured product and furnish your office with a copy, counterpart or fac-simile thereof, you will then possess authority to register the same and issue a certificate of record in accordance with the terms of the Act.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

MISCELLANEOUS — BOARD OF CHIROPRACTIC EXAMINERS NO POWER TO REVOKE LICENSE OF LICENSEE CALLING HIMSELF A "CHIROPRACTIC PHYSICIAN."

March 30, 1923.

Dr. J. Ralph John,
State Board of Chiropractic Examiners,
Howard and Franklin Sts.,
Baltimore, Md.

MY DEAR DR. JOHN: You reported to me in your letter of March 28th, that a certain licensee of your Board, who is now practicing in Baltimore City, is holding himself out to be a "chiropractic physician". You then state that your Board feels that the use of the word "physician" is an attempt to practice chiropractic under a false name with the idea of creating the impression in the minds of the public that he is actually a physician, and that in view of this fact you would be justified in revoking his license.

The power of the State Board of Chiropractic Examiners to revoke a license is conferred by Section 8 of Chapter 666 of the Acts of 1920. This power under the terms of the statute may be exercised for any one of five causes as follows:

1. The employment of fraud or deception in applying for a license or in passing an examination.

2. The practice of chiropractic under a false or assumed name.

3. The impersonation of another practitioner of like or different name.

4. The conviction of a crime involving moral turpitude.

5. Habitual intemperance in the use of ardent spirits, narcotics or stimulants to such an extent as to incapacitate him for the performance of his professional duties.

The third, fourth and fifth reason may be eliminated from consideration because they have no possible application to the facts presented by you. You will note that under the

first cause the fraud or deception must be employed in applying for a license or in passing an examination. Inasmuch as the practitioner referred to in your letter has already passed the examination and has a license, any fraud of which he may now be guilty does not fall within the terms of the Act. This leaves for our sole consideration the second cause, namely, the use of a false or assumed name, and the question is whether this provision has been violated by one who holds himself out to be a chiropractic physician.

The words "False or assumed name", are, in my judgment, intended to apply only to the personal name under which the licensee practices. It requires him to use his own name and denies him the right to assume another name or to use a name which is in fact false. It does not apply to a description of the service which he will render or to his qualifications for the same. It has no reference to any title that he may attempt, even though improperly, to use. I am, therefore, constrained to conclude that although the practitioner in question may have no legal right whatever to describe himself as a chiropractic physician, nevertheless in doing so he is not laying the foundation for a revocation of his license. Of course this conclusion is subject to the stipulations of Section 15 of the Act, but the case which you present does not seem to be embraced within its terms.

I would suggest, however, that you call to the attention of the licensee in question the fact that in the judgment of the Board he is using an improper term and request that he refrain hereafter from doing so. It may be that such a request will be sufficient to solve the difficulty.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

MISCELLANEOUS — BOARD OF BARBER EXAMINERS — THREE YEARS' APPRENTICESHIP NOT A CONDITION PRECEDENT TO TAKING EXAMINATION.

April 19, 1923.

Louis Reuling, Esq.,
State Board of Barber Examiners,
Emerson Hotel Barbershop,
Baltimore, Md.

MY DEAR SIR: In your letter of April 12th, you asked me to advise you whether the law creating your Board requires an apprenticeship of three years before any one may take the examination or receive the certificate for which said law provides. This contention was brought to the notice of your Board through the U. S. Veterans' Bureau by certain ex-soldiers who are now receiving vocational training as barbers. The State Board of Barber Examiners was established and its powers and duties defined by Chapter 226 of the Acts of 1904. In Section 6, all persons are prohibited from practicing the occupation of Barber in Maryland unless they have first received a certificate of qualification from your Board. Reference is then made to the examinations to be held by your Board, and the procedure to be followed both by the applicant and the Board itself, but I am unable to find any requirement of a three year apprenticeship as a condition precedent to the taking of the examination.

I think probably the parties raising this question must have had in mind the language which appears in Section 13 of the Act which reads as follows: "This Act shall not in any way apply to or effect any person who is now engaged as a Barber in this State nor any person employed in a barbershop, or an apprentice, except that a person so employed less than three years prior to the passage of this Act shall be considered as an apprentice, and at the expiration of such three years of such employment shall be subject to the provisions of this Act."

It will be observed that the time to which reference is here made are the *three years prior to the passage of the*

Act, and that in the next line the words employed are "such three years", indicating against the three years prior to the passage of the Act. The purpose of this provision was to deny to parties who, at the time of the passage of the Act, had worked as Barbers for a period of less than three years, the benefit of the provisions of Section 8 which authorized the issuance by the Board of the certificate required by the Act to every person who was then engaged in the State in the business of a barber provided he filed the necessary affidavit within three months after the Act's passage.

I do not think the language here used is sufficiently broad to embrace all applicants for examination who may thereafter present themselves and to require of each of them a three year apprenticeship.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

MISCELLANEOUS — POWER LEGALLY CONFERRED UPON GOVERNOR TO CEDE LIGHTHOUSE SITES TO FEDERAL GOVERNMENT.

April 20, 1923.

Honorable Albert C. Ritchie,
Governor of Maryland,
Annapolis, Md.

DEAR GOVERNOR RITCHIE: I am in receipt of your letter of April 14th enclosing a communication addressed to you by H. D. King, Esq., who represents the Department of Commerce in Baltimore as Superintendent of Lighthouses. Mr. King requests you to cede to the United States the Marine Lighthouse sites mentioned in his letter. You ask me to advise you as to your power in the matter and as to whether I feel that there is any reason why you should not exercise this power in the event that you possess it.

Chapter 193 of the Acts of 1874, codified as Section 2 of Article 96 of the Code, reads as follows:

"With respect to land covered by the navigable waters within the limits of the State, and on which a lighthouse, beacon or other aid to navigation has been built, or is about to be built, the Governor of the State, on application of an authorized agent of the United States, setting forth a description of the site required, is authorized and empowered to convey the title to the United States, and to cede jurisdiction over the same; provided, no single tract shall contain more than five acres."

The power to cede the territory of a State is vested in its legislature, and I have been unable to find any authority denying to the legislature the title to tracts of a certain class or character and cede jurisdiction over the same. Assuming, as I feel we must, that the legislature can authorize the Governor to act in its behalf, it has unquestionably done so in this case and, by the clear language of the statute quoted, has invested you with the power, within your discretion, to convey the title to the sites upon which lighthouses stand and cede jurisriction over the same.

If these lighthouses are owned, maintained and operated by the United States Government, I know of no reason why the occasion requested should not be made. A formal application for the cession should come from a duly authorized agent of the United States. I would, therefore, suggest that you ask Mr. King to furnish you with blue prints and title papers showing the location and title of the lighthouse stations as proposed in his letter. These papers will supply you with important information which you ought to have before reaching a final decision. I will be very glad to revie wthem for you as soon as they have been received and to confer with you further on the subject if you desire me to do so.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

MISCELLANEOUS—STATE BOARD OF UNDERTAKERS—INFANT ENTITLED TO CERTIFICATE AS ASSISTANT IF OTHER FORMALITIES ARE COMPLIED WITH.

April 28, 1923.

H. H. Housman, Jr., Esq.,
Secty., St. Bd. of Undertakers,
323 N. Charles St.,
Baltimore, Md.

MY DEAR MR. HOUSMAN: You stated in a recent letter that a duly registered and licensed undertaker had applied to your Board for the issuance of a certificate to her son, a boy seventeen years of age, authorizing him to act as an assistant undertaker or employee in the city of Baltimore. The authority for such a certificate is found in Chapter 254 of the Acts of 1918, which adds a new section designated as Section 8-A to the law establishing the State Board of Undertakers of Maryland. Under this Section any licensed undertaker in Baltimore city may file any application with your Board setting forth the name and address of any person desiring to act as an employee or assistant, and stating that such person is of good moral character and possessed of reasonable skill and knowledge of such business. The fee of $5.00 is required, and under the language of the Section it is apparently made the duty of your Board, upon the payment of this sum, to issue the certificate to the person named in the application. The qualification of age is not referred to in any way, and I, therefore, see no reason why in the case mentioned in your letter the certificate should not be issued if the other formalities of the Act have been complied with.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

MISCELLANEOUS—STATE BOARD OF UNDERTAKERS—CORPORATION ENTITLED TO ORIGINAL LICENSE, UPON APPLICATION, WITHOUT PAYMENT OF FEE—RENEWAL FEE PAYABLE.

May 15, 1923.

Mr. H. H. Housman, Jr.,
Secty., State Board of Undertakers,
Baltimore, Md.

DEAR MR. HOUSMAN: I regret that unusual pressure of business, particularly the necessity of preparing on short notice a number of cases for argument in the Court of Appeals, has prevented an earlier reply to your letter of April 30th.

You state, in substance, that heretofore the firm of Chas. F. Evans & Son has been licensed by your Board as a co-partnership, in accordance with the provisions of Section 237 of Article 43, Public General Laws; that the business formerly conducted by that firm is now being conducted by a corporation, namely, Chas. F. Evans & Son, Inc.; and that this corporation has applied to your Board to be licensed under the provisions of the above mentioned section, and contends that it is not required to pay any fee for such license, though admitting that each of its officers whose duties engage him or her in the care, preparation, disposition or burial of the dead must pay a fee for the license required of him or her under the terms of the section in question. You request my opinion as to the correctness of the above contention.

The section to which I have referred, after providing for application by persons, co-partnerships and corporations as a pre-requisite to their engaging in the business of undertaking, and fixing the fee to be paid by such applicants at twenty dollars, contains, among others, the proviso: "that such license shall be issued to a corporation upon application therefor." In Keller vs State, 122 Md. 677, in which it was contended that the exception of corporations from the

provision requiring a fee from applicants for licenses invalidated the statute of which Section 237 formed a part, the Court, in overruling this contention, said (p. 683): "It is true that under the provisions of the Act, a corporation pays nothing for a license ****."

This language clearly indicates that the Court construed the language above quoted from Section 237 as exempting a corporation not only from the provision requiring an applicant to undergo an examination — a requirement with which it would obviously be impossible for a corporation to comply—but also from the provision requiring the payment of a fee. It would seem that the ground for dispensing with this last mentioned requirement is that the payment of a fee is required on the theory that a certain amount of expense is involved in arranging for the examination of applicants, which should be borne only by those applicants who are examined.

Section 239, which provides for the issuance of a renewal license upon payment of a fee of five dollars, makes no exception in favor of corporations. In the case of these renewal licenses, which are granted to all applicants without examination, the reason above suggested for the exception in favor of corporations, does not exist, and, therefore, there is as much reason for exacting this smaller fee—not based in any degree on the expense of examination—from corporations as from others. It is doubtless upon this ground that no exception in favor of corporations is found in Section 239.

In my opinion, therefore, Chas. F. Evans & Son, Inc., need not pay the fee of twenty dollars for the original license to be issued to it under date of May 1, 1923, but must pay the fee of five dollars for a renewal license to be issued to it on May 1, 1924, if it shall then desire to continue in the business of undertaking, and a like fee on the first of May, in every subsequent year during which it may desire to continue in that business.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

MISCELLANEOUS — REGISTER OF WILLS APPOINTED BY ORPHANS' COURT OF BALTIMORE CITY TO FILL VACANCY—TAKES OATH BEFORE CLERK OF SUPERIOR COURT—NO TAX ON OFFICIAL COMMISSION PAYABLE.

May 19, 1923.

The Judges of the Orphans' Court of Baltimore City,
Court House,
Baltimore, Md.

GENTLEMEN: I beg to reply to the questions you have submitted to me in reference to your appointment of a successor to Howard W. Jackson as Register of Wills of Baltimore City. You, of course, are empowered by Section 41 of Article 4 of the Constitution of Maryland, to fill the vacancy in the office of the Register of Wills until the next general election for delegates to the General Assembly.

You ask whether the oath of office of your appointee should be made before the Orphans' Court of Baltimore City or before the Clerk of the Superior Court of Baltimore City. Section 4 of Article 70 of the Code provides as follows:

"The clerks of the circuit courts for the counties, the superior court of Baltimore city, the court of common pleas, the circuit court of Baltimore city, the circuit court No. 2 of Baltimore city, the Baltimore city court and the criminal court of Baltimore, shall severally take and subscribe the oath prescribed by the constitution before the judges of their respective courts."

Section 7 of Article 70 provides as follows:

"All other officers elected or appointed to any office of trust or profit under the constitution and laws of this State, including the mayors or other chief magistrates of municipal corporations, shall take and subscribe the said oath in the city of Baltimore before the clerk of the superior court, and in the several counties before the clerk of the circuit court or before one of the sworn deputies of such clerks."

The Register of Wills is not mentioned in Section 4, and as the successor will be appointed to office by you, he will, in

my opinion, take the oath of office provided by Section 7 before the Clerk of the Superior Court of Baltimore City.

You further ask whether or not the new Register of Wills must pay the tax on official commissions as provided in Section 146 of Article 81 of the Code. I do not think that this Section of the Code applies to an appointment made by the Orphans' Court to fill a vacancy in the office of the Register of Wills.

It is my opinion that the new Register of Wills will take office by virtue of an order of the Orphans' Court appointing him to the vacancy, and such an order is not an official commission within the contemplation of Section 146.

Upon investigation I find that the procedure outlined herein was used some time ago in a similar case in Washington County, Maryland.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

MISCELLANEOUS — BOARD OF CHIROPRACTIC EXAMINERS— MAY PERMIT APPLICANT TO TAKE EXAMINATION AND DETERMINE LATER WHETHER HIS SCHOOL CONFORMS TO THE LEGAL REQUIREMENTS.

May 30, 1923.

J. Ralph John, D. C.,
Howard and Franklin Sts.,
Baltimore, Md.

MY DEAR SIR: I have considered the matters submitted in your letter of May 28th relative to the application of Mr. A. Sommerwerck, a graduate of the Riley School of Washington, to take a Maryland examination.

I feel that your Board must determine to follow either one of two possible courses. You must determine the standing

of the Riley School at this time and be governed accordingly or you should permit Mr. Sommerwerck to take the regular examination which will be held in July. I feel that your Board would place itself in an unfortunate position, even though it has the right to hold special examinations, to require Mr. Sommerwerck to take such an examination, because if he fails it could at once be said that his examination was much more difficult than the regular July examination, and that the whole purpose of the special examination in his case was to disbar him as a graduate of the Riley School.

It is true the law states that only those persons shall be eligible for examination who are graduates of a "Chiropractic school or college which teaches a resident course of three years, of six months each or more or the equivalent thereof requiring active attendance in the same," and this condition of the law must be observed, but the real purpose is to prescribe standards which will limit practitioners of Chiropractic in Maryland to those actually qualified to engage in such practice. Therefore, if a candidate passes your regular examination showing a thorough familiarity with the subjects involved, he will have met successfully the most important test to which the law subjects him.

Of course, you can stipulate that Mr. Sommerwerck will take the examination subject to your right to secure subsequently additional information concerning the standing of the Riley School and to deny him a license if you should find that it does not in fact conform to our law.

I am returning herein the papers relating to this matter which I think should be in your hands.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

MISCELLANEOUS—IMPROPER SHIPMENT OF MOVIE FILM BY EMPLOYEE OF CROWNSVILLE STATE HOSPITAL—RESULTING LIABILITIES.

June 8th, 1923.

William L. Marbury, Esq.,
President Board of Managers,
Crownsville State Hospital,
Maryland Trust Building,
Baltimore, Md.

DEAR SIR: I acknowledge receipt of your letter of May 26th, 1923, enclosing letter of May 12th, 1923, from Scientific & Cinema Supply Company to you in reference to the claim of that Company against the Crownsville State Hospital for a reel of film lost in the mail.

I have made a limited search of the authorities on the question here involved. In the matter of "contracts by correspondence" the rule is that the posting of a letter of acceptance completes the contract. Some authorities even go so far as to say that if the letter is lost in the mail so that the acceptance never does reach the offerer, the contract is nevertheless complete and final. The theory of the doctrine in this class of cases, however, is that the offerer used the mail in making the offer and hence the acceptance can be made through the same medium.

As to the subject of "remittance by mail" the authorities indicate that a remittance by mail may constitute payment if expressly or impliedly authorized by the creditor, or if such payment is according to the usual course of dealing between the parties. It seems also that a mere general direction by a creditor to his debtor to remit money to him does not authorize a remittance by mail at the risk of the creditor, unless that is the usual course of business and known by the creditor to be so.

I am assuming that the statement in the above mentioned letter of May 12th makes a true presentation of the facts of this case. It seems that the Scientific & Cinema Supply

Company assumed that the Hospital would insure the package. The package was sent "postage collect" from the Supply Company to the Hospital, and notwithstanding the Hospital was aware of the amount of postage paid for the receipt of the package nevertheless the Hospital placed less postage on the package for its return. Furthermore, the Hospital admits that a substitute Shipping Clerk mailed the package back, and that the regular shipping clerk would have made the shipment properly. The Hospital practically admits that the package was improperly shipped. It appears further that it is customary that such packages be insured.

I am unable to hold that the postal department is the agent of the addressee in this case, as the Hospital did not use the same class of mail in returning the package as was used in the original shipment to the Hospital. It seems to me, therefore, that the rule laid down in the law of "contracts by correspondence" is not applicable to this case.

I feel that the law on the subject of "remittance by mail" is more closely applicable. The Supply Company looked for the return of the package by mail, but did not designate the ordinary mail as the proper channel and the Hospital knew that the ordinary mail was not the proper mail.

In my opinion, therefore, the Hospital assumed the risk of having this package lost in the mail, and I feel that the Hospital can properly pay the claim of $120.00 to the Scientific & Cinema Supply Company.

This situation has been treated thus far as if the Hospital was a private corporation, because I felt that you would like to know whether a legal liability existed in an ordinary case, inasmuch as this would, in large measures, determine whether a moral obligation to pay rested upon the Hospital. As the Crownsville State Hospital is one of the agencies of Maryland for the administration of the State's sovereign functions it could successfully plead the State's immunity from suit in any action, founded in tort, which might be instituted against it.

It is also doubtful whether under the Budget System, any funds may be applied to this purpose in the absence of an appropriation specifically covering the subject.

Under all the circumstances your Board must determine whether it will stand upon its technical rights or whether it will recognize and if possible discharge an obligation which apparently possesses merit from the standpoint of fairness and justice.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

MISCELLANEOUS—REPORT TO GOVERNOR CONCERNING STATE HAY SCALES IN BALTIMORE CITY WITH RECOMMENDATIONS.

June 16, 1923.

Honorable Albert C. Ritchie,
Governor of Maryland,
Annapolis, Md.

DEAR GOVERNOR RITCHIE: I beg to submit my report and recommendation as to the State Hay Scales in Baltimore City, as requested by the Board of Public Works.

The 1915 Revised edition of the Charter of Baltimore City at page 287, et seq., title, "Hay and Straw," provides for the appointment of four inspectors of hay and straw for the City of Baltimore, and determines the charge to be made for weighing hay and straw and other commodities, and sets forth the disposition to be made of the money received by the inspectors for weighing commodities, and also provides for the weighing of cattle and hogs on the Eastern Hay Scale at Canton, in the City of Baltimore, and makes certain other provisions.

The Canton Hay Scale, used also for weighing live stock, has been abolished. The property for the Canton scale was conveyed by The Canton Company to the State of Maryland by deed dated May 8th, 1865, and recorded among the Land

Records of Baltimore City in liber A. M., No. 275, folio 442, and consisted of a rectangular piece of land located at the Southwest corner of O'Donnell Street and East Avenue, fronting forty-eight feet on O'Donnell Street and twenty-four feet on East Avenue. The legislature by Chapter 576 of the Acts of 1892 authorized the Governor of the State to reconvey to the Canton Company the said lot of ground, and pursuant thereto, Frank Brown, Governor, by deed dated May 11th, 1892, and recorded among the aforesaid land records in liber J. B. No. 1392, folio 459, reconveyed said property to the Canton Company. The State now has no right, title or interest in this lot of ground which is at present improved by two-story brick house privately owned.

There was also another Eastern Hay Scale which has been abolished, formerly located at the southeast corner of Monument and Buren Streets, the property fronting about 27 feet on Buren Street, and 55 feet on Monument Street. Chapter 371 of the Acts of 1876 directed the Governor to appoint three commissioners to sell this property. Pursuant thereto, John Merryman et al., Commissioners, conveyed said property to Ichabod Jean by deed dated September 13, 1876, and recorded among the aforesaid Land Records in Liber G. R. No. 752, folio 437.

At the present time there are three State Hay Scales in Baltimore City, as follows:

One. Eastern Hay Scale.

The lot of ground for this scale is located at the Northwest corner of Truxton Street and Greenmount Avenue, and was purchased by the State pursuant to Chapter 371 of the Acts of 1876, and was conveyed to the State of Maryland by James C. Rowe, et al. by deed dated September 28, 1876, and recorded among the Land Records of Baltimore City, in liber G. R. No. 755, folio 299, and is described as follows:

Beginning for the same at the corner formed by the intersection of the west side of Greenmount Avenue and the north side of Truxton Street, thence running northerly binding on the west side of Greenmount Avenue thirty-six feet, more or less, to the building erected on the lot adjoining hereto on the north, thence westerly and parallel with Truxton Street,

seventy-five feet, thence southerly and parallel with Greenmount Avenue, thirty-five feet, more or less, to the north side of Truxton Street, and thence easterly, binding on the the north side of Truxton Street, seventy-five feet, to the place of beginning.

Orrick E. Ensor of Cockeysville, Baltimore County, Maryland, is the present inspector of the Eastern Hay Scale, which, however, is in actual charge of Frank B. Boarman as agent for Mr. Ensor. Mr. Boarman says that he chiefly weighs hay, straw, and corn, but occasionally weighs potatoes, scrap iron and paper. The scale is in good working condition, and is inspected at intervals by the scale inspector of Baltimore City. The scale is fifteen feet long and is a little too short for large trucks. In a large measure, farmers are now using trucks instead of horses. There is no private scale near the Eastern Hay Scale where the farmers can have their weighing done. I am advised that the gross quarterly income at this scale is about $120.00, and Mr. Boarman says that the inspector retains three-fourths of the gross income, and that the expenses, such as repairs, coal and wood, are paid out of the remaining one-quarter, and the net balance of said one-quarter is then remitted quarterly to the Treasurer. Mr. Boarman acts as agent in the sale of hay occasionally at the scale, which is a private business of his own. This scale is used by the farmers of Baltimore County, Harford County and Carroll County and some few from Howard County. There is a large hay, straw and corn market in the immediate vicinity of this scale. Greenmount Avenue is now being repaved, and will therefore provide a better artery of approach to the scale. The office building erected on the ground is in fair shape, as is also the roof over the scale.

This scale, if abandoned, would be missed by its patrons. In my opinion, the Eastern Hay Scale is a necessity for the farmers and patrons thereof, and should be continued in operation.

Two. Northwestern Hay Scale.

John B. Morris, Jr., conveyed to the State of Maryland by deed dated April 20, 1866, and recorded among the afore-

said Land Records in Liber A. M. No. 165, folio 335, a triangular piece of property at the southern intersection of Fremont Avenue and Myrtle Avenue (Formerly Chatsworth Street), fronting two hundred and forty-seven feet, one and one-half inches on Fremont Avenue and two hundred and thirty-one feet three and one-half inches on Myrtle Avenue. This scale is now located near the southern intersection of Fremont and Myrtle Avenues, on a portion of this property.

Chapter 309 of the Acts of 1874 authorized the Governor to sell to the Mayor and City Council of Baltimore, a part of this lot, provided such sale should not prejudice the interests of the State of Maryland in the use of the balance of said lot for a hay scale. Chapter 1 of the Acts of 1876, recited the said Act of 1874, and authorized the Governor to convey by deed a certain part of said tract to the Mayor and City Council of Baltimore for the sum of twenty-five hundred $2500) dollars. This conveyance was not made until Governor Warfield's term of office. The State of Maryland, by Edwin Warfield, Governor, conveyed to the Mayor and City Council of Baltimore by deed dated March 23, 1906, and recorded among the aforesaid Land records in Liber R. O. No. 2220, folio 347, the northern portion of said lot, which is now improved by the City with a fire engine house.

The portion of said tract which was retained and used by the State for the Northwestern Hay Scale, is described by the following metes and bounds.

Beginning for the same on the west side of Myrtle Avenue at a point distant ninety-five feet and ten inches northerly from the northwest corner of Myrtle Avenue and Mosher Street, and running thence westerly parallel with Mosher Street, eighty-seven feet and three inches to the east side of Fremont Avenue, and running thence in a northerly direction, binding on the east side of Fremont Avenue, fifty-four feet seven and one-half inches, and thence leaving Fremont Avenue and running in an easterly direction sixty-eight feet to a point on the west side of Myrtle Avenue, and running thence southerly, binding on the west side of Myrtle Avenue, fifty-one feet and one inch to the place of beginning.

This lot of ground is improved by a hay scale and a brick office building and by a wooden shed and garage. Mr. Charles P. Anger, of 714 Mosher Street, is the inspector of this hay scale and is in actual charge of it. The scale floor is fifteen feet long but is too short for the largest trucks, but such trucks are accommodated by laying planks lengthwise over the scale supported by blocks, and the wheels of the trucks being driven on the planks. The chief products weighed at this scale are corn, hay, straw and potatoes, and occasionally scrap iron and paper. The farmers coming in the Reisterstown Road from Baltimore County and Carroll County patronize this scale. There are no private scales in the immediate vicinity which can be used by the farmers. I am advised that the gross income is about one hundred and eighty ($180.00) dollars quarterly, of which three-fourths is retained by the inspector and one-fourth is remitted to the Treasurer.

I believe this scale is a necessity for the farmers and its other patrons. In my opinion the Northwestern Hay Scale should be continued in use.

Three. Western Hay Scale:

This scale is located near the northeastern intersection of Frederick Avenue and Pulaski Street. The property is composed of two lots of ground together with the use of an alley. The first tract was purchased for the State by three commissioners pursuant to Chapter 381 of the Acts of 1867, and the second tract was purchased for the State by the Board of Public Works pursuant to Chapter 401 of the Acts of 1878.

The first tract of the Western Hay Scale property was conveyed to the State of Maryland by Charles Shipley and wife by deed dated October 8th, 1867, and recorded among the aforesaid land records in liber A. M. No. 353, folio 451, and is described as follows:

Beginning for the same on the line of the northwest side of Frederick Avenue fifty feet northeasterly from its intersection with the east side of Pulaski Street and at a corner of a lot leased to John Clarkes and I. Phillip Yager on December 20, 1865, and duly recorded, and running thence northeasterly on said Frederick Avenue, fifty-nine feet six

inches to Wilhelm's ground, thence northwesterly binding on Wilhelm's ground, seventy feet to a twenty foot alley, thence southwesterly binding on said alley with the right of the use thereof in common with others fifty-nine feet six inches to the line of Yager's lot aforesaid, and thence with said line south eighteen and one-half degrees east seventy feet to the beginning.

The second tract of said Western Hay Scale property was conveyed to the State of Maryland by Charles Shipley and wife by deed dated September 13, 1878, and recorded among the aforesaid land records in liber F. A. P. No. 826, folio 96, and is described as follows:

Beginning for the same on the east side of Pulaski Street at the distance of about ninety-seven feet northerly from the northeast corner of Frederick Avenue and Pulaski Street, which place of beginning is designed to be at the northeast intersection of Pulaski Street and an alley twenty feet wide mentioned in a deed from Charles Shipley and wife to the State of Maryland dated October 8th, 1867, and recorded among the Land Records of Baltimore City in liber A. M. No. 353, folio 451, thence northeasterly binding on the northernmost line of said twenty foot alley seventy-eight feet more or less to a point four feet westerly from the dividing line between the property of said Shipley and the Wilhelm estate, thence northerly, parallel with said dividing line twenty feet, thence southwesterly parallel with the first mentioned line seventy-three feet more or less to the east side of said Pulaski Street, thence southerly on the east side of Pulaski Street, twenty-one feet, more or less, to the place of beginning.

The inspector in charge of the Western Hay Scale is Henry F. Schwab, whose address is 2021 W. Frederick Avenue. The hay scale on this property is in very poor condition. The surface water from the western part of this property drains down into the scale pit, and causes a quantity of dirt and mud to accumulate in the pit, which has to be cleaned out after every rain. The water has also caused the wooden sills of the scale to become rotten. The roof over the scale is dilapidated and in a dangerous condition, as it might

tumble in at any time. On the property is a two-story brick building containing four rooms, one of which is used as an office. This brick building is in very poor condition and needs repairing badly. The small amount of corn and straw that is weighed comes in chiefly from the Second District of Baltimore County and Howard County. Reahl Bros., who are in business in the same block, have a scale which is sometimes used by the farmers in preference to the State scale. I am advised that the farmers use a B. & O. R. R. scale frequently. I understand that the gross quarterly receipts amount to $15 or $18, of which three-fourths is retained by the inspector and one-fourth remitted to the Treasurer. This property is located in a business section and is very valuable. The State paid $2500 for the larger lot and $1000 for the smaller lot in 1867 and 1878, respectively, according to the deeds.

The price which could be realized from the sale of the Western Hay Scale property would yield a far greater income to the State than the income derived from the scale. Furthermore, the farmers are apparently using private scales in preference to this State scale. Besides, it would be very expensive to repair the building and install a new scale. I therefore recommend that this property be sold by the State and that the Western Hay Scale be abandoned. At present there is no officer, board or commission with power or authority to sell the property. It will, therefore, be necessary for the Legislature to pass an appropriate act conferring upon the Governor or the Board of Public Works, or some other State Officer or Board the power to sell this property and directing that the proceeds be turned over to the State Treasury.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

MISCELLANEOUS—STATE SENATOR MAY RETAIN POSITION AS OFFICIAL STENOGRAPHER TO PUBLIC SERVICE COMMISSION.

July 5th, 1923.

Frank F. Kornman, Esq.,
Public Service Commission,
Calvert and Fayette Streets,
Baltimore, Md.

MY DEAR MR. KORNMAN: In your letter of June 25th you stated that you are considering the advisability of becoming a candidate for State Senator in the Sixth Legislative District in Baltimore City on the Republican ticket during the approaching campaign. At this time you are employed by the Public Service Commission of Maryland as official court stenographer, but devote part of your time to reporting in the various courts of the City and State and you are not under the State Civil Service Rules. You draw a regular salary of $2,000 and in addition receive fees for the work which you do in the various courts. You ask me to advise you whether your election to the State Senate would make it necessary for you to resign your position with the Public Service Commission.

The only provision of the Constitution which might apply to such a situation is found in Article 35 of the Declaration of Rights. It declares that "no person shall hold at the same time more than one office of profit, created by the Constitution or laws of the State."

This section has been passed upon a number of times by the Court of Appeals of Maryland, and a distinction is always drawn between an office and employment. A State Senator is unquestionably an officer. I do not feel, however, that a stenographer of the Public Service Commission or an official court stenographer can be so classified. He is not required to take an official oath; he does not receive a commission, and I feel that the place filled by him would be construed to be an "employment". It follows that in the event of your

election, it would not be necessary for you to resign the stenographic position which you now hold.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

MISCELLANEOUS—COMMISSION TO INVESTIGATE ADVISABILITY OF ACQUIRING "SYLVAN RETREAT" IN ALLEGANY COUNTY—MAY REPORT TO GENERAL ASSEMBLY OF 1924.

July 5, 1923.

Dr. A. P. Herring,
Bd. of Mental Hygiene,
330 N. Charles St.,
Baltimore, Md.

DEAR DR. HERRING: In your letter of June 22nd, you call my attention to Chapter 652 of the Acts of 1916 which creates a Commission composed of the members of the State Lunacy Commission and the Board of Public Works for the purpose of investigating the advisability of acquiring in behalf of the State the County Home and Pest House in Allegany County known as "Sylvan Retreat", and passing upon the amount required for said purpose. The title to this act indicates that the Commission was expected to make its report to the Legislature of 1918. In the enacting clause, however, no such limitation is placed upon the authority of the Commission. In Section 3 of the Act its powers are enumerated in general language and no requirement whatever is made that a report shall be rendered to the Legislature of 1918. Even if such a report was contemplated, I see no reason why the commission should not make the necessary investigation and submit its report to the Legislature of 1924. Its finding will not be in any way binding, being merely in the nature of a recommendation

and the information brought to the attention of the General Assembly will be helpful to that body in passing upon the advisability of making the purchase.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

MISCELLANEOUS—COUNTY TREASURER OF ALLEGANY COUNTY CANNOT SERVE ALSO AS TAX COLLECTOR FOR FIRST TAX COLLECTION DISTRICT.

August 13th, 1923.

William A. Huster, Esq.,
City Solicitor,
Cumberland, Maryland.

DEAR MR. HUSTER: In your letter of June 18th, you call the following facts to my attention. The Tax Collector for the first tax collection district for Allegany County is a candidate for the office of County Treasurer, subject to the Republican Primaries in September. You ask me to answer the following questions: In case the tax collector should be nominated and elected Treasurer will he be eligible to hold the office of County Treasurer and retain his position as tax collector?

I have carefully examined the Acts of 1910, Chapter 115, the Acts of 1912, Chapter 183, and the Acts of 1922, Chapter 8th, all of which are local Acts outlining the duties of the County Treasurer and the duties of the District Tax Collectors, and comprising a part of the Public Local Code of Allegany County. A careful review of these acts set out in sections 39, 39-a, 39-b, 40, 41, 42-a, 42-b, 43 and 43-b clearly reveals that the two offices are incompatible at common law. The rule of the common law prohibits a public officer from holding two incompatible offices at one time.

This rule has never been questioned and its correctness and propriety are well established. In the question presented the district tax collector collects taxes and must pay them to the County Treasurer. It is incompatible for the same person to occupy these two positions. Incompatibility arises from several causes. In the first place Section 42-b requires the collectors to collect all state and county taxes placed in their hands for collection by the County Commissioners of Allegany County, and, as to state taxes, to make report to the Comptroller and pay same over to the Treasurer of the State of Maryland, and, as to county taxes to pay over to the Treasurer of Allegany County. It will thus be seen that the District Collector will be required to pay money which he has collected as District Collector to himself as County Treasurer, and by section 42-a as County Treasurer he pays himself the salary which he has earned as District Collector. Moreover, we have the anomalous situation of one man holding two county offices, the functions of one of which is limited to a particular district, and the functions of the other extends over the entire county, and both of them having a direct relation to the collection of county taxes. Moreover it has been held that neither the brevity of the period of incompatibility nor the remoteness of the contingency giving rise to incompatibility is sufficient ground for holding offices incompatible. Among offices which have been held incompatible at common law are the following:

Constable and Justice of the Peace; deputy county auditor and school trustee; paymaster in the United States Army and county clerk; justice of the peace and town clerk; superintendent and financial officer of institution for feeble minded; paymaster and assistant engineer in Navy; district councilor and district treasurer; county treasurer and justice of the peace.

The following offices have been declared to be compatible with each other:

County auditor and member of board of review; clerk and collector of the same school district; clerk of the Federal court and United States commissioner; special assistant

United States district attorney and examiner; Army officer on retired list and chief clerk in the Department of Agriculture; clerk of United States circuit court and United States circuit court of appeals; county clerk and justice of the peace; clerk of the peace and justice of the peace; justice of the peace and coroner; councilman and town clerk.

An examination of the offices listed above and those enumerated in L. R. A., 1917-A, page 223 as incompatible and compatible convinces me that the county treasurer and the district tax collector should be classified as incompatible at common law. The holding of these two offices also violates Article 35 of the Declaration of Rights. It may be argued that the district tax collector is not an office within the constitutional inhibition set out in Article 35 supra of the Declaration of Rights. The position of County Treasurer is undoubtedly an office of profit within the meaning of the constitutional inhibition. In my judgment, the district tax collector is also an office of profit. The statute reveals that the position is a lucrative one, and in my judgment the statute in outlining the duties creates an office. The incumbent by Section 43-b, is invested with certain sovereign powers. The tax collector is authorized to seize and levy upon and sell the property of delinquent tax payers. Section 43-c gives very large and comprehensive powers as to enforcing payment of delinquent taxes due on real property; after providing for the sale and report to the court the statute provides that upon ratification of such sale the collector shall convey to the purchaser upon payment of the purchase price, the property sold. By Section 43-e, the tax collectors are clothed with the power of general assessors. By Section 42-a it is required that the tax collector be more than twenty-five years of age and that he shall not be related directly or collaterally within the third degree (nor married to any one so related) to any member of the Board of County Commissioners making such appointment, and it is further provided that *said collectors shall not be eligible for re-election for the term next ensuing.* Each collector is required to give bond and the collector for the first tax collection district is required to give bond in the sum of $100,-

000; the collector for the second district $75,000; and for the third district the sum of $50,000. Moreover, section 42 provides in part as follows: *"Each collector shall hold their office* for a term of two years beginning on the first Tuesday of April next after their election or until their successors are elected and qualified; and said collectors shall be subject to removal *from their said office* by the County Commissioners of Allegany County for any neglect of duty, misbehavior *in office* or incompetency at any time."

I have, therefore, no hesitancy in declaring the position of district tax collector *an office*. The result of the incompatibility between these offices is well settled. The acceptance of the second office incompatible with the one already held works an immediate vacation of the prior office. This rule seems to be based on the presumption of election between the two offices as evidenced by the acceptance and incumbency of the second office.

My opinion, therefore, is that these two offices are incompatible at common law and are within the constitutional inhibition of Article 35 of the Declaration of Rights, and that, therefore, the acceptance of the second office automatically vacates the first.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

MISCELLANEOUS — GOVERNOR POSSESSES NO POWER TO REMOVE A JUSTICE OF THE PEACE—CAN ONLY BE DONE BY LOCAL JUDGES POSSESSING CRIMINAL JURISDICTION.

December 1st, 1923.

Honorable Albert C. Ritchie,
Governor of Maryland,
Annapolis, Maryland.

MY DEAR GOVERNOR RITCHIE: In your letter of November 29th, you advise that charges of a serious nature have been

preferred against Justice Andrew J. Jones, of Rising Sun, Cecil County, and that you have given him an opportunity either to resign or stand trial. You ask me to advise you what procedure should be followed in the removal of Justice Jones in the event that he declines to resign.

I have examined the three local statutes, relating to Justices of the Peace in Cecil County, mentioned in your letter, and find that they have no bearing on the question in which you are interested.

Section 15 of Article 2 of the Constitution contains the general provision that the Governor "May remove for incompetency or misconduct all civil officers who received appointment from the Executive for a term of years."

Section 42 of Article 4, however, deals specifically with the appointment and removal of Justices of the Peace. After providing for their appointment by the Governor, the following language is employed: "Justices of the Peace and Constables so appointed shall be subject to removal by the judge or judges having criminal jurisdiction in the County or City, for incompetency, wilful neglect of duty or misdemeanor in office, on conviction in a court of law."

This specific direction as to the removal of Justices of the Peace takes precedence, in my judgment, over the general language of Section 15 of Article 2, quoted above. It would be improper to assume that the framers of the Constitution intended the Governor to have the power of removing Justices of the Peace, when it is declared in express language that these officers can be removed by the Judges sitting in their respective jurisdictions.

The principle involved in discussed in the case of Cantell vs. Owens, 14 Md. 215, in which the Court was called upon to construe certain sections of the Constitution of 1851, relating to Justices of the Peace. Under that Constitution Justices of the Peace were elected, but it was expressly declared in Article 4, Section 19, that "In the event of a vacancy in the office of Justice of the Peace, the Governor shall appoint a person to serve until the next regular election of said office." It was contended, however, that when a vacancy occurred, it should have been filled by the Governor and Senate

under a general provision appearing in another section of the Constitution. The Court, however, declared that if the latter interpretation was adopted "It would deprive the clause in Art. 4, Sec. 19, which relates to vacancies in *this* office of all effect whatever, and impute to the convention a design to place the office of Justice of the Peace, in respect to filling vacancies, on a footing with other offices, when their plain language admits of a different construction."

I must, therefore, advise you that, in my judgment, you do not possess the power to remove a Justice of the Peace, and that, on the contrary, the only procedure for the removal of such an official is that authorized in Section 42 of Article 4 of the Constitution.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

MISCELLANEOUS—DEEDS CONVEYING LIGHTHOUSE SITES TO FEDERAL GOVERNMENT—FORM APPROVED.

December 1st, 1923.

Honorable Albert C. Ritchie,
Governor of Maryland,
Annapolis, Md.

MY DEAR GOVERNOR RITCHIE: I am returning herewith plats and deeds submitted to you some months ago by the Superintendent of Lighthouses in Baltimore, representing the Department of Commerce of the United States, embracing six marine lighthouse sites in Maryland which it is proposed to convey to the United States.

I have examined all of these deeds and find that they are in proper form and in accordance with the statutes of Maryland authorizing the conveyance of lighthouse sites by the Governor to the United States. I am not, of course, passing

upon the desirability of executing these conveyances, but beg to advise you that the deeds are in proper form.

You will note that in each case the deeds call for an area embracing five acres which is the maximum area that may be conveyed in a single tract. Whether it is necessary in every case to convey a five acre tract, I do not know, but I merely mention the fact for your consideration.

I might add that I have verified the figures and find that each of the circular tracts covered by the deeds contains five acres.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

MISCELLANEOUS — TOWN CLERK OF EASTON AN OFFICE OF PROFIT — CANNOT BE HELD BY STATE'S ATTORNEY OF TALBOT COUNTY.

December 8, 1923.

John C. North, Esq.,
State's Attorney of Talbot County,
Easton, Maryland.

MY DEAR SIR: You state in your letter of December 4th that you expect to qualify as the newly elected State's Attorney for Talbot County on January 1st, 1924, and ask me to inform you whether, after assuming the State's Attorneyship, you can continue to perform the duties of Town Clerk of Easton, which position you now hold under and by virtue of Section 1, Chapter 52, of the Acts of 1914. You state that you wish to hold over until the end of the fiscal year of the Town on May May 31st, 1924. In your letter you quote the law in pursuance of which you were appointed and which I find constitutes Section 75 of the Town Charter of Easton.

The answer to your question, however, is not determined by this Section, but, in my judgment, by Section 77 of the Charter under which the Town Clerk is required, before entering upon the duties of his office, to take an oath before the Mayor and also to execute a bond to the State of Maryland for the faithful performance of his duties.

Article 35 of the Declaration of Rights prohibits any person from holding "at the same time more than one office of profit created by the Constitution or laws of this State."

The most important test adopted by the Court of Appeals in determining what is an office of profit is that laid down in Baltimore City vs. Lyman, 92 Md. 591, in which the following quotation from Judge Cooley, is adopted:—"The officer is distinguished from the employee in the greater importance, dignity and independence of his position; in being required to take an official oath and perhaps to give an official bond." The taking of the official oath and the giving of the official bond have been referred to in many subsequent decisions of the Court of Appeals, and I have no hesitation in holding that the Town Clerkship of Easton is an office of profit within the inhibition of the Declaration of Rights.

It will, therefore, be necessary for you to resign this position, although your qualification as State's Attorney will automatically vacate the office. See Truitt vs. Collins, 122 Md. 526.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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