ANNUAL REPORT

AND

OFFICIAL OPINIONS

OF THE

ATTORNEY GENERAL

COMPLIMENTS OF
ALBERT C. RITCHIE
ATTORNEY GENERAL

1916

ALBERT C. RITCHIE
ATTORNEY GENERAL

847

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

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

STATE LAW DEPARTMENT.

Albert C. Ritchie.....Attorney General.

Ogle Marbury. . . ..Assistant Attorney General.

John M. Requardt.....Assistant Attorney General.

William Pinkney Whyte, Jr.....Assistant Attorney General.

Philip B. Perlman.....Assistant.

Miss Virginia Ellinger.....Stenographer.

Miss Emily Dashiell.....Stenographer.

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

TABLE OF CONTENTS.

Annual Report for 1916.

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

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

DEAR GOVERNOR HARRINGTON:

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

The State Law Department.

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

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

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

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

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

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

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

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

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

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

Legislature of 1916.

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

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

The more important bills drafted by me were:

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

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

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

Abolishing continuing appropriations. Acts 1916, Chap. 126.

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

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

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

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

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

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

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

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

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

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

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

Two other bills require special mention.

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

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

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

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

Criminal Cases Tried in the Court of Appeals.

January, April and October Terms, 1916.

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

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

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

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

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

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

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

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

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

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

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

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

Civil Cases Tried in the Court of Appeals.

January, April and October Terms, 1916.

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

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

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

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

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

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

Civil Cases Tried in the Lower Courts.

October 1, 1916, to December 31, 1916.

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

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

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

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

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

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

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

Cases Pending on Appeal.

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

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

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

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

Civil Cases Pending in Lower Courts.

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

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

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

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

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

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

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

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

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

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

McQuire Construction Co. vs. State Roads Commission. United States District Court. Action for $34,458.10 on account of alleged extra work on road contracts.

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

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

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

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

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

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

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

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

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

Oyster Condemnation and Protest Cases.

Condemnation of Oyster Leases.

The Shepherd law, Acts 1914, Chap. 265, provided that when bottoms which had been leased by the Shell Fish Commission as barren bottoms, were upon re-survey determined to be natural bars, then the interests of the lessees should be condemned by the State, under proceedings to be instituted by the State's Attorney of the County in which such bottoms were located. There were thirty-eight leases of this kind in Somerset County, and after the resurveys the State's Attorney of Somerset County instituted the appropriate condemnation proceedings. The cases were tried by the State's Attorney in October, 1915, and resulted in Jury awards aggregating $257,975.

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

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

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

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

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

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

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

In St. Mary's County, there were eight similar condemnations. Early in December, 1916, Assistant Attorney General Marbury tried these cases with the State's Attorney and Mr. William M. Loker, special assistant. The trials resulted in awards aggregating $9,705.00, which the Conservation Commission and my Department consider reasonable and satisfactory, and for the payment of which provision should be made by the Legislature of 1918.

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

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

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

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

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

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

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

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

Board of Election Supervisors of Baltimore City.

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

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

State Insurance Department.

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

Bank Commissioner.

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

State Board of Health.

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

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

Opinions.

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

RECOMMENDATIONS AND CONCLUSIONS.

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

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

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

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

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

I have the honor to be,

Respectfully yours,

ALBERT C. RITCHIE, *Attorney General.*

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

1.	Salary from October 1, 1915, to December 20, 1915, Mr. Poe	$ 661.29	
	Salary from December 20, 1915, to September 30, 1916, Mr. Ritchie	2,338.71	
			$3,000.00
2.	Contingent fund for "printing and travelling expenses, clerical services, stationery, postage and other necessary expenses," Acts 1914, Chapter 389, page 627	$2,500.00	
	Paid by Comptroller to Mr. Poe, for period from October 1, 1915, to December 20, 1915	555.33	
			$1,944.67
	Disbursements by Mr. Ritchie for period from December 20, 1915, to September 30, 1916, for purposes named in the appropriation Act, every disbursement being accompanied by receipted voucher	1,870.32	
	Reverted into general treasury October 1, 1916	$ 74.35	
3.	Briefs and Records. Appropriation, Bagby's Code, Art. 17, Sec. 44	$ 500.00	
	Balance from preceding year's appropriation	60.00	
	Amounts refunded State under court orders awarding costs to the State	110.45	
	Balance October 1, 1915	$ 670.45	
	Printing bills for Briefs, approved by Mr. Poe	$376.50	
	Printing bills for Briefs, approved by Mr. Ritchie	292.00	
			668.50
	Reverted into general treasury October 1, 1916		$1.95

OFFICIAL OPINIONS

of the

ATTORNEY GENERAL OF MARYLAND.

ADMINISTRATION OF ESTATES.

(Collateral Inheritance Tax Opinions included under Taxation.)

ADMINISTRATION—DESCENT OF REAL ESTATE.

July 7, 1916.

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

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

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

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

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

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

ADMINISTRATION—TAX ON EXECUTOR'S COMMISSIONS.

January 7, 1916.

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

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

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

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

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

ADMINISTRATION—TAX ON EXECUTOR'S COMMISSIONS.

January 7, 1916.

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

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

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

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

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

ADMINISTRATION—TAX ON EXECUTOR'S COMMISSIONS.

June 9, 1916.

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

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

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

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

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

—

ADMINISTRATION—TAXES DUE STATE AND CITY, PAYMENT OF.

December 6, 1916.

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

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

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

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

I beg to advise you as follows:

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

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

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

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

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

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

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

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

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

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

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

BANKS.

BANKS—BRANCH BANKS.

December 14, 1916.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

—

BANKS—REDUCTION OF CAPITAL STOCK.

December 28, 1916.

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

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

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

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

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

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

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

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

BANKS—TRUST COMPANY POWERS ELIMINATED BY CHARTER AMENDMENT.

November 10, 1916.

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

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

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

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

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

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

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

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

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

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

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

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

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

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CONSERVATION.

CONSERVATION—CRAB LICENSES—POWER TO ARREST.

August 29, 1916.

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

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

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

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

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

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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

June 3, 1916.

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

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

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

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

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CONSERVATION—CRAB LICENSES—CRABBING FOR PLEASURE.

July 28, 1916.

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

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

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CONSERVATION—CRAB LICENSES—SELLING LESS THAN CRATE.

June 20, 1916.

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

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

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

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

—

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

August 17, 1916.

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

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

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

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

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

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

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

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

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

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

See also—

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

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

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CONSERVATION—FISH—UNDERSIZE.

February 5, 1916.

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

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

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

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

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

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

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

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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

September 13, 1916.

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

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

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

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

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

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

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

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

The result is:

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

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

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

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

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

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

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

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

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

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

—

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

September 11, 1916.

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

DEAR SIR: I have your favor of September 9. Under the Act of 1916, Chap. 282, Sec. 15D, the closed season for raccoons and possums in Allegany County is from April 1 to September 1. This Act supersedes as to Allegany County the general law codified in Bagby's Code, Art. 99, sects. 58 and 59.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

—

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

August 29, 1916.

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

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

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

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

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

The Act of 1916, Ch. 143, also authorizes the killing of deer during said season from November 10th to December 24th, but the Act of 1916, Ch. 399, approved on April 18th, after Chapter 143, requires a closed season for deer throughout the State for six years from June 1st, 1916. See also Act 1916, Ch. 10.

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

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

My conclusions, therefore, are:

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

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

Very truly yours,

ALBERT C. RITCHIE, *Aitorney General.*

—

CONSERVATION—GAME—EXPORTATION BETWEEN COUNTIES.

September 26, 1916.

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

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

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

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

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

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

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

—

CONSERVATION—GAME—EXPORTATION BEYOND THE STATE.

November 21, 1916.

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

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

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

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

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

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

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

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

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

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CONSERVATION—GAME—MOTOR BOATS IN DUCK SHOOTING.

November 20, 1916.

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

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

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

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

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

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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

September 23, 1916.

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

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

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

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

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

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

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

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

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

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

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

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CONSERVATION—MARYLAND AND VIRGINIA BOUNDARY LINE.

W. Thomas Kemp, Esq., *July 29, 1916.*
Chairman, Conservation Commission,
512 Munsey Building,
Baltimore, Maryland.

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

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

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

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

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

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

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

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

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

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

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CONSERVATION—OYSTERS—CULLING WHOLE CARGO.

October 23, 1916.

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

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

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

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

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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

September 14, 1916.

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

DEAR SIR: I beg to reply to your favor of September 11.

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

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

—

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

October 23, 1916.

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

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

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

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

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

See also:

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

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

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

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

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

Very truly yours,

ALBERT C RITCHIE, *Attorney General*.

CONSERVATION—OYSTER INSPECTION TAX ON VIRGINIA RAISED OYSTERS.

October 31, 1916.

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

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

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

This charge is levied:

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

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

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

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CONSERVATION—OYSTER LEASES—CONDEMNATION OF—PROCEDURE—ABANDONMENT.

January 21, 1916.

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

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

These cases were 38 in number, and they involved 38 lots which had been leased by the Shell Fish Commission as barren bottoms, open for oyster culture, but which, under the re-surveys provided for by the Shepherd law (Acts 1914, Ch. 265), were determined to be natural bars, and, therefore, not subject to lease. Section 94C of the Shepherd law (Bagby's Code, Vol. III, Art. 72, Sec. 96C) provided that the interests of lessees under outstanding leases of bottoms which, under such re-surveys, were determined to be natural bars, and the oysters thereon, should be condemned by the State, and the duty of instituting such condemnation proceedings was placed upon the State's Attorney of the county in which said areas were located.

The lots in question were all located in Somerset County, and accordingly the State's Attorney for Somerset County, Mr. Gordon Tull, instituted the proper proceedings for their condemnation, and the cases were tried in October, 1915. The awards of the Juries aggregated $257,975, and the lots, with their locations, and the amounts awarded by the jury for each lot, are as follows:

(*Note.—These details are omitted.*)

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

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

These motions were argued by Mr. Tull on December 20, 1915, which was the day of my qualification as Attorney General, and on the following day the court overruled the motions.

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

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

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

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

3. That the Shepherd law of 1914 provided in Section 94C (Bagby's Code, Vol. III, Art. 72, Sec. 96C), that the condemnation proceedings should be "that set forth in Chapter 117 of the Acts of 1912," whereas the proceedings were actually taken under the Act of 1914, Chapter 463, which repealed the Act of 1912, and re-enacted it with amendments (Bagby's Code, Vol. III, Art. 33A). I found, however, that under the Act of 1914, Chap. 463, Sec. 15 (Bagby's Code, Sec. 14), whenever the State thereafter resorted to condemnation, it was

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

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

From this brief review of the points involved in the appeals, you will see that in my judgment the appeals cannot be prosecuted successfully, and I do not think that the time and expense (the latter approximating $1,500), which the prosecution of the appeals would involve, are justified. I, therefore, think it my duty to report my conclusions upon the matter to you, and to ask you, if you agree with them, to authorize me not to prosecute the appeals, but to enter the same dismissed.

If the appeals are dismissed, this will, of course, leave the judgments, aggregating $257,975.00, outstanding against the State, and as requested by you I have considered whether the State has the power to abandon the condemnations altogether, and permit the lot owners to keep their lots, and if so, what the proper procedure for this would be.

Without troubling you with a review of the authorities upon the question, I will simply say that I have examined them all, and that in my judgment there is no doubt about the State's power to abandon the condemnation proceedings at any time before payment of the damages assessed. Indeed, the Shepherd law itself, in Section 94C (Bagby's Code, Vol. III, Art. 72, Sec. 96C), provides that the rights and property of the lot owners shall not be divested until the compensation awarded has been paid them by the State.

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

The Shepherd law provides that lots leased as barren bottoms, but found, under the resurveys, to be natural bars, "shall be condemned by the State of Maryland for the use of the public," (Bagby's Code, Vol. III, Art. 72, Sec. 96C). Since the Legislature is the body which directed that these condemnations should be taken, I think that the Legislature is the body which should now determine that the condemnations are to be abandoned, if that course is decided upon.

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

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

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CONSERVATION—OYSTER LEASES—REFUND OF APPLICATION FEES.

December 27, 1916.

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

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

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

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

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

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CONSERVATION—OYSTER LEASES—SCALE OF RENTS.

June 30, 1916.

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

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

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

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

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

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

--

CONSERVATION—OYSTER LEASES—STAKES FOR MARKING.

May 1, 1916.

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

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

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

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

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

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

stakes interfere unreasonably with the rights of crabmen and fishermen.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CONSERVATION—OYSTER LICENSES—CULLING AND TONGING.

October 5, 1916.

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

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

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

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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

August 29, 1916.

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

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

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

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

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

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

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

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

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

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CONSERVATION—OYSTER LICENSES—PACKERS.

November 24, 1916.

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

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

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

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

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

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

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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

September 11, 1916.

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

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

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

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

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

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

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

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

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

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CONSERVATION—OYSTER LICENSES—TONGING—PATENT TONGS.

November 27, 1916.

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

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

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

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

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

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

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CONSERVATION—OYSTER SEASON IN PATUXENT RIVER AND TRIBUTARIES.

August 28, 1916.

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

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

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

CONSERVATION—STATE FISHERY FORCE—POWER TO ARREST.

July 28, 1916.

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

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

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

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

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

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

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

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

July 31, 1916.

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

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

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

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

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

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

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

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

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

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

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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

November 28, 1916.

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

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

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

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

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

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

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

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

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

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

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

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

EDUCATION.

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

October 26, 1916.

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

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

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

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

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

—

EDUCATION—COUNSEL FOR COUNTY SCHOOL BOARDS.

October 12, 1916.

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

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

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

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

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

EDUCATION—COUNTY SUPERINTENDENT—TERM OF OFFICE.

May 15, 1916.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Very truly yours,

ALBERT C RITCHIE, *Attorney General.*

—

EDUCATION—COUNTY SUPERINTENDENT — TEACHERS — OATH OF OFFICE.

September 26, 1916.

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

DEAR MR. CLEMSON: I have your favor of September 25th. Section 72 of the General Educational Bill (Act 1916, Ch. 506), provides that "all county superintendents of schools *holding office* at the time this act shall take effect, shall continue to serve to the end of the term for which they were originally appointed." Mr. Unger, the Superintendent elected in May, 1916, was not *holding office* on June 1, 1916, when the Educational Bill took effect, but was merely an *appointee* then, whose term was not to begin until August 1, 1916. Consequently, he was not within the saving clause of section 72. Nor do I think that he could legally assume office at all without a re-appointment after June 1st, because the statute under which he was appointed in May (Bagby's Code, Art. 77, Sec. 22), was repealed as of June 1st by the Act of 1916. I, therefore, think that the Board should now confirm the legality of Mr. Unger's appointment, by re-electing him at its next meeting.

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

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

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

Very truly yours,

ALBERT C RITCHIE, *Attorney General*.

ELECTIONS.

ELECTIONS—BALLOTS—DETACHABLE STUBS FOR PRIMARIES.

April 25, 1916.

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

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

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

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

April 25, 1916.

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

DEAR MR. MCCULLOUGH: I beg to reply to your favor of April 21st. The portion of Chapter 160 of the Act of 1916 relating to preparation of ballots is substantially the same as it has always been. The only substantial amendment which the Act makes to Section 184 of the Election Law is the omission of the portions thereof relating to the envelope system. The intent was that the form of the primary ballot should be the same as the form required for the ballot in general elections, "except that on the back and outside of all such official ballots shall be printed only the words 'official ballot for,' " etc.

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

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

Very truly yours,

ALBERT C RITCHIE, *Attorney General.*

—

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

April 12, 1916.

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

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

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

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

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

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

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

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

—

ELECTIONS—BALLOTS—PRESIDENT—CROSS MARK FOR.

October 12, 1916.

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

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

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

—

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

October 18, 1916.

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

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

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

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

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

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

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

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

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

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

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

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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

October 19, 1916.

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

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

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

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

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

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

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

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

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

Very truly yours,

ALBERT C RITCHIE, *Attorney General.*

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

October 23, 1916.

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

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

The only suggestions that occur to me are the following:

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

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

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

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

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

Very truly yours,

ALBERT C RITCHIE, *Attorney General.*

ELECTIONS—BALLOTS—SAMPLES FOR CANDIDATES.

April 25, 1916.

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

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

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

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

ELECTIONS—CORRUPT PRACTICES—ELECTIONEERING—SANDWICHES AND COFFEE.

November 1, 1916.

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

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

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

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

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

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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

September 29, 1916.

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

DEAR MR. WATERS: I have your favor of September 28th.

I think that the office of Justice of the Peace or Notary Public is a "public office or employment," within the meaning of Section 7 of Article 33 of Bagby's Code, and, therefore, I agree

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

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

—

ELECTIONS—PRECINCTS, CONSOLIDATION OF.

July 21, 1916.

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

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

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

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

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

—

ELECTIONS—PRESIDENTIAL CANDIDATES, CERTIFICATION OF.

August 5, 1916.

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

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

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

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

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

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

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

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

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

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

Very truly yours,

ALBERT C RITCHIE, *Attorney General.*

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

October 16, 1916.

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

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

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

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

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

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

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

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

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

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

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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

May 5, 1916.

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

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

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

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

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

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

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

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

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

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

March 6th, 1916.

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

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

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

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

Sincerely yours,

ALBERT C. RITCHIE, *Attorney General.*

—

ELECTIONS—PRIMARIES—PARTIES WHICH MAY PARTICIPATE.

March 14, 1916.

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

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

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

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

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

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

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

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

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

ELECTIONS—PROHIBITION QUESTION—SUBMISSION IN ELLICOTT CITY. *June 30, 1916.*

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

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

By the Act of 1916, Ch. 30, the question of prohibition in the several political units therein named must "be submitted to the registered and qualified voters of said political units herein designated at the general election to be held" in November, 1916.

Ellicott City is one of the political units named in the act, and consequently the question of prohibition in Ellicott City must be submitted "to the registered and qualified voters" of Ellicott City at the said general election.

The Act of 1914, Ch. 836, revised the charter of Ellicott City. Sections 52 and 53 provide for the registration, in July, 1914, of all citizens of Ellicott City qualified to vote therein. I understand that this registration was duly made, and that the citizens thus registered constitute "the registered and qualified voters" of Ellicott City.

There is only one registration book showing these qualified voters, and this, after said registration, was deposited by the Officer of Registration with the Clerk of the Circuit Court for Howard County, pursuant to section 54 of the Act of 1914, Ch. 836. That section provides that the said book "shall remain in the custody of said clerk," but provision is made for delivering it to the officer of registration for use at subsequent registrations (section 54), and to the judges of election for use on election days (section 57), after which the book is to be redeposited with the Clerk of Court (Sections 54 and 59).

Under the political division of Howard County for general elections, Ellicott City lies entirely within the Second Election District, but that District is divided into two precincts, and Ellicott City lies partly in each precinct. The registration books of these two precincts contain the names of all qualified voters who have registered from each precinct, whether they live in the part of the precinct which is within or in the part which is outside of Ellicott City; but there is nothing to indicate which of these voters are also registered as qualified voters of Ellicott City. The only book which shows this is the registration book of the qualified voters of Ellicott City, which is in the custody of the Clerk of the Court.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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

—

ELECTION:—PROHIBITION QUESTION—SUBMISSION IN ANNAPOLIS.

August 30, 1916.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

ELECTIONS—PUBLICATION OF LOCAL LAWS REFERRED TO THE PEOPLE.

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

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

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

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

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

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

ELECTIONS—RECOUNT OF VOTE ON CONSTITUTIONAL AMENDMENT.

August 17, 1916.

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

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

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

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

I beg to remain,

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

ELECTIONS—REGISTRATION DAYS IN COUNTIES.

September 13, 1916.

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

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

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

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

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

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

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

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

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

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

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

ELECTIONS—REGISTRATION—DECLARATION OF INTENT.

January 29, 1916.

Harrison E. Crook, Esq.,
Pomfret, Charles County, Md.

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

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

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

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

—

ELECTIONS—REGISTRATION—DECLARATION OF INTENT.

September 1, 1916.

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

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

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

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

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

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

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

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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

October 9, 1916.

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

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

Your inquiry is whether or not persons who remove from this State after May 7, 1916, and, therefore, less than six months preceding the next November election, which will be on November 7, 1916, but who declare their intention to return (under Bagby's Code, Art. 33, Sec. 28), can nevertheless be stricken from the registration books, because they cannot return or intend to return on or before six months before such election of November 7, 1916.

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

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

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

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

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

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

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

ELECTIONS—REGISTRATION—DECLARATION OF INTENT—MINORS.

September 19, 1916.

Hon. Frederick N. Zihlman,
Cumberland, Maryland.

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

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

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

On the other hand, if that be the proper construction, then no matter how young a minor might be, who was brought into this State, for example, by his parents, he could not thereafter register until he had made the declaration. Moreover, the object of requiring the declaration is that it shall constitute evidence of the person's *intent* to become a citizen and resident of Maryland (Pope vs. Williams, 98 Md. 59), and ordinarily minors cannot acquire a domicile of their own, but their domicile follows that of their parents.

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

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

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

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

ELECTIONS—REGISTRATION—MILITIA SHOULD NOT BE STRICKEN OFF.

October 12, 1916.

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

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

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

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

ELECTIONS—REGISTRATION—MILITIA ON BORDER CANNOT REGISTER.

October 31, 1916.

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

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

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

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

ELECTIONS—REGISTRATION—TRANSFER CERTIFICATES.

October 3, 1916.

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

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

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

ELECTIONS—SUPERVISORS, APPOINTMENT OF.

May 16, 1916.

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

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

As I understand the situation, it is this:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Purnell vs. Shriver, 125 Md. 266.

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

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

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

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

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

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

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

ELECTIONS—SUPERVISORS, COMPENSATION FOR PRIMARY ELECTIONS.

June 12, 1916.

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

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

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

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

FISCAL MATTERS.

FISCAL—ACCOUNTING AND BOOKKEEPING, UNIFORM SYSTEMS OF.

January 18, 1916.

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

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

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

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

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

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

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

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

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

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

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

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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

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

July 28, 1916.

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

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

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

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

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

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

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

FISCAL—BONDS—BIDS MUST BE INVITED.

December 16, 1916.

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

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

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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

November 13, 1916.

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

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

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

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

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

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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

May 25, 1916.

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

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

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

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

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

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

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

A's bid at 101 would be.....$2,020,000
B's bid at 98 would be..... 1,470,000

Or a total for both issues of.....$3,490,000
C's bid at 100 for the entire issue would be.....$3,500,000

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

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

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

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

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

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

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

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

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

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

FISCAL—BONDS—VALIDITY OF 1916 ISSUES.

August 1, 1916.

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

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

> $2,000,000—"The Treasury Relief Loan of 1916," Series "A" to "M," dated Aug. 1, 1916, 4% Bonds, $1,000 denomination, Coupon form, registrable as to principal.
>
> $1,500,000—part of "The Three Million Dollar Loan of 1916," Series "A" to "M," dated August 1, 1916, 4% Bonds, $1,000 denomination, Coupon form, registrable as to principal—

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

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

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

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

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

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

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

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

—

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

November 24, 1916.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

FISCAL—CLERKS OF COURT, BONDS OF.

December 23, 1916.

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

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

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

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

—

FISCAL—CLERKS OF COURT—OFFICE EXPENSES.

November 18, 1916.

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

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

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

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

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

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

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

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

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

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

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

FISCAL—DEPOSITARY BANKS—COLLATERAL MUST BE REGISTERED.

October 5, 1916.

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

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

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

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

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

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

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

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

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

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

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

FISCAL—DEPOSITS—FORM OF REGISTRATION.

February 24, 1916.

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

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

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

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

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

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

March 8th, 1916.

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

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

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

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

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

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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

February 21, 1916.

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

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

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

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

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

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

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

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

—

FISCAL—INTEREST ON BANK DEPOSITS CREDITED TO GENERAL TREASURY.

November 21, 1916.

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

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

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

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

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

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

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

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

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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

January 10, 1916.

Hon. Emerson C. Harrington,
State Comptroller,
Annapolis, Maryland.

DEAR SIR: I beg to acknowledge your favor of December 31, 1915, in which you ask whether or not the Register of Wills for Allegany County is authorized to charge against the receipts of his office the sum of $270 for the purchase of an Elliott-Fisher book typewriter.

The Constitution, Art. III, Section 45, provides that the Registers of Wills in the counties shall receive, out of the fees or receipts of their offices, a compensation not exceeding $3,000 a year, "over and above office expenses, and compensation to assistants."

Bagby's Code, Art. 93, Sec. 276, provides that the Registers of Wills for the several counties, the emoluments of whose offices shall exceed the sum of $3,000 in any one year, "after deducting therefrom the necessary expenses incident to their office for the same period," shall pay the excess to the treasurer.

Sec. 277 of the same Article requires every Register to return annually to the Comptroller an account of his fees, emoluments and receipts, "and of all the expenses incident to his office," and with such accounts of expense each Register is required to give a list of his clerks, their compensation and duties, and also "an account of the sums paid for stationery, official or contingent expenses, fuel and other things, and stating the purposes for which said expenses are applied."

From the aforegoing provisions it appears that the Registers of Wills are entitled to charge against the fees or receipts of their offices, *necessary office expenses, stationery, official or contingent expenses, fuel and other things incident* to their offices. I think that under these provisions an Elliott-Fisher book typewriter, if needed, is a proper charge against the receipts of the office of the Register of Wills of Allegany County.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

FISCAL — SCHOOLS — COMMON SCHOOL FUND — 1812 WAR LOANS—MARYLAND AGRICULTURAL COLLEGE—FEDERAL AID.

March 10th, 1916.

Hon. Harvey L. Cooper,
Chairman Senate Finance Committee,
Annapolis, Maryland.

DEAR SENATOR COOPER: As requested by your favor of March 8th, I have looked into the power of the State to sell the securities you mention and make disposition of the proceeds.

1. Securities and cash aggregating $233,560.50, consisting of Baltimore and Ohio common stock, Baltimore City 3½s,

United Railways and Electric Company first 4s, State loan of 1914, and $3,572.50 cash, carried by the Comptroller to the credit of the Common Free School Fund (Report for 1915, Statement F-A).

These securities represent moneys received from the United States Government, amounting originally to $160,929.26, and representing interest upon loans contracted by the State for the prosecution of the war of 1812. See Resolution of Goneral Assembly of Maryland No. 38, 1825.

The present investments of this money were made under the Act of 1858, Ch. 295, March 9, 1858, and by that act the interest and dividends are required to be distributed "among the several counties of the State and the City of Baltimore, in the ratio of the whole representation of the said counties and city, respectively, in the General Assembly, in the same mode that the free school fund is non, or may be hereafter, distributed according to law, to the person or persons duly and legally authorized to receive the same."

I see no reason why the Legislature cannot require the sale of these securities, and make such other disposition of the proceeds as it deems proper.

2. Securities aggregating $118,943.05, consisting of Public Building Loans and State Loans of 1902, 1912 and 1914, carried by the Comptroller to the credit of the Maryland Agricultural College. (Report of 1915, Statement F-A.)

These securities represent the investment of moneys received by the State from the United States Government, under Act of Congress of July 2, 1862, Ch. 130, 12 Stat. 503, amended by Act of Congress of March 3, 1883, Ch. 102, 22 Stat. 484. (See United States Compiled Statutes, 1901, Vol. 3, pages 3212, etc.)

Under these Acts of Congress the principal of this fund is required to "forever remain unimpaired" and "undiminished," and the income is "inviolably appropriated" to the endowment, support and maintenance of a state college where the leading object is the teaching of agriculture and mechanic arts, the college selected by the State being the Maryland Agricultural College.

The Legislature cannot apply either the principal or the interest of this fund to any purpose other than the purpose to which the same are now applied.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

FISCAL—SCHOOLS—FREE SCHOOL FUND AND INDIGENT BLIND —SURPLUS REVENUE OF THE UNITED STATES.

June 28, 1916.

Harry J. Hopkins, Esq.,
Comptroller's Office,
Annapolis, Maryland.

DEAR MR. HOPKINS: I have examined all the legislation relating to the $34,069.36 appropriations for the public schools, and the deductions therefrom for the indigent blind. I apologize for the length of this report, but in view of the possible mandamus proceedings which you mentioned, and of the desirability of having a record of the situation for future use, I thought it best to set out the result of my examination at length. You will find the conclusions I have reached briefly stated at the end of this report.

The Act of 1836, Ch. 220, seems to be the first Act providing for the disposition of Maryland's share in the surplus revenue of the United States. This act provided that $274,451 out of the total fund of $955,838.25 should be used in paying the public debt, and that the interest on the remaining $681,387.25 should be distributed among the counties and the City of Baltimore for the public schools.

The Act of 1837, Ch. 173, provided that a sum not exceeding $1,000 should be appropriated annually, for the indigent blind, out of the interest upon the surplus fund. The Act of 1837, Ch. 285, provided the method by which the interest on the surplus fund should be distributed among the counties and the City of Baltimore. The Act of 1837, Ch. 308, provided for the deposit of the surplus fund at 5 per cent interest, and that this interest, after deducting the said $1,000 annually for the

indigent blind, should be distributed in the manner specified in Chapter 285 of the Acts of the same year.

The result of this legislaiton was that from the interest on the surplus fund there was first deducted each year $1,000 for the indigent blind, and the balance of the interest was distributed annually for the public schools.

The Act of 1839, Ch. 33, provided that *in place of the interest on the fund,* the sum of $34,069.36 yearly (which was 5 per cent on the $681,387.25 constituting the fund) of the State's revenue *from the Baltimore and Washington Railroad,* should, beginning with July 1, 1841, and after first deducting therefrom the $1,000 aforesaid for the indigent blind, be distributed annually for the public schools, according to the method of distribution set forth in the Act of 1837, Ch. 308.

This Act made the $34,069.36 appropriation a charge against the State's revenue from the Baltimore and Washington Railroad, instead of, as formerly, against the interest on the surplus revenue fund. (The form of the recent annual appropriations seems to make this immaterial. See Acts 1914, Ch. 386, page 614, and Acts 1914, Ch. 389, page 626.) The $1,000 was still to be deducted for the blind, and the balance was still to be distributed for the public schools.

The Act of 1849, Ch. 209, repealed the Act of 1837, Ch. 173, and also all prior legislation for the indigent blind; and provided that a sum not exceeding $2,000 (instead of $1,000 as formerly) should be annually appropriated *out of the interest upon the surplus fund for the indigent blind.* The Act of 1854, Ch. 224, increased this appropriation to $4,000. The balance was still to be distributed for the public schools.

The Act of 1849, Ch. 209, as amended by the Act of 1854, Ch. 224, was codified in the Maryland Revised Code of 1859 as Sections 7, 8, 9 and 10 of Article 33, and by Section 7 it was provided that "a sum not exceeding $4,000 *shall be annually appropriated,* to be applied under the direction of the Governor in placing, for instruction in the Maryland Institute for the Instruction of the Blind, or in some other convenient institution established for that purpose, such indigent blind persons," etc.

In other words, the appropriation for the blind, which had become $4,000, *was no longer to be deducted from the interest on the surplus revenue fund,* as the previous legislation required, but was made *a straight, annual appropriation.*

The above Sections 7, 8, 9 and 10 of Art. 33 of the Revised Code of 1859, became Sections 3, 4, 5 and 6 of Art. 33 of the Code of 1860, and Section 3 as there codified is the same as Section 7 of Art. 33 of the Revised Code of 1859, except that "a sum not exceeding $6,000" was appropriated, instead of a sum not exceeding $4,000. This again was *a straight, annual appropriation,* and was not to be deducted from the interest on the surplus revenue fund.

This appropriation for the indigent blind was thereafter continued as a straight annual appropriation.

The Act of 1868, Ch. 205, increased the appropriation to $15,000.

The Act of 1886, Ch. 278, continued it at $15,000, and it was codified at this amount in the Code of 1888, Art. 30, Sec. 3.

The Act of 1892, Ch. 272, increased the appropriation to $21,000, and it was codified at this amount in the Code of 1904, Art. 30, Sec. 3, and in Bagby's Code of 1912, Vol. I, Art. 30, Sec. 3.

The Act of 1912, Ch. 200, increased the appropriation to $33,000, and it is codified at this amount in Bagby's Code, Vol. III, Art. 30, Sec. 3.

It thus appears that prior to the Codes of 1859 and 1860 the appropriation for the indigent blind was deducted from the $34,069.36 representing the interest on the surplus revenue fund, and that the amount which, between 1849 and 1854, should have been so deducted, was $2,000 annually; and between 1854 and 1859 it was $4,000 annually, leaving, for these years, a balance of $30,069.36 as the amount which should have been distributed for the public schools.

It also appears, however, that under the Codes of 1859 and 1860 this appropriation for the indigent blind ceased to be a charge against the $34,069.36 interest, and was converted into an ordinary, straight, annual appropriation of $6,000, which

has since been gradually increased, until in 1912 it was made $33,000.

Therefore, it is no longer proper to deduct any part of this appropriation for the blind from the $34,069.36 representing interest. The original $1,000 appropriation, which in 1839 became $2,000, has been merged in and become part of the present $33,000 appropriation for the indigent blind.

I understand that this $33,000 appropriation for the blind has been and will be duly paid (see Act 1916, Ch. 685, page 1568 for 1917 and Act 1916, Ch. 684, page 1553 for 1918), as have the several annual amounts which preceded it, and this being so, my opinion is that the $2,000 per annum which has been retained for the blind, but not paid, during each of the past four years, should not be paid for that purpose, and that, of course, nothing should be deducted for the blind from the $34,069.36 appropriated for the schools, in accordance with the Act of 1839, Ch. 33, by the Act of 1914, Ch. 389, and due July 1, 1916.

Since no part of this $34,069.36 is to be deducted for the blind, the remaining question is, whether the whole of this sum shall be distributed, on July 1, 1916, to the schools, in accordance with the method prescribed by the Act of 1837, Ch. 285.

In my opinion it should be. The Act of 1914, Ch. 389, appropriates this $34,069.36 for the Free School Fund, in accordance with the Act of 1839, Ch. 33 (which refers to the legislation of 1837), said sum to be "substituted for the interest on the surplus fund as provided in said Act, *and shall be apportioned and paid in the manner now provided by law.*"

The laws providing for deductions for the blind from this interest, were, as already shown, the Act of 1837, Ch. 173, the Act of 1837, Ch. 308, the Act of 1839, Ch. 33, the Act of 1849, Ch. 209 (which repealed all prior legislation for the blind), and the Act of 1854, Ch. 224. Those laws, to the extent at least that they provided for these deductions, were, as has been shown, repealed by the Codes of 1859 and 1860, and have never been revived since. Consequently, there is now no law providing for any deductions for the blind from the $34,069.36.

This being so, I think that the present effect of the Act of 1839, Ch. 33, taken in connection with the Act of 1837, Ch. 285 (which provides the method of distribution, without any deduction for the blind at all), and also in connection with the Act of 1849, Ch. 209 (which repealed all prior legislation providing for the indigent blind), is that the whole of the said sum of $34,069.36, due on July 1, 1916, should be distributed for the schools, because that is the manner of distribution "now provided by law."

Finally, the Act of 1916, Ch. 557, repeals the Act of 1839, Ch. 33, as of August 1, 1916. This repeal, together with the Act of 1916, Ch. 126, abolishing continuing appropriations, and the appropriation Acts of 1916, Chapters 684 and 685, which do not continue the $34,069.36 appropriations in question for either 1917 or 1918, mean that this appropriation of $34,069.36 ceases with the payment of July 1, 1916, and will not be payable thereafter.

My conclusions are:

1. That nothing is to be deducted for the indigent blind from the $34,069.36 appropriation made by the Act of 1914, Ch. 389, for the Free School Fund, and due July 1, 1916.

2. That the whole of said appropriation of $34,069.36 should be distributed on July 1, 1916, to the Free School Fund, in the manner specified in the Act of 1837, Ch. 285.

3. That this appropriation of $34,069.36 ceases with the payment of July 1, 1916.

4. That no part of the $8,000 retained from the similar appropriations of $34,069.36 made annually during the past four years should be paid for the indigent blind.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

FISCAL—SCHOOLS—GUARANTEE OF FRATERNITY BONDS BY MARYLAND COLLEGE OF AGRICULTURE.

July 19, 1916.

H. J. Patterson, Esq.,
President, Maryland Agricultural College,
College Park, Maryland.

DEAR MR. PATTERSON: I have your favor of July 18th, asking whether the Maryland State College of Agriculture can guarantee the payment of bonds issued by college fraternities to build fraternity houses.

I do not think that the College should do this. I have not been able to find any power in the College's original charter or in any of the amendatory acts, or in the legislation of 1916, which would, in my judgment, confer a power of this kind.

In any event, however, the College is practically a State Institution, and should incur no obligation not contemplated by the State. The obligations which the State contemplated the College would be under during the next two fiscal years are shown in the appropriation acts for those years (Acts 1916, Ch. 684, page 1559, and Ch. 685, page 1573), and, of course, do not include liability on fraternity bonds. The guarantee would be worth nothing unless the State were behind it, and if, as might very well happen, the bonds defaulted, there would be no funds at all available to meet the default.

Morover, the amount of liability under the guarantee would necessarily be uncertain, and a default in the bonds would place the State in the position of either repudiating the obligation, on the ground that it had never authorized it, or else of assuming what might be a quite considerable payment for buildings which the Trustees would not have constructed out of their own funds.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

FISCAL—SCHOOLS — SPECIAL APPROPRIATIONS TO CALVERT AND GARRETT COUNTIES FOR HIGH SCHOOLS.

September 26, 1916.

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

DEAR MR. MCMULLEN: I have carefully considered your inquiry of September 22nd, relative to the special appropriations made for school purposes to Calvert County, by the Act of 1916, Ch. 295, and to Garrett County, by the Act of 1916, Ch. 565.

The provisions of these two acts are, as you say, in direct conflict with sections 133 and 138 of the Act of 1916, Ch. 506, the General Educational Bill.

Under these circumstances, it is clear, under Musgrove vs. B. & O. R. R. Co., 111 Md. 629, 637, that the validity of the appropriations made by the two acts in question depends upon whether the acts were approved by the Governor before or after the General Educational Bill was approved.

All three of the acts were approved on the same day, April 18, 1916, but they were approved in the following order:

1. Chapter 506, General Educational Bill.
2. Chapter 295, Calvert County appropriation.
3. Chapter 565, Garrett County appropriation.

Since the two last named acts were approved after the General Educational Bill, they take precedence over it to the extent of any inconsistency; and, therefore, the two special appropriations should be paid, as the acts direct, out of the public school tax (that is, out of the General State School Fund, of which the receipts from the public school tax form part), before the same is apportioned.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

FISCAL—SECRETARY OF THE SENATE, APPROPRIATION TO—MAY ALSO HOLD OFFICE OF SHERIFF.

January 10, 1916.

Hon. Emerson C. Harrington,
State Comptroller,
Annapolis, Maryland.

DEAR SIR: I beg to acknowledge your favor of December 31, 1915, asking whether you are authorized to pay Mr. John R. Sullivan his salary of $300 as Secretary of the Senate from October 1, 1915, to January 5, 1916, in accordance with the appropriation made therefor by the Act of 1914, Ch. 221 (Bagby's Code, Vol. III, Art. 84A, Sections 1 and 2), in view of the fact that Mr. Sullivan was elected Sheriff of Anne Arundel County, and duly qualified as such in the month of November, 1915.

The only provision of law under which Mr. Sullivan might be deprived of his right to his said salary as Secretary of the Senate, is Article 35 of the Bill of Rights, which provides "that no person shall hold, at the same time, more than one office of profit, created by the Constitution or Laws of this State," but in my judgment the position of Secretary of the Senate is not an "office" within the purview of Article 35, as the same has been construed by the Court of Appeals. See—

Truitt vs. Collins, 122 Md. 526;
State Tax Commission vs. Harrington, 126 Md. 157.

I, therefore, advise you that Mr. Sullivan is entitled to his salary of $300 as Secretary of the Senate from October 1, 1915, to January 5, 1916.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

FISCAL—SECRETARY OF THE SENATE—APPROPRIATION FOR INDEXING SENATE JOURNAL.

May 4, 1916.

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

DEAR MR. MCMULLEN: I received your favor of April 25th, asking my advise as to whether the Journal Clerk of the Senate or tho Secretary of the Senate should be paid for indexing the Senate Journal.

Th Act of 1892, Chapter 225, quoted by you, makes it the duty of tho Secretary of the Senato to do this work, and provides for an appropriation, not exceeding $300.00, by each Legislature to cover this work at the succeeding Legislature, the same to be paid to the Secretary of the Senate upon the certificato of the President of the Senate that a proper and complete index has been made. Tho Appropriation Act for the fiscal year ending September 30th, 1916, made the proper appropriation for this purpose. (Act 1914, Chap. 389, page 632.)

The Senato Order passed January 5, 1916, directing the Journal Clerk to do the indexing, cannot override the provisions of the Act of 1892, and the $300 should, therefore, be paid to the Secretary of the Senate, upon receipt of the proper certificate from the President of the Senate.

The only hesitation I had about the matter arose from the fact that I understood the Journal Clerk had done all the work, and that the Secretary of the Senate would be paid for something he did not do. I find upon investigation, however, that the Secretary made an arrangement with the Journal Clerk whereby tho work was to be done by the latter in conjunction with the Secretary, the appropriation to be divided between them on a basis agreed upon. This is in accordance with what I understand has always been the custom. The agreement will bo carried out by the Secretary of the Senate, so that no injustice will be done the Journal Clerk by the above ruling, which is undoubtedly correct legally.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

FISCAL—SECRETARY OF STATE—COMPENSATION OF—FEES OF HIS OFFICE BELONG TO STATE.

December 22, 1916.

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

DEAR MR. MCMULLEN: As requested by your favor of December 8th, I have most carefully considered the question, whether the fees of the Secretary of State should be reported to your office and paid into the state treasury.

My conclusion is that the Secretary of State is not entitled to any compensation for the duties of his office in addition to the $2,000 salary which the Constitution allows, and that no part of the fees of his office can be legally retained by him as his own; but that the law does not prevent him from also holding the position of Secretary to the Board of Public Works, and that if he does, he is entitled to the $500.00 salary which that Board pays its Secretary, in addition to his $2,000 salary as Secretary of State.

I am giving you at length the reasons for this conclusion, because it involves a departure from what has for years been the practise of those who have filled the office of Secretary of State, and because it not only materially affects the compensation of the gentleman who now occupies that office, but also involves the obligation of former Secretaries of State to reimburse the State for the fees they respectively retained in excess of their salary.

It is doubtless true that a gentleman of the high standing and ability of the present Secretary of State would not have accepted the office had he known that the constitutional salary would be the limit of his compensation. This case is an illustration of the objection to having the Constitution fix salaries, for when that is done, very often the salary cannot be changed without a constitutional amendment. The result in the present case is that the compensation of the Secretary of State is limited by a constitutional provision adopted almost fifty years ago, although conditions are vastly different now from what they

were then, and the importance and work of the office have greatly increased. But in this case the only remedy is through a constitutional amendment. My duty is to declare the law as I find it.

1. *The whole compensation of the Secretary of State is the* $2,000 *salary which the Constitution provides.* Article II, Sec. 22 of the Maryland Constitution requires the Secretary of State to perform such duties as the Legislature may prescribe, and provides that he shall "receive an annual salary of $2,000." The salary, therefore, is fixed by the Constitution itself, and unless there is some provision in the Constitution authorizing the Legislature to increase or add to it, then clearly the Legislature has no such power.

The only provision in the Constitution from which it can be argued that the Legislature has this power is the clause in Article 3, Section 35, which reads: "Nor shall the salary or compensation of any public officer be increased or diminished during his term of office." The argument would be that this clause impliedly recognizes the power of the Legislature to change the salaries which the Constitution prescribes for public officers, such changes, however, not to become effective until the expiration of the incumbent's term.

In my opinion this clause applies only to those public officers whose compensation the Legislature is authorized to fix in the first instance or whose compensation the Constitution authorizes the Legislature to change.

The increases which the Legislature has made from time to time (Act 1892, Chap. 388, Act 1908, Chap. 180, and Act 1914, Chap. 847) in the salaries of the Judges,—which are named in the Constitution with certain provisions against diminishing them during the term of office,—have been suggested as a basis for the contention that section 35 of Article 3, above referred to, recognizes the right of the Legislature to increase the salary of the Secretary of State.

The Constitutions of this State, however, have always made special provision for the case of the Judges, and from this as well as from the debates in the Constitutional Conventions it is quite clear that the question of the Judges' salaries is and

always has been treated on a basis separate and distinct from the salaries of other public officers.

Constitution 1851, Art. 4, Sec. 4, 9, 12, 13;
Constitution 1864, Art. 4, Sec. 21, 28, 32;
Constitution 1867, Art. 4, Sec. 24, 31;
Debates of Constitutional Convention of 1851, Vol. I, pages 239, 516, 544, 549; Vol. II, pages 552-559, 579-582, 658-659, 661, 699-700;
Debates of Constitutional Convention of 1864, Vol. II, pages 1177, 1310-1314; Vol. III, pages 1435-1436, 1560-1562, 1617-1622.

The situation as to the Secretary of State is this:

The office of Secretary of State was created in 1837, when the people adopted the constitutional amendment embodied in the Act of 1836, Chap. 197, Sec. 17. That amendment provided that the compensation should be fixed by the Legislature; and following this, the Act of 1837, Chap. 131, fixed the salary at $2,000.00 *"in full for all services* that the law does now or may hereafter requiro said officer to perform." Later this salary was reduced to $1,000.00.

In the Constitutional Convention of 1851 the proposition that the Legislature should continue to have the power to fix the compensation *was voted down,* and the salary was fixed in the Constitution itself at $1,000.00. The Convention did this in face of the protest that if the Constitution fixed the salary, *it could not be changed and a competent man might not be secured for the salary named.*

The salary was continued at $1,000.00 in the Constitution of 1864, and the present Constitution of 1867 raised the salary to $2,000.00, this increase being intended, in large part at least, as compensation for performing "all clerical duty belonging to the Executive Department," which work was transferred to the Secretary of State from the Private Secretary, whose office was then abolished.

It is clear from the debates and proceedings of the Constitutional Conventions that the framers of the several Constitutions of this State intended, with respect to the salary of the Secre-

tary of State, what they in fact provided in every Constitution, namely, that the salary provided for the Secretary of State should be in *full compensation* for all his duties.

Debates of Constitutional Convention of 1851, Vol. I, pages 451-452, 493-494;
Debates of Constitutional Convention of 1864, Vol. II, pages 1328-1329;
Proceedings of Constitutional Convention of 1867, pages 201-204;
Constitution of 1851, Art. II, Sec. 22;
Constitution of 1864, Art. II, Sec. 23;
Constitution of 1867, Art. II, Sec. 22.

I cannot believe that the general provision of Section 35 of Article 3 of the Constitution of 1867 (which occurs in identically the same language in the Constitution of 1851, Article 3, Section 23, and in the Constitution of 1864, Article 3, Section 34), "nor shall the salary or compensation of any public officer be increased or diminished during his term of office," confers any authority upon the Legislature to increase or add to the salary which the Constitution itself, in Article 2, Section 22, fixes for the Secretary of State.

To hold that it does would not only be to disregard all that was said in the Debates of 1851 and 1864, which clearly show that the object of fixing the Secretary of State's salary in the Constitution was to *limit* his compensation to the amount there named; but it would be to disregard also the view as to the application of section 35, which was advanced when this section was adopted, as section 34 of Article 3 of the Constitution of 1864. This view, which in my opinion is the correct one, was thus expressed by Mr. Stirling:

> "No matter what may be the salaries fixed by the Committee, *if they are put into the Constitution, the Legislature cannot change them* * * *. This section only applies to those salaries *which the Legislature has the power to regulate.* Other salaries, *those fixed by*

the Constitution, cannot be affected by the Legislature."

Debates of Constitutional Convention of 1864, Vol. I, pages 802-806; see also page 475;
Debates of Constitutional Convention of 1851, Vol. I, pages 124, 379-380.

The salaries "which the Legislature has the power to regulate," and to which, like Mr. Stirling, I think this section applies, are salaries which the Legislature has the power to fix in the first instance, and salaries which the Constitution fixes, but authorizes the Legislature to change. Such salaries the Legislature may change, although it cannot increase or diminish them during the term of office. But salaries which the Constitution itself fixes, without any authority to the Legislature to change them, cannot be affected by the Legislature at all.

In the present case, the Constitution fixes the salary of the Secretary of State, and does not authorize the Legislature to change it or increase it or add to it. It follows, in my opinion, that the salary thus fixed by the Constitution constitutes the whole compensation which the Secretary of State is authorized to retain for the performance of his duties.

2. *Any Statute providing additional compensation would be void.* From the aforegoing it follows that if there were now any statute purporting to give the Secretary of State any compensation in addition to the salary which the Constitution contemplates shall be his whole compensation, such statute would, to that extent, be unconstitutional and void.

On this point see—

Green vs. State, 122 Md. 288;
Cecil vs. Anne Arundel Co., 121 Md. 696.

I have discussed the constitutional question at length, because it is more or less popularly supposed that the existing statutes treat the fees of the Secretary of State as belonging to him. I do not think, however, that the constitutional question is really involved at all, because in my opinion the statutes under which the Secretary of State collects fees or compensation in addition

to his salary, do not purport to authorize him to retain any part of these fees as his own.

3. *Statutes under which additional compensation has been retained.* I am advised that these statutes are the following:

a. Fees paid upon the incorporation of Maryland companies. Fees of this character have been paid the Secretary of State since April 16, 1914, when the Act of 1914, Chap. 789, amending section 4 of Article 23 of Bagby's Code, went into effect. Under that Act charters were required to be delivered to the Secretary of State for record, instead of to the State Tax Commissioner as theretofore, and it was further provided that the Secretary "shall collect double the fees allowed by law to Clerks of Court for recording documents of similar length." The law also required the State Tax Commissioner to record an abstract of the charter in his office, and provided that one-fourth of the fees should be paid by the Secretary of State to the State Tax Commissioner, but did not provide how the remaining three-fourths was to be disposed of.

The law continued in this way until June 1, 1916, when the Act of 1916, Chap. 596, became effective. That act requires Maryland charters to be delivered to the State Tax Commission, together with $10 for recording fees. The Commission is first to record each charter, and then send it to the Secretary of State, to be recorded again. The act then provides that "$3.50 of the recording fees so collected shall be paid by it (the Commission) to the Secretary of State." An additional $1.50 was required to be paid to the Clerk of the Court where the charter was again to be recorded, and the remaining $5.00 was to be paid to the Treasurer for the use of the State. Section 29, page 1222 provides that on consolidations, $6.00 shall be paid to the Secretary of State.

Therefore, the Act of 1914 provided that the Secretary of State "shall collect double the fees" allowed Clerks of Court, and specifically disposed of only one-fourth of these fees, and the Act of 1916 requires $3.50 of the present recording fees, or $6.00 in case of consolidations, "to be paid by the State Tax Commission to the Secretary of State,"—who then records the

charter,—and does not say what the Secretary of State is to do with these fees.

In neither case, however, does either act provide that the fees thus paid to the Secretary of State are intended for him personally. The only basis for that contention is the fact that the Act of 1916 expressly requires the State Tax Commission to pay $5.00 of the recording fees to the State Treasurer for the use of the State, whereas nothing is said as to what disposition the Secretary of State shall make of the $3.50 paid him. But, in my opinion, no statute should be construed as authorizing a public officer to retain fees as his own, unless the statute clearly provides that such fees shall be his own.

In the absence of such a provision in the statutes in question, I think that their intent is that the fees are received by the Secretary of State in his official capacity as an officer of the State, and that they belong to and are the property of the State.

These fees do, however, constitute recording charges, and I think that such reasonablo clerical expenses as the work of recording necessitates may properly be paid out of them. The balance of the fees then remaining belongs to the State.

b. Fees paid by foreign corporations. Bagby's Code, Art. 23, Sec. 93, requires foreign corporations desiring to do business in this State, among other things, to pay "to the Secretary of State for the use of the State, a fee of $25.00," and thereafter to file a renewal certificate annually, "accompanied by the annual fee of $1.00 for recording such renewal." This section, after imposing the $25.00 fee, then provides that "for all such fees the Secretary of State shall account quarterly to the Comptroller and pay the same forthwith to the State Treasurer for the use of the State, less the costs and expenses of recording the same."

Of course, these fees clearly belong to the State, because the statute expressly so provides. The "costs and the expenses of recording" may be deducted, but the balance must be paid to the State.

c. Fees paid for certifying documents. The authentication of records and papers in the office of the Secretary of State is provided for in Bagby's Code, Art. 35, Sec. 59, and Art. 85,

Sec. 1. These sections contain no provisions with respect to fees, but to the extent that such fees may be lawfully charged and collected, they belong to the State.

d. Appropriation for Maryland Manual. I understand that the excess of this appropriation over the cost of preparing and publishing the Manual, has been customarily retained by the Secretary of State.

The Manual is provided for by the Act of 1900, Chap. 240, codified in Bagby's Code, Art. 85, Sections 6-9. That Act made an annual appropriation for "compiling, printing and distributing said manual," of $1,500, "or so much thereof as may be necessary," the same to be paid to the Secretary of State "upon the presentation of proper vouchers from him that the work above mentioned has been fully done."

This annual appropriation has been repealed, as of October 1st, 1916, by the Act of 1916, Chap. 126, abolishing continuing appropriations. The appropriation for the Manual for the current and the next fiscal year is $1,200, "or so much thereof as may be necessary." Acts 1916, Chap. 685, page 1571, and Chap. 684, page 1557.

Any excess of this appropriation over and above the cost of "compiling, printing and distributing," for which "proper vouchers" should be presented, belongs to the State.

4. *Article XV of the Constitution does not Apply.* It is clear from the aforegoing that the Secretary of State is a salaried officer, and that his whole compensation for his official duties, is his salary of $2,000 provided by the Constitution.

It follows that Article XV of the Constitution, requiring certain officials to return an account of their fees annually to the Comptroller, and to pay to the Treasurer the excess over what the law allows them to retain, and providing also that no person holding office shall receive more than $3,000 per annum, except where the Constitution provides otherwise, does not apply to the Secretary of State.

This section, as the Court of Appeals has recently held in Thrift vs. Laird, 125 Md. 55, 63, "was intended to apply to that class of officers *whose pay or compensation was derived*

from fees which they were entitled to receive by law for the performance of their official duties," and does not apply to salaried officers. The Secretary of State is not and never has been an officer whose pay or compensation is derived from fees. He is an officer for whom a salary is provided, and for this reason Article XV does not apply to him.

But, as already stated, the fees collected by the Secretary of State belong to the State, and, therefore, he should account for them to the Comptroller, and pay them to the Treasurer, exactly as any other salaried official accounts for and pays over any receipts which come into his hands officially.

5. *Salary as Secretary to the Board of Public Works.* The Secretary of State also acts as Secretary to the Board of Public Works, and receives therefor a salary of $500.00.

The Board of Public Works is created by Article XII of the Constitution. In former times the Board's principal function was to manage and dispose of the State's interest in public service corporations, but the Constitution also provides that they "shall perform such other duties as may be hereafter prescribed by law."

Acting under this authority, the Legislature has from time to time imposed upon the Board various duties of importance, such as the construction and renting of state buildings, the leasing of state offices, the awarding of state contracts, the insuring of state property, the floating of state bond issues, the supervision over the State Fishery Force and its vessels, and the like.

The Board has a contingent fund, which is $4,500 for the current fiscal year and a like amount for the next fiscal year. (Acts 1916, Chap. 685, page 1567, and Chap. 684, page 1552.)

The Board is an important factor in the state government, and although no statuto expressly authorizes it to appoint a Secretary, yet if the Board finds that such an officer is necessary for the discharge of its duties, then I think that it has the power to appoint one, and pay him reasonable compensation out of its contingent fund.

The Board cannot, however, require the Secretary of State to act as its Secretary. It is no part of the duty of the Secretary of State to act as Secretary to the Board of Public Works. But if the Board desires to appoint the Secretary of State as its Secretary, then there is no legal reason why the Secretary of State may not accept the position and receive the salary thereof, unless he is prevented from so doing by Art. 35 of the Declaration of Rights, which provides that "no person shall hold, at the same time, more than one office of profit, created by the Constitution or Laws of this State." (See also Constitution, Art. I, Sec. 6, and Bagby's Code, Art. 70, Sec. 2.)

The Court of Appeals, however, has made a clear distinction between an *officer* and an *employee* under this and other sections of the Constitution, and under these decisions the position of Secretary to the Board of Public Works is not an *office* of profit within the meaning of Article 35.

Truitt vs. Collins, 122 Md. 526;
State Tax Com. vs. Harrington, 126 Md. 157;
Baltimore vs. Lyman, 92 Md. 591.

Therefore, the Secretary of State can hold the position of Secretary to the Board of Public Works without violating Article 35 of the Declaration of Rights; and, accordingly, there is no legal reason why he may not hold this position, and receive the salary thereof, in addition to his salary as Secretary of State.

6. *Accounting for Fees retained in the Past.* On this subject I will simply state the conclusions I have reached after a careful examination of the law. In my opinion, the State is legally entitled to recover from those who formerly held the office of Secretary of State any compensation which they may have received for the duties of their office in excess of the $2,000 salary allowed by the Constitution.

The institution of such suits by the Comptroller is authorized by the Constitution, Art. 6, Sec. 2, and Bagby's Code, Art. 19, Sec. 37 (as amended by Act 1916, Chap. 60), and subsequent sections. Section 37 also authorizes the compromise or abate-

ment of claims of this kind by the Comptroller, with the approval of the Governor and the Treasurer.

When the Governor, the Comptroller and the Treasurer come to determine whether such suits should be brought or not, it is only fair to the former Secretaries of State that due consideration should be given, as of course it will be, to the fact that the fees which the former Secretaries of State retained in excess of their salaries were retained by them with the knowledge and acquiescence of the state officials, and doubtless under the belief that they were entitled to them.

Also, the $1.00 which was retained by the Secretary of State out of automobile and chauffeur licenses from 1906 to 1910, was expressly authorized by the Act of 1906, Chap. 449, Sections 131 and 139A to be retained by the Secretary of State "for his services." The other statutes above referred to contain no such provision as this, and while I think that this provision was unconstitutional, yet in determining whether or not the State should now sue to recover back these automobile fees, the fact should not be overlooked that at the time they were retained a state statute existed which expressly provided that the Secretary of State should be entitled to retain them.

It is also doubtless true that the gentlemen who formerly held the office of Secretary of State, as well as the present incumbent, would not have accepted the office had they known that the constitutional salary would be the limit of their compensation.

I await instructions as to whether or not I am to institute proceedings against the former Secretaries of State to recover such fees or compensation as may have been retained by them in excess of their annual salary.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

FISCAL—STATE FIRE MARSHAL—PHYSICIANS' BILLS NOT OFFICE EXPENSE.

June 5, 1916.

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

DEAR MR. MCMULLEN: I have your favor of June 1st, in which you ask whether the State Fire Marshal is entitled to include among his disbursements for the past six months an item of $566.59 paid for medical treatment received at the University of Maryland on account of the accident he received while making arrests in an arson case.

The amount in question was paid by the State Fire Marshal out of the annual appropriation of $10,000, made to the State Fire Marshal, "for the entire expenses of his office," by the Act of 1910, Ch. 392, p. 79, Bagby's Code, Art. 23, Sec. 225. This Act provides that the State Fire Marshal shall be allowed out of this appropriation for the salaries of himself and his Deputy, for office rent, for clerical and other assistants, for means of conveyance, for travelling, hotel and other necessary expenses, and for office fixtures and appliances, and that any balance remaining unexpended should be paid into the State Treasury.

I cannot find in this Act any authority for an expenditure out of the above appropriation for medical attention necessitated by injuries received in the discharge of duty. On the contrary, I think it quite clear that the appropriation can only be expended, as the Act provides, for the expenses of the office. These expenses are specifically enumerated in the Act, and medical attention for personal injuries is not one of them, nor, in my opinion, can such medical attention properly be regarded as an office expense.

I regret being compelled to this conclusion, but the law seems to me clear.

The apparent hardship, however, is somewhat mitigated by the fact that the Act of 1916, Ch. 671, appropriated $2,000 to Mr. Myers as compensation for the injuries received by him on the occasion in question.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

FISCAL—STATE LIVE STOCK SANITARY BOARD AND CHIEF VETERINARY INSPECTOR—TRAVELLING AND HOTEL EXPENSES AND TEAM HIRE.

February 3, 1916.

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

DEAR SIR: I have your favor of January 27th, asking my opinion upon two questions raised by vouchers presented to you by members of the State Live Stock Sanitary Board, and by the Chief Veterinary Inspector. I beg to reply thereto as follows:

The law creating the State Live Stock Sanitary Board requires the Board to maintain an office in Baltimore City, and provides that each member shall be paid "the sum of five dollars per day and necessary expenses for time actually spent in the discharge of his duties." (Bagby's Code, Vol. II, Art. 58, section 4.)

In my opinion the traveling expenses incurred by county members of the Board in going from their homes to their office in Baltimore, the hotel or boarding expenses of such members while in Baltimore, and their traveling expenses in returning to their homes, are none of them "necessary expenses for time actually spent in the discharge of his (their) duties," and that the law does not provide for the payment of such expenses.

With respect to the Chief Veterinary Inspector, the law provides that he shall be paid "a salary not exceeding $1,000 and traveling expenses, in the discretion of the Governor" (Bagby's Code, Vol. II, Art. 58, sec. 5). In my opinion the Chief Veterinary Inspector is not authorized to charge the State an arbitrary lump sum of $50 per month for "Team Hire," which I understand covers the use on official business of his own automobile.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

FISCAL—TREASURER OF BALTIMORE COUNTY—LEVY FEES.

June 24, 1916.

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

DEAR MR. DENNIS: As requested by your favor of June 9th, I have considered the question contained in Mr. Merryman's letter to you of June 6th.

It appears that under Section 148 of the present Baltimore County Code (Sec. 90 of the former County Code, Act 1908, Ch. 495), the County Treasurer is "entitled to the following fees for levying upon property to enforce payment of taxes: For summoning and swearing two appraisers and making out a schedule, $2.50," this sum being collected from the delinquent tax payer. Out of these collections, Mr. Merryman has hitherto paid 75 cents per levy to a deputy, whose employment, he says, was necessary to assist in the work.

By the Act of 1914, Ch. 712, the compensation of the County Treasurer was increased, and it was provided that all fees thereafter collected by him from delinquent taxpayers should be paid to the State Treasurer.

Mr. Merryman desires to know whether he can still pay 75 cents, out of each $2.50 collected from said levies, to the deputy whom he needs to employ, and account to the State Treasurer for only $1.75.

Before the Act of 1914 was passed, the compensation of the County Treasurer was $3,000 per annum, for his services as collector of both State and County taxes. (Act 1908, Ch. 495, Sec. 80.) By the Act of 1914, the Treasurer's compensation for collecting county taxes was fixed at $2,500 per annum, to be paid by the County, and in addition thereto the County was required to levy a commission for the collection of State taxes, not exceeding two per cent on the State taxes estimated to be collected during the year, but in no event to exceed $3,000 in any one year. These two sums aggregate $5,500 per annum.

The Act of 1914 then provided that "all the fees and commissions hereafter collected by the Treasurer of Baltimore County from delinquent taxpayers, as provided by Sections 87 and 90 of this sub-title, shall be paid to the Treasurer of the State." Section 90 is, as already stated, section 148 of the present Baltimore County Code, and is the very section which provides for the $2.50 levy fees now under consideration.

Under these circumstances, it is impossible for me to reach the conclusion that the Treasurer can charge a deputy's salary of 75 cents against each of the said $2.50 levy fees, and account to the State for only $1.75. The Act of 1914, which increased the Treasurer's compensation, and which requires the levy of a commission not exceeding $3,000 per annum to insure a speedy collection of State taxes, specifically directs that all of the fees collected from the levies provided for by Section 90 of the old Code (now sec. 148 of the present Code), that is, all of this very $2.50 charge now under consideration, shall be paid to the Treasurer of the State. This leaves you no discretion at all. Since the law in express terms requires that *all* of each such $2.50 collected shall be paid to you, it follows that you have no power to accept less.

I, therefore, advise you that under the express terms of the Act of 1914, Ch. 712, it is the duty of the Treasurer of Baltimore County to account to the State Treasurer for the whole of each $2.50 collected as levy fees under section 148 of the present Code of Baltimore County.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

FISCAL—TREASURER OF WICOMICO COUNTY—APPROVAL AND CUSTODY OF BOND.

August 17, 1916.

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

DEAR MR. MCMULLEN: I have your favor of August 15, relating to the bond of the County Treasurer of Wicomico County.

The Act of 1904, Ch. 14, makes the County Treasurer the collector of both State and County taxes in Wicomico County, and requires him to execute a bond to the State of Maryland in the penalty of $50,000, which shall be secured by a fidelity or security company qualified to act as surety or guarantor under the laws of the State of Maryland, and shall be approved by the Judges of the Circuit Court of Wicomico County, and thereafter be recorded in the office of the Clerk of Court for said county.

Though it is not entirely clear, yet I rather think that this Act would be held to render unnecessary the Governor's approval of the bond, which approval is required in ordinary cases by Bagby's Code, Art. 81, sec. 34. I think, however, that a question of this kind, which might possibly be contended to affect the validity of the bond, should not be left open; and I, therefore, advise that the original bond of the County Treasurer of Wicomico County should be approved by the Governor as well as the Judges of the Circuit Court.

With reference to the custody of the bond after it has been thus approved, section 35 of Article 81, providing for the filing of bonds with the Comptroller, applies, I think, to the separate bonds for state taxes required by sections 34 and 35, and not to a bond like that of the County Treasurer of Wicomico County, which, under the Act of 1904, Ch. 14, covers both state and county taxes.

I, therefore, think that in this case, the County Treasurer's original bond may properly be deposited either in your office or with the local authorities of Wicomico County; and if the latter, then a certified copy of the original bond, containing the Governor's approval upon it, should be filed in your office.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

FISCAL—UNEXPENDED BALANCE OF STATE ROADS COMMISSION'S APPROPRIATION DOES NOT REVERT IF THERE ARE OUTSTANDING OBLIGATIONS AGAINST IT.

January 19, 1916.

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

DEAR SIR: On January 7th I wrote Mr. Hopkins for certain information with respect to a balance of $200,797.39 to the credit of the State Roads Commission at the close of the last fiscal year, on September 30, 1915, which balance was then treated as having reverted to the general treasury, because not withdrawn on or before that date. The State Roads Commission had previously asked my opinion as to whether this balance should not have been carried to the Commission's credit for the fiscal year beginning October 1, 1915. Mr. Hopkins gave me the information for which I asked under date of January 10, and I now beg to submit to you my conclusions about the matter. I will do so somewhat fully, as the question is one of considerable importance.

The appropriations which are involved were all made to cover the State's proportion of the cost of roads constructed under what is known as the Shoemaker Road Law. For this purpose, the Act of 1904, Chapter 225, sec. 16, provided that "the sum of $200,000 annually, or so much thereof as may be necessary, be and the same is hereby appropriated, out of any money in the treasury not otherwise appropriated"; the Act of 1910, Chapter 217, Sec. 48, made a similar annual appropriation (Bagby's Code, Vol. II, Art. 91, Section 81), and the Act of 1912, Chapter 121, made an annual appropriation for the same purpose of $300,000 (Bagby's Code, Vol. III, Art. 91, Section 81).

On the books of the Comptroller's office, the amounts of these appropriations which remained unexpended at the close of the fiscal years 1906, 1907 and 1908, were treated as reverting into the general treasury.

From 1909 to 1914, inclusive, a different procedure was followed, and the amounts of the annual appropriations unexpended at the close of each of the respective fiscal years from 1909 to 1914, inclusive, were carried down to the credit of the State Roads Commission for the succeeding fiscal year, and as a result of this there was carried to the Commission's credit, for the fiscal year beginning October 1, 1914, the sum of $302,412,24. This balance, added to the appropriation of $300,000 for that fiscal year, made a total credit to the Commission for the said fiscal year beginning October 1, 1914, of $602,412.24. During that fiscal year $401,614.85 of this credit was withdrawn, which left a balance to the Commission's credit on September 30, 1915, of $200,797.39. This balance was then treated as having reverted to the general treasury, because of the fact that it had not been withdrawn during that fiscal year.

The Comptroller accordingly transferred this balance of $200,797.39 to the general treasury account, and he did this in accordance with an opinion from Attorney General Poe, dated February 3, 1915, to the effect that so much of the said annual appropriation of $300,000 "as is not withdrawn or contracted for by the end of each year ceases to be any longer available for the purpose for which it was appropriated, and becomes a part of the general revenues of the State."

From a statement handed me by the State Roads Commission I find that on September 30, 1915, there were a large number of outstanding contracts in the various counties of the State for road work under the Shoemaker Road Law. Some of these contracts were completed and others were nearly completed, and the total balance then due by the State, under these contracts, being one-half of the aggregate of the contract prices, was $220,924.28, or more than the balance of $200,797.39, which, as already shown, was treated as having reverted to the general treasury at the close of September 30, 1915, because not withdrawn on or before that date.

Since that time further contracts have been awarded for State aid work under the Shoemaker Road Law, of which the State's one-half will amount to $92,500; and the State's one-half of work planned but not yet contracted for is estimated at over

$500,000. It is not, however, necessary to consider anything except the situation as it existed on September 30, 1915.

On that date, as already shown, the State's outstanding obligations for State-aid road work, amounted to $220,924.28, and there was an unexpended balance to the Commission's credit, for the State's share of such work, of $200,797.39. The question is, whether this balance of $200,797.39 should have been carried down to the Commission's credit for the fiscal year beginning October 1, 1915, in order to meet the then outstanding obligations of $220,924.28 against it, or whether it reverted to the general treasury on the ground that although contracted for, it had nevertheless not been withdrawn prior to October 1, 1915.

In the first place, Attorney General Poe's opinion states, in express terms, that only such balances revert as are "not withdrawn *or contracted for*" at the close of the fiscal year, so that the balance in question could not, under his opinion, be treated as having reverted, because contract obligations were then outstanding against it, which exceeded the amount of the balance.

I have, however, very carefully considered the question independently of Mr. Poe's opinion, and I have no doubt whatever that balances to the credit of the State Roads Commission to meet the State's half of the cost of State-aid road work, and which are unexpended at the close of the fiscal year, do not revert to the general treasury, at least to the extent that there are outstanding contract obligations against them. I have considerable doubt as to whether they would revert in any event, but if there are outstanding contract obligations against them, then I do not consider that there is any doubt about the question at all.

There is in Maryland no general law which declares that money not drawn in the fiscal year for which it has been appropriated cannot be drawn thereafter; and if the intent of the Legislature is clear that any appropriation may be drawn after the close of the fiscal year, then beyond all question this legislative intent must be given effect, and the unexpended balances may be thereafter withdrawn. *Md. Agricultural Col. vs. Atkinson,* 102 Md. 557.

To determine the legislative intent in the present case requires an examination of the legislation applicable, all of which I have carefully examined. It is found in the Shoemaker Road Law itself, Acts 1904, Chapter 225, more particularly sections 3, 12 and 16 (now codified with amendments, in Bagby's Code, Vol. II, Art. 91, sections 68, 77 and 81); the Act of 1910, Chapter 217, more particularly sections 33, 42, 44 and 48 (now Bagby's Code, Vol. II, Art. 91, sections 66, 75, 77 and 81); and the Act of 1912, Ch. 121 (now Bagby's Code, Vol. III, Art. 91, section 81).

I will not trouble you with a review of the provisions of this legislation, but will only state my conclusion with respect to it. This is that the legislative intent is quite clear that any balance of the appropriations in question unexpended at the close of any fiscal year is not to revert into the general treasury, if there are at that time outstanding contract obligations against it in excess of such balance. It is not necessary to decide what would happen if no such outstanding contract obligations existed, because they do exist in the present case.

While the present appropriation Act of 1912 does appropriate $300,000 annually, "or so much thereof as may be necessary," this does not mean that the amount *necessary* for any one year must all be *withdrawn* during that year and that any balance not actually withdrawn reverts. Whether the whole $300,000 is *necessary* in any one year or not, depends upon whether the Commission has, during that year, *obligated itself for the whole* $300,000. In other words, the intent of the law is that the State is to make an *annual contribution* of $300,000 for the work, and this annual contribution is not to be cut down for any one year merely because the Commission, while it has *contracted* for all of it during that year, yet has not actually *drawn* it all, on account of the fact that all of the work so contracted for has not been finally completed.

It is, therefore, my opinion that the balance of $200,797.39 unexpended at the close of the fiscal year ending September 30, 1915, did not revert to the general treasury, but should have been carried down to the credit of the State Roads Com-

mission for the fiscal year beginning October 1, 1915, and be subject to withdrawal on proper vouchers to meet the contract obligations of $220,924.28, which were outstanding against it on that date.

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

Note.—The State Roads Commission instituted mandamus proceedings against the Comptroller to have the $200,797.39 above referred to transferred back to their credit. Baltimore City Court. On January 29, 1917, the Court passed an order directing the transfer to be made. Affirmed by Court of Appeals, February 16, 1917.

—

FISCAL—UNEXPENDED BALANCE OF STATE INDUSTRIAL ACCIDENT COMMISSION'S APPROPRIATION REVERTED.

August 21, 1916.

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

DEAR MR. REIFSNIDER: I received your favor of August 14, asking whether the sum of $7,975.69, being the unexpended balance of a former appropriation of $40,000 to the Commission, was still available, or whether it had reverted to the general treasury.

The appropriation in question was made under sec. 63 of the Act of 1914, Ch. 800 (Bagby's Code, Vol. III, Art. 101, sec. 64), which appropriated "$40,000 annually for the years 1914, 1915 and 1916, or so much thereof as may be necessary annually" for the maintenance of the Commission, the payment of its salaries and expenses, and the maintenance of the State Accident Fund.

I think that the intent of this section of the law is that the Commission should only be entitled, during each of the said years 1914, 1915 and 1916, to so much of the annual appropriation of $40,000 as might be necessary, during each of said years, for the purposes mentioned; and that any portion of said annual appropriation which, during any one year, exceeded

the disbursements made and the obligations incurred by the Commission for such year, was not necessary for such year, and reverted to the general treasury.

The Comptroller's Office advises me that (as they advised your Auditor under date of March 16, 1916), the $7,975.84 in question represents the balance of the 1915 appropriation which remained after all disbursements made during 1915 and all obligations incurred during 1915 had been taken care of.

Under these circumstances it is my opinion that the said $7,975.84 reverted to the general treasury, and is no longer available to the Commission.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

INSURANCE.

INSURANCE—CHARTER PERPETUAL.

December 6, 1916.

Hazelton A. Joyce, Jr., Esq.,
State Insurance Department,
Union Trust Building,
Baltimore, Maryland.

DEAR SIR: I beg to reply to your inquiry as to the status of the Mutual Insurance Company of Washington County.

This company was incorporated by the Act of 1846, Ch. 37, for a period of twenty years, the Legislature reserving the right to amend the charter at pleasure. The Act of 1866, Ch. 95, continued the company's charter until the end of the session of the Legislature of 1886. The Legislature of 1886 did not expressly renew the charter, nor has any subsequent Legislature done so.

The Legislature of 1886 did, however, pass the Act of 1886, Ch. 89. This Act was an amendment to the company's charter, and it authorized the company to create a Special Reserve Fund and to do business under the provisions of the Act. The Act provided in detail for the creation, investment and application of the fund, and for the issuing of future policies and renewals subject to the provisions of the Act.

This Act was duly accepted by the members of the company on July 13, 1886, and the certificate of acceptance was duly filed with the Clerk of the Circuit Court as required by the Act, and the company has since done business under the provisions of the Act.

The Act of 1900, Ch. 678, authorized the company to reinsure its risks which "now or may hereafter be carried."

In my opinion, both the Act of 1886, Ch. 89, and the Act of 1890, Ch. 678, constituted a waiver by the State of the company's obligation to renew its charter in 1886, and a recognition by the State of the company as a legally existing corpora-

tion, authorized to continue to do business in accordance with these two Acts, and with its original charter and amendments thereto.

This was the situation in 1908. The Act of 1908, Ch. 240, section 1 (page 24), section 7 (page 27) and section 75 (page 54) made perpetual the charters of "all corporations then existing," and repealed all provisions in the charter of "any existing corporation" which limited its duration.

Since the Mutual Insurance Company of Washington County was an existing corporation in 1908, the above provisions of the Act of 1908 applied to it, with the result that the company's charter, in my opinion, is now perpetual.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

INSURANCE—DEPOSIT OF SECURITIES AND REGISTRATION THEREOF UNDER RETALIATORY LAW.

May 10th, 1916.

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

DEAR MR. DENNIS: I received some time ago your favor of April 20th, relating to the deposit to be made by the Atlantic Life Insurance Company, a Virginia corporation doing business in Maryland, under the retaliatory law of Maryland, codified in Bagby's Code, Art. 23, Sec. 205.

The questions raised are two: (1) whether the Atlantic Life Insurance Company can make the deposit required by Sec. 205 of Art. 23, in securities of the State of Virginia, and (2) if so, whether these securities must be registered in the name of the State Treasurer of Maryland, or whether it will be sufficient if they are accompanied by proper power of attorney authorizing their sale and transfer.

The Maryland statutes specifying the kind of securities which must be deposited in this State by insurance companies, and specifying how such securities must be registered, do not apply to the present case.

I am informed by the Insurance Department that the Atlantic Life Insurance Company has complied with all the specific provisions of our laws passed for the protection of the citizens of this State, by filing the proper certificate showing that it has made in Virginia the $100,000 deposit specifically required by our law. (Bagby's Code, Art. 23, Sec. 183.)

The reason why a further deposit is now required is because the laws of Virginia make greater exactions upon foreign corporations doing business in Virginia, than do the Maryland laws upon foreign corporations doing business here. This being the case, Bagby's Code, Art. 23, Sec. 205, applies. That law provides that whenever the laws of any *other* State require that a Maryland insurance company, doing business in such other State, shall make a deposit greater than the laws of Maryland require of insurance companies of such other State doing business *here,* then the non-resident company doing business in Maryland shall be required to make the *same deposit in Maryland* which the laws of such other State require of a Maryland company doing business there.

This law does not specify what character of securities shall, in such case, be deposited in Maryland, nor does any other Maryland law so provide; but section 205 does provide that the *same deposit* shall be made by the non-resident company doing business in Maryland as the laws of the other State require of a Maryland company doing business there.

This being so, the effect of section 205 is to import the Virginia law into Maryland, and to fully justify you, as Treasurer, in receiving a deposit of such securities as the Virginia law authorizes, provided you are satisfied with their character.

In the present case, the company wishes to deposit $10,000 Town of Ginter, Virginia, bonds, and $5,000 City of Richmond bonds. These bonds are authorized to be deposited by the laws of Virginia, and the Insurance Department informs me that they are in all respects safe and sound securities. If this is so, then I think that you should accept them as the deposit required by section 205 of Article 23 of Bagby's Code.

With respect to the form of registration, the provisions of our law which require securities to be registered in the name

of the Treasurer, in trust for the depositing company, do not apply to deposits made under the retaliatory provisions of section 205 of Article 23. Nothing is specified as to how securities deposited under this section shall be registered.

Under these circumstances, I think that the question of registration is one which you, as Treasurer, can decide as you, in your judgment, think proper.

Personally, I see no objection to your accepting the bonds as they may now be registered, if accompanied by the proper powers of attorney authorizing their sale and transfer.

If that is your judgment also, then it seems to me that you should require a separate power of attorney for each bond, because in the event that it should ever become necessary to sell in order to meet the company's liabilities here, you might wish to sell one or more of the bonds, and not all of the bonds.

The conclusions I have just expressed are concurred in by the Insurance Department, and by Col. Arthur D. Foster, its counsel.

I return you the letter from Mr. Coudon, Deputy Insurance Commissioner, to yourself, dated April 16, 1916, and also the copy of the letter from Mr. Taylor, Vice-President of the Atlantic Life Insurance Company, to Mr. Coudon, dated April 14, 1916.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

INSURANCE—DEPOSITS, FIRST MORTGAGES AS—LICENSES AND LICENSE FEES—RECIPROCAL LAWS—DIVIDING COMMISSIONS.

June 30, 1916.

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

DEAR MR. COUDON: I beg to give you my opinion upon the inquiry contained in your favor of June 27th, and also upon the questions you orally submitted to me yesterday.

1. The Insurance Department should not accept first mortgages as part of the deposits required to be made under Sec-

tions 110, 118, 157, 193 and 379 of Article 23 of Bagby's Code. Of course, *bonds* secured by first mortgages on real estate in Maryland owned by the depositing company may be received, under the terms of Section 118, if approved by the Board of Public Works.

2. A broker's solicitor who takes out his license as such under the Act of 1916, Ch. 257, Sec. 219-A, and who later in the year takes out a broker's license under Art. 23, Sec. 219 of the Code, is not entitled to have the $25 fee paid by him for the broker's solicitor's license credited against the fee due for the broker's license. Even if such credit were permissible, it would in most cases amount to only a very small saving, because of the fact that fees for broker's licenses are pro rated.

3. If a foreign insurance company, authorized to write policies in Maryland, holds a broker's license in its home state, and desires to take out a broker's license in Maryland, the fee for the Maryland broker's license should be the same as the fee which such company's home state charges citizens of Maryland for taking out a broker's license in such home state. Act 1916, Ch. 257, Sec. 219-B.

If, in this case, the foreign insurance company holds no broker's license in its home state, then the fee for the Maryland broker's license will be $100 (under Sec. 219), because the reciprocal provisions of Sec. 219-B only apply to duly authorized brokers in other States.

4. A foreign insurance company holds no broker's license in its home state, but one of its employees holds a broker's license there, issued to him as an individual. In such case the *company* cannot obtain a broker's license in Maryland for the same fee for which New York would issue a broker's license to a citizen of this State in New York, because the company itself holds no broker's license in New York, and Sec. 219-B only applies to duly authorized brokers of other States.

5. Where a foreign state makes no distinction between agents and brokers, but an agent does the work which a broker does in Maryland, such agent will be authorized to take out a broker's license in Maryland under the reciprocal provisions of Sec. 219-B. The words of that section "any duly authorized

broker of any other State" mean any person who in fact does the work in such other State which brokers do in Maryland, whether such person is called a broker in his home State or not, and whether he does other work in his home State or not.

6. I do not think that the fact that a foreign State will not grant a broker's license to a resident of Maryland at all, prevents your Department from granting a broker's license to a resident of such foreign State upon Maryland terms. I do not think that Section 219-B was intended to be retaliatory in such a case, and in any event there would probably be constitutional objections to refusing such a license altogether. But you should only grant it on Maryland terms.

7. Wisconsin permits resident agents or brokers to divide commissions with non-resident agents or brokers, provided the property insured is located in Wisconsin and is also owned by non-residents of Wisconsin. In Maryland it is unlawful and a punishable offense for a Maryland agent or broker to divide commissions with any non-resident agent or broker, who is not licensed in Maryland. (Art. 23, Sec. 185, 186, 163 of the Code.)

In my opinion, Sec. 219-B does not authorize a Maryland broker to divide commissions with a Wisconsin agent or broker who is not licensed in Maryland, even though the property insured is located in Maryland and owned by residents of Wisconsin.

Sec. 185 embodies a clear, fixed policy of Maryland law, the violation of which is a punishable offense, and it should not be regarded as supplanted in any case by reciprocal legislation unless the intent so to supplant it is clear. I do not think that Section 219-B shows this intent.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

INSURANCE—LICENSES FOR AGENTS AND SOLICITORS CAN ONLY BE ISSUED TO INDIVIDUALS.

October 4, 1916.

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

DEAR MR. COUDON: I have considered the inquiry contained in your letter of October 2nd.

In my opinion, the effect of the Act of 1916, Ch. 255, adding sections 184 A to E to Art. 23 of the Code, is that licenses for agents and solicitors provided for by those sections and by section 184, can no longer be issued to a co-partnership, so as to cover all the members of the co-partnership, but that such licenses can only be issued to individuals; and that each license will only authorize the individual named therein to act as agent or solicitor.

I do not think that each member of a co-partnership need necessarily always have an agent's or solicitor's license, but each member who acts as an agent or as a solicitor will have to have one. Any member who has no such license cannot act in either of these capacities.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

INSURANCE—LICENSES—BROKERS' LICENSES FOR FIRMS AND CORPORATIONS.

July 22, 1916.

Messrs. Baldwin & Frick,
Keyser Building, Baltimore, Maryland.

GENTLEMEN: I have your favor of July 20th.

Section 219 of the Insurance Law seems to me clearly to confine the use of the firm broker's license to not more than three members of the firm, and the corporation broker's license to not more than three representatives of the corporation.

The result is that in the case of a firm composed of two members, like your own, only those two members can act under the firm license, and if such a firm wishes a third person, not a

partner, even though he be a paid employee, to act as broker, an additional license must be taken out for such third person, either as a broker ($100), or as a broker's solicitor ($25, section 219-A). If, however, such a firm were to incorporate, then three representatives could act under the corporation's broker's license.

I can readily see how you regard this law as involving a hardship upon a firm such as yours, as compared with a corporation, but the language of section 219 is so clear that I do not see any escape from it.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

INSURANCE—LICENSES FOR BROKERS' SOLICITORS CAN ONLY BE ISSUED TO INDIVIDUALS.

June 10, 1916.

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

DEAR MR. COUDON: I beg to reply to your favor of June 5th.

In my opinion Section 219-A of the Act of 1916, Chapter 257, requires insurance brokers' solicitors' licenses to be issued to each individual acting as such. They cannot be issued to firms.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

INSURANCE—LICENSES FOR BROKERS' SOLICITORS CANNOT BE PRORATED.

June 21, 1916.

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

DEAR SIR: I beg to reply to the second inquiry contained in your favor of June 5, namely, whether the fees charged for brokers' solicitors' licenses can be prorated if such licenses are applied for after the beginning of the license year.

While a number of the laws with respect to insurance licenses (for example, Code, Art. 23, sections 184, 189, 219), provide for pro-rating the fees, yet the Act of 1916, ch. 257, contains no such authority in the case of brokers' solicitors' licenses, but simply provides that the $25 license fee shall be paid "for each such broker's solicitor."

Under these circumstances, I think that the license fees in question cannot be pro-rated, but that the entire $25 fee must be paid, without regard to the length of time which will intervene between the granting of the licenses and the succeeding May 1, when they expire.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

INSURANCE—LICENSES FOR FIRE INSURANCE COMPANIES—COUNTY'S RIGHT TO IMPOSE.

June 22, 1916.

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

DEAR MR. COUDON: I beg to reply to your recent inquiry as to whether the towns of Westminster and Taneytown, both in Carroll County, can exact licenses from fire insurance companies transacting business therein, in view of the fact that such companies are subject to the State Insurance Department.

The charter of Westminster authorizes the Mayor and Common Council "to impose a license upon all fire insurance companies and agencies located in or doing business in said city." Act 1892, Ch. 416; Act 1910, Ch. 341, Section 225. Under this authority the town passed Ordinance No. 91, imposing an annual license fee of $10. This ordinance is clearly authorized by the express terms of the charter of Westminster, and I find nothing in the insurance laws of the State, subjecting fire insurance companies to the State Insurance Department, which prohibits a municipality from requiring a local license. I, therefore, think that such companies are required to pay the license fee in question before doing business in Westminster.

The charter of Taneytown authorizes the Commissioners "to enact and pass all laws and ordinances not inconsistent with the laws of this state, of said county, or this act, as they may deem wise and expedient for the comfort, health, order, prosperity, peace and convenience of said town and the inhabitants thereof." Act 1884, Ch. 509, Sec. 13. This is the only section in the town's charter that I have been able to find which could be construed as authorizing the license fee in question in Taneytown. The Ordinance is No. 62, passed June 3, 1901, and it imposes an annual license fee of $10 upon all fire insurance companies and agencies located or doing business in Taneytown.

Whether the above provision of the charter of Taneytown authorizes the passage of Ordinance No. 62 admits of some doubt. But if the Ordinance imposing the town license is not valid, its invalidity is not due to the fact that fire insurance companies are subject to the State Insurance Department, but to the fact that the town has not the necessary charter authority to impose any license at all. This is a question which does not concern the State, and, therefore, I express no opinion upon it. If the companies think that the local license in Taneytown is invalid, on the ground that the town's charter does not authorize it, then this is a purely local question between the companies and the town of Taneytown, which the companies should take up with the local authorities of Taneytown.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

INSURANCE—MUTUAL COMPANIES REORGANIZING AS STOCK COMPANIES—CONDITIONS THEREOF.

July 21, 1916.

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

DEAR MR. COUDON: As requested by you, I have considered the question of whether your Department should now accept the deposit from the Independent Mutual Life Insurance Company,

which the company's counsel informs me was tendered on July 5, 1916.

This company was formerly the Independent Mutual Aid Society, and it undertook to reorganize as a stock corporation under section 193 of Article 23 of Bagby's Code, which was amended by the Act of 1916, Ch. 133.

Under the above law, before mutual companies can be converted into stock corporations, two things must be done "prior to July 1, 1916, and not thereafter," namely:

1. The mutual company must reorganize as a stock corporation under the provisions of section 155.

2. The mutual company must comply with all the requirements and provisions of section 155.

I have communicated with the company's counsel, and I find that all of the steps required by law for the reorganization of the Independent Mutual Aid Society as a stock corporation, and all the requirements and provisions of section 155, were complied with before July 1, 1916, unless the following two steps, which were not complied with before that date, be regarded as essential:

1. The corporation did not tender your Department the deposit required by law prior to July 1, 1916.

2. Your Department has not issued its certificate, as required by section 155, that "the admitted assets of the said company, including its capital stock, are sufficient to provide reserve upon all outstanding policies as required by the laws of this State in relation to insurance companies, over and above all other bona fide debts and claims against it."

These last two requirements are not part of the reorganization of a mutual company into a joint stock corporation, but the provisions of section 155 is that such corporation *"shall not be entitled to do any business* as a stock corporation" until these requirements have been complied with. In other words, these requirements are for the benefit and protection of policy holders. Inasmuch as they are not part of the reorganization of the mutual company into a joint stock corporation, but are simply the conditions which must be observed before the joint stock corporation, when organized, can begin business, I see no reason

why these requireemnts may not be complied with after July 1st, and indeed it seems to me that the protection of policy holders will be best subserved by accepting compliance with them, even after July 1st, rather than by refusing it, and thus forcing the company out of business.

I, therefore, think that the deposit of the Independent Mutual Insurance Company should be accepted now.

After the deposit has been accepted, the corporation will still not be legally authorized to transact business until your Department issues the certificate called for by the provisions of section 155 quoted above. Under date of June 30, 1915, the corporation wrote your Department a letter which was intended as a request for this certificate, and I think that your Department should now, under section 155, value the assets and outstanding policies, and if you find that the admitted assets, including capital stock, are sufficient to provide the required reserve upon all outstanding policies, over and above all other bona fide debts and claims against it, then you should so certify, whereupon the corporation will be legally entitled to do business.

I do not think that this opinion need give you much concern as to its application to other mutual companies desiring to reorganize under section 193. Any such companies which have not completed their reorganization as joint stock corporations prior to July 1, 1916, cannot, of course, complete it after that date. And while I think that such companies as have so reorganized prior to July 1, 1916, may make their deposit and receive your certificate after July 1, 1916, yet until they do so, they are transacting business unlawfully, and are subject to all the penalties provided by law for so doing, and to proceedings by your Department for winding up their affairs. And I think that such companies should be notified that these penalties will be exacted and these proceedings taken unless their deposits are made at once.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

INSURANCE—MUTUAL FIRE INSURANCE COMPANIES—NOTICE OF ANNUAL MEETINGS.

November 21, 1916.

Hazelton A. Joyce, Jr., Esq.,
State Insurance Department,
Union Trust Building,
Baltimore, Maryland.

DEAR SIR: I beg to reply to your favor of November 16th.

1. You first ask what Act constitutes the charter of the Mutual Insurance Company of Frederick County.

This company was incorporated by the Act of 1843, Chap. 199. Its charter was amended by the Act of 1852, Chap. 145, Act of 1856, Chap. 29, Act of 1860, Chap. 227, and Act of 1906, Chap. 486. Each of these amendatory Acts provided that they should only take effect upon the approval of the members.

Finally, the Act of 1912, Chap. 841, provided an entirely new charter for the company. This act expressly repealed all of the original charter, except Section 1 thereof (which incorporated the Company), and also repealed all of the Acts which had amended the charter. This act also provided that it was to become effective if approved by the members, otherwise it was to be null and void. I understand that this Act was duly approved by the members. Consequently, the company's present charter consists of Section 1 of the Act of 1843, Chap. 199, and the Act of 1912, Chap. 841.

2. You also ask what notice your Department should require the company to give of its annual meetings.

The Act of 1912, Chap. 841, Section 5, requires the President and Secretary "to give at least two weeks' notice by advertisement in one or more newspapers published in Frederick County, and such other counties in the State in which the company shall have properly insured, of the annual meeting of the Company."

The Act of 1916, Chap. 256, contains a number of provisions relating to mutual fire insurance companies. Section 154-O of this Act provides, among other things, that "every person insured by a mutual fire insurance company * * * shall be

notified of the time and place of holding its meetings by a written notice or by an imprint in type not smaller than long primer upon the filing back of each policy, receipt or certificate of renewal," in the form prescribed by the Section.

While the charter of the Mutual Insurance Company was originally not subject to amendment, because granted prior to 1851, yet, as already stated, the acceptance of the Act of 1912, Chap. 841, constituted that Act the company's charter, and I think that this Act is now subject to amendment.

I also think that the company is subject to the provisions of Section 154-O of the Act of 1916, Chap. 256, relating to notices, and that it should be required by your Department to notify its members of its annual meetings "by a written notice or by an imprint" upon the filing back of each policy, receipt or certificate of renewal, as provided in Section 154-O.

Whether these provisions of Section 154-O repeal the provisions relating to notice of the annual meetings contained in Section 5 of the Act of 1912, Chap. 841, so that the notice provided by Section 154-O now constitutes the only notice of annual meetings which the company is required to give, or whether the company must give the notice provided by section 5 of the Act of 1912 and also the notice required by section 154-O of the Act of 1916, is a question which admits of some doubt.

Section 154-O provides that the notice by imprint "shall be a sufficient notice," but does not contain a similar provision as to the written notice, if that be adopted.

This, however, is a question which I think the company must take the responsibility of deciding for itself.

The position which your Department should take is that the Act of 1916, Chap. 256, Sec. 154-O, relating to notices, applies to this company, and that either a written notice or a notice by imprint, in accordance with that section, must be given, leaving it to the company to decide whether or not its charter requires it to give in addition the notice provided by section 5 of its charter.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

INSURANCE—NON-RESIDENT BONDING AND SURETY COMPANIES NEED NOT COMPLY WITH CODE ART. 23, SEC. 93, RELATING TO FOREIGN CORPORATIONS.

October 10, 1916.

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

DEAR SIR: As requested by your favor of September 30th, I have considered the question of whether or not a non-resident bonding or surety company, which has been licensed by the Insurance Department to transact the bonding or surety business in this State, must also comply with section 93 of Article 23 of Bagby's Code, relating to foreign corporations generally.

Section 93 exempts from its provisions "insurance companies hereinafter provided for," and, therefore, the question is whether a non-resident bonding or surety company is an "insurance company," as that term is used in section 93.

After a careful examination of the Insurance Laws of this State, I have reached the conclusion that it is.

There is, of course, no doubt that the bonding and surety business is one character of insurance.

Moreover, Sections 153, 156, 163, 178, sub-sections 11, 13, 14 and 15 of 178, Sections 181, 187, 191, 192 and 201 of Article 23 of Bagby's Code, all recognize bonding and surety companies as insurance companies, or clearly include them in their provisions. Many of these sections, or sections substantially similar, were in force in 1908, when the present section 93 of Article 23 was enacted.

In this connection see Md. Cas. Co. vs. Gehrmann, 96 Md. 634, 646.

Moreover, the object of section 93 is to require non-resident corporations to file with the Secretary of State copies of their charters, the names of their officers and directors, the location of their offices in this State, certain information as to their capital stock, and the names of their resident agents on whom process can be served, whose authority shall continue as long as there are any outstanding liabilities in this State. Sec-

tion 182 of Art. 23, applying to non-resident companies transacting *"any* business of insurance, whether life, fire, marine or inland, or *other insurance risks,"* and Section 201, applying to non-resident companies conducting *"any* branch of insurance business," and other sections of the law, require such non-resident companies to file exactly similar data with the Insurance Department. These provisions all include, I think, bonding and surety companies, and, therefore, if the phrase "insurance companies" in section 93 does not include bonding and surety companies, the result would be to require such companies, without any apparent reason, to duplicate this data to the Secretary of State. This could hardly have been intended.

In this connection see Oland vs. Agr. Ins. Co., 69 Md. 248, 251.

For the above reasons, I am of opinion that the exemption of "insurance companies" from section 93, includes insurance companies which conduct the bonding and surety business, as well as other kinds of insurance, and that, therefore, non-resident bonding and surety companies, which comply with the insurance laws of the State, need not also comply with section 93.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

INSURANCE—PROMOTION OF INSURANCE COMPANIES—STATUTE NOT RETROACTIVE.

November 27, 1916.

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

DEAR SIR: I beg to reply to your favor of November 17th, asking whether the promoters of the Independent Life Insurance Company are subject to the Act of 1916, Chap. 274.

This Act prohibits the solicitation of subscriptions to or the sale of stock of insurance companies, until the Insurance Commissioner has been furnished with full particulars as to the methods and cost of promotion; requires the salesmen to be

licensed; provides that the cost of promotion, including commissions and all expenses of organization, shall not exceed five per cent of the subscription or selling price of each share of stock, this requirement to be plainly set forth in the subscription agreement or contract for the sale of the stock; and requires the fiscal agent or promoter to give bond for the faithful performance of the undertaking in accordance with the Act.

I understand from the letter of November 17th from Messrs. Haman, Cook, Chesnut and Markell to your Department, and from investigations which I have since made myself, that the Independent Life Insurance Company was incorporated and organized some years ago, and began soliciting subscriptions to its capital stock in 1914, under a contract entered into with a fiscal agent on May 14, 1914, whereby the fiscal agent was to receive more than 5 per cent for procuring stock subscriptions; that during May and June, 1914, 150 shares were subscribed for and issued, when the European War broke out, and efforts to secure further subscriptions were suspended; that in January, 1916, the owners of the outstanding shares of stock reduced the same to 50 shares and then proceeded with the solicitation of further subscriptions, in order to launch the company.

The contract with the fiscal agent was valid when made. The parties interested have expended, since January 1, 1914, $2,475.00 on the faith of the contract, in organization and preliminary expenses. The promoters proceeded to solicit subscriptions, without furnishing your Department with the particulars of the promotion, without obtaining any license and without giving any bond, because the Act of 1916, Chap. 274, requiring these things, had not then been passed. They had secured a number of subscriptions when the Act became a law, and, of course, the subscription agreements did not contain the five per cent limitation on expenses, because this was not required when they were obtained.

Under these circumstances, I beg to advise you that the Act of 1916, Chap. 274, should not be given a retroactive effect, so as to require the promoters of the Independent Life Insur-

ance Company to comply with its provisions in this case; but the promoters are entitled to proceed under the contract entered into and acted upon by them prior to the passage of the Act.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

INSURANCE—TAX ON PREMIUMS.

December 13, 1916.

Wilson L. Coudon, Esq.,
Deputy Insurance Commissioner,
Union Trust Building, Baltimore, Maryland.

DEAR SIR: I have carefully considered the question you have raised under Section 184 of Article 23 of the Annotated Code, as amended by Chapter 255 of the Acts of 1916, as to the tax on premiums of a policy of insurance issued by a foreign insurance company, and covering both fire and accident.

The words of the statute which govern this question are—"Which tax shall be at the rate of two per centum on premiums on policies of such companies, whose Charters authorize them to write fire, marine or inland insurance, and at the rate of one and one-half per centum on premiums on policies of all other such companies."

Applying these words strictly to a policy of insurance issued on an automobile, which covers both fire and accident, and for which the premium is $200.00, divided, $150.00 for accident and $50.00 for fire, your Department would collect two per cent on the entire $200.00 premium.

I do not think, however, that this is what the Legislature meant when it passed the Act; the use of the words—"whose charters authorize them to write fire, marine or inland insurance," must be read in connection with the words "policies of all other such companies," and hence the technical construction of the former would be wanting. The tax collected before 1912 was one and one-half per centum from all foreign companies, and the distinction between fire and accident was first made in 1912. In making this distinction the intent of the Legislature

evidently was to separate the policies of insurance and not the character of the companies writing them. It was not the intention to arbitrarily say that any insurance written by a company whose charter might incidentally authorize it to write a fire policy, must be taxed the full rate of two per cent. Suppose a company having power to write both fire and accident insurance actually only wrote the latter in this State, surely your Department would not be justified in collecting a two per centum on premiums on such policies.

The companies, in writing the form of the policy under discussion, state the premiums on fire and on accident, so that it is easy to separate the two.

My conclusion, therefore, is that in computing this tax, you are to be guided by the policy as actually written, and to collect the same as follows:

Two per centum for fire, marine and inland insurance, and one and one-half per centum on all others; which leads us to the question as to what is inland insurance. My judgment as to inland insurance is that it means protection against any accident to the thing insured while in transportation, and it makes no difference whether the article insured is transported by a carrier or under its own power, or whether it is in motion, or is at a stand-still; it embraces several of the sub-divisions of automobile risk, and as the practical question will only arise in automobile insurance, I would suggest that you adopt the rule, so far as this question of taxation is concerned, that any damage done to the insured automobile, outside of fire, comes under the head of inland insurance, and any damage done by the automobile to person or property is casualty or accident insurance. You can readily adjust the different forms of automobile insurance to meet the requirements of this rule.

Very truly yours,

JOHN M. REQUARDT,

Assistant Attorney General.

Approved:

ALBERT C. RITCHIE, *Attorney General.*

LICENSES.

(Excluding opinions on Conservation, Motor Vehicle and Insurance Licenses, which will be found under these respective headings.)

LICENSES—CASH REGISTERS AND ADDING MACHINES.

July 15, 1916.

Hon. Hugh A. McMullen,
State Comptroller,
Cumberland, Md.

DEAR MR. MCMULLEN: I have your favor of July 14. The opinion I gave you on May 29, under sec. 167 of the Act of 1916, ch. 704, imposing a license fee upon cash register and adding machine companies, was not intended to cover the case of a company having more than one place of business, but simply of a company having a number of agents, and in such case the license secured by the company will be sufficient to cover the operations of the Agents throughout the State.

If, as in the case of Adder Machine Company, the company has more than one place of business in this State, then section 167 is not clear as to whether only one license is required or whether a separate license is required for each place of business. I think, however, that the fair construction of the law is that the license is required for the *company,* and not for the place or places of business of the company, and that consequently one license will suffice. I know that this was the intent of the state authorities in drafting the act, and I think that the state should construe it in this way.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—CLEANING, DYEING AND PRESSING ESTABLISHMENTS—WHEN IN THIS STATE.

July 7th, 1916.

Old Staten Island Dyeing Establishment,
332 N. Howard Street,
Baltimore, Md.

GENTLEMEN: I have your favor of July 6th, with reference to section 180 of the Act of 1916, ch. 704, requiring licenses for "each person, firm or corporation, resident or non-resident, conducting the business of cleaning, dyeing and pressing in this State, when done by steam, electric or other power than by hand."

"Establishments employing less than five persons.	$ 5.00
"Establishments employing not less than five persons, and not more than ten persons.	15.00
"Establishments employing not less than ten persons, and not more than twenty persons.	50.00
"Establishments employing more than twenty persons.	100.00."

As I understand your letter, the question in your case is, whether you are "conducting the business of cleaning, dyeing and pressing in this State," in view of the fact that you only take orders and make deliveries here, and do the actual work on Staten Island.

The question is not entirely clear, but my opinion is that the above section does apply to you, and that you should take out a license upon the basis of the number of persons employed in your establishment here.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—CLEANING, DYEING AND PRESSING ESTABLISHMENTS—HAND WORK.

July 11, 1916.

Chr. Hemmeter, Esq.,
419 W. Saratoga Street,
Baltimore, Maryland.

DEAR SIR: I have your favor of July 10th.

Section 180 of the Act of 1916, Ch. 704, does not apply to dyeing and cleaning establishments where the work is done solely by hand.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—COLLECTION AGENCIES.

June 21, 1916.

Sun Mercantile Agency,
15 East Main Street,
Frostburg, Md.

GENTLEMEN: I have your favor of June 19.

I think that a concern conducting a collection agency only, that is, an agency such as you describe, which undertakes collections on a commission basis, is not a "commercial, mercantile or mutual protective agency" as those terms are used in section 169 of the Act of 1916, Ch. 704, and, therefore, no license is required under that section for such collection agency.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—FARM MACHINERY.

June 20, 1916.

Lloyd L. Shaffer, Esq.,
Clerk, Circuit Court,
Cumberland, Maryland.

DEAR SIR: I have your favor of June 15th.

Section 174 of the Act of 1916, Chapter 704, is by no means clear upon the question, but I think that the intention is that in such a case as you submit the wholesale dealer in farm

machinery is required to take out only one license in Maryland, to wit: In Cumberland, where he maintains his general agency and where he stores all his machinery for distribution; and that he is not required to take out licenses in the different cities or towns in which he sells to dealers.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—GARAGES.

June 9, 1916.

Hart B. Noll, Esq.,
Clerk, Circuit Court,
Ellicott City, Md.

DEAR SIR: I have your favor of June 7th.

In my opinion, the license fee imposed by the Act of 1916, Chap. 704, Sec. 166, is a charge exacted for the privilege of keeping a garage where automobiles are stored for hire or kept for hire or sale, and it is in addition to the traders' license required for stock. I, therefore, think that in the case you put both licenses are required.

I also think that a person buying junk in the county and selling the same to dealers in Baltimore, is dealing in junk within the meaning of Section 172, and must take out the license required by that section wherever he has his place of business.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—GARAGES.

July 5, 1916.

Adam Deupert, Esq.,
Clerk, Court of Common Pleas,
Court-House, Baltimore, Maryland.

DEAR SIR: Mr. Osborne I. Yellott, counsel for the Automobile Dealers' Association, and Mr. German H. H. Emory, also representing certain interested parties, have asked me to consider several questions which have arisen in connection with

the application of Section 166 of the Act of 1916, Chap. 704, requiring licenses for garages.

I have considered these questions, and I beg to send you herewith my opinion upon each of them.

1. Garages where cars are kept solely for sale, and not for hire or storage, and which may or may not be also used as repair shops. These garages are required to procure a license.

The only question in this connection arises because of the fact that while the first paragraph of Section 166 requires a license for garages "for the hire, storage *or sale* of automobiles," the succeeding paragraph defines a garage as meaning "a place of storage for hire or a place where there is kept for hire any automobile," etc., thus *omitting* from the definition garages where automobiles are kept *for sale*.

I think, however, that the first paragraph of Section 166 controls as to the application of the section, and that the definition of the word "Garage" is not exclusive, and does not relieve garages where cars are kept solely for sale from the necessity of taking out a license.

2. Garages where cars are kept for sale, and also for storage and also for hire. These garages are required to procure a license.

3. Garages where cars are kept solely for hire, but not for sale and not for storage. These garages are required to procure a license.

4. Garages or buildings where cars are kept solely for storage for hire, in which garages or buildings automobiles alone may be stored, or in which other classes of property may be stored also. These garages or buildings are required to procure a license.

5. Repair shops, where cars are not kept for sale or for hire or for storage for hire. In this case, no license is required.

6. Garages in which one or more automobiles are kept for hire, but are sometimes used for private purposes also. These garages are required to procure a license. Any garage where a car is kept which will be hired out on call, must procure a license, even though the car may at other times be used for purposes other than for hire.

7. The license fees are computed in accordance with the floor space which each garage contains. In this connection, the question arises whether any floor space can be included in the computation other than the floor space actually occupied by the cars.

I think that the computation should be based on the floor space actually occupied by the cars, plus such additional floor space as may be occupied for offices or other rooms used in connection with the business of selling, hiring or storing the cars. In the case of a building which is used for no other purpose than for the sale, storage or hire of automobiles, no question would arise, because the whole of such building would be used either for keeping the cars themselves, or for the transaction of the business, and in such cases the whole floor space of the building is the basis for computing the fee.

Cases will, however, arise where the entire building is not used for the sale, storage or hire of automobiles, but where only part of the building is so used, and where other parts are used for purposes not connected at all with the sale, storage or hire of automobiles. For instance, a warehouse may be used for the storage of automobiles, and also for the storage of other classes of property.

In all such cases the license fee should be computed upon the amount of floor space occupied by the cars themselves, plus such additional amount of floor space as may, in each case, reasonably and fairly be necessary for attending to that portion of the business which relates to the automobiles, and their storage, sale or hire.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—HUNTERS' LICENSES IN ALLEGANY COUNTY.

August 21, 1916.

Hon. Hugh A. McMullen,
State Comptroller,
Annapolis, Maryland.

DEAR MR. MCMULLEN: I have your favor of August 18, enclosing copy of letter from Mr. Lloyd L. Schaffer, Clerk of the Circuit Court for Allegany County.

The Act of 1916, Ch. 282, relating to hunters' licenses in Allegany County, provides in section 13A the cost of the licenses required by the Act, to wit: bona fide residents of Allegany, Garrett and Washington Counties, $1; non-residents of those counties but residents of Maryland, $3; non-residents of Maryland, $5. Under this law, applicants cannot be charged more than these specified amounts, and accordingly they cannot be charged an additional 50c for issuing the license.

The same section, and also section 15A, provide that all of such license monies shall be paid over monthly by the Clerk of Court to the Treasurer of the Board of Game Wardens of Allegany County, which Board is created by section 14B; and section 14B provides that such license moneys shall be used (1) for protecting and propagating game in Allegany County, (2) for the incidental expenses of the Board, (3) for the hunters' licenses and applications, and (4) for the Clerk's record license book.

Under this section, the Board will allow the Clerk, out of said license moneys, the cost incurred by him in preparing the licenses and application blanks, and in procuring his record book. The Clerk will not be allowed the 50c fee for issuing licenses provided by Bagby's Code, Art. 36, sec. 12, and the Clerk will, therefore, not be held accountable by your office for that 50c fee. This fee cannot be charged at all for licenses issued under the Act of 1916, ch. 282, because its exaction would be inconsistent with the terms of this Act, and section 18A of the Act expressly provides that all sections of the Code

inconsistent with the Act are repealed so far as Allegany County is concerned.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

—

LICENSES—JUNK DEALERS—SEPARATE COUNTIES—EMPLOYEES.

June 2, 1916.

William L. Seabrook, Esq.,
State's Attorney,
Westminster, Md.

DEAR MR. SEABROOK: I beg to acknowledge your favor of May 31.

Whether or not a junk dealer is required by sec. 172 of the Act of 1916, ch. 704, to take out a license in each county in which he operates, depends upon whether he has a "place of business" in each such county. The law requires the license for conducting *the junk dealing business in this State,* and requires a separate license to be taken out *for each place of business,* and whether a junk dealer operating, for example, in Carroll County, has to take out a license there, would depend upon whether his operations are such as to constitute a place of business in Carroll County.

Of course, if the dealer has an office or headquarters in Carroll County, the case would be clear. Also, even if he has no office or headquarters in Carroll County, but maintains these in some other county, still if he deals in junk in Carroll County from a wagon or car, then I think that he would have a place of business in Carroll County, under Salfner vs. State, 84 Md. 299, 303, and would have to take out a license in Carroll County. Other cases would likewise be controlled by the question of whether the method of operation could fairly be said to constitute a place of business.

With respect to your second inquiry, I agree with you that the law does not require a junk dealer, who has taken out his license in any given county, to take out additional licenses for his bona fide, salaried employees who buy junk for him in such

county. I think, that the dealer's license covers such employees. I also agree with you that if such a junk dealer buys junk from others on a commission basis, that then such commission men must each take out a license.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—JUNK DEALERS—WHEN TRADERS' LICENSE ALSO NECESSARY.

June 2, 1916.

Adam Deupert, Esq.,
Clerk, Court of Common Pleas,
Court House, Baltimore, Md.

DEAR SIR: I beg to acknowledge your favor of May 26th, asking whether junk dealers taking out the license required by Section 172 of the Act of 1916, Ch. 704, are also required to take out a traders' license under Art. 56, Sections 38 and 39 of the Code.

I understand that hitherto there has been no provision of the license laws dealing specifically with junk dealers, but that junk dealers have been required to take out the ordinary licenses prescribed by Section 38 of Article 56 for selling "goods, wares or merchandise." Now, however, Section 172 of the Act of 1916, Chapter 704, provides specifically for junk dealers' licenses.

Under these circumstances it is my opinion that the license required of junk dealers by the Act of 1916 is the only license they are required to take out. I may add that I have conferred with Mr. McMullen, who drafted the law, and he tells me that this was his intention.

I am, of course, assuming that the dealers in question deal only in junk, because if they also deal in other forms of goods, wares or merchandise the ordinary traders' license would also be necessary.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—JUNK DEALERS—WHEN TRADERS' LICENSE ALSO NECESSARY.

September 8, 1916.

Ernest Ray Jones, Esq.,
Oakland,
Maryland.

DEAR MR. JONES: I have your favor of September 6th. The difficulty about permitting the ordinary traders' license to cover dealing in junk, when the trader deals in junk as part of his general business, seems to be that in this event the trader would often be enabled to take out his trader's license, covering both his junk and his other dealings, for a fee which would be less than the fee prescribed for those who deal in junk alone. This will appear by comparing the fees for traders' licenses specified in Bagby's Code, Art. 56, Sections 41, etc., with the fees for junk dealers specified in the Act of 1916, Ch. 704, Sec. 172. The Legislature could hardly have intended this.

From this fact, as well as from the language of Section 172, it seems to me that the general traders' license will not cover dealing in junk, but that those traders who wish to deal in junk as well as in other goods, must take out both licenses.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—LIQUOR LICENSE FEES, INCREASE OF—DISPOSITION OF INCREASE IN ELLICOTT CITY.

June 10, 1916.

D. C. Higenbotham, Esq.,
Registrar, Ellicott City, Maryland.

DEAR SIR: I beg to acknowledge your favor of June 3rd.

The Act of 1916, Chap. 594, provides that the additional license fee of $100 "shall be disposed of as other license fees now provided by law for the issue of licenses."

The Act of 1902, Chap. 249, Sec. 98-E, provides that out of the $500 license fee imposed in Ellicott City, Howard County, the clerk shall "pay over quarterly to the Treasurer of the State the same sum as is now charged by the State for such license,

to wit, the sum of $50 for each license, and the balance shall be paid to the Mayor and City Council of Ellicott City."

The only way I see to work out the proper division of the additional $100 fee between Ellicott City and the State, is to treat the Act of 1902 as disposing of the $500 license fee in the proportion of one-tenth to the State and nine-tenths, less Clerk's authorized deduction, to Ellicott City. The $100 additional fee should then be disposed of in the same way, that is, $10 to the State, and $90, less Clerk's authorized deduction, to Ellicott City.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—LIQUOR LICENSE FEES, INCREASE OF—HOTELS.

June 24, 1916.

Hon. Hugh A. McMullen,
State Comptroller, Annapolis, Maryland.

DEAR MR. MCMULLEN: I have your favor of June 23rd, enclosing inquiry from Edward Oswald, Esq., Clerk of the Circuit Court for Washington County.

I understand that the saloon keepers in Washington County take out two different kinds of licenses: (1) The Traders' Liquor License, under Bagby's Code, Art. 56, Sec. 60, which authorizes the sale of liquor in quantities greater than one pint, and (2) the Oyster House License, under Bagby's Code, Art. 56, Sec. 90, which authorizes the sale of liquor in quantities less than one pint.

In my opinion, the saloon keepers of Washington County are only required to pay the additional $100 fee, provided by the Act of 1916, Chap. 594, with respect to their Traders' Liquor Licenses issued under Section 60 of Art. 56 of the Code, and they are not required to pay any other additional fees under the Act of 1916.

I also understand that the hotel keepers in Washington County take out two different kinds of licenses: (1) The Traders' Liquor License, under Bagby's Code, Art. 56, Sec. 60, which authorizes the sale of liquor in quantities greater than one pint,

and (2) the Ordinary Keeper's License, under Bagby's Code, Art. 56, Sec. 72, which authorizes the sale of liquor in quantities less than one pint.

The Act of 1916, Chap. 594, provides increased license fees for the sale of liquors by saloons or restaurants and also by hotels. If a saloon or restaurant is operated in connection with and as part of a hotel, then I think that the additional $100 fee required of saloons should not be imposed, but that the additional fees of $250 or $500, as the case may be, required of the hotels, should be imposed.

Therefore, the hotels in Washington County, which sell liquor are required to pay the additional fees provided for hotels selling liquor by the Act of 1916, Chap. 594, that is, an additional fee of $250 or $500, as the case may be, and are not required to pay any other additional fees under the said Act of 1916.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—LIQUOR LICENSE FEES, INCREASE OF—HOTELS.

July 3, 1916.

Lloyd L. Shaffer, Esq.,
Clerk, Circuit Court,
Cumberland, Maryland.

DEAR SIR: I beg to reply to your recent letter relative to increased liquor license fees on hotels.

If a saloon is operated in connection with and as part of a hotel, then the additional $100 fee required by the Act of 1916, Chap. 594, should not be imposed at all, but the additional fee of $250 or $500, as the case may be, required by that Act for hotels selling liquor, should alone be imposed. This of course, is in addition to the Ordinary Keeper's license fee already required by Bagby's Code, Art. 56, Sec. 72.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—LIQUOR LICENSE FEES, INCREASE OF—RESTAURANTS OR EATING HOUSES.

June 12, 1916.

Lloyd L. Shaffer, Esq.,
Clerk, Circuit Court,
Cumberland, Maryland.

DEAR SIR: I beg to answer the inquiries contained in your letter of June 9th.

1. You do not say what additional $100 fee you refer to, but I presume you mean the $100 additional license fee provided by the Act of 1916, Chap. 594, for saloons, etc. If you do, then that law expressly provides that the $100 fee is to be in addition to the already existing fees, and that it shall be payable on June 15, 1916, for the period between that date and the expiration of the current license year. Consequently, this $100 must be paid by those who took out their licenses during May.

2. Section 182 applies to public restaurant and eating places. If a man conducts a saloon under a liquor license, and also conducts in connection therewith a public restaurant, or eating place, then it seems to me that the law requires him to take out the license provided by section 182.

3. I do not think that a person with a saloon license who simply serves short lunches (sandwiches, coffee, etc.), such as you describe, can be said to be conducting a public resturant or eating house, and, therefore, I do not think that he need take out a license under section 182.

4. Nor do I think that a person having a traders' and soda fountain license, and serving similar light lunches, can be said to be conducting a public restaurant or eating house, and, therefore, I do not think that he need take out a license under section 182.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—MOVING PICTURE THEATERS—ADMISSION CHARGES.

September 1, 1916.

Curtis W. Long, Esq.,
State's Attorney,
Salisbury, Maryland.

DEAR MR. LONG: I have your favor of August 31st. It seems to me that if the moving picture theatre you mention has a license, under the Act of 1916, Ch. 704, Sec. 165, based on five cents admission, that it has no right to charge ten cents for any performance. Such license authorizes five cent shows, but does not authorize any ten cent show.

If the theatre wishes to charge five cents most nights, but ten cents some nights, and wants to have the five cent license, then I think that the ten cent shows must be the subject of an additional license, based on the ten cents admission. If the ten cents admission is only charged one night each month, then, as the ten cent exhibition is not given more than three nights in any one week, the fee, under section 165, will be one-half of the ordinary fee for ten cent shows.

In other words, the theatre will have this choice: Either take out a license for ten cent shows, and charge ten cents or five cents, which ever and whenever it wishes, in which event the fee, on the basis of 600 seating capacity, would be $80; or take out a license for the five cent shows, which would be $45 and an additional license for the ten cent shows, which would be $40 (one-half of $80). Under these circumstances the theatre would, of course, take out the ten cent license for $80.00.

The five cent license certainly does not authorize a ten cent show, and I think it is perfectly clear that if the ten cent show is given on the five cent license, the law is violated, and the penalties provided by Section 188 can be imposed. Therefore, I see nothing for the owners to do except take out a ten cent license, which will authorize the ten cent shows as well as the five cent shows, or else take out the two licenses, one for the five cent shows and the other for the ten cent shows.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—MOVING PICTURES—WHEN LICENSE REQUIRED.

July 10, 1916.

L. A. Rudisill, Esq.,
Mountain Lake Park Association,
Mountain Lake Park, Maryland.

DEAR SIR: I have your favor of July 6. With respect to the licenses for moving pictures, prescribed by the Act of 1916, ch. 704, sec. 165, I beg to advise you as follows:

1. If no admission fee is charged, then no license is required, even though collections may be taken up, and the audience contribute anything or nothing as they see fit.

2. If an admission fee is charged, then the license must be taken out, unless your Association is for benevolent, charitable or educational purposes.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

—

LICENSES—MOVING PICTURES—VAUDEVILLE.

August 22, 1916.

O. L. Mitchell, Esq.,
Manager "The Lyric,"
Crisfield, Maryland.

DEAR SIR: Absence from tho city has prevented my answering your favor of August 9th more promptly.

I must say that the law is not entirely clear, but it seems to me that the intent is that the license fee required by section 165 of the Act of 1916, Chap. 704, is for the exhibition of moving pictures only, and that if a vaudeville performance is also to be given, the license required by section 108 of the Act of 1916, Chap. 704, should also be taken out. Under this latter section (which amends Sec. 108 of Art. 56 of the Code), the license for stage players, etc., is now $50 per annum for each county in which performances are given, or $2.00 for each exhibition.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—MOVING PICTURE THEATRES—LAW NOT RETROACTIVE.

July 1, 1916.

Hon. Hugh. A. McMullen,
State Comptroller,
Cumberland, Maryland.

DEAR MR. MCMULLEN: I beg to reply to your favor of June 30th.

With reference to the moving picture house you speak of, I understand that the exhibition license it took out May 1, 1916, to exhibit in Allegany County for one year, was taken out under Bagby's Code, Art. 56, Sec. 108, and that the house has now been asked to take out a license under Sec. 165 of the Acts of 1916, Ch. 704.

I understand that while the old law did not specifically cover motion picture houses, yet it was in actual practice treated as covering them, and that such houses did customarily take out licenses under the old law. This being so, then I think that the provisions of Sec. 165 of the new law will not apply, until May 1, 1917, to such motion picture houses as, in good faith, procured and paid for licenses, during May, 1916, under the old law. In other words, the May, 1916, licenses of such houses will be good until May 1, 1917.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

—

LICENSES—PEDDLERS USING AUTOMOBILES.

July 10, 1916.

Hon. Hugh A. McMullen,
State Comptroller,
Annapolis, Md.

DEAR MR. MCMULLEN: I have your favor of July 7, enclosing copy of letter of July 5 from Mr. A. Parks Rasin, Clerk of the Circuit Court for Kent County.

Whether or not Bagby's Code, Art. 56, sections 24, 25, etc., apply to peddlers in Kent County who use an automobile is not free from doubt. Those sections were, however, evidently

intended to cover all peddlers, and I think that the language can fairly be construed as applying to the case in question, and that Kent County peddlers who use automobiles should be required to take out the license. I also think that they should be required to pay the $200 fee. If this construction is incorrect, this should be for the courts to decide and not for your department or mine.

Such licenses are not assignable by the holders. (Bagby's Code, Art. 56, sections 2, 26.)

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—RAILROAD CHECK ROOMS—NO EXEMPTION BECAUSE OF GROSS RECEIPTS TAX.

July 25, 1916.

Leon E. Greenbaum, Esq.,
111 N. Charles Street,
Baltimore, Maryland.

DEAR SIR: I received your favor of July 17th, asking my opinion as to whether Section 179 of the Act of 1916, Chapter 704, applies to the Western Maryland Railroad Company, and stating the reasons why you think that it does not. I have considered this question, and beg to give you my views upon it.

Section 179 provides that "each person, firm or corporation, conducting a check-room in this State for the deposit of packages and baggage, shall pay a privilege tax for stall purposes, and before doing so, shall first take out a license therefor, paying an annual license fee" of $40 where the charge is at the rate of 10 cents or more per twenty-four hours, and $20 where the charge is less than 10 cents.

I think that check-rooms such as I understand the railroad represented by you conducts at various stations throughout the State are included within the language of section 179. I have ascertained that it was the intention of the draughtsman of the Act to include them, and I think that the language does so.

I also think that the fact that your company pays a tax on its gross receipts does not exempt it from the obligation to take out the license and pay the license fee required by section 179.

The tax which you speak of as a gross receipt tax is imposed by section 167 of Article 81 of Bagby's Code, and is a franchise tax. The Act of 1896, Ch. 120, Sec. 146, specifically declared that this was its nature. Cumb. vs. Pa. R. R. Co. vs. State, 92 Md. 676.

I do not understand that section 179 imposes a franchise tax. It may be true that your company's check rooms are conducted under your charter power to provide reasonable facilities for the public, and that power, of course, grows out of the railroad franchise which the state gave you, and which section 167 of Article 81 of the Code taxes. But the fact that you hold a railroad franchise, and pay a tax upon it measured by your gross receipts, does not prevent the State from taxing you for the actual carrying on of some part of your business. This is what section 179 seems to me to do.

For instance, your charter doubtless authorizes you to conduct hotels for the accommodation of passengers, and this power grows out of your franchise, for which you pay the franchise tax. But if you exercise that power by actually establishing hotels, surely a state law requiring all hotels to be licensed and requiring them to pay a license fee, would have to be complied with by your road.

Your charter also, I assume, authorizes you to conduct a restaurant as one of the facilities to be furnished the public. That authority grows out of your franchise powers, but if you actually exercise it, surely a state law requiring all restaurants to be licensed would have to be complied with by your road.

The same would be true with reference to the sale of liquor. This is one of the things which your charter doubtless gives you authority to do, and that authority grows out of your franchise powers. But if you actually sell liquor, you would have to comply with the license laws of the State for so doing.

Section 179 requires every person or corporation conducting a check room to pay a license fee. That is an occupation or business charge. If your corporation did not have the franchise

power to conduct this character of business, you could not, of course, conduct it at all; so that, in the case of corporations, section 179 presupposes that the franchise power to conduct a check room business exists. For the existence of that, as well as of the other powers covered by your franchise, you pay the tax imposed by section 167 of Article 81. For the actual exercise of the portion of your franchise power authorizing check rooms, that is, for carrying on the check room business, you pay the fee imposed by section 179.

The franchise tax and the check-room license fee seem to me, therefore, to cover two distinct things. The former covers the franchise which is granted to you, and which you hold. The latter covers the actual exercise of one of the powers which your charter grants, namely, the business of operating a check-room. The difference is between the right or privilege, called a franchise, to carry on a particular business, and the actual operation of the business itself.

I see no reason why the state cannot tax both. The former is taxed by section 167 of Art. 81, and the intent to tax the latter is, I think, clear from section 179.

In my opinion, therefore, your road must comply with section 179 of the Act of 1916, Ch. 704, at every station in this State where you receive for deposit and check packages and baggage.

I note from your letter that the Western Maryland will regard it necessary to give up the check-rooms now conducted by it throughout the State, if section 179 is construed as applying to such check-rooms, because the license fee is, you state, in most cases more than the receipts from the service.

I will thank you to let me know whether this will in fact be the attitude of your company, in view of this opinion; because if your company does contemplate abandoning its check-room service, I feel that I should communicate this fact to the Public Service Commission, to the end that they may decide whether they will consent to the abandonment of what the Commission may consider a necessary service for the convenience of the public using your road.

I enclose you copy of a letter I am today writing Mr. Marsden Smith attorney for the Baltimore & Ohio Railroad, as to the application of section 179 to that road; and I am sending a copy of both letters to Messrs. Bernard Carter & Sons, attorneys for the Pennsylvania lines in Maryland, with the statement that in my opinion section 179 applies to those lines; and as Mr. Marchant, Deputy State's Attorney, has asked me to let him know my conclusions, I am sending him a copy of all three letters.

I think you for the assistance you gave me in examining the question, and I regret that I have not been able to agree with you about it.

Very truly yours,
ALBERT C. RITCHIE, *Attorney General.*

LICENSES—RAILROAD CHECH-ROOMS—BALTIMORE AND OHIO RAILROAD NOT EXEMPT.

July 25, 1916.

R. Marsden Smith, Esq.,
B. & O. R. R. Law Department,
Charles and Baltimore Streets,
Baltimore, Maryland.

DEAR SIR: I received your favor of July 18th, asking my opinion as to whether section 179 of the Act of 1916, Chapter 704, applies to the Baltimore and Ohio Railroad Company, and stating the reasons why you think that it does not. I have considered this question, and now beg to advise you of my views upon it.

In the first place, I think that the method in which your company receives packages and hand baggage at your stations in this State, as described in your letter, constitutes "conducting a check-room in this State for the deposit of packages and baggage," within the meaning of section 179.

This leaves open two questions, first, whether the state can subject your company to the provisions of section 179, in view of the fact that you pay a franchise tax, measured by your gross receipts; and, secondly, whether this can be done in view of your company's irrepealable exemption from taxation.

The first of these questions is covered by an opinion which I am today sending Mr. Greenbaum, attorney for the Western Maryland Railway Company, a copy of which I enclose you, in which I hold that the payment of the franchise tax will not relieve a railroad from the license fee imposed by section 179.

With respect to the second question, I do not think that your company's exemption from taxation relieves it from the obligation of complying with section 179.

The exemption, as contained in section 18 of your charter (Act 1826, Ch. 123), is, as I understand the decisions of our Court of Appeals, an exemption of your property and franchises from taxation; and the Act of 1878, Ch. 155, by which you agreed to a limited tax on your gross receipts, provided that no further tax for State purposes should be levied upon any of your franchises, property or receipts.

I understand this to be the limit of your exemption, and I do not think that it includes a business or occupation fee such as, in my letter to Mr. Greenbaum, I interpret the license fee required by section 179 to be.

For these reasons it is my opinion that your road must comply with section 179 of the Act of 1916, Ch. 704, at every station in this State where you receive for deposit and check packages and baggage.

I note from your letter that if section 179 is construed as I construe it, your company will cease giving the parcel room service at the twenty-five stations where the receipts from that service do not, you state, equal the license fee imposed. I will thank you to let me know whether this will in fact be the attitude of your company, in view of this opinion; because if it will be, then I feel that I should communicate this fact to the Public Service Commission, to the end that they may decide whether they will consent to the abandonment of what the Commission may consider a necessary service for the convenience of the public using your road.

I am sending a copy of this letter and of my letter to Mr. Greenbaum, to Messrs. Bernard Carter & Sons, attorneys for the Pennsylvania lines in Maryland, with the statement that

in my opinion section 179 applies to those lines; and as Mr. Marchant, Deputy State's Attorney, has asked me to let him know my conclusions, I am sending him a copy of all three letters.

I thank you for the assistance you gave me in examining the question, and I regret that I have not been able to agree with you about it.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—RESTAURANTS OR EATING PLACES.

August 3, 1916.

Edwin H. Brown, Jr., Esq.,
Centreville, Maryland.

DEAR MR. BROWN: I have your favor of August 2nd. It is difficult to give a definition to the words "restaurant or eating place" in section 182 of the Act of 1916, Chap. 704, which may not be incorrect in some cases. Some special circumstance might make considerable difference.

However, as a general proposition, I think that the words mean any place where the public can regularly go for the purpose simply of obtaining a meal.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—STAGE PLAYERS—DETECTIVE AGENCIES—CARNIVALS—TRAVELLING SALESMEN—TYPEWRITER AGENCIES—RESTAURANTS OR EATING PLACES—WHOLESALE LIQUOR DEALERS.

June 9, 1916.

Lloyd L. Shaffer, Esq.,
Clerk, Circuit Court,
Cumberland, Maryland.

DEAR SIR: I beg to answer the inquiries you make in your letter of June 3rd, relative to the Act of 1916, Chap. 704.

1. Section 108 is precisely the same as Sec. 108, Art. 56 of Bagby's Code, except that the amount of the license fee has

been increased. The new section 108 should be construed as applying in exactly the same way as the old section 108. In my opinion, when a company of stage players, etc., perform in a duly licensed theatre, the license of the theatre is all that is necessary, and the company will not be required to take out an additional license under section 108.

2. Under Section 164, a private detective agency must take out a license in each county in which it is *located.* What constitutes being *located* in a county depends upon the facts of each case, but in my opinion an agency which maintains its headquarters in Baltimore City or in one of the counties, and also maintains branch offices in other counties, must take out a license in every county in which such branch offices are located. An agency may, however, *operate* (that is, conduct its investigations, etc., in specific cases) anywhere in the State, without being obligated to take out a license in any county, except in the county or counties in which it is located.

3. Under section 165, "traveling, tented carnivals," working under the auspices of charitable or benevolent organizations, but sharing in the profits, must pay the $100 weekly license fee imposed by the last paragraph of section 165.

4. The license required by section 167 does not, I think, apply to traveling salesmen who stop for a few days at hotels and there display their samples.

5. The license required by section 168 applies only to concerns dealing *exclusively* in typewriters and typewriter supplies, and is not required of general office supply houses, which deal in office supplies of all kinds, including typewriters and typewriter supplies.

6. It is somewhat difficult to give a general definition of Commercial, Mercantile and Mutual Protective Agencies, which will cover all the cases intended to be covered by Section 169. I would prefer, therefore, not to give an opinion upon the general application of this Section, but will be glad to give an opinion as to its application to any specific cases, about which there may be some question.

7. The only way I know to compel the concerns mentioned in sections 174 and 185 to take out the licenses required by

those sections, is to notify those that you know of to secure their licenses, and prosecute those that do not do so. Of course, everyone is charged with knowledge of the law, and subject to prosecution for not complying with it.

8. Section 182 does not apply to the case of a private dwelling, owned by a person who serves meals to two or three persons. It applies rather to public restaurants or eating places.

Hotels need not take out the restaurant license provided by this section, if they have the usual hotel license.

This section does not apply to persons who accommodate roomers in their own homes, and serve no meals.

9. Section 186 does not apply to saloons or retail liquor dealers. It applies only to non-residents, who *sell by the wholesale* in this State.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—STORAGE WAREHOUSES.

June 5, 1916.

Hon Hugh A. McMullen,
State Comptroller,
Annapolis, Maryland.

DEAR MR. MCMULLEN: I have your favor of June 1st, enclosing letter from Mr. William P. Cole, Clerk of the Circuit Court for Baltimore County, in which Mr. Cole asks whether Section 178 of the Act of 1916, Ch. 704, providing licenses for storage warehouses, applies to warehouses located in counties, but not in cities in such counties. In my opinion it does.

Section 178 specifically requires the license to be obtained in Baltimore City, if the warehouse is located in Baltimore City, and if it is located in one of the counties, then the license is required to be obtained in such county; and the only difficulty arises from the fact that the amount of the tax is graduated in accordance with the number of inhabitants *in cities.*

I think, however, that the word *cities* should receive a liberal interpretation, and that it means communities or localities in which people reside, and that the license fees in question should

be charged upon the basis of the number of people in the community or locality in which each storage warehouse is located.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—TRADERS, CIGARETTES AND BILLIARDS—TRANSFER, DEVOLUTION AND ASSIGNMENT OF LICENSES.

July 7th, 1916.

Hon Hugh A. McMullen,
State Comptroller,
Annapolis, Maryland.

DEAR MR. MCMULLEN: I have your favor of July 6th.

Bagby's Code, Article 56, section 3, provides that "wherever a particular place for transacting the business for which a license is obtained is specified in the license, if the party removes, he may carry on said business at the place to which he may remove; provided the clerk shall endorse such removal on the license, which he is hereby directed to do on application."

This applies to Female Traders licenses (Code, Art. 56, sec. 38, 54, Act 1916, ch. 632), Billiard licenses (Code, Art. 56, sec. 8), and Cigarette licenses (Code, Art. 56, sec. 58). Accordingly, such licenses are transferable from place to place, if the place of removal is endorsed on the license by the clerk.

Under Bagby's Code, Art. 56, sec. 2, no person other than the holder can operate under a license, unless he "is entitled as a representative, or assignee under the provisions hereinafter contained in this article."

Sec. 4 of Art. 56 (Act 1914, ch. 159), authorizes the devolution of licenses upon the holder's death, but I understand that Mr. Cole has in mind an assignment by the holder during his life. The only provisions of law which deal with assignments, are sections 56 and 57 of Art. 56, which authorize the sale of trader's licenses (and also liquor licenses) to purchasers of the holder's stock of goods who also purchase or rent his place of business, and provide that in such cases the clerk should enter the transfer.

These sections 56 and 57 apply to trader's licenses, and also to cigarette licenses issued under sec. 58, but not to billiard licenses. Therefore, a billiard license cannot be assigned at all by the holder. A trader's license or a cigarette license can be assigned by the holder to anyone who purchases his stock of goods and who purchases or rents his place of business, but cannot be assigned to anyone else.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—TRADERS AND CIGARETTES, INCREASED FEES NOT RETROACTIVE—ADDITIONAL LIQUOR LICENSE FEES—DRUGGISTS.

May 29th, 1916.

Lloyd L. Shaffer, Esq.,
Clerk, Circuit Court,
Cumberland, Maryland.

DEAR MR. SHAFFER: I am sorry to have been so long in answering your inquiries of May 13th, but I have only just received the copies of the laws in question. I now answer your inquiries in their order.

1. *Cigarette licenses.* The license for retail cigarettes is provided for by Sec. 58 of Art. 56 of the Code, and at present Sec. 59 requires a $10 fee for the same. The Act of 1916, Ch. 704, amends Sec. 59 by raising the fee to $15, and this Act takes effect on June 1st, 1916.

Under the present law, Art. 56, Sec. 1, cigarette licenses expire on May 1, and consequently the 1915-1916 licenses expired on May 1, 1916. Sec. 1 of Art. 56 has been amended by the Act of 1916, Ch. 632, which takes effect June 1, 1916, and under this amendment the Clerks of Court "are hereby expressly forbidden to date any such license other than the first day of May in each and every year, except when the trader engages in business in any other month subsequent thereto, when such license shall be issued from such month, and a ratable sum shall be charged therefor. All licenses granted or issued by said Clerks shall expire the first day of May next thereafter, except licenses for fisheries and horse-racing."

Therefore, the situation is that both under the present law and under the Act of 1916, Ch. 632, which amends the present law as of June 1, 1916, all cigarette licenses expire every year on May 1st and must be renewed then for another year; and the law raising the fee to $15 does not take effect until June 1, 1916.

In my opinion, cigarette licenses issued at the $10 rate *before* June 1, 1916, will be good until May 1, 1917, on which date the $15 fee will become operative; but all such licenses taken out *after* June 1, 1916, must pay at the $15 rate.

2. *Traders' Licenses.* The increases in traders' licenses generally are made by the Act of 1916, Chap. 632. This law leaves the license fees now provided by sections 41 to 51, inc., of Art. 56 of the Code unchanged, but by sections 52 and 52-A to 52-I, inc., the new law provides increased license fees on stocks in trade ranging from $40,000 upwards. The Act of 1916, Chap. 632, does not take effect until June 1, 1916.

In my opinion, traders' licenses taken out *before* June 1, 1916, at the existing fees, will be good until May 1, 1917, on which date the rates fixed by the Act of 1916, Ch. 632, will become operative; but all such licenses taken out *after* June 1, 1916, must pay at the rates prescribed by the Act of 1916, Chap. 632.

3. *Female Traders' Licenses.* These licenses are now provided for by Sec. 54 of Art. 56 of the Code, and are $6.00 on stock in trade not exceeding $500.00. The Act of 1916, Ch. 632, amends this section by making the fee $6.00 on stock in trade not exceeding $300.00. This Act of 1916 takes effect June 1, 1916.

In my opinion female traders' licenses taken out *before* June 1, 1916, at the existing rate, will be good until May 1, 1917, on which date the rate fixed by the Act of 1916, Chap. 632, will become operative; but all such licenses taken out *after* June 1, 1916, must pay at the rate prescribed by the Act of 1916, Ch. 632.

4. *Additional Liquor Licenses.* The $100 additional license fee required by the Act of 1916, Ch. 594, for saloons or restaurants, for wholesale liquor dealers or jobbers and for bottlers,

applies to *each license issued,* so that if one man has more than one of such licenses, he must pay the additional $100 on each license that he has. This additional license is due June 15, 1916, for the current year.

5. *Druggists* as such are not under the Act of 1916, Chap. 594. But if a druggist desires to take out any of the licenses covered by the law, then he must, of course, pay, in addition to the amounts now required for such licenses, the additional amounts required for each such license by the Act of 1916, Chap. 594.

Very truly yours,
ALBERT C. RITCHIE, *Attorney General.*

—

LICENSES—TRADERS' AND PEDDLERS' LICENSES IN BALTIMORE COUNTY.

November 9, 1916.

Hon. Harry J. Hopkins,
State Comptroller's Office,
Annapolis, Maryland.

DEAR MR. HOPKINS: I beg to reply to your favor of November 3rd, enclosing copy of letter to the Comptroller from the Clerk of the Circuit Court of Baltimore County, in which the latter asks advice as to the proper construction of the Act of 1900, Chap. 218, relating to licenses in Baltimore County.

This Act is certainly not clear, and different constructions of it are possible. It seems to me, however, that the Act should be regarded as containing two separate provisions on the subject of licenses.

The first one is that "no person or resident conducting business in Baltimore County, shall sell any goods or merchandise whatever in Baltimore County unless he shall first take out the license now provided by law."

Under this provision every person, *conducting business in Baltimore County,* who sells goods or merchandise in Baltimore County, must take out the license *now provided by law,*—that is, if he is a hawker and peddler, he must be licensed under Section 24 of Article 56 of Bagby's Code, and if he is a trader, then he must be licensed under Section 38.

This portion of the Act of 1900 apparently applies only to those who *conduct business in Baltimore County.*

The remaining portion of the Act applies, it seems to me, to those who do *not* conduct business in Baltimore County, *and* who reside in any of the counties except Baltimore, Carroll, Howard, Anne Arundel and Harford counties, *and* who wish to sell in Baltimore County *from wagons.* If such persons (a) do not hold in Baltimore County the license "now prescribed by law,"—that is, either a hawkers' and peddlers' license or a traders' license; and (b) wish to sell from wagons in Baltimore County "any merchandise, except fish, fruit and vegetables, except to dealers," then they must take out the local $50 license provided by the Act of 1900.

There are certain conditions under which such persons could sell from wagons in Baltimore County, under the traders' license which they hold from their home counties (Salfner vs. State, 84 Md. 299, 303); but under the Act of 1900 they cannot, in the cases named in the Act, sell from wagons in Baltimore County, on their home county licenses alone, but will be required in addition to take out the $50 local license provided by the Act of 1900.

In other words:

1. Persons conducting business in Baltimore County, no matter where they reside, must always take out either a hawkers' and peddlers' license or a traders' license in Baltimore County, under the general law.

2. Persons who do not conduct business in Baltimore County, but who reside in any of the counties except the five excepted ones, and who hold neither a hawkers' and peddlers' license nor a traders' license in Baltimore County, can in no case sell "any merchandise, except fish, fruits and vegetables, except to dealers," *from wagons* in Baltimore County on their home license alone, but, in cases where this would be permissible under the general law, they must take out the $50 license provided by the Act of 1900.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—TRADING STAMPS—COUPONS REDEEMABLE IN TUITION.

August 16, 1916.

Hon Hugh A. McMullen,
State Comptroller,
Cumberland, Maryland.

DEAR MR MCMULLEN: I beg to reply to your favor of August 11.

In my opinion, the issue of coupons by the Tri-State Business College, redeemable in tuition, in the manner set forth in the College's letter to you of August 10, and in the enclosure with that letter, is not within section 173 of the Act of 1916, ch. 704, relating to trading stamps redeemable for merchandise; and, therefore, I think that the College is not required to take out a license under that section for the issue of such coupons.

Very truly yours,
ALBERT C. RITCHIE, *Attorney General.*

LICENSES—TRADING STAMPS—MANUFACTURERS.

May 17, 1916.

Hon Hugh A. McMullen,
State Comptroller,
Annapolis, Maryland.

DEAR MR. MCMULLEN: I have your favor of May 13th, enclosing copy of letter from Mr. D. Meredith Reese, in which he asks whether a manufacturer who sells his goods mostly to consumers, to whom he gives trading stamps, must pay a license fee of $1,500 or of $50 under the Act of 1916, Chap. 704.

I understand Sec. 172 to provide that:

1. Every person, firm or corporation, who or which is *not* a manufacturer or packer, and who or which sells or delivers trading stamps *to any other person, firm or corporation* in connection with sales *by such other person, firm or corporation,* shall pay a license fee of $1,500.00.

2. *Every manufacturer or packer,* who sells or delivers trading stamps in connection with the sale of his own manufactured

products *to any other person, firm or corporation,* shall pay a license fee of $50.

I understand that Mr. Reese submits the case of a manufacturer who sells his own goods to others, and issues trading stamps with such sales. If that is the case, then I think that the manufacturer in question must pay a license fee of $50.00.

I do not see that it makes any difference whether he sells *mostly* to consumers or not. If he is a manufacturer, and if he sells *his own* manufactured product to *any* person, firm or corporation at all, whether consumers or not, and if he *issues trading stamps* with such sales, then it seems to me that he falls within the class upon which the Act of 1916 imposes the $50 license fee.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

—

LICENSES—TRADING STAMPS—RETAIL STORES.

June 9, 1916.

Adam Deupert, Esq.,
Clerk, Court of Common Pleas,
Court House, Baltimore, Md.

DEAR SIR: I beg to reply to your favor of May 26th, in which you ask my opinion upon the inquiry made by Messrs. Mengel and Smith in their letter to you of May 25, namely, whether a retail tea store which issues trading stamps must take out a trading stamp license under section 173 of the Act of 1916, Ch. 704.

Section 173 only applies (1) to trading stamp companies and (2) to manufacturers or packers who issue trading stamps in connection with the sale of their own manufactured or processed products to others. Whether or not a retail tea store which issues trading stamps must take out a license, depends upon whether the articles which such a store sells, and with which it furnishes the stamps, are its own manufactured or processed

products or not. If they are, then the store must obtain the license, but if the retail store simply procures such articles from others, and neither manufacturers them nor processes them itself, then it is not subject to the license.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—WHOLESALE LIQUOR DEALERS—SALES IN MARYLAND.

August 2, 1916.

Lloyd L. Shaffer, Esq.,
Clerk of Circuit Court,
Cumberland, Maryland.

DEAR MR. SHAFFER: I beg to reply to recent letter asking whether a Pittsburg brewing agency, operating a wholesale house in Cumberland, must take out a non-resident wholesale liquor dealers' license under the Act of 1916, Ch. 704, Sec. 186. As I wrote you, I have been considering the application of section 186 for some time, and this question involves some difficulty.

I think that the section only applies to such non-resident houses as can legally be said to *sell in Maryland,* and very often a non-resident house does not sell in Maryland, when it solicits orders here which are accepted elsewhere, and filled from stock kept elsewhere. I do not know enough about the exact method by which the agency you refer to conducts its business and makes its sales, to enable me to say whether its sales are legally made in Maryland or not. If, however, as I infer from your letter, the agency operates a wholesale warehouse in Cumberland, and sells in Maryland the stock contained in that warehouse, then I should say that it sells in Maryland, within the meaning of section 186, and is required to take out the license.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES — WHOLESALE LIQUOR AND TOBACCO DEALERS — SALES IN MARYLAND.

September 21, 1916.

Lloyd L. Shaffer, Esq.,
Clerk, Circuit Court,
Cumberland, Maryland.

DEAR MR. SHAFFER: The Act of 1916, Ch. 704, Sec. 186, only applies to wholesale liquor dealers who *sell* in Maryland, and if the dealer to whom you refer does not sell beer for the non-resident house, but buys it himself, and then in turn sells it himself to his own customers, he is not required to be licensed under Section 186.

Section 185 applies to non-residents who sell at wholesale tobacco for delivery in this State. I understand that the dealer to whom you refer is a non-resident, who travels and solicits wholesale orders in Maryland, and when he gets them, turns them over to local jobbers, who then buy and receive the tobacco from the non-resident dealer, and deliver it to the Maryland customers. Under these circumstances I think that the non-resident dealer is selling his tobacco at wholesale for delivery in this State, and that he must be licensed under section 185.

Very truly yours,
ALBERT C. RITCHIE, *Attorney General.*

LIQUORS.

LIQUORS—GALLON A MONTH LAW, REPEAL OF AS TO TALBOT AND QUEEN ANNE'S COUNTIES.

May 15, 1916.

Ralph Robinson, Esq.,
Continental Building,
Baltimore, Maryland.

DEAR SIR: I have your favor of May 12, referring to the Act of 1916, ch. 148. I have considered the different suggestions you make relative to this law, its constitutionality and effect, and I beg to give you my views upon each of them.

1. Your first point is that the Act does not apply to Queen Anne's County.

The title indicates that the Act is to repeal the gallon a month law in so far as it relates to shipments to residents or tax-payers of *Talbot and Queen Anne's County.* The Act itself repeals the gallon a month law to the extent that it prohibits shipments into *Talbot County* for individuals, etc., who are residents or tax-payers of *Talbot County and Queen Anne's County,* but preserves the gallon a month law with respect to shipments into *Talbot County and Queen Anne's County* for individuals, etc., who are not residents or tax-payers of *Talbot County and Queen Anne's County.*

Of course, the omission of Queen Anne's County in the first portion of the enacting clause was a mistake, because the law was really intended to apply to both counties; but the question in this connection is whether the language of the Act, as a whole, applies so clearly to Talbot County only, that there is no room for construction, or whether the whole language used shows the legislative intent that the Act should apply to Queen Anne's County as well as to Talbot County.

While the question is certainly not free from doubt, I think that a consideration of the body of the Act, in which both Talbot and Queen Anne's Counties are mentioned together three times, and of the title (which should also be considered,

Waters vs. Laurel, 93 Md. 221, 224), in which both counties are also mentioned together, shows that the legislative intent was to repeal the gallon a month law as to both Talbot and Queen Anne's Counties. In my opinion this is the proper construction and effect of the law.

As bearing upon the question, the following authorities are in point:

Overton vs. Harrington, 126 Md. 32, 35;
Criswell vs. State, 126 Md. 103, 107;
State Tax Com. vs. Harrington, 126 Md. 157, 166;
Purnell vs. Shriver, 125 Md. 265, 270;
Shehan vs. Tanenbaum, 121 Md. 283, 285;
Mitchell vs. State, 115 Md. 360, 364;
Storck vs. Baltimore, 101 Md. 476, 482;
State vs. Tag, 100 Md. 588, 592;
Waters vs. Laurel, 93 Md. 221;
Maxwell vs. State, 40 Md. 273.

2. You next suggest that the Act of 1916 is not merely a repeal of the gallon a month law as to the two counties in question, but is an amendment to the gallon a month law; and that this being so, the Act of 1916 does not comply with Article III, sec. 29, of the Constitution, which provides that "it shall be the duty of the General Assembly, in amending any article or section of the Code of Laws of this State, to enact the same as the said article or section would read when amended."

In the first place, the gallon a month law, Act 1914, ch. 831, is no part of and is not contained in the "Code of Laws of this State," and, therefore, even if the Act of 1916 is an amendment of the Act of 1914, nevertheless it is not an amendment of "any article or section of the Code of Laws of this State."

In the second place, I think that this provision of Art. III, sec. 29, of the Constitution is not mandatory, but is directory only.

Hardesty vs. Taft, 23 Md. 512, 525;
Anderson vs. Baker, 23 Md. 531, 571, 585;
Co. Commrs. vs. Meekins, 50 Md. 28. 45.

Finally, the point that the Act of 1916 is really an amendment of the gallon a month law is based on the fact that the Act of 1916 in terms only applies to "spirituous, vinous, fermented, malt or intoxicating liquors," whereas the gallon a month law in terms applies not only to these but also to "any mixture thereof containing alcohol for beverage purposes." And the result you suggest is that under the Act of 1916 it would be *lawful* to ship into the two counties in question, for residents or tax-payers thereof, "spirituous, vinous, fermented, malt or intoxicating liquors," in any quantities at all, but *unlawful* to ship, to such residents or tax-payers, "any mixture thereof (i. e., of such liquors) containing alcohol for beverage purposes," except under the Act of 1914; and furthermore, that it would be *lawful* to ship "any mixture thereof containing alcohol for beverage purposes" into the two counties in question for persons who are *not* residents or tax-payers of such counties.

The gallon a month law prohibits the shipment of "any spirituous, vinous, fermented, malt or intoxicating liquors, *or any mixture thereof* containing alcohol for beverage purposes, in any quantity whatever." The law then proceeds in sections 1 and 2, to authorize the shipment for personal use of one gallon a month of "spirituous, vinous or fermented liquors," and of six dozen pint bottles a month "of any malt liquor," but does not in this connection authorize the shipment of *mixtures* thereof in any quantities at all. Finally, towards the end of section 2, the carriers are prohibited from delivering packages containing "spirituous, vinous, fermented, malt or intoxicating liquors, *or any mixtures thereof* containing alcohol for beverage purposes," without labeling the same; and the same language is repeated in section 3.

These clauses last mentioned doubtless authorize the shipment of *mixtures* of the liquors in question in quantities not exceeding respectively one gallon a month or six dozen pint bottles a month, although the portions of the law expressly authorizing such quantities to be shipped do not mention *mixtures* at all. If this is the proper construction, and I think it is, it can only be reached by construing the authority to ship

one gallon a month of "spirituous, vinous or fermented liquors" and six dozen pint bottles a month of "any malt liquor" (sections 1 and 2), as including also *mixtures* of such liquors, although such mixtures are not specifically authorized to be shipped at all.

I think that in the same way the words "spirituous, vinous, fermented, malt or intoxicating liquors" in the Act of 1916 should be construed as including "any mixture thereof containing alcohol." In other words, that the same construction ought to be placed upon these words in the Act of 1916 as is placed upon them in the Act of 1914; with the result that the Act of 1916 would permit the shipment into Talbot and Queen Anne's Counties of the liquors in question, *and also of any mixtures thereof* containing alcohol, without restriction as to quantities, provided only they are for residents or tax-payers of such counties.

If this construction is right, then the Act of 1916 is not an amendment of the Act of 1914, in the particular you suggest, but is simply a repeal of the Act of 1914 as to residents and tax-payers of the two counties affected; and in this event no question of non-compliance with Art. III, sec. 29 of the Constitution, with respect to the form of amendatory laws, would arise.

If this construction is not right, then, for the reasons already given, the Act of 1916 would not on this account be void (because the constitutional provision does not apply, and in any event is only directory), and the result would be that the liquors enumerated could be shipped into the counties in question without restriction as to quantities, but that the mixtures thereof could not be so shipped, except in the quantities authorized by the Act of 1914. Even if this distinction exists, it could not, in my opinion, invalidate the Act of 1916. But, as already stated, I do not think that the Act of 1916, properly construed, admits of any such distinction.

3. You next suggest that the subject of the Act of 1916 is not described in its title, because the title indicates a law to *repeal* the Act of 1914 as to residents or tax-payers of Talbot and Queen Anne's Counties, whereas the law itself is an

amendment, in the particulars already discussed, of the Act of 1914. I have already stated the reasons why I do not think that the Act of 1916 is an amendment of the Act of 1914, but that it is simply a repeal of the Act of 1914 so far as shipments to residents or tax-payers of Talbot and Queen Anne's Counties are concerned. The same reasons lead me to the opinion that the Act of 1916 is properly described in its title.

4. The final suggestion you make relates to whether or not the State can authorize shipments of the liquors in question, without restriction as to quantity, to bona fide residents or tax-payers of the two counties affected, and at the same time prohabit the shipment thereof, except in accordance with the gallon a month law, to those who are *not* bona fide residents or tax-payers.

In my opinion this is a lawful classification.

I fully appreciate, of course, the importance to the carriers of the considerations you mention, and it is for this reason that I have troubled you so fully with my views upon them.

In case my opinion shall be requested by the State's Attorney of either of the counties affected, it will be to the effect:

1. That the Act of 1916 is valid legislation.

2. That it applies to both Talbot and Queen Anne's Counties.

3. That it repeals all of the provisions of the gallon a month law so far as concerns shipments to bona fide residents or tax-payers of those two counties, and authorizes the shipment to such bona fide residents or tax-payers of "spirituous, vinous, fermented, malt or intoxicating liquors, or any mixture thereof containing alcohol for beverage purposes," without restriction as to quantity.

4. That the shipment of such liquor, and mixtures thereof as aforesaid, into either of such counties to "corporations, firms, clubs, associations or individuals who or which are not bona fide residents or tax-payers" thereof, except as may be authorized by the Act of 1914, ch. 831, is unlawful; and that the

Act of 1914, ch. 831, still applies to such shipments precisely as if the Act of 1916 had never been passed.

Very truly yours,
ALBERT C. RITCHIE, *Attorney General.*

LIQUORS—GALLON A MONTH LAW DOES NOT APPLY TO "SEABOARD."

July 22, 1916.

Ralph Robinson, Esq.,
Continental Building,
Baltimore, Maryland.

DEAR SIR: I beg to reply to your favor of June 23rd, asking what will be the attitude of the prosecuting officers of the State and counties towards the steamship companies you represent, with respect to the handling by them of the product of the Monumental Brewing Company, known as "Seaboard," in view of the Act of 1914, Ch. 831 (the gallon-a-month law), as amended by the Act of 1916, Ch. 148.

In considering this question I have had the benefit of the views of Mr. Eli Frank, attorney for the Monumental Brewing Company, and the citation of numerous authorities by him, and have also made a careful examination of the authorities myself.

"Seaboard" is a fermented liquor, is for beverage purposes, and contains some alcohol. According to the analysis of Dr. Arthur Lee Browne, it contains .36% of alcohol by volume and .28% of alcohol by weight, or less than ½ of 1% in both cases. It may, I understand, be regarded as entirely non-intoxicating according to the recognized definitions of intoxicating liquors. Grape juice and ginger ale, according to Dr. Browne, frequently contain as much and often more alcohol than "Seaboard."

The Act of 1914, Ch. 831, as amended by the Act of 1916, Ch. 148, prohibits the shipment into certain designated counties of Maryland of "any spirituous, vinuous, fermented, malt or intoxicating liquors or any mixture thereof containing alcohol for beverage purposes," in quantities exceeding one gallon a

month or six dozen pint bottles a month, as the case may be, to any one person.

The authorities are in some conflict as to whether the Maryland Statute should be construed to prohibit the shipment of fermented liquor, which contains any percentage of alcohol at all, however small, or whether the statute applies to intoxicating liquors only.

6 L. R. A. (N. S.), 186, Case Note;
20 L. R. A. (N. S.), 1146, Case Note;
26 L. R. A. (N. S.), 872, 890, 895, Case Note;
34 L. R. A. (N. S.), 890, Case Note;
46 L. R. A. (N. S.), 759, Case Note;
48 L. R. A. (N. S.), 302, 308, Case Note;
Joyce, Intoxicating Liquors, sections 9, 10, 38-42;
Woollen & Thornton, Intoxicating Liquors, Secs. 1-48, 961 n. 73, 962, 963;
23 Cyc. 60, 228, 230;
20 L. R. A. 645, 647;
Sarlls vs. United States, 152 U. S. 570;
Perkins vs. Barr, 126 Md. 91.

In view of this conflict of authority it is, of course, not easy to predict which view our courts would take; and I do not understand that it would be my duty to control any prosecution which the local authorities might deem proper to institute in the premises.

Having regard, however, to what I understand to be the purpose and spirit of the Act of 1914, Chap. 831, and to what seems to me to be the correct interpretation of that act, I will, if asked for an opinion by any of the local State's Attorneys, advise that in my judgment the said Act was not intended to apply to "Seaboard" (as the analysis submitted to me shows "Seaboard" to be constituted), and that in my judgment the common carriers should not be prosecuted for shipping "Seaboard" into counties covered by the Act.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LIQUORS—RIGHT TO CARRY THROUGH DRY COUNTY.

July 6, 1916.

Ernest Ray Jones, Esq.,
Oakland, Maryland.

DEAR MR. JONES: I have your favor of June 3rd.

As I understand it, what you want to stop is the carriage through Garrett County of liquors in wagons and cars operating between points in Pennsylvania and points in Allegany County, the liquor not being sold or used in any way in Garrett County, but being simply carried over the highways of Garrett County.

It is possible that this carriage might, under the Wilson law (upheld in 205 U. S. 93), be stopped by statute, although the decisions seem to be in conflict as to whether the Wilson law applies except when the liquor has reached its destination.

7 Cyc. 440.

But assuming that such a statute, applying only to the *carriage* of liquor through Garrett County, would be valid, it still seems to me that the Act of 1916, Ch. 156, (which I understand is the only statute involved), does not undertake to do this. I would construe that act as applying to liquor carried or brought into Garrett County as the place of destination, and not simply in transit.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

MOTION PICTURE CENSORS.

MOTION PICTURE CENSORS—LIABILITY FOR DAMAGES.

July 14, 1916.

Mrs. Marguerite E. Harrison,
Secretary, Board of Motion Picture Censors,
204 East Lexington Street, Baltimore, Maryland.

DEAR MRS. HARRISON: As requested by you, I have considered the question whether or not the Board of Motion Picture Censors can be held liable for damages to films while under examination by the Board.

I am quite clearly of the opinion that the Board cannot be held liable in such cases. The Board is an agency of the State, exercising public powers, and under the law all of the funds coming into the Board's hands are appropriated to the performance of the Board's public duties, and cannot be diverted to the payment of claims for damages to films.

If, however, any films are damaged through the carelessness of any employee of the Board, then such employee could be sued personally for the damage.

Very truly yours,
ALBERT C. RITCHIE, *Attorney General.*

—

MOTION PICTURE CENSORS—POSTERS.

July 10, 1916.

Charles E. Harper, Esq.,
Chairman, Board of Motion Picture Censors,
204 East Lexington St., Baltimore, Md.

DEAR SIR: I understand from you that on July 8, 1916, Mrs. Harrison, the Secretary of your Board, saw what she considered to be an exceedingly immoral poster at the Dixie Theatre, 312 W. Baltimore Street. She requested the lady manager, who was there, to submit the poster to the Board, in order that the whole Board might pass upon it, but the manager refused to do so.

I beg to advise you that section 15 of the Motion Picture Law provides that "no banner, poster or like advertising matter shall contain anything that is immoral or improper," and that a copy of such poster "shall be submitted to the Board;" and section 20 imposes a fine of not less than $25 nor more than $50 for the first offense of any person who violates any of the provisions of the law. For each subsequent offense the fine is not less than $50 nor more than $100.

Your Secretary was absolutely within her rights in requesting the manager of the Dixie to submit the poster in question to the Board, and in declining to do so the manager violated the law, and subjected herself to the fines above mentioned.

I further advise you that the law gives your Board full power to require any banner, poster or like advertising matter, used in connection with moving pictures, to be submitted to your Board, and that you also have power to adopt a rule to the effect that when such a requirement is made of any exhibitor, then, pending the Board's approval, the poster in question must not be shown.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

MOTION PICTURE CENSORS—PREMIUMS ON BONDS.

August 17, 1916.

Hon. William F. Stone,
Board of Motion Picture Censors,
204 E. Lexington St.,
Baltimore, Maryland.

DEAR MR. STONE: I have your note of August 11, asking whether the premiums on the bonds given by the members of the Board of Motion Picture Censors are proper charges against the funds of the Board. In my opinion they are. This is in accordance with the established practice of the Comptroller's office.

Very truly yours,

ALBERT C RITCHIE, *Attorney Gener*al.

Motion Picture Censors—Traveling and Hotel Expenses.

June 30, 1916.

Hon. William F. Stone,
Treasurer, Md. State Board of Censors,
Western National Bank,
Baltimore, Maryland.

Dear Sir: Answering your request for my opinion as to whether a member of the Board of Censors can charge the funds of the Board with traveling expenses incurred in going from his home elsewhere to your offices in Baltimore and back, and with hotel expenses incurred while in Baltimore, I beg to reply that such expenses are not proper charges against the funds of the Board.

Expenses of this kind must be borne by the member personally. They are not incurred in connection with the business of the Board, and it is only expenses incurred in connection with the business of the Board which can be charged against the funds of the Board. This is not only clear under the censorship law, but it is in accordance with previous rulings by me in similar cases, and with rulings of the State Comptroller in similar cases.

Very truly yours,

Albert C. Ritchie, *Attorney General.*

MOTOR VEHICLES.

MOTOR VEHICLES—DEPUTIES' POWER TO ARREST.

August 21, 1916.

E. Austin Baughman, Esq.,
Commissioner of Motor Vehicles,
11 E. Lexington St., Baltimore, Md.

DEAR MR. BAUGHMAN: I have your favor of August 17th. I presume that your motor cycle men are the deputies provided for by section 137 of the Act of 1916, Ch. 687. Such deputies have the power to arrest drivers of horse drawn vehicles for any violation of the motor vehicle or traffic laws of the State, including the case you mention, where the vehicle is being driven on the wrong side of the road.

Very truly yours,
ALBERT C. RITCHIE, *Attorney General.*

—

MOTOR VEHICLES—FINES and COSTS, AMOUNT AND DISPOSITION OF—SUNDAY HEARINGS—NON-RESIDENT OPERATORS.

June 26, 1916.

E. Austin Baughman, Esq.,
Commissioner of Motor Vehicles,
11 E. Lexington St., Baltimore, Md.

DEAR SIR: I have considered the several questions about which you conferred with me some days ago, and now beg to advise you as to each of them, this opinion to be taken as of July 1, 1916, when the new Motor Vehicle Laws take effect.

1. *Amount of Fines which Justices of the Peace may impose.* The fines which may be imposed for violations of the Motor Vehicle Laws are set forth in connection with the various provisions of those laws. Where a minimum fine is provided for any offense, the Justice has no power to impose any smaller fine than the minimum, and likewise where a maximum fine is provided for, the Justice cannot impose any fine

in excess of the maximum. If section 521 of Article 27 of Bagby's Code, authorizing courts to impose less than the minimum penalty, applies to Justices in the trial of ordinary cases, because of Article 52, sec 12 of the Code, still I do not think it applies to offenses under the Motor Vehicle Law tried before Justices, because sec. 159 of Act 1916, Ch. 687, requires Justices to impose the fines therein provided.

2. *Amount of Costs which may be imposed in trials before Justices of the Peace.* The Act of 1916, Ch. 687, provides, in Section 162, the costs which Justices of the Peace are authorized to charge under the Motor Vehicle Laws. The costs authorized by Section 162 take the place of any and all costs which Justices, under other provisions of law, are entitled to charge in cases not involving violations of the Motor Vehicle Laws. In other words, in cases involving violations of the Motor Vehicle Laws, Justices are authorized to charge the costs set forth in that section, and they are not authorized to charge any other or additional costs.

The same section specifies the fees, and the only fees, which Constables are entitled to charge in cases involving violations of the Motor Vehicle Laws.

The costs thus authorized to be charged are as follows:

	Contested Cases.	*Uncontested Cases.*
Warrant	.25 cents	.25 cents
Trial	.25 cents	
Oath to *all* Witnesses	.10 cents	
Entering Judgment	.10 cents	
Entering plea of Guilty and Judgment		.10 cents
	.70 cents	.35 cents

In addition to these costs, the Constable's fee, where the arrest is made on warrant, is 75 cents, and where the arrest is made without warrant, 25 cents. There is no difference, in

respect to Constable's fees, between contested and uncontested cases. Consequently:

Costs in contested cases, arrest on warrant.....$1.45
Costs in contested cases, arrest without warrant.... .95
Costs in uncontested cases, arrest on warrrant..... 1.10
Costs in uncontested cases, arrest without warrant.. .60

In no event can the costs exceed these amounts, except that the Justices are entitled to charge the following additional amounts, and no more, for the following specific services, if rendered:

For each continuance.....10 cents.
For each release of accused on bail....25 cents.
For each copy of warrant.....10 cents.
For each copy of docket entries.....10 cents.

The amount of costs as aforesaid is not affected by the fact that the Justice may be paid a fixed salary in lieu of fees, as is the case in Baltimore City (Charter Sec. 636), and in some of the counties; or that the Justice may receive his compensation by fees, as is the case in other counties. The costs are the same, regardless of how the Justice is paid his compensation.

3. *Disposition of Fines.* This is covered by Sec. 139 of Ch. 687 of the Acts of 1916. All fines, penalties and forfeitures must be paid over by the Justice, within five days after the receipt thereof, to the Commissioner of Motor Vehicles, together with a statement setting forth the action or proceedings in which such monies were collected, the name and residence of the defendant, the nature of the offense, and the fine, penalty, forfeiture or sentence, if any, imposed.

All monies so received by the Commissioner of Motor Vehicles, except such as shall be necessary for his salary and the expenses of his office, shall be accounted for and remitted by the Commissioner to the State Treasurer, and they then constitute a special fund for road work.

If fines, penalties and forfeitures are not paid over to the Commissioner within five days after the receipt thereof, then the Commissioner is authorized to take, in the name of the State, all steps necessary to enforce their collection. These

steps may be: (a) an action at law to recover the amount of fines withheld; (b) an action on the delinquent official's bond; (c) a proceeding against the delinquent official for malfeasance in office.

In making their returns to the Commissioner, the Justices should, in each case, state separately the amount of fine or penalty imposed and the amount of costs.

4. *Disposition of Costs.* The Motor Vehicle Laws do not provide how costs are to be disposed of. Consequently, this is regulated by local laws, as follows:

(*a*) *In Baltimore City.* All costs paid to the Station House Justices in Baltimore City must be accounted for to the Board of Police Commissioners of Baltimore City (Charter, Sec. 646), and they form part of the Police Pension Fund (Charter, Sec. 750).

(*b*) *In the Counties.* In the counties, this is usually regulated by the local laws applicable to the different counties. In those counties where the Justices are paid fixed salaries, it is usually provided that the costs shall be paid to the County Commissioners. In counties where the Justices do not receive fixed salaries, they may be authorized to retain their costs.

In no event, however, does the Commissioner of Motor Vehicles receive any part of the costs, and he is under no duty with respect to their disposition.

5. *Sunday Hearings.* In Baltimore City, the Station House Justices are expressly authorized to sit on Sundays (Charter, Sec. 630). I know of no similar law applicable to the counties. I think, however, that Section 159 of the Act of 1916, Ch. 687, requiring that persons taken into custody in the counties, "shall *forthwith* be taken" before the nearest Justice, and "be entitled to an *immediate* hearing" authorizes trials to be held on Sundays before Justices in the counties.

7. *Non-resident Operators.* A non-resident operator is only entitled to the benefit in Maryland of his non-resident operator's license when he is driving his non-resident car, displaying the identification markers of the State of its registration; and then

only in case such State permits licensed Maryland Operators to drive Maryland registered cars in such State, without further license. A non-resident operator cannot drive in Maryland a Maryland registered car upon his non-resident operator's license. He can only use his non-resident operator's license in Maryland when driving his non-resident registered car. If he wishes to drive in this State a Maryland registered car, he must secure a Maryland operator's license. (Act 1916, Ch. 687, Sec. 146.)

Very truly yours,
ALBERT C. RITCHIE, *Attorney General.*

—

MOTOR VEHICLES—FINES, DISPOSITION OF.

August 2, 1916.

E. Austin Baughman, Esq.,
Commissioner of Motor Vehicles,
11 E. Lexington St., Baltimore, Md.

DEAR SIR: Confirming my oral conversation with you this morning, I beg to advise you that, in my opinion, all fines imposed for violations of the provisions of section 148 of the Act of 1916, ch. 687, relating to brakes, horns, lights and mufflers, must be paid by the local magistrates to you, as Commissioner of Motor Vehicles.

In my letter to you of July 7 I did not mention section 148, not because fines for its violation are not payable to you, but because I was then only advising you as to the disposition of fines imposed for violation of the provisions of the law relating to speed, licensing, registration and fees.

All fines imposed under any of the provisions of the state law, in cases where no conflict exists between the state law and some local law, ordinance or resolution, must, under the state law, always be paid to the Commissioner of Motor Vehicles.

Very truly yours,
ALBERT C. RITCHIE, *Attorney General*

MOTOR VEHICLES—FOREIGN DIPLOMATS, THEIR CHAUFFEURS EXEMPT FROM ARREST.

August 16, 1916.

E. Austin Baughman, Esq.,
Commissioner of Motor Vehicles,
11 E. Lexington St., Baltimore, Md.

DEAR SIR: You asked me sometime ago whether the chauffeurs of foreign public ministers were exempt from arrest for violations of the state motor vehicle law. My delay in answering has been due to the fact that I have been in communication with the State Department at Washington, in order to ascertain its rulings upon certain Federal Statutes which are applicable, namely, U. S. Comp. Statutes, sections 7611, 7613, 1210.

The cases I submitted to the State Department were the following:

1. When the foreign minister is in the car.

2. When the foreign minister is not in the car, and the chauffeur is operating it alone, (*a*) on business for the foreign minister, (*b*) for his own pleasure.

I have received the following reply from the State Department:

> "After consideration of the matter, the Department does not find that it has made rulings upon all of the situations which you mention, but is pleased to advise you that according to its view and in line with what it understands to be international usage in such matters, the Department is of the opinion that in all the above situations the chauffeur of a foreign minister should be regarded as immune from arrest irrespective of the statutory provisions which have been enacted in the United States and which seem to bear upon the matter. However, after the termination of such employment, the chauffeur of a foreign minister would be subject to arrest for a violation of the law committed during the time of his employment.
>
> "The authorities upon international law have attached great importance to the immunity from local

jurisdiction of the vehicular equipage of foreign diplomatic representatives as essential for their freedom of movement, which constitutes such a large part of their independence in the State where they represent their governments. Therefore, the Department considers, that irrespective of statutory enactments, the latitude in this respect granted by the generally accepted international usage should govern the action of the authorities in the United States in dealing with the servants of foreign diplomatic representatives whose duty it is to convey their employers from place to place. It is recognized that some inconvenience may in given cases result from an exercise of this indulgence, but presumably any dereliction committed by a chauffeur of a foreign minister, if called to the latter's attention through the Department, would result in a satisfactory adjustment of the matter."

I think that these rulings of the State Department should be followed in this State, and that accordingly the chauffeurs of foreign ministers should be regarded as exempt from arrest in all of the above cases.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

MOTOR VEHICLES—LICENSES FOR OPERATORS IN POLICE AND FIRE DEPARTMENTS.

July 15, 1916.

E. Austin Baughman, Esq.,
Commissioner of Motor Vehicles,
11 E. Lexington St., Baltimore, Md.

DEAR SIR: As requested by you, I have considered the application of Section 135 to the motor vehicles and operators of the Police and Fire Departments of Baltimore City.

The motor vehicles of these Departments are not exempted from any provisions of the State law except the provisions of section 141 requiring the payment of registration fees. (See Section 135.) Identification markers, approved by the Com-

missioner of Motor Vehicles, must be secured and displayed, but no fee can be charged therefor.

The operators of the cars of the Police and Fire Departments must be licensed under Section 143, and the fees prescribed by Section 144 must be paid. The law clearly makes no exemption in this case. The operators of these cars must and ought to be licensed just as in the case of all other operators.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

MOTOR VEHICLES—LICENSES FOR OPERATORS CARRYING UNITED STATES MAILS.

August 1, 1916.

E. Austin Baughman, Esq.,
Commissioner of Motor Vehicles,
11 E. Lexington St., Baltimore, Md.

DEAR SIR: As requested by you orally the other day, I have considered the question of whether or not chauffeurs driving motor vehicles engaged in carrying United States mails, either by contract or directly for the Post Office Department, are required to take out operators' licenses under the Act of 1916, Ch. 687, sections 143 and 144.

The license provided for by these sections is required of all persons who operate motor vehicles upon any highway in this State, without any exception whatever, and the license is required under the State's police power, for the protection and safety of its citizens and of the public.

The exemption of Federal agencies from State regulation only applies where such State regulation can properly be said to interfere with or impair the efficiency of the Federal agencies in performing their public functions. I do not consider that the efficiency of carriers by motor vehicle of the United States mails would be interfered with or impaired at all by subjecting them to the requirement of being licensed under the Maryland

law; and inasmuch as the law by its terms clearly applies to them, it is my opinion that they should be required to take out operators' licenses.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

—

MOTOR VEHICLES—LICENSES FOR OPERATORS, SUSPENSION OR REVOCATION THEREOF.

August 31, 1916.

E. Austin Baughman, Esq.,
Commissioner of Motor Vehicles,
11 E. Lexington St., Baltimore, Md.

DEAR SIR: As requested by you, I have considered your power to suspend or revoke operator's licenses without hearing, upon convictions not appealed from.

Section 145 of the Act of 1916, Ch. 687, provides, in the second paragraph, that "whenever any person licensed to operate a motor vehicle upon the highways of this State shall have been convicted of any violation of any of the provisions of this subtitle, said Commissioner may, in his discretion, suspend or revoke the operator's license of such person."

In my opinion this authorizes you, in your discretion, to suspend or revoke the operator's license of such person upon the fact of his conviction alone, without any hearing before you at all. In other words, you may, if you deem proper, treat the fact of conviction as of itself sufficient cause to suspend or revoke the license.

While you have, I think, this discretionary power, yet I hardly think that it would be advisable to adopt a rule that a conviction should always result in the suspension or revocation of the license. I think that you should rather use your judgment in each case as it arises, as to whether you will suspend or revoke without a hearing or whether you will give a hearing first. If, in any case, the circumstances are such that you conclude that there ought to be either a suspension or a revocation by reason of the conviction alone, without any hearing before you, then you have the necessary power.

In all cases, however, which do not involve a conviction, you can only suspend or revoke after a hearing, as provided in the first paragraph of section 145.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

—

MOTOR VEHICLES—LOCAL LAWS AS TO SPEED, REGISTRATION, LICENSES AND FEES REPEALED—DISPOSITION OF FINES.

July 7, 1916.

E. Austin Baughman, Esq.,
Commissioner of Motor Vehicles,
11 E. Lexington St., Baltimore, Md.

DEAR SIR: As requested by you, I have considered the effect of the Act of 1916, ch. 687, known as the General Motor Vehicle Law of Maryland, upon certain local laws, ordinances, or resolutions relating to motor vehicles in the counties, cities and towns of this State, and beg to advise you as follows:

The said law supersedes and repeals (see section 133 and also section 2 entitled "Repeal") each and every local law, ordinance or resolution relating to the following three subjects:

1. The speed at which motor vehicles may be operated. This subject is now controlled throughout the State by sections 149 and 150 of the State law.

2. The registration or licensing of motor vehicles and the operators thereof. This subject is now controlled throughout the State by sections 140, 142, 143, 145, 146 and 147 of the Stato law.

3. The taxation, registration fees, license fees, assessments and charges of every kind for the use of a motor vehicle upon any public highway or highways in this State. This subject is now controlled throughout the State by sections 141, 142 and 144 of the State law.

All existing local laws, ordinances or resolutions upon any of tho subjects covered by any of the above sections of the State law (that is, sections 140, 141, 142, 143, 144, 145, 146, 147, 149 and 150), are superseded and repealed by the State

law, and can no longer be enforced; and any local law, ordinance or resolution which any county, city or town may hereafter pass upon any of the said subjects, will be void and unenforceable.

All prosecutions throughout the State, relating to any of the matters covered by any of the sections above enumerated, must necessarily be taken under the said sections of the State law, and not under any local laws, ordinances or resolutions; and all fines and penalties imposed and collected under such prosecutions by Justices of the Peace, Magistrates or Police Justices must in every case be paid over, within five days after the receipt thereof, to the Commissioner of Motor Vehicles, in accordance with section 139 of the State law.

It is proper to add that section 133 of the State law authorizes incorporated cities and towns within the State to prescribe and enforce "reasonable traffic regulations," applicable to all vehicular traffic, motor vehicles included, provided (1) they do not, so far as motor vehicles are concerned, relate to any of the subjects above mentioned, and provided also (2) they do not involve any charge of any kind for the use of the highways.

Under this power to prescribe reasonable traffic regulations, subject to the two limitations just mentioned, local ordinances or resolutions may doubtless be passed upon subjects not covered at all by the State law, and possibly also, in some cases, upon subjects (other than the three subjects mentioned in the beginning of this letter) which are referred to in the State law.

Rossberg vs. State, 111 Md. 394;
23 Cyc. 72-74.

It is difficult to define in advance the precise extent to which such local traffic regulations will be valid, and the only safe course is to lay down no general rule upon the subject, but to determine in each case as it arises whether any given local regulation that may exist or may be hereafter passed is valid or not. As such cases actually arise in the future I will be glad to give you an opinion upon them.

Of course, all fines imposed under any of the provisions of the State law, in cases where no conflict exists between the State

law and some local law, ordinance or resolution, must always be paid to the Commissioner of Motor Vehicles.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

—

MOTOR VEHICLES—LOCAL LICENSE FEES REPEALED.

November 22, 1916.

Alexander R. Hagner, Esq.,
Attorney for Mayor and City Council of Hagerstown,
Hagerstown, Maryland.

DEAR MR. HAGNER: I beg to reply to your favor of November 20th, in which you ask my opinion as to the effect of Chapters 610 and 714 of the Acts of 1916 upon an ordinance of Hagerstown requiring a license fee to be paid the town by passenger and freight motor busses, for the use by them of the streets.

The Act of 1916, Chap. 610, relating to motor vehicles used in the public transportation of passengers for hire over the streets and roads of incorporated towns and cities, provides in Section 1 that the license fees there prescribed shall be paid to the Commissioner of Motor Vehicles, "and no other additional fees, license or tax shall be charged by the State or any municipal sub-division thereof except the regular property tax in respect to such vehicles or their operation."

The Act of 1916, Chap. 714, contains a similar provision in Section 1 with respect to motor vehicles used in the public transportation of merchandise or freight over the streets and roads of incorporated towns and cities.

By Section 3 of both Acts the fees are to be accounted for by the Commissioner to the State Treasurer, and the State Treasurer is to pay annually "to the Mayors of the respective towns and cities in the State of Maryland all moneys collected for the use of the roads and streets of said towns and cities, and all such moneys so collected shall be used for the maintenance of said roads and streets over which said motor vehicles shall operate."

In my opinion these Acts repeal any ordinances of the town of Hagerstown imposing fees for the use of the streets upon passenger and frieght motor busses operated for hire, and no fees can now be legally collected under ordinances of this kind.

You will observe, of course, that the town of Hagerstown will ultimately receive the fees imposed by the two Acts in question for the use of your roads and streets.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

MOTOR VEHICLES—REGISTRATION CERTIFICATE, NO PENALTY FOR NOT CARRYING.

July 14, 1916.

E. Austin Baughman, Esq.,
Commissioner of Motor Vehicles,
11 E. Lexington St., Baltimore, Md.

DEAR SIR: As requested by you, I have considered the question whether or not any penalty is provided for the violation of those provisions of Section 140 of the Motor Vehicle Law, Act 1916, Ch. 687, requiring that certificates of registration "shall at all times be carried upon such motor vehicle, and shall be subject to examination upon demand by any proper officer as hereinafter provided:"

This requirement as to *registration certificates,* with the omission of the words "as hereinafter provided," seems to have first appeared in section 133 of the Act of 1910, Ch. 207, p. 171 (Bagby's Code, Vol. II, Art. 56, Sec. 135), along with the provision of Section 137 of the same Act requiring *operator's license certificates* to be similarly carried and exhibited (Bagby's Code, Vol. II, Art. 56, Sec. 139). Section 140*o* of the Act of 1910, Ch. 207, prescribed a penalty for the violation of both of these requirements, as well as other requirements of the law, the fine being not more than $50 for the first offense of failing to carry and exhibit the registration certificate, and not more than $500 for the first offense of failing to carry and exhibit the operator's license certificate. At that time there was, therefore, no difficulty about prosecuting for any violation of the

provisions of either of these sections, and Hendrick vs. State, 115 Md. 552, is an instance of a prosecution under both.

The law as it thus stood was not affected by the Act of 1912, Ch. 133, nor by the Acts of 1914, Ch. 564 and 832.

The Act of 1916, Ch. 687, however, repealed and re-enacted all three of these Sections 133, 137 and 140*o* of the Act of 1910, Ch. 207, as the same were contained in Bagby's Code, Vol. II, Art. 56, that is, sections 135, 139 and 156 of said Article 56. Section 135, relating to registration certificates, became Section 140 of the present law, section 139 relating to operator's license certificates become Section 143 of the present law, and some of the provisions of Section 156 became Section 161 of the present law. But the provisions of Section 156 imposing fines for violations of the old law were omitted entirely from Section 161 of the new law, the scheme of the new law being to have each section provide the fines for its own violation.

The scheme was carried out with respect to most of the requirements of the present law. For instance, the failure to carry and exhibit operator's license card certificate, as required by Section 143, is penalized at the end of that section.

Section 140, however, requiring the registration certificate to be carried and exhibited, contains no penalty for failure to do so, and there is now no other provision in the law imposing a penalty for such offense.

The offense of failing to carry and exhibit the registration certificate is purely statutory, and it is elementary that no fine can be imposed for the violation of a statutory offense, unless the statute provides for one. Inasmuch as there is no statute providing any fine or penalty for failure to carry the registration certificate required by Section 140, I am of opinion that no fine or penalty can be imposed for failure to observe this requirement of section 140.

The omission should be corrected at the next session of the Legislature.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

MOTOR VEHICLES—REGISTRATION OF HOSPITAL AMBULANCES.

December 21, 1916.

E. Austin Baughman, Esq.,
Commissioner of Motor Vehicles,
11 E. Lexington St., Baltimore, Md.

DEAR SIR: I beg to confirm the oral opinion I gave you the other day with reference to the classification of hospital automobile ambulances.

The Act of 1916, Chap. 687, Sec. 141, Class A, requires a registration fee of fifty cents per horse power "in the case of all motor vehicles having pneumatic tires," and Class F provides that the fee shall be $1.00 per horse power "in the case of motor vehicles operating for the purpose of transporting persons for hire upon any of the public highways of this State, other than more vehicles operating on fixed schedules."

Whenever a motor vehicle operates at all for the purpose of transporting persons for hire, and has not a fixed schedule, then it comes under Class F, even though it may also carry persons free. Only those motor vehicles which do not operate for hire at all come under Class A. Motor vehicles which operate both free and for hire, and have no schedule, necessarily come under Class F. The test is, whether they operate for hire. If they do, they come under Class F, and they cannot be taken out of Class F because they may also carry persons free.

The extent to which they carry free is immaterial. If they carry at all for the purpose of hire, then Class F. applies. Otherwise a motor vehicle carrying for hire, could have itself classified under Class A by simply also carrying persons free.

I understand that the hospital automobile ambulances, which, of course, have no fixed schedules, do a large percentage of their carrying free, but that they also operate for the purpose of transporting persons for hire. The fact that they do this necessarily puts them in Class F.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

MOTOR VEHICLES—REGISTRATION OF JITNEYS—FIXED ROUTES AND SCHEDULES.

October 26, 1916.

William Curran, Esq.,
463 Calvert Building,
Baltimore, Maryland.

DEAR MR. CURRAN: I beg to reply to your favor of October 18th.

I understand from your letter that the motor vehicles to which you refer carry passengers for hire, and are commonly known as jitneys; that they have a fixed route; that they have not, however, a fixed schedule, in the sense of fixed hours for arriving at and departing from the termini and intermediate points on their route, but that these hours depend upon the extent and exigencies of traffic.

Under these circumstances, you ask my opinion as to whether these jitneys should be registered under the Act of 1916, Ch. 687, Sec. 141, Class F, or under the Act of 1916, Ch. 610.

Class F of Chapter 687 provides for registering, according to horse power, motor vehicles which transport persons for hire "other than motor vehicles operating on fixed schedules, the registration fees of which are fixed by other specific provisions of law."

The other specific provisions of law referred to are Chapters 610 and 714 of the Acts of 1916.

Chapter 610 requires the granting of permits by the Public Service Commission to motor vehicles used in the transportation of persons for hire, and for the registration of such motor vehicles by the Commissioner of Motor Vehicles; and the application for such registration must, among other things, state "the route on which said motor vehicle is to be used," and "the schedule under which it shall be operated during the ensuing year" (Section 1). Such motor vehicles may operate "only on the route and schedule set forth in said application during the year," and may not change "said schedule or route" without permission.

Chapter 714 contains similar provisions as to motor vehicles used in the public transportation of freight.

You contend that the jitneys to which you refer do not operate on "fixed schedules," and, that, therefore, they are not included among the motor vehicles exempted from Class F of Chapter 687, but should be registered under Class F.

I am unable to agree with this contention. In my opinion jitneys such as you describe must be registered under Chapter 610, and not under Class F of Chapter 687.

The object of Chapter 610, and of its companion measure, Chapter 714, was to protect the highways over which motor vehicles with fixed routes operate. This object is shown by Section 3 of both chapters, whereby the fees are distributed among the counties, cities and towns, to be "used for the maintenance of said roads and streets over which said motor vehicles shall operate." This object should be gratified by bringing under Chapter 610 such motor vehicles for passenger hire as, like yours, have fixed routes, as far as this is legally possible.

I think that the proper construction of Section 1 of Chapter 610, requiring motor vehicles used in transporting passengers for hire, to state, in their applications for registration, their route and their schedule, is that whenever such motor vehicles have a route, they must also have a schedule. In other words, the route and the schedule must go together, and no permit can be granted and no registration had of motor vehicles which have a route, unless they also have a schedule.

If this is not the proper construction, then it would be impossible to compute the tax, which Chapter 610 evidently intends to be imposed upon such motor vehicles having fixed routes; because the tax, under Section 1, is computed by multiplying the rate per passenger seat with the total number of miles the motor vehicle will travel. The total number of miles the motor vehicle will travel cannot be ascertained unless the mortor vehicle has a schedule, and hence the motor vehicle having a route must also have a schedule, in order that the tax may be computed and imposed, as the law contemplates, upon motor vehicles carrying passengers for hire over fixed routes.

I am advised that the above is the construction of the Public Service Commission, which, under Sections 1 and 4 of Chapter 610, will issue no permits to jitneys having a route unless they also have a schedule.

This is also the construction of the Commissioner of Motor Vehicles, who, under Section 141 of Chapter 687, has "authority, in disputed cases, to determine the classification in which any motor vehicle belongs;" and he has determined that motor vehicles of the kind you refer to, do not come under Class F of Chapter 687, but do come under Chapter 610.

Being of opinion, therefore, that all motor vehicles carrying passengers for hire which have a fixed route, must under the law also have a fixed schedule, it follows that such motor vehicles as you refer to are not under Class F of Chapter 687; because such motor vehicles as have fixed schedules do not come under Class F, and your motor vehicles must have fixed schedules as the necessary result of their having fixed routes. If they do not have fixed schedules, they cannot either receive a permit or be registered, and hence cannot operate. Therefore, such motor vehicles come under Chapter 610.

I understand that the Public Service Commission, acting under its General Counsel's opinion of July 2, 1916, has ruled that Chapter 610 does not apply to motor vehicles which secured their licenses before July 1, 1916, until the expiration of such licenses on December 31, 1916.

On and after January 1, 1917, therefore, the situation will be that motor vehicles carrying passengers for hire cannot receive a permit from the Public Service Commission, and cannot be registered by the Commissioner of Motor Vehicles, unless they have both a fixed route and a fixed schedule.

The question of what shall constitute a fixed schedule, is, I think, in the first instance for the Public Service Commission, in its discretion, to decide, under Section 4 of Chapter 610. I may say, however, that I do not think that the words "fixed schedules" in Class F of Chapter 687, necessarily mean fixed hours for arrival at and departure from the termini and intermediate points on the route. I think that the words "fixed

schedules" should not be construed too strictly, but that motor vehicles will have fixed schedules if they aim to make a certain number of trips per day, over their route, even though the hours for arrival and departure are not attempted to be scheduled at all.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

Note.—On January 5, 1916, in the case of State vs. William M. Smith, Criminal Court of Baltimore, Judge Soper held that jitneys come under Chapter 610 of the Acts of 1916. Opinion published in full in Daily Record, January 10, 1917.

MOTOR VEHICLES—REGISTRATION NUMBER OF HOME STATE AND DISTRICT OF COLUMBIA.

July 7th, 1916.

E. Austin Baughman, Esq.,
Commissioner of Motor Vehicles,
11 E. Lexington St., Baltimore, Md.

DEAR SIR: As requested by you, I have considered the matter referred to in Mr. J. Charles Linthicum's letter of June 30, 1916, to Mr. Zouck, namely, the effect of a District of Columbia registration number upon a non-resident car in addition to the registration number of the owner's home State.

District of Columbia registrations are not recognized in Maryland, both because there is no reciprocity between Maryland and the District of Columbia, as provided by section 146 of the Maryland law, and because in any event section 134 provides that the word "state" in section 146, relating to non-resident owners whose cars are registered in their home states, shall not includo the District of Columbia.

The registration in tho owner's home State (the District of Columbia excepted) will be recognized in Maryland, under sec. 146, if reciprocity exists between such home state and Maryland, provided the car displays its home registration number and "none other." I do not see any escape from this last requirement under the terms of section 146.

Consequently, if a non-resident car displays in Maryland the registration number of the owner's home state and also the registration number of the District of Columbia, the operator is subject to arrest in Maryland.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

MOTOR VEHICLES—RIGHT OF WAY AT INTERSECTING STREETS AND ROADS.

July 14, 1916.

E. Austin Baughman, Esq.,
Commissioner of Motor Vehicles,
11 E. Lexington St., Baltimore, Md.

DEAR SIR: As requested by you, I have considered the effect of the conflict between Section 14 of Ordinance No. 188 of the Mayor and City Council of Baltimore, approved July 10, 1908, which provides: "On all public streets and highways of the city all vehicles going in a northerly or southerly direction shall have the right of way over any vehicle going in an easterly or westerly direction," and Section 163 of the State Motor Vehicle Law, Act 1916, Chapter 687, which provides: "All vehicles shall have the right of way over other vehicles approaching at intersecting roads from the left, and shall give right of way to those approaching from the right."

The word "vehicle" as used in this latter clause of the state law clearly means "motor vehicles," and motor vehicles, under Section 134, are defined as embracing "all vehicles, including motor bicycles or motorcycles, propelled by any power other than muscular power, except such vehicles as run only upon rails or tracks." The word "roads" as used in said clause is defined, in Section 134, as including "any highway or thoroughfare of any kind used by the public, whether actually dedicated to the public and accepted by the proper authorities or otherwise."

Consequently, there is a clear conflict between the city ordinance and the state law with respect to the right of way of motor vehicles at intersecting streets in the City of Baltimore.

They cannot stand together, but one or the other must give way.

Section 133 of the state law provides that the provisions of the state law "are intended to be state wide in their effect," and that this provision shall not be deemed as repealed by any act hereafter passed unless "expressly referred to and repealed in terms, or some other clear evidence given of an intent on the part of the General Assembly to change the policy of the State herein declared." Incorporated cities and towns are, however, permitted to prescribe and enforce "reasonable traffic regulations * * * applicable to all vehicular traffic, motor vehicles included," etc.

While incorporated cities and towns may thus prescribe "reasonable traffic regulations," this authority does not extend to any subject which is regulated by the state law, and as to which the state law shows the Legislature's intent that the state regulation shall be exclusive and supreme over contrary local regulation.

The provisions of Section 163 of the state law, as to right of way at intersecting streets, are embraced in a separate part, entitled "Rules of the Road," and clearly apply and were intended to apply to all motor vehicles operating upon any highway or street in this State; and Section 2 of the state law, title "Repeal," provides that "all acts and parts of acts, laws and parts of laws, ordinances and parts of ordinances, inconsistent herewith or contrary hereto, be and the same are hereby repealed to the extent of such inconsistency."

In my opinion, these circumstances, taken in connection with the provisions of Section 133, already referred to, make it clear that the state law supersedes the city ordinance as to right of way of motor vehicles at intersecting streets and highways, and that this subject, so far as motor vehicles in Baltimore City are concerned, is now governed by Section 163 of the state law and not by section 14 of the city ordinance.

The same is true with respect to any local law, ordinances or resolutions which may exist elsewhere in the State on the same subject. All are superseded by section 163 of the state

law, which now contains the requirements, and the only requirements in force anywhere in this State with respect to the right of way of motor vehicles at intersecting roads, highways and streets.

It has been suggested that if four motor vehicles, one coming from each direction, reach a street intersection at the same time, then under the state law none of them will have the right of way, because each much give the right of way to the motor vehicle approaching from the right, so that all must stop, and none can proceed without mutual agreement.

This may be true. It is one of those instances which sometimes occur in applying statutes, the language of which does not cover every conceivable case which may arise. When four motor vehicles, each coming from a different direction, do meet at the same moment at intersecting streets in Baltimore City, it will probably in most cases be at a crossing regulated by a traffic officer, and there will then be no difficulty, because as a practical matter the traffic officer will control the right of way. Where there is no traffic officer, the situation will simply have to be dealt with by the common sense of the driver, and practically there ought to be no real trouble.

Of course, the Legislature makes the laws, and neither your Department nor mine has anything to do with the question of whether the Legislature acted wisely in superseding all local laws on the subject of right of way of motor vehicles at intersecting highways by the state law; but in this connection it may be noted:

1. The city ordinance, giving the absolute right of way to north and south traffic, is hardly calculated to make cars going north and south slow down at crossings, and, therefore, if cars going east and west fail to slow down, as they should do, the danger of accident is increased. But under the state law every car must give the right of way to cars approaching from the right, and this should make all cars, from no matter what direction they may be coming, slow down at every crossing, in order to see whether another car is approaching from the right—thus decreasing the danger of accident.

2. Where a street running northeasterly intersects a street running northwesterly, then a car going northeasterly on one and northwesterly on the other are both "going in a northerly direction," and neither would have the right of way under the city ordinance, but under the state law there would be no difficulty. It may be observed that this is a case which, under the city ordinance, would have to be regulated by the traffic officer or by the practical sense of the operators, exactly like the case, under the state law, of the four cars meeting at the same corner at the same time.

3. The east and west streets in Baltimore are now well paved, whereas formerly the north and south streets only were usually the well-paved streets. There is really no reason why north and south traffic should have precedence over east and west traffic. For example, under the city ordinance, traffic on Baltimore Street has to give the right of way to traffic on all streets which cross it.

4. If the subject is one for local regulation, then such regulations might and doubtless would differ in different localities of the state. But a state-wide law, which simply requires that at every crossing every motor vehicle must be on the look-out for motor vehicles on the right, is uniform throughout the state, is easily known and understood, and can be easily observed. There will, moreover, be no difficulty in ascertaining directions, as must be the case, more or less, where the north and south traffic has the right of way.

These considerations simply tend to show why the Legislature may have thought it better to have one uniform state law upon this subject; but in any event it is, I think, clear that the state law does supersede all inconsistent local laws, ordinances and resolutions.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

August 14, 1916.

E. Austin Baughman, Esq.,
Commissioner of Motor Vehicles,
11 E. Lexington St., Baltimore, Md.

DEAR SIR:—I beg to reply to your favor of August 12th.

Under the Act of 1916, Ch. 687, section 149, a rate of speed greater than thirty-five miles an hour is always unlawful.

Rates of speed below thirty-five miles an hour may or may not be unlawful, according to the circumstances. If the speed is reckless, or if it is greater than is reasonable and proper, having regard to the width, traffic and use of the highway, or to danger to property, life or limb, or to damage to the highway, then it is unlawful. Otherwise, the rate of speed is lawful. Whether a less rate than thirty-five miles an hour is lawful or unlawful in any particular case, depends, therefore, upon the facts.

Whenever it is shown that the rate exceeds twelve miles an hour in the thickly settled or business parts of cities, or eighteen miles an hour in the out-lying or not thickly settled parts of cities, or twenty-five miles per hour in the open country, then the rate is presumed to be unlawful; and in such case the burden of proof is shifted to the operator to show that the rate, although exceeding twelve or eighteen miles or twenty-five miles an hour, was nevertheless not reckless or not greater than was reasonble and proper under the circumstances.

The law is, I think, quite clear on these points, and in fact Judge McLane has so held in the case of State vs. Offut, decided March 10, 1915, Circuit Court for Baltimore County.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

POLICE BOARD OF BALTIMORE CITY.

POLICE BOARD—RETIREMENT OF OFFICER ALREADY RESIGNED.

November 17, 1916.

Josiah A. Kinsey, Esq., Secretary,
Board of Police Commissioners,
Court-House, Baltimore, Md.

DEAR SIR: I beg to reply to your recent request for my opinion as to whether the Police Board is authorized to place Mr. Louis V. Paff on the retired list now because of disability resulting from injuries incurred in the discharge of duty in 1890.

I understand that after receiving the injuries in question Mr. Paff, who was a patrolman, resigned in May, 1898, and that the Board accepted his resignation. He made no application for retirement on pension.

The Legislature, however, by the Act of 1902, Chap. 280, authorized the Board to pay Mr. Paff a pension, and the Board did this, under that Act, until August, 1916, when it was advised by Mr. Vernon Cook, then counsel to the Board, that all acts providing for special pensions were void; whereupon the Board notified Mr. Paff, and all others who were the beneficaries of special pension acts, that such pensions would be discontinued.

The validity of these special pensions acts is now involved in litigation, and pending the result of that litigation your Board is paying no pensions under special acts; but I understand that your Board wishes my opinion as to whether Mr. Paff can now be placed on the retired list for the injuries received by him in 1890, and receive a pension in that way.

The law authorizing retirement on pension is Section 777 of the Baltimore City Charter, as enacted by the Act of 1912, Chap. 567. This section provides for retiring on one-half pay "any officer of police, policeman, detective, clerk or turnkey" appointed by the Board, provided he shall have served faithfully for sixteen years, or shall have been permanently disabled in the discharge of his duty.

Mr. Paff is, of course, not an officer of police or a policeman, because he resigned as such in 1898, over sixteen years ago. Since he has thus resigned, he cannot now be retired. The Board can only retire persons who are officers at the time of retirement. They cannot retire as an officer anyone who, by resignation, has long since ceased to be an officer.

In my opinion, therefore, Mr. Paff cannot now be retired because of the injuries received by him in 1890.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

POLICE BOARD—RETURN OF MONEY STOLEN.

November 23, 1916.

Josiah A. Kinsey, Esq., Secretary,
Board of Police Commissioners,
Court-House, Baltimore, Md.

DEAR MR. KINSEY: I have investigated the right of Benjamin Franklin to the sum of $90.00 taken from Samuel Cohen and James Hannan at the time of their arrest for larceny in April, 1916.

I understand that Cohen and Hannan were arrested for picking the pocket of Mr. Charles Gemmecker of $90.00. This sum was found on them at the time of their arrest, and taken from them and is now in your property room. Cohen was released on bail, and shortly thereafter Mr. Gemmecker received a registered letter containing $90.00. I assume that this sum was returned to Mr. Gemmecker by Cohen and Hannan, or at their instance. Afterwards, Cohen and Hannan were convicted, and both are now serving prison terms. While in prison, each man, under date of July 18, 1916, addressed the following communication to the Police Board:

> "I, the undersigned, do hereby sell, transfer and assign unto Benjamin Franklin all the money and personal effects taken from me at the time of my arrest, and I hereby authorize and empower you to accept his receipt therefor."

Mr. Harry B. Wolf, attorney for Franklin, has requested the payment of the $90.00 to his client, in accordance with these assignments.

Before paying the money to Franklin, I think that you should secure a letter to your Board from Mr. Gemmecker to the following effect:

> "I hereby certify to your Board that I have been repaid the sum of $90.00 stolen from me in April, 1916, for the larceny of which Samuel Cohen and James Hannan were convicted by the Criminal Court of Baltimore, and are now serving sentence. I have no interest of any kind in any money or effects taken from said Cohen and Hannan at the time of their arrest, and consent to the payment or delivery thereof to them, or to their assignee."

Upon the receipt of a letter of this kind from Mr. Gemmecker, I think that your Board will be fully authorized to pay the $90.00 in question to Franklin, provided, of course, you are satisfied that the assignments to Franklin were executed by Cohen and Hannan.

Mr. Wolf can doubtless satisfy you upon this point, as I believe he saw the assignments signed. He has the assign ments, and will present them to you.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

POLICE BOARD—STATION HOUSE JUSTICES—DOCKETS.

October 10, 1916.

Josiah A. Kinsey, Esq., Secretary,
Board of Police Commissioners,
Court-House, Baltimore, Md.

DEAR SIR: I received your favor of October 4th, asking whether Police Justices in Baltimore City are entitled to retain their Dockets, as their own property, upon the expiration of their terms of office; and if not, whether the Dockets should remain at the Station Houses or must be deposited with the Clerk of the Baltimore City Court.

There is no doubt at all that the Police Justices are not entitled to retain their dockets as their own property. In State vs. Wyman, 2 G. & J. 254, 282, the Court of Appeals held that "the records of our courts of justice are to be considered as public property," and Justices of the Peace, in exercising their criminal jurisdiction, are unquestionably acting as courts of justice.

McBee vs. Fulton, 47 Md. 403, 425-6;
Crichton vs. State, 115 Md. 423, 434;
State vs. Chaney, 93 Md. 71, 74.

And in State vs. Chaney, 93 Md. 71, 74, the court said: "It is the settled policy of the law that the original papers relating to the proceedings before each tribunal, even that of a Justice of the Peace, should be kept together, and with its dockets and records, where there are records, should constitute its archives."

The dockets, being thus public records, cannot be treated by the Justices as their private property, and the only question is, where they must be deposited.

Section 648 of the Baltimore City Charter, and sections 18 and 19 of Article 52 of Bagby's Code, require Justices of the Peace in Baltimore City to deliver their dockets, upon the expiration of their terms, or when they die, resign or are removed, to the Clerk of the Baltimore City Court. These are the only provisions of law I find upon the subject. I have examined the history of these sections as contained in the following acts:

See Act 1864, Ch. 179; Act 1870, Ch. 39; Rev. Code 1878, Art. 68, Sec. 59 and 60; Code P. G. L. 1888, Art. 52, Sec. 15 and 16; Code P. L. L. 1888, Art. 4, Sec. 631; Act 1888, Ch. 74; Baltimore City Charter 1893, Sec. 631; Baltimore City Charter 1906, Sec. 648; Act 1912, Ch. 823; Act 1914, Ch. 242; Baltimore City Charter 1915, Sec. 648; Bagby's Code, Art. 52, Sections 18 and 19; Art. 17, Sec. 42.

After a good deal of consideration, I have reached the conclusion that these provisions apply to Police Justices as well as civil Justices. The language of the statutes is clearly broad

enough to include both, and the Police Justices are simply those Justices whom the Governor has selected, from the whole list of his magistrate appointments, to sit at the Station Houses (Charter, Section 630), and the Governor may select other Justices from time to time for that purpose (Charter, Section 635).

I, therefore, think that under the above provisions of law the Police Justices in Baltimore City are required to deposit their dockets with the Clerk of the Baltimore City Court.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

TAXATION.

(Collateral Inheritance Tax Opinions Included.)

TAXATION — COLLATERAL INHERITANCE TAX — APPRAISAL IS FINAL AS TO VALUE OF PROPERTY.

October 18, 1916.

Hon. Hugh A. McMullen,
State Comptroller,
Cumberland, Maryland.

DEAR MR. MCMULLEN: I beg to reply to your favor of October 14th, enclosing letter of the same date from Mr. Hervey W. Shuck, Register of Wills for Allegany County.

I understand that the real estate of Mr. Francis M. Gramlich was duly appraised on March 9, 1915, at $23,675.00, and the collateral inheritance tax paid on that amount and duly returned to the Comptroller; that on October 4, 1916, the same real estate was sold by Trustees for $22,126.25; and that in paying the collateral inheritance tax now due upon $3,000 of personal property about to be distributed, the Executors claim a credit of $1,548.75, being the difference between the appraisal of the real estate of $23,675, and the selling price thereof of $22,126.25.

The Executors are not entitled to this credit. After providing for the manner of appraising real estate for collateral inheritance tax purposes, Bagby's Code, Art. 81, Sec. 130, provides:

> "The appraisement thus made shall be deemed and taken to be the true value of the real estate upon which the said tax shall be paid."

A price obtained for the real estate at a Trustees' sale, one year and a half after the appraisal, and after the tax on the appraisal has been paid and returned, cannot be substituted for the amount of the appraisal, which, under Section 130, is final as to the value of the real estate for collateral inheritance tax purposes.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

TAXATION—COLLATERAL INHERITANCE TAX—DEDUCTION OF ADVANCES TO PAY DEBTS.

October 18, 1916.

J. Enos Ray, Jr., Esq.,
State Auditor,
Garrett Building, Baltimore, Md.

DEAR MR. RAY: I beg to reply to your favor of October 13th, transmitting to me an inquiry from the Register of Wills of Frederick County.

I understand that in the Estate of Christian Smith there is approximately $5,000 of personal property, $10,426 of debts and real estate appraised at $13,000, and that it will, therefore, be necessary for approximately $5,426 of the real estate to be sold, and the proceeds applied, with the $5,000 of personal property, to the payment of the debts, or else for the collateral heirs to advance this $5,426. Under these circumstances, you ask whether the Register should collect the collateral inheritance tax on the entire appraised value of the real estate, $13,000, or whether the amount which the collateral heirs, who will receive this real estate, may advance for the debts, should be first deducted from the appraised value, and the tax paid upon the balance.

Bagby's Code, Art. 81, Sec. 120, provides that estates passing to collaterals "shall be subject to a tax of five per centum in every hundred dollars *of the clear value of such estate.*" This means that the collaterals pay the tax upon the value of the estate which they receive.

Therefore, if the collaterals advance nothing, and part of the real estate is sold to pay the debts, the tax will only be paid on the value of what is left, because that is what they receive. If instead of having part of the real estate sold, the collaterals themselves advance the amount necessary for the debts, then I think that the amount so advanced should be deducted from the appraisal of the real estate, and the tax paid upon the balance. In such case, the clear value of the real estate which the collaterals receive, and which is the thing to be taxed, will

not be the total appraisal of $13,000, but it will be that amount less the advances made by the collaterals for the debts.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

—

TAXATION—COLLATERAL INHERITANCE TAX—ESTATES VALUED AT $500 ARE SUBJECT TO.

October 5, 1916.

Randolph Barton, Jr., Esq.,
207 North Calvert Street,
Baltimore, Maryland.

DEAR MR. BARTON: I beg to reply to your request for my opinion as to whether a distributive interest of less than $500 may be subject to the collateral inheritance tax.

It seems to me that the word "estate," occurring in the first, fourth and eleventh lines of Section 120 of Article 81 of the Code, should be given a different meaning from the word "estate" occurring in the fifteenth line, after the word "provided."

The first three references are to the estate *which passes to the collateral,* that is, the collateral's distributive share, which is taxed to the extent of 5% of its clear value.

The last reference is to the estate *left by the testator,* that is, all the property he left.

If the testator's whole estate is valued at less than $500.00, then no distributee pays any tax at all. But if his whole estate is valued at more than $500.00, then the tax is imposed upon what passes to the collaterals, and it makes no difference in such case whether the estates passing to the collaterals, that is, their respective distributive shares, are more or less than $500.00.

I have already advised the Registers of Wills of Baltimore City and of Harford County to this effect.

It is, of course, true, as you say, that the thing which is taxed is the clear value of the estate which passes to the collaterals, but the question here is not on what interest the tax, when payable, must be computed, but what must be the value of the

testator's estate, before any tax can be charged at all; and this value, it seems to me, must be $500.00.

In the illustration you give of a testator leaving a $1,000 estate, with $900 of debts, and $100 for distribution to collaterals, the result would, of course, be that this $100 would be subject to the tax.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

TAXATION—COLLATERAL INHERITANCE TAX—ESTATES TAKING EFFECT AFTER GRANTOR'S DEATH.

March 25, 1916.

Hon. Hugh A. McMullen,
State Comptroller,
Annapolis, Maryland.

DEAR MR. MCMULLEN: I received your favor of March 9th, enclosing letter from Thomas E. Hilliard, Register of Wills for Washington County, with reference to collateral inheritance tax on the estate of Sarah J. F. Cushwa.

I understand from Mr. Hilliard's letter that Mrs. Cushwa, on February 12, 1915, deeded certain property to Richard E. Cushwa and Mary Susan Cushwa, reserving a life estate in herself, and reserving also power to revoke the grant during her life by deed, but not by will. She died in August, 1915, without having revoked the grant.

A future estate of this kind was void at common law, but is now valid under the Statute of Uses; and according to the better view the future estate, that is, the estate in Richard E. Cushwa and Mary Susan Cushwa, did not arise, or at least did not take effect in possession, until the death of Mrs. Cushwa.

Tiffany, Real Property, Part II, Chap. 6, Sec.134;
Rogers vs. Eagle Fire Ins. Co., 9 Wend. 611.

Bagby's Code, Art. 81, Sec. 120, provides that all estates "transferred by *deed,* will, grant, bargain, gift or sale, *made or intended to take effect in possession after the death of the grantor*" are subject to the collateral inheritance tax.

While the question is not entirely free from doubt, yet since the deed from Mrs. Cushwa to Richard E. Cushwa and Mary

Susan Cushwa created an estate in them which did not, in my opinion, take effect in possession until after the grantor's death, I think that the estate is now subject to the tax.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

TAXATION—COLLATERAL INHERITANCE TAX—EXECUTOR'S LIABILITY.

March 22, 1916.

Howard W. Jackson, Esq.,
Register of Wills,
Court House, Baltimore.

DEAR MR. JACKSON: I have your favor of March 20th, with respect to collateral inheritance tax on the estate of L. Clementina Grace, together with copy of Mr. Brundige's letter to you and of your reply to him.

There is no doubt at all that the estate of L. Clementina Grace, passing to her sisters Mary F. Grace and Mrs. Elizabeth Powell, was liable for the collateral inheritance tax, and while it is true that the tax is a lien on real estate for only four years (Bagby's Code, Art. 81, Sections 131, 132, 135), which have now expired, yet the amount of the tax is still a debt due the State of Maryland.

The administratrix of L. Clementina Grace distributed the estate, without deducting the tax, to herself (Mary), and her sister, Mrs. Powell. Mrs. Powell and Mary's estate are both liable, *as distributees,* and as such may both be sued for money "had and received."

Fisher, Trustee, vs. State, 106 Md. 104, 120.

In addition to this, *Mary's bond* as administratrix of Clementina's estate is liable for the amount of the tax (section 137).

Mary's estate is also liable for the tax, because she, as administratrix, was required to pay it (sections 120, 121, 123), and not having done so, the amount of the tax is a proper claim against her estate.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

TAXATION—COLLATERAL INHERITANCE TAX—REGISTER'S COMMISSIONS.

March 18, 1916.

John M. Dennis, Esq.,
State Treasurer,
Annapolis, Md.

DEAR MR. DENNIS: I have your favor of March 17th, asking me the amount of Collateral Inheritance Taxes which the Registers of Wills in Baltimore City and in the counties are entitled to retain from their collections.

Article 81, Section 143 of the Code, allows the several Registers of Wills 12½% commissions on the amount of Collateral Inheritance Taxes received by them respectively during the year. The Registers, however, are not allowed to retain this 12½% as compensation (Banks vs. State, 60 Md. 305). The commission simply goes into the general receipts of the office out of which the office expenses, etc., are paid, and the excess is accounted for quarterly to the Treasurer.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

—

TAXATION—COLLATERAL INHERITANCE TAX—SETTLEMENT OF LITIGATION NOT SUBJECT TO.

June 5, 1916.

D. Princeton Buckey, Esq.,
Frederick, Maryland.

DEAR MR. BUCKEY: I received your favor of May 24th.

As I understand the situation, a mortgage and bank deposit belonging to James Graham, deceased, were both held by said deceased and his wife, Barbara Graham, as tenants by the entireties, but were distributed by the executors to other parties; that Mrs. Graham filed a bill in equity to secure a decree that the mortgage and bank account belonged to her, and that a transfer of the same previously made by her to one of the defendants was void; and that the case was settled by the payment by Mrs. Graham to the defendants in this suit of $1,500, in return for which the mortgage and bank account were retransferred to her.

Under these circumstances it does not seem to me that the $1,500 constitutes any part of the estate of James Graham, and accordingly I do not think that it is subject to the collateral inheritance tax.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

TAXATION—COLLATERAL INHERITANCE TAX—SUCCESSIVE ADMINISTRATIONS.

February 18, 1916.

Walter J. Mitchell, Esq.,
La Plata, Maryland.

DEAR MR. MITCHELL: I am in receipt of your favor of February 10th. You say that Mr. John H. Freeman died intestate, leaving his sister as sole heir and distributee, and then, before distribution to her, the sister died, leaving all she possessed or was entitled to, to collaterals. You ask whether Mr. Freeman's estate and his sister's estate are both subject to collateral inheritance taxes.

The Code, Art. 81, Sec. 120, as you know, provides that all estates "passing from any person," etc., "to any person or persons," etc., shall be subject to the collateral inheritance tax. The only contention which occurs to me could be made against the collection of the tax on both Mr. Freeman's and his sister's estate, is that the title to Mr. Freeman's *personal property* passes, of course, through his administrators, and that, therefore, his personal property never passed to his sister, because she was dead at the time of administration. This contention could not be made with respect to Mr. Freeman's *real property,* because that passed to his sister, as sole heir, immediately upon his death.

My own opinion, however, is that the point would not be good even with respect to the personal property. The two administrations are necessary, and I think that when Mr. Freeman's personal estate is distributed to the Executors of his sister it

is subject to the tax, and that when it is distributed to his sister's beneficiaries it is again subject to the tax; and I think that the same is true with respect to his real estate.

The situation does appear to involve a hardship, but the above is my best judgment about it. With kindest regards, I am

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

TAXATION—FOREIGN CORPORATION TAX.

July 21, 1916.

Albert L. Steuart, Esq.,
Continental Building,
Baltimore, Maryland.

DEAR MR. STEUART: I have considered the copy of your letter to Mr. McMullen, dated June 8, 1916, with reference to the liability of the Baltimore Tube Company of Virginia, to the foreign corporation tax imposed by Bagby's Code, Art. 23, Sec. 95.

I understand that the Baltimore Tube Company of Maryland paid the domestic franchise tax imposed by Bagby's Code, Art. 23, Sec. 88B as of January 1, 1916, and that the Virginia Company, on January 25, 1916, took over all of the Maryland company's assets, except $25,000, which it borrowed, whereupon the Maryland company's capital stock was reduced to $25,000; and that the Maryland company is being kept alive for the enforcement, if this be necessary, of certain unexpired contracts which it executed.

Under these circumstances, I do not see how I can avoid holding, if the question is presented to me, that the Virginia company is liable for the full amount of the foreign corporation tax for the current year.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

TAXATION—FRANCHISE TAX ON ORDINARY BUSINESS CORPORATIONS—DISCOUNTS.

May 1, 1916.

Hon. Hugh A. McMullen,
State Comptroller,
Annapolis, Maryland.

DEAR MR. MCMULLEN: I have your favor of April 27, asking me whether the Act of 1916, ch. 630, relating to the collection of state taxes, applies to the franchise tax imposed upon ordinary business corporations by the Act of 1914, ch. 324 (Bagby's Code, Vol. III, Art. 23, sec. 88D).

Section 49 of ch. 630 of the Acts of 1916, by its terms applies to the state taxes which the City of Baltimore and the several counties levy, and also to "all taxes due from incorporated institutions of this State." Of course, ordinary business corporations, which are required to pay the franchise tax, are incorporated institutions of the state. Nevertheless, I do not think that the Act of 1916 was intended to apply to these franchise taxes, for the following reasons:

1. Section 48 of the Act of 1916, makes the taxes to which it applies payable on July 1 "in the year in which they are levied." This, I think, contemplates taxes which are provided for by annual levies. There are no annual levies for the franchise tax. The tax was imposed by the Act of 1914 once for all.

2. Section 48 also makes it the duty of the local collectors, treasurers or other officers to collect the taxes to which said section applies, and to account for the same monthly to the Comptroller. The franchise tax is payable to the State Treasurer direct, and is not collected by the local officers at all.

3. Section 48 also provides that the local collectors shall receive such compensation for the collection of the taxes to which said section applies, as may be levied by the City of Baltimore and the several counties. Nothing is levied for local collectors in connection with the franchise tax, because that tax is paid to the State Treasurer.

4. Section 48 makes it the duty of the local collectors who collect the taxes to which said section 48 applies, to collect the same as delinquent taxes after January 1st succeeding their

levy. When the franchise tax is in arrears on November 1, a penalty of 10 per cent is added, in addition to interest from May 1, and the whole is placed in the hands of the Attorney General to collect by suit, and the failure of the corporation to pay constitutes a cause for forfeiture and dissolution proceedings. This constitutes a procedure for the collection of the franchise tax distinct from the ordinary procedure for the collection of delinquent taxes.

5. Section 48 of Article 81 of Bagby's Code, which was amended by the Act of 1916, applied, before its amendment, to state taxes due by "all persons and incorporated institutions," yet it did not apply to the franchise tax due by ordinary business corporations, because the Act of 1914 made special provision for that. I think that section 48 as amended by the Act of 1916 applies only to the same character of taxes due by incorporated institutions as it did before its amendment.

6. One of the principal objects in enacting the Act of 1916, ch. 630, was to do away with discounts on state taxes. Franchise taxes are not among the kinds of taxes for the prompt payment of which discounts have been allowed.

For these reasons I do not think that it was the legislative intent that the Act of 1916, ch. 630, should apply to the collection of the franchise tax imposed upon ordinary business corporations by the Act of 1914, ch. 324; and since the legislative intent, as gathered from the terms of the Act, always prevails over the letter, it is my opinion that the Act of 1916, ch. 630, does not apply to the collection of the franchise tax, but that the franchise tax should continue to be collected in accordance with the terms of the Act of 1914, ch. 324.

I understand that you also wish my opinion as to when the discounts now allowed on state taxes will cease under the Act of 1916, Ch. 630. This act takes effect on June 1st. Consequently, taxpayers who pay their taxes during the month of May are entitled to discounts exactly as if the new law had not been passed. On and after June 1st no discounts will be allowable.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

TAXATION—INTEREST—PENALTIES.

May 9, 1916.

A. T. Benzinger, Esq.,
Deputy Collector,
City Hall, City.

DEAR SIR: I beg to answer the two inquiries contained in your letter to me of May 6th, as follows:

1. Under section 51 of the Charter, which provides for the one per cent penalty to which you refer, the advertisement there called for is required to be inserted two weeks before the taxes become in arrear, and the penalty is to be added in case the taxes are not paid before they so become in arrear, accounting from the time the said taxes became in arrear to the time of the payment thereof. I think, therefore, that the penalty in question should be added to the 1916 bills for state taxes from January 1st, 1917, which is the date they become in arrear under the Act of 1916, Chap. 630.

2. I think that the Act of 1916, Chap. 630, should be construed as applying only to state taxes for the year 1916 and succeeding years, and that in the case of state taxes now overdue, and now carrying interest or penalties or both, such interest and penalties should be collected exactly as if the Act of 1916 had not been passed at all.

Very truly yours,
ALBERT C. RITCHIE, *Attorney General.*

—

TAXATION—INTEREST—PENALTIES.

August 17, 1916.

Hon. Hugh A. McMullen,
State Comptroller,
Annapolis, Maryland.

DEAR MR. MCMULLEN: I have your favor of August 15th, asking when penalties and interest are chargeable upon taxes due by incorporated institutions.

The only possible doubt upon this subject relates to the question of penalties. The Act of 1916, Ch. 630, provides the time

when state taxes due by incorporated institutions are payable, when they bear interest, and when they are collectible by legal process, this latter date being January 1st, succeeding their levy. Section 95 of Article 81 of Bagby's Code, which relates to the five per cent penalty, imposes that penalty on November 1st, and requires the collection by legal process immediately thereafter. In other words, section 95 provides for the collection by legal process after November 1st, and the Act of 1916, Ch. 630, after January 1st. I think, however, that the proper construction of these two provisions is, that the penalty will still be imposed, under section 95, on November 1st, but that portion of section 95 which requires the collection by legal process after November 1st, has been superseded by Chapter 630, so that the collection by legal process will not now be undertaken until January 1st.

Under the present law, therefore, the state taxes due by incorporated institutions, referred to in the Act of 1916, Ch. 630, are payable and carry interest and penalties as follows:

1. Said taxes are payable July 1st in the year in which they are levied.

2. They bear interest from September 1st.

3. They carry penalties from November 1st.

4. They are subject to collection by legal process after January 1st.

I should add that what has been said does not apply to franchise taxes due by corporations. These are still collectible in accordance with the Act of 1914, Ch. 324, as explained in my letter to you of May 1, 1916.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

MISCELLANEOUS.

Agriculture. Barbers. Corporate Charters. Criminal Law. Forestry. Health. Hours of Labor. Land Office. Lunacy Commission. Municipal Charter. Senate Rules. Statutes, when effective. Veterinary Medicine. Workmen's Compensation Law.

AGRICULTURE—COUNTY DEMONSTRATORS, SALARIES OF.

December 6, 1916.

Samuel M. Shoemaker, Esq.,
President, State Board of Agriculture,
816 Fidelity Building, Baltimore, Md.

DEAR SIR: I beg to confirm the opinion I gave you orally yesterday, namely, that under the terms of the $23,000 appropriations made by the Act of 1916, Chap. 685, page 1574, and the Act of 1916, Chap. 684, page 1558, for salaries for County Demonstrators, your Board is not required to pay a salary of $1,000 to each County Demonstrator, but you may fix the salary of each County Demonstrator at such amount as you deem proper, not to exceed, however, $1,000 in any one county.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

BARBERS—CERTIFICATES—DEAD BODIES—CHILDREN.

September 2, 1916.

C. Henry Bischoff, Esq.,
President, State Board of Barber Examiners,
Hotel Kernan, Baltimore, Maryland.

DEAR SIR: I beg to reply to your favor of August 30th.

1. Section 9 of the Act of 1904, Ch. 226 (Bagby's Code, Art. 43, Sec. 217), makes it the duty of the holders of certificates of registration "to post the same in a conspicuous place in the shop where he is working, where it may be readily seen by all persons whom he may serve." Section 14 (Section 222 of the Code) imposes a penalty upon "any person violating any

of the provisions of this sub-title." Consequently any barber who does not comply with the above provisions of Section 9 can be arrested and prosecuted.

2. I do not think that Section 13 of the law (Section 221 of the Code) makes it unlawful for undertakers to shave or cut the hair of deceased persons. The business of an undertaker, as the Maryland statutes recognize, consists, among other things, in the *preparation* of bodies for burial, and undertakers have the right to shave and cut the hair of deceased persons whom they are preparing for burial. It was not intended by the Barbers' Law to interfere with this. (See, as to undertakers, Bagby's Code, Art. 43, Sec. 230-247; Keller vs. State, 122 Md. 677; State vs. Rice, 111 Md. 317.)

3. Nor do I think it was intended by the Barbers' Law to prevent lady hairdressers from cutting children's hair.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CORPORATE CHARTERS—CUSTODY OF ORIGINAL CERTIFICATE.

December 14, 1916.

Hon. Thomas W. Simmons,
Secretary of State,
Annapolis, Md.

DEAR MR. SIMMONS: I beg to reply to your inquiry of December 11th. The Act of 1916, Ch. 596, Sec. 4, provides that after the State Tax Commission records a certificate of incorporation, it shall transmit the original to the Secretary of State, "by whom the same shall be again recorded." The law does not provide for your doing anything at all with the certificate after you have recorded it, and all that the law provides for you to do with it is to record it.

Under these circumstances, I think that after you have recorded the certificate, you may properly permit its return to the incorporators.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CRIMINAL LAW—ARRESTS WITHOUT WARRANT.

August 31, 1916.

J. Frank Parran, Esq.,
Prince Frederick, Maryland.

DEAR MR. PARRAN: Please pardon my delay in answering your favor of August 22nd. I have been so much occupied, that last night was the first opportunity I had to consider it.

I hesitate to give a specific opinion upon the question you ask, without knowing more definitely what the offense is for which you contemplate an arrest without warrant, and whether there may be some local law relating to the subject.

The law, however, seems to be that:

1. Peace officers may arrest without warrant for felonies, or where there are reasonable grounds to suspect felonies.

Brish vs. Carter, 98 Md. 445, 449;
Edgar vs. Burke, 96 Md. 715, 722;
Kirk vs. Garrett, 84 Md. 383, 405.

2. They may also, of course, arrest without warrant for breaches of the peace committed in their presence.

3. And in the following Maryland cases arrests without warrant have been upheld, where the offense was committed in the officer's view, although it may not have amounted to a breach of the peace.

Mitchell vs. Lemon, 34 Md. 176, 181;
Roddy vs. Finnegan, 43 Md. 490, 504;
Turner vs. Holtzman, 54 Md. 148, 159-160;
B. & O. R. R. vs. Cain, 81 Md. 87, 100.

I think that the above decisions, particularly those last cited, will enable you to decide whether a warrant will be necessary for the offense you have in mind.

The subject is also discussed in the following treatises, some of which are doubtless available to you.

3 Cyc. 877-884;
2 R. C. L., pp. 446-449, 452-453;
5 Corpus Juris., pp. 398-410:
8 L. R. A. 529;

51 L. R. A. 203;
34 L. R. A. (N. S.) 1182;
42 L. R. A. (N. S.) 69;
L. R. A. 1915 B 505;
L. R. A. 1915 E 883.

Very truly yours,
ALBERT C. RITCHIE, *Attorney General.*

CRIMINAL LAW—OFFENSES ON GOVERNMENT RESERVATION AT INDIAN HEAD.

February 7, 1916.

Ferdinand C. Cooksey, Esq.,
State's Attorney,
La Plata, Maryland.

DEAR MR. COOKSEY: I beg to reply to your favor of February 4th.

As I understand it, the United States Government purchased the Reservation at Indian Head, on August 5th, 1901, from Gaffield and wife, for military purposes.

At this time the Act of 1900, Ch. 67, adding sections 19, 20 and 21 to Article 96 of the Code, was in force. Section 19 gave the consent of the State to the purchase by the United States of any land for certain military purposes, and provided further that the consent thus given was in accordance with the United States Constitution, Art. 1, Sec. 8, Clause 17. This constitutional provision confers upon Congress power "to exercise *exclusive* legislation in all cases whatsoever * * * over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards and other needful buildings.

Section 21 provided that the provisions of section 17 of Article 96 (relating to land *condemned*) should apply to all land *purchased* by the United States under the provisions of section 19, and section 17, which was thus made part of the State's consent in such cases, provided, among other things, that "this State shall retain concurrent jurisdiction with the United States in and over all lands condemned under the provisions of this article" (which concurrent jurisdiction was by

Section 21 of the Act of 1900, Chapter 67, extended to lands *purchased*) "so far as that *all* processes, civil and criminal, issuing under the authority of this State, or any of the courts or judicial officers thereof, *may be executed on the premises* so condemned" (or so *purchased,* by virtue of section 21 above), "and in any building erected or to be erected thereon, in the same way and manner as if this article had not been passed."

Consequently, the consent given by the State by the Act of 1900, which Act covered the purchase of Indian Head, was conditional to the extent that the State retained concurrent jurisdiction with the United States with respect to the execution of process upon the Reservation. Except for this condition, the jurisdiction of the United States over Indian Head is unquestionably exclusive. The condition reserved, however, only applies to the *execution of process* upon the Reservation. It authorizes process to be executed there for offenses committed *outside* the Reservation, but I do not think it covers the punishment of offenses committed *on* the Reservation.

See Western Union Telegraph Company vs. Chiles, 214 U. S. 274, which appears to cover the present case exactly.

That the State did not reserve jurisdiction over offenses committed *on* the Reservation, is emphasized by the Act of 1902, Ch. 263, Bagby's Code, Art. 96, Sec. 28 (which does not apply to the present case because passed *after* the purchase of Indian Head), which Act retains the State's jurisdiction over land acquired by the United States, for the purpose of executing process within such lands for crimes committed *within or without their limits,* and Indian Head is *expressly excepted* from this Act.

For these reasons it seems to me that Dodd cannot be prosecuted by the State for an offense committed on the Reservation.

In addition to the three Fort Leavenworth cases, 114 U. S. 525, 114 U. S. 542, and 146 U. S. 325, and to the Chiles case, 214 U. S. 274, I would refer you also to Battle vs. United States, 209 U. S. 36, 37, and also to cases reported in 160 U. S. 510, 220 U. S. 345, 357; 224 U. S. 369, and 234 U. S. 547.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

FORESTRY—ADVERTISING MATTER ON GUIDE POSTS AND DANGER SIGNS.

November 8, 1916.

F. W. Besley, Esq.,
State Forester, Johns Hopkins University,
Baltimore, Maryland.

DEAR MR. BESLEY: I beg to reply to your recent favor, in which you ask whether guide posts erected upon the public highways of the State by the B. F. Goodrich Company, and which contain the name "Goodrich" in addition to the distances between points, violate the Act of 1914, Ch. 824, Sec. 151 (Bagby's Code, Art. 39A, Sec. 151), which reads as follows:

> "Any person who in any manner paints, puts or affixes any advertisement, sign, notice or other written or printed matter, other than notices posted in pursuance of law, on or to any stone, tree, fence, stump, pole, building or other structure which is in or upon a public highway, or which is on the property of another, without first obtaining the written consent of such owner, shall be guilty of a misdemeanor," etc.

Under this section, it is lawful to paint, put or affix advertisements or notices upon poles in the public highways, provided they are "notices posted in pursuance of law."

Bagby's Code, Art. 91, Sec. 37, provides that the State Roads Commission "shall erect suitable guideposts at convenient points along State highways," and section 37A requires the Commission's consent before any structure can be placed on such highways. Sections 82A and 82B provide for the erection by the Commissioner of Motion Vehicles of guide posts and danger signs.

These latter sections (37, 37A, 82A and 82B), do not expressly authorize advertising matter to be placed on guide posts, nor do they expressly prohibit it, and whether the simple name "Goodrich" on the sign posts to which you refer (which were erected as hereafter explained under the supervision of the

State Roads Commission), constitutes a violation of the Act of 1914, Ch. 824, Sec. 151, is by no means clear.

I find the facts to be that the State Roads Commission and the Commissioner of Motor Vehicles have been co-operating with regard to guide posts and danger signs, with the view of having erected as many as are needed at the least possible cost to the State. These guide posts and danger signs are certainly essential to the convenience and safety of the vast number of automobilists, both from this and other States, who travel our highways, and the State Roads Commission informs me that their erection involves a cost of about $5.00 each, so that the expense item is a serious one to the State.

Accordingly, the Commission some time ago, acting under the authority of Sections 37 and 37A of Article 91 of the Code, expressly authorized the Goodrich Company to erect *guide posts* on the public highways in this State. The form of the sign was submitted to and approved by the Commission, and the points at which they were to be erected were designated by the Commission; and on the faith of this permission the Goodrich Company has, at large expense, and under the supervision of the Commission, erected thousands of these guide posts. The Commission advises me that all of them are necessary for the proper convenience of travellers, that it has authorized no company other than the Goodrich Company to erect any guide posts, or to place any advertising matter thereon, and that it intends to limit the permission to that company. These particular guido posts certainly do not seem to offend the artistic sense. Moreover, if they are removed, not only would the Goodrich Company have at least a moral claim against the State on account of the money which it expended on the faith of the State Roads Commission's permission to erect them, but the State would be compelled to expend thousands of dollars in order to substitute new guide posts in the place of those removed.

The Commission further advises me that it has never authorized any private concern to erect *danger signs* on any of the public highways, and has never authorized advertising matter of any kind to be placed on danger signs.

Under these circumstances, I think that the *guide posts* of the Goodrich Company, erected by that Company, at large expense, upon the permission of the Commission, acting under its authority to "erect suitable guide posts at convenient points along State highways" (Art. 91, Sec. 37 and 37A), should be allowed to remain.

No private concern, however, has authority to erect either guide posts or danger signs upon the public highways without the Commission's consent, and, as already stated, the Commission has not given permission for guide posts to any company other than the Goodrich Company, and has not given permission to any company at all to erect danger signs.

While, therefore, I think that in view of the above circumstances the guide posts of the Goodrich Company should be allowed to remain, I also think that any guide posts, containing advertising matter, and erected on public highways by any other company, and all danger signs containing advertising matter, and erected by any private concern, are being unlawfully maintained, (if for no other reason than that they have not been authorized by the State Roads Commission), and that they may, therefore, be removed, and that those who have erected them may be prosecuted.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

FORESTRY—TRIMMING ROAD SIDE TREES.

July 14, 1916.

F. W. Besley, Esq.,
State Forester,
Johns Hopkins University,
Baltimore, Maryland.

DEAR MR. BESLEY: As requested by you, I have considered the question whether or not the State Board of Forestry has the power to authorize the trimming of roadside trees, growing within the right of way of public roads, without the consent of the owner of the trees.

This subject is governed by the Act of 1914, Ch. 824 (Bagby's Code, Vol. III, Art. 39A, Sections 15A to 15J, inc.), as construed by the decision in Chesapeake and Potomac Telephone Company vs. Board of Forestry, 125 Md. 666. I think it is quite clear from this Act and decision that the permit of the Board of Forestry will not alone be sufficient, but that the consent of the owner is also necessary. The Court of Appeals itself emphasizes the fact that the Act does not interfere in any way with private property rights, and it was only because it does not do this, that the Act was upheld.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

HEALTH—STATE BOARD OF HEALTH HAS NO POWER OF EMINENT DOMAIN.

June 21, 1916.

William Pinkney Whyte, Jr., Esq.,
620 Munsey Building,
Baltimore, Md.

DEAR SIR: I have examined your opinion to Mr. Robert B. Morse, Chief Engineer State Department of Health, dated May 29, 1916, in which you hold that the incorporated Town of Myersville, the County Commissioners of Frederick County, and the State Board of Health, have no power of condemnation in order to comply with the Act of 1914, Ch. 810.

I agree with you that the power of condemnation does not exist unless it is expressly conferred by the Legislature.

In addition to the authorities you cite upon this point, it is said in the Union Railway Company case, 35 Md. 224, 231, that the power to condemn "ought to be conferred in language clear and unequivocal," and in Baltimore vs. Kane, 125 Md. 135, 137, that the proceeding is "wholly dependent upon statutory regulation and provision."

I find no statute that confers the power of condemnation upon the State Board of Health, and I assume (without having examined this question myself) that you are correct in saying that there is no statute that confers the power of condemnation

in such a case as the present one on either the Town of Myersville or the County Commissioners of Frederick County.

I have accordingly approved your opinion to Mr. Morse, and I return it to you herewith.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

HEALTH—STATE BOARD OF HEALTH—INFORMERS' FEES.

July 26, 1916.

J. Davis Donovan, Esq.,
Investigating Officer,
Department of Health,
16 W. Saratoga St., Baltimore, Md.

DEAR SIR: I have your favor of July 25th.

In my opinion neither the State Health Department nor any of its members or employees, are entitled to informers' fees in the cases you mention, because it is their official duty to secure and disclose information as to violations of the health laws, and public officers and employees are not entitled to informers' fees for doing what it is their duty to do.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

HOURS OF LABOR—FEMALES IN DEPARTMENT STORES.

June 19, 1916.

Hon. Frederick N. Zihlman,
Cumberland, Maryland.

MY DEAR SENATOR: I have your favor of June 16th. The Ten Hour Law for Females, as amended by the Act of 1916, Ch. 147, provides that "in any *retail mercantile establishments located outside of the City of Baltimore,* a female may be permitted to work on *Saturdays* and on Christmas Eve and the five working days next preceding Christmas Eve not more than *twelve hours,* if during each of such Saturdays and Christmas Eve and five days aforesaid the female so employed shall have at least two rest intervals of not less than one hour each, and this provision shall only apply to such mercantile establish-

ments as have during the *remainder* of the calendar year a working day of not more than *nine hours.*"

I think that a department store is a retail mercantile establishment, within the meaning of this section, and, therefore, department stores located outside of Baltimore City can work their female help twelve hours on Saturdays, provided they fulfil the other requirements of the Act.

Very truly yours,

ALBERT C RITCHIE, *Attorney General.*

HOURS OF LABOR—CHAUTAUQUA CHOIR BOYS.

May 30, 1916.

Chautauqua Association of Pennsylvania,
Swarthmore, Penna.

GENTLEMEN: I have your favor of May 26th. The Act of 1916, Ch. 222, Sec. 8, provides:

> "Nor shall any child under the age of sixteen years be employed, permitted or suffered to appear upon the stage of any theatre or concert hall in connection with any professional theatrical performance, exhibition or show."

In my opinion this provision of the law was not intended to apply to the Choir Boys in a Chautauqua program.

Very truly yours,

ALBERT C RITCHIE, *Attorney General.*

LAND OFFICE—REVOLUTIONARY WAR DOCUMENTS.

June 23, 1916.

Hon. James S. Shepherd,
Commissioner of the Land Office,
Annapolis, Maryland.

DEAR SENATOR SHEPHERD: I have your favor of June 21st, enclosing request from the Maryland Historical Society that you deliver to it any commissions or enlistment papers of soldiers in the Revolutionary War which may be in your office.

The Act of 1882, Chap. 138, to which you refer, authorizes and directs the Commissioner of the Land Office to deliver to

the Maryland Historical Society "all the records, archives and ancient documents of the province and State of Maryland of any date prior to the acknowledgment of the independence of the United States by Great Britain."

I think that the documents in question are within the terms of this Act, and that you are authorized to deliver such of them as may be in your possession to the Maryland Historical Society.

Inasmuch as the Act imposes certain obligations upon the Society with respect to the safe keeping, etc., of the documents, it would be advisable for the receipt which the Society gives you for such documents as you deliver to it, to state that the same "are received and are to be owned, kept, arranged, catalogued and accessible in accordance with the provisions of the Act of 1882, Ch. 138."

I do not know whether the appropriation provided for by the Act was paid or not; but if not, I think that at this late date it may properly be said to have lapsed, and that the same is not now payable.

Very truly yours,
ALBERT C. RITCHIE, *Attorney General.*

LUNACY COMMISSION—RIGHT TO CHARGE FOR SERVICES—SUPPORT OF LUNATICS.

October 4, 1916.

Dr. Arthur P. Herring,
Secretary, Lunacy Commission,
330 North Charles Street,
Baltimore, Maryland.

DEAR DR. HERRING: I beg to reply to the inquiries contained in your letter of September 28th.

1. In my opinion, the members of the Lunacy Commission cannot charge for their services in making examinations, at the court's order, under the Act of 1916, Ch. 699, of persons under indictment, because this Act makes such examination part of the duty of the Lunacy Commission, and by Art. 59, Sec. 16, of Bagby's Code it is provided that the Commission shall receive

no compensation for their services. I may add that after a conference this morning between you, Judge Soper and myself, Judge Soper could see no escape from this conclusion.

2. The Act of 1916, Ch. 566, Sec. 3A, in providing that a father or mother, or both, shall be liable for the support of a son or a daughter, and vice versa, makes no distinction between adults and minors. Therefore, an adult son or daughter is responsible, under this section, for the support of a father or mother, and a father or mother is responsible for the support of an adult son or daughter.

3. As to the power of the County Commissioners to require patients committed by the courts, or their relatives, to pay the expenses of support, I find that lunatics may be committed by the Court to State Hospitals under the following provisions of Bagby's Code:

a. Art. 59, Sec. 1, when a jury is impanelled to try the question of sanity. This section provides that the committal shall be "at the expense of the county or city," but section 3 (amended by the Act of 1916, Ch. 566), provides that no person shall be entitled to the benefit of section 1, if he or his relatives are able to pay for his support, and in such case the County Commissioners or the City Supervisors may require such person to be a reimbursing patient; and in this event section 3A (Act 1916, Ch. 566) will apply. Therefore, the County Commissioners can require patients committed under Art. 59, Sec. 1, or their relatives, to pay for their support, in accordance with the provisions of section 3A.

b. Art. 59, sections 4 to 8, inc. (sections 4 and 6 having been amended by the Act of 1916, Ch. 699), provide:

For commitment of traversers found, on trial by the jury, to be insane (sections 4 and 5).

For commitment of indicted persons before trial, when the Lunacy Commission, on refcrence from the court, finds them to be insane (section 4).

For commitment of arrested persons before indictment or trial, when the Lunacy Commission, on reference from the court, finds them to be insane (section 6).

For commitment of arrested persons during the recess of the courts (section 7).

In each of the above cases, if the person committed is himself possessed of property adequate for his support, that property may be subjected to the payment of his support, through the appointment of a trustee, under section 9. But if such person has no property himself, then I do not think that his family or relatives can be compelled to pay for his support, because the only provisions of law requiring the family or relatives to pay for the support of insane persons, are the provisions contained in the Act of 1916, Ch. 566, and these do not apply to commitments under Art. 59, sections 4 to 8.

c. Art. 59, Sec. 44, and Act 1916, Ch. 556, Sec. 648, provide for the commitment of convicts found by the Lunacy Commission to be insane. These sections specifically provide that the expenses of support shall be borne by the State. Also, Art. 27, Sec. 282, provides for the commitment of prisoners confined in the Jail, who become insane, and this section expressly provides that the support of such persons shall be at the expense of the county or city.

Very truly yours,
ALBERT C. RITCHIE, *Attorney General.*

—.

LUNACY COMMISSION—SUPPORT OF LUNATICS.

August 31, 1916.

Dr. Arthur P. Herring,
Secretary, State Lunacy Commission,
330 N. Charles St., Baltimore, Md.

DEAR SIR: I beg to advise you upon the question you submitted to me the other day.

1. Under section 3A of the Act of 1916, Ch. 566, and the amendment to section 3 made by that Act, the County Commissioners and the Supervisors of City Charities have, in my opinion, the power and authority to commit insane persons, even though they or their relatives are able to pay for their maintenance and support, either in whole or in part.

2. The form of agreement to be made by relatives or others chargeable, when they are able to pay, in whole or in part, for the patient's support and maintenance, should be substantially as enclosed herewith.

3. Section 3A of the Act of 1916, Ch. 566, provides, among other things, for making claims against the estates of deceased patients for their maintenance and support in the institution to which they may be committed, and section 3B authorizes the authorities to exercise, in the case of patients *heretofore* committed and still confined, all the powers conferred by section 3A with respect to patients *hereafter* to be committed, "to the end that payment for the *future* maintenance and support of such persons while in such institutions may be required," etc., as in the case of persons hereafter to be committed under section 3A.

No claim can be made under these provisions against the estates of deceased patients for maintenance and support incurred before the Act took effect. Moreover, in order to furnish the basis for a claim under these sections for maintenance and support since the Act took effect, the procedure as to investigation and the passage of an order requiring payment, provided by section 3A, should be followed.

In the case of claims, if any, against the estates of deceased patients committed before the Act of 1916 took effect, which claims arise under provisions of law other than those contained in the Act of 1916, the same can, I think, be made. For instance, claims against the estates of deceased patients who were committed as reimbursing patients under section 3 as it stood before the amendment of 1916, and which are, I think, preserved by the Acts of 1912, Ch. 120 and Ch. 365 (Bagby's Code, Vol. III, Art. 1, Sec. 2A; Art. 89A). Also, claims under the last sentence of section 45.

Very truly yours,

ALBERT C RITCHIE, *Attorney General.*

MUNICIPAL CHARTER—ACT NAMING ONLY FOUR OF SIX COUNCILMEN, EFFECT OF—DE FACTO OFFICERS.

August 28, 1916.

Hon. Hugh A. McMullen,
State Comptroller,
Cumberland, Maryland.

DEAR MR. MCMULLEN: As requested by your favor of August 23rd, I have examined the charter of the town of Accident, Act 1916, Ch. 514, in order to see if it is invalid for the reason suggested by Mr. John Gies in his letter to you of August 21st.

After incorporating the citizens of the town, and defining the corporate limits, the charter then proceeds, in Section 3, to provide that "said corporation shall be governed by a Mayor and six councilmen." A Mayor is then named to serve until March, 1918, two councilmen, Messrs. Richter and Ravenscroft, are named to serve until March, 1918, and two other councilmen, Messrs. Diehl and Speicher, are named to serve until March, 1917. The Act then provides that "hereafter an election shall be held on the first Tuesday in March in each and every year for the election of two councilmen to serve for two years from the date of their election."

Therefore, the Act does not name the remaining two of the six councilmen, nor does it make any provision for their election, because at the councilmanic election to be held each year in March, only two councilmen are to be elected, and these, of course, will always take the place of two of the four councilmen named in the act, or their successors, as their terms expire. Conseqnently, while the act calls for six councilmen, provision is only made for four.

Whether or not a condition of this kind would make the charter invalid; is a question which, as far as I have been able to ascertain, has not arisen before in Maryland, nor have I been able to find that the direct question has been presented elsewhere. If the question should hereafter present itself in a manner in which the State as such is interested, I would like to make a more extended examination of it than I have thus far

been able to make; but in the meanwhile the conclusions which I have reached are as follows:

1. The Act of 1916 very clearly *incorporates* the town of Accident, and I think that the fact that six councilmen are specified and only four provided for, does not affect the validity of the *incorporation,* but at most only affects the *machinery for governing* the town which the Act incorporates. In other words, the act does two things: first, it *incorporates* the town, and, secondly, it provides for its *government;* and I think that an ambiguity or inconsistency in the provisions for *governing* the town would not invalidate the *incorporation* of the town, as to which there is no ambiguity. The town is still a corporation, even though there is an inconsistency in the provisions which relate to the membership of its council. Accordingly, the charter is, I think, valid.

2. It remains to determine the membership of the council. I find that as originally introduced, this bill (House Bill No. 683) provided in section 3 for *six* councilmen, as the act now does, but named *three*—Messrs. Richter, Ravenscroft and Speicher—whose terms would expire in March, 1918, and *three* —Messrs. Gies, Diehl and Shartzer—whose terms would expire in March, 1917, and also provided that at each annual election *three* councilmen should be elected.

In this form the Bill passed the House (House Journal, pages 841, 966 and 1121), and passed its first and second readings in the Senate (Senate Journal, pages 826 and 1047). On its third reading in the Senate, however (Senate Journal, page 1233), the bill was amended by striking Mr. Speicher's name from the three councilmen whose terms were to expire in March, 1918, leaving the other two—Messrs. Richter and Ravenscroft —and by striking out the names of all three of the councilmen whose terms were to expire in March, 1917, and inserting instead the names of only two—Messrs. Diehl and Speicher; and also by providing that at each annual election only *two* (instead of three) councilmen should be elected. The Senate, however, did not amend the first part of section 3, which called for *six* councilmen, but left that part unchanged. It seems

reasonably clear to me that this was an oversight, and that what the Senate really intended to do was to provide for four councilmen only; and this must, I think, also be taken as the intention of the House, when it concurred in the Senate's amendment.

The requirement that there shall be six councilmen cannot, of course, be reconciled with the fact that provision is only made for four; and accordingly one or the other of these two clauses must control. I think that the latter clause, providing for only four councilmen, supersedes the former clause, saying that there shall be six, first, because the provision for the four councilmen is *specific,* in that it names each of them, whereas the requirement for six is general; and secondly, because the *intent* of the Legislature, as gathered from the amendments it made, seems to have been that there should only be four councilmen. The result, in my opinion, is, that the town will be legally governed by a Mayor and four councilmen.

3. This last conclusion, that the requirement of six councilmen is superseded by the subsequent provision for four only, may not be entirely free from doubt, although I think it correct; but even so, the whole question of the validity of the charter is one that, in my opinion, can only be raised by the *State,* and no one but the State would, I think, have a standing in the courts to question the charter on the above grounds. This means that if the four councilmen act, they will at the very least be *de facto* officers; and as long as the State, which incorporated the town, does not bring proceedings to question the right of the four councilmen to act for the town, then I think that no one else can do so.

4. For the above reason, I think (a) that the town is a valid corporation, and that the four councilmen can legally act for it under the charter, and (b) even if the four councilmen cannot *legally* act for the town, nevertheless, in actually acting, they will be regarded as *de facto* officers, and their authority and the validity of their acts can be questioned by the State alone. When the Legislature of 1918 meets, any desired amendments can, of course, be made to the charter.

Very truly yours,

ALBERT C RITCHIE, *Attorney General.*

SENATE RULES—JOURNALIZATION OF BILLS.

February 8, 1916.

Joseph M. George, Esq.,
Journal Clerk, Senate of Maryland,
Annapolis, Md.

DEAR MR. GEORGE: I beg to confirm what I told you orally the other day, namely, that I see no legal objection to Senator Williams' order of February 1, 1916, adopted by the Senate on February 3, 1916 (Journal, page 175), as an amendment to Rule 29, directing that "after a bill has been journalized the first time it shall in future Journal references be simply referred to by number and a short descriptive title," etc.

I also think that this Rule contemplates that all bills which come to the Senate from the House should be journalized in the Senate, and that the journalzation of such bills in the House will not suffice for the Senate, but that they should be journalized the first time in the Senate also.

Very truly yours,
ALBERT C. RITCHIE, *Attorney General.*

—

STATUTES—WHEN THEY TAKE EFFECT.

January 27th, 1916.

Hon. William J. Ogden,
Chairman, Judiciary Committee,
Senate of Maryland,
Annapolis, Maryland.

DEAR SIR: As requested by you orally on January 25th, I have considered the effect of the Amendment adopted by the people at the November Election, 1915, adding Article XVI to the Constitution, known as the Referendum (Acts 1914, Ch. 673), upon the time when laws passed by the Legislature become effective.

All laws now take effect in accordance with the provisions of this Constitutional Amendment, and not as formerly, in accordance with Article III, Sec. 31, of the Constitution.

The effect of this Constitutional Amendment is that "no law enacted by the General Assembly shall take effect until the first day of June next after the session at which it may be passed," unless:

1. "It contain a Section declaring such law an emergency law and necessary for the immediate preservation of the public health or safety, and passed upon a yea and nay vote supported by three-fifths of all the members elected to each of the two Houses of the General Assembly."

2. Or unless it be a "law making any appropriation for maintaining the State Government."

3. Or unless it be an appropriation law "for maintaining or aiding any public institution, not exceeding the next previous appropriation for the same purpose."

4. Or unless it be a law "licensing, regulating, prohibiting, or referring to local option the manufacture or sale of malt or spirituous liquors."

Any law which falls within any one of the first three of these four classes can be made effective at once by the insertion of the usual clause: "This Act shall take effect from the date of its passage." I do not, however, wish to be understood at this time as expressing any opinion upon the question whether the declaration of three-fifths of the membership of the Legislature that a law is "an emergency law and necessary for the immediate preservation of the public health or safety" will be final and conclusive upon that question or not, first, because this might depend very largely upon the nature of the particular law in question, and, secondly, because I assume that the Legislature would not mako such a declaration unless in its judgment it conformed to the facts. Any law of this character which is made effective at once would nevertheless still be subject to reference to the people in accordance with the terms of the Constitutional Amendment.

Any law embraced within the second or third of the above classes can, in my judgment, be made effective at once by the insertion of the usual clause to this effect, and cannot be referred to the people under the Amendment; except that any law mak-

ing an appropriation to a public institution *in excess* of the next previous appropriation for the same purpose, can be so referred to the extent of the excess, and to that extent cannot become effective until the first day of June, but to the extent that such appropriation does not exceed the next previous appropriation for the same purpose it can be made effective at once.

No law embraced within the fourth class, "licensing, regulating, prohibiting, or referring to local option the manufacture or sale of malt or spirituous liquors" can be referred to the people under the Constitutional Amendment. Whether or not such a law can, in any event, and independently of the Amendment, be passed without a referendum, is a question which may hereafter arise directly, and, therefore, I do not think that I should express any opinion upon that question at this time.

Any law which does not fall within one of the above four classes, can in no event take effect before the first day of June. In such case a clause in the law providing that it shall take effect from the date of its passage, or at any time before the first day of June, would, in my judgment, be simply nugatory, and the law would take effect on the first day of June notwithstanding such clause.

If such law contains no clause at all as to when it is to take effect, then, in my judgment, it will take effect, under the Constitutional Amendment, on the first day of June, unless previously referred to the people. In order, however, that there should be no possible question about this, I think it better to add a section to all laws which are not embraced within one of the above four classes, to the effect that "This Act shall take effect from the first day of June, 1916."

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

VETERINARY MEDICINE—RIGHT TO REGISTER.

June 29, 1916.

Dr. G. H. Grapp, President,
State Veterinary Medical Board,
Port Deposit, Maryland.

DEAR SIR: I have your favor of June 24, and enclose you copy of the Act of 1916, Ch. 108, regulating the practice of veterinary medicine in Maryland.

You ask whether a person can register under this law if he conducts a general merchandise store, and practices veterinary medicine "illegally as a side issue." I assume that the person you have in mind holds no diploma. If such a person has practised veterinary medicine in Harford County "as a means of livelihood" for ten years previous to June 1, 1916 (when the enclosed act took effect), then he is entitled to be registered within twelve months, and to continue practising in Harford County. The fact that he conducted a store would not necessarily debar him, but he must have practiced veterinary medicine "as a means of livelihood." This depends upon the facts, and as I do not know them, I cannot be more definite.

You next ask whether a person can be registered if he has been prosecuted for illegal practise. I do not know what kind of illegal practise he was prosecuted for. If it was that he practised without having been examined or without having had a diploma, this would not debar him, provided he has practised in Harford County as a means of livelihood for ten years.

Very truly yours,
ALBERT C. RITCHIE, *Attorney General.*

—

WORKMEN'S COMPENSATION LAW—REINSURANCE AGAINST CATASTROPHY HAZARD.

October 12, 1916.

J. Milton Reifsnider, Esq.,
Chairman, State Industrial Accident Commission,
Equitable Building, Baltimore, Md.

DEAR MR. REIFSNIDER: I beg to reply to your favor of October 5th.

I understand that what you desire to do, for the protection of the State Accident Fund, is to reinsure your risks against catastrophy hazard only.

In my opinion, the proper protection of the State Accident Fund, both for the benefit of the employers who insure in it and of the employees and dependents who are intended to share in it, as well as the duty of your Commission to take all appropriate steps to see that such employees and dependents may not be deprived by unforeseen circumstances of the benefits of the fund which the State has provided for them, fully justify your Commission in safeguarding the fund by reinsuring your risks against catastrophy hazard.

I think that your Commission has the implied power to do this in connection with your duty of administering the fund, and that the reinsurance premiums will be part of the expenses of such administration, payable in accordance with Section 77 of the law, as amended by the Act of 1916, Ch. 597.

Very truly yours,

ALBERT C RITCHIE, *Attorney Gener*al.

WORKMEN'S COMPENSATION LAW—STATE MILITIA.

May 5, 1916.

Henry M. Warfield, Esq.,
Adjutant General,
Annapolis, Md.

DEAR SIR: I have your favor of May 3rd.

In my opinion the Workmen's Compensation Law of Maryland does not apply to the military branch of the State, and the State assumes no liability under that law with respect to the troops of the Maryland National Guard, whether the troops are on duty with or without compensation.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

INDEX

TO

OPINIONS

INDEX TO OPINIONS.