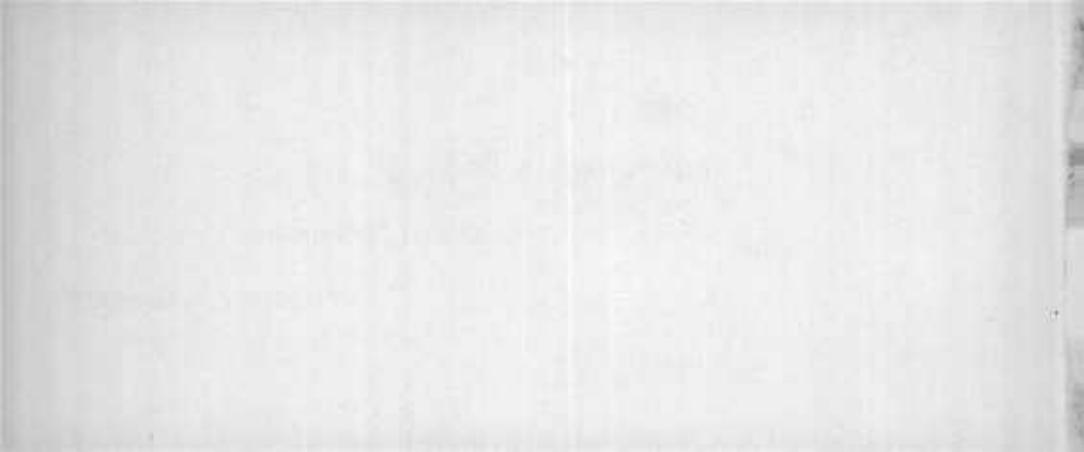


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COMPLIMENTS OF

THOMAS H. ROBINSON

ATTORNEY GENERAL



ANNUAL REPORT

AND

OFFICIAL OPINIONS

OF THE

ATTORNEY GENERAL

OF

MARYLAND

1925

THOMAS H. ROBINSON

ATTORNEY GENERAL

20th Century Printing Co.
Baltimore, Md.

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
Isador Rayner.....	1900
William S. Bryan, Jr.....	1904
Isaac Lobe Straus.....	1908
Edgar Allen Poe.....	1912
Albert C. Ritchie.....	1916
Alexander Armstrong.....	1920
Thomas H. Robinson.....	1924

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

STATE LAW DEPARTMENT

Thomas H. Robinson.....Attorney General.
Robert H. Archer.....Assistant Attorney General.
Willis R. Jones.....Assistant Attorney General.
Herbert Levy.....Assistant Attorney General.
John Hubner Rice.....Assistant Attorney General.
Mrs. Anna Davis Greer.....Stenographer.
Miss Hattie F. Fuxman.....Stenographer.

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

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Annual Report for 1925

BALTIMORE, MARYLAND, *January 1, 1926.*

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

DEAR GOVERNOR RITCHIE:

I have the honor to present to you, as required by Section 8 of Article 32-A of the Code, a report of the business and proceedings of the Department of Law beginning January 1st, 1925, and ending December 31st, 1925, together with a statement of the receipts and disbursements during the past year. The official opinions rendered by my Department during that period follow this report.

ORGANIZATION

Messrs. Edward H. Burke, Robert H. Archer, Willis R. Jones and Herbert Levy constituted a very able staff of Assistants during all this period, until April 1st, when Mr. Edward H. Burke resigned to form a partnership with a prominent law firm of this city. Mr. John Hubner Rice was appointed in the place of Mr. Burke. These gentlemen have been in close touch with the work of this Department practically every day throughout the year, and their able, untiring and sympathetic co-operation in all matters in which we were called upon to work together was of invaluable assistance to me in discharging the duties of my office.

SUMMARY OF LITIGATION FOR 1925

CASES IN THE OCTOBER TERM, 1924, OF THE COURT OF APPEALS, NOT DECIDED UNTIL 1925.

Josephine Brogley vs. State of Maryland. No. 36 October Term, 1924. Appeal from the Circuit Court for Caroline County. Conviction for a violation of the "Local Option Law" of Caroline County. There was no stenographic transcript of the testimony in this case, and the parties were unable to agree upon bills of exceptions. For this reason the trial court granted a new trial and the appeal was dismissed.

Dixon Construction & Repair Company, Employer, and State Accident Fund vs. Nelson Beazley, Employee and Claimant. No. 37, October Term, 1924. Appeal from the Baltimore City Court. This case involved a claim by the employee against his employer and the State Accident Fund, insurer, on account of the aggravation and acceleration of a pre-existing disease, caused by an injury arising out of and in the course of his employment. The State Accident Fund denied its liability on the ground of delay in filing claim, and because the injuries were not the natural result of the accident. Judgment affirmed. Mr. Burke appeared for the State Accident Fund.

J. Thomas Williams vs. Dr. Henry M. Fitzhugh, et al, constituting the Board of Trustees of the State Normal School at Bowie. No. 92, October Term, 1924. This was a suit against the Board of Trustees by a teacher at the State Normal School, for a breach of contract. A demurrer was interposed to the declaration, upon the ground that the Board was a State agency, and, therefore, immune from suit. The demurrer was sustained by the trial court and a judgment was entered in favor of the defendants. On appeal the

judgment was affirmed. The Attorney General and Mr. Burke submitted a brief on behalf of the Board of Trustees.

Cassell vs. Chesapeake & Potomac Telephone Company. No. 93, October Term, 1924. This was an appeal in a case of a telephone subscriber, who filed a bill on behalf of an association of subscribers, praying an injunction against the initiation by the telephone company of its new schedules of rates, pending an investigation of the Public Service Commission into the reasonableness of those rates. A demurrer filed by the telephone company was sustained, and this appeal was taken from the order sustaining it. This case involved the same questions as those in the case of the *Public Service Commission vs. The Chesapeake and Potomac Telephone Company*, No. 94, October Term, 1924. The Attorney General was asked to join in the brief, in order to avoid any question as to the jurisdiction of the court in the other case. The Attorney General also advised against an appeal in this case, but, at the suggestion of Mr. Maloy, it was entered. For the same reasons, as in the other case, the appeal was dismissed by the Court of Appeals.

Public Service Commission vs. Chesapeake & Potomac Telephone Company. No. 94, October Term, 1924. The Chesapeake and Potomac Telephone Company filed with the Public Service Commission a schedule of new and increased rates for telephone service, which were to go into effect on November 1, 1924. The Commission conducted an exhaustive hearing for the purpose of determining the reasonableness of the said rates. Finding it impossible to conclude the investigation of the new rates proposed by the company until after November 1st, 1924, the Commission, on October 21st, 1924, passed an order preserving the existing rates until after the conclusion of the investigation. The Chesapeake and Potomac Telephone Company filed a bill in the Circuit Court of Baltimore City to restrain the Public Service Commission from putting into effect the said order of October 21st, 1924. After a hearing, Judge Stein, sitting as the Circuit Court of Baltimore City, granted the injunction. Subsequently, the Governor induced the company to continue the old rates in effect until January 1st, 1925, be-

fore which date the Commission agreed to complete its investigation and announce its decision. The Attorney General advised the Commission against taking an appeal from the restraining order passed by Judge Stein upon the ground that before the time the Court of Appeals could arrive at a decision, the questions involved in the appeal would be moot, and would, therefore, not be considered by the Court of Appeals. However, Mr. Maloy, the People's Counsel, insisted upon the appeal, and the Attorney General joined therein, and in the brief, although he did not participate in the argument. On January 23rd, 1926, the Court of Appeals rendered an opinion, dismissing the appeal upon the ground that the questions involved were moot.

CASES ARGUED IN THE SUPREME COURT OF THE
UNITED STATES

George W. Bush & Sons Company vs. The Public Service Commission Of Maryland. No. 185, October Term, 1924. In the case of Bush & Sons Co. vs. Public Service Commission, 143 Md. 507, our Court of Appeals held that the motor vehicle carriers of merchandise and freight operating in interstate commerce were required to obtain certificates of public convenience from the Public Service Commission under the provisions of the Public Freight Motor Vehicle Law. Upon a Writ of Error to the Supreme Court of the United States, it was held that the restriction by competition as provided for by our law, so far as it affected interstate commerce, was an undue burden on the same, and, therefore, violated the interstate commerce clause of the Federal Constitution. The judgment of the Court of Appeals of Maryland was reversed. The Attorney General and Mr. Burke appeared for the Public Service Commission.

State of Maryland vs. Morris A. Soper, Judge of the District Court of the United States for the District of Maryland and the District Court of the United States for the District of Maryland. Nos. 23, 24 and 25 Original; October Term, 1925. Robert D. Ford, John M. Barton, E. Franklin Ely and Wilton L. Stevens are Federal Prohibition Agents. The said agents, with one William Trabing, who was acting as their chauffeur at the time, were indicted in the Circuit Court for Harford County for the murder of one Lawrence Wenger, and for conspiracy to obstruct justice by suppressing material evidence in testifying before a Coroner's inquest, held for the purpose of inquiring into the cause of death of the said Wenger. The agents and their chauffeur were also severally indicted for various perjuries committed before said Coroner's inquest.

The said agents and their chauffeur, through the United States Attorney for the District of Maryland, filed a petition

for the removal of said prosecutions from the Circuit Court for Harford County to the District Court of the United States for the District of Maryland, upon the asserted authority of Section 33 of the Judicial Code, and of Section 28, Title II of the National Prohibition Law. The State of Maryland appeared specially in the District Court and moved to remand the prosecutions to the Circuit Court for Harford County, upon the grounds that Federal Prohibition Agents, as such, are not entitled to remove prosecutions against them in any event, and because the averments in the various petitions for removal did not show that the prosecutions against the petitioners arose out of any act done under color of their office or of any revenue law.

Judge Morris A. Soper refused to remand the proceedings, and the State of Maryland thereupon instituted three original proceedings in the Supreme Court of the United States: (1) To require Judge Soper to remand the prosecution for murder, *supra*, (No. 23, Original,); (2) To require Judge Soper to remand the prosecution for conspiracy to obstruct justice (No. 24, Original, *Supra*); and (3) To remand one of the prosecutions for perjury, against Ely, (No. 25, Original, *supra*).

Similar proceedings were not filed in the other perjury cases, because it was understood that the determination of these cases would abide the decision of the Supreme Court of the United States in No. 25, Original, *supra*.

Application to file three petitions for mandamus was promptly granted by the Supreme Court, and shortly thereafter the cases were argued.

The cases were argued by the Attorney General and Mr. Levy for the State of Maryland, and Colonel William J. Donovan, Assistant to the Attorney General of the United States, for Judge Soper. The Court granted the writ of mandamus in each of the three cases directing the District Judge to remand the indictments and prosecutions.

In the murder case, the Court reserved to the District Judge the right, if he deemed it proper, to allow an amendment to the petition for the removal, by which the aver-

ments necessary to bring the case within Section 33, might be supplied. But in the conspiracy and perjury cases the order to remand was absolute, without any right of amendment.

The Court, in its opinion, refused to adopt the contention of the State of Maryland that Federal Prohibition officers, as such, were not entitled to remove prosecutions against them to the District Courts, in any event, but the Court upheld the contention of the State that the petition for removal must be sufficiently candid and positive in explaining the relation of the petitioner to the transaction growing out of which he has been indicted and in showing that his relation to it was confined to his acts as an officer, and in so detailing the facts of the case in his petition, a Federal officer abandons his right to refuse to testify because accused of crime at least to the extent of disclosing in his application for removal all circumstances known to him out of which the prosecution arose.

Furthermore, the conspiracy and perjury cases definitely decided that there are some crimes, which, because of their peculiar nature, cannot possibly be said to arise out of acts done by the Federal officer under color of his office. These cases were prepared and presented to the Supreme Court by the Attorney General and Mr. Levy.

CASES PENDING AND DISPOSED OF IN THE DISTRICT COURT
OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND

State of Maryland vs. Robert D. Ford, John M. Barton, E. Franklin Ely, Wilton L. Stevens and William Trabing.
Indictment for murder.

State of Maryland vs. Robert D. Ford, John M. Barton, E. Franklin Ely, Wilton L. Stevens and William Trabing.
Indictment for conspiracy to obstruct justice.

State of Maryland vs. Robert D. Ford. Indictment for Perjury.

State of Maryland vs. John M. Barton. Indictment for Perjury.

State of Maryland vs. E. Franklin Ely. Indictment for Perjury. (Four cases.)

State of Maryland vs. Wilton L. Stevens. Indictment for Perjury.

State of Maryland vs. William Trabing. Indictment for Perjury.

These cases resulted in the three original petitions for mandamus in the Supreme Court of the United States, (Nos. 23, 24 and 25, Original, October Term, 1926, supra.)

The first attempt to remove the above prosecutions was made before the indictments had been found by the Grand Jurors of Harford County. After consultation between the District Judge and the Attorney General, the Court rescinded the orders for removal upon the ground that they had been passed prematurely. No formal motions to remand were required by the Court. After the indictments were found in the Circuit Court for Harford County, petitions for removal were again filed. The State appeared specially and moved to remand the prosecutions. The Court refused to pass an order of remand, but, deeming the petitions insufficient, permitted them to be amended.

Amended petitions were filed, and the State, having again appeared specially and moved to remand, the Court again refused the motion and passed final orders removing the cases to the District Court for trial. These orders resulted in the mandamus proceedings in the Supreme Court, final orders were passed by the District Judge, remanding the conspiracy and perjury cases to the Circuit Court for Harford County.

The Prohibition Agents and their chauffeur have filed a petition praying leave to amend their petition for removal in the murder case. This petition for leave to amend has not yet been heard or determined by the Court. The Attorney General and Mr. Levy represented the State of Maryland in the various proceedings in the District Court.

United States of America, Ex Relatione Joseph A. Furbershaw vs. I. W. Thompson, Sheriff of Harford County,

Md. Furbershaw, a Federal Prohibition Agent, was charged with the murder of one John Bungori in Havre de Grace, Md. He was committed to jail upon a commitment issued by a justice of the peace of Harford County, pending action by the Grand Jury for Harford County. This proceeding was instituted for the purpose of having Furbershaw released on bail by the District Court, pending the action of the Harford County Grand Jury. The State of Maryland opposed his release, upon the ground that, until indictment, the Federal Court was without jurisdiction in the premises. The State's contention was sustained, the petition for Habeas Corpus was dismissed and Furbershaw remanded to the custody of the Sheriff for Harford County. The Attorney General, Mr. Levy and Mr. Archer appeared on behalf of the State of Maryland.

State of Maryland vs. Joseph A. Furbershaw. After Furbershaw's indictment in the Circuit Court for Harford County, petition was filed in the District Court for the removal of the prosecution to the District Court under the asserted authority of Section 33 of the Judicial Code, and of Section 28 of Title II of the National Prohibition Law. The State appeared specially in the case, and filed a motion to remand the prosecution to the Circuit Court for Harford County upon the ground that a Federal Prohibition Agent was not entitled to the privilege of removal. The decision in this case was withheld pending the decision of the Supreme Court of the United States in Nos. 23, 24 and 25, Original, October Term, 1925, *supra*.

During the pendency of the proceeding, several attempts were made by the United States Attorney, on behalf of Furbershaw, to obtain his release on bail. The State protested against such action, and the Federal Judge refused to release him.

Upon the authority of the above mentioned decisions of the Supreme Court of the United States, the District Judge finally decided to permit the removal and the cases are soon to be tried in the District Court. In the several pro-

ceedings before the District Court, the Attorney General and Mr. Levy appeared on behalf of the State.

Chesapeake & Potomac Telephone Company of Baltimore City vs. Public Service Commission. In the District Court of the United States. The C. & P. Telephone Company of Baltimore City applied to the Public Service Commission for increase in rates in June, 1924. The Public Service Commission conducted a hearing to ascertain whether such increase was justified. This hearing began on September 22, 1924, and continued until December 22, 1924. This Department did not participate in this hearing. The Commission refused the increase asked for and continued the previously existing rates in force for two years from January 1st, 1925, until December 31st, 1926, both dates inclusive, unless within that time the Commission should otherwise direct. On December 31st, two days after the order was entered, the company filed a bill of complaint in the District Court of the United States for the District of Maryland, alleging that under the rates the Commission required it to maintain it could not get a fair return upon the fair and reasonable value of its property exclusively devoted to furnishing intrastate telephone service. It prayed that the order imposing such rates upon it should be declared void, and that the Commission be enjoined during the litigation, as well as permanently, from attempting to compel it to keep them in force, and in like manner be restrained pending the hearing of the application for an interlocutory injunction. The Attorney General objected to the interlocutory injunction, and the case was set down for hearing within a week from the filing of the bill. The case was tried before a statutory Court, Rose, Circuit Judge, Groner and Soper, District Judges. After a hearing which lasted for several days the Court decided that the Commission could not deny the Company permission to charge rates which would produce at the minimum 6 per cent. on the fair value of its property at the time used or useful in telephone service, and that on December 31st, 1923, that property was at a value of \$28,865,859, and that on the date of the decision it was that value plus whatever net additions to it had been

since made, diminished, however, by whatever net increase, if any, there was in the unexpended balance standing to the credit of the depreciation reserve. The effect of this decision was to require the Public Service Commission to authorize an increase in rates, not as great as that sought by the Company, but greater than that allowed by the Commission. The opinion of Judge Rose is published in the Daily Record of Saturday, February 28, 1925. The Attorney General, Mr. Burke, People's Counsel Clarence W. Miles, Philip B. Perlman, City Solicitor of Baltimore City, former People's Counsel William M. Maloy and J. Wallace Bryan appeared for the Public Service Commission.

Robert M. Williams vs. James A. Latane, Jervis Spencer, Jr., and John F. Mudd, Commissioners of the Maryland Racing Commission, the Maryland Jockey Club of Baltimore City and the Southern Maryland Agricultural Association. This was a bill of complaint, in Equity, to test the constitutionality of the Burke Racing Law, (Chapter 273 of the Acts of 1920, codified as Article 78-B of Bagby's Annotated Code of 1924). A number of objections were made to the constitutionality of the law, but the defense, by motions to dismiss, attacked the bill upon the ground that it lacked equity, and that the complainant had not shown such an injury to himself through the operation of the law as entitled him to maintain the bill. The Court agreed with these contentions and held the bill defective for general want of equity. The plaintiff was granted leave to amend, but he failed to avail himself of that privilege. After the time for filing the amended bill had expired, Judge Soper passed an order finally dismissing the suit. Mr. Levy appeared for the Maryland Racing Commission.

CRIMINAL CASES IN THE COURT OF APPEALS, JANUARY, APRIL
AND OCTOBER TERMS, 1925.

Claude F. Dobbs, William George Gross, Thomas J. Foran, alias Thomas James Farren, Charles Mullan, alias Joseph Green, vs. State of Maryland. No. 22, January Term, 1925. The appellants were tried before three judges sitting as a

jury and were convicted of murder. Three of the appellants were sentenced to death and Mullan, the other, to life imprisonment. There were one hundred and twenty-two bills of exceptions in the Record. These related to the action of the trial court with reference to certain statements made by the State's Attorney in his opening statement to the Court, to the admission in evidence of certain statements offered as confessions and to the admission of evidence of other crimes not related to or connected with the crime charged against them in the indictment. The case was heard by a full bench. Offutt, J., wrote an opinion in which Adkins and Digges, J., concurred, and Urner and Walsh, JJ., concurred in part. A dissenting opinion was filed by Bond, C. J., and Pattison and Park, JJ. A separate opinion was filed by Urner, J. The only exceptions upon which a majority of the Court agreed were those involving the testimony relating to the alleged participation of some of the appellants in which was known as the "Littman Robbery." Judge Urner concurred in Judge Offutt's opinion as to these exceptions, because he was doubtful as to the prejudicial effect of the testimony in question and he felt that any doubt he had on the subject should be resolved in favor of the accused. He also felt that this duty was emphasized by the fact that if, while regarding the ruling as an error, he should adopt the view that it was not prejudicial, the judgment imposing death penalties would be affirmed by an equally divided Court. The opinions of Judge Offutt, Chief Judge Bond and Judge Urner are not to be reported, but they are published in the Daily Record of April 14, 1925. Mr. Levy appeared for the State.

State of Maryland vs. John Barrett. No. 31, January Term, 1925. In this case Barrett was indicted for larceny. In the indictment it was alleged that the property in question was stolen from the Parents' & Teachers' Association of the Broad Neck School. After the jury had been sworn the State's Attorney moved to amend the indictment by striking out the name of the Parents' & Teachers' Association of Broad Neck School and inserting in place thereof the name of Mrs. Ruthwin Strong. The motion was refused

by the Court and from this decision the State's Attorney for Kent County entered an appeal to the Court of Appeals. The decision of the lower court was affirmed. Mr. Jones appeared for the State.

James Shea vs. State of Maryland. No. 38, January Term, 1925. James Shea was convicted in the Circuit Court for Baltimore County on the charge of selling intoxicating liquors without a license. It was contended on behalf of the appellant that the license laws for Baltimore County had been repealed by Chapter 350 of the Acts of 1920. The State contended that the Act of 1920 was unconstitutional and void in that its subject matter was not adequately described in the title and this contention was sustained by the Court of Appeals where the judgment of the lower court was affirmed. Mr. Jones appeared for the State.

Josephine M. Brogley vs. State of Maryland. No. 3, April Term, 1925. Appeal from the Circuit Court for Caroline County. After the dismissal of the appeal in No. 36, October Term, 1924, supra, the State's Attorney for Caroline County requested an opinion from this department as to the admissability of the evidence which was the subject of the first appeal. He was advised that it was inadmissable, and that he should not offer it at the re-trial of the case. He failed to follow this advice, but after the retrial which resulted in a conviction, and an appeal had been taken, he called upon this department to prosecute the appeal in his behalf. The same questions were involved in this appeal as in the first, namely, whether evidences of other sales were admissable under an indictment for a particular sale of intoxicating liquor on a particular day and to a particular person. Another exception related to the admissability of evidence of implements of manufacture of intoxicating liquor found on the traverser's premises. The State's Attorney was informed that in view of the fact that he had offered the questionable evidence, contrary to the advice of this department, this department could not participate in the appeal. The State's Attorney insisted, however, that a brief be prepared by this department expressing his views

as to the admissibility of testimony. The brief was prepared by Mr. Levy, but it was not signed by the Attorney General or any of his Assistants, nor did this department participate in the argument of the case in the Court of Appeals. The Court ordered a re-argument of this case at the October Term, 1925, and it was placed on the docket of that term as case No. 88.

James F. Klecka vs. State of Maryland. In the Court of Appeals of Maryland. No. 20, October Term, 1925. James F. Klecka was convicted of conspiring to obstruct justice. The traverser appealed. The findings of the lower court were affirmed. Mr. Rice appeared for the State.

Mabel Moore vs. State of Maryland. In the Court of Appeals of Maryland. No. 40, October Term, 1925. Mabel Moore was found guilty in the Criminal Court of Baltimore City on the charge of obtaining valuable jewelry from Bucher & Company by means of false pretenses. On appeal the findings of the lower court were sustained. Mr. Herman Moser, Assistant State's Attorney for Baltimore City, and Mr. Rice represented the State.

Josephine Brogley vs. State of Maryland. No. 88, October Term, 1925. This was a re-argument of No. 3, April Term, 1925, supra. As before stated, this Department did not participate in this case except to draw the brief expressing the views of the State's Attorney for Caroline County. The case was argued and re-argued by the State's Attorney. The judgment was reversed.

Aaron Schnaper vs. State of Maryland. In the Court of Appeals of Maryland, No. 99, October Term, 1925. In this case the appellant was convicted of a violation of Ordinance No. 334, passed by the Mayor and City Council on February 9, 1925. This ordinance was declared unconstitutional and void by the Court of Appeals in the case of Tighe vs. Osborne, No. 59, October Term, 1925. Case was consequently reversed on appeal. Mr. Jones appeared for the State.

George H. Sloatfield vs. State of Maryland. Ferdinand M. Arnreich vs. State of Maryland, and George Weil vs.

State of Maryland. In the Court of Appeals of Maryland. Nos. 100, 101 and 102, October Term, 1925. In these cases the appellants who transact business in one of the public markets of Baltimore were indicted for their failure to obtain traders' licenses as required by Section 42 of Article 56 of the Code of Public General Laws. They were convicted in the lower court. Upon appeal the decision was reversed. Mr. Jones appeared for the State.

Reuben S. Baldwin and Samuel Volkes vs. State of Maryland. No. 114, October Term, 1925. Appeal from the Criminal Court of Baltimore City. The record in this case was not perfected, and the appeal was dismissed.

CIVIL CASES IN THE COURT OF APPEALS JANUARY, APRIL
AND OCTOBER TERMS 1925.

Mayor & City Council of Baltimore, a corporation, vs. Herbert R. O'Connor. No. 16, January Term, 1925. Appeal from the Superior Court of Baltimore City. This suit involved the constitutionality of Chapter 576 of the Acts of 1924, which provided that any deficit in the offices of the Clerks of Court, Register of Wills or State's Attorney for Baltimore City shall be paid out of the excess fees derived from the other offices. The Act was attacked by the State, principally upon the ground that, after the excess fees of office were paid into the State Treasury, they could not be withdrawn except by an appropriation in the Budget Bill. The State's position in this matter was in line with the rulings of this Department since the passage of the Budget Amendment, endeavoring to maintain the integrity of the Budget system prescribed by the Budget Amendment to the Constitution. This was the first time that the Court of Appeals, or any other Court, had occasion to construe the provisions of the Amendment. The Court upheld the State's contention that no money can be withdrawn from the State Treasury without strict compliance with the Budget Amendment. The case also involved the question as to whether a fee office could, by Legislative enactment, be converted into a salaried office. The State maintained that this

could not be done, except by constitutional amendment. The Court upheld this view. Judgment affirmed. Mr. Levy appeared for the State.

Charles D. Gaither, Commissioner of Police, vs. Howard W. Jackson, Mayor of Baltimore City, et al. No. 21, January Term, 1925. Appeal from the Superior Court of Baltimore City. This case involved the validity of an Ordinance of the Mayor and City Council of Baltimore, repealing certain local laws in force in Baltimore City, providing for the appointment by the Governor of auctioneers in the City, and for the payment by the auctioneers of license fees and duties to the State. The City contended that it had the right under the Home Rule Amendment to the Constitution to pass such an Ordinance. The State contended that the City's power under said amendment was limited to local laws, and that a statute was not a local law because its operation was confined to Baltimore City or to a single County if it affected the interests of the people of the whole State, as by providing revenue for the State. The judgment of the lower Court was adverse to the State and the State appealed. The case was exceedingly important, because, if the City could deprive the State of certain revenues by repealing revenue laws, this might seriously embarrass the Governor and the General Assembly in the preparation and approval of the Budget Bill, in which the said revenues are taken into consideration. The Court of Appeals upheld the State's contention and the judgment of the lower Court was reversed. The Attorney General and Mr. Burke appeared for the State.

Hennegen Bates Company vs. State Tax Commission. No. 22, April Term, 1925. Appeal from the Baltimore City Court. The State Tax Commission refused to exclude from the assessment of the Hennegen Bates Company certain property, which had been certified for exemption by the Appeal Tax Court of Baltimore City under a "Manufacturer's Exemption Ordinance." An appeal was entered by the Company to the Baltimore City Court and the order of the Commission was affirmed, in an opinion written by

Judge Duffy and published in the Daily Record of November 29, 1924. The City Solicitor of Baltimore City represented the City and Mr. Levy appeared for the State Tax Commission in the trial of the case before the Baltimore City Court. After an appeal had been entered by the Hennege Bates Company, negotiations were begun between the City of Baltimore and the Company for a compromise settlement of the City's claim for taxes. The State taxes had been paid and the only interest of the State Tax Commission was in the extent of its jurisdiction to supervise the action of the local taxing bodies with reference to manufacturer's exemptions. This jurisdiction had been upheld by Judge Duffy in a very able opinion, and so far as the State Tax Commission was concerned it was immaterial what arrangements for settlement were made by the City with the Company. Pending the negotiations, the appeal to the Court of Appeals was continued until the October Term, 1925. It appeared as Case No. 2 on the docket of the October Term, 1925. At that term an order was filed dismissing the appeal, the costs to be paid by the appellant. Mr. Levy appeared for the State.

Morris Grossfeld and the Wilson Nash Motors Company vs. E. Austin Baughman. No. 23, October Term, 1925. Appeal from the Superior Court of Baltimore City. This case involved the constitutionality of Chapter 412 of the Acts of 1924, which provided that taxes on automobiles in Baltimore City must be paid before the issuance of registration tags or titles, by the Commissioner of Motor Vehicles. The Attorney General had given an opinion construing the Act and ruling that it was constitutional. The Court below sustained the opinion of the Attorney General in all respects and dismissed the petition for mandamus, and on appeal the judgment of the Court below was affirmed. Mr. Levy appeared for the State.

Ezra B. Whitman, J. Frank Harper, Harold E. West, constituting the Public Service Commission of Maryland, vs. Consolidated Gas Electric Light & Power Company. No. 26, January Term, 1925. At the request of the Public Service

Commission, the Attorney General ruled that the Consolidated Gas Electric Light & Power Company could change the number of shares of its common stock by increasing by four times the then number of shares authorized and likewise the number of shares issued and outstanding, and to provide that all shares of the common stock issued or outstanding should be shares without any nominal or par value instead of shares of the par value of \$100.00 each, without obtaining the authority of the Public Service Commission for that purpose. The People's Counsel, Mr. Maloy, was not satisfied with this opinion and brought a test case on behalf of the Public Service Commission to determine the correctness of this decision. This department did not participate in this case either below or in the Court of Appeals, but the ruling of this department upon the question involved was sustained both in the lower Court and by the Court of Appeals.

Philip P. Restivo, Trading as Restivo Brothers, vs. The Public Service Commission of Maryland, et al. No. 65, April Term, 1925, and No. 6, October Term, 1925. Appeal from the Circuit Court of Baltimore City. This case involved the constitutionality of the "Public Passenger Motor Vehicle Law." (Sections 251-257 of Article 56 of the Code). The State contended that the plan of operation of the bus lines of the appellant constituted a subterfuge for the purpose of avoiding the provision of the Public Passenger Motor Vehicle Law. The appellant contended that said law was unconstitutional, and that even if constitutional, it was not applicable to his operations, because they were essentially of a private character and had no public aspect. The lower Court refused to accept these contentions and dismissed the bill filed by the appellant against the Public Service Commission and the Commissioner of Motor Vehicles to restrain the defendants from interfering with the complainant's operations. The Court of Appeals affirmed the decree. Mr. Levy and Mr. Rice appeared for the State.

H. M. Rowe Company, etc., vs. State Tax Commission, et al. No. 34, October Term, 1925. Appeal from the Bal-

timore City Court. This case involved the question as to whether the H. M. Rowe Company was a manufacturer within the meaning of certain State laws and ordinances of the Mayor and City Council of Baltimore, exempting manufacturers from taxation. The Company was engaged in the business of distributing educational text books and pamphlets. All of the mechanical processes of the business were performed by independent contractors, and for this reason, the State and City, who co-operated in this case, contended that the Company was not entitled to be classified as a manufacturer. The lower Court sustained the contention of the City and State and, on appeal, the judgment of the lower Court was affirmed. Mr. Levy appeared for the State Tax Commission.

Jacob R. Middlekauff vs. E. Lee LeCompte, State Game Warden. No. 91, October Term, 1925. Appeal from the Circuit Court for Washington County. This case involved the construction of the compact between Maryland and Virginia in reference to the jurisdiction over the Potomac River. Both the lower court and the Court of Appeals decided in favor of the State. The State contended that the compact only applied to so much of the river as was navigable, and that beyond that point Maryland has exclusive jurisdiction. Mr. Archer appeared for the State.

CASES PENDING IN COURT OF APPEALS.

Howard Mayers vs. State of Maryland. No. 6, January Term, 1926. Appeal from the Criminal Court of Baltimore City (Duffy, Judge), whereby Howard Mayers was convicted of the crime of Bastardy and sentence suspended and paroled to pay ten dollars (\$10.00) monthly.

Harry Weller vs. State of Maryland. No. 11, January Term, 1926. This is an appeal from the judgment of the Circuit Court for Washington County sentencing the appellant to one year in the Maryland House of Correction and imposing a fine of five hundred (\$500.00) Dollars upon conviction for violation of Chapter 30 of the Acts of 1916, and subsequent amendments thereto.

Maryland State Funeral Directors Association vs. State Board of Undertakers and John W. Ritz. No. 15, January Term, 1926, filed November 10th, 1925. Application for writ of mandamus to compel revocation of licenses issued by the State Board of Undertakers to John W. Ritz. Application denied in the Superior Court. Plaintiff appealed. Mr. Jones is representing the State Board of Undertakers.

State Tax Commission of Maryland, etc., vs. Eureka Life Insurance Company of Maryland, a body corporate. No. 45, January Term, 1926. Appeal from the Baltimore City Court. By Chapter 225 of the Acts of 1924, it was provided that in the assessment of shares of stock of domestic life insurance companies, the amount invested by said companies in mortgages on real or leasehold properties in the State of Maryland should be deducted. This case involved the question as to whether the Act of 1924 was applicable to the 1924 tax year. The lower Court held that it was. The State and City entered an appeal to the Court of Appeals. The case was argued by Mr. Levy for the State Tax Commission, and is awaiting decision.

Harold E. West, et al, vs. Western Maryland Dairy Company. No. 58, January Term, 1926. Appeal from the Circuit Court of Baltimore City. The lower Court decreed that the operation by the appellee of its motor vehicles, as disclosed by the evidence, was not subject to the provisions of the Public Freight Motor Vehicle Law, and it enjoined the appellants from interfering with such operations. The State entered an appeal to the Court of Appeals. The Attorney General, Mr. Archer and Mr. Levy appeared for the State.

CASES FINALLY DISPOSED OF IN LOWER COURTS.

Joseph Archer vs. State Tax Commission. In the Baltimore City Court.

John Fletcher Lee vs. State Tax Commission. In the Baltimore City Court.

McInnes Laundry Co. vs. State Tax Commission. In the Baltimore City Court.

New Method Laundry Company vs. State Tax Commission. In the Baltimore City Court.

O'Brien Company vs. State Tax Commission. In the Baltimore City Court.

Harry T. Pratt, trading as Druid Laundry Company, vs. State Tax Commission. In the Baltimore City Court.

Regal Laundry Company vs. State Tax Commission. In the Baltimore City Court.

Frank J. Medinger vs. State Tax Commission. In the Baltimore City Court.

Sterling Laundry Company vs. State Tax Commission. In the Baltimore City Court.

Taylor & Walker vs. State Tax Commission. In the Baltimore City Court.

United Laundries Company vs. State Tax Commission. In the Baltimore City Court.

Appeals were entered in the above cases in June, 1917. By agreement of counsel they were to be disposed of in conformity with the ruling of the Court of Appeals in the Grand Laundry Company case, 134 Md. 99. The taxes in these cases had long since been paid, but the appeals had not been dismissed. The Court passed an order requiring the appellants to show cause why the appeals should not be dismissed, and no cause having been shown, on December 10th, 1925, an order of non pros was entered by the Court. Mr. Levy represented the State Tax Commission.

Clark Lumber Company vs. E. Austin Baughman, Commissioner of Motor Vehicles. In the Baltimore City Court. Petition for mandamus to compel the issuance of a certificate of title to the petitioner. The petition was dismissed

with costs. Mr. Levy appeared for the Commissioner of Motor Vehicles.

Justin G. Buch and Lulu J. Buch, mother and next friend, vs. E. Austin Baughman, Commissioner of Motor Vehicles, and William S. Forwood, Agent of Commissioner of Motor Vehicles. In the Circuit Court of Baltimore City. Bill to restrain the Commissioner of Motor Vehicles and his agent from conducting a hearing for the purpose of determining why the motor vehicle operator's permit of the appellant, Justin G. Buch, should not be suspended or revoked. The constitutionality of Section 189 of Article 56 of Bagby's Annotated Code of 1924, vesting in the Commissioner of Motor Vehicles and his agent the power to suspend and revoke motor vehicle operators' licenses was assailed. A preliminary injunction was granted. A demurrer and motion to dissolve a preliminary injunction was filed on behalf of the defendants. The demurrer was sustained, the bill was dismissed and the preliminary injunction was dissolved, without stay of execution, pending appeal. Mr. Levy appeared for the State.

L. Bryd Brushwood vs. E. Austin Baughman, Commissioner of Motor Vehicles. In the Circuit Court for Harford County. This was an appeal from an order of the Commissioner of Motor Vehicles refusing a motor vehicle operator's license to a deaf mute. It was heard before Offutt, C. J., and Harlan and Preston, JJ. The Commissioner's action was sustained and the appeal dismissed. The Attorney General and Mr. Levy appeared for the Commissioner.

Joseph L. Wynniger vs. E. Austin Baughman, Commissioner of Motor Vehicles. In the Baltimore City Court. This was an appeal from an order of the Commissioner of Motor Vehicles revoking the appellant's chauffeur's license. Appeal dismissed. Mr. Levy appeared for the Commissioner.

Western Maryland Dairy Incorporated, a body corporate, vs. Harold E. West, et al. In the Circuit Court of Baltimore City. This was a bill to enjoin the Public Service Commission, the State Roads Commission and the Commissioner

of Motor Vehicles from interfering with the trucking operations of the appellee, upon the ground that the said operations did not constitute public transportation within the meaning of the Public Freight Motor Vehicle Law. The injunction was granted. Messrs. Archer and Levy appeared for the State.

Eureka Life Insurance Company vs. State Tax Commission. In the Baltimore City Court. This was an appeal from an order of the State Tax Commission refusing to exclude from the assessment upon the shares of stock of the Eureka Life Insurance Company, the amounts invested by the said Company in mortgages on real or leasehold property in the State of Maryland. By Chapter 225 of the Acts of 1924, the Legislature had exempted such mortgages, of domestic life insurance companies, from taxation, and the question involved in this case was whether the said Act was applicable to the 1924 tax year. The Court held that the Act was not so applicable and reversed the order of the State Tax Commission. Mr. Levy appeared for the State Tax Commission.

Red Star Line Incorporated vs. E. Austin Baughman, Commissioner of Motor Vehicles. In the Baltimore City Court. This was a petition for mandamus to require the Commissioner of Motor Vehicles to issue public passenger motor vehicle licenses for an interstate operation, for a fee based upon the actual mileage within the State to be traversed by the busses of the appellant during the remainder of the year, instead of on the basis of the daily operations of said motor vehicles for a period of six months, as provided by Section 243 of Article 56 of Bagby's Annotated Code of 1924. The Court held that the provision of Section 253 requiring the payment of the fee based on a six months' operation of motor vehicles was unconstitutional and the writ of mandamus was granted. After consultation, the Public Service Commission, the Chairman of the State Roads Commission, the Commissioner of Motor Vehicles and this Department agreed that no appeal should be

entered from the judgment to the Court of Appeals. Mr. Levy appeared for the State.

City-Co Realty Company vs. State Tax Commission. In the Baltimore City Court. Appeal from an order of the State Tax Commission of Maryland. Appeal dismissed before the trial. Mr. Levy represented the State Tax Commission.

Joseph G. Degrief, et al, vs. Public Service Commission and E. Austin Baughman, Commissioner of Motor Vehicles. In the Circuit Court of Baltimore City. This was a bill to enjoin the State officials from interfering with certain trucking operations of the complainant. At the time the bill was filed the question as to whether the complainant's operations came within the Public Freight Motor Vehicle Law had not been determined by the Public Service Commission, and, after it was pointed out to the complainant's counsel that the action had been taken prematurely, the bill of complaint was dismissed. Mr. Levy appeared for the State.

James E. Davis vs. E. Austin Baughman, Commissioner of Motor Vehicles and Andrew Linhardt, Registrar of Titles. In the Baltimore City Court. Petition for mandamus to require the Commissioner and the Registrar of Titles in the office of the Commissioner, to issue a certificate of title. The petition was dismissed upon payment of costs by the petitioner. Mr. Levy appeared for the State.

Maryland Tri-County Fair Association, a corporation, vs. Maryland Racing Commission, Defendants. In the Circuit Court for Prince George's County, in Equity. This was a suit to require the Maryland Racing Commission to award betting privileges to the plaintiff who had made application to the Commission for a permit to conduct a County fair and agricultural exhibit. The case was heard before a full bench, Digges, C. J., and Mattingly and Loker, JJ. The Court held that the action of the Commission, in refusing such privileges, was a reasonable exercise of the discretion vested in it and the bill of complaint was dismissed. Mr. Levy and Lansdale G. Sasscer, of the Prince George's County Bar, appeared for the Commission.

H. M. Rowe Company, a body corporate, vs. The State Tax Commission of Maryland, et al. In the Baltimore City Court. This was an appeal from the order of the State Tax Commission refusing the appellant's application for exemption as a manufacturer. The order of the State Tax Commission was affirmed. Mr. Levy appeared for the State Tax Commission.

Philip P. Restivo vs. The Public Service Commission, and the Commissioner of Motor Vehicles. In the Circuit Court of Baltimore City. This was a suit to enjoin the defendants from interfering with the motor vehicle bus operations of the complainant, who was operating without the permit and license prescribed by the Public Passenger Motor Vehicle Law. After a hearing on bill, answer and testimony, the bill of complaint was dismissed. Mr. Levy and Mr. Rice appeared for the State.

Charles N. Dement, et al, vs. State Roads Commission. In the Circuit Court No. 2 of Baltimore City. Bill in equity to enjoin the State Roads Commission from granting a certain road contract in Southern Maryland, without advertisement and competitive bidding. A decree was passed granting the relief prayed. The Attorney General and Mr. Archer appeared for the State Roads Commission.

W. Worthington Milstead, et al, vs. State Roads Commission, et al. In the Circuit Court No. 2 of Baltimore City. This was a suit to restrain the State Roads Commission from making any payments to the defendant, Harold S. Swann, for or on account of the resurfacing of the road leading from Indian Head in Charles County toward La Plata in said County, upon the ground that a contract for the re-surfacing had been made with Swann without advertisement and competitive bidding as required by law. The Commission contended that the arrangements with Swann were made in the discharge of its duty to maintain and keep in repair the State roads under its jurisdiction, and that as to such arrangements the provisions for advertisement and submission to competitive bidding did not apply.

The bill of complaint was dismissed, with costs to the defendant. The Attorney General and Messrs. Archer and Levy appeared for the State.

Samuel B. Hayden vs. State Roads Commission. In the Circuit Court No. 2 of Baltimore City. Bill in equity to enjoin the State Roads Commission from granting a certain road contract in Southern Maryland. The bill was dismissed, upon the order of the complainants before a hearing. The Attorney General and Mr. Archer appeared for the State Roads Commission.

City Dairy Company vs. State Tax Commission. In the Baltimore City Court. Appeal from an order of the State Tax Commission. The appellant dismissed its appeal. Mr. Levy represented the State Tax Commission.

Shimon Greenberg vs. Charles D. Gaither, Police Commissioner, Garnishee of Clarence H. Meyers. This was an attachment suit affecting a seven passenger Nash automobile which came into the possession of the Department in the usual course of business. Mr. Jones filed a plea on behalf of the Commissioner admitting possession of the automobile, and thereafter the automobile was sold at private sale and the proceeds after payment of costs paid over to the plaintiff.

Maryland State Funeral Directors Association and Edward I. Fanning vs. The State Board of Undertakers of Maryland and John W. Ritz. In the Superior Court of Baltimore City. In this case the plaintiffs sought a writ of mandamus to compel the State Board of Undertakers to revoke a license previously issued to John W. Ritz as an undertaker, and also a license previously issued to the same person as an embalmer and contended that John W. Ritz was not eligible under the law to obtain said license. An answer was filed on behalf of the State Board in which it was contended that the licenses were properly issued to Ritz and after a trial lasting several days before Judge Frank, the application for the writ was denied. Mr. Jones appeared for the State Board of Undertakers. Subsequent

to the decision in the above case, another protest was filed against the issuance of the licenses in question to Ritz, the Board again declined to revoke the licenses and there was a second application for mandamus to the Superior Court to compel the revocation of licenses previously issued to Ritz. The latter case was submitted upon the evidence offered at the previous trial and also the additional correspondence between the State Board and the attorney for the plaintiffs. The Superior Court followed the decision in the previous case and denied the application for the writ. Mr. Jones appeared for the State Board of Undertakers.

Robert P. Massow and William H. Leonard, co-partners, Trading as Western Mint Vending Company, and Bernard H. Prendergast vs. Charles D. Gaither, Police Commissioner of Baltimore City. In the Circuit Court of Baltimore City. In this case the plaintiffs filed a bill of complaint to restrain the Police Commissioner from arresting or interfering with the operation of certain slot machines which the Police Commissioner contended were gaming devices, and prohibited by law, and which were contended by the plaintiffs to be automatic salesmen and legal devices. Upon the bill of complaint an immediate injunction was granted as prayed. A demurrer and answer was promptly filed on behalf of the Police Commissioner and at the same time a motion to dissolve the injunction was entered. The case was promptly heard by Judge Solter, who sustained the demurrer and signed an order dissolving the injunction. Mr. Jones appeared for the Commissioner.

Fidelity & Deposit Company vs. Board of Welfare. Garnishee of Jack Hart, alias James Connelly. Attachment laid in hands of Board of Welfare affecting sum of money amounting to \$970.00 recovered from the person of Jack Hart at the time of his recapture, in Chicago. The State having no interest in the fund in question, assented to an agreement between the Fidelity and Deposit Company and Hart by which the controversy was compromised and settled and after payment of costs divided the sum of money in accordance with said agreement. Mr. Jones represented the Board of Welfare.

William L. Galvin vs. John E. Potee, Sheriff of Baltimore City. In the Baltimore City Court. Action for conversion of automobile. The automobile in question was seized upon a writ of fieri facias. The plaintiff claimed that the seizure was wrongful. The case was tried before Judge Ulman sitting as a jury and resulted in a verdict for the defendant. Mr. Jones appeared for Sheriff Potee.

Baltimore Butterine Company vs. State Tax Commission. In the Baltimore City Court. Appeal from an order of the State Tax Commission. The appellant dismissed this appeal. Mr. Levy represented the State Tax Commission.

James R. Armiger Company vs. State Tax Commission. In the Baltimore City Court. Appeal from an order of the State Tax Commission. This appeal involved the same question as that in the case of *Hennegen Bates Company vs. State Tax Commission*, supra. The Armiger Company agreed to abide by the ruling of Judge Duffy in the *Hennegen Bates* case. A compromise settlement of the municipal taxes was effected on the same basis as that in the *Hennegen Bates Company* matter. Mr. Levy represented the State Tax Commission.

Nellie V. Archer vs. E. Austin Baughman, Commissioner of Motor Vehicles, and William S. Forwood. In the Circuit Court for Howard County. This was an appeal from an order of the Commissioner of Motor Vehicles, suspending the license of Nellie V. Archer for sixty days accounting from January 6, 1926. After a hearing, the appeal was dismissed. Mr. Levy appeared for the Commissioner of Motor Vehicles.

Mayor and City Council of Baltimore vs. Charles D. Gaither, Police Commissioner, Garnishee of Frank Markey. In the Superior Court of Baltimore City. Writ of attachment laid in hands of Police Commissioner affecting a certain Oldsmobile automobile which came into the possession of the department in connection with the arrest of Markey on the charge of reckless driving. Mr. Jones prepared a

plea on behalf of the Police Commissioner. Thereafter the attachment was dismissed.

Commercial Credit Company vs. Charles D. Gaither, Police Commissioner of Baltimore City. In the Superior Court. Writ of replevin for recovery of Studebaker touring car which came into possession of the department in connection with an arrest in the usual course of business. The Police Commissioner declined to deliver the automobile in question to the plaintiff except upon the issuance of a writ and the filing of a bond. Mr. Jones appeared for the Commissioner.

Edson & Company, Inc., vs. Charles D. Gaither, Police Commissioner. In the Baltimore City Court. Writ of replevin for recovery of Ford automobile. The automobile came into possession of the department in connection with an arrest charging its theft, and the Commissioner declined to deliver the same to the plaintiff in the absence of a writ of replevin and the filing of a bond. Mr. Jones represented the Police Commissioner.

Board of Welfare vs. Charles Schwartzman, et al. In the Baltimore City Court. Action on bond given by Schwartzman, et al, to secure the faithful performance of contract by the United Shoe Manufacturing Company with the Board of Welfare. The Shoe Company was adjudicated a bankrupt in January, 1923, and after the receipt of dividends from the bankrupt estate by the Board of Welfare, there remained a balance due of \$4,690.63. This action was instituted to recover this balance. The defense was raised that the bondsmen were not liable for the reason that the State should have claimed and received payment in full of its account from the bankrupt estate. After very extensive negotiations it was concluded that a compromise on a 50 per cent basis would be advisable. A settlement was effected on these terms. Mr. Jones appeared for the Board of Welfare.

John S. Watson vs. State Roads Commission. In the Circuit Court for Allegany County. This case involved the

width of the Cumberland Turnpike, now a part of the National Highway between Hagerstown and Cumberland. Mr. Archer appeared for the State Roads Commission.

Jerry Lunak vs. Charles D. Gaither, Police Commissioner, Garnishee of Louis J. Meyers. In the Court of Common Pleas. This was an attachment laid in the hands of the Police Commissioner attaching a certain Ford touring car which came into the possession of the department in the usual course of business. A claimant's petition was filed in the case by the Commercial Credit Company. A motion to quash was also filed. Upon hearing the motion to quash was granted. Mr. Jones appeared for the Commissioner.

State of Maryland for the Use of the State Accident Fund and Margaret Jane Moseman. In the Baltimore City Court. In this case John Jacob Moseman was killed while in the course of his employment by the Dixon Construction & Repair Company. The employer was insured by the State Accident Fund and as a consequence of the accidental death of Moseman the fund was ordered to pay his widow compensation at the rate of \$10.83 per week for a period of 415 5-7 weeks, and also the funeral bill, amounting to \$125.00. The accident was occasioned through the alleged negligence of the employees of the Baltimore Transfer Company in allowing a team of horses to run away, and it was while this team of horses was in flight that they ran over and killed Mr. Moseman. Suit was filed against the Baltimore Transfer Company, which resulted in a compromise settlement in the amount of \$4,346.14. Out of the settlement the State Accident Fund was reimbursed for all of the compensation paid by it as well as the expenses incurred in connection with the case, and the balance was paid over to Margaret Jane Moseman, claimant, the widow of John Jacob Moseman, who executed a release in full to the State Fund and to the Baltimore Transfer Company. Mr. Jones represented the State Fund.

David Rubin vs. Charles D. Gaither, Police Commissioner. In the Baltimore City Court. Action of replevin for recovery of automobile which came into the possession of the De-

partment in the usual course of business. The Commissioner was uncertain as to the ownership of said automobile and required the institution of this suit and the filing of a bond before the delivery of the automobile to the plaintiff. Mr. Jones appeared for the Police Commissioner.

Ephraim Smith vs. State Board of Undertakers. In the Circuit Court for Allegany County. This was an application for a writ of mandamus to compel the State Board of Undertakers to issue to the plaintiff a license as an undertaker and a license as an embalmer under the provisions of Chapter 575 of the Acts of 1924. The State Board of Undertakers declined to issue the licenses applied for on the ground that the application was not filed within the time limited by the Act. The Act of 1924 required all persons carrying on the undertaking business at the time of its passage to register with the State Board, and all persons engaged in the business of embalming dead human bodies at the time of passage of the Act, to register with the Board within sixty days after the passage of the Act. The Board based its refusal to issue the licenses on the fact that the plaintiff did not file his application for the licenses until nearly a year after the passage of Chapter 575 of the Acts of 1924. The case was heard by Judge Walsh at Cumberland. He decided that the provision requiring registration within sixty days after the passage of the Act was unreasonable and directed the writ to issue as prayed. Mr. Jones appeared for the State Board of Undertakers. Associated with him was Fuller Barnard, Esq., of the Cumberland Bar.

Finance Company of America vs. Charles D. Gaither, Police Commissioner. In the Baltimore City Court. Action of replevin for recovery of possession of Ford coupe. This automobile was recovered by the Department in connection with the arrest of one Charles Henderson, who was charged with operating the same without authority of the owner. Henderson was thereafter convicted of this charge and the Commissioner declined to deliver the automobile to the plaintiff except upon the institution of a replevin suit and the filing of a bond. Mr. Jones appeared for the Commissioner.

Commercial Credit Company vs. A. L. Baker and Charles D. Gaither, Police Commissioner. In the Superior Court of Baltimore City. Action of replevin for recovery of a Maxwell Sedan. This automobile came into the possession of the Department in connection with the arrest of one Arthur Leroy Baker. The Commissioner declined to return the automobile to the plaintiff except upon the institution of a replevin suit and the filing of a bond. Mr. Jones appeared for the Commissioner.

Hare & Chase, Incorporated, vs. Patsy Picone and Charles D. Gaither, Police Commissioner. In the Baltimore City Court. Action of replevin for the recovery of Dodge touring automobile. This automobile came into the possession of the Department for safe keeping when it was supposed to be the property of one Patsy Picone, who was killed. The Commissioner declined to deliver the automobile to the plaintiff except upon the institution of a replevin suit and the filing of a bond. Mr. Jones appeared for the Commissioner.

Baltimore Discount Company vs. Grover C. Smith and Charles D. Gaither, Police Commissioner. In the Superior Court of Baltimore City. Action of replevin for recovery of possession of Oldsmobile touring car. This automobile came into the possession of the Department in connection with the arrest of one Grover Smith, who was charged with reckless driving and was left as collateral security for a further hearing on the charge against him. He did not appear for the trial and the automobile was turned over to the Department for safe keeping. The Commissioner declined to deliver the automobile in question to the plaintiff except upon the institution of a replevin suit and the filing of a bond. Mr. Jones appeared for the Commissioner.

Samuel Krieger vs. Charles D. Gaither, Police Commissioner. In the Circuit Court No. 2. Bill for injunction to restrain the Police Commissioner from interfering with the plaintiff in the erection of certain buildings. The action grew out of the revocation of a permit by the Board of

Zoning Appeals. A demurrer was interposed to said bill of complaint, which after hearing was sustained. Mr. Jones appeared for the Commissioner.

Nichola Sangiavanni vs. State Accident Fund. Before the State Industrial Accident Commission. In this case Sangiavanni suffered an injury to his foot which incapacitated him for a time, and compensation was paid to him without protest until it was felt by the physicians who treated him for the State Fund, that he had recovered from the injury and that he was malingering. There were three different hearings in his case, at all of which he complained of severe pain and almost complete disability. The doctors who treated him testified that he would come to their office with complaints and claimed to be unable to walk except by the assistance of a cane, and then with great difficulty. Between his visits he would be seen on the streets of Cumberland by the physicians and others, at which time he showed no evidence of any injury to his foot. The Commission discontinued his compensation upon these facts being developed to their satisfaction. Mr. Jones appeared for the State Fund.

Thomas vs. State Accident Fund. Before the State Industrial Accident Commission. In this case the widow of David Thomas, employed by the General Crushing Stone Company, claimed compensation, alleging that his death arose out of an accidental injury which he suffered in the course of his employment. The State Fund as the insurer of the employer contested the claim. At the hearing it developed that the deceased died as a result of tuberculosis. The testimony of the claimant was to the effect that the tuberculosis was super-induced by the accident, whereas the testimony offered on behalf of the Fund was to the effect that there was no connection between the accident and the death. The Commission sustained the contentions of the State Fund and the claim was disallowed. Mr. Jones appeared for the State Fund.

W. A. Thomas vs. State Accident Fund. Before the State Industrial Accident Commission. In this case the widow of

W. A. Thomas, employed by McComas Brothers, claimed compensation from the State Accident Fund as insurer of McComas Brothers, alleging that the death of Thomas resulted from an accidental injury arising out of and in the course of his employment. The State Fund contested the claim on the ground that the death did not result from an accident so occurring. It developed that the death of Thomas resulted from an internal injury which he may have received in the course of his employment or in the course of certain private work which he did for himself after leaving his employment for McComas Brothers, for the last time. The claim was disallowed. Mr. Jones appeared for the State Fund.

Cora L. Haines vs. State Accident Fund. In the Circuit Court for Washington County. Cora L. Haines, widow of William L. Haines, filed claim for compensation against the State Accident Fund by reason of the death of her husband, William L. Haines, which it was alleged resulted from an accident arising out of and in the course of his employment by the Dickson Construction and Repair Company, the latter being insured by the State Accident Fund. Mr. Haines sustained a slight injury in the early part of April, 1924, by running a splinter into his hand. A few days after the accident, it was necessary to operate on his hand, from which operation he recovered in the normal space of time. He had been regularly employed prior to the accident and about four weeks after the operation, when he had practically recovered from the effects of the injury, he suffered a complete breakdown, which the doctors employed by the State Fund attributed to arterio sclerosis. The State Fund filed a petition with the State Accident Commission, asking it to determine the extent of disability and upon hearing of his application, compensation was discontinued after allowance for such time as the Commission felt the disability of Haines was due to the accident. Mr. Burke represented the Fund in this hearing before the Commission. The decision of the Commission discontinuing compensation was appealed to the Circuit Court for Washington County. In the trial of this appeal in December, 1924, the State Fund was repre-

sented by former Attorney General Alexander Armstrong. The decision of the Commission was reversed and accordingly the State Fund was directed to continue the payment of compensation to Haines. These payments were continued until April, 1925, when he died as a result of arterio sclerosis. Thereafter his widow filed a claim for compensation, claiming that his death had been caused or accelerated by the accident in April, 1924. The State Fund contested this claim, and its contentions were sustained by the State Accident Commission in the disallowance of the claim. Mr. Jones appeared for the State Fund in this proceeding.

The decision of the State Accident Commission was appealed to the Circuit Court for Washington County, and in the trial of this appeal the State Fund was represented by Mr. Jones and Robert H. McCauley of the Hagerstown Bar. The issues of fact involved in the case were submitted to a jury and resulted in a verdict for the State Fund, affirming the decision of the State Accident Commission, by which the claim of Mrs. Haines for compensation was disallowed.

Louisa R. Cramblitt vs. State Industrial Accident Commission. Mrs. Cramblitt claimed compensation from the State Accident Fund by reason of the death of her son, Officer Albert E. Cramblitt, who was killed in the course of his duties as a member of the State Police Force. The issue of dependency was raised by the State Fund in this case, and upon hearing it developed that Officer Cramblitt contributed regularly to the support of his mother to the extent of approximately \$15.00 per week. The Commission found Mrs. Cramblitt partially dependent upon her son and awarded compensation accordingly. Mr. Jones appeared for the State Fund.

Federal Insurance Company vs. Charles D. Gaither, Police Commissioner. In the Baltimore City Court. Writ of replevin for recovery of Buick automobile which came into possession of Department in connection with the arrest of one Orville Grimm on the charge of violating the law with respect to the transportation of stolen automobiles. The

Commissioner declined to deliver the automobile in question to the plaintiff except upon the issuance of a writ of replevin and the filing of a bond. Mr. Jones represented the Commissioner.

General Exchange Insurance Corporation vs. Charles D. Gaither, Police Commissioner. In the Baltimore City Court. Writ of replevin for the recovery of Buick automobile which came into possession of the Department in connection with the arrest of Orville Grimm on the charge of violating the law with respect to the transportation of stolen automobiles. The Commissioner declined to deliver the automobile to the plaintiff except upon the issuance of a writ of replevin and the filing of bond. Mr. Jones represented the Commissioner.

Cooper vs. State Accident Fund. Before the State Industrial Accident Commission. In this case the widow of Cooper claimed compensation from the State Accident Fund as insurer of W. M. Longly, Cooper's employer. Cooper was found dead beside the railroad track leading from his place of employment to his home, and it was assumed that he was struck by a passing train. The claim was contested on the ground that the accident did not arise out of and in the course of Cooper's employment, and this contention was sustained by the Commission and the claim disallowed. Mr. Jones appeared for the Fund.

James W. Hancock et al. vs. Public Service Commission of Maryland et al. In the Circuit Court for Worcester County. By an Act of the Legislature, the town of Snow Hill was authorized to purchase a privately owned electric light plant operating in the town and to issue bonds in order to raise sufficient funds to complete the purchase subject to the approval of the Public Service Commission of Maryland. This approval was obtained after due hearing. Subsequently and before the purchase could be completed, additional facts were discovered which caused the Mayor and City Council of Snow Hill to question the advisability of the purchase. In view of the fact that certain other

interests made an offer for the property the terms of which would apparently be advantageous to the municipality, a rehearing was, therefore, asked and the Public Service Commission of Maryland passed an order granting its sanction to a sale of the interest already acquired by the municipality in the electric light plant to the would-be purchaser. A number of citizens of Snow Hill thereupon brought suit to restrain the municipal authorities from completing the sale. The case was argued before Judges Pattison and Duer. Mr. John W. Staton, appearing on behalf of the Mayor and City Council of Snow Hill, co-defendants with the Public Service Commission, and Mr. Rice representing the Public Service Commission. The injunction was granted.

Carville D. Benson, Insurance Commissioner, vs. Southern Life Insurance Company of Baltimore City. In the Circuit Court of Baltimore City. Action was instituted against the Southern Life Insurance Company of Baltimore City, because of the failure of that Company to comply with the provisions of the insurance laws of Maryland. Upon compliance with the requirements, the bill was dismissed. Mr. Burke and Mr. Rice appeared for the Insurance Commissioner.

Joseph H. Mitchell vs. Charles D. Gaither, Police Commissioner; Owen Taylor vs. Charles D. Gaither, Police Commissioner, and John B. Leitch vs. Charles D. Gaither, Police Commissioner. Three separate petitions for mandamus to compel the Police Commissioner to pay to the plaintiffs who have been retired from the Police Force of Baltimore City, fifty per cent of the bonus which the active members of the Police Force receive under the provisions of the Act of 1922. Attorney General Armstrong in 1922 rendered an opinion in which he decided that the retired officers were not entitled to the percentage of the bonus claimed. An answer was filed to each of the petitions in accordance with the opinion delivered by Mr. Armstrong. At the hearing it developed that the cases were intended as test cases, and the granting of the petitions would mean the prompt payment of approximately \$75,000 from the Pension Fund and

the annual payment of approximately \$25,000 thereafter to officers who had been retired from the Department over and above the amounts now paid to them from the Pension Fund. The cases were heard by Judge Stein in the Superior Court of Baltimore City. The petitions were dismissed. Mr. Jones appeared for the Commissioner, Mr. Allan H. Fisher, former Attorney General, appeared *amicus curiae*.

In addition to the above cases finally disposed of in the lower Courts, there were approximately seventy-five other hearing cases before the State Industrial Accident Commission. Hearings in these cases were requested by the State Fund to determine some doubtful point. A majority of these hearings took place before the Commission in Baltimore, although there were a great many in different parts of the State. Mr. Burke or Mr. Jones represented the State Fund in such of these hearings as were held before the resignation of Mr. Burke on April 1st, 1925. Since his resignation, Mr. Jones has represented the State Fund in all of these hearings except those which have taken place when he was otherwise engaged, when the State Fund was represented by Mr. Rice.

CASES PENDING IN THE UNITED STATES DISTRICT COURT.

In the Matter of the Monarch Manufacturing Company in Bankruptcy. In the United States District Court. This company being indebted to the Board of Welfare to the extent of approximately \$22,000, and it appearing to the Director of Welfare that the management of the Company was such that there was no reasonable hope of a reduction of this indebtedness, but a probability that it would increase, the matter was referred to the department for attention. After consideration it was concluded to apply for a receiver in bankruptcy, and upon such application being filed, Mr. Jones was appointed receiver and obtained authority to continue the business until such time as it could be sold as a going concern on the most advantageous terms. He conducted the business for several weeks at a small profit to the bankrupt estate and finally sold the assets of the company as a going concern in excess of their appraised value. Subsequently Harold Tschudi, Esq., was appointed trustee in bankruptcy and Mr. Jones, as receiver, turned over to the trustee so appointed all assets in his hands.

In filing the claim of the Board of Welfare against the bankrupt estate, this Department contended that the Board of Welfare was entitled to priority, first by reason of State sovereignty, second, on the ground that its claim was in effect for wages, and, third, to the extent of the net proceeds of the sale of the machinery and equipment situated within the Maryland penitentiary on the ground that such machinery had been pledged to the Board of Welfare as security for any claim which might accrue by reason of the contract with the Monarch Manufacturing Company. These contentions were set for hearing before the referee and the argument in support of them was made by Mr. Jones.

State of Maryland vs. Robert D. Ford, John M. Barton, E. Franklin Ely, Wilton L. Stevens and William Trabing.

Under the decision of the Supreme Court of the United States in the case of State of Maryland vs. Soper (No. 23, October Term, 1925, supra), the right was reserved to Judge Soper to permit an amendment to the petition for removal in the murder case, so as to bring the same within the provisions of the Removal Act. The traversers petitioned Judge Soper for leave to amend, and Judge Soper signed an order requiring the State to show cause why such leave should not be granted. The Attorney General and Mr. Levy are appearing for the State.

CASES PENDING IN THE LOWER COURTS.

William E. Woodall & Company vs. State Tax Commission. In the Baltimore City Court. Appeal from an order of the State Tax Commission. The taxes in this case have long since been paid and John Henry Skeen, counsel for the appellant, has advised this Department that a dismissal of the appeal will be entered in due course. Mr. Levy is representing the State.

Mathias Thau vs. Robert E. Thau and E. Austin Baughman, Commissioner of Motor Vehicles. In the Circuit Court of Baltimore City. This is a suit to require the Commissioner of Motor Vehicles to transfer title to certain motor vehicles to the complainant. It is a private dispute between the complainant and the defendant, Robert E. Thau. The Commissioner of Motor Vehicles is merely a formal party. An answer has been filed on behalf of the Commissioner of Motor Vehicles. Mr. Levy is representing the Commissioner.

William V. Roach and Catherine A. Roach, his Wife, vs. State Tax Commission. In the Baltimore City Court. An appeal from an order of the State Tax Commission. In this case the appellants contend that the assessment on their property was increased without notice to them. Mr. Levy is appearing for the State Tax Commission.

Whitmarsh Sand & Gravel Company vs. State Tax Commission. In the Circuit Court for Baltimore County. Appeal from an order of the State Tax Commission. This case involved the question as to whether a sand and gravel company is a manufacturer within the meaning of the tax exemption statutes. Mr. Levy is representing the State Tax Commission.

George P. McCeney vs. State Tax Commission and the County Commissioners of Prince George's County, Maryland. In the Circuit Court for Prince George's County.

This is an appeal from an order of the State Tax Commission of Maryland, assessing the appellant upon his equitable interest upon certain intangible property, part of a trust estate being administered in the District of Columbia. The question involved is whether the Maryland statute, providing for the assessment of the equitable interests of residents of Maryland, where the trustee is a non-resident, is applicable. Mr. Levy is representing the State Tax Commission.

Baltimore Steam Packet Company, a Body Corporate, vs. State Tax Commission. In the Baltimore City Court. Appeal from an order of the State Tax Commission. The purpose of this appeal is to test the validity of Chapter 264 of the Acts of 1924, exempting certain vessels of corporations of this State, engaged in foreign coastwise commerce, from taxation. Mr. Levy is representing the State Tax Commission.

State Tax Commission vs. United Railways and Electric Company. In the Circuit Court No. 2 of Baltimore City. This case involves the question of the liability of the United Railways Company for the payment of the bonus tax of \$2,200.00 on the increase of its capital stock. This case has been pending since 1917, the bonus tax of \$2,200.00 having been deposited with the Union Trust Company pending the determination of this litigation. Further efforts on the part of this Department to bring the case to trial were unsuccessful, but it is hoped that it may be disposed of in the coming year. Mr. Levy is representing the State Tax Commission.

State of Maryland vs. Charles M. Claggett. In the Circuit Court for Charles County. In this case the constitutionality of Section 190 of Article 56 of Bagby's Annotated Code of 1924, in so far as it provides for the termination of the reciprocal privileges of non-resident motorists, upon a conviction for any violation of the general Motor Vehicle Law, is assailed. This Department was requested by Chief Judge Digges to submit briefs on behalf of the State. Mr. Levy is appearing for the State.

Camden Sewer Company of Salisbury, Maryland, a corporation, vs. State Board of Health. In the Circuit Court for Wicomico County. This is an appeal from an order of the State Board of Health refusing to grant a permit to the Camden Sewer Company of Salisbury for certain sewerage construction. Hooper S. Miles of the Salisbury bar has been retained as local counsel. Mr. Levy and Mr. Miles are appearing for the State Board of Health.

J. Harris vs. Charles D. Gaither, Police Commissioner, Garnishee of Jake Gold. Attachment laid in the hands of the Police Commissioner affecting lot of fur coats valued at approximately \$1,500.00 and a sum of money amounting to \$545.00, which came into possession of the department at the time of the arrest of Gold and others on suspicion that the coats in question had been stolen. It later developed that the coats were actually stolen from the Crawford Stores Company of Meadville, Pennsylvania, and upon a release of the plaintiff being filed the coats were returned to their rightful owner. Thereafter a plea was filed admitting the possession of the money. Mr. Jones is representing the Police Commissioner in the proceeding.

Henry S. Ashman vs. Charles D. Gaither. Garnishee of Florentino Diaz and Amadio Farrazroser. In the Superior Court of Baltimore City. This attachment was laid in the hands of the Commissioner affecting certain clothing which came into the possession of the department in connection with a charge of burglary, and as the clothing was required for evidence in the burglary case, a motion to quash the attachment was filed on this ground. Mr. Jones is appearing for the Commissioner.

Walter L. Swiskowski vs. Maryland Penitentiary.

Andrew Sauer vs. Maryland Penitentiary. The claimants in these cases are prisoners at the Maryland Penitentiary who, while engaged in State work received accidental injuries. They filed separate claims with the State Industrial Accident Commission, claiming compensation, which

claim was contested on the ground that their employments are not covered by the Workmen's Compensation Law, and on the further ground that they are not employees within the meaning of the Workmen's Compensation Act. Mr. Jones represented the Penitentiary in these two cases and they are now being held under consideration by the State Industrial Accident Commission.

David Jacobs vs. Charles D. Gaither, Police Commissioner. Garnishee of Joseph Cascio, Godfrey Hammond and Edward Wefelmeyer. In the Baltimore City Court. Attachment laid in the hands of the Commissioner intending to affect certain monies and property which came into the possession of the Commissioner at the time of the arrest of the defendants. Mr. Jones filed a plea on behalf of the Commissioner admitting possession of the assets named and will represent him in all further proceedings.

Odessa Kimmel vs. State Accident Fund. Odessa Kimmel claimed compensation from the State Accident Fund, insurer of the Manor Coal Company, by reason of the death of Walter Kimmel, her husband. The State Accident Fund raised the issue of dependency, and upon hearing of this issue the claimant testified that although she had not been living with her husband for approximately two years, she had received regular support from and was dependent upon him. She further contended that she had lived regularly at a certain place during the entire time. The State offered at this hearing certain testimony to the effect that Walter Kimmel in his life time had claimed that his wife had deserted him and that he neither gave her any support nor expected to have anything more to do with her. The facts in the case being in considerable doubt, Mr. Jones who represented the State Fund requested a further hearing which was granted, and pending the further hearing, made a very careful investigation through the aid and assistance of Mr. Walter Clay, a private detective of Cumberland. The result of this investigation was presented at the subsequent hearing with the result that the State Accident Commission

decided that the claimant was not dependent upon her husband and consequently disallowed the claim. The decision has been appealed to the Circuit Court for Allegany County, and Fuller Barnard, Esq., of the Cumberland bar and Mr. Jones will represent the State Fund in the trial of the appeal.

State Accident Fund and Josephine Hurka vs. Stewart Taxi-Cab Company. In the Baltimore City Court. Josephine Hurka, while employed by the National Window Cleaning and Supply Company was injured in the course of her employment in December, 1923. As insurer of the National Window Cleaning and Supply Company, the State Accident Fund was required to pay her compensation during disability. The accident occurred under circumstances which, in the opinion of the department, created a legal liability in the Stewart Taxi-Cab Company to pay damages in respect thereto and the present action is being prosecuted for the purpose of enforcing this liability for the benefit of Mrs. Hurka and obtaining reimbursement to the State Fund for the compensation which it has been required to pay. Mr. Jones is appearing for the plaintiffs.

Board of Welfare vs. Taxicab Company of Baltimore. In the Baltimore City Court. Action for damages to automobile truck belonging to the Board of Welfare. The case grows out of an accident in which a taxicab belonging to the defendant company collided with the automobile of the Board of Welfare and the case has been instituted for the purpose of recovering the damages to the automobile belonging to the Board of Welfare. Mr. Jones is appearing for the Board of Welfare.

Samuel C. Mahle vs. Charles D. Gaither. Garnishee of Milton R. Callison. In the Baltimore City Court. Attachment laid in the hands of the Police Commissioner affecting the sum of \$164.00 recovered from Milton R. Callison in connection with his arrest on the charge of larceny. Mr. Jones filed a plea on behalf of the Commissioner admitting

the possession of the money in question, and will represent him in the proceedings.

John Kraushaar vs. State Board of Electrical Examiners. In the Baltimore City Court. Petition for writ of error to compel the re-issue of a Master Electrician's license to the plaintiff, which license had been revoked by the defendants. Mr. Jones has prepared and filed an answer for the defendants, and will represent them in the proceeding.

Joseph Pautenis, et al, vs. John E. Potee, Sheriff, et al. In the Circuit Court No. 2 of Baltimore City. Bill of complaint in equity to set aside a sale made by the Sheriff of Baltimore City on a writ of execution. Mr. Jones has prepared and filed an answer on behalf of the Sheriff and will represent him in the proceeding.

William C. Turner vs. John E. Potee, Sheriff of Baltimore City. In the Circuit Court of Baltimore City. Bill to restrain the Sheriff of Baltimore City from selling a certain automobile which he seized on a writ of fieri facias. Mr. Jones prepared and filed an answer on behalf of the Sheriff and will represent him in the proceeding.

James King & Sons, Inc., vs. John E. Potee. In the Baltimore City Court. In this case the plaintiff claims storage from the defendant for automobiles stored with the plaintiff company by his predecessor in office. On behalf of the defendant, Mr. Jones has filed a demurrer to the declaration and will represent him in the proceeding.

University of Maryland vs. H. D. Watts Company and United States Fidelity & Casualty Company of New York. In the Superior Court of Baltimore City. Suit upon contract and bond for construction and completion of buildings for University of Maryland. Issues joined awaiting trial. Mr. Rice is appearing for the University of Maryland.

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

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

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

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

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

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

Frederick W. Rohrs and Annie Rohrs vs. State Roads Commission. In the Circuit Court for Baltimore County in equity. Bill of complaint to enjoin the State Roads Commission from entering upon the property of the complainants and removing or attempting to remove a gasoline pump.

Edward M. Hammond vs. State Roads Commission. In the Circuit Court for Howard County in equity. Bill to restrain the Commission from installing on the State Road known as Frederick Turnpike, certain pipe and from closing a bridge on said road. Answer filed.

David Asche vs. State Accident Fund. Appeal from the award of the State Industrial Accident Commission to the Circuit Court of Talbot County. Settled by agreement. Release filed December 15, 1925.

Samuel Rachanow and wife vs. John E. Potee, Sheriff of Baltimore City, et al. In the Circuit Court of Baltimore City. This is a bill for injunction to restrain the defendants from executing upon the property of the plaintiffs by reason of a judgment which is alleged to have been obtained by fraud. Mr. Jones filed an answer for Sheriff Potee and will represent him in the proceedings.

Bessie I. Hitchens vs. John E. Potee, Sheriff of Baltimore City, et al. In the Circuit Court No. 2 of Baltimore City. This is an equity proceeding for an injunction to restrain the defendants from proceeding with an execution. Mr. Jones filed an answer for Sheriff Potee and will represent him in the proceeding.

Bessie E. Davis vs. Charles D. Gaither, Police Commissioner, Garnishee of Maurice E. Pease. In the Superior Court of Baltimore City. In this case the plaintiff caused an attachment to be laid in the hands of General Gaither attempting to affect the salary of Maurice E. Pease who is employed as a member of the police force of Baltimore City. A motion to quash the attachment has been filed and will no doubt dispose of the matter. Mr. Jones is representing the Police Commissioner.

Thomas Kane vs. Thomas F. McNulty, former Sheriff, and John E. Potee, present Sheriff of Baltimore City, et al. In the Baltimore City Court. This is an action of trover and conversion in which the defendants are charged with wrongfully depriving the plaintiff of the use and possession of his automobile. The Sheriff is a nominal party and the action has been continued from time to time at the request of counsel for the other parties interested in the proceeding. Mr. Jones is representing the Sheriff.

Charles J. Carroll vs. Charles D. Gaither, Police Commissioner, Garnishee of James V. Coleman. In the Baltimore City Court. In this case the plaintiff caused an attachment to be laid in the hands of General Gaither intended to attach

a certain automobile belonging to the defendant, the same having been left with the Police Department as bail for the appearance of the defendant in the Traffic Court, and the Police Department has no interest in the further detention of the car. A special plea has been filed by Mr. Jones, who is representing the Police Commissioner in the action.

Ida Jacobson vs. John E. Potee, Sheriff of Baltimore City. In the Circuit Court No. 2 of Baltimore City. This is an action for injunction to restrain the defendants from executing on the property of the plaintiffs by reason of the existence of a judgment which is alleged to have been illegally entered. Mr. Levy prepared an answer for the Sheriff and will represent him in the proceeding.

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

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

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

Commission. Mr. Jones will represent the State Accident Fund.

Louis M. Hill vs. Administrator of Estate of Annie L. Thomas, the State of Maryland, et al. In the Orphans' Court of Talbot County. Petition for the sale of property of deceased who died unmarried, leaving no heirs within the fifth degree. The State is made a party to the proceedings as it is entitled to the balance of the estate, after the payment of all just expenses and charges, for the benefit of the public schools of Talbot County.

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

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

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

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

BANK RECEIVERSHIP CASES NOW PENDING

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

State of Maryland vs. Lafayette Bank. Mr. Page, Bank Commissioner, is acting as receiver. A considerable amount of litigation has been involved in the administration of this

receivership. The receiver, represented by Samuel J. Fisher, Esq., as attorney, secured during the year 1923, a favorable decision from the Court of Appeals in the case of Montrose Building & Loan Association against Page, receiver. Two cases, each entitled Penrose against Page, receiver, and the case of Rausch against Page, receiver, have been argued before the Court of Appeals. The receiver on December 1st, 1923, distributed a fourth and final dividend of 25 per cent to all depositors and creditors, making a total distribution of 100c on the dollar to all creditors. Four per cent on all savings deposits up to the date of the receivership was also allowed and paid.

ASSIGNMENTS TO DEPARTMENTS.

The Attorney General, in connection with Mr. Burke and Mr. Rice, has acted as counsel to the Public Service Commission. He has kept in close personal touch with the Commission and during the year rendered a number of opinions to it.

After April 1st, 1925, Mr. Rice succeeded Mr. Burke. As counsel to the Board of Public Works he prepared and drafted the resolutions, forms of advertisements and forms of bonds in connection with all issues of the State Bonds during the year. Legal opinions as to the validity of these issues were furnished to the State Treasurer.

Acting as counsel to the University of Maryland, he cooperated with Dr. Gordon, the State Chemist, and his assistant, Mr. Bopst, in the enforcement of the Feed Stuff and Fertilizer Law. Numerous hearings in regard to violations of these laws were held. The State was successful in obtaining convictions in every case prosecuted.

The State Department of Forestry which is under the supervision of the Board of Regents of the University of Maryland has been represented by Mr. Rice. A controversy of long standing as to the acquisition of a site for the foot bridge to be erected by the Department at Orange Grove, Maryland, was brought to a successful conclusion. Mr. Burke and Mr. Rice represented the State Board of Labor and Statistics, and as counsel for that department conducted numerous prosecutions for violations of the Child Labor Laws.

Mr. Burke and Mr. Rice were in frequent consultation during the year with the Insurance Commissioner and Deputy Commissioner in regard to the affairs of the Insurance Department. Proceedings were instituted against the Southern Life Insurance Company, but upon compliance by that company with the requirements of the law and regulations of the Commission, the proceedings were dismissed.

Mr. Jones has continued to act as counsel for the Police Commissioner, the Secretary of State, the Board of Welfare, the Board of Election Supervisors of Baltimore City, the Sheriff of Baltimore City, the State Board of Undertakers, the State Board of Electrical Examiners, the State Bureau of Mines, the Board of Moving Picture Censors, the State Employment Commissioner and other departments of the State government requiring occasional advice. Upon the resignation of Mr. Burke on April 1st, 1925, Mr. Jones assumed the duties of counsel to the State Accident Fund and to the State Industrial Accident Commission.

In his capacity as counsel for the Board of Welfare, Mr. Jones has prepared numerous contracts, bonds and other documents either for the employment of prison labor at the institutions under the control of the board or for the making of repairs or additions to one or more of these institutions.

For the Secretary of State and the Board of Election Supervisors, he has answered many inquiries which have not been included in the official opinions, relative to interpretations of the election laws and also prepared a number of forms for use by these officials in the discharge of their duties.

For the Police Commissioner, and in an effort to greatly diminish the number of replevin suits against this official for the recovery of properties of various kinds which come into his possession in the usual discharge of his duties, Mr. Jones has prepared a form of bond for acceptance by the Commissioner when executed by an approved surety, so as to avoid the necessity for replevin proceedings. It is expected that this action will materially reduce the number of suits instituted against the Commissioner in the course of a year and expedite the return of properties to their rightful owners as well as save to them the court costs and counsel fees usually incident to the institution of replevin suits.

Mr. Levy continued to act as counsel for the Bank Commissioner, State Board of Health, State Tax Commission,

the Commissioner of Motor Vehicles, the Maryland Racing Commission, the State Lunacy Commission, the Board of Medical Examiners, the Board of Dental Examiners and several other departments.

As counsel for the Bank Commissioner he kept in close touch with the various problems and activities of that department and consulted with and advised the Bank Commissioner on numerous occasions. In the course of the year there were a number of difficult and delicate matters which were adjusted without litigation.

He attended the meetings of the State Board of Health and was constantly in touch with its Department Head and Bureau Chiefs.

He handled appeals from the State Tax Commission to the Baltimore City Court and to the County Circuit Courts, and all other matters upon which the Commission sought the advice of this department. He also prepared and argued several cases for the Commission in the Court of Appeals.

He tried appeals from orders of the Commissioner of Motor Vehicles, refusing, revoking or suspending licenses, represented him in a number of other cases in the Courts, and handled and collected for him a number of delinquent accounts.

He also kept in close touch with the other departments to which he was assigned, and represented them in the Courts.

He assisted in the preparation of numerous opinions requested by the various State Departments.

He adjusted the claim of the State against Herman E. Burgess, Treasurer of Prince George's County. The amount claimed to be due was \$4,006.93, on account of taxes collected and unremitted, and settlement was made with his surety, the United States Fidelity & Guaranty Company, with the approval of the Board of Public Works, for \$3,845.55.

He also adjusted a claim of the State against Kirk E. Gifford, Ex-Sheriff of Cecil County, for alleged excess fees

of office, unremitted to the State. The Ex-Sheriff contended there were no excess fees, but was unable to produce vouchers to support his contention. With the approval of the Board of Public Works this claim was settled for \$500.00.

After a great deal of difficulty, he obtained a refund of approximately \$800.00 from Vivian V. Simpson, of costs advanced by the University of Maryland, in the case of Simpson vs. University of Maryland, argued in the Court of Appeals, in the October Term, 1924.

He adjusted a dispute between the City of Baltimore and the Clerk of the Baltimore City Court as to certain fees which the City refused to pay to the Clerk.

During the year there was a great increase in the number of public freight and passenger motor vehicle operations. There were a number of cases in which the carriers denied their amenability to the Public Freight or Public Passenger Motor Vehicle Laws. Mr. Levy assisted the Public Service Commission and the Commissioner of Motor Vehicles in an adjustment of several of these matters, and arranged for a determination of the status of certain other carriers, by Court proceedings. In these proceedings, Mr. Levy represented the State.

Mr. Archer continued his assignment as counsel to the Conservation Commission, State Roads Commission, Adjutant General and the Board of Moving Picture Operators and Examiners.

As counsel for the State Roads Commission, he has approved the following contracts: Seven oiling contracts covering 430 miles, \$179,217.92; twelve bridge contracts, \$158,266.25; one hundred and eight road contracts, with a total mileage of 243.06, amounting to \$4,631,190.21; one contract for jetties at Ocean City, \$16,187.50; grand total of 128 contracts amounting to \$4,984,861.88.

He has also represented the Commission in a claim against the Cumberland and Allegany Gas Company in reference to the re-location of gas mains in Cumberland made necessary by the change in the grade of certain State Roads. He also represented the State in seventeen condemnation cases for

the acquisition of a right-of-way for State Roads throughout the State, and in addition thereto, settled a number of these claims without the necessity of bringing suit.

He represented the Commission in negotiations with the Susquehanna Power Company and the Philadelphia Electric Company as to the changing of the location of a section of the State road and the Conowingo Bridge over the Susquehanna River, and the construction of a new road and bridge by the said companies necessitated by the erection of the Conowingo Dam. He settled successfully the case of the Hatton Construction Company against the State Roads Commission and Edward F. Murray.

He has also, in connection with the Attorney General's office of West Virginia, been working on the problem of the condemnation of the toll bridge at Harper's Ferry. This work has included his attendance at a number of conferences, one of which was held at Harper's Ferry, and was attended by the Road Commissioners of Maryland and West Virginia.

He has been engaged in the prosecution of the claim against the Pennsylvania Railroad in connection with the destruction by fire of a bridge over the said railroad near Charlestown, Cecil County.

He represented the Conservation Commission in a number of cases growing out of the protest of application for leases for oyster bottoms in St. Mary's, Calvert, Dorchester, Kent, Queen Anne and Wicomico Counties.

In January, 1925, at the request of the Conservation Department, Mr. Archer made a trip down the Bay to investigate the operation of the trawl nets in the southern part of the Bay and the Potomac and Patuxent Rivers. On this trip he was accompanied by the Commissioner and representatives of the Department of Fisheries at Washington. There is no law prohibiting the operation of trawl nets, but due to the great destruction these nets were causing to the fish industries of Southern Maryland, a bill in Equity was prepared to restrain the owners of these nets from operating, on the ground that they were destroying the public resources of the State, but before the proceedings were filed,

the owners of these nets ceased operation in Maryland waters and returned to Virginia and have not returned. In view, however, of the great destruction they caused while here, it is very important that the next Legislature pass the necessary legislation to prohibit the use of such nets in Maryland waters.

As counsel for the Adjutant General, he advised with the General over the acquisition of land necessary for the construction of armories in several of the Counties and also in reference to acquiring land for State camping ground.

As counsel for the Board of Moving Picture Machine Operators, he represented them in the Baltimore City Court in an injunction proceeding brought by Ralph W. Rushworth, which was a proceeding growing out of the refusal of the Board to issue him a license as a moving picture operator.

CONDEMNATION WORK, SPECIAL COUNSEL.

The following condemnation cases for the purpose of acquiring the right-of-way for the State Roads Commission were tried and determined by verdict of a jury:

Montgomery County—

Condemnation proceedings against Thomas H. Carter for land required by the State Roads Commission. Associate Counsel, Bowie F. Waters, Esq. Verdict, \$900.00. Fee, \$100.00.

Montgomery County—

Condemnation proceedings against Elza Cordell for land required by the State Roads Commission. Associate Counsel, Bowie F. Waters, Esq. Verdict, \$366.25. Fee, \$100.00.

Prince George's County—

Condemnation proceedings against Richard Robertson for land required by the State Roads Commission. Ogle Marbury, Esq., Associate Counsel. Verdict, \$300.00. Fee, \$250.00.

Prince George's County—

Condemnation proceedings against John W. Thorne for land required by the State Roads Commission. Associate Counsel, W. Hampton Magruder, Esq. Verdict, \$125.00. Fee, \$100.00.

Washington County—

Condemnation of certain land owned by George Haller required by the State Roads Commission. Associate Counsel, Alexander Armstrong, Esq. Verdict, \$300.00. Fee, \$150.00.

Wicomico County—

Condemnation of certain land owned by Severn Harman required by the State Roads Commission. Associate Counsel, Woodcock & Webb. Verdict, \$100.00. Fee, \$150.00.

Worcester County—

Condemnation of certain land owned by M. L. Truitt required by the State Roads Commission. Associate Counsel, John W. Staton, Esq. Verdict, \$15.00. Fee, \$100.00.

CONCLUSION.

My relations with all the officials connected with your administration have continued friendly and cordial, and it has been a distinct pleasure to render them the service which they requested. Permit me to express my sincere appreciation of your courtesy and co-operation in all matters referred to my Department, and to assure you that all of its members hold themselves in readiness to respond to any call for assistance that may come from you.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

COST OF THE STATE'S LEGAL WORK DURING THE YEAR
ENDING SEPTEMBER 30, 1925.

Appropriation under Act of 1924, Chap. 176.....		\$24,803.00
Unexpended Balance 1924, carried forward to 1925		1,433.96
Reimbursement Expenses in Kepner Case.....		94.20
		\$26,331.16
Salary of Attorney General.....	\$5,000.00	
Salaries of Asst. Attys. General.....	10,000.00	
Stenographers and Office Help.....	3,640.00	
Rent	2,599.92	
Postage	74.64	
Office Supplies.....	207.18	
Printing Annual Report and Opinions	658.00	
Telephone and Telegraph.....	378.07	
Miscellaneous, Water, Ice, Towels.....	172.99	
Office Equipment.....	50.00	
Books and Periodicals.....	124.00	
Traveling Expenses	19.75	
	\$22,924.55	
Less 1924 bill.....	48.03	
		22,972.58
Balance carried forward to 1926.....		\$3,358.58

OFFICIAL OPINIONS

of the

ATTORNEY GENERAL OF MARYLAND

ADMINISTRATION.

ADMINISTRATION — WILLS — WHERE BOTH WITNESSES TO WILL ARE DEAD THE SIGNATURES OF TESTATOR AND WITNESSES SHOULD BE PROVED.

January 8, 1925.

*J. Irwin Harwood, Esq.,
Register of Wills,
Denton, Maryland.*

DEAR SIR: I have your letter of January 2nd, 1925, asking an opinion as to the proof required for probate of a will where both of the witnesses are deceased.

By Section 353 of Article 93 of the Code of Public General Laws, it is provided that "proof by any credible witness of the signature of the testator or of the signature of any such deceased or absent witness shall have the same effect upon the probate of said will as if said deceased or absent witness had been present at said probate, and had testified that said will was duly executed. From this provision of the law, it would seem that proof of the signature of the testator would be sufficient to admit the will to probate, although in the case of *Safton vs. Krumm*, 107 Md. 405, where both of the witnesses were dead, proof was offered as to the signature of the testator and each of the witnesses. This procedure was held by the Court of Appeals to be in compliance with the above section.

While I know of no case in the Maryland Courts in which the proof of the signature of the testator alone has been held to be sufficient, that appears to be the meaning of the language used, and I believe the Court would be warranted in admitting the will to probate upon such proof.

In the main, the question which you present is a private one in which the devisees under the alleged will and the heirs and next of kin of the testator are concerned and the State has no interest in it unless the property is disposed

of to collaterals, in which event the State is entitled to the usual collateral inheritance tax. If there is any considerable amount of property involved, I should think the devisees could and would be justified in arranging for the appearance of witnesses to prove the signatures of the witnesses to the alleged will, which, in addition to the proof of the testator's signature would eliminate all question as was decided in the case of Safton vs. Krumm, *supra*.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General*.

ADMINISTRATION—GUARDIAN AND WARD—ORPHANS' COURT
HAS FULL POWER TO APPOINT GUARDIANS AND A BANK
IS JUSTIFIED IN DECLINING TO PAY A SUM OF MONEY
TO A MINOR EXCEPT THROUGH A DULY QUALIFIED GUAR-
DIAN.

February 21, 1925.

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

DEAR MR. SMITH: We have just now received your letter of February 19th, enclosing copy of the letter which you wrote to me under date of January 22nd.

You state that a certain sum of money was deposited in a bank in your City in the names of an adult and an infant, in trust for the adult and the infant, subject to the check of either and payable, in the event of death, to the survivor. That the adult has died and the question now arises as to whether or not the Bank is authorized to pay the amount of the deposit to the minor, who is under eighteen years of age. You request an opinion as to whether or not the Orphans' Court of Frederick County has jurisdiction and authority to appoint a guardian for the minor.

I think the Bank is within its rights in declining to pay the fund to the infant, except through a duly appointed and qualified guardian. Under the provisions of Sections 145,

146 and 147 of Article 93 of the Code of Public General Laws, the Orphans' Court has full authority to appoint a guardian under the circumstances stated in your letter.

I regret the delay in advising you in connection with this matter, and trust that the above will satisfactorily answer your inquiry.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

ADMINISTRATION—ORPHANS' COURT—WHEN ASSETS OF DECEASED NON-RESIDENT SHOULD BE ADMINISTERED IN MARYLAND.

November 5th, 1925.

Honorable Edward A. Scott,
Chief Judge, Orphans' Court of Kent County,
Chestertown, Maryland.

DEAR JUDGE SCOTT: Your letter of November 3rd, addressed to the Attorney General has been referred to me for reply.

You state that one Jane Justis Wallis, formerly a citizen of Maryland and at the time of her death a citizen and resident of Dover, Delaware, where she died, leaving a last will and testament, which has been admitted to probate in the latter state, left real and personal property in Kent County, Maryland; that an exemplified copy of the will has been recorded in your court and that ancillary letters have been there granted. It further appears that among the assets left by the decedent in Maryland is a sum of money on deposit in a bank and also the contents of a safe deposit box, which are unknown to the Court. You request an opinion as to whether or not this deposit and the contents of the safe deposit box should be treated as assets in this State and accounted for in the administration under your jurisdiction.

With respect to the bank deposit, I think it is clear that your Court has jurisdiction to administer the same, pro-

vided it has not already been paid over to the executor in Delaware. It has been held in the case of Citizens National Bank vs. Sharp, 53 Md. 521, that payment by a bank to a foreign executor is good against the subsequent claim of a domestic administrator subsequently appointed. The reason why the situs of simple debts and bank deposits for the purpose of administration is where the debtor resides, is because of the necessity of recourse to the Courts where such debtor resides to bring an action to enforce payment in case of dispute.

As to the contents of the safe deposit box we cannot answer your inquiry definitely without knowing the character of the property contained therein. I would say, however, that if this box contains any tangible personal property such as jewelry, silverware or other articles of value such articles would unquestionably be subject to administration and taxation in Maryland. On the other hand, if the box contains intangible assets, such as stocks and bonds of foreign corporations, I think these assets should be administered in Delaware and not in Maryland.

If the box should contain any of the public stocks or debts created or issued upon the credit of this State, or any stock or debt created or issued upon the credit of the City of Baltimore, or the capital stock of any joint stock company incorporated by the authority of the State, or by any national bank in this State (other than ordinary business corporations) as provided by Sections 77 and 88G of Article 93 of the Code, your Court has jurisdiction to administer such securities unless a sale or transfer of such securities has actually been made by the foreign executor, under the provisions of Section 78 of the same article.

Trusting that the above will satisfactorily answer your inquiry, and with kind regards, I am,

Yours very truly,

WILLIS R. JONES, *Asst. Attorney General.*

ADMINISTRATION—ORPHANS' COURT—LETTERS TESTAMEN-
TARY SHOULD NOT ISSUE ON ESTATE OF NON-RESIDENT
WHO OWNED NO PROPERTY IN MARYLAND.

January 31, 1925.

*Honorable E. E. Friend,
Register of Wills for Garrett County,
Oakland, Md.*

DEAR MR. FRIEND: In your letter of January 16th, you ask for an opinion as to whether or not it is proper for the Orphans' Court of your county to admit to probate a certain alleged last will and testament of Mrs. Jet Agnes Grannon. You further state that Mrs. Grannon left no property of any kind in your county or in the State of Maryland, and that she lost her life in a fire while on a visit at Mt. Lake Park.

Section 341 of Article 93 of the Code of Public General Laws of Maryland provides that "any will or codicil may be proved in any county or Baltimore City wherein letters testamentary or of administration may be granted."

Section 42 of the same article provides that letters testamentary may be granted by the Orphans' Court in any county wherein the testator left personal estate to be administered.

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

It is apparent from the above provisions of law that there can properly be no probate of a will in this State unless the decedent left personal property herein. This conclusion is supported by the decision of the Court of Appeals of Maryland in the case of *Grimes vs. Talbert*, 14 Md., at page 173, where the Court said:

"In an application for letters, the dying intestate and leaving personal estate must be shown; the former must be

proved to the satisfaction of the Court, the latter need not be conclusively established; prima facie evidence thereof is all that is necessary."

It is my opinion, therefore, that the Orphans' Court for your county is justified in declining to admit the alleged last will of Mrs. Grannon to probate until it is established that she left personal property in your jurisdiction.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

BOARD OF WELFARE.

INTERPRETATION OF AGREEMENT WITH WORCESTER WIRE
NOVELTY CO.

July 13, 1925.

*Robert D. Case, Esq.,
Secretary, Board of Welfare,
Union Trust Building, Baltimore, Md.*

DEAR MR. CASE: In your letter of July 7th you request an opinion as to whether or not the Worcester Wire Novelty Company is required to pay a minimum of \$1,000 each month during the term of its contract with the Board.

I think the answer to your question is found in Clause 3 of the agreement, which specifically provides: "If one-third of the net selling price shall be less than \$1,000 per month, the compensation for such labor shall be \$1,000 per month."

The purpose of this provision was to insure the employment of a sufficient number of prisoners to manufacture wire goods to the value of \$3,000 per month, and in order to protect the Board, the above provision was inserted to require the payment for the hire of prisoners on that minimum basis regardless of whether or not the labor was used by the contractor.

I am returning the copy of the contract which you left with me as well as your correspondence with the contractor.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

BOARD OF WELFARE—REQUIRED TO REPAIR ELECTRIC MOTOR
UNDER AGREEMENT TO FURNISH CONTRACTOR POWER
FOR CONDUCT OF BUSINESS.

October 2, 1925.

*Honorable Stuart S. Janney,
Director, Department of Welfare,
Union Trust Building, Baltimore, Md.*

DEAR COL. JANNEY: I have your letter of September 30th, 1925, in which you state that a controversy has arisen between the Department of Welfare and the Worcester Wire Novelty Company of Baltimore as to the proper interpretation of the contract between the parties executed on the first day of December, 1924, and asking my opinion with respect thereto.

By clause 5 of the contract, the Board of Welfare is required to "furnish free of charge, the necessary heat, power and light essential to operate the plant therein."

Section 6 of the contract requires the contractor to furnish "all machinery, tools, supplies, materials, equipment and everything else that may be necessary for the manufacture" of the products of the company.

It appears further that the Board of Welfare has in use and operation a motor for the generation of power used by the contractor, and that this motor, by reason of its use for this purpose, has become worn and now requires repairs. The company declines to pay for these repairs, and you desire to know if it is within its rights in taking this position.

When the Board of Welfare agreed to furnish power free of charge to the company, I think it also agreed to furnish such motor, machinery or other equipment as might be necessary for the making of that power. If the power should be purchased from an outside company, certainly the contractor would not be required to pay for any repairs to the equipment of the outside company. As I view the matter, I think it is immaterial to the contractor whether the Board of Welfare generates the power furnished or pur-

chases it. In either event, it is the obligation of the Board to furnish the same without expense to the contractor.

The machinery, tools, supplies, materials, equipment, etc., referred to in paragraph 6 are intended to cover such articles as are necessary after the Board of Welfare has met its obligation in furnishing power. I do not think, therefore, that it was intended by this clause of the agreement to impose upon the contractor the obligation to repair the motor in question or that he could be required to purchase a motor on his own account for the generation of power.

I am returning the agreement which accompanied your letter.

Trusting that the above will satisfactorily answer your inquiry, and with kind regards, I am

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

CLERK OF COURT.

CLERK OF COURT REQUIRED TO PAY FEE OF \$100.00 TO TREASURER OF MARYLAND UPON TAKING OATH OF OFFICE UNDER APPOINTMENT TO FILL UNEXPIRED TERM.

April 20, 1925.

*John W. Staton, Esq.,
Attorney at Law,
Snow Hill, Md.*

DEAR MR. STATON: In your letter of April 14th, addressed to the Attorney General, you state that Mrs. Sue M. Collins was recently appointed Clerk of the Circuit Court for Worcester County to succeed her husband, Oliver D. Collins, deceased, and you request an opinion as to whether or not Mrs. Collins is required to pay the fee of \$100.00 to the Treasurer of Maryland as provided by Section 56 of Article 17 of the Code of Public General Laws of Maryland. This Code provision was included in Chapter 483 of the Acts of Assembly of Maryland for the year 1874, the title of which chapter reads,

“An act to repeal Article 81 of the Code of Public General Laws of Maryland, entitled ‘Revenue and Taxes,’ and to re-enact the same with amendments.”

It is plainly apparent from this act of the Legislature that it was intended as a revenue measure, and since the particular provision requires the Clerks to pay the sum of \$100.00 when they respectively take the oath of office, it is the opinion of the present Attorney General that this obligation applies to clerks who are appointed to fill unexpired terms as well as those who are elected.

For your information I would say that I have communicated with the office of the Comptroller of the State in regard to the previous practice prevailing in cases of this

character, and I am informed by that office that it has been the uniform custom to collect this fee from clerks appointed to fill unexpired terms.

With kind regards, I am,

Very truly yours,

WILLIS R. JONES, *Asst. Attorney General.*

CONSERVATION.

TONGING LICENSE—CONSTRUCTION OF SEC. 3 OF ART. 72.

February 5, 1925.

Mr. John C. North,
State's Attorney,
Easton, Md.

DEAR SIR: Your letter of the 3rd inst. relative to the construction to be placed on that part of Section 1 of Article 72 of the Code of Public General Laws of Maryland, in so far as the same applies to the granting of the licenses for tonging oysters, in connection with Section 3 of the same Article, is received.

In your letter you ask whether the law permits a resident of the County who is qualified to take out a license to tong for oysters therein to employ on his boat, engaged in such operation, persons who are not residents of the County.

In my opinion the only one required to take the prescribed oath is the owner of the boat, and after taking this oath he is entitled to procure a license for each man employed thereon, whether such employee is a resident of the County and the State or not.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

CONSERVATION—LICENSE FOR ERECTION OF DUCKING BLINDS
IN TALBOT COUNTY—MEASURING DISTANCE BETWEEN
BLINDS—PROVISIONS OF SEC. 1—A OF CH. 462 ACTS
1924 UNCONSTITUTIONAL.

March 31, 1925.

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

DEAR MR. LE COMPTE: Replying to your letter of February 27th, asking for a construction of Chapter 88 of the Acts of 1920, Section 8 of Chapter 26 of the Acts of 1924 and Section 1 of Chapter 462 of the Acts of 1924, I will answer your questions in the order in which you have asked them.

1. You ask if the Poplar Island Duck Club, which is composed of residents of Baltimore City, but whose charter is recorded in Talbot County, are entitled to license under the provisions of Section 5 of Chapter 88 of the Acts of 1920.

I am of the opinion that they are entitled to a license for two reasons: (a) because the Circuit Courts throughout the State have uniformly ruled that non-resident property owners of a county are entitled to a resident hunting license in the county in which they own property; (b) the section itself limits the number of licenses which may be issued to a Club, which clearly contemplates the issuance of such license to a bona fide club, which, from your description, the Poplar Island Duck Club must be.

2. Section 8 of Chapter 26 of the Acts of 1924, can, in my opinion have but one interpretation as to the distance that a blind may be placed from the property of another, the clause in question providing as follows:

“That no person shall erect or place a blind less than 250 yards from the property of any other person.” This means that no blind can be erected closer than 250 yards to another’s property, whether the distance is measured over land or water.

3. In your third question you ask for a construction of a part of Section 1-A of Chapter 462 of the Acts of 1924, which reads as follows:

“It shall be unlawful for any person to place or erect any blind on shore within 300 yards of any blind.”

In my opinion, this clause is unconstitutional in so far as it applies to land owners, because it imposes an improper restriction on the use to which the owner may put his property, without due process of law, and without showing any reason for the imposing of the restriction.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

CONSERVATION—LOCATION OF DIVISION LINE BETWEEN
COUNTIES WHEN DIVIDED BY NAVIGABLE STREAM.

April 9, 1925.

Swepton Earle, Esq.,

Conservation Commissioner,

Munsey Building, Baltimore, Md.

DEAR MR. EARLE: Your letter of March 26th in reference to what constitutes the true boundary between counties where they are divided by a navigable stream or by the channel of a navigable stream is received. There are a number of cases in reference to the question of what constitutes the center of a stream as between different States, and I do not think there would be any difference in the construction of the law when applied to counties.

The leading case on this question is the case of the State of Iowa vs. the State of Illinois, and was reported in 147 U. S. Supreme Court Reports, page 55. In this case the Act of Congress creating the State of Illinois made the boundary line the middle of the Mississippi River. The State of Iowa contended that this meant the middle line of the River, while Illinois insisted that it meant the middle of the main navigable channel. The Court decided that the thread or center of the main channel was the dividing line, and in

deciding the case referred to numerous works on International Law to support their contention. All the cases referred to in these treatises were in reference to boundary between countries and the Court decided that the same rule would apply to boundaries between States. By carrying this rule one step further, I cannot see why it would not also apply to counties. In defining what is meant by the channel when constituting the boundary line, the law is uniform in stating that it means the thread of the main channel.

As to the effect of the shifting of the channel upon the boundary line, the rule is when the change is violent or artificial that the boundary does not change, but where the change is gradual and imperceptible, the boundary shifts with the shifting of the channel. "It is only when the change in the stream is sudden, violent, or visible that the title remains the same. It is not enough that the change may be discerned by comparison at two distinct points of time. It must be perceptible when it takes place. The test as to what is gradual and imperceptible in the sense of the rule is that, although the witnesses may see from time to time that progress has been made, they could not perceive it while the process was going on." (9 C. J., page 195, Sec. 82.)

I think the above is in answer to your inquiry, but if you should desire any further information on the subject, I will be glad to furnish it.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

CONSERVATION—DEFINITION OF "SUB-FISH"—CATCHING OF SAME IN POTOMAC RIVER.

April 30, 1925.

*E. Lee LeCompte, Esq.,
State Game Warden,
Munsey Building, City.*

DEAR MR. LE COMPTE: Your letter of the 23rd inst., in which you state that my opinion rendered you on the 21st

of August last does not go far enough into the matter, is received.

I have looked into the matter as to what constitutes "sub-fish" and agree with you that the definition includes practically all members of the fish family which are not included in other classes, and I am, therefore, of the opinion that under the provisions of Chapter 340 of the Acts of 1924, it is unlawful to take any species of fresh water fish above tide water (except trout) between the first of December and the first of July, and that during the open season such fish can be taken only by means of rod, hook and line. Of course, this is not to apply to the Potomac River, for which there is special provision under the compact between Maryland, Virginia and West Virginia.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

CONSERVATION—FISHING ON SUNDAY IN GARRETT COUNTY.
WHO TO ENFORCE LAW.

April 30, 1925.

*E. Lee LeCompte, Esq.,
State Game Warden,
Munsey Building,
City.*

DEAR MR. LECOMPTE: Your letter of the 27th inst., in reference to fishing on Sunday in Garrett County is received.

Chapter 55 of the Acts of 1896 makes it a misdemeanor to fish, gun or hunt on Sunday in Garrett County, and provides a penalty therefor by way of fines, one-half of which shall go to the informer and one-half to the School Commissioners of Garrett County.

Chapter 340 of the Acts of 1924 is an Act defining and classifying, and providing open and closed seasons for the taking of fish in the waters of the State above tide water.

Section 2 of this Act provides that all General Local Laws inconsistent with it are hereby repealed to the extent of their inconsistency.

My construction of this section is that it only applies to such Acts as directly affect the subject-matter of the bill in question. In other words, if there was a Local Act which gave a different definition as to the classification of fish or which provided a different season during which the same might be caught, or a different manner for catching the same, such Act would be repealed.

Chapter 55 of the Acts of 1896, however, is not a law for the protection of fish or game, but one to compel the proper observance of the Sabbath, and comes under the head of what we usually refer to as the "Blue Laws."

Therefore, while I am of the opinion that Chapter 340 does not repeal the last mentioned Act I do not think that it is the duty of yourself or your Game Warden to enforce it, but that it should be enforced by the Sheriff or other county officers or in the manner provided in Section 2 of said Act.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

CONSERVATION—CONSTRUCTION OF CH. 767 OF ACTS OF 1914.
ERECTION OF DUCKING BLINDS IN DORCHESTER COUNTY.

June 23, 1925.

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

DEAR MR. LECOMPTE: Your letter of the 22nd inst. in reference to Chapter 767 of the Acts of 1914, regulating the erection of ducking blinds in Dorchester County, is received. In your letter you state that one Herbert Keene pro-

cured from Grantville Tubman, a land owner, the right to erect a ducking blind in front of Mr. Tubman's property in the year 1924.

Under Section 321-A-5 of the above Act, Keene's license expired the 31st of May, 1925. You further state that Keene procured another license in 1925, and attempted to locate a blind in front of Mr. Tubman's property close to the property line of Robert E. Tubman, who is an adjoining land owner to Grantville Tubman, and that a few days later, Robert E. Tubman also secured a license and located a blind in front of his property. You further state that these blinds so located are closer to each other than 500 yards, the minimum distance prescribed in the Act, and ask which of the locations for a blind must be moved.

Under the Act in question, the riparian land owner has the first right to locate a blind in front of his property, which right continues until 20 days prior to the open season, and as the season does not open until November 1st, a person other than a riparian owner could not locate a blind in front of another's property until October 10th.

I am, therefore, of the opinion that Mr. Robert E. Tubman is entitled to locate the blind in front of his property, provided he complies with the other requirements of the law, and any one else wishing to locate a blind in that vicinity would have to locate the same more than 500 yards from his blind even though said person may have the permission of an adjacent riparian owner to place a blind in front of his property.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

CONSERVATION—TRIAL OF VIOLATORS OF GAME AND FISH
LAWS IN MONTGOMERY COUNTY.

June 25, 1925.

*E. Lee LeCompte, Esq.,
State Game Warden,
Baltimore, Md.*

DEAR MR. LECOMPTE: Your letter of June 22nd, in reference to the trial of violations of the game and fish laws in Montgomery County is received.

Chapter 518 of the Acts of 1922 created the office of Police Justice for Montgomery County, and required that the person holding this position must maintain an office at Rockville. The Act further confers all criminal jurisdiction which formerly vested in Justices of the Peace, upon this Police Justice, and divests the other justices of all criminal jurisdiction except the right to issue warrants, which warrants when issued must be returnable before the Police Justice. I am, therefore, of the opinion that while your Wardens may secure a warrant for the arrest of any person violating the game and fish laws before any of the several Magistrates of Montgomery County, these warrants must be returnable to the Police Justice and he alone has jurisdiction to try the cases.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

CONSERVATION—RESIDENTS OF RESERVATION AT INDIAN
HEAD REQUIRED TO TAKE OUT NON-RESIDENT LICENSE
TO HUNT IN CHARLES COUNTY.

June 25, 1925.

*E. Lee LeCompte, Esq.,
State Game Warden,
Baltimore, Md.*

DEAR MR. LECOMPTE: Your letter of June 22nd, asking whether residents or employees on the Reservation at Indian Head, are required to obtain a non-resident hunting license to hunt in Charles County, is received.

This question was passed on by me, on December 11th last, in a letter to Mr. J. O. McCusker, Budget Accountant, in which case an opinion was requested as to whether persons living on the Government Reservation at Perryville should be required to take out a non-resident license to hunt in Cecil County. In this opinion I said, "it is my conclusion, therefore, that persons residing in this territory who desire to take out hunters' licenses in Cecil County should be required to pay the fee provided by law for non-residents."

I have looked into the several acts connected with the transfer of the Reservation at Indian Head to the Federal Government, and can find nothing therein which could change the opinion above quoted, and I am, therefore, of the opinion that persons working or living on the Reservation at Indian Head are in no different position as far as obtaining hunters' licenses are concerned, from any other non-resident of the State, and they must, therefore, take out the license required of non-residents to entitle them to hunt game in Charles County or any other County in Maryland.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

CONSERVATION—LOCATION OF BOUNDARY LINE BETWEEN
WICOMICO AND SOMERSET COUNTIES.

August 27, 1925.

*Swepson Earle, Esq.,
Conservation Commissioner,
Munsey Building,
City.*

DEAR MR. EARLE: Your inquiry in reference to your police duties in the matter of the dispute between the tongers of Somerset and Wicomico counties as to the boundary line between said counties in the Wicomico River is received.

Section 2 of Article 13 of the Constitution of Maryland defines this boundary as follows "Thence up the channel of the Wicomico River to the mouth of Wicomico Creek."

On April 9th last, I rendered you an opinion to govern you in the establishment of a true boundary between the counties at this point as defined by the above-mentioned provision of the Constitution.

I think it is your duty to locate this boundary line, to the best of your ability, as defined by the Constitution, and in so doing to observe the rule of law laid down in opinion of April 9th, and after you have so determined said boundary line, to compel the tengers of the two counties to respect the line so established by you.

If the tengers from either county feel aggrieved by your action, they can take the matter to Court and have it legally determined there.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

CONSERVATION—CONSTRUCTION OF SECS. 127 AND 128 OF
ART. 39—LICENSE REQUIRED TO FISH IN STATE WATERS
OF CHESAPEAKE BAY SOUTH OF POOLE'S ISLAND—EX-
CEPT WITH HOOK AND LINE.

September 17, 1925.

Swepton Earle, Esq.,
Conservation Commissioner,
Munsey Building,
Baltimore, Md.

DEAR MR. EARLE: Your letter of the 25th ulto. in reference to the construction of Sections 127 and 128 of Article 39 is received, also copy of correspondence between your office and the State's Attorney for Kent County.

My construction of Section 127 is that a license is required for the taking or catching of fish for sale in any manner except by hook and line in the waters of the Chesa-

peake Bay south of Poole's Island, outside the jurisdictional limits of any county, but that such license does not authorize the holder thereof to fish within the jurisdictional limits of any county. It seems clear to me that the section refers only to the part of the bay over which the State has jurisdiction outside of the limits of the several counties. I cannot agree with the State's Attorney of Kent County that there is anything contradictory or irreconcilable in the section to render it inoperative and void.

Section 128 when originally passed was intended to provide the amount of the license fee and the manner of issuing the same provided for in Section 127, but like a great many of the other sections of our Code, it has been amended by persons not sufficiently conversant with the law to know what they were doing, with the result that some of its provisions are apparently in conflict with those of Section 127, but I think it clearly shows that it is intended to apply to the waters outside of the county limits referred to in Section 127.

In the latter part of this section certain nets are exempt, to wit, purse, fike and hoop, buck or gill nets. This exemption should have been placed in Section 127, but as it was passed by a more recent Act of the Legislature than the last enactment to Section 127, I think that the above nets would be exempt from the license fee. The other amendment stated that "nothing in this section shall apply north of a line drawn from Rickett's Point to Love Point." As I understand it, a line drawn between these two points would run almost due north and south, and, therefore, that part of the section can have no legal effect or meaning, and the law will still apply to all of the Bay south of Poole's Island.

Yours very truly,

ROBERT H. ARCHER, *Asst. Attorney General.*

CONSERVATION—CONSTRUCTION OF LAWS GOVERNING DUCK-
ING ON SUSQUEHANNA FLATS.

October 22, 1925.

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

DEAR MR. LECOMPTE: Your letter of the 15th instant in reference to the ducking law on the Susquehanna Flats is received. As I understand your letter, you wish to know the days on which ducking is permitted under the local laws of Harford and Cecil Counties from November 1st to January 1st, and also when crafts can anchor on the Flats for the purpose of ducking.

The law governing these two points on so much of the Flats as are located in Harford County, is contained in Section 520 of Article 13 of the Code of Public Local Laws as repealed and re-enacted by Chapter 242 of the Acts of 1924. And as to so much thereof as are located in Cecil County, is contained in Section 402A of Article 8 of the Code of Public Local Laws of Maryland as Section 402 was repealed and re-enacted as Section 402A of Chapter 649 of the Acts of 1914. While there is a slight difference in the wording of the two sections above referred to, there is no material difference in their legal effect as both sections make the days for ducking on the Flats, Mondays, Wednesdays, and Fridays during the months of November and December and Mondays, Wednesdays, Fridays and Saturdays during the month of January, and both sections allow crafts to be anchored on the Flats after 4:30 A. M. in the morning of any day on which it is legal to shoot ducks.

I am, therefore, of the opinion that hunters can set their rigs or anchor their craft on the said Flats at any time after 4:30 A. M. on any day it is legal for them to shoot ducks on the Flats as set forth in the sections above referred to. The interpretation of Section 520 of Article 13 of the Code of Public Local Laws as repealed and re-enacted by Chapter 242 of the Acts of 1924 was passed on by the

Circuit Court for Harford County in the case of State of Maryland vs. William Beck, who was arrested for anchoring his craft on the Flats on the night before a day it was legal for him to run. The Court, through Judge Harlan, decided in favor of the State and upheld the provisions of the Section, ruling that it was unlawful to take his position before 4:30 A. M. on the day it was legal for him to shoot ducks.

In your letter you referred to Chapter 548 of the Acts of 1924, but this Act did not attempt to either repeal or amend Section 402A as enacted by Chapter 649 of the Acts of 1914, or Section 387 as enacted by Chapter 383 of the Acts of 1916, so of course these sections will stand as they were previous to 1924, Section 387 referred to being the Section which prescribes the days of the week it is lawful to shoot wild fowl on the Susquehanna Flats within the limits of Cecil County.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

CONSERVATION—ERECTION OF DUCKING BLINDS ON BOTTOMS LEASED FOR OYSTER CULTURE.

November 5, 1925.

Swepson Earle, Esq.,
Conservation Commissioner,
Baltimore, Md.

DEAR MR. EARLE: Your inquiry as to whether a lease of of an oyster bottom can prevent the erection of ducking blinds on the leased area is received. In looking into the law in reference to the leasing of oyster bottoms as contained in Article 72 of the Code of Public General Laws, it seems clear to me that in leasing these bottoms the State enters into a contract with the lessee which gives him exclusive jurisdiction over the area for the purpose of planting and cultivating oysters. The relation between the State and the lessee is defined in Section 183 of Article 72 above referred to.

In view of the law above cited, I am of the opinion that any use of these bottoms which would in any manner interfere with the purpose for which the land is leased would be contrary to the terms of the lease between the State and the lessee, and, therefore, a statutory ducking blind which is attached to the bottom would, in my opinion, be a violation of the terms of the lease, and the State and the Counties would have no right to grant a person the right to erect a blind on a leased area. The lessee, however, does not under the term of his lease acquire from the State any right to erect a blind on this area, and it is, therefore, my opinion that no statutory ducking blinds can be erected on oyster bottoms which are under lease by the State of Maryland. If it were otherwise, in view of the first part of my opinion, it would be possible for people to lease these bottoms presumably for the purpose of growing oysters, but really to secure the exclusive right to place blinds thereon, which would certainly be unfair to the other citizens of the State.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

CONSERVATION—CONSTRUCTION OF SEC. 125 OF ART. 72—
JURISDICTION OVER STREAMS 100 YARDS WIDE AT
MOUTH.

November 18, 1925.

Swepton Earle, Esq.,
Conservation Commissioner,
Munsey Building,
Baltimore, Md.

DEAR MR. EARLE: Your inquiry in reference to the construction of Section 125 of Article 72 is received. This Section is as follows:

“This sub-title is not intended to apply to any lands owned by private persons, the bounds of which extend below low water into or beneath the waters of this State. This

sub-title shall not be so construed as to apply to any creek, cove or inlet, less than one hundred yards in width at its mouth at low tide."

You state in your inquiry that some creeks are one hundred yards wide at the mouth and narrow to a width of less than one hundred yards and widen out again. I am of the opinion that if the creek is one hundred yards wide at its mouth, your jurisdiction will extend up the stream to a point where it would conflict with the provision of the first part of the section, and the fact that the stream might be less than one hundred yards wide at a point above its mouth would not in itself affect this jurisdiction.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

CONSERVATION—FISHWAYS IN CONOWINGO DAM.

December 8, 1925.

Sepson Earle, Esq.,
Conservation Commissioner,
Baltimore, Md.

DEAR MR. EARLE: Your letter of December 7th, in which you ask if it is necessary to take any action at this time to protect the migratory rights in connection with the construction of the proposed dam near Conowingo, is received. In this letter you state that no practical appliance has been found that would insure the passage of fish over a dam the height of the one proposed.

There is a provision in the charter of the Susquehanna Power Company which requires it to provide adequate fish ways in any dam it may construct on the Susquehanna River, and in addition to this the Federal regulations make ample provisions along the same line.

In view of the fact that we could not at this time specify any kind of a fish way, I do not think it is necessary to make any mention of the matter in the order about to be

issued by the Public Service Commission. I am of the opinion that under the charter and Federal regulations above referred to, that you, in connection with the Department of Fisheries, can compel the company when the proper time arrives to erect and maintain the most modern and approved form of fish way without any further mention of the matter at this time.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

CONSERVATION—SINK BOXES IN POTOMAC RIVER WITHIN
LIMITS OF CHARLES AND PRINCE GEORGE'S COUNTIES.

December 11, 1925.

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

DEAR SIR: Your letter of the 4th inst. in which you ask me to construe Chapter 510 of the Acts of 1920, is received.

General Armstrong gave an opinion as to part of this Act which is found on pages 73 and 74 of Volume 7 of the Official Opinions of the Attorney General. In this opinion he decided that the distance a blind can be erected from the shore of the Potomac River applies to both the Maryland and Virginia sides of the river. I think this opinion is absolutely correct, but I do not think he intended or attempted to decide anything else.

Section 1 of the Act is as follows:

"Be it enacted by the General Assembly of Maryland, That it shall be unlawful for any person to have a blind more than three hundred yards from the shore on the Potomac River in Charles and Prince George's Counties."

And under General Armstrong's opinion, I think the construction of the section is perfectly plain. Section 2 refers

to sink boxes as distinguished from blinds, and while your contention that a sink box is only a form of a blind, may be correct, I am of the opinion that the Legislature intended to make a distinction between a "blind" referred to in Section 1 and a "sink box" referred to in Section 2.

In Section 2 there is no limit prescribed as to the distance a sink box may anchor from shore, and I, therefore, feel after reading the whole act carefully that the Legislature did not intend to place the same restrictions on a sink box that they did on a blind, and that, therefore, a sink box may be anchored at any point in the Potomac River within the limits of the two counties named in the act, to wit, Charles and Prince George's Counties.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

CORONERS.

CORONERS—HAVE NO POWER TO ADMIT PRISONERS TO BAIL.

July 6, 1925.

Dr. George C. Blades,
Coroner at Large,
 143 N. Broadway,
 Baltimore, Md.

DEAR DR. BLADES: Your letter of June 8th, addressed to the Attorney General has been referred to me for reply. You request an opinion as to whether or not a coroner is authorized to accept bail.

At page 1255 of Volume 13 of *Corpus Juris*, the law is stated as follows: "In the absence of statutory provisions, the coroner has no power to bail." I find nothing in the statute law of Maryland authorizing the coroner to release a prisoner on bail. I have read the case of *Parrish vs. State*, 14 Md. 238, but as that case deals with the power of a judge in one County to take bail for the appearance

of a person in another County, I do not think it is decisive of the question which you present.

In accordance with the above statement of law, it is the opinion of the Attorney General that coroners in this State are not authorized to release prisoners on bail.

Very truly yours,

WILLIS R. JONES, *Asst. Attorney General.*

CORONERS—ATTORNEYS AT LAW NOT EXEMPT FROM SERVICE
ON CORONER'S JURY.

September 29, 1925.

Dr. George C. Blades,
143 N. Broadway,
Baltimore, Md.

DEAR DR. BLADES: On September 8th you requested an expression of opinion as to whether or not attorneys at law may be summoned to serve on a coroner's jury.

I know of no statute which expressly exempts attorneys from such service, but it has been the common practice in this City to excuse them, and it would seem wise to follow this custom. Cases pending in Court cannot be proceeded with in the absence of the trial attorney, and to require them to serve on coroners' juries would needlessly interfere with the administration of justice when there are so many other citizens available who can perform the services equally as well.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

CORONERS—CORONER AT LARGE SHOULD ACT IN CASE OF
INABILITY OF DISTRICT CORONER TO PERFORM DUTIES.
DISTRICT CORONERS MAY, HOWEVER, PERFORM DUTIES
IN ANOTHER DISTRICT.

December 15, 1925.

Dr. George C. Blades,
143 N. Broadway,
Baltimore, Md.

DEAR DR. BLADES: I have your letter of December 9th, in which you request an opinion as to whether or not it is permissible or legal for a Coroner assigned to one District to hold an inquest in another District when the Coroner-at-Large is available.

Section 294 of the Baltimore City Charter authorizes the Governor to appoint as many Coroners for the City of Baltimore as there are Police Districts in Baltimore City. Section 295 authorizes in addition the appointment of a Coroner-at-Large "whose duty it shall be to act in the place of any of the Coroners who shall have been assigned to the various Police Districts of said City who may have been prevented by illness or enforced absence from attending to his duties." It is plain from the above provisions of the law that it is the duty of the Coroner-at-Large to act in all cases requiring the action of a Coroner, where the Coroner assigned to the particular District is "prevented by illness or enforced absence."

I am not prepared to say, however, that it is illegal for a Coroner to hold an inquest in a District other than that to which he has been assigned. The Coroners are appointed "for the City of Baltimore," and although it was the intention to confine their duties to the District for which they were appointed and a District Coroner could probably not be compelled to perform duties outside of the District to which he has been assigned, cases might arise in which both the District Coroner and the Coroner-at-Large are unavailable, and in these cases I see no reason why a Coroner for another District could not perform the duties.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

COUNTY COMMISSIONERS.

COUNTY COMMISSIONERS—TERM OF T. HOWARD DUCKETT
AS MEMBER OF WASHINGTON SUBURBAN SANITARY COM-
MISSION REDUCED ONE YEAR BY OPERATION OF FEWER
ELECTIONS AMENDMENT.

May 8th, 1925.

Mr. John T. Fisher,
Clerk, County Commissioners of
Prince George's County,
Upper Marlboro, Md.

DEAR MR. FISHER: Your letter of May 6th, addressed to the Attorney General has been received. You state that Mr. T. Howard Duckett was appointed as a member of the Washington Suburban Sanitary Commission for the year 1922, and I observe that this appointment was made for a term of four years to begin on May 1st, 1922. You request an opinion as to whether or not the term of office of Mr. Duckett has been affected by the Fewer Elections Law.

The Fewer Elections Amendment to the Constitution of the State, which is known as Article 17, was adopted by the voters of the State at the election held in November, 1922. Section 5 of this Amendment provides, inter alia, that "the terms of all State and County officers heretofore appointed for terms which will not expire until during the years 1925, 1926, 1927 or 1928, shall be reduced by one year." Inasmuch as Mr. Duckett's appointment was made prior to the ratification of this Amendment, and for a term that would expire, in the absence of the Amendment, in the year 1926, it is clear that his term of office has been reduced by one year.

Trusting that the above will satisfactorily answer your inquiry, I am,

Very truly yours,

WILLIS R. JONES, *Asst. Attorney General.*

COUNTY COMMISSIONERS OF WASHINGTON MAY PREVENT
OBSTRUCTION OF PUBLIC HIGHWAYS.

October 9, 1925.

*Hon. J. O. Snyder,
Hagerstown, Maryland.*

DEAR MR. SNYDER: I have your letter of October 1st, in which you request an opinion as to whether or not the County Commissioners of Washington County can enforce the provisions of Chapter 520 of the Acts of 1924.

This Act was passed for the purpose of preventing obstructions in the public highways in Washington County, and merely imposes upon the offending abutting property owner, the cost of removing any obstruction which he may permit to grow into such highways. It appears to me to be a valid exercise of the legislative power of the State, and in my opinion, the County Commissioners are fully authorized to enforce its provisions.

With kind regards, I am

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

CRIMINAL LAW.

CRIMINAL LAW—POWER VESTED IN POLICE AUTHORITIES OF THIS STATE TO HOLD ONE SUSPECTED OF CRIME IN ANOTHER STATE FOR REASONABLE TIME.

August 26, 1925.

*Oliver H. Bruce, Esq.,
Police Justice,
Cumberland, Maryland.*

DEAR SIR: In reply to your letter of August 1st, 1925, in which you ask by what authority the Police Department of the City of Cumberland detains in the City Jail persons whom the Sheriffs and Police Departments of localities outside the State of Maryland request by telegram to be so detained.

Section 2 of Article 4, of the Constitution of the United States provides that "a person charged in any State with treason, felony or other crime who shall flee from justice and be found in another State shall on demand of the Executive authority of the State from which he fled be delivered up to be removed to the State having jurisdiction of the crime."

It has been frequently held that in interstate extradition the principle that the crime for which the fugitive may be extradited need be one common to both States does not apply. Under the above quoted section there is an obligation to surrender the fugitive for any act which is made criminal by the law of the demanding State.

It has further been held that under the said Article 4, Section 2, a fugitive from justice from any of the United States may be arrested and detained in another State preparatory to his surrender before requisition is actually made by the Executive of the State where the crime was committed. See Bailey on Habeas Corpus, Vol. 1, page 536. A

number of States have enacted statutes providing for procedure in such cases. Such, however, is not the case in Maryland.

Mr. Thomas in his book on Procedure in Justices' Cases, 2nd Ed., Section 302, states, however, "in the case of an offense committed in another State, the accused may be arrested without a warrant if the offense is one for which arrests might thus be made if it had been committed here (State vs. Taylor, 70th Ver., page 1). A prisoner must then be held for a reasonable time to await proper extradition proceedings."

It is the well-established principle of the Maryland Law that any peace officer may arrest without warrant whenever he has reasonable grounds to suspect that a felony has been committed and that it is wholly immaterial whether the suspicion arises out of information imparted to the officer by some one else or whether it is founded on his own knowledge, it only being required of him that he take the prisoner to the nearest magistrate for a preliminary examination or hearing. See *Brish vs. Carter*, 98 Md., page 445.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General*.

CRIMINAL LAW—PROSECUTIONS FOR MISDEMEANORS MUST
BE STARTED WITHIN ONE YEAR FROM DATE THE MIS-
DEMEANOR WAS COMMITTED.

March 16, 1925.

A. E. Brown, *Esq.*,
Secretary, State Industrial Accident Commission,
Equitable Building,
Baltimore, Md.

DEAR MR. BROWN: I have your letter of February 7th, in which you ask whether a criminal case which had been pending in Carroll County was dismissed for a good cause by the State's Attorney of that county. You told me that the case originated through a warrant sworn out on Octo-

ber 29th, 1924, by R. Earl Carter for the arrest of William W. Dulaney for failure to comply with the Workmen's Compensation Law of October 31st, 1922. I understand that Mr. Carter was an injured employee of Mr. Dulaney, and that on December 19th, 1923, the State Industrial Accident Commission awarded Mr. Carter compensation to begin as of November 4, 1922. The accident happened on October 31, 1922.

Section 15 of the Workmen's Compensation Act provides that any employer subject to the provisions of this Act who fails or refuses to submit to said Commission as provided in the next succeeding paragraphs, the method he desires to adopt for assuring compensation, or who shall fail to secure insurance by one of such methods shall be guilty of a misdemeanor and shall be subject to a fine of not less than \$500 nor more than \$5,000.

The general rule is that criminal proceedings for the prosecution of a misdemeanor must be begun within one year from the time the misdemeanor was committed. You will notice, however, that in the section referred to above, there are two distinct misdemeanors; first, it is made a misdemeanor not to submit to the Commission the method the employer desires to adopt for assuring compensation; second, it is made a misdemeanor to fail to secure insurance by one of such methods. The time for instituting the proceedings against Dulaney, in the instant case, would have been within one year from the time that he, being subject to the provisions of the Act, refused to submit to the Commission the method he desires to adopt for assuring compensation or from the time he failed to secure insurance by one of such methods. The date of the particular injury to Mr. Carter and the date of the particular award by the State Industrial Accident Commission do not seem to me to be important factors at all. The question would be when Mr. Dulaney was subject to the provisions of the Act and if he was subject to the provisions of the Act and failed to submit the method he adopted for assuring compensation or failed to secure insurance by one of such methods, he could have been presented within one year thereafter.

The warrant sworn out by R. Earl Carter may have been defective. Mr. Dulaney may not have been subject to the Act within one year of that time, and the State's Attorney for Carroll County may have had good and sufficient reasons therefore to dismiss the criminal proceedings.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

EDUCATION.

EDUCATION—CERTIFICATE FROM PHYSICIAN AS TO CHILD'S PHYSICAL UNFITNESS TO BE IN SCHOOL, MAY NOT BE REQUIRED BEFORE SUCH EXCUSE MAY BE OFFERED AS A LEGAL ONE.

April 17, 1925.

*Albert S. Cook, Esq.,
State Superintendent of Schools
Department of Education,
Baltimore, Md.*

DEAR MR. COOK: Mr. Robinson has asked me to reply to your letter of the 14th inst., in which you inquire whether the County Superintendent of Schools has a right to require a certificate from a practicing physician stating that a child is physically unfit to be in school before such excuse may be offered as a legal one.

We have examined Section 221 of Article 77 of Bagby's Annotated Code of 1924, which provides what children must attend school, and exempts from the provisions of the law "children whose mental or physical condition is such as to render the instruction * * * * described inexpedient or impractical." We have also examined the provisions of the law relating to the general duties and powers of County Superintendents of Schools. We are unable to find any authority, either express or implied, for the requirement by the County Superintendent of Schools of a certificate from a practicing physician as to the child's mental or physical disability to attend school.

Of course, in any case where a County Superintendent has evidence that the child is not mentally or physically unfit he has the right to prosecute the person who has the child under his control. In such a case, the tribunal before which the child's case is tried is entitled to receive any competent evidence of the child's disability. It may, in one case be

satisfied of the child's disability on the testimony of the parent alone, while in another case it might consider a physician's certificate insufficient. This is a matter affecting the credibility of the defense, which is entirely within the discretion of the tribunal before which the case is tried, and neither this nor your department has any jurisdiction or control over the same.

Trusting that this answers your inquiry, I am,

Yours very truly,

HERBERT LEVY, *Asst. Attorney General.*

EDUCATION—COUNTY BOARDS OF EDUCATION—POWER TO
SELL PROPERTY—DEED TO SCHOOL AUTHORITIES, DE-
CLARING SCHOOL PURPOSES, VESTS UNCONDITIONAL
TITLE.

May 1, 1925.

*J. Cleveland Grice, Esq.,
Attorney and Counsellor at Law,
Hagerstown, Maryland.*

DEAR SIR: I am in receipt of your letter of the 29th ulto. enclosing deed from Amanda Wantz, et al, to the Board of County School Commissioners of Washington County, dated the 15th day of August, 1894, and recorded among the Land Records of Washington County, in Liber, No. 102, Folio 347. You ask for an opinion as to whether or not the County Board of Education has the right to sell the property described in said deed.

The grant is to the Board of County School Commissioners of Washington County, and immediately following the description of the property, and the reservation of an easement in favor of the grantors, the following clause appears:

“The further consideration of this grant being the erection on the lands hereinbefore granted by the Board of County School Commissioners of Washington County of a

school building according to the plans and specifications prepared by H. E. Dayhoff, architect, and now exhibited and as contracted for by Wolf & Scheuler, contractors."

This building was erected in accordance with the terms of the deed, and has been on this property for a long time. You ask, first, whether the County Board of Education is authorized, under the law, to sell this property, and, second, whether if the Board has this power, the clause above quoted would preclude it from conveying a good and marketable title to the purchaser.

The first question is answered by Sections 41 and 45 of Article 77 of Bagby's Annotated Code of 1924. Under Section 41, "all the property, estate * * * * heretofore vested by law in the public school authorities of any county, for the benefit of public, primary, free or high schools, are transferred to and vested in the County Boards of Education, and their successors in office." Section 45 authorizes and empowers the Boards, with the approval of the State Superintendent of Schools, "to purchase grounds, school sites or buildings, or to sell the same," and further provides that "they may sell, with the approval of the State Superintendent of Schools, school grounds, school sites and school buildings when no longer needed for educational purposes."

Your second inquiry is answered by the case of Faith vs. Bowles, 86 Md. 13, in which the Court held that where a deed conveying land declares the purpose for which the same is to be used, and such purpose does not inure to the special benefit of the grantor, and there are no words indicating an intent that the grant is to be void if the purpose is not carried out, such deed will not be construed to be upon a condition subsequent so as to create a defeasible estate.

In that case land was conveyed to a county "for a public school as the property of the schools of said county and for no other purpose in fee." The land was afterwards sold and conveyed to the defendant, who used the building thereon as a dwelling house. An action of ejection was brought by the heirs at law of the grantor in the first deed. It was

held that the words expressive of the purpose for which the land was to be used did not create a condition subsequent so as to work a forfeiture of the land in case it ceased to be used for that purpose. The title of the defendant was declared to be good and marketable.

See also:

Baltimore City vs. Day, 89 Md. 555;
 Newbold vs. Glenn, 67 Md. 490;
 Annotation, L. R. A. 1918 B. 702;
 Annotation, 44 L. R. A. (N. S.) 1220.

In view of these authorities, I must concur in your opinion that the Board of Education can give a good title to the property.

I am returning herewith deed which you enclosed in your letter.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

EDUCATION — COUNTY COMMISSIONERS — AUTHORITY TO
 AWARD CONTRACTS FOR ERECTION OF SCHOOL BUILDINGS
 OR TO SPEND PUBLIC MONEY FOR SCHOOL PURPOSES OF
 ANY KIND.

July 17, 1925.

*Louis C. Robinson, Esq.,
 County Superintendent of Schools,
 Board of Education of Kent County,
 Chestertown, Maryland.*

DEAR SIR: Your letter of the 13th inst. did not reach me until this morning. I tried to call you on the telephone, but found that you would not be back until tomorrow. I am, therefore, unable to have my reply in your hands before the meeting on Friday evening, as requested in your letter.

You ask whether the Board of County Commissioners of Kent County has any authority, under the laws of Maryland, to award contracts for the erection of new school buildings or to spend public money for school purposes of any kind.

Section 77 of Bagby's Annotated Code of 1924 contains a codification of the laws of this State relating to public education. Under those laws a general system of free public schools is created (Section 1). Educational matters affecting a county are under the control of a County Board of Education (Section 3). Funds for the construction and maintenance of County Schools are provided by the levy and collection of a school tax under the provisions of Section 56 of said Article. Taxes so levied and collected are paid over to the Treasurer of the County Board of Education as provided in said Section 56.

By Section 45 the County Boards of Education are vested with full authority "to rent, repair, improve and construct school buildings or approve contracts for so doing when the plans conform to the rules and regulations of the State Board of Education, and are approved by the State Superintendent of Schools, as provided for in Section 30 of this Article."

It is clear from these sections that exclusive authority with reference to the expenditure of school funds, derived by taxation under Section 56, is vested in the school authorities.

However, there may be, and we believe there are in your county, public local laws providing for the issue of bonds, the proceeds whereof are to be used for school purposes. Under many of these acts, the authority to make expenditures of the funds derived from the bonds is vested in the County Commissioners. It depends, therefore, entirely upon the terms of the Act under which the funds to be expended are derived as to who is vested with the authority to expend them.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

EDUCATION—COUNTY BOARDS OF EDUCATION ARE NOT LIABLE TO SUIT IN DAMAGES FOR INJURIES SUSTAINED BY CHILDREN BEING TRANSPORTED TO AND FROM PUBLIC SCHOOLS IN BUSES.

November 19, 1925.

Hon. E. L. Noble,
County Superintendent of Education,
Denton, Md.

DEAR SIR: I have your letter of November 13th, asking for an opinion as to whether or not the several County Boards of Education would be liable in damages in case injuries are received by children who are being transported to and from the Public Schools in a bus or wagon which is owned and operated by an independent contractor.

Although Section 40 of Article 77 of the Code of Public General Laws provides that the County Board of Education "shall be capable to sue and to be sued" it has been held in the case of *Weddell vs. School Commissioners*, 94 Md. 344, that such Boards are not subject to suit for damages growing out of alleged negligence in the construction or maintenance of school property. In the course of the opinion in this case the Court said:

"Now it is obvious, we think, that the Legislature intended by the use of the language 'shall be capable to sue and be sued' to restrict the liability of the Boards of County School Commissioners to such suits, in respect to matters within the scope of their duties and to such things as the boards are empowered to do. We find nothing in the statutes that would justify a different conclusion, or would sustain the contention of the appellant in this case.

"There is no power given the Boards of School Commissioners to raise money for the purpose of paying damages nor are they supplied with means to pay a judgment against them. All of their funds are appropriated by law to specific purposes and they cannot be diverted by them. The Constitution of the State, Sec. 3, Art. 8, provides that the school fund of the State shall be kept inviolate and appropriated only to the purposes of education. In *Perry vs. House of*

Refuge, 63 Md. 27, this court distinctly held, in adopting the English decisions on the subject, that damages could not be recovered from a fund held in trust for charitable purposes."

The above ruling of the Court of Appeals was affirmed in principle in the later case of Fisher vs. Mackall, 138 Md. 593. It is the opinion of this Department that the cases above referred to dispose of the question presented by you, and that the County Boards of Education are not subject to suits for damages by children who are injured in being transported to and from the schools.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

EDUCATION—COUNTY COMMISSIONERS ARE NOT LIABLE WHERE CHILDREN ARE INJURED IN BUSES WHILE BEING TRANSPORTED TO AND FROM SCHOOL WHEN THE BUSES ARE PROVIDED BY BOARD OF EDUCATION.

December 5, 1925.

Hon. E. L. Noble,
County Superintendent Board of Education,
Denton, Md.

DEAR SIR: I have your letter of December 1st, in which you ask for further information concerning the civil liability of the County Boards of Education and the Boards of County Commissioners in connection with the transfer of children in busses to and from the public schools.

In line with the decision referred to in my letter of November 19th, I think there can be no doubt that the County Boards of Education are not liable for injuries sustained by school children while being transported in buses regardless of whether the buses are owned by the County or by an independent contractor.

As to the liability of the Boards of County Commissioners for such injuries where the busses are operated by the

Boards of Education, it is the opinion of this department that the Commissioners would not be liable. This follows from the fact that the busses are under the control of the Boards of Education and the Commissioners have no power in the selection of employees or the general operation of the busses. It would be a manifest injustice to hold the Commissioners responsible for actions beyond its control or supervision.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

EDUCATION—KINDERGARTENS MAY BE ESTABLISHED BY
STATE BOARD OF EDUCATION AND COUNTY SCHOOL COM-
MISSIONERS.

December 19, 1925.

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

DEAR DR. COOK: The laws of Maryland give to the State Board of Education and the School Commissioners of the various Counties, great latitude in the conduct and management of the Public Schools. We are, therefore, of the opinion that should a County desire to establish a kindergarten it has ample authority to do so, provided it has the sanction of the State Board.

Section 63 of Chapter 506 of the Laws of 1916, to which you refer in your letter of November 30th, would not apply in such a case. This Section we feel approaches the situation from an entirely different angle. In other words, the Schools must be open to white youths between the ages of six and twenty-one years. This does not mean that they shall be closed to all who are not between these ages, if in the opinion of the various school authorities public education would be promoted by admitting children below that age or adults above it. On the other hand, I think that in

view of the statute it would be possible for the school authorities to prevent any one not within those ages from attending the public schools. The section does not restrict your authority in regard to the age limit below that of six years or above that of twenty-one years.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

ELECTIONS.

ELECTIONS—PERSONS RESIDING ON GOVERNMENT RESERVATION AT PERRY POINT NOT ELIGIBLE TO VOTE IN MARYLAND.

March 3, 1925.

*Mr. Charles M. Wyndham,
U. S. V. B. Hospital No. 100,
Camp Custer, Michigan.*

DEAR SIR: In answer to your letter of February 25th, addressed to the Attorney General, please be advised that it is the opinion of this Department that persons residing on the Government Reservation at Perry Point do not acquire the full rights of citizenship under the laws of this State, and are not subject to all of the obligations imposed by the laws of this State. The preceding Attorney General gave an opinion holding that persons doing business on the Reservation were not required to take out a license as required by the State law, and the present Attorney General has had occasion to concur in this opinion, and also to rule that persons residing on the Reservation were to be treated as non-residents in applying for a local hunter's license. Section 32 of Article 96 of the Code of Public General Laws of this State grants to the United States exclusive jurisdiction over land acquired for governmental purposes such as Perry Point, "except the service upon such site of all criminal and civil process of the courts of this State." Under this provision of the law and in accordance with the former opinions rendered by this Department, we do not think you acquire the right to vote in this State by reason of your residence at Perry Point.

Very truly yours,

WILLIS R. JONES, *Asst. Attorney General.*

ELECTIONS—POWERS AND DUTIES OF COUNTY COMMISSIONERS OVER SALARIES OF SUPERVISORS OF ELECTION, THEIR ATTORNEY AND CLERK.

April 18, 1925.

*Honorable J. H. C. Legg,
Attorney for Board of Supervisors of
Elections for Queen Anne's County,
Centreville, Md.*

DEAR SENATOR LEGG: The Attorney General has referred to me your letter of April 14th, in which you ask to be advised concerning the salaries to which the Board of Election Supervisors, its clerk and counsel are entitled during the year 1925.

The salaries of the Supervisors of Elections as provided in Sections 2 and 187 of the Election Laws are annual salaries, and it is the opinion of the Attorney General that it is mandatory upon the County Commissioners to provide for the payment of these salaries. The salary of the attorney for the Board is provided by Section 125, and by reference to this section, you will note that he is to receive such compensation as shall be allowed by the County Commissioners upon the approval of the Circuit Court. It does not appear to be incumbent upon the County Commissioners to allow any salary for the attorney during the off years if they do not deem it proper to do so.

Under Section 6 the power is conferred upon the County Commissioners to fix the salary for the Clerk to the Board of Election Supervisors, and we think it is clear that the County Commissioners can, if they deem proper, decline to appropriate any salary for this official during the off years.

There are not many duties devolving upon any of these officials during the present year, but it should be borne in mind that should a special election be called, it would be the duty of these officials to make proper provision for its conduct. In some of the counties and in Baltimore City, a number of the precincts are being sub-divided. These duties

are not as onerous as those during the years of election, but persons who perform them would seem to be entitled to some compensation.

Trusting that the above will satisfactorily answer your inquiry, I am

Yours very truly,

WILLIS R. JONES, *Asst. Attorney General.*

ELECTIONS—RESIDENCE IN TERRITORY ANNEXED TO TOWN,
EQUIVALENT TO RESIDENCE IN OLD TOWN LIMITS FOR
PURPOSE OF DETERMINING QUALIFICATIONS AS VOTER IN
TOWN ELECTION.

May 9, 1925.

*H. H. R. Brechbill, Esq.,
Boonsboro, Maryland.*

DEAR SIR: In your letter of April 30th you state that the limits of the town of Boonsboro were extended by the last Legislature and that the voting ordinance of the town provides that persons must be residents of the town for one year in order to qualify as voters. You ask an opinion as to whether or not persons residing in the territory added to the town within the past year should be allowed to vote at the coming election.

This matter has been considered by the Attorney General and in his opinion the persons who have resided in the new territory for at least a year next preceding the day of election should be allowed to vote in the same manner as the old residents of the town.

Trusting that the above will satisfactorily answer your inquiry, I am,

Yours very truly,

WILLIS R. JONES, *Asst. Attorney General.*

ELECTIONS—DECLARATION OF INTENT TO BECOME A CITIZEN
MADE ONE YEAR BEFORE AN ELECTION IS SUFFICIENT
TO ENTITLE DECLARANT TO REGISTER AT REGULAR REG-
ISTRATION BEFORE THAT ELECTION.

June 26, 1925.

Mr. Charles L. Wiegand,
Custom House,
Baltimore, Md.

DEAR SIR: In reply to your inquiry as to whether a person declaring his intention to become a resident voter of the State of Maryland a year or more before the date of election, but less than a year before the date of registration, is entitled to vote at the next election.

Our Court of Appeals in the case of Pope vs. Williams, 98 Md. at page 68, said: "The right to become a registered voter under such proof dates from the time of the registration of the intent in the record book of the Clerk, and, therefore, if the intent be registered less than a year before the sitting of the register of voters, but more than one year before the next election, he would be entitled to be a registered voter at that election.

It, therefore, appears that should the declaration of intent be properly filed more than a year before the date of election, the person so filing it will be entitled to vote at that election.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

ELECTIONS—COMMISSIONERS OF BOULEVARD HEIGHTS HOLD
OFFICE FOR ONE YEAR.

July 14, 1925.

A. E. Stewart, Esq.,
Route 1, Bennings Station, D. C.

DEAR SIR: I am in receipt of a communication from the Commissioners of Boulevard Heights under date of the 11th inst. asking me whether the Commissioners elected Novem-

ber 22nd, 1924, hold office until November 22nd, 1925, or should be replaced by the Commissioners elected on July 6th, 1925, and in reply to your inquiry will say that it appears to be perfectly plain from Section 4 of the Senate Bill enclosed with the communication, that the Commissioners and Treasurer who were elected November 22nd, 1924, hold their office for the term of one year, and that their term of office does not expire until November 21st, 1925.

Therefore, while the Bill provides for an annual election in July, the Town Commissioners elected at that election do not take office until the following November. There are plenty of precedents for this, not only in the officers elected in the State of Maryland to fill State offices, but with Members of Congress and United States Senators. The latter are elected in November, and do not take office until the following March.

Trusting this will answer the question which you submit, I remain,

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

ELECTIONS—FEWER ELECTIONS AMENDMENT—DOES NOT
ABROGATE CONSTITUTIONAL PROVISION RENDERING
COUNTY SHERIFF INELIGIBLE TO SUCCEED HIMSELF.

July 28, 1925.

*Hon. William S. Gordy, Jr.,
State Comptroller,
Annapolis, Md.*

DEAR MR. GORDY: I have your letter of the 25th inst., in which you ask my opinion as to whether a County Sheriff is eligible for re-election to succeed himself.

You suggest that Section 44 of Article IV of the Constitution, which provides that "he shall hold office for two years and until his successor is duly elected and qualified; *he shall be ineligible for two years thereafter,*" may have been abrogated by Article XVII (commonly known as the

"Fewer Elections Amendment"), which was ratified by the people in November, 1922.

The purpose of the amendment, as expressed in Section II thereof, is "to reduce the number of elections, by providing that all State and county elections shall be held only in every fourth year, and at the time now provided by law for holding Congressional elections * * *."

This purpose is accomplished by providing that "all State officers elected by qualified voters (except judges of the Circuit Courts of the several circuits, the member of the Court of Appeals from Baltimore City, and members of the Supreme Bench of Baltimore City), and all county officers elected by qualified voters, shall hold office for terms of four years, and until their successors shall qualify." (Section 1.)

By Section 13 it is provided that "in the event of any inconsistency between the provisions of this article and any of the other provisions of the Constitution, the provisions of this article shall prevail, and all other provisions shall be repealed or abrogated to the extent of such inconsistency."

So far as possible, however, the provisions of the "Fewer Elections Amendment" should be reconciled with the other provisions of the Constitution.

The requirement of a lapse of two years from the end of the term of the County Sheriff as a condition of his eligibility for re-election is to insure rotation in the office, and does not in any manner conflict with the purposes of the Fewer Elections Amendment. I am, therefore, of the opinion that the said requirement of Section 44 of Article IV has not been repealed or affected by the Amendment.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

ELECTIONS—DAYS ON WHICH ELECTION OFFICIALS WILL BE
REQUIRED TO SERVE IN 1926.

August 11, 1925.

*M. Harry Laib, Esq.,
Supervisors of Elections,
Court House,
Baltimore, Md.*

DEAR DR. LAIB: I have your letter of August 8th, in which you request me to supply you with the number of days the Judges and Clerks of Election will be called upon to serve during 1926.

As you know, there will be a general registration in Baltimore City in the next year, and this will require five days, four of which will be devoted to the registration of voters and the fifth for revision purposes. Those on which the officials will be required to serve in this capacity, according to my calculation, will be as follows:

First Sitting, Tuesday, September 21st.

Second Sitting, Wednesday, September 22nd.

Third Sitting, Tuesday, October 5th.

Fourth Sitting, Wednesday, October 6th.

Fifth Sitting, Revision, Tuesday, October 12.

There may or may not be a primary election throughout the city, depending upon whether or not there is any contest over the nominations to be made, but there must necessarily be a general election day. Since you require this information for budget purposes, I should say it will be necessary to provide for seven days' service for each of these officials.

Trusting that the above will satisfactorily answer your inquiry, I am,

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

ELECTIONS—POWERS OF BOARD OF SUPERVISORS TO SUB-DIVIDE PRECINCTS MUST ADVERTISE BOUNDARIES OF NEW PRECINCTS BEFORE JULY FIRST OF THE YEAR IN WHICH CHANGES ARE MADE.

August 20, 1925.

Hon. M. Harry Laib,
Chief Clerk,
Supervisors of Elections,
Court House,
Baltimore, Md.

DEAR MR. LAIB: In your telephone conversation this morning you informed me that the Board of Supervisors of Elections is about to sub-divide a number of precincts in Baltimore City and requested my advice as to the advertising of the new precincts.

The law relating to your inquiry is found in Section 126 of the Registration and Election Laws of Maryland and by reference to that section, you will observe that "the boundaries of said precincts shall be made known by advertising in one or more newspapers in said City, once a week for two (2) successive weeks before the first of July in each year in which such division is made."

Inasmuch as the law requires publication to take place before the first week in July in the year in which the division is made, I think that the Board should defer the making of the sub-division of the precincts until after the first of the coming year, when the publication may lawfully be made.

I think the above will answer the question which you have propounded, but if you desire any further information, I shall be glad to hear from you.

With kind regards, I am,

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

ELECTIONS—VOTER MAY NOT CHANGE AFFILIATION EXCEPT BEFORE THE BOARD OF REGISTRY ON A DAY FIXED FOR REGISTRATION. CHANGE TO BE EFFECTIVE IN PRIMARY ELECTION MUST BE MADE AT LEAST SIX MONTHS BEFORE PRIMARY ELECTION.

August 21, 1925.

*Honorable Edmond H. Johnson,
State's Attorney
Snow Hill, Maryland.*

DEAR MR. JOHNSON: I have before me your letter of August 5th, in which you request an opinion pertaining to the right of voters to change their affiliations. You refer to Section 194 of Article 33 of the Code of Public General Laws, which provides that no person shall be permitted to change his affiliation unless the same be made at least six months prior to the day of primary election. You observe further that the only registration between now and the next primary election is less than six (6) months before the election, and you request an opinion as to what, if any, method a voter can now pursue to change his affiliation so as to be able to vote in the primary of his newly chosen party at the next primary election.

I find in Section 201 of the same article of the Code the following provision:

“And in all primary elections thereafter held, any person so registered as affiliated with the given political party shall have the right to vote the official ballot of that party and of no other; and at any intermediate registration subsequent to the close of the next general registration, such voter may appear before the Board of Registry and, upon his identity being established to the satisfaction of the majority of the board of registry, to make, alter, or strike out any entry in the column headed ‘party affiliations’ opposite his name in the registry; it shall be the duty of the Board of Registry to enter in the column headed ‘remarks’ the fact that such entry was made, altered or stricken out, and the date thereof.”

It is obvious from the above provision that the voter may change his affiliation at any intermediate registration. There is no other provision in the law which authorizes the change of party affiliation. I think it is the intention of the election law as a whole that all entries in the registration books relating to qualifications, affiliations, etc., of voters shall be made by the Boards of Registry on the days duly set for that purpose, and the provision in Section 194 referred to by you, prohibiting the change of affiliation within six months of the primary election, means the voter must apply for such change to the Board of Registry on registration day duly fixed by law, and at least six months before the primary election at which he proposes to vote.

I may add that I have discussed this matter with persons who have been identified with the office of the Board of Supervisors of Election in Baltimore City and in Harford County for a number of years and I am told that it has been the uniform custom to allow no person to change his party affiliation except upon application to the Board of Registry on the day of registration, and in no event have such changes been made by the Board of Supervisors between registration days.

I am of the opinion, therefore, that there is no method by which a voter may now change his affiliation in time to vote in the primary election of the party of his new choice in the year 1926.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

ELECTIONS—NO HOLIDAY IN 1925 ON DAY ON WHICH ELECTIONS USUALLY TAKE PLACE.

October 24th, 1925.

*Farmers Banking & Trust Company,
Rockville, Maryland.*

DEAR SIR: Your letter of October 20th, addressed to the Attorney General in which you request an opinion as to whether or not the day on which General Election would be

held this year, if there were such an election, will be a holiday, has been referred to me for reply.

Legal holidays in Maryland are defined by Section 9 of Article 13 of the Code of Public General Laws, and the provision relating to election days reads "All days of general and congressional elections throughout the State."

Inasmuch as there will be no general or congressional election during the year 1925, it is clear that there will be no holiday growing out of this provision during the present year.

Very truly yours,

WILLIS R. JONES, *Asst. Attorney General.*

ELECTIONS—SUCCESSORS TO SENATOR WELLER AND CERTAIN NAMED JUDGES SHOULD BE ELECTED IN 1926.

December 1st, 1925.

*Hon. Robert B. Ennis,
President, Board of Election
Supervisors of Baltimore City,
Court House,
Baltimore, Md.*

DEAR MR. ENNIS: On September 21st, you submitted a list of the offices to be filled at the primary and general elections to be held in the fall of 1926, and requested a ruling from this Department as to whether or not the list so submitted is complete and correct. Before answering your inquiry we deemed it advisable to obtain from the office of the Secretary of State a statement showing the dates on which the various Judges and Court Clerks were elected, and this information has just now been received. After careful examination I would say that we find the list which you submit to be complete and correct.

I think I should add that the United States Senator who will be elected at the coming election will succeed Hon. Ovington E. Weller, and the six Judges in Baltimore City

who will be elected at the same time succeed the following Judges, whose terms will expire upon the election and qualification of their successors, namely:

Judge Henry Duffy,
Judge H. Arthur Stump,
Judge Walter I. Dawkins,
Judge Joseph N. Ulman,
Judge W. Stuart Symington, Jr.,
Judge George A. Solter.

Very truly yours,

WILLIS R. JONES, *Asst. Attorney General.*

FISCAL.

FISCAL — COMMISSIONER OF MOTOR VEHICLES—RECEIPTS FROM TITLE DEPARTMENT—APPLICABLE TO BUDGET APPROPRIATION FOR FISCAL YEARS 1925, 1926 AND 1927, AVAILABLE FOR ROAD MAINTENANCE.

January 24, 1925.

*Hon. William S. Gordy, Jr.,
State Comptroller,
Annapolis, Md.*

DEAR MR. GORDY: With reference to your inquiry concerning the disposition of the receipts of the Title Department of the Commissioner of Motor Vehicles, I beg to advise you as follows:

The Title Department was created by Chapter 407 of the Acts of 1920, and under its provisions the receipts of the Department were to be set aside and retained by the Commissioner of Motor Vehicles in a special fund. However, since the Re-Organization Bill, (known as Chapter 29 of the Acts of 1922), these funds have been paid monthly to the Treasurer and credited by him to a special fund or account in favor of the Title Department, and the Budget appropriations to said Department have been paid out of said special account.

During the fiscal years of 1923 and 1924, large surpluses accumulated in this account, over and above the appropriations provided for in the Budget for the maintenance of the Department. As I understand it, you have taken the position that these surpluses, and others which are likely to occur during the fiscal years 1925, 1926, 1927, are required to be kept in this special fund or account until the Legislature of 1927 makes some disposition thereof.

On the other hand, the State Roads Commission and the City of Baltimore claim that under their appropriations in

the Budget Bills of 1922 and 1924 the surplus receipts belong to them.

In my opinion the contention of the State Roads Commission and of Baltimore City is correct.

The appropriations to Baltimore City in the Budget Bill of 1924, Chapter 176 of the Acts of 1924, reads as follows:

“To Baltimore City, one-fifth of the receipts of the Motor Vehicle Department and gasoline taxes, after deducting the expenses of that Department and of the Traffic Court; the amount hereby named being an estimate only, and it being the intention that the exact amount of this appropriation shall be one-fifth of said receipts and taxes, whether the same be more or less than this estimate.....\$824,302.00.”

The appropriation to the State Roads Commission in the same Act reads as follows:

“For Maintenance and Reconstruction of State and State-aided Roads, all the moneys received from the Motor Vehicle Department Receipts and Gasoline Taxes, after the appropriations made for the Motor Vehicle Department, and the Traffic Court and from Special Funds have first been paid; the amount hereby named being an estimate only, and it being the intention that this appropriation shall be the whole of said balance, whether the same be more or less than this estimate.....\$3,297,208.00.”

In the Budget Bill of 1922, (Chapter 500 of the Acts of 1922), the wording of the appropriations to Baltimore City and the State Roads Commission is practically to the same effect.

Upon investigation we find that the Governor in making up his estimates for the Budget Bill submitted by him to the Legislature in 1922 and 1924, included in his estimate of the receipts of the Motor Vehicle Department, the receipts of the Title Department, and the estimate of the appropriation to Baltimore City and the State Roads Commission is based upon all of the receipts of the Motor Vehicle Department, including the aforesaid receipts of the Title Department. We find that these estimates were not changed

by the Legislature, and, therefore, the conclusion is inescapable that it was the intention of the Governor and of the Legislature in these Budget Bills to appropriate to Baltimore City and the State Roads Commission all of said receipts, including the receipts of the Title Department.

There is one other question as to the disposition of the balances on hand at the end of the fiscal years of 1923 and 1924. Section 2 of each of said Budget Bills provides that unexpended balances at the end of the fiscal year shall revert to the General Treasury, unless the Comptroller is notified at least ten days before the end of the fiscal year for which the appropriation is made that said unexpended balances are needed to meet obligations incurred during that year and which will be unpaid at the end thereof.

I understand that in view of the fact that the aforementioned appropriations to Baltimore City and the State Roads Commission are merely estimated, and not fixed, you have required only a general request from the State Roads Commission to carry forward any amounts appropriated to them, but not disbursed by you, at the close of the fiscal year, and you have waived the formality of having the City write to you especially regarding its unexpended balances.

I am, therefore, of the opinion that Baltimore City is entitled to one-fifth, and the State Roads Commission to four-fifths of all accumulations now in the Special Fund of your office in favor of the Title Department, and that for the fiscal years of 1925, 1926 and 1927 you should account to the City for one-fifth, and the State Roads Commission of four-fifths, of all of the net receipts of the Motor Vehicle Department, including the receipts of the Title Department.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

FISCAL—INFORMER'S FEES—SHERIFFS AND DEPUTY SHERIFFS NOT ENTITLED TO.

January 29, 1925.

*Joseph O. McCusker, Esq.,
Comptroller's Office,
Annapolis, Md.*

DEAR MR. MCCUSKER: In response to your inquiry over the telephone this morning as to whether a Sheriff or Deputy Sheriff is entitled to receive informers' fees, I beg to advise you as follows:

The general rule is that a person whose duty it is to disclose information, and who violates such duty if he does not disclose it, cannot be an informer. 25 C. J. 1168.

This rule was recognized in the case of *Sanner vs. State*, 83 Md. 648. But, in that case, it was held that the State having no interest in the fines, etc., collected and claimed by the Sheriff as informers' fees, could not maintain an action therefor against him.

But in the subsequent case of *Green vs. State*, 120 Md. 681, suit was brought by the State to recover fines which the Sheriff was withholding to be paid to informers when called upon by them. But the Court held that no claim having been made by any informer the Sheriff was required to account for these fines to the State Treasurer. It follows, therefore, (1) that a Sheriff or Deputy Sheriff is not entitled to receive informer's fees; and (2) that when such fees have been illegally retained, suit can be brought by the State for their recovery.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General*.

FISCAL—COUNTY OFFICES—PREMIUMS ON BONDS MAY BE
CHARGED AS AN EXPENSE OF OFFICE.

February 24, 1925.

*John H. T. Briscoe, Esq.,
State's Attorney,
Leonardtown, Md.*

DEAR MR. BRISCOE: In answer to your letter of February 16th, in which you ask whether or not this Department has had occasion to pass on the provisions of Section 19 of Article 25 of the Code of Public General Laws of Maryland, I would say that we had occasion to consider this section of the law in connection with the premium on the bond of the State's Attorney for Talbot County, in an opinion written on July 23, 1924, in which we held that the State's Attorney for that County was entitled to charge the premium on his bond as an expense, and where he is a salaried officer it is mandatory upon the County Commissioners to pay the premium on the bond furnished by him.

There seems to be some doubt as to the application of this Section to county officers generally, due to the use of the word "may" rather than the word "shall," but we think the language relating to Clerks of Courts, Registers of Wills, State's Attorneys and Sheriffs, to the effect that the premiums on the bonds "shall be charged as an expense" are clear and unmistakable and that it was intended that this expense should be charged as other official expenses of such officers.

Trusting that the above will satisfactorily answer your inquiry, and with kind regards, I am,

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

FISCAL—DISPOSITION OF FINES IMPOSED FOR TRESPASSING.

March 3, 1925.

*Edwin W. Mellor, Jr., Esq.,
Clerk, Circuit Court for Carroll County,
Westminster, Md.*

DEAR SIR: Under date of February 25th, 1925, you inquire as to the disposition to be made by you of fines imposed by the Court in cases heard on appeal from a Justice of the Peace, prosecuted under Section 1, Chapter 112, of the Acts of 1920. This is an act to prohibit trespassing on property which is posted against trespassers in a conspicuous manner.

As the Act itself does not direct the disposition of the fine, resort must be had to Sections 2 and 4 of Article 38 of the Code, which provide, in substance, as follows:

(1) Where there is an informer, one-half of the fine imposed should be paid to him, and the other half should be retained by you to be expended under the direction of the Judges of your Court for augmentation of your Court library.

(2) Where there is no informer, one-half goes to the library fund, and the balance is to be treated as a receipt of your office, for which you must account to the treasurer, under the decision of *State vs. Green*, 120 Md. 681.

Trusting that this answers your inquiry, I am,

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

FISCAL—LIABILITY OF HEIRS AND NEXT OF KIN OF DECEASED
SURETY ON BOND OF CLERK OF COURT.

April 9, 1925.

*Joseph O. McCusker, Esq.,
Comptroller's Office,
Annapolis, Md.*

DEAR SIR: In your letter of April 7th, you state that one of the sureties on the bond of a Clerk of the Court has died, and ask what steps the State should take in such a case.

Section 1 of Article 50 of the Code provides that "where two or more persons are jointly bound by bond * * * to pay money or do anything, and one or more such persons shall die, his or their executors and heirs shall be bound in the same manner and to the same extent as if the person so dying had been bound severally as well as jointly."

This section would give the State the same rights against the executors and heirs of the deceased surety as against the surety himself. I, therefore, do not see how any steps can be taken until there is an actual default on the part of the Clerk or the expiration of the bond. In your letter you do not set forth the form of the bond, but we suppose that the sureties are jointly and severally liable as is usual in most bonds. In that event, each one of the sureties would be liable for the entire amount of the default.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

FISCAL—STATE'S ATTORNEY FOR BALTIMORE CITY—APPLICATION OF EXCESS FEES DURING 1924 TO PAYMENT OF INDEBTEDNESS TO BALTIMORE CITY—SYSTEM OF BOOKKEEPING REQUIRED UNDER AMENDMENT TO SECTION 9 OF ARTICLE V OF MARYLAND CONSTITUTION.

June 19, 1925.

*J. O. McCusker, Esq.,
Comptroller's Office,
Annapolis, Md.*

DEAR MR. MCCUSKER: I am enclosing herewith copy of letter of June 18th, 1925, addressed to this office by the State's Attorney for Baltimore City, making inquiry with reference to two funds concerning which I have previously communicated with you.

The first relates to the sum of \$1,081.02, representing the excess of receipts over disbursements from the date of the installation of the present State's Attorney of Baltimore City, January 7, 1924, to December 31st, 1924.

During Mr. Leach's administration, the Mayor and City Council of Baltimore advanced the State's Attorney for Baltimore City \$4,493.59, in excess of the amount of fees earned by them. The query is: Should this sum of \$1,081.02 be remitted to the State Treasurer as excess fees of the office, or should it be applied to the indebtedness due the City?

Our correspondence in this matter shows that you and I agree that this balance is not payable to the State, but should be applied to the indebtedness to the City.

The second inquiry relates to the system of bookkeeping to be adopted by the State's Attorney's office in view of the amendment to Section 9 of Article V of the Constitution, which was adopted by the people last November. This amendment provides that the salaries and expenses for conducting the office of the State's Attorney of Baltimore City "shall be paid by the Mayor and City Council of Baltimore to the extent that the total of them exceeds the fees of his office, or as the General Assembly shall otherwise provide,

and the Mayor and City Council of Baltimore shall not be liable for appearance fees to the State's Attorney." The City prefers to have the State's Attorney turn over to it all of the fees collected by him, and then to make an appropriation in full for all the salaries and expenses of the office. The State's Attorney is willing to do this, but asks our office as to whether it is proper for him to enter into such an arrangement, or whether it is necessary for him to retain such fees as he may collect, and obtain from the City the difference between the amount collected and that necessary in the conduct of his office.

In view of the comprehensive obligation under this amendment upon the part of the City for the maintenance of this office, I do not see how it would be possible for the State to have any interest in any of the fees thereof.

However, we do not want to lend our approval to such an arrangement, if it in any way interferes with the routine or records of your office.

I trust that you will give me your views upon these questions, and, if they coincide with mine I believe the instructions and authority to the State's Attorney should come from the Comptroller rather than from this office.

If you decide to permit the State's Attorney to turn over the fees to the City of Baltimore, he will, of course, be required to keep a record thereof for inspection by the State Auditor.

Thanking you in advance for your co-operation in this matter, I am,

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

FISCAL—BUDGET BILL OF 1924—SECTION 9 VALID—RE-
QUIRES FUNDS FROM SOURCES OTHER THAN APPROPRIA-
TION TO BE PAID INTO TREASURY—SPECIAL ACCOUNTS—
METHOD OF DISBURSEMENT.

September 24, 1925.

HONORABLE WILLIAM S. GORDY, JR.,
State Comptroller,
Annapolis, Md.

DEAR MR. GORDY: In response to your request for my opinion as to the proper construction to be placed upon Section 9 of Chapter 176 of the Acts of 1924, known as the "Budget Bill," I beg to advise you as follows:

Section 9 provides:

"That all moneys received by any department, board, commission, officer or institution of the State, from sources other than appropriations made in the Budget, and dedicated by any Act of Congress or laws of this State to some specific purpose or purposes, and which have been accounted for to the Comptroller and paid into the Treasury, may be disbursed by the Treasurer, upon warrant of the Comptroller, to such department, board, commission, officer, or institution for the purpose or purposes for which the same are dedicated."

The purpose of the above section was to make possible a centralized bookkeeping system showing all moneys spent by the State. Funds received as federal aid, county matching appropriations and from certain other sources, which were dedicated to special purposes, and not considered in making up the Budget or the Budget Bill, were never paid into the Treasury because of the fear of the various departments receiving these funds, that under the Budget Amendment (Article III, Section 52 of the State Constitution, as amended by the Act of 1916, Chapter 159, ratified November 7th, 1916), they could not have been gotten out of the Treasury. As a result, your office had no record of these funds, and your books failed to show all the money spent

each year by the various State departments. Section 9 was passed to remedy this difficulty.

Mayor and City Council of Baltimore vs. O'Connor, No. 16, January Term, 1925, reported in Daily Record of Friday, April 17th, 1925.

It seems clear to me that Section 9 requires the departments, boards, commissions, officers or institutions of the State, receiving moneys such as those described therein, to account for the same to you. Such money should be paid into a separate and special account in the Treasury, separate and distinct from the general funds of the Treasury. Each of said funds should be set up on your books as a special account and should be disbursed by the Treasurer upon your warrant for the purpose or purposes for which the same are dedicated.

It is my opinion that so far as this section affects funds which are not taken into consideration in making up the Budget or the Budget Bill, and which are paid into a special account in the Treasury and set up in a special account on your books, it is a perfectly valid and constitutional exercise of power by the Legislature, and is in no wise in conflict with the Budget Amendment.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

FISCAL—CLERKS OF COURT—FEES REQUIRED, UPON TAKING OATH OF OFFICE, CANNOT BE PAID OUT OF RECEIPTS OF OFFICE—APPOINTED CLERK MUST PAY FEE.

October 9, 1925.

A. *Theodore Brady, Esq.,*
State's Attorney,
Annapolis, Md.

DEAR MR. BRADY: The Attorney General has referred to me your letter of October 7th, in which you ask if Mr. William Martin Brady, who was appointed Clerk of the Circuit

Court for Anne Arundel County, is required to pay the Secretary of the State the sum of \$100.00, as required by Section 56 of Article 17 of the Code of Public Laws, and also by Section 152 of Article 81 of the Code.

This question has been considered by the Attorney General on two previous occasions, and in his opinion a Clerk of the Court who is appointed to succeed a deceased Clerk is required to pay the fee.

You further ask that in the event Mr. Brady is required to pay the \$100.00 which has been demanded of him by the Comptroller, whether or not he can deduct it from the fees of his office. We know of no provision in the law which would authorize such deduction, and in view of the fact that Section 56 of Article 17 and Section 152 of Article 81 were codified from Chapter 483 of the Acts of Assembly of 1874, which was a revenue measure, it would seem clear that this fee was intended to be paid by the Clerk individually and not from the fees of his office. It would seem to be useless to provide a tax for revenue purposes to be paid by the Clerks, if the tax was intended to be paid from fees which would otherwise revert to the State Treasury.

This conclusion is supported somewhat by Section 20 of Article 25, which relates to premiums on bonds of officials. It is there provided that the premium on the bond of the Clerk of the Court shall be charged as an expense of such officer. It is obvious that the Clerk can make no deduction from the fees of his office which is not authorized by law, and in the absence of such authorization, it is the opinion of the Attorney General that Mr. Brady is required to pay the fee in question individually.

Very truly yours,

WILLIS R. JONES, *Asst. Attorney General.*

FISCAL — GASOLINE TAX — DEALERS CANNOT DEDUCT FOR
GASOLINE SOLD TO POST EXCHANGES.

October 13, 1925.

*Joseph O. McCusker, Esq.,
Comptroller's Office,
Annapolis, Md.*

DEAR MR. McCUSKER: I have your letter of the 3rd instant, in which you request us to advise you whether dealers, registered under the gasoline tax law, in making their monthly reports to you, are entitled to deduct for gasoline sold to them to the Post Exchange at Camp Meade. You state that you allow the dealers to take credit for gasoline sold to governmental agencies, but you are in doubt as to whether the Exchange is entitled to such a classification.

I find that the Exchange is not created by Act of Congress, and, in fact, I have learned from the best sources of information at my command, that it is not a governmental enterprise at all. I understand it is a private undertaking conducted by the Post for its private profit.

Furthermore, the gasoline tax is not imposed upon the Exchange, as such, at all. It falls directly on the purchaser.

I am, therefore, of the opinion that the dealers should not be permitted to take credit for gasoline sold to the Exchange.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

HEALTH.

HEALTH—MATTRESSES—PROVISION OF STATUTE PROHIBITING USE OF SHODDY UNCONSTITUTIONAL.

May 6, 1925.

*J. D. Donovan, Esq.,
Chief, Division of Legal Administration,
Department of Health,
16 W. Saratoga St.,
City.*

DEAR SIR: In your letter of May 1st, you ask this department to pass upon the constitutionality of Section 64 of Article 43 of Bagby's Annotated Code of 1924, prohibiting the use of "Shoddy" in the manufacture of mattresses and related articles. That section defines the word "Shoddy" as follows: "The word 'Shoddy' shall mean any material which has been spun, knit, or woven into fabric, and subsequently cut up, torn up, broken up or ground up." It is further provided that "no person shall employ or use in the making, re-making or renovating of any mattresses, pillows, bolsters, feather-beds or comfortables any material known as 'Shoddy' or any fabric or material from which 'Shoddy' is constructed."

You refer to the decision of Judge Schoonmaker, sitting as the District Court of the United States for the Western District of Pennsylvania, in Equity, in the case of The Palmer Brothers Company vs. D. E. Weaver, Chief of Bureau of Inspection, in Pittsburgh of the Department of Labor and Industry of the Commonwealth of Pennsylvania, decided on April 23rd, 1925. The opinion is not yet reported.

In that case provisions of the Pennsylvania Bedding Law, identical with those above quoted, were attacked as unconstitutional, and the Court, in a very convincing and elaborate

opinion held them to be an unconstitutional exercise of legislative power.

This department believes that Judge Schoonmaker's opinion is sound, and holds, therefore, that the above provisions of our law are also void and unenforceable.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

HEALTH—LIABILITY IN DAMAGES FOR DISEASE CONTRACTED
FROM A WATER SUPPLY.

May 19, 1925.

*Honorable Abel Wolman,
Chief Engineer, Bureau of Sanitary Engineering,
State Board of Health,
16 W. Saratoga Street,
Baltimore, Md.*

DEAR MR. WOLMAN: I am in receipt of your letter of the 18th inst., enclosing two instructive articles on the legal liability for disease contracted from a water supply.

I have read both of them carefully, and believe that they both set forth quite accurately the various legal phases of the subject. I am of the opinion, however, that the one stamped "Fuller & McClintock, May 14th, 1925," contains the more complete discussion of the question.

From all of the authorities, the following general proposition may be said to be firmly established: Damages may be recovered from an individual or a municipal or other corporation, supplying water to the public, if the plaintiff proves by a preponderance of the evidence:

First: The impurity of the water supply;

Second: That the impurity was due to the negligent act or omission of the individual or corporation furnishing the same; and

Third: That the consumer contracted the disease from the water supply.

As in any other suit for negligence, if there is no proof of a negligent act or omission, the Court will instruct a verdict for the defendant. If on the other hand, there is any proof at all, of a negligent act or omission, it would be the province of the jury to determine the liability vel non of the defendant.

Whether the act or omission constituted negligence would depend upon whether the defendant had conducted the business of furnishing the water with the same prudence, caution and care as would be expected of a reasonably prudent person in the same line of business.

In view of the general knowledge of modern methods of purifying water, it seems to me that it would not be very difficult to establish a standard for the conduct of this business.

If, after you have made a study of the Fuller & McClintock manuscript, you wish to discuss further any phases of this matter with me, do not hesitate to call upon me.

I am returning herewith both manuscripts.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

HEALTH—DELMAR—BONDS FOR SEWERAGE IMPROVEMENT—
STATUTE AUTHORIZING ISSUE OF, MANDATORY, AFTER
FAVORABLE REFERENDUM.

June 22, 1925.

Mr. A. E. Goodrich,
Division Engineer,
State Department of Health,
Baltimore, Md.

MY DEAR SIR: I have your letter of the 19th instant in which you inquire whether Chapter 593 of the Acts of 1924, an act authorizing the Commissioners of Delmar, Maryland, to bond for sewerage improvements, is mandatory upon the Commissioners of that municipality, if favorably voted upon

by the people in accordance with Section 17 thereof. You state that at an election held as prescribed in the bill, the voters sanctioned the bond issue, but you understand that a majority of the Commissioners apparently are lacking enthusiasm in executing the citizens' verdict, and your Department has been appealed to for assistance.

I have carefully examined the Act, and find that the language used throughout is mandatory in its character. But Section 17, which provides for the referendum, dispels all doubt as to the legislative intention. It provides:

"That at a special election to be called by the Commissioners of Delmar there shall be submitted to the qualified voters of Delmar, the question whether bonds shall be issued for said sewerage system in Delmar, and at such election the ballots cast upon such question shall have the words "For Bond Issue for Sewerage System," and "Against Bond Issue for Sewerage System," thereon, and if a majority of the votes cast upon such question shall be "For Bond Issue for Sewerage System," then the Commissioners of Delmar, or a majority of them, shall proceed to execute the power vested in them by this Act." * * *

In view of this unequivocal language, I am forced to the conclusion that it is incumbent upon the Commissioners to carry out the will of the people, as expressed at the election.

Very truly yours.

THOMAS H. ROBINSON, *Attorney General.*

INSURANCE.

INSURANCE — FOREIGN COMPANIES DOING BUSINESS IN
MARYLAND—LICENSE FEES.

March 5, 1925.

*Carville D. Benson, Esq.,
Insurance Commissioner,
Union Trust Building,
Baltimore, Md.*

DEAR MR. BENSON: I have your letter of March 2nd, enclosing copy of a letter from the Insurance Commissioner of Virginia to you under date of February 27th, and a copy of a letter from you to the Life Insurance Company of Virginia under date of February 25th. I understand from your letter and its enclosures that the Life Insurance Company of Virginia in case its premiums in Maryland amount to \$59,070.22, for the year 1924, would pay in 1925 under the rates and charges in effect under the Maryland law, the following fees:

Company License	\$300.00
Filing Annual Statement.....	25.00
Abstract of Statement.....	4.00
Premiums Tax at 1½%.....	886.05
	<hr/>
A total of.....	\$1,215.05

I further understand that if a Maryland company does the same amount of business in the State of Virginia it would pay the following charges:

License tax at 2¾%.....	\$1,402.92
Assessment for maintenance Bureau of Insurance at 1/20th of 1%.....	29.54
Annual Registration Fee.....	25.00
	<hr/>
A total of.....	\$1,457.46

Section 41 of Article 48A of the Annotated Code, Title "Insurance," provides as follows:

"When by the laws of any other state, any deposit of money or securities is required, or taxes, fees, fines, penalties or other obligations or prohibitions are imposed upon companies incorporated or organized under the laws of this state, and transacting business in such other state, or upon the agents of such companies, greater than those required or imposed by the laws of this state, so long as such laws remain in force, the same deposits, taxes, fees, fines, penalties, obligations and prohibitions shall be imposed upon all agents or companies of such state doing business in this state, instead of those prescribed by the laws of this state."

You ask whether you may legally charge the Life Insurance Company of Virginia doing business in this state, the company license of \$300.00, and also the Virginia rate of taxes at $2\frac{3}{8}\%$ on premiums. I do not think so. The intent and purpose of Section 41 is that where the rates and charges imposed on a Maryland company doing an insurance business in another State are greater than that company would be required to pay for the same and similar business in this state, you are directed to impose a charge on similar corporations organized under the laws of that State the same charges which that State imposes upon and exacts from Maryland corporations.

I think you should take the total amount of fees and taxes that a similar company from Maryland would be required to pay by the Virginia laws and thus tax and license Virginia companies doing a similar business in this State. I do not think that you would be justified in charging a license tax of $2\frac{3}{8}\%$ on premiums (which the Maryland company would be required to pay in Virginia), and at the same time charge the Virginia Company a license fee of \$300.00.

Very truly yours.

THOMAS H. ROBINSON, *Attorney General.*

INSURANCE—MINIMUM ASSETS OF COMPANY RE-INSURING
ITS RISKS.

March 23, 1925.

Denton S. Lowe, Esq.,
Auditor, State Insurance Department,
Union Trust Building,
Baltimore, Md.

DEAR MR. LOWE: I am in receipt of your letter of March 19th, in which you say that the National Underwriters' Mutual Insurance Company has applied to the State Insurance Department for permission to start business, and has filed with the Department two hundred applications, having re-insured its entire risk in companies authorized to do business in Maryland. You state that this company will not do other than a fire insurance business. You call my attention to Section 111 of Article 48-A of the Annotated Code and you ask whether this company has, at its inception, a maximum single risk within the meaning of Section 111, and whether the company is required to have assets of at least \$10,000.

Sub-section C of Section 111 reads in part as follows:

"It shall have collected a premium upon each application required for organization, the total of which premiums shall be held in cash or in securities in which insurance companies are authorized to invest, and the total assets shall be equal, in case of fire or steam boiler insurance, to not less than twice the maximum single risk assumed subject to one fire or to one loss, nor less than ten thousand dollars * * *." I have omitted the balance of the section, because it relates to insurance other than fire.

In sub-section B of Section 111, it is said: "The maximum single risk shall not exceed twenty per cent of the admitted assets, or three times the average risk, or one per cent of the insurance in force, whichever is the greatest, any re-insurance taking effect simultaneously with the policy being deducted in determining such maximum single risk."

As it is expressly provided that in determining the maximum single risk, all re-insurance is to be deducted, and as you tell me this company has re-insured its entire risk, it is evident that the total assets shall not be measured in any way by the maximum single risk, but are required to be not less than \$10,000.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

INSURANCE — AN ASSOCIATION FORMED UNDER PLAN
KNOWN AS LLOYDS MAY NOT ENGAGE IN ACCIDENT AND
HEALTH INSURANCE IN MARYLAND.

July 13, 1925.

*Wilson L. Coudon, Esq.,
State Insurance Department,
Union Trust Building,
Baltimore, Md.*

DEAR MR. COUDON: We wish to acknowledge receipt of your letter of July 10th, enclosing letter from McKinley & Killinger, and in which you ask our opinion as to whether or not under the laws of Maryland an association organized under the plan known as Lloyds can be formed for the purpose of writing health and accident insurance, and also as to whether such an association organized without the State may be admitted to do business within the State in accident and health insurance.

It is provided in Section 81 of Article 48-A, that an association whether organized within this State or elsewhere within the United States, formed upon the plan known as Lloyds may be authorized to transact insurance other than life in this State upon certain conditions thereafter set forth. This section, therefore, plainly prevents a Lloyds from writing life insurance in this State, whether it is formed here or elsewhere. Section 82, which immediately follows the above-named section, defines life insurance companies as fol-

lows: "Any company making any engagement for the payment of money or benefits in the event of sickness, accident or death, or other contingency, either to the member, policy or certificate holder, or by whatsoever name the same may be known, or to their families or representatives * * * shall be deemed and taken to be a life insurance company within the meaning of this Article, and should be subject to all the requirements of law applicable to said life insurance company."

It is, therefore, our opinion that an association formed under the plan known as Lloyds for the purpose of engaging in health and accident insurance could not be organized or operate in Maryland.

Very truly yours.

THOMAS H. ROBINSON, *Attorney General.*

JUSTICE OF PEACE.

JUSTICE OF PEACE AT LARGE IN BALTIMORE CITY—SALARY LIMITED TO \$10.00 PER ANNUM FOR ALL DUTIES EXCEPT FEES FOR ACKNOWLEDGMENTS AND AFFIDAVITS.

January 22, 1925.

*Mr. Joseph A. Civis,
Fidelity and Deposit Company,
Baltimore, Md.*

DEAR SIR: I am in receipt of your favor of the 20th instant, calling attention to your favor of the 10th instant directed to me, in which you request me to advise you in reference to the following matter:

“Can a Justice of the Peace at large for Baltimore City accept more than \$10.00 per year in fees, flowing to him by virtue of his office, or is he limited to a maximum amount of \$10.00 collected as fees from his office?”

Section 625-B is in the following language:

“Each of the justices of the peace provided for in Section 623 hereof, other than those specially provided for in section 623A, 625 and 630 to 638, inclusive, of this article, shall receive from the Mayor and City Council of Baltimore a salary of \$10.00 per annum, as full compensation for the performance by them of all duties of a civil, judicial nature; but said justices of the peace shall have the right to charge and retain all fees arising from the taking of acknowledgments and affidavits.”

This Act was declared constitutional as to this provision in the case of *Levin vs. Hewes*, 118 Md. 624. Therefore, a Justice of the Peace, except those assigned to special duties by this Act, is entitled to receive \$10.00 per year, and in addition to this such fees as he shall receive from the taking of acknowledgments and affidavits, but no other fees.

Very truly yours.

THOMAS H. ROBINSON, *Attorney General.*

JUSTICE OF PEACE—HAS POWER IN CRIME CASES TO SENTENCE TO HOUSE OF CORRECTION FOR LESS THAN THREE MONTHS WHERE LOCAL LAW SO PROVIDES.

July 3rd, 1925.

*Honorable H. J. Moffat,
Hyattsville, Maryland.*

DEAR SIR: Your letter of June 29th addressed to the Attorney General has been referred to me for reply. You state that on June 21st, you sentenced a certain Robert W. Wilson to the Maryland House of Correction for violation of Chapter 13 of the Acts of 1917 for a period of two months, and that upon the arrival of the prisoner at the institution named, the officials hesitated in receiving him, taking the position that they were not required to accept commitments for less than three months. You request an opinion as to whether or not your sentence was proper under the circumstances.

Section 701 of Article 27 of the Code of Public General Laws of Maryland does provide "that in no case whatsoever shall any justice sentence any prisoner to imprisonment in the Maryland House of Correction for more than three years nor for less than three months except" for violation of Section 460 of Article 27. It was by reason of this provision of the general law of the State that the officials at the House of Correction did not wish to accept the prisoner in question.

Upon examination of Section 6 of Chapter 13 of the Acts of 1917 which, it will be observed, was passed after Section 701, above referred to, was enacted, I find that persons who violate this provision of law are subject to be imprisoned in the County Jail or Maryland House of Correction for not less than thirty days nor more than six months. There is, therefore, an obvious conflict between the Local Law and the General Law, and it is the opinion of the Attorney General that the Local Law should prevail, and your commitment is, therefore, valid.

This conclusion is supported by the case of State vs. County Commissioners, 29 Md. at page 516, where Judge Alvey,

speaking for the Court of Appeals, said "The rule of interpretation as to the codified laws is that where the Public General Law of the State and the Public Local Law of any county or city are in conflict, the Public Local Law is to prevail.

Trusting that the above will satisfactorily answer your inquiry, I am,

Very truly yours.

WILLIS R. JONES, *Asst. Attorney General.*

JUSTICES OF PEACE HAVE NO POWER TO GRANT NEW TRIALS.

July 15th, 1925.

*Honorable Paul Johannsen,
Police Magistrate, Northwestern District,
Baltimore, Maryland.*

MY DEAR JUDGE JOHANNSEN: The Attorney General has asked me to answer your letter of July 14th, in which you request an opinion as to whether or not a Police Magistrate is authorized to grant a new trial.

Thomas on "Procedure in Justice Cases," 2nd Edition, Section 78, states that "Justices in Maryland have no power to grant new trials, and their judgments once entered, are final, unless appealed from."

This statement of the law is supported by a decision of the Court of Appeals in the case of Frasier vs. Griffin, 8 Md. 50, where it was held that Magistrates have no authority to strike out a judgment rendered at a previous meeting.

In conformity with the above authorities, it is the opinion of the Attorney General that Police Magistrates in Baltimore City are without authority to grant new trials.

With kind regards, I am,

Very truly yours.

WILLIS R. JONES, *Asst. Attorney General.*

JUSTICE OF PEACE — JURISDICTION EXTENDS TO WHOLE
COUNTY—NOT CONFINED TO ELECTION DISTRICTS.

July 22nd, 1925.

*Honorable G. W. McCardell,
Justice of the Peace,
Williamsport, Md.*

DEAR MR. MCCARDELL: Your letter of July 15th, addressed to the Attorney General has been referred to me for reply.

You state that you were appointed a Justice of the Peace for Washington County, Maryland, District No. 2, and qualified on May 2nd, 1925; that you have your office at Williamsport, which is situated within District No. 2, and you are about to move with your family to another District within Washington County. You request an opinion as to whether or not your removal will disqualify you from performing your duties as a Justice of the Peace in Williamsport, where you expect to continue to maintain your office.

Section 5 of Article 52 of the Code of Public General Laws of Maryland authorizes any justice of the peace of the county where the defendant resides to try and determine any matter in controversy between the plaintiff and defendant, provided the case be within his jurisdiction.

Section 12 of the same Article authorizes the several justices of the peace of the State of Maryland with certain designated exceptions to try and determine all cases involving the charge of any offense, crime or misdemeanor not punishable by confinement in the Maryland Penitentiary or involving a felonious intent which may be committed within their respective counties.

The above provisions of the general law clearly authorize you to hear civil and criminal cases within the magistrate's jurisdiction anywhere within Washington County, regardless of the District in which you may reside, unless by the Local Law of some particular town or district exclusive jurisdiction is conferred upon some particular magistrate.

It is the opinion of the Attorney General, therefore, that you will not relinquish or lose the right to hold the office by your removal from District No. 2 to some other District within the County.

Very truly yours.

WILLIS R. JONES, *Asst. Attorney General.*

JUSTICE OF PEACE—CANNOT HOLD OFFICE UNDER FEDERAL GOVERNMENT.

August 8th, 1925.

Hon. Morris A. Downes,
Lanham,
Prince George's County, Md.

DEAR SIR: Your letter of July 13th, addressed to the Attorney General has been referred to me for reply.

You state that you are employed as a clerk in the Department of Agriculture, and that you have recently received a notification of your appointment as a Justice of the Peace for the 20th District of Prince George's County. You request an opinion as to whether or not you are qualified to fill the office of Justice of the Peace, inasmuch as you are employed by the Federal Government.

Section 3 of Article 152 of the Code of Public General Laws of Maryland reads:

"If any justice of the peace, having qualified as such, shall accept any office under the Government of the United States and shall still act as justice of the peace, he shall forfeit and pay for every such offense the sum of forty dollars."

The manifest intention of the above provision of law, is to prohibit a Justice of the Peace from serving under the Government of the United States during his term of office, and in the opinion of the Attorney General, you are not qualified to fill the office in the 20th District, to which you

have been appointed, so long as you occupy your position under the Federal Government.

I am returning the notification, which you received from the Secretary of State.

Very truly yours.

WILLIS R. JONES, *Asst. Attorney General.*

JUSTICE OF PEACE — CONSTABLE REQUIRED TO EXECUTE
PROCESS—SHERIFF NOT REQUIRED TO EXECUTE PROCESS
OF JUSTICE OF PEACE.

November 5, 1925.

*Robert E. Lee, Esq.,
Justice of the Peace,
Kensington, Md.*

DEAR MR. LEE: In your letter of October 20th, you request an opinion as to whether or not the Sheriff of Montgomery County is required to serve a summons for debt and execute judgments issued by a Justice of the Peace.

Section 4 of Article 20 of the Code of Public General Laws requires the Constable to execute the process of a Justice of the Peace, and I know of no statute which requires the Sheriff to perform the same duties.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

LICENSES.

LICENSES—CIGARETTES—CLEANING, DYEING AND PRESSING.
LAUNDRY—RESTAURANTS OR EATING PLACES.

January 26, 1925.

*Joseph O. McCusker, Esq.,
Comptroller's Office,
Annapolis, Md.*

DEAR MR. MCCUSKER: I have considered your several inquiries with reference to the various license laws, and I beg to send you herewith my opinion upon each of them:

1. *Cigarette Licenses.* There must be a separate license for each place of business. (Article 56, Section 59.)

"Report and Opinions of Attorney General," Volume 8, page 245.

2. "*Cleaning, Dyeing and Pressing*" Licenses. A person conducting a cleaning, dyeing and pressing business, who uses a "Hoffman Presser," which he operates himself, and who has no employees, is required to pay the minimum license fee prescribed by Section 180 of Article 56 (Volume 4). I have made a personal inspection of the machine, and find that, although it is, as you say, operated by the foot, that operation merely sets in motion the other operations by which the work is accomplished. It is my opinion that the exception in the statute of those who conduct this business by hand-power, applies to those who use hand irons for pressing, and not to those who use the machine in question.

3. *Laundry Licenses.* A person having a regular place of business for public laundry purposes must procure the license, and pay the minimum license fee prescribed by Section 171 of Article 56 (Volume 4), even though he has no employees.

4. *Garage Licenses.* In the recent case of *Montgomery County Motor Co. vs. State* (No. 53, October Term, 1924), our Court of Appeals held that an automobile dealer who has only a show room where he displays the automobiles which he has for sale, is not required to procure a garage license. This decision overrules the opinions of the former Attorney General, which held that automobile dealers were required to obtain garage as well as traders' licenses. The Appellate Court held, however, that garages "where automobiles were kept in storage with a view of selling them for the owners and where the storage charges were largely incidental, and might even be included in the sales fees," come within the purview of the garage license law.

5. *"Restaurant or Eating Place" Licenses.*

(a) A person operating a dining room that is open only for two or three hours of the day must procure the license required by Section 182 of Article 56 (Volume 4), as amended by Chapter 504 of the Acts of 1920.

(b) A person having a soda fountain license, who sells ham and cheese sandwiches over his soda fountain, is not required to take out a license under said section. ("Report and Opinions of Attorney General," Volume 1, page 195.

c) Section 182 (supra) provides for the licensing of restaurants or eating places in cities or towns. There is no provision for licenses other than in cities or towns. If places along the highways, where meals or cold lunches are served, are in the open country, no license is required. If they are in a city or town, a license must be procured. "Report and Opinions of Attorney General," Vol. 3, page 158; Vol. 5, page 308.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

LICENSES—ROASTERS, GRINDERS AND BLENDERS OF COFFEE
WITHIN PROVISIONS OF ARTICLE 56.

February 10, 1925.

Mr. Frank P. Brattan,
Chief Inspector of State Licenses,
605 Union Trust Building,
Baltimore, Md.

DEAR MR. BRATTON: I have your letter of February 9th, enclosing letter of C. H. Kroneberger & Co., under date of January 22nd, 1925.

I understand that this Company buys coffee in the raw state, and after roasting it, grinding and blending it, sells it in the State of Maryland. Your question is, whether this company as well as all other persons, firms or corporations which engage in a similar business, are required to procure a traders' license in compliance with Article 56 of the Code.

This question was answered in the affirmative by former Attorney General Alexander Armstrong in his letter to the State's Attorney of Frederick County, Mr. Aaron P. Anders, under date of July 12, 1921, in the course of which he said:

"Section 38 of Article 56 of the Code of Public General Laws provides: 'No person or corporation other than the grower, maker or manufacturer shall barter or sell or otherwise dispose of, or shall offer for sale any goods, chattels, wares or merchandise, within this State, without obtaining a license in the manner herein prescribed; * * *' As coffee certainly comes within the meaning of the word 'merchandise,' I assume that the only question on which you desire my opinion is whether the company to which you refer may be considered a manufacturer. On this question I find a decision directly in point.

"People ex. rel. Union Pacific Tea Company vs. Roberts, 145 N. Y. 375, was a proceeding to review an assessment, the Union Pacific Tea Company contending that it was a manufacturing corporation. The facts with regard to the business of the company, so far as relevant here, were thus stated by the Court:

“Coffee is purchased in the raw bean, roasted, ground, and in some instances different kinds of coffee are mixed together, forming * * * a combination article.’

“The Court, after thus stating the facts, proceeds: ‘We think it very clear that the handling of * * * coffee in the manner indicated is not manufacture in any legal sense, and the relator cannot be regarded as a manufacturing corporation.’”

It is the opinion of this office, for the reasons given by General Armstrong, that C. H. Kroneberger & Co., and all others in like business, come within the provisions of Article 56 of the Code, title “Licenses,” sub-title “Traders”), and are required to procure the license before they can legally sell coffee in this State.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

LICENSES—REAL ESTATE BROKERS—RESIDENTS OF DISTRICT OF COLUMBIA, OFFERING PROPERTY FOR SALE IN MARYLAND, MUST PROCURE LICENSE—PERSONS OFFERING THEIR OWN PROPERTY FOR SALE, NOT BROKERS.

February 27, 1925.

*Joseph O. McCusker, Esq.,
Budget Accountant, Office of Comptroller,
Annapolis, Md.*

DEAR MR. MCCUSKER: I am in receipt of your letter of the 25th inst., in which you enclose a copy of a letter from Prather & Robinson, real estate brokers of Washington, D. C.

Prather & Robinson state that they are advertising and offering for sale in Montgomery County, Maryland, property in said county, without having a Maryland real estate broker's license. They are licensed brokers under the District of Columbia Laws, maintain their offices in the District of Columbia, and have no offices in Maryland.

They wish to know whether they are required to obtain a license to do business in Maryland and the amount of the license fee required.

Real estate brokers' licenses are provided for by Sections 12 and 13 of Article 56 of Bagby's Annotated Code. These sections read as follows:

"12. Any person applying for the same and paying the sum of \$25.00, may obtain a license for carrying on the business of real estate broker. This section not to apply to Baltimore City.

"13. Any person who shall offer to act as real estate broker by advertisement, sign or otherwise, shall be required to take out a real estate broker's license as required by the preceding section, before he shall so act or advertise. This section not to apply to Baltimore City."

It is very clear that the acts performed by Prather & Robinson in this State make them amenable to the provisions of the above sections, and that they are, therefore, required to obtain a Maryland license, even though they have procured such a license in the District of Columbia.

In your letter you also make reference to certain Washington, D. C., persons who own the properties they offer for sale, and you inquire whether, under such circumstances, they can be classified as brokers, and be required to procure real estate brokers' licenses.

I am of the opinion that the sections above referred to cannot be applied to such persons, because they are not brokers. A real estate broker is one who is engaged in the business of procuring purchases or sales of land for third persons; he is an agent or a go-between. When he acts for himself, he does not come within the legal definition or classification of a broker.

Trusting that this answers your inquiries, I am,

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

LICENSES — MANUFACTURER OF CARBONATED BEVERAGES
MUST PROCURE NEW LICENSE WHEN HE MOVES INTO A
NEW ESTABLISHMENT.

March 6, 1925.

A. L. Sullivan, Esq.,
State Food and Drug Commissioner,
State Board of Health,
16 W. Saratoga Street,
Baltimore, Md.

DEAR SIR: In your letter of the 4th inst., you inquire whether a licensed manufacturer of carbonated beverages who moves into a new establishment, which is in good sanitary condition, is required to obtain a new license, or is permitted to continue under his old license until the year for which the same has been issued, has expired.

The annual licensing of manufacturers of carbonated beverages is provided for by Chapter 120 of the Acts of 1922, as amended by Chapter 292 of the Acts of 1924.

Under the provisions of Section 150-A of Chapter 292 of the Acts of 1924, the application for license is required to "contain the name of the applicant, his address, and the location of his manufacturing plant or plants, the name of the beverages manufactured, and such other pertinent information as shall be prescribed by the State Board of Health in pursuance of the provisions of this Act."

The said section further provides that "A license may be denied at the time of application if the establishment of the applicant is known to be in an unsanitary condition or if the water supply is known to be dangerously polluted."

These provisions lead me to the conclusion that the legislature contemplated that a preliminary inspection be made of the plant or plants of the applicant before the license is issued, and that when changes are made in the location of the establishment, an application for a new license is necessary.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

LICENSES—HAWKERS AND PEDDLERS—TRADERS—LICENSE
 REQUIRED FOR DELIVERY OF GOODS SOLD BY NON-RESI-
 DENT MANUFACTURER.

March 7, 1925.

*J. Clayton Kelly, Esq.,
 Clerk of the Court,
 Salisbury, Md.*

DEAR SIR: Under date of February 27th, 1925, you ask whether a non-resident of Maryland, who sells, on commission, and delivers mayonnaise dressing to merchants in your County, for a firm manufacturing the same in Newark, N. J., is required to take out a license, and if so, what kind of a license.

You refer to an opinion given by former Attorney General Armstrong in which he held that a non-resident passing through the counties of this State from time to time in a motor truck, selling goods to merchants, making immediate delivery thereof and collecting for the same at the time of sale was not required to procure a peddlers' license (because in order to make such a one a peddler the sales must be made to consumers and not confined exclusively to dealers), but was required to obtain a traders' license in every County in which he undertook to sell goods from such a vehicle. "Report and Opinions of Attorney General," Volume 5, pp. 306-308.

The only difference between your case and that passed upon by Mr. Armstrong, is that the non-resident in your case sells, not his own goods, but the goods of his principal who is a non-resident manufacturer thereof.

Section 38 of Article 56 of Bagby's Annotated Code exempts from the requirement of obtaining traders' licenses, growers, makers or manufacturers. The tax imposed against the salesman in your case is in fact a tax upon his non-resident principal, who, as a manufacturer, is, under our statute, absolved from the license requirement. *Stockard vs. Morgan*, 185 U. S. 37. Any other construction would render this law unconstitutional, because it is well settled that

a State cannot exact licenses from persons residing in foreign states which are not required by its own citizens under like circumstances and on like terms. 17 R. C. L. 490.

Furthermore, I am unable to agree with the narrow construction placed by Mr. Armstrong on Section 55 of Article 56. This Section reads as follows:

“It shall not be necessary for a non-resident traveling salesman, or sample merchant, or the representative of foreign mercantile or manufacturing firms or corporations, as such, to take out a license in order to make sales to licensed merchants, or solicit orders from licensed merchants in this State.”

Mr. Armstrong says that “the operation of Section 55 of Article 56 is * * * confined solely to representatives of non-resident corporations taking orders within the State, to be executed later, and does not extend to cases where sales and deliveries are co-incident.”

But it will be noted that the Act in turn refers to both classes of transactions, namely, sales made to licensed merchants, and orders solicited from licensed merchants. This language clearly imports that the Legislature intended this Section to apply not only to the non-resident representatives of non-resident merchants and manufacturing concerns, who take orders within the State, to be executed later, but also to cases where sales and delivery are co-incident.

However, it appears from the facts set forth in Mr. Armstrong's opinion that the non-resident in the case which he was considering, was selling his own goods, and it was, therefore, unnecessary for the purposes of that opinion to construe section 55.

But in this case where there is a non-resident *salesman* of a non-resident *manufacturer*, I feel that not only can he not be required to procure a traders' license because his principal is a manufacturer (Section 38), but also because Section 55 specifically relieves him from such obligation.

To summarize:

(1) Where a non-resident sells his own goods from a wagon or truck, exclusively to merchants, he must procure a traders' license, unless he is a grower, maker or manufacturer.

(2) Where his sales are made to consumers as well as to dealers, he must obtain a peddlers' license.

(3) Where he acts as the salesman for a non-resident mercantile or manufacturing concern and sells to consumers, a peddlers' license is required. *Emert vs. Missouri*, 156 U. S. 296, 17 R. C. L. 495.

(4) Where he sells goods to merchants only as a representative or salesman for a non-resident mercantile or manufacturing concern, it is not necessary for him to have either license.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General*.

LICENSES—JUNK DEALERS—MAY BE REQUIRED TO OBTAIN
JUNK DEALER'S AS WELL AS TRADER'S LICENSE.

April 8, 1925.

Mr. George A. Deakyne,
Clerk of the Circuit Court,
Denton, Md.

DEAR SIR: In your letter of the 13th ultimo, you ask whether an individual who is engaged in purchasing old automobiles, who disposes of the good parts as accessories, while the other parts which cannot be used are disposed of by him as old iron and metal, and who also deals in other forms of goods, wares and merchandise, for which he has a trader's license, must also procure a regular junk dealer's license.

Governor Ritchie, while Attorney General, ruled that where persons deal in junk, and also deal in other forms

of goods, wares and merchandise, both a junk dealer's and a general trader's license must be procured. "Opinions of Attorney General," Volume 1, pp. 191-192.

The definition of the words "junk dealers" in Section 234 of Article 56 of Bagby's Annotated Code of 1924, was before the Court of Appeals in the case of State vs. Shapiro, 131 Md. 168. The Court, speaking through Judge Urner, said: "The business of dealing in junk is a distinct and recognized branch of commercial enterprise, its nature and instances are commonly known and may be judicially noticed. A junk dealer is one who is engaged in the business of buying and selling junk, which is defined to be 'old iron, or other metal, glass, paper, cordage, or other waste or discarded material which may be treated or prepared so as to be used again in some form.' Webster's International Dictionary; Century Dictionary; 4 Words and Phrases 3874; Commonwealth vs. Ringgold, 182 Mass. 309; City of Duluth vs. Bloom, 55 Minn. 97. It was not necessary that the provision as to this class of license should have more specifically defined the business to which it is intended to apply."

I am of the opinion that under this decision the individual referred to in your letter is clearly a junk dealer within the meaning of Section 234 of Article 56, and is, therefore, required to procure a junk dealer's license, in addition to his general trader's licenses.

Very truly yours.

THOMAS H. ROBINSON, *Attorney General.*

LICENSES—TRADER'S—LUNCH ROOMS IN SCHOOLS—LICENSE
REQUIRED, IF CONDUCTED FOR PROFIT.

April 9, 1925.

Mr. William M. Storm,
State's Attorney,
Frederick, Md.

DEAR SIR: In your letter of April 6th, you ask whether a trader's license is necessary in the following case:

“The Frederick High School has in the building a lunch room in which is sold soups, salads, pies, cakes, peas, beans and other vegetables, which are prepared in the building, as well as candy, salted peanuts, ice cream, etc., purchased for sale. The above-mentioned articles of food and confection are sold to the students, teachers and visitors at a profit large enough to take care of the expenses of that department, and is backed by and run under the supervision of the Frederick County Board of Education.”

Section 5 of Article 56 provides, “nothing in this article shall be deemed to apply to persons who do not buy or sell with a view to profit in the prosecution of some regular trade or business.” Should the business mentioned in your letter be operated in such a manner as to merely cover the expenses involved in the sale and preparation of the articles sold and the cost of instruction incidental thereto, we do not think that a trader’s license is necessary.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

LICENSES—SALE OF MAGAZINES AND POSTAL CARDS.

May 13, 1925.

*William M. Storm, Esq.,
State’s Attorney,
Frederick, Md.*

DEAR SIR: In reply to your letter of May 4th, in which you ask if it is necessary to take out a trader’s license to sell magazines which are sent to the merchant on consignment, that is, he is to pay for what magazines he sells and return the remainder.

I assume that your inquiry is in regard to the merchant who receives the magazines and in turn sells them to the public.

In my opinion a trader’s license in such a case is necessary.

Your second inquiry is as to whether a trader's license is necessary to sell postal cards.

In my opinion, the seller in this case cannot be classed as a manufacturer, and should, therefore, be required to take out a trader's license.

Your third inquiry is as to whether the Standard Oil Company of New Jersey should take out separate traders' licenses for each of its three filling stations, and whether the application for all three can be made on one blank.

I am of the following opinion: Application for a trader's license for each station should be made upon a separate blank, and a separate license for each station taken out.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

LICENSES—GUM VENDING MACHINE—GAMING DEVICE.

May 29, 1925.

*J. Clayton Kelly, Esq.,
Clerk of the Court,
Salisbury, Md.*

DEAR MR. KELLY: In your letter of April 13th, you ask if a license is required to operate a gum vending machine in Maryland, which for each nickel gives a five cent package of gum and also certain premium checks as trade stimulators.

The particular device which you describe is a gaming device, and any person who operates the same is subject to prosecution under the laws of this State. Obviously no license can properly be issued for the operation of such a machine.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

LICENSES—RESTAURANTS OR EATING PLACES—WHEN PERSONS OPERATING SODA WATER FOUNTAINS MUST PROCURE RESTAURANT LICENSE.

June 30, 1925.

*J. O. McCusker, Esq.,
Budget Accountant, Office of Comptroller,
Annapolis, Maryland.*

DEAR MR. MCCUSKER: I am in receipt of your letter of the 27th inst., in which you inquire whether persons operating soda water fountains, who sell sandwiches and edibles in connection with the regular fountain business, all of which are eaten at the fountain, must procure a "restaurant or eating place" license under Section 244 of Bagby's Annotated Code of Maryland (1924). This question, in its several aspects, has been passed upon by this office on a number of occasions.

Governor Ritchie, when Attorney General, ruled that a person having a soda fountain license, who sells sandwiches over his soda fountain is not required to take out a license under said section. "Report and Opinions of Attorney General," Volume 1, page 195.

This ruling was followed by me in an opinion to you dated January 26th, 1925.

However, former Attorney General Armstrong ruled that where sandwiches of all kinds and other edibles were served at fixed prices to all comers at all times, it was necessary to obtain the license. "Report and Opinions of Attorney General," Volume 5, page 303, and "Report and Opinions of Attorney General," Volume 6, page 342.

From these rulings it would seem to follow that where a general lunch stand is conducted, where meals are served, that is to say, where soup, sandwiches, coffee, meat and other foods are served, the license is necessary, but where sandwiches only are served, there is no more reason for requiring such license than in cases where cakes and candies are sold and eaten on the premises.

Very truly yours.

THOMAS H. ROBINSON, *Attorney General.*

LICENSES—DUCKING BLINDS—PRIORITY OF RIPARIAN OWNERS AS AGAINST THIRD PERSONS.

July 9, 1925.

Mr. J. Fred Dunn,
Clerk of the Circuit Court,
Cambridge, Md.

MY DEAR SIR: Your letter of July 2nd, in reference to the issuance of a ducking license to Herbert E. Keene is received; also, a copy of an agreement between Granville Tubman and Keene.

Section 321-A-7 of Chapter 767 of the Acts of the General Assembly of 1914, defines the rights of riparian owners to procure a license for the erection of a ducking blind in front of their property provided it is in compliance with the other provisions of the Act in question. I do not think that this right can be delegated by the riparian owner to a third party so as to affect the right of adjoining riparian owners prior to twenty days before the open season. I am, therefore, of the opinion that the license issued to Robert E. Tubman should have precedence over the one issued to Herbert E. Keene, and, therefore, Keene must erect his blind a sufficient distance from that of Robert E. Tubman to comply with the other provisions of the said act.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

LICENSES — CIGARETTES — WHOLESALE DEALERS... EXEMPT FROM CIGARETTE LICENSE — TRADER'S LICENSE REQUIRED.

July 11th, 1925.

J. O. McCusker, Esq.,
Budget Accountant, Office of Comptroller,
Annapolis, Maryland.

DEAR MR. MCCUSKER: In your letter of the 10th inst., you inquire whether a trader who sells tobacco at wholesale is required to procure a cigarette license.

The language of Section 71 of Article 56 of Bagby's Annotated Code of 1924, requiring cigarette licenses, clearly answers your inquiry. It is there provided that "when any person or corporation intends to sell at retail cigarettes * * * he, she or it shall apply to the Clerk of the Court who is empowered to issue traders' licenses."

Although not required to obtain a cigarette license, such wholesaler, in my opinion, would be required to secure a trader's license, under Section 42 of Article 56 of the Code. This section makes no distinction in favor of the wholesaler. The only exemption granted is in favor of the grower, maker or manufacturer.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

LICENSE—REAL ESTATE BROKERS—IN COUNTIES, LICENSE CANNOT BE ISSUED TO CORPORATIONS; OTHERWISE IN BALTIMORE CITY.

July 11th, 1925.

J. O. McCusker, Esq.,

*Budget Accountant, Office of Comptroller,
Annapolis, Maryland.*

DEAR MR. McCUSKER: I am in receipt of your letter of the 10th inst., in which you inquire whether it is permissible for Clerks of the Circuit Courts of the counties or the Clerk of the Court of Common Pleas of Baltimore City to issue real estate licenses in the corporate name of corporations engaged in the real estate business.

The statutory provisions in regard to licensing of real estate brokers in the counties are contained in Sections 13 and 14 of Bagby's Annotated Code of 1924, and are as follows:

"13. Any person applying for the same and paying the sum of twenty-five (\$25.00) dollars may obtain a license for carrying on the business of real estate broker. This section not to apply to Baltimore City.

"14. Any person who shall offer to act as real estate broker by advertisement, sign or otherwise, shall be required to take out a real estate brokers' license as required by the preceding section, before he shall so act or advertise. This section not to apply to Baltimore City."

It is my opinion that the word "person" as used in the above sections does not include corporations, and that, therefore, in the counties each individual who acts as a real estate broker, or, by any of the means described in Section 13 above quoted, should offer to act as such, must obtain a license. *Shehan vs. Tannebaum Son & Co.*, 121 Md. 283.

The requirements for the licensing of real estate brokers in Baltimore City are set forth in Chapter 493 of the Acts of 1918, which repeals and re-enacts with amendments Sections 695, 696, 697, 698, 699 and 700 of Article 4 of the Public Local Laws of Maryland, title "City of Baltimore," sub-title "Real Estate Brokers," and adds thereto two new sections known as 699a and 699b.

You will observe that this act applies specifically to persons, co-partnerships and corporations. The fee prescribed is \$25.00, except for co-partnerships, for which the fee is \$25.00 for the first two names inserted in the license, and \$25.00 for each and every additional name therein.

The act also exempts from the license requirement, officers or employees on behalf of a licensed corporation, and members or employees of a licensed co-partnership.

It seems clear, therefore, from a reading of this entire act, that in Baltimore City it is permissible for the Clerk of the Court of Common Pleas to issue such a license in the name of a corporation.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

LICENSES—MANUFACTURERS AND VENDORS OF CIDER GOVERNED BY U. S. STATUTES.

August 24th, 1925.

S. B. Short, Esq.,
Chief Inspector,
Maryland State Department of Markets,
College Park, Maryland.

DEAR SIR: I wish to acknowledge receipt of your letter of August 15th in which you ask a number of questions in regard to the manufacture and marketing of sweet cider.

Section 42 of Article 56 of the Code of Public General Laws of Maryland, which section applies to the necessity of taking out a trader's license, specifically exempts from the provisions of the license laws, vendors of cider who are the makers thereof. It is, therefore, clear that a farmer manufacturing and selling cider need not obtain a license. Furthermore, there is no other Maryland statute regulating or limiting the sale thereof.

I presume, however, that your inquiry was mainly in regard to the provisions of the Volstead Act, and I am afraid that it is impossible for us to answer your questions in regard to this Act. I have taken up the matter with Col. Amos Woodcock, United States District Attorney for the District of Maryland, who has charge of the prosecution of all violations of the Prohibition Laws, and he has flatly refused to render an opinion on any of the points involved, but referred me to Regulations 60 relative to intoxicating liquor, a copy of which I am enclosing for your benefit.

I regret very much that I cannot give you more explicit information, but you, of course, realize that the United States Act governs and that the questions involved are ones to be determined by the Bureau of Internal Revenue and the United States Courts..

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

LICENSES—TRADER'S LICENSE—NOT REQUIRED OF PERSON
WHO SELLS COAL ON COMMISSION FOR NON-RESIDENT
COAL MINING COMPANY.

September 3rd, 1925.

*Hon. William S. Gordy, Jr.,
Comptroller of Maryland,
Annapolis, Maryland.*

DEAR MR. GORDY: A short time ago you requested an opinion from me concerning the license laws of Maryland. You enclosed a letter from Ogle Marbury, Esquire, from which it appears that one of his clients sells coal on commission in Maryland, for Cosgrove & Company, Incorporated, a non-resident coal mining company. Neither the company nor Mr. Marbury's client keeps any coal on hand, but the salesman takes orders for carload lots from consumers and retail dealers in this State, which he forwards to the Cosgrove Company for acceptance and execution, or rejection at the option of the company. Mr. Marbury wants to know if his client is required to take out a trader's license in this State.

The law requiring traders to take out a license in Maryland is found in Section 42 of Article 56 of the Code of Public General Laws, where it is provided, "That no person or corporation, other than the grower, maker or manufacturer shall barter or sell or otherwise dispose of, or shall offer for sale any goods," etc., without first obtaining a license. This section was under consideration by the Court of Appeals of this State, in the case of Corson vs. State, 57 Md. 263, where it was held to apply to non-residents, as well as residents and also, to apply to sales by samples.

In that case Corson, a citizen and resident of New York, sold by sample 30 packages of tea belonging to a New York company, to one Kenny of Baltimore without taking out a license as required by Section 42. Neither Corson nor the company had any place of business or stock in trade, other than samples in the State of Maryland. Corson was indicted and convicted for making the sale without procuring a li-

cense and this conviction was affirmed by the Court of Appeals, where the Court said:

“The language of the Code applies alike to resident or non-resident and applies to all sales whether made by sample or otherwise.”

The above decision has not been reversed by the Court of Appeals of this State and by following the rule laid down in that case, it would seem clear that Mr. Marbury's client would be required to take out the license required by Section 42. In the more recent case of Real Silk Hosiery Mills, Incorporated, vs. Portland, decided by the Supreme Court of the United States on April 27, 1925, and reported in the Daily Record of September 2, 1925, however, a different conclusion is reached.

In this latter case, the Real Silk Hosiery Mills, an Illinois corporation, was engaged in the hosiery business and selling its products throughout the United States to consumers only. It employed duly accredited representatives in many states, who went from house to house soliciting and accepting orders. The purchaser was required to make a deposit, whereupon his order was forwarded to the home office, from which the goods was sent by parcel post, c. o. d.

On May 16, 1923, the City of Portland passed an ordinance requiring every person who goes from place to place taking orders for goods for future delivery, and receiving payment or any deposit on account, to secure a license and file a bond in the penalty of \$500.00, conditioned to make prompt delivery of the goods ordered, etc.

The Hosiery Company filed a bill in equity challenging the ordinance and asked that its enforcement be restrained upon the ground, among others, that it interferes with and burdens interstate commerce and is repugnant to Article 1, Section 8, of the Federal Constitution. The Supreme Court sustained the above complaint and in the course of its opinion said:

“Considering former opinions of this Court, we cannot doubt that the ordinance materially burdens interstate commerce and conflicts with the commerce clause.

“The negotiation of sales of goods which are in another State, for the purpose of introducing them into the State in which the negotiation is made, is interstate commerce. Manifestly, no license fee could have been required of appellant’s solicitors if they had traveled at its expense and received their compensation by direct remittances from it, and we are unable to see that the burden on interstate commerce is different or less because they are paid through retention of advance partial payments made under definite contracts negotiated by them. Nor can we accept the theory that an expressed purpose to prevent possible frauds is enough to justify legislation which really interferes with the free flow of legitimate interstate commerce.”

Inasmuch as the decision of the question which you present involves the determination of a Federal Constitutional question, the above decision of the Supreme Court should prevail over the decision of the Court of Appeals of this State and in conformity with the decision of the higher court, in the case of the Real Silk Hosiery Mills, Incorporated vs. Portland, above referred to, I must advise you that the State of Maryland is not, in my opinion, warranted in exacting a license from Mr. Marbury’s client, as a condition precedent to the taking of orders by him in this State.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

LICENSES—STORAGE WAREHOUSE CONDUCTED BY BALTIMORE CITY AT RECREATION PIER—NO LICENSE REQUIRED.

September 25 ,1925.

Honorable William S. Gordy, Jr.,

State Comptroller,

Annapolis, Md.

DEAR MR. GORDY: I beg to reply to your inquiry as to whether Baltimore City is required to pay the license fee prescribed by Section 240 of Article 56 of Bagby’s Anno-

tated Code of 1924, for conducting a storage warehouse at the Recreation Pier.

The files of this office show that former Attorney General Armstrong ruled that the City was required to pay this fee, but the City Solicitor of Baltimore took the contrary view and the fee has, therefore, not been paid.

After careful consideration of the matter, I am forced to the conclusion that the City Solicitor is correct in his view.

Section 240 provides that "every person, firm or corporation who shall keep for compensation any house for storage or impounding, shall pay an annual sum for said privilege by first taking out a license therefor, if such house be located in Baltimore City, then in said City, if in the counties, then in the county in which said house may be located, * * *"

The municipality is sought to be held liable for the fee upon the theory that the statute applies to all corporations, including municipal or public corporations, but our Court of Appeals has held that municipal corporations are excepted, by implication, from statutes which apply to corporations generally.

Phillips vs. Baltimore City, 110 M. 431.

In the light of this case, and in view of the fact that the City was given a specific grant of power by the General Assembly to construct, maintain and operate the warehouse at the Recreation Pier, it is clear that Section 240 does not, nor was it intended to apply to the said municipally owned and operated storage warehouse.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General*.

LICENSES—JUNK DEALERS—LICENSE MUST BE PROCURED BY
WHOLESALE, AS WELL AS RETAIL, DEALERS.

October 2nd, 1925.

*Joseph O. McCusker, Esq.,
Budget Accountant, Office of Comptroller,
Annapolis, Maryland.*

DEAR SIR: Under date of September 17th, 1925, you ask whether Section 234 of Article 56 of Bagby's Annotated Code of 1924, providing for the licensing of junk dealers, includes those dealing in junk at wholesale, as well as retail dealers.

In the case of *State vs. Shapiro*, 131 Md. 168, at page 174, our Court of Appeals defined the term "junk dealer," as used in the statute, as follows:

"A junk dealer is one who is engaged in the business of buying and selling junk, which is defined to be: 'old iron, or other metal, glass, paper, cordage or other waste or discarded material which may be treated or prepared so as to be used again in some form.'"

You will note that our Court, in adopting this definition, made no distinction between wholesalers and retailers. Although there are some cases which recognized such a distinction, under the later and better reasoned authorities, it seems that a junk dealer does not cease to be such because of the magnitude of his business or of the manner in which it is conducted, whether at wholesale or retail, and whether dealing in junk is his main business or is merely incidental. *Smolensky vs. City of Chicago*, 282 Ill. 131, 134; *People vs. Scrap Iron and Metal Company*, 202 Mich. 469; Note, 30 A. L. R. 1427, 1431-1433.

I am, therefore, of the opinion that both classes of dealers are required to procure the license.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

LICENSES—GARAGES—LICENSE NOT REQUIRED FOR PLACE OF
PUBLIC PASSENGER MOTOR VEHICLES.

October 24th, 1925.

Joseph O. McCusker, Esq.,
Budget Accountant, Office of State Comptroller,
Annapolis, Md.

DEAR SIR: I beg to reply to your recent inquiry as to whether persons operating public passenger motor vehicles, as described in Section 251 of Article 56 of Bagby's Annotated Code of 1924, are required to procure the garage license, prescribed by Section 228 of the same article, upon the place where said vehicles are stored.

Section 228 defines the term garage to mean a place of storage for hire or a place where there is kept for hire any automobile * * . This department has ruled that this definition embraces garages in which automobiles offered for hire are stored, and upon that theory, it has been held that a taxicab company which conducts the usual taxicab business, storing its fleet of motor vehicles in a large garage, is subject to the provisions of the Act. The answer to your present inquiry depends upon whether or not there is any distinction in the law between automobiles offered for hire and the public passenger motor vehicle, which runs on a regular schedule over a fixed route.

It seems clear that there is a marked difference between these two classes of motor vehicles, and this becomes apparent when we consider the language of the legislative definition of "garage" in Section 228. "A place * * * where there is kept for hire any automobile" is undoubtedly applicable to garages where taxicab and other hiring cars are stored, because, in many cases, orders are received at the garage and immediately filled by automobiles standing therein. On the other hand, a public passenger motor vehicle is not hired, or subject to the control of any particular person, and orders for them are never received at the place where they are stored. Those wishing to obtain transportation on them are required to board them at some point on

the route, over which they are permitted to be operated under the terms of the permit issued by the Public Service Commission, and their operations are restricted to that route.

The character of the operations of said vehicles, and the restrictions upon their route and schedule make it obvious that such carriers are not hiring cars within the meaning of Section 228; and the provision in Section 251 that, aside from the annual fees required to be paid for certificates of registration under said section, "no other additional fees, licenses, 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" lends force to the view that the place of storage of such vehicles was never intended to be covered by Section 228.

I am, therefore, of the opinion that the owners of such vehicles are not required to procure the garage license for the place where they are stored.

In reaching this conclusion, it is, of course, assumed: (1) that the owner of the public passenger motor vehicle is also the owner or lessee of the place of storage; that is to say, the storage of said vehicles is not for hire; (2) that other vehicles are not stored for hire in said garage, and (3) that taxicabs or other hiring vehicles are not kept there for hire.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

LICENSES—DUCKING BLINDS—ISSUANCE TO CORPORATION
CONDUCTING DUCKING CLUB DOES NOT PRECLUDE
RIGHTS OF MEMBER, WHO IS RIPARIAN OWNER.

November 5, 1925.

*John C. North, Esq.,
State's Attorney,
Easton, Md.*

DEAR SIR: Your letter of the 29th instant is received, and the contents carefully noted. I cannot concur with you in

your construction of Section 5 of Chapter 88 of the Acts of 1920. As I understand you, your contention is that if a person is a member of the Popular Island Ducking Club, and is also a bona fide owner of land on the same waters, and the Ducking Club has already secured the amount of permits permissible for an individual or corporation on these waters, that then the owner of the other land is precluded from securing a permit for the erection of a blind because he is a member of the corporation.

A corporation is simply a fictitious person created by action of law and giving certain rights which were formerly enjoyed by actual persons. I do not think that the Act could be given such a strained construction as the one for which you contend. If your contention were correct and a person who had already obtained a permit for a blind on these waters before the Club had obtained theirs, his action in joining the Club would preclude it from erecting any blinds at all.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

MISCELLANEOUS.

MISCELLANEOUS — STATE BOARD OF CHIROPRACTIC EXAMINERS—USE OF ELECTRICAL APPLIANCES BY CHIROPRACTORS.

January 31, 1925.

Dr. J. Ralph John,
Sec., State Board of Chiropractic Examiners,
Charles and Hamilton Streets,
Baltimore, Md.

DEAR DR. JOHN: Section 6 (c) of Chapter 666 of the Acts of 1920, very clearly restricts the practice of Chiropractic to adjustments *by hand* of articulations of the spinal column.

In my opinion, the use of electrical appliances would subject the practitioner to the penalties prescribed by Section 15 of the Act, but does not constitute a ground of revocation under Section 8 (a).

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

MISCELLANEOUS—TRADE MARK—MAY BE ASSIGNED AND RECORDED WITH SECRETARY OF STATE.

February 9, 1925.

Mr. Murray G. Hooper,
Executive Offices,
Annapolis, Md.

DEAR MR. HOOPER: Answering your letter of January 31st, in which you ask whether or not an assignment of a trade mark can be lawfully recorded by the Secretary of State, I would say that I have examined the provisions of Chapter 357 of the Acts of 1892, and while no specific provision for assignment is contained in this Act, it seems to me that in cases where the owner of a trade mark sells the same

you are fully warranted in accepting from the seller an assignment of the same and issuing the assignee the certificate of record provided for in Section 3 of this Act for the fee therein stated.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

MISCELLANEOUS—MINING LAW—EACH VIOLATION CONSTITUTES SEPARATE OFFENSE.

February 16, 1925.

*John J. Rutledge, Esq.,
Chief Mine Inspector,
Bureau of Mines,
22 Light Street, City.*

DEAR DR. RUTLEDGE: I have read with much interest your letter of January 31st and must apologize to you for not answering earlier. I have been in Court almost continuously during the last two weeks. This has necessitated the delay in giving attention to the matter presented by you.

It is certainly a very serious matter for miners to carry with them into gaseous mines articles which may cause an explosion resulting in the loss of numerous lives and extensive property damage, and it is very unfortunate that the trial of these offenders can be delayed in Garrett County for such a long time. Each violation, however, constitutes a separate offense, and I think you are entirely justified in having an additional warrant sworn out for each violation which is discovered. There is ample authority on the part of the operator to discover all of these violations under the provisions of Section 142 of the Act, and I am sure there is no provision of the law which the public welfare demands to be more rigidly enforced than the provisions of Section 72 which prohibit the carrying of dangerous articles into gaseous mines.

With kind regards, I am

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

MISCELLANEOUS — CITY STREETS — POWER TO IMPROVE
STREETS OF FRIENDSVILLE, MD., VESTED IN MAYOR AND
CITY COUNCIL.

March 11th, 1925.

Hon. J. W. McCullough,
Friendsville, Md.

DEAR SENATOR: I am just in receipt of your favor of the 5th instant, and have also received the letter referred to from Mr. Speelman in reference to the authority of the Mayor and City Council of Friendsville, relative to the construction of the streets in that town.

It seems to me perfectly plain that under Section 1 of the Act, full authority is given to the Mayor and City Council of Friendsville to improve the roads of said town by hard surfacing the same in a manner to be determined by them. The Act also authorizes a bond issue and provides the method of assessing abutting property owners. I think all that Section 9 of the Act does is to give the right to fifty per cent of the property owners to petition the Mayor and City Council for the improvement of certain roads, and to have said petition considered, but the Section expressly provides that the Mayor and City Council of Friendsville shall have the discretion and final determination as to the construction of all of said work, notwithstanding such petition. Just why this section was included in the Act is not entirely clear to me, but in my opinion it only requires the Mayor and City Council to consider a petition which embraces the names of fifty per cent of the property owners on any particular road. This, I suppose, they will do even if the proportion of property owners were less, but it certainly does expressly provide that they are not in any way bound by the petition. I am, therefore, convinced that the whole authority for the improvement of roads and streets of your town is vested in the Mayor and City Council.

With kind personal regards, believe me,

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

MISCELLANEOUS—SALE OF SEED BY FARMERS.

April 15, 1925.

*Mr. F. B. Bomberger,
University of Maryland,
College Park, Md.*

DEAR SIR: Replying to your letter of April 13th, in regard to the marketing of tomato seeds, I wish to call your attention to Chapter 113 of the Acts of the General Assembly of 1918, sections 1 and 2, which are as follows:

“It shall not be lawful for any corporation, co-partnership or individual, engaged in the canning or preserving of any fruit or vegetables, to sell or otherwise dispose of the seed of any fruit or vegetables obtained in the canning or preserving of any fruit or vegetables to any dealer in garden seed or other person under circumstances where the same may be resold for the purpose of planting or propagation, unless said corporation, co-partnership or individual shall sell said seed under an absolute guarantee as to purity and germinating properties.

“It shall not be lawful for any corporation, co-partnership or individual to sell or otherwise dispose of any such seed for planting purposes.”

I do not think that the second section above quoted is meant to prohibit the absolute sale of such seeds, but feel that if the farmer will comply with Section 1 as to guaranteeing the seed as to purity and germinating properties he will be within the law.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

MISCELLANEOUS — STATE'S ATTORNEYS — INDICTMENTS —
RIGHT TO AMEND.

April 24, 1925.

Wesley E. Thawley, Esq.,
State's Attorney,
Denton, Md.

DEAR SIR: In reply to the inquiries contained in your letter of the 23rd instant, I beg to advise you as follows:

1. Can an indictment for forgery be amended by striking out the name of the person alleged to have been defrauded?

In Section 558 of Article 27 of Bagby's Annotated Code of 1924, it is provided, among other things, that it shall be sufficient in any indictment for forging any instrument whatever, "to hold that the defendant did the act with intent to defraud without alleging the intent of the defendant to defraud any particular person, and on the trial it shall not be necessary to prove an intent on the part of the defendant to defraud any particular person, but it shall be sufficient to prove that the defendant did the act alleged with an intent to defraud."

In the case of *Hawthorne vs. State*, 56 Md. 530, it was held that an allegation in an indictment, that the forgery was committed with intent to defraud a particular person was unnecessary or mere surplusage, proper to be disregarded. The Court said: "Being thus mere surplusage, proper to be disregarded, allowing it to be stricken out was clearly an amendment in mere matter of form and not of substance."

2. Does the omission of the formal phrase, "contrary to the form of the Act of Assembly for such case made and provided, and against the peace, government and dignity of the State," render an indictment void?

In *State vs. Amidon*, 58 Vt. 524, 2 Atl. 154, 6 Am. Cr. Rep. 41, it was held proper to allow an amendment to a count in an indictment by inserting these formal words. The Court said: "It * * * cannot be seriously contended that the words allowed to be added to the first count of the indict-

ment, by the County Court contain an averment of any fact necessary to constitute the crime charged an assault, or that was required to be proved or disproved to establish the crime charged, or to defend against the same. We conclude, therefore, that the amendment allowed was not matter of substance, but matter of form, and within the jurisdiction of the County Court to allow."

And in *Cain vs. State*, 4 Blackf. (Inc.) 512, wherein the indictment omitted the words: "against the peace and dignity of the State," as required by the Constitution, the trial judge authorized an amendment correcting the omission. The Court held that such an amendment was proper since the Grand Jury had nothing to do with the finding of that conclusion, and the amendment did not embarrass the defendant nor deprive him of any just means of defense.

In neither of the above cases was any statute authorizing the amendment referred to in the opinion.

Furthermore, in your case, where one of the counts of the indictment concludes with the formal words, it is my opinion that it would be improper to sustain a demurrer to the whole indictment, because, even though the Court might be of the opinion that an amendment to the defective count was unauthorized, yet the defect vitiated only that count, and the other count is valid and sufficient to sustain a verdict of guilty if otherwise justified. *Watts vs. State*, 99 Md. 30.

3. Is an indictment signed "State's Attorney for Caroline County" instead of "*The* State's Attorney for Caroline County" void because of the omission of the word "The"?

The constitutional title of the State's Attorney appears to be "The State's Attorney." See Section 7 of Article V of the Maryland Constitution. However, I do not believe that the omission of the word "the" would make the indictment void. It seems to me to be only a matter of form and not a matter of substance.

I would like to refer you to a valuable annotation on the power of the Court to amend an indictment, in 7 A. L. R. at page 1516.

Very truly yours,
 THOMAS H. ROBINSON, *Attorney General.*

MISCELLANEOUS—MONTROSE SCHOOL FOR GIRLS—USE OF
 PROCEEDS OF SALE OF PROPERTY IN BALTIMORE COUNTY.

April 30, 1925.

Thomas B. Wedge, Esq.,
Director, Farm and Buildings,
Montrose School for Girls,
Reisterstown, Maryland.

DEAR SIR: Your letter of the 17th inst., sets forth the following facts:

By Chapter 303 of the Acts of 1918, the Montrose School for Girls, formerly known as the Maryland Industrial Training School for Girls, was taken over by the State in its entirety, and is now a State-owned and managed institution.

When the State assumed control, the institution owned two parcels of real estate, one in Baltimore City and the other, consisting of about ninety acres of land, near Timonium, Baltimore County. The Baltimore City property was sold by the Board of Public Works to the City of Baltimore, and the proceeds of this sale were used in the construction of new buildings at Montrose.

You state you are in need of funds for the erection of a new school building, and would like to have an official opinion as to whether the Timonium property can be sold, and, if it can, whether the proceeds can be used for new construction at Montrose.

By Chapter 72 of the Acts of 1920, the Board of Public Works was authorized to dispose of the property in Baltimore City, and in Baltimore County, respectively, acquired by the State of Maryland from the Maryland Industrial

Training School for Girls, by deed dated July 27, 1918, recorded among the Land Records of Baltimore City in Liber. S. C. L. No. 3241, folio 465, and also recorded in Baltimore County.

Section 2 of said Act directs "that the proceeds of the sale or sales of said property shall be paid to the State Treasurer to be held by him for the account of the said Maryland Industrial Training School for Girls."

Section 3 of the Act provides "that the said Treasurer and the State Comptroller shall disburse the full amount received as the proceeds of such sale or sales under the provisions of this Act upon the order or orders of the Board of Managers of the Maryland Industrial Training School for Girls on account of the purchase price of a site for said Maryland Industrial Training School for Girls in the country, and/or for the cost of erection of suitable buildings on such site on the cottage system; and that such proceeds shall be used only for such purposes and shall not be diverted to any other purpose, nor be transferred to any other fund by the State, City or County authorities."

It will be observed that the Act authorizes the sale by the Board of Public Works of all of the property conveyed by the deed mentioned therein. I have examined this deed and find that it includes the Timonium tract.

It is my opinion that the proceeds of the sale of this property by the Board of Public Works can be utilized for the same purposes, and disbursed and expended in the same manner, as the proceeds from the sale of the Baltimore City property.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

MISCELLANEOUS—UNIFORM FLAG LAW—USE OF COLOR OR SHIELD ON STATIONERY.

May 9, 1925.

*Carl M. Distler, Esq.,
401 American Building,
Baltimore, Md.*

DEAR MR. DISTLER: In reply to your letter of April 14th, in regard to the design to be used by the Baltimore American Insurance Company on its letter heads and stationery, depicting a male figure holding in his hand a shield representative of the flag or colors of the State of Maryland, and a female figure holding in her hand a shield representative of the flag or colors of the United States of America. You ask if the use contemplated constitutes a violation of Chapter 281 of the laws of 1918, commonly known as the Uniform Flag Law.

Section 74A, sub-section C of this law, states that it is unlawful to "expose to public view for sale, manufacture or otherwise or to sell, give or have in possession for sale for gift or for use for any purpose any substance being an article of merchandise or receptacle or thing for holding or carrying merchandise upon or to which shall have been produced or attached any such flag, standard, color, ensign or shield in order to advertise, call attention to, decorate, mark or distinguish such article or substance."

It is my opinion that stationery and letter heads would be classed as articles of merchandise, and, therefore, this section of the law is applicable especially when Section 74C of said law, entitled "Exceptions" is taken into consideration. This section provides that stationery is exempt only when the flag, color or ensign is not accompanied by a design or words and disconnected with any advertisement.

Answering your question as to whether the printing of the design in a single color will affect the legality of its use, I refer to Section 74 of the aforesaid law which provides that the words, flag, standard, color, ensign or shield shall include a copy, picture or representation thereof made of

any substance or represented or produced therein and of any size, or a copy, picture or representation thereof.

I am, therefore, of the opinion that the proposed use of the design upon the letter heads and stationery violates the law.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

MISCELLANEOUS—STATE BOARD OF DENTAL EXAMINERS—
GRANTING OF TEMPORARY LICENSES TO LICENSED PRACTITIONERS OF OTHER STATES DISCRETIONARY—USE OF TRADE NAMES BY REGISTERED DENTISTS.

June 6th, 1925.

*Dr. T. L. McCarriar, Sec.,
Maryland State Board of Dental Examiners,
1822 N. Charles Street,
Baltimore, Maryland.*

DEAR SIR: I am in receipt of your letter of the 5th inst., asking my opinion upon the two following subjects:

1. Is it mandatory upon your Board to grant a temporary license to a person who has been graduated and admitted to the degree of Doctor of Dental Surgery or equivalent degree by a reputable University, and who has been duly registered and licensed to practice dentistry by a Board of Dental Examiners created and existing under the laws of another State; or is the granting of a temporary license to such applicant within the discretion of your Board?

Section 4 of Article 32 of Bagby's Annotated Code of 1924 provides, in part, as follows:

"The Board *may, in its discretion,* register without examination and issue a certificate (permanently or until the next regular meeting of the Board), to any person who has been graduated and admitted to the degree of Doctor of Dental Surgery or equivalent degree by any University or College incorporated and authorized to grant such degree by the

laws of the United States or any of its territories, districts or possessions, or by the laws of any State of the United States, and who has been duly registered and licensed to practice dentistry by a Board of Dental Examiners created and existing under the laws of the United States, or any of its territories, districts or possessions, or under the laws of any State of the United States.”

The above provision (which was first incorporated in the law by Chapter 481 of the Acts of 1920), clearly vests in your Board a broad discretion in the issuance of temporary licenses to practitioners of other States, who hold the degree of Doctor of Dental Surgery. This discretion, if honestly exercised, cannot be controlled or interfered with by the Courts.

Henkel vs. Millard, 97 Md. 24.

Therefore, if, in such a case, your Board is not satisfied with the personal indorsement of the applicant, or if you have any other good reason for so doing, you are authorized under the law to refuse to grant a temporary license to the applicant.

2. Can a Dentist, registered in Maryland, conduct an office for the practice of dentistry, and advertise it under another name, when he has his correct name on his office door?

There are two provisions in Article 32 of the Code which have a bearing upon this question. The first is found in Section 1 of said Article, which requires a practitioner of dentistry to “exhibit on the door or front of the building wherein he shall practice or attempt to practice dentistry, a sign on which shall be the name of such person, provided that any person practicing or attempting to practice dentistry in any building containing more than ten offices, may exhibit such sign on the door of his office instead of on the door or front of such building.”

The other provision is found in Section 8 of the law, which provides that certificates issued by the Board may be cancelled, when the practitioner “has been guilty of using fraudulent or misleading advertisements.”

If the name used in the advertisements has no particular significance, and a sign containing the correct name of the practitioner is exhibited as provided by Section 1, I do not believe he is acting in violation of any provision of the dentistry law.

If, however, the name appearing in the advertisements is used to defraud or mislead, the Board has the right to cancel his certificate; and, of course, if a sign containing his name is not exhibited as provided by Section 1, he is subject to the penalties provided by law.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

MISCELLANEOUS—NOTARY PUBLIC—FEMALE NOTARY MAY
CONTINUE TO USE MAIDEN NAME IN SIGNING AFFI-
DAVITS AFTER MARRIAGE.

June 16, 1925.

Mr. Murray G. Hooper,
c/o Secretary of State,
Annapolis, Md.

DEAR MR. HOOPER: I have your letter of June 15th, in which you ask to be advised whether or not it is necessary for a female Notary Public who marries and changes her name to be re-commissioned in her married name in order to perform the duties of her office as a Notary.

This question was passed upon by Acting Attorney General Ogle Marbury in an official opinion rendered on November 23, 1918, and reported in Volume 3 of the Report of the Attorney General for that year. Mr. Marbury concluded that the lady in question was still authorized to sign affidavits in her maiden name, and after careful consideration I see no reason to differ from the conclusion there reached.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

MISCELLANEOUS — STATE'S ATTORNEYS — ENTITLED TO BE
PAID FOR SERVICES IN PROSECUTION REMOVED TO HIS
COUNTY, BY THE COUNTY FROM WHICH CASE WAS RE-
MOVED.

June 17th, 1925.

A. *Theodore Brady, Esq.,*
State's Attorney for Anne Arundel County,
Annapolis, Md.

DEAR MR. BRADY: In your letter of the 16th inst., you inquire whether you are entitled to charge for services rendered by you in the prosecution of a case removed to the Circuit Court for your county from the Circuit Court for St. Mary's County.

You will find the answer to this query in Section 115 of Article 75 of Bagby's Annotated Code (1924), which reads as follows:

"Any of the said Circuit Courts to which any cause or causes may be removed under the preceding sections, shall allow such compensation not exceeding the sum of forty (\$40.00) dollars in any one case, to the State's Attorney, for his services in appearing or trying said cause or causes, as they may deem just and proper, to be borne and paid by the County from which said cause or causes may be removed, or by the City of Baltimore, as the case may be."

You will, therefore, have your Court fix the fee to be charged (not exceeding the sum of \$40.00), and send the bill for your services to the Circuit Court for St. Mary's County.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

MISCELLANEOUS—WASHINGTON COLLEGE—MAY PURCHASE
COAL FROM FIRM OF MEMBER OF FACULTY.

August 2, 1924.

*S. Scott Beck, Esq.,
Attorney at Law,
Chestertown, Md.*

DEAR SIR: In your letter of the 28th ultimo, you ask for an opinion as to the construction of Section 483 of Article 27 of the Code in so far as it applies to the following facts: Mr. J. Thomas Kibler is Athletic Instructor at Washington College, and as such is a member of the College Faculty. He is also a member of the firm of C. W. Kibler & Sons, which firm is composed of his father, brother and himself, and among other things the firm sells coal. You ask whether the firm of C. W. Kibler & Sons has the right to sell coal to Washington College in view of the connection of J. Thomas Kibler with said college.

Section 483 provides that "every person having any official connection, either as officer, agent, trustee or member of the board of visitors of any public institution or private institution supported in whole or in part by money appropriated by the State of Maryland, who shall after April 6, 1908, become directly or indirectly concerned or interested, for profit, in any contract, purchase or sale of anything for, by, or on account of such institution shall be deemed guilty of a misdemeanor."

The purpose of the Act is to debar every person having an official connection with a State or State-Aided institution, whose duties enter into the private business management of the institution, from becoming directly or indirectly interested in the provisions of any contract, purchase or sale of anything for, by, or on account of such institution. It was not intended to apply to mere employees or those not officially connected with the institution.

A member of the faculty of the university is in no sense an officer of the corporation. His duties relate solely to the

educational feature of the institution. He occupies merely a contractual position as an employee.

11 C. J. 995.

27 R. C. L. 137.

I have examined the provisions of the Charter of your institution and find nothing in them to indicate that the faculty or the members thereof occupy a status other than that of employee, as stated in the authorities above quoted.

Mr. Kibler, being a member of the college faculty and athletic instructor of Washington College, a State-aided institution, it is my opinion that his connection with the institution is not such an official connection, within the meaning of the Act, as would disqualify the firm with which he is connected, from selling coal to Washington College.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

MISCELLANEOUS — BUREAU OF MINES — ASSISTANT MINE FOREMAN MUST BE A RESIDENT OF MARYLAND.

August 18, 1925.

*Honorable John J. Rutledge,
22 Light Street,
Baltimore, Md.*

DEAR SIR: In your letter of August 17th, you request an opinion as to whether or not the State Mine Examining Board can properly examine an applicant for a second class or assistant mine foreman's certificate of competency, whose home is in West Virginia, but who actually works in a mine in Maryland.

Section 39 of the Mining Law approved on April 13th, 1922, requires that applicants for second class or assistant mine foreman certificates of competency shall produce evidence that they are residents of Maryland. The word "resident" as used in this section was undoubtedly intended by

the legislature to mean a person who has his place of abode within the State rather than a person who merely works in the State. The certificate of competency would be of no use except for work in the mines of Maryland, and in requiring the applicant to be a resident, the legislature intended that he should do something more than work in Maryland, and I think the language requires that he have an actual place of abode within this State.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

MISCELLANEOUS — STATE'S ATTORNEYS — SUFFICIENCY OF
INDICTMENTS FOR CARNAL KNOWLEDGE.

October 21, 1925.

Wesley E. Thawley, Esq.,
State's Attorney for Caroline County,
Denton, Maryland.

DEAR SIR: In your letter of the 17th inst., you enclose a copy of an indictment, recently returned by the Grand Jury for your county, drawn to conform to Section 17 of Article 27 of Bagby's Annotated Code of 1924, charging *felonious* assault with intent *feloniously* to carnally know and abuse a woman child under the age of fourteen years. You state that a motion to quash the indictment is about to be filed upon the ground that the word "feloniously" is improperly used in two places in the indictment. You ask whether the use of such words renders the indictment defective.

It is true, as you state, that the crime charged in the indictment is merely a misdemeanor. However, upon the authority of *Hollohan vs. State*, 32 Md. 399, I am of the opinion that the description of the carnal knowledge as felonious does not vitiate an indictment under Section 17 of Article 27. In that case, the indictment alleged that an act was done with intent "feloniously" to rape. The Court held that to constitute the crimes of robbery, murder or

rape, felonious act and felonious intent must concur, and that to bring an assault under this section, the act must be charged and proved to have been committed with an intent to commit a crime which is a felony. In the note to this section in Bagby's Annotated Code, the Annotator suggests that this case was decided prior to the Act of 1904, Chapter 76, which added to the section the crime of assault with intent to have carnal knowledge of a female child under the age of fourteen years, but I believe the rule would be the same under the present act, where the charge is assault with intent to have carnal knowledge of a female child under the age of fourteen years, because such carnal knowledge is also made a felony under Section 467 of Article 27.

As to the use of the word "feloniously" in the description of the assault, there is some conflict of authority as to whether this renders the indictment defective. In the case of *Davis vs. U. S.* 16 App. D. C. 442, you will find that under the weight of authority among the decisions of the Courts and the textbook writers, an averment in an indictment for a misdemeanor that the act was done feloniously may be rejected as surplusage.

Hochheimer's Criminal Law (2nd Ed.) Section 103.

Apparently, however, this is not the rule in Maryland, for in the case of *Black vs. State*, 2 Md. 376, wherein there was an indictment for a misdemeanor and the act was improperly described as felonious, it was held that a judgment of guilty on such indictment was invalid and legal judgment could not be pronounced. This decision was recognized and followed in the later case of *Barber vs. State*, 50 Md. 161.

It seems, therefore, that in the use of the word "felonious" in the description of the assault, the indictment is defective.

I would like to call your attention to the provisions of Section 553 of Article 27, under which it has been held that if an indictment charges an act to be a felony which is not a felony, the error must be taken advantage of by demurrer.

Hawthorne vs. State, 56 Md. 533;
See also:

Reynolds vs. State, 141 Md. 637.

Upon the authority of these cases, I believe that if the defendants raised the question by motion to quash instead of by demurrer, the motion to quash would have to be overruled. If, on the other hand, the point is properly raised by demurrer, it seems to me that under the authorities above quoted, the demurrer would have to be sustained.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

MISCELLANEOUS — PAROLE COMMISSIONER — NOT REQUIRED
TO HEAR APPLICATIONS FOR A REDUCTION OF SEN-
TENCE.

October 27, 1925.

*Honorable Edward Parrish,
Parole Commissioner,
Morris Building,
Baltimore, Md.*

DEAR MR. PARRISH: I have your letter of October 23rd, in which you request to be advised whether or not you are compelled to hear applications for reduction of sentences of persons convicted and sent to the various penal institutions of the State.

Section 51 of Article 41 of the Code of Public General Laws authorizes the Governor to remit any part of the time for which any person may be sentenced to imprisonment. The same section authorizes the Governor to grant conditional pardons.

Section 54 of the same Article imposes upon the Parole Commissioner the duty "to collect all information that may aid him in determining the advisability of recommending to the Governor the conditional pardon of any person sen-

tenced under the laws of Maryland," but I find no provision which requires you to collect information and make recommendations to the Governor concerning reduction of sentences. It seems to me, therefore, that if a person sentenced to confinement in a penal institution desires to apply for a reduction of sentence he must make his application to the Governor, but if he desires the benefit of your investigation and recommendation, he can demand it only through an application for a conditional pardon. Upon consideration of your recommendation with respect to the granting of a conditional pardon, the Governor could either reduce the sentence or grant an absolute or conditional pardon in his discretion.

Trusting that the above will satisfactorily answer your inquiry, and with kind regards, I am

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

MISCELLANEOUS — PAROLE COMMISSIONER — MAY RECOMMEND CONDITIONAL PARDON UPON CONDITION THAT PRISONER BE CONFINED AT INSANE ASYLUM OUT OF STATE.

June 5th, 1925.

*Honorable Edward M. Parrish,
Parole Officer,
Baltimore, Md.*

MY DEAR MR. PARRISH: In your letter of May 29th, you state that Wade H. Sellman, who was sentenced to the Maryland Penitentiary for a term of ten years is desirous of being transferred to St. Elizabeth's Hospital at Washington, and you request an opinion as to whether or not you are authorized to recommend to the Governor a parole conditioned upon his confinement at that institution, although he has not served one-third of his original sentence as required by the rules of your department.

Under the provisions of Section 51 of Article 41 of the Code of Public General Laws of Maryland, the Governor is authorized to grant pardons upon such conditions as he may deem proper, and I think he could impose the condition in this case that the prisoner be actually confined at St. Elizabeth's Hospital for the remainder of the term for which he was sentenced, and should he leave that institution to be required to return to the Maryland Penitentiary with the proviso that his failure to so return would be a breach of his conditional pardon, and subject him to service in the Maryland Penitentiary of the entire term for which he was originally sentenced.

Trusting that the above will satisfactorily answer your inquiry, and with best wishes, I am

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

MOTOR VEHICLES.

MOTOR VEHICLES—JURISDICTION OF JUSTICE OF THE PEACE
APPOINTED BY INCORPORATED TOWNS, IN PROSECUTIONS
UNDER MOTOR VEHICLE LAW.

January 31, 1925.

*Colonel E. Austin Baughman,
Commissioner of Motor Vehicles,
Baltimore, Md.*

DEAR COLONEL BAUGHMAN: I have your letter of the 30th inst., in which you make inquiry as to the jurisdiction of Charles F. Luebner, recently appointed Police Justice of Edmonston under Chapter 154 of the Acts of 1924. You ask whether an incorporated town is authorized to appoint Police Magistrates and whether or not in this particular case this officer will be authorized to try cases involving motor vehicle violations.

Section 42 of Article IV of the Constitution provides that Justices of the Peace shall be appointed by the Governor, by and with the advice and consent of the Senate. I doubt very much the validity of a statute in which this power of appointment is delegated to a town council or any official other than the Governor.

However, in the case to which you refer, Section 10 of the Act limits the jurisdiction of the Justice (appointed by the town council under Section 9) to cases where the town of Edmonston is a party.

I am, therefore, of the opinion in this particular case at least, Mr. Luebner would not be authorized to try cases involving motor vehicle violations.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

MOTOR VEHICLES—JUSTICES OF THE PEACE WHO HAVE CONVICTED PERSON OF VIOLATION OF MOTOR VEHICLE LAW, REQUIRING IMMEDIATE CORRECTION, CANNOT AUTHORIZE OPERATOR TO PROCEED WITHOUT MAKING SUCH CORRECTION.

February 19, 1925.

*Colonel E. Austin Baughman,
Commissioner of Motor Vehicles,
Baltimore, Md.*

DEAR COLONEL BAUGHMAN: In your letter of the 18th inst. you state that it has been called to your attention that peace officers, other than the State Police, and even Police Justices, will, after finding a motor vehicle operator guilty of violation of the law which requires an immediate correction—such as displaying tags of another car, or improper registration, etc.—will give the operator a letter addressed “to whom it may concern,” setting forth that a fine for the specified violation has already been imposed and paid, and the violator will be allowed to proceed.

You inquire whether there is any authority in the law for such procedure.

In our opinion, it is entirely contrary to both the letter and spirit of the law to permit a person who is arrested, for instance, for displaying the tags of another, to pay a fine therefor, and at once drive away still displaying the same tags. .

We would suggest, therefore, that you advise all enforcement officers in this State, including the Police Justices, that there is no warrant or authority in the Motor Vehicle Law for such procedure, and that in the future, no such letters as those above described should be issued, but that the operator be required to correct the violation before he is permitted to proceed.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

MOTOR VEHICLES—PUBLIC FREIGHT MOTOR VEHICLE LAW—
APPLICABILITY OF, TO TRANSPORTATION OF MILK BY
WESTERN MARYLAND DAIRY.

March 30, 1925.

*Hon. John N. Mackall,
State Roads Commission,
Garrett Building,
Baltimore, Md.*

DEAR MR. MACKALL: In your letter of the 10th instant, you ask whether the method of procedure proposed to be adopted by the Western Maryland Dairy for the transportation of milk from the farms to its dairy in Baltimore constitutes such transportation of merchandise as is described in Sections 258-265, inclusive, of Bagby's Annotated Code of 1924.

In accordance with the suggestion contained in your letter, I communicated with Mr. E. Allan Sauerwein, counsel for the dairy, who fully presented to me the facts and legal propositions upon which he relies.

The salient facts bearing upon the question under consideration are, briefly stated, as follows:

1. The Western Maryland Dairy is a distributor of milk.
2. All of the farmers from whom it purchases its milk are members of the Maryland State Dairymen's Association.
3. All of these farmers are under contract to sell all their milk to the association, which has absolute control over the fixing of the prices.
4. The association in reality does not buy the milk, but directs its sale to the several milk distributors. In other words, the Association waives its right to the milk in favor of the distributors.
5. The distributor pays the shipper the price named by the Association, less the Association's commission, which is deducted and paid to the Association.
6. The Association has the absolute right to designate the distributor to whom the milk shall be sold.

7. All milk is priced to the distributors f. o. b. Baltimore, at prices determined by the Maryland State Dairymen's Association.

8. Where milk is delivered directly to the country creamery or receiving station, a lower price reflecting this saving in freight is set by the Association. Where the milk is transported by truck, the trucker is allowed three cents per gallon charge and this irrespective of whether the milk is carried by one engaged in public transportation or whether it is carried by the Western Maryland Dairy in its own trucks.

9. Where the milk is carried by the Western Maryland Dairy in its own trucks, it is bought in the country, f. o. b. country at three cents less than the prevailing price for milk delivered in Baltimore.

10. Where the milk is bought f. o. b. country, it is subject to inspection in Baltimore and subject to rejection if condemned by the health authorities or when it does not measure up to specifications.

Now, the company contends that it has the right to transport this milk to its dairy in Baltimore, either in its own trucks, or under contract with a trucker for exclusive transportation of its milk, without complying with the provisions of the Public Freight Motor Vehicle Law.

After a careful consideration of all of the facts, I cannot perceive how the dairy can be totally absolved from compliance with this law.

The law as it was originally enacted embraced only those who were engaged in the public transportation of merchandise or freight for hire. It applied solely to common carriers and provided that before the Public Service Commission issued a permit for the operation of a motor vehicle for such transportation it should be satisfied that it was best for the public welfare or convenience that the permit be granted. (Section 262.)

So long as the law was confined solely to *public* carriers, this provision was perfectly proper. It gave the Public

Service Commission a general jurisdiction and supervision over such carriers, so that the public would be protected as to service, and just compensation would be made for the extraordinary and unusual use of the road by these carriers.

But in 1924 there was a change in the policy of the law. The Legislature enlarged its scope to include private carriers of a certain class.

By section 4 of Chapter 291 of the Acts of 1924 (Article 56, Section 259), it was provided that "corporations, groups of individuals and associations engaged in the transportation of freight or merchandise of their stock-holders, shareholders or members, whether on the co-operative plan or otherwise shall be included within the provisions of this Act."

It was not intended by this Act to give the Public Service Commission the right to refuse such corporations, groups of individuals and associations the privilege of using the State highways for the purpose of transporting their own merchandise, or to require them to become public or common carriers and take the merchandise or freight of any one who might apply.

The Legislature would have had no right to deny the use of the roads for private transportation or to compel private carriers to assume the burdens of public carriers.

As was said by Mr. Justice Butler in the case of *Michigan Public Utilities Commission et al. vs. Duke*, Adv. Ops. 207, Sup. Ct. Rep., Vol. 45, p. 191:

"It is beyond the power of the State by legislative fiat to convert property used exclusively in the business of a private carrier into a public utility, or to make the owner a public carrier, for that would be taking private property for public use without just compensation, which no State can do consistently with the due process of law clause of the Fourteenth Amendment."

In my opinion, the purpose of the Act of 1924 was to create a separate classification of the corporations, groups

of individuals and associations, described therein, for the purpose of fixing the license fee to be paid by them, so that they might contribute a more just and equitable proportion of the cost of maintenance of the roads.

The general system of the legislation in this State with reference to motor vehicles has been upheld as a regulation of the use of this means of rapid transit on the public highways.

The Legislature in the exercise of this power may make such classifications as may be deemed necessary, provided they are not unreasonable or arbitrary. *Ruggles vs. State*, 120 Md. 561.

In view of the fact that the carriers embraced within the Act of 1924 operate their vehicles over more or less fixed routes on more or less regular schedules, for the benefit of associations or groups of individuals, the Legislature deemed it proper to classify them separately, so that the license charge to be paid by them would be more commensurate with their use of the roads. Such a classification is not only proper and reasonable, but is eminently wise and just.

Now, in the case of the Western Maryland Dairy, whether the trucks are purchased jointly by the shippers and the dairy, or whether the shipper and the Dairy jointly employ contractors to haul only their own milk, or whether the trucks are bought or the contracts are made in the name of the dairy alone, or of the shippers alone, or whether the title to the milk shipped is vested in the shipper or the dairy during the course of transportation, the purpose and effect of the plan proposed are the same. It affects an association between the dairy company and the shippers for the purpose of providing a more effective means of transportation of the milk in which they deal. Under the rules and regulations of the Dairymen's Association, the cost of this transportation must be paid by the shipper, under the plan proposed or under any other plan or procedure, for the shippers are required either to transport the milk to

Baltimore themselves and thereby incur the three cent charge to a public trucker, or allow the deduction of three cents per gallon when the milk is transported in the trucks of the dairy.

If the trucks were jointly owned by the shippers and were used for the sole purpose of transporting their own milk, they would unquestionably come within the full letter of the Acts of 1924. Such joint ownership would constitute the association or group of owners, a "co-operative" in the literal sense of the word. How, then, can this statute be avoided merely by putting the title to the trucks or the title to the milk in some third person? If the co-operative associations, through the simple expedient of selling the products of their members to some middle-men or distributor, especially constituted for that purpose, and vesting the title to the means of transportation in him, or by making a contract with a trucker for the transportation of their products exclusively, could relieve themselves of their obligations under the Public Freight Motor Vehicle Law, there would soon be no "co-operatives." They would all resort to this plan and thereby defeat entirely the purpose of the law.

But our Court of Appeals, in passing upon similar arrangements on the part of public carriers, in *Smith vs. State*, 130 Md. 482, and *Goldsworthy vs. Public Service Commission*, 141 Md. 674, said, in effect, that form should be disregarded and the substance of the procedure alone should be considered, so that the law and spirit of the statute should not be evaded.

Looking at the entire plan proposed to be adopted by the Western Maryland Dairy, it is perfectly obvious that it is an arrangement of a group or association of individuals for the transportation of their products from the farm to Baltimore City; that the transportation is on a more or less regular schedule and over a more or less fixed route, and, I am, therefore, of the opinion that the trucks so employed should be required to pay the license fee prescribed by the Public Freight Motor Vehicle Law.

This does not mean that the trucks so operated would be required to accept all milk tendered them whether it be milk bought by the Western Maryland Dairy or whether it be milk belonging to any other person or company.

If the Western Maryland either itself or through contractors, confines itself to the transportation of its own milk, purchased from members of the association, over a route and schedule designated in its application for license, and pays the prescribed license fee, it cannot be compelled to accept all milk tendered to it. It does not thereby become a common carrier.

However, it must report its route and schedule, as that is the basis upon which the license fee is fixed. It cannot, however, be restricted as to the route it selects, or schedule it fixed, but is at liberty to select any route or fix any schedule which suits its convenience, provided, however, it pays the license fees based thereon.

Of course, if on the return from Baltimore, or at any other time, the trucks are used for any transportation other than that described in its application, the Company may thereby subject itself to all the requirements imposed by the Act upon those engaged in public transportation.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

MOTOR VEHICLES—COMMISSIONER OF MOTOR VEHICLES NOT
LIABLE FOR DAMAGES ARISING OUT OF NEGLIGENCE OR
DEFAULT OF OFFICERS OF STATE POLICE.

May 18, 1925.

*Honorable E. Austin Baughman,
Commissioner of Motor Vehicles,
Baltimore, Maryland.*

MY DEAR COLONEL BAUGHMAN: I am in receipt of your letter of the 16th inst. enclosing correspondence of March

17th and March 24th, 1924, with invoice of \$266.70 under date of March 27th, 1924, covering the following items, namely: (1) \$200, paid in full settlement for the damages suffered by one George Heldman, who was injured by Sergeant Emil W. Busch of the Maryland State Police Force while on assignment and in active pursuit of duty; (2) \$50 fee to counsel for Heldman, and (3) \$16.70 court costs in the case instituted by Heldman against Sgt. Busch. You state that Mr. Daniel H. Carroll, Deputy State Auditor, has disallowed this entire item in the audit of the records of your Department, and you ask to be advised whether or not expenses of this kind should be borne by the Department, or whether payment should be arranged through other channels.

The answer to this question depends upon whether there is any liability on the part of the State of Maryland or upon you, as Commissioner of Motor Vehicles, for damages arising out of the negligence or default of the officers of the State Police.

As stated by former Attorney General Armstrong in an opinion to you under date of March 6th, 1922 (7th Report and Official Opinions of the Attorney General, pp. 295-296): "It requires no citation of authority to show that the function of the Automobile Commission is governmental in character and comprises one of the well-known governmental activities recognized by a long line of decisions as an important and legitimate sphere of the police power. The State of Maryland is not liable for the torts of its police officials in the performance of their duties. A sovereign State such as Maryland cannot be sued for the torts of its agents unless the State by statute has granted such right. State use of *Watkins vs. State Roads Commission*, 126 Md. 645. No such right is granted by statute, and no appropriation has been made by the General Assembly to take care of such contingencies. The officer who caused the injury may be personally liable if he was negligent in the operation of his motorcycle. That, however, is the personal liability of the officer himself."

It follows from this ruling that inasmuch as the State of Maryland is not liable for this claim and no appropriation has been made for payment of claims of this character, the action of the Deputy State Auditor in disallowing the same was proper.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

MOTOR VEHICLES—PUBLIC FREIGHT MOTOR VEHICLE LAW—
PROCEDURE IN CASE OF REFUSAL TO COMPLY WITH.

May 25, 1925.

*John N. Mackall, Esq.,
State Roads Commission,
Baltimore, Md.*

DEAR MR. MACKALL: In your letter of April 21st, 1925, you state that the Stone Express Company has refused to comply with my opinion of March 12, 1924, requiring it to pay the license fee prescribed by the "Public Freight Motor Vehicle Law."

You ask to be advised as to the procedure which you should adopt for enforcing a compliance by this company with the law.

I beg to call your attention to Sections 263 and 264 of Bagby's Annotated Code (1924), which read as follows:

"263. Every person owning or operating any such motor vehicle in violation of any of the provisions of this sub-title, or in violation of the rules and regulations aforesaid of the Public Service Commission, shall be deemed guilty of a misdemeanor and upon conviction subject to a fine of not less than five dollars (\$5.00) nor more than fifty dollars (\$50.00) for each first offense, and a fine of not less than ten dollars (\$10.00) nor more than one hundred dollars (\$100.00) for each second offense or subsequent offense."

“264. It shall be the duty of the Commissioner of Motor Vehicles and his deputies to enforce the provisions of sections 251, 152, 158 and 259.”

Under these sections the Commissioner of Motor Vehicles is empowered to arrest the operators of the motor vehicles of the Stone Express Company, and in these proceedings the liability of the Company for the license fees may be tested.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

MOTOR VEHICLES — PROSECUTION UNDER PUBLIC FREIGHT
MOTOR VEHICLE LAW — JURISDICTION OF JUSTICES OF
THE PEACE AND CIRCUIT COURTS, CONCURRENT.

June 2nd, 1925.

H. Courtenay Jenifer, Esq.
State's Attorney for Baltimore County,
Court House, Towson, Maryland.

DEAR SIR: In your letter of the 15th ulto., you ask whether Justices of the Peace have original or concurrent jurisdiction over violations of the “Public Freight Motor Vehicle Law” (Sec. 263 of Article 56 of Bagby’s Annotated Code, 1924).

If original, a trial must be held before a magistrate, and the accused either acquitted or penalized. If the accused is convicted, an appeal may be taken to the Circuit Court and the case tried *de novo* without indictment.

If, on the other hand, the jurisdiction of the magistrate is concurrent with that of the Circuit Court, the accused may pray a jury trial and the case can be taken up by you under an order of reference and criminal information filed under the authority of a local statute.

If the offense described by Section 263 of Article 56 is embraced within the language of Section 204 of said Article, entitled “Enforcement of Motor Vehicle Law—Arrest,

Bail, Trial and Appeal," then the jurisdiction of the Justice of the Peace is original. *Crichton vs. State*, 115 Md. 423.

However, Section 204 of Article 56 applies only "in case any person shall be taken into custody because of a violation of any of the provisions of *this sub-title*." It appears by reference to the various acts of the legislature, of which Section 204 is a part, that the sub-title therein referred to is "Motor Vehicles," while the sub-title under which Section 263 falls, although it relates to a special class of motor vehicles, is separate and distinct from the sub-title embracing the general motor vehicle law.

All of the provisions of the law with reference to Public Passenger and Public Freight Motor Vehicles have been embodied in enactments, which have been separate and distinct from those relating to motor vehicles in general, and by Chapter 291 of the Acts of 1924, the legislature, by the title of said Act specifically segregated the general provisions of the Motor Vehicle Law from the special provisions with respect to the Public Passenger and Public Freight Motor Vehicles by grouping the latter under the sub-titles "Public Passenger Motor Vehicles," and "Public Freight Motor Vehicles," respectively.

I am, therefore, of the opinion that Section 204 of Article 56 has no applicability to violations of Section 263 of said Article, and that the jurisdiction of the magistrates over such violations is concurrent with that of the Circuit Court.

This construction of the law seems to have been recognized by the Court of Appeals in the case of *Smith vs. State*, 130 Md. 482.

In that case the Court also passed upon the form of the indictment. I am enclosing herewith a copy of the indictment, so approved.

I believe it would be advisable to have the Western Maryland Dairy case determined upon an "Agreed Statement of Facts," reserving to either side the right of appeal. Mr.

Sauerwein has agreed to submit a stipulation for our approval, within the next few days. As soon as I receive it, I shall send you a copy.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

MOTOR VEHICLES — CONVICTION BEFORE MAGISTRATE FOR DISPLAY OF FICTITIOUS TAGS AND FOR IMPROPER REGISTRATION—CONTINUED OPERATION WITH SAME TAGS AND REGISTRATION, PENDING APPEAL, NEW OFFENSE.

July 7th, 1925.

*Honorable D. Marshall Schroeder,
Deputy Commissioner of Motor Vehicles,
Baltimore, Maryland.*

MY DEAR MR. SCHROEDER: In your letter of July 2nd, 1925, you present the following problem:

A person is charged with driving a motor vehicle having fictitious tags and not properly registered under the Maryland Law. He is found guilty of both charges and enters appeal, bond being given in both cases.

You inquire whether, in a situation of this kind, where appeals have been taken and bond given, such a person has a right to operate the said motor vehicle unmolested until the matter has been settled on appeal.

Section 204 of Bagby's Annotated Code (1924), which provides for appeals in such cases, makes no provision for the continued use of the motor vehicle pending appeal. You suggest that the provision of said Section for the staying of execution would apply in a case of this kind, but it is clear that this provision refers merely to the execution of the sentence already imposed and not to repetitions of the offense.

I see nothing in the General Motor Vehicle Law which would justify the contention sought to be made in the case

which you mention, and as I advised Colonel Baughman on February 19th, 1925, there is no warrant or authority in the law for the issue by Police Justices of written permission to violators of the law to repeat and continue their violations after conviction.

Trusting that this answers your inquiry, I am,

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

MOTOR VEHICLES — MODIFICATION OF SHERIFF'S FEES IN
MOTOR VEHICLES PROSECUTIONS, BY PUBLIC LOCAL LAW.

August 29th, 1925.

*Thomas M. Wilkerson, Esq.,
Waldorf, Charles County, Md.*

DEAR SIR: Within the past few days, there have been numerous complaints filed with the Commissioner of Motor Vehicles that you have been assessing Sheriff's costs in the amount of \$6.00 in cases involving violations of the motor vehicle law in which you have found the traversers guilty.

You will recall that on September 6th, 1924, at the request of the Commissioner of Motor Vehicles, I rendered an opinion, copy of which is herewith enclosed, that Chapter 352 of the Acts of 1924, under which you are probably acting in imposing such sheriff's costs, is not applicable to violations of the general motor vehicle law and that no sheriff in this State is "entitled to any fees for his services in connection with any prosecution under the motor vehicle laws of this State in excess of the fees prescribed for Sheriffs by Article 36 of the Public General Laws, all or any local laws to the contrary notwithstanding."

Throughout the general motor vehicle law, you will observe that the legislature has shown an unmistakable intention to make the provisions of the law State-wide in their

scope and effect, and to provide a scale of fines and fees which were to be uniform throughout the State. It was never intended that, in the guise of local legislation, this uniform State-wide system should be modified in any singular locality. Certainly it was never intended to permit this to be done, without making a full disclosure in the title of the act of the objects of legislation, so that all the Legislators, and all the motorists of the State should be distinctly and definitely apprised of any change which so vitally affects such a large number of people throughout the State.

The theory of the law was that the privilege of using the State roads was not a matter of local concern, to be varied in each geographical sub-division, but was a matter affecting the people of the whole State, and should not be modified without notice to all of the people, so that opportunity might be given to protest and object.

The report, which the Commissioner of Motor Vehicles enclosed in his letter to me, of the fines and costs imposed and collected by you on August 22nd and 23rd, 1925, demonstrates the unfairness of the enactment, under the guise of a local law, of such legislation as Chapter 352 of the Acts of 1924, unknown to the great mass of people of the State who are affected by it. Certainly objection would have been interposed to a scale of charges, which permits an assessment of \$7.45 costs in cases where the fines imposed are \$1.00 and \$500 or where no fine at all is imposed.

I am convinced of the manifest inapplicability of the Act of 1924 to motor vehicle law violations, and I would suggest, therefore, that in the future you assess Sheriff's costs in cases involving motor vehicle violations, at the rate provided by Section 208 of Article 56 of the Code of 1924.

I am confident that on reflection, you will appreciate the gravity of this situation, and will agree with the interpretation of the Act of 1924, which I have suggested.

Kindly notify me by return mail what course you intend to pursue.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

MOTOR VEHICLES—REPORTS MUST BE MADE OF ACCIDENTS
ON ROADS, CLOSED TO THE PUBLIC.

September 22nd, 1925.

*Colonel E. Austin Baughman,
Commissioner of Motor Vehicles,
Baltimore, Maryland.*

DEAR COLONEL BAUGHMAN: I have your letter of the 19th inst., in which you ask whether accidents happening on a road which is closed to the public, whether permanently or temporarily, must be reported, pursuant to the provisions of Section 196 of Article 56 of Bagby's Annotated Code of 1924.

It is suggested that the definition of the terms "highways," "roads," "public highways" or "public roads" in Section 173 of said Article limits the requirements of Section 196 to accidents happening on the highways or thoroughfare "*used by the public.*" But I cannot agree with this contention.

Section 196 applies in terms to "*all cases of accident resulting in injury to any person.*" It is the intention of the law that every operator of a motor vehicle, figuring in any accident, irrespective of where said accident occurs, shall, within twenty-four hours, report the details of the same to the Commissioner of Motor Vehicles.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

MOTOR VEHICLES—POWER OF JUSTICE OF THE PEACE TO IM-
POSE LESS THAN THE MINIMUM FINE IN PROSECUTIONS
UNDER MOTOR VEHICLE LAW.

October 13, 1925.

*Colonel E. Austin Baughman,
Motor Vehicle Commissioner,
Baltimore, Md.*

DEAR COLONEL BAUGHMAN: I am in receipt of your letter of the 10th instant, in which you enclose correspondence between Captain Myers of the State Police and Judge Tilghman Johnston, of Easton, on the subject of the right of magistrates, in trials for violations of the automobile law, to impose less than the minimum fine prescribed by that law.

Magistrate Johnston has requested this Department to review an opinion of Governor Ritchie, when he was Attorney General, that at least the minimum fines are required to be imposed. If you will refer to your files and to the Official Reports and Opinions of the Attorney General you will find that this Department, during the present administration and also during the term of office of Mr. Armstrong, had occasion to pass upon this question, and that in both instances Governor Ritchie's ruling has been sustained.

1 Report and Official Opinions of Attorney General, page 227;

6 Report and Official Opinions of Attorney General, page 350;

9 Report and Official Opinions of Attorney General, pages 178-182;

Our opinion to you of January 24, 1925.

Although, as Magistrate Johnston says, some injustice might result in an exceptional case by the imposition of the

minimum fine, the power to relieve such a situation does not rest either in the enforcement officers or in this Department.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

MOTOR VEHICLES—DISPOSITION OF MOTOR VEHICLES TAKEN
BY TRAFFIC COURT, AS BAIL.

October 14th, 1925.

*Colonel E. Austin Baughman,
Commissioner of Motor Vehicles,
Baltimore, Maryland.*

DEAR SIR: In your letter of the 13th inst., you request the opinion of this Department as to the method of disposition of a motor vehicle, taken by the Traffic Court as bail, under the provisions of Section 206 of Article 56 of Bagby's Annotated Code of 1924.

You state that in a certain case, upon the failure of the defendant to appear for the hearing at the time set when he was released on this bail, Judge Staylor requested your Department to take charge of the forfeited automobile. You ask whether this is the proper procedure.

In all criminal proceedings before Justices of the Peace in Baltimore City, where the traverser, who has given bail, fails to appear, the Justice of the Peace returns the bail forfeiture to the Clerk of the Criminal Court of Baltimore City. The latter thereupon forwards the papers in the case to the State's Attorney for Baltimore City, who causes to be issued a fi. fa, upon the property bailed. The Sheriff of Baltimore City then sells the property, after giving the appropriate notice.

According to the Clerk of the Criminal Court of Baltimore City this has always been the uniform procedure in bail forfeitures in criminal proceedings before Justices of

the Peace, and we see no reason why the same procedure should not be resorted to in cases where motor vehicles are deposited as bail under Section 206 of Article 56.

Trusting that this answers your inquiry, I am,

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

POLICE COMMISSIONER.

POLICE COMMISSIONER — HAS POWER TO CONFISCATE SLOT MACHINES THAT CAN BE USED FOR NO LEGITIMATE PURPOSE—MONIES IN SUCH MACHINES WHICH IS UNCLAIMED FOR ONE YEAR MAY BE TURNED OVER TO PENSION FUND.

February 24, 1925.

*General Charles D. Gaither,
Police Commissioner,
Baltimore, Md.*

DEAR GENERAL GAITHER: In your letter of February 10th, you state that about a year ago the Department found in operation, and seized, about thirty odd penny slot machines which you describe, and which appear to be gambling devices within the meaning of the laws of this State. You further state that the accused were tried and convicted of violating the gambling laws of the State, and that some of the persons from whose possession the machines were taken have applied for their return, and in other cases no such application has been made, although all the machines have been in the custody of the Department for more than a year. You request an opinion as to whether or not the Department may legally take possession of the money in the machines for the benefit of the Pension Fund, and destroy the machines.

The most recent case in our Court of Appeals dealing with the right of the Police Department to seize and confiscate such devices is that of Soper et al. vs. Michal, 123 Md. at page 543. In this case Michal brought a replevin suit against the Board of Police Commissioners for the recovery of certain slot machines which had been seized by the Department from the plaintiff while such machines were on storage and not in use. In this case, the Court after reviewing the authorities on the subject, quoted with ap-

proval from *Wagner vs. Upshur*, 95 Md. 519, as follows: "The doctrine clearly announced in the former appeal conclusively settles the following propositions, first, that only such property or articles as are intended to be used in violation of law and can be used for no legitimate purpose can be summarily seized by the police authorities, and, secondly, that articles or property that may or may not be used for legal purposes cannot be seized until it has been first properly established that the article was procured, held or used for an illegal purpose." * * *

With respect to the request for the return of the machines, it is my opinion that you are within your rights in declining to honor this request, and that you are authorized to destroy the machines since it is apparent "that they can be used for no legitimate purpose." Before actually destroying the machines, however, I think it would be wise to notify the claimants of such contemplated action by you, so as to give them an opportunity to bring such proceedings for the recovery of the machines or to prohibit such action by you as they might deem proper.

With respect to the money contained in the machines, it can hardly be said that it "can be used for no legitimate purpose," and I do not think, therefore, that you are authorized to confiscate this money for the benefit of the Pension Fund, where a claim to same is or has been made.

Section 776C of the Baltimore City Charter, provides a method by which the Pension Fund is created, and subsection 4 of said section reads:

"The said special fund shall consist of

"(4) All lost, abandoned, unclaimed or stolen money remaining in the possession of the Secretary of the Board of Police Commissioners for the space of one year, and for which there shall be no lawful claimant, and all monies arising from the sale by the said Secretary of said Board of unclaimed, abandoned, lost or stolen property, and all moneys realized, derived or received from the sale of any

condemned, unfit or unserviceable property belonging to or in the possession or under the control of the Police Department."

Under this provision of the law I think you are authorized to appropriate such monies to the Pension Fund only where there is no known claimant, and then only after the money has been in the possession of the Department for the space of one year.

If you desire any further assistance in the disposition of this matter I shall be glad to hear from you.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

POLICE COMMISSIONER—PERSON CONVICTED OF CRIME AND PARDONED BY GOVERNOR IS ELIGIBLE TO BE APPOINTED AS A PATROLMAN.

March 25, 1925.

*Hon. Charles D. Gaither,
Police Commissioner,
Court House,
Baltimore, Md.*

DEAR GENERAL GAITHER: In your letter of March 13, you request an opinion as to whether or not a man who has been guilty of the crime of larceny of an automobile and who served the sentence imposed upon him, and later obtained a pardon from the Governor of the State in which he was convicted, is eligible for appointment to the Police Force of Baltimore City.

Section 745E of the Baltimore City Charter prohibits the Board of Police Examiners from examining an applicant who has been guilty of a crime, and since no one can be appointed to the Department, in the absence of an examination by this Board, it is clear that the applicant in question would be ineligible, were it not for the executive pardon which has been granted to him.

The effect of an unconditional pardon upon the qualifications of the person pardoned, to hold office, is a question about which authorities on the subject have arrived at different conclusions. In Volume 29 of *Cyclopedia of Law*, at page 1385, it is stated that "it would seem to be the rule, that the pardon of the executive will not remove disqualification resulting from conviction of crime." It has also been held in the case of *Freeman vs. Baldwin*, 24 Illinois, 298, that under a statute prohibiting persons convicted of larceny from giving testimony, a person who had been convicted of this offense and pardoned by the executive did not regain his right to testify as a witness.

On the other hand, the weight of authority seems to be that a full pardon not only relieves the offender of the punishment, but also blots out of existence his guilt, to such an extent that in the eye of the law he is as innocent as if he had never committed the offense, 20 *Ruling Case Law*, 556. One of the cases which supports this view, which was decided by the Supreme Court of the United States, is that of *ex parte Garland*, see 18 U. S. (L. ed.), 366. In this case Garland was admitted as an attorney and counselor to practice in the Supreme Court of the United States at the December term of 1860. Subsequently he took part in the Civil War on the side of the Confederacy, and by an Act of Congress, dated January 24, 1865, it was provided that no person should be permitted to practice in the Supreme Court after March 4, 1865, unless he should take an oath to the effect, that he had given no aid to persons engaged in armed hostilities to the Government of the United States. In July, 1865, Garland was granted an unconditional pardon by the President of the United States, and thereupon he applied to the Supreme Court for permission to continue to practice as an attorney and counselor in that Court. Justice Field in delivering the opinion for the Court in this case said:

"A pardon reaches both the punishment prescribed for the offense and the guilt of the offender; and when the pardon is full, it releases the punishment and blots out of

existence the guilt, so that in the eye of the law the offender is as innocent as if he had never committed the offense. If granted before conviction, it prevents any of the penalties and disabilities, consequent upon conviction, from attaching; if granted after conviction, it removes the penalties and disabilities, and restores him to all his civil rights; it makes him, as it were, a new man, and gives him a new credit and capacity.

“There is only this limitation to its operation; it does not restore offices forfeited, or property or interests vested in others in consequence of the conviction and judgment.”

Section 20 of Article 2 of the Constitution of Maryland, authorizes the Governor of this State to grant “reprieves and pardons, except in cases of impeachment and in cases in which he is prohibited by other articles of this Constitution.” Section 745E of the Baltimore City Charter, above referred to, must be construed in connection with the pardoning power which is thus vested in the Governor. In my opinion, it is not within the Constitutional power of the Legislature of Maryland, to inflict punishment beyond the reach of executive clemency. To construe Section 745E as rendering ineligible, a person who has been pardoned, would not only continue the punishment, but would also make it an unwarranted interference with the Constitutional power of the Governor to grant pardons.

There are many other authorities which follow the decision of the Supreme Court in the Garland case, and I think there can be no doubt that if the applicant whom you mention, has obtained a full and unconditional pardon from the Governor of the State in which he was convicted, he is eligible for appointment to the Police Force of Baltimore City.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

POLICE COMMISSIONER—WILLMARK SERVICE SYSTEM RE-
QUIRED TO PROCURE DETECTIVE LICENSE.

April 21, 1925.

*Hon. Charles D. Gaither,
Police Commissioner,
Court House,
Baltimore, Md.*

MY DEAR GENERAL GAITHER: I have before me your letter of March 30, 1925, in which you ask an opinion as to whether or not the Willmark Service System of New York is required to take out a license as private detective for each of their representatives in this City. I have delayed answering your letter in order that I might obtain from Mr. Semans, the attorneys for this System, full and complete information, as to their methods of doing business.

The Willmark Service System employs representatives, who go into the stores which they represent, make actual purchases, observe the conduct of the employees making the sale, and make a private report of this conduct to the store which employs this System. The essential idea of the System is to procure for its customers, the greatest amount of efficiency from their employees, although it also tends to diminish dishonesty on the part of employees, as is evidenced by a heading of one of its circulars which reads: "Reduces Employee Dishonesty By Enforcing Store Rules."

Chapter 694 of the Acts of 1910, provides that "No person shall engage in the business of private detective for hire or reward, whether for himself or as a member of, or as an employee of any detective agency, firm or corporation, or advertise or hold himself out as a private detective in the City of Baltimore without first having obtained license so to do."

As I understand the Willmark Service System, its business is nothing more or less than a limited private detective business. It is employed specifically to detect efficiency or inefficiency, honesty or dishonesty, courtesy or discourtesy and report the details of any conduct on the part of the

employee which may bear upon any of these subjects. This is just the kind of work which a private detective might be expected to be employed to do and in my judgment it would be unfair to the detective agencies which are in existence and which pay the license fee provided by law, to permit this System to carry on its business without taking out such a license.

I have informed Mr. Semans of our position in this matter, and he has given us to understand that the representatives of the System will comply with the law. I am returning the correspondence which you sent me in this matter, to which I have attached certain circulars left with me by Mr. Semans, which we have considered in determining the question presented.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

POLICE COMMISSIONER—SUBSTITUTE MATRONS ARE NOT ENTITLED TO BENEFITS OF PENSION FUND, BUT ARE ENTITLED TO INCREASE IN RATE OF PAY AFTER SERVING FIVE YEARS.

August 27th, 1925.

*Honorable Charles D. Gaither,
Police Commissioner,
Court House, City.*

DEAR GENERAL GAITHER: In your letter of August 5th, you request an opinion as to whether or not the substitute matrons who are appointed under the authority of Section 765 of the Baltimore City Charter, are entitled to the benefits of the Pension Fund, and also as to whether or not a substitute matron who is promoted to the position of regular matron, is entitled to credit for the period of her employment as a substitute matron in determining the extra compensation.

Section 766 of the City Charter contains the provision "that said substitute matrons shall perform the duties of matrons when called upon by said Board (Commissioner) in the absence or disability of any of said matrons or as necessity for their services may arise, and shall only receive pay during the time of actual service rendered by them."

It is obvious from the above provision that the substitute matrons are not full-time employees, and after reading Section 766C, which provides for the creation of the Pension Fund, I think it is clear that it was intended to be for the benefit of full-time members of the Department only. For instance, in sub-section 9 of this section you will note that each member may, at his option, contribute a sum equal to but not greater than 2% of the semi-monthly pay, salary or compensation, and it is further provided "that no member of said force shall participate in said special fund unless he contributes to the said fund as aforesaid."

I understand the substitute matrons do not contribute to the Pension Fund, and it is clear they have no fixed semi-monthly pay or salary, as they are paid only during the time of actual service. By reference to Section 777 of the Charter, you will observe that upon retirement the members of the force are entitled to receive out of the fund "a sum of money equal to one-half the amount of money currently paid monthly," and as the payments to the substitute matrons fluctuate, there is no definite amount of money currently paid monthly to them.

In view of the above provisions of the law, I am of the opinion that the substitute matrons are not entitled to the benefits of the Pension Fund.

Section 745 of the City Charter as amended by Chapter 263 of the Acts of 1924, provides that each member shall be entitled to an increase of 2½% of the salary of his grade or position after serving five years, and a like increase for each five years thereafter up to thirty years. If the substitute matrons continue to occupy their positions as such for the time stated, they would, in my judgment, be en-

titled to compensation at the increased rate. The purpose of this provision is to reward continuous service in the Department, and inasmuch as the substitute matrons are appointed in the same manner and subject to the same qualifications as the regular matrons, I think they should be given credit for the time served in this capacity provided they remain in the Department continuously without an intervening resignation.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General*.

PUBLIC SERVICE COMMISSION.

PUBLIC SERVICE COMMISSION HAS NO JURISDICTION OVER
TURNPIKE OR TOLL ROAD.

January 26, 1925.

*Frank Harper, Esq.,
Executive Secretary, Public Service Commission,
Munsey Building,
Baltimore, Md.*

DEAR MR. HARPER: I have your letter of January 22nd, in regard to the proposed application of the Maryland Ocean-Shore Turnpike Company for authority to construct and operate a turnpike or toll road and to issue its stock for certain property rights and fix rates of toll.

I understand that this company, which has been organized under the general laws of the State, proposes to construct and operate a toll road in Worcester County, Maryland, along or near the ocean shore from Ocean City to the Delaware line; that its authorized capital stock is 2,000 shares of common stock of the par value of one hundred (\$100) dollars each; that the company proposes to issue this stock for the fee simple estate in the land necessary for the construction of the road and to borrow on its unsecured corporate notes the amount necessary to be expended in the construction of the road; and that it proposes to charge toll for the use of the road at varying rates.

You desire to know whether or not the Public Service Commission has any jurisdiction in this matter.

The subjects over which the Public Service Commission may exercise jurisdiction are named in Section 3 of the Act under nine separate sub-divisions. At the end of this section it is provided that the jurisdiction of the Commission shall extend "to such other and further extent and to all

such other and additional matters and things and in such further respect as may herein appear either expressly or impliedly."

The words "expressly or impliedly" contained in the section above referred to, mean in the language of 1 Dillon on Municipal Corporations, 4 Md., Section 59, cited in *Rushe vs. Hyattsville*, 116 Md. 122, and in *Stanley vs. Baltimore*, reported in the Daily Record of July 3, 1924, that the Public Service Commission may exercise the following powers and no others:

"First: those granted in express words; second, those necessarily or fairly implied in or incident to the powers expressly granted; third, those essential to the declared objects and purposes of the corporation—not simply convenient, but indispensable. * * *"

While the Public Service Commission has been granted jurisdiction over common carriers, and while the term "Common Carrier" has, by the Acts of 1916, Chapter 272, been extended to include all bridges in the State, I cannot find anything in the law which either expressly or impliedly gives the Public Service Commission of Maryland jurisdiction over a turnpike or toll road, and for this reason the question propounded in your letter of January 22nd, in reference to the Maryland Ocean-Shore Turnpike Company, must be answered in the negative.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General*.

PUBLIC SERVICE COMMISSION—EXTENT OF JURISDICTION OF
PUBLIC SERVICE COMMISSION OVER CONOWINGO PROJ-
ECT.

January 31, 1925.

*Public Service Commission,
Munsey Building,
Baltimore, Md.*

GENTLEMEN: I am in receipt of your communication of the 27th, enclosing a copy of a letter from the Federal Power Commission with enclosures which accompanied it, respecting the jurisdiction of the Public Service Commission of Maryland over the Susquehanna Power Company and the Susquehanna Electric Company, two Maryland corporations organized for the purpose of developing the water power on the Susquehanna River, and I note that Mr. Merrill, Executive Secretary of the Federal Power Commission, has requested an opinion concerning the jurisdiction of the Commission, and that you desire my opinion respecting the jurisdiction of your Commission over the several matters enumerated in his letter.

The inquiries of Mr. Merrill, the Executive Secretary of the Federal Power Commission, are directed first to the Susquehanna Power Company as to,

1. *The Susquehanna Power Company,*

a. Issuance of securities, and particularly the proposed issuance of stock to be delivered to Philadelphia Electric Power Company, the making of the joint mortgage with that company, and the guaranty of the payment of principal, interest and sinking fund with respect to the bonds to be issued under such mortgage.

b. Lease of reservoir in Pennsylvania from Philadelphia Electric Power Company.

c. Lease of Maryland properties and assignments of lease of reservoir in Pennsylvania to The Susquehanna Electric Company.

d. Guaranty agreement from The Philadelphia Electric Company.

e. Accounts and reports.

Mr. Merrill's inquiry is then directed to the Susquehanna Company as to,

2. *The Susquehanna Electric Company,*

a. Lease of Maryland properties and the reservoir in Pennsylvania from The Susquehanna Power Company.

b. Operating agreement with The Philadelphia Electric Company.

c. Rates and service as to power furnished consumers in the State of Maryland.

d. Issuance of securities, and particularly the proposed issuance of stock to be delivered to The Philadelphia Electric Company.

e. Accounts and reports.

It appears from the memoranda accompanying Mr. Merrill's letter, that the Susquehanna Power Company will be the holding company of all project property located in Maryland and will be the lessee of the Philadelphia Electric Power Company, which is the holding company of all project property in Pennsylvania; that the Susquehanna Electric Company is the Company which will operate the plant in Maryland as lessee of the Susquehanna Power Company, and is the Company which will distribute electricity, under a proposed contract with the Philadelphia Electric Company, the terms of said proposed contract being briefly, that the Susquehanna Electric Company will deliver to the Philadelphia Electric Company at the Maryland-Pennsylvania State line to the transmission line in Pennsylvania, the maximum amount of hydro-electric energy consistent with the capacity of the hydro-electric plant and the lines leased by the Susquehanna Power Company to the Susquehanna Elec-

tric Company, the energy requirements of the market local to the power plant and the flow of the Susquehanna River, it being the intention of said contract that the Susquehanna Electric Company shall so operate the plant owned by the Susquehanna Power Company as to offer the maximum possible cooperation to the Philadelphia Electric Company in supplying its electrical energy requirements.

The memoranda accompanying Mr. Merrill's letter also deals with proposed financing of the project which involves various issues of stocks and bonds, the making of a joint mortgage by the Susquehanna Power Company and the Philadelphia Electric Power Company to secure the bonds.

It is my opinion that the Public Service Commission of Maryland has jurisdiction over both the Susquehanna Power Company and the Susquehanna Electric Company as to each and every of the several matters referred to in Mr. Merrill's letter, and which is the subject of his inquiry. Both of these Companies are electrical corporations within the meaning of the Public Service Commission law, and come clearly within the definition of that term as it is defined in the Act.

Section 1 of the Public Service Commission Law of Maryland provides in part as follows:

"The term 'electrical corporation,' when used in this Act, includes every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees or receivers, appointed by any court whatsoever (other than a railroad or a street railroad corporation generating electricity for its own use solely and exclusively) owning, operating, managing or controlling any plant or property, including any water plant, or water property, or water falls, or dam, or water power station, for generating and distributing or generating and selling for distribution, or selling or distributing electricity for light, heat or power, or for the transmission of electric current for such purposes, or for any public use whatsoever." And also,

"The term 'electric plant' when used in this Chapter, includes (1) engines, boilers, dynamos, generators, storage

batteries, converters, motors, transformers, cables, wires, services, poles, lamps, meters, real estate, easements, materials, apparatus, devices and property of every kind operated, controlled, owned, used or to be used, for or in connection with, or to facilitate the generation, transmission, distribution, sale or furnishing of electricity for light, heat or power; and (2) any conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying electrical conductors used or to be used, wholly or in part, for the transmission of electricity for light, heat or power."

In addition, clear and express powers are conferred upon the Public Service Commission of Maryland to supervise the issuance of stocks, bonds and other evidences of indebtedness of an electrical corporation incorporated under the laws of the State of Maryland, where such stocks, bonds or other evidences of indebtedness are not payable within twelve months from the date thereof, and when the issuance of such securities are necessary for the acquisition of property, the construction, completion, extension or improvement of its plant or distributing system, or for the improvement or maintenance of its service. Indeed, the law expressly provides that no such electrical corporation shall begin construction or exercise any right or privilege under any franchise without having first obtained the permission and approval of the Commission. The law further expressly directs the Public Service Commission of Maryland to adopt a system of accounts for each public utility, and you have adopted the form of accounts, records and memoranda which are now established and prescribed by the Interstate Commerce Commission, and you have been given expressly by statute, the right of access to all accounts, records and memoranda of corporations which are subject to the provisions of the Maryland law, which include, as stated above, the Susquehanna Power Company and the Susquehanna Electric Company, and you have full and complete power over the corporations' accounts, with authority to compel reports at stated intervals.

The Public Service Commission law of Maryland further expressly provides that no electrical corporation shall transfer or lease its franchise, works or system, or any part of such franchise, works or system, to any other person or corporation, or contract for the operation of its works and system without the written consent of the Commission. We will not claim that the Maryland Commission has jurisdiction over the Philadelphia Electric Power Company, holding title to the part of the reservoir necessary for the project plant in Pennsylvania, or that the Maryland Commission has the power to determine what contracts shall be made between the Susquehanna Power Company and the Philadelphia Electric Power Company, for the purpose of leasing from the said Pennsylvania Electric Power Company, the part of said reservoir located in Pennsylvania, but in any investigation of rates to the consumers of electrical current in Maryland, your Commission has full power to inquire into the terms of that contract for the purpose of determining whether the amount paid under the terms of the lease is reasonable.

Trusting the above will give you the information you desire, I remain,

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

PUBLIC SERVICE COMMISSION—CONSOLIDATED GAS ELECTRIC LIGHT AND POWER COMPANY NEED NOT OBTAIN SANCTION OF COUNTY COMMISSIONERS TO EXTEND LINES.

June 6, 1925.

Harold E. West, Esq.,
Public Service Commission,
Baltimore, Md.

DEAR MR. WEST: I am in receipt of your recent communication including files in cases No. 2348 and 2349, being application of the Consolidated Gas Electric Light and

Power Company of Baltimore, made to the Commission pursuant to the provisions of a circular letter addressed by the Commission to all electric utilities in the State of Maryland, for permission to build certain extensions of its lines into Harford County, in which County it has not heretofore extended its lines or exercised any franchise, and also enclosing copy of the petition filed by Clarence W. Miles, Esq., People's Counsel, wherein he challenges both the right of the Company to begin the construction and the right of the Commission to authorize such construction, unless and until the Company secures an order from the Board of County Commissioners of Harford County consenting to the construction and requesting an opinion with respect to the legal points raised in the petition of the People's Counsel.

In reply to your inquiry will say that the Consolidated Gas Electric Light and Power Company of Baltimore City has a State-wide charter authorizing it to operate in any part of Maryland, it being an amalgamation of a number of Companies, some of which were formed under Section 28, Class 13, Article 23 of the Code of 1904. This section provides as follows:

“For constructing, owning or operating telegraph or telephone lines in this State where the principal office of said corporation is located in this State, and for the transaction of any business in which electricity over or through wires may be applied to any useful purpose.”

Chapter 55 of the Acts of 1910, the same being section 337, Article 23, of Bagby's Annotated Code of 1924, provides as follows:

“Any of the corporations formed under Class 13, section 28 of this Article shall have the power which is conferred upon telegraph companies incorporated under this Article by Section 295, and may construct and lay any number of its line or lines underground on any route for which it is authorized to construct such lines in whole or in part, above ground, etc., provided, however, that all corporations incorporated or to be incorporated by virtue of said Section 28, Class 13, and all corporations heretofore or hereafter incor-

porated under the provisions of the corporation law of 1908, shall obtain the assent and approval of the Mayor and City Council of Baltimore City before using the streets or highways of Baltimore City, either the surface or the ground beneath the same."

Under Section 296 of Article 23, of Bagby's Annotated Code of 1924 referred to in Section 337, telegraph and telephone companies are authorized to construct a line or lines of telegraph through this State or from or to any point or points within this State, or upon the boundaries thereof and along and upon any postal roads and postal routes, roads, streets and highways or across any of the bridges or waters within the limits of this State, by erection of the necessary fixtures, including posts, piers or abutments or suspending the cords or wires of such lines, without their being deemed a public nuisance, or subject to be abated by any private party, etc."

It is, therefore, apparent that under the provisions of the law above quoted, no approval of any of the municipalities of the State except the City of Baltimore is required for the construction and operation of a telegraph, telephone or electric light system in the State. The only difficulty that is suggested by the petition of the People's Counsel as referred to in your letter, is whether Section 23 of the Public Service Commission Law is applicable to this particular case. Of course, the provisions of Section 33 are well known to you, and that section, and indeed the entire Public Service Commission Act was passed by the same Legislature that passed Chapter 55 of the Acts of 1910, now Section 337 of Article 23 as above referred to, and it seems to me that there is nothing inconsistent with the two acts. Section 33 provides that "no gas corporation or electrical corporation incorporated under the laws of this or any other State shall begin construction or exercise any rights or privileges under any franchise *hereafter granted*, or under any franchise heretofore granted, but *not heretofore actually exercised*, without first having obtained permission and approval of the Commission," etc. In other words, Section

33 has no application to any gas or electric corporation incorporated at the time of the passage of that Act after it exercised any rights or privileges under any franchises granted to it. The facts in this case clearly show that the Consolidated Gas Electric Light and Power Company of Baltimore was in existence at the time of the passage of that act and had exercised its franchise rights very extensively. Therefore, the provisions of that Section have no application to that Company. The contention seems to be made that because it has never actually exercised any franchise rights in Harford County, although it had the right to operate any place in the State, and was actually exercising all of its franchise powers in certain parts of the State, that it comes within the provisions of Section 33 of the Public Service Commission Act. I cannot agree with this contention, because as hereinbefore stated, all its rights, privileges and franchises had been granted prior to the passage of that Act, all of its rights, privileges and franchises had been exercised by it prior to the passage of that Act, and the fact that it now desires to extend its lines into some other part of the State does not bring it within the provisions of that Section requiring the consent of the County Commissioners of the different Counties of the State before it can exercise its franchises in those counties.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

PUBLIC SERVICE COMMISSION—PUBLIC SERVICE COMMISSION
CANNOT DEMAND INFORMATION IN REGARD TO GRADE
CROSSINGS.

July 2, 1925.

Harold E. West, Esq.,
Chairman, Public Service Commission,
Baltimore, Maryland.

DEAR MR. WEST: I wish to acknowledge receipt of your letter of recent date, in which you request to be advised

as to the power of your Commission to compel the various railroad companies operating within the State of Maryland to comply with Order No. 8908, filed in Case No. 2340, which order provides that the aforementioned companies furnish under oath, a statement of all the points or locations in the State of Maryland where any of the tracks of the said companies are crossed by a State or County highway, and the particular light or other signalling device, or both, if any, used at such points of intersection.

Section 240 of Article 23, the same being Section 1, Chapter 294, of the Acts of 1888, provides that the County Commissioners of the various counties shall be charged with the duty of determining whether or not flagmen, safety gates, alarm bells, etc., shall be placed at various railroad crossings, and the sections which immediately follow, provide a means for enforcing orders promulgated in pursuance of this section.

I am unable to find anything in the various sections of the law relating to your Commission which either directly or by implication repeals or conflicts with these sections. In fact, in the case of City and Suburban R. R. Co. vs. Washington, Westminster and Gettysburg R. R. Co., 122 Md., at page 656, the Court of Appeals in its opinion delivered by Chief Judge Boyd, states when referring to the Public Service Commission Act, "there is no express reference in it to railroad crossings either over other railroads or public streets and roads."

The power to protect the traveling public by compelling the railroad companies to safeguard the places where their tracks cross the public roads is, therefore, still vested in the County Commissioners of the several counties. Such being the case, the information sought to be obtained by Order No. 8908 would be useless, as your Commission would be without authority to issue orders or regulations based thereon. To require the companies to file such information would be to require them to go through a mere formality, and I do not think that our courts would lend their aid towards enforcing it, but that they would take the position

that without such power and authority there can be no jurisdiction.

I must, therefore, advise you that in my opinion your Commission has not the power to compel the companies in question to furnish the information called for by this order.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

SECRETARY OF STATE.

SECRETARY OF STATE — HAS POWER TO DETERMINE WHEN
TRADE MARKS MAY BE MISTAKEN.

July 11, 1925.

Mr. Murray G. Hooper,
Secretary of State's Office.
Annapolis, Md.

DEAR MR. HOOPER: I have your letter of July 9th, with which you submit the trade label which the Cloth Hat, Cap and Millinery Workers' International Union desires to register with the Secretary of State in accordance with Chapter 357 of the Acts of 1892. You also submit the trade label of the Cloth Hat and Cap Makers' Union No. 1 of Baltimore, Md., which was filed on July 30th, 1895, and request from me an expression of opinion as to whether or not the application for registration first above mentioned should be granted in view of the fact that it might probably be mistaken for the label already of record in your office.

You will observe, of course, that section 3 of the Act in question provides that the Secretary of State shall be the judge of the fact as to whether or not the label would probably be mistaken for one already of record. Notwithstanding this, however, I have, as you requested, looked at the labels and although the names are somewhat similar it seems to me that the difference in design is so marked that there is no reasonable likelihood of a mistake as to identity, and in my opinion the Secretary of State would be fully warranted in accepting the application for registration which is now pending.

I am returning the papers which you sent me.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

SHERIFF.

SHERIFF — ENTITLED TO BOND BEFORE SEIZING PROPERTY TITLE TO WHICH IS IN DISPUTE—MAY ACCEPT BLANKET BOND FROM MAYOR AND CITY COUNCIL TO COVER ALL CASES.

February 16, 1925.

*John E. Potee, Esq.,
 Sheriff of Baltimore City,
 Court House,
 Baltimore, Md.*

DEAR MR. POTE: You have referred to me letter of City Solicitor Philip B. Perlman, dated February 6, 1925, in regard to the practice of requiring the City of Baltimore to furnish a bond in execution or attachment proceedings instituted by the City. Mr. Perlman suggests that in view of the very large financial resources of the City the bond serves no useful purpose and the expense of furnishing it imposes an unnecessary burden upon the taxpayers. You have requested an opinion as to whether or not you are justified, under the circumstances, in releasing the City from the usual requirement of furnishing bond before proceeding in any of these cases.

As Sheriff of Baltimore City you are unquestionably within your rights in requiring of every litigant a bond to indemnify you against loss in cases where you are directed to seize or sell property, the title to which may be in question. The question presented by the City Solicitor appears to me, however, to be one of policy rather than one of law. If you feel satisfied that the City will defend you in all actions which may arise out of any such proceeding, and indemnify you against loss as fully and effectually as a bonding company would, it would seem to be in the interest of the public to adopt Mr. Perlman's suggestion and forego the requirement of a bond in action instituted by the City.

So long as Mr. Perlman is City Solicitor he will, no doubt, be glad to assume the responsibility of defending you in any actions which may be brought, and I feel certain also, that he will use his best efforts to have you indemnified against any loss. His successors in office, however, may not feel disposed to assume the same obligations, and even he might experience some difficulty in obtaining an appropriation to meet any judgment resulting from an illegal seizure. In other words, the Board of Estimates might possibly claim that the City Solicitor had no authority to order the illegal seizure in any given case, or to assume for the City the responsibility of indemnifying you and for either of these reasons decline to appropriate the money.

I mention these difficulties not for the purpose of discouraging the very worthy proposal of Mr. Perlman, but rather to enable you to foresee some of the possible consequences of its adoption. If you can be secured against all contingencies by means of a blanket bond or in any other manner that will relieve you of any possible liability, I see no objection to the adoption of the proposal.

With kind regards, I am

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

STATE ACCIDENT FUND.

STATE ACCIDENT FUND — PREMIUMS TO STATE FUND ARE
NOT PREFERRED — CLAIMS IN SETTLEMENT OF BANK-
RUPT ESTATE.

May 29th, 1925.

*John S. Phillips, Esq.,
State Accident Fund,
Baltimore, Md.*

MY DEAR MR. PHILLIPS: In your letter of May 19th, you request an opinion as to whether or not claims due the State Accident Fund for compensation insurance premiums from persons and corporations who are adjudicated bankrupts are entitled to priority in the distribution of the bankrupt estate.

There is no provision in the statute law of this State which gives preference to such claims, and under the Bankruptcy Act, it is necessary that the State law provide for such preference before the claims can be so treated in the settlement of the bankrupt estate. This has been definitely decided in the case of *In the Matter of Eureka Paper Company*, 44 Am. Bankruptcy, page 179. The case referred to in Volume 2 of *Collier on Bankruptcy* indicating that such claims are entitled to priority was decided under the Workmen's Compensation law for Porto Rico, which contained a provision that such claims are entitled to priority. There being no such provision in the Workmen's Compensation Law of Maryland, it is clear that claims of this character due the State Fund of Maryland stand on the same footing as claims of general creditors.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

STATE BOARD OF BARBER EXAMINERS.

STATE BOARD OF BARBER EXAMINERS—BARBERS WHO BEGAN
BUSINESS AFTER APRIL 1, 1904, REQUIRED TO TAKE EX-
AMINATION.

November 12th, 1925.

Mr. Charles F. Ely,
507 Washington Square,
Hagerstown, Maryland,

DEAR MR. ELY: Your letter of November 9th, enclosing notice received by you from the State Board of Barbers' Examiners requesting you to appear before the Board on November 12th for an examination for barber license did not come to my attention until this morning. This office was closed yesterday on account of its being a legal holiday, and for this reason I have been unable to give earlier attention to same. Ordinarily we do not furnish legal information except to the departments of the State government, as our staff is not sufficiently large to answer the numerous inquiries which we would receive if any other practice were followed. I am making an exception in your case, however, as I understand that you are anxious to ascertain your status before the Board with respect to this notice at the earliest possible time. You request an opinion as to whether or not you are required to take an examination and procure a license in order to carry on the business of a barber.

The State law relating to the subject of the licensing of barbers has not been declared invalid or unconstitutional by this department. The constitutionality of the law was sustained by the Court of Appeals in the case of Criswell vs. State, 126 Md. at page 103. The law became effective on April 1, 1904, and contained a provision that it would not apply in any way to persons occupied or working as barbers at the time of its passage. I would say say, therefore, that

if you were in the barber business on or prior to April 1st, 1904, you are not required to take the examination. On the other hand, if you entered the business subsequent to that date, there could, in my opinion, be no doubt that you are required to comply with the provisions of the law as enacted.

I am returning the notice of the State Board which accompanied your letter.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

STATE BOARD OF BARBER EXAMINERS—METHOD OF PROCEDURE IN PROSECUTING PERSONS WHO DO NOT OBEY THE BARBER LAW.

June 2nd, 1925.

*George W. Sanders, Esq.,
Secretary, State Board of Barber Examiners,
18 W. Saratoga Street,
Baltimore, Md.*

DEAR SIR: In your letter of May 20th, you state that the Maryland State Board of Barber Examiners has received complaint that the laws of Maryland, relating to barbers, is being violated, and you request an opinion as to the method of procedure in enforcing these laws.

Section 282 of Article 43 of the Code of Public General Laws of Maryland provides that any person violating any of the provisions of the sub-title relating to the State Board of Barber Examiners shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than ten dollars or imprisonment in the County Jail for a period of not less than thirty days or by both such fine and imprisonment.

Upon satisfactory information being produced that any person is violating any of these provisions, I think it would be proper for any member of the Board or its duly author-

ized representative to apply to the local magistrate exercising police jurisdiction for a warrant charging such violation. Should the magistrate, for any reason, decline to issue the warrant, it would be in order to present the facts to the State's Attorney for the county in which the violation occurred, with the request that the matter be laid before the Grand Jury for an indictment.

Under Section 280 of the same Article, the State Board is also authorized to call upon the State or local board of health to declare any shop which is found to be in an unsanitary condition a public nuisance.

Trusting that the above will satisfactorily answer your inquiry, I am

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

STATE BOARD OF ELECTRICAL EXAMINERS.

STATE BOARD OF ELECTRICAL EXAMINERS — REQUIRED TO
SUBMIT ANNUAL REPORT TO BOARD OF PUBLIC WORKS
ON SEPTEMBER 30TH IN EACH AND EVERY YEAR.

January 30, 1925.

*Mr. Joseph O'Brien, Secretary,
22 Light Street,
Baltimore, Md.*

DEAR SIR: I have before me your letter of January 28th, in which you request an opinion from me as to whether your annual report should be made as of September 30th, as requested by the Comptroller, or on May 1st of each year as provided in the Act of 1906, Chapter 244, by which your Board was created.

Under the provisions of Chapter 29 of the Acts of 1922, commonly known as the Re-Organization Act, your Board was assigned to the Department of State Employment and Registration, and Section 3 of the law creating this Department reads as follows:

Sec. 3. "Upon the taking effect of this Act, and annually thereafter, and also from time to time as may be necessary, each of the boards and agencies mentioned in Section 2 hereof shall submit to the Board of Public Works an itemized estimate of the amount of fees and other income which it will receive during the ensuing year, and also an itemized estimate of its expenses and disbursements during the ensuing year. The Board of Public Works shall approve all or such portion of said estimated expenses and disbursements as it deems proper, and each of said boards and agencies shall make no expenditures except for purposes so approved by the Board of Public Works, which shall in each case determine the time for such annual estimates to be submitted."

I understand that in pursuance of the above provision the Board of Public Works has determined that the report and annual estimates should be submitted as of September 30th, in each and every year, and in view of the fact that Section 2 of said Chapter 29 repeals all laws or parts of laws conflicting or inconsistent with the provisions of said Act, I think you are obliged to make the report to the Board of Public Works as of September 30th in each and every year, as requested by the Comptroller.

Trusting that the above will satisfactorily answer your inquiry, and with kind regards, I am

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

STATE INDUSTRIAL ACCIDENT COMMISSION.

STATE INDUSTRIAL ACCIDENT COMMISSION—AVERAGE WEEKLY WAGE OF MEMBER OF MILITIA.

April 21, 1925.

*State Industrial Accident Commission,
Equitable Building,
Baltimore, Md.*

GENTLEMEN: You have requested my opinion as to what is the average weekly wage of Corporal Corbin H. Merrill, who is a member of the organized militia of the State of Maryland, and who was injured August 5, 1924, while engaged in military service. According to the record in this case, Corporal Merrill was required to drill one night a week for forty-eight weeks, and received therefor \$1.40 for each drill night, and was also required to assemble in camp with his unit for fifteen days' training, for which he received \$1.40 for each day. The rate of \$1.40, we understand to be the established pay for his grade. The total amount therefore that Corporal Merrill could earn as Corporal in the organized militia of the State was \$88.20, during any one year. It would seem, therefore, that his average weekly wage was $1/52$ of this amount, or \$1.70.

Officers and enlisted men of the organized militia of the State come within the operation and effect of the Workmen's Compensation Law by virtue of Chapter 332 of the Acts of 1924, which provides in part, "in time of peace and while engaged in military service, all officers and enlisted men of the organized militia of the State of Maryland shall be deemed workmen of the State for wages." * * *

Average weekly wages are defined in Section 65 of Article 101 of the Annotated Code, 1924, as follows: "Average weekly wages for the purpose of this Article shall be taken to mean the average weekly wages earned by an employee when working on full time."

According to the record which has been submitted to me, Corporal Merrill when working on full time would earn during the year \$88.20, as indicated above. Moreover, Section 26 of Article 65 of the Annotated Code, 1924, title "Militia," provides for drill and instruction of not less than forty-eight times each year and for fifteen days in training each year. The provision in the Code defining the term "average weekly wage," and the section in Article 65, to which reference has been made, confirms me in my opinion.

Moreover, our Court of Appeals in the case of *Picanardi vs. Emerson Hotel Company*, 135 Md. 92, has decided that the terms "wages" and "earnings" are not synonymous terms, and that the latter is a much more comprehensive term, and that it would be unreasonable to hold that the premiums and rates of insurance from which the State Accident Fund might be called upon to pay losses were to be calculated upon a basis which was more narrow than that adopted for allowance of compensation. This case, therefore, settles and decides the claim of Corporal Merrill adversely to him, that he is entitled to have his earnings on a farm, or in any capacity other than the organized militia, considered by your Commission in fixing his average weekly wage in determining the compensation that may be due him for an injury sustained by him in the military service.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

STATE BOARD OF LABOR.

STATE BOARD OF LABOR — APPEARANCE OF CHILDREN ON
AMATEUR NIGHT.

November 17, 1925.

Dr. J. Knox Insley,
Commissioner of Labor and Statistics,
St. Paul and Saratoga Sts.,
Baltimore, Md.

DEAR DR. INSLEY: Please pardon my delay in answering your letter of November 4th, in regard to the appearance of children under the age of sixteen upon the stage of theaters and moving picture establishments on so-called amateur nights.

I cannot help but feel that the appearance of such children on the stage under the conditions above set forth is a violation of Section 8 of Article 100 of the Annotated Code of Maryland. It is clear that the intent of this Section is to regulate the health and morals of such children and as an incident thereto prevent their appearance at the professional theater, exhibition or show, and that the compensation which they may or may not receive does not enter into the question. It, therefore, follows that entertainments such as school plays, Sunday School plays, etc., which in themselves are of amateur nature, although an admission may be charged, are not within the above Section.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

STATE BOARD OF MOTION PICTURE CENSORS.
STATE BOARD OF MOTION PICTURE CENSORS—CANNOT RE-
FUND MONEY PAID FOR CERTIFICATE OF APPROVAL.

July 2, 1925.

*Miss Marie W. Presstman,
211 N. Calvert Street,
Baltimore, Md.*

DEAR MISS PRESSTMAN: I have your letter of June 29th, in which you state that the Board received from the Art Film Service Company on June 22nd, 1925, \$27.00, to cover the fee for duplicate reels which were never issued to the applicant, and that subsequently the Art Film Company was adjudicated a bankrupt, and the Receiver has requested a refund of the sum so paid to your Board. You ask for an opinion as to your authority to make this refund.

Section 11 of Article 66-A, of the Code of Public General Laws of Maryland, fixes the fee for duplicate prints and provides, that the "Board shall account for and pay all fees received by it into the State Treasury." I think this provision of law is mandatory upon your board, and that you are without authority to make the refund requested.

The Receiver in Bankruptcy is, of course, entitled to the duplicate prints if they are of any use to the bankrupt estate, but for the reasons above stated it is clear that he cannot properly demand the refund.

Trusting that the above will satisfactorily answer your inquiry, I am,

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

STATE BOARD OF MOTION PICTURE CENSORS—HAS NO POWER
TO ISSUE PASSES TO MOVING PICTURE THEATERS EX-
CEPT TO EMPLOYEES OF THE BOARD.

July 2, 1925.

Dr. George Heller,
Motion Picture Board,
211 N. Calvert Street,
Baltimore, Md.

DEAR DR. HELLER: In your letter of June 22nd, you state that the inspectors of the Comptroller's Office have requested your Board to issue passes to the Chief Inspector and his assistants, to all moving picture parlors to facilitate their work of inspecting for State licenses. You request an opinion as to whether or not it is necessary for your Board to issue these passes.

Section 14 of Article 66-A of the Code of Public General Laws, authorized the Board of Motion Picture Censors, or any employee of the Board, to enter any place where films or views are exhibited, but further than this I find no authority in the law for the issuance of passes by your Board to motion picture parlors. Inasmuch as the inspectors of the Treasury Department of the State are in no sense employees of the State Board of Motion Picture Censors, I think it is clear that you are without authority to issue the passes requested.

I think also that under the provisions of Section 7 of Article 56 of the Code of Public General Laws, these inspectors are authorized to enter the motion picture parlors when the performance of their duties necessitates such entry, and in view of the authority there conferred upon the inspectors, I think it is clear that even though your Board possessed the authority, there is no necessity for the issuance of the passes requested.

Trusting that the above will satisfactorily answer your inquiry, I am

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

STATE BOARD OF EXAMINERS IN OPTOMETRY.

STATE BOARD OF EXAMINERS IN OPTOMETRY — POWERS TO
REVOKE LICENSES GENERALLY.

April 4, 1925.

*Mr. J. Fred Andreae, Secretary,
Board of Examiners in Optometry,
Lexington Building,
City.*

DEAR SIR: In your letter of March 25th, you state that the Board of Examiners in optometry has had complaints of solicitors being employed by persons who are not registered optometrists, but who in turn employ a registered optometrist to examine the eyes of the patients so obtained. You request an opinion as to whether or not the Board has the power to revoke the license of any optometrist so employed.

The obvious purpose of Section 264 of Chapter 231 of the Acts of Assembly of 1922 is to prevent the solicitation of patients for registered optometrists, and it would seem to be a violation of the Act, authorizing revocation by the Board, where solicitors are employed for the specific purpose of obtaining business for a particular optometrist whether such solicitors be employed by the optometrist in question or by any other person.

The difficulty arises in the question which you present in cases of solicitors who are employed by department stores and jewelry establishments where the principal purpose of the solicitor is to procure purchasers of merchandise or jewelry, and the examination of the eyes by an optometrist employed by the same establishment, is merely incidental to this general business. It is not believed that it was intended by the Legislature to prevent the employment of registered optometrists at a fixed salary in such establishments. An analogy arises where lawyers are employed by

large business establishments, such as trust companies, to execute professional business which has been solicited. No lawyer employed by such a company has ever been disbarred in this State, although the law prohibits the solicitation of professional business by members of the bar either directly or indirectly.

I think it would be a clear violation of the law for a person to employ an optometrist and at the same time employ solicitors for the sole purpose of obtaining business for that optometrist, and the Board would in such case be justified in revoking the license of the optometrist in question.

On the other hand, I do not believe your board would be justified in revoking the license of an optometrist employed by one of the large department stores or jewelry stores in the City where the examination of eyes by the optometrist is merely incidental to the general business carried on by the employer.

In conclusion, I would say that the decision of the question presented by you is committed to the discretion of the Board of Examiners in Optometry and so long as that Board exercises its discretion fairly and reasonably, its action will be upheld by the courts.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

STATE PURCHASING BUREAU.

STATE PURCHASING BUREAU—VALIDITY OF CONTRACT WITH
LOWEST BIDDER, TRADING AS CO-OPERATIVE ASSOCIATION,
IN VIOLATION OF "CO-OPERATIVE ASSOCIATION
LAW."

February 9, 1925.

*Walter N. Kirkman, Esq.,
State Purchasing Agent,
22 Light Street, Baltimore, Md.*

DEAR MR. KIRKMAN: I am in receipt of your letter of the 5th inst., in which you inquire as to the validity of a contract for the purchase of certain supplies, made by your Bureau, after competitive bidding, with one who trades as a Co-operative Association.

You state: (1) that the successful bidder made the lowest bid; (2) that in your dealings with him over a period of ten years, you have found that he has always furnished a satisfactory product; (3) that he is a responsible source of supply; (4) that he is to execute a bond covering the value of the supplies to be furnished by him, and as the delivery of the same is not to be made until the middle of March, there is ample time for your bureau to seek other sources of supply in the event he is prevented from fulfilling his contract.

You state further that the next lowest bidder has lodged a complaint against the placing of this order on the ground that there is no such concern as the Co-operative Association in question, and for the further reason that the action of the successful bidder in designating himself as a Co-operative Association violates Chapter 197 of the Acts of 1922.

I understand that it is true that there is no such association as the Co-operative Association in question, but that

the successful bidder uses this title as a trade name and has long been using the same for over ten years.

Under the circumstances above set forth, it is my opinion that it is perfectly proper to award this contract to the lowest bidder, no matter what trade name or title he may use. Although the contract was awarded to him as agent for the Co-operative Association, he is, in reality, the Association, and you know no one else in the matter. The contract is, therefore, valid as one with him as an individual.

It is true that Section 496a of Chapter 197 of the Acts of 1922 provides that "no person, partnership, corporation or association *hereafter* organized in this State shall be entitled to use the term 'Co-operative,' as a part of its corporate or business name or title, unless it has complied with the provisions of this Act," but this is merely a penal provision, for the violation of which fine and imprisonment may be imposed under sub-section 4 of said Section 496. It in no way affects the validity of a contract made with one who violates it, and even if it did, it would not apply to the successful bidder in this case, because he used this name long before the law went into effect and the law is, by its terms, prospective only, and could not validly be given a retrospective operation.

It is my opinion that in the light of the facts in this case, it is incumbent upon you to carry out the contract you have made, and thereby give the State the benefit of the lowest bid.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

STATE PURCHASING BUREAU—DEALINGS WITH MEMBER OF
BOARD OF VISITORS OF A STATE INSTITUTION—REMEDY
OF BUREAU IN CASE OF NON-DELIVERY OF GOODS CON-
TRACTED FOR.

May 23rd, 1925.

*Walter N. Kirkman, Esq.,
State Purchasing Agent,
c/o Central Purchasing Bureau,
22 Light Street,
Baltimore, Md.*

DEAR MR. KIRKMAN: In your letter of the 21st inst., you ask my opinion on the following two subjects:

1. Is it unlawful for your Bureau to make contracts with, or purchases from, a member of the Board of Visitors of a State institution, or from a firm, a member of which, or a corporation, an officer or stockholder of which, is a member of the Board of Visitors of a State institution?

It is true that Section 534 of Article 27 of Bagby's Annotated Code (1924) provides that:

"Every person having any official connection, either as officer, agent, trustee or member of the board of visitors of any public institution, or private institution, supported in whole or in part by money appropriated by the State of Maryland, who shall, after April 6th, 1906, become directly or indirectly concerned or interested, for profit, in any contract, purchase or sale of anything for, by, or on account of such institution, shall be deemed guilty of a misdemeanor; and any person so offending shall upon conviction in any Court of this State, be immediately dismissed from employment or forfeit his place as such officer, agent, trustee or member of the board of visitors, and be subject to a fine not to exceed five hundred (\$500) dollars, to be recovered as other fines are, or imprisoned for a term in the Maryland Home of Correction not to exceed one year."

But when the Purchasing Bureau was created by Chapter 184 of the Acts of 1920, its transactions were specifically excepted from the operation and effect of the above quoted Section. By Section 3 of Article 78 of the Code of 1924

(said Article being a codification of the provisions of the law relating to the Purchasing Bureau), it is provided that:

"No contract or purchase made by the Central Purchasing Bureau or under its authority shall constitute such a contract, purchase or sale as to subject the party or parties thereto to the penalties provided by Section 534 of Article 27 of the Annotated Code of Maryland."

2. What remedies has your Bureau in the event a contractor fails to make delivery of the goods in accordance with the terms of the contract?

You enclose copy of a "guarantee" which you require to be submitted with every proposal to furnish supplies to State agencies. This "guarantee" seems to be sufficient to permit your Bureau, in the event of the failure of the contractor to comply with the terms of his contract, to buy the needed supplies in the open market and charge the contractor with the difference between the contract price and the market or current price of the goods at the time of the breach.

But, even in the absence of the specific agreement, embodied in the said "guarantee," the law provides that in the event the seller wrongfully neglects or refuses to deliver the goods, the buyer may maintain an action against the seller for damages for non-delivery.

"The measure of damages is the loss directly and naturally resulting, in the ordinary course of events, from the seller's breach of contract.

"Where there is available market for the goods in question, the measure of damages, in the absence of special circumstances, showing approximate damages of a greater amount, is the difference between the contract price and the market or current price of the goods at the time or times when they ought to have been delivered; or, if no time was fixed, then at the time of the refusal to deliver."

Art. 83, Sec. 88.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

STATE BOARD OF UNDERTAKERS.

STATE BOARD OF UNDERTAKERS—REQUIRED TO ACCOUNT TO
COMPTROLLER MONTHLY AND PAY RECEIPTS TO STATE
TREASURER, UNLESS EXCUSED BY COMPTROLLER, WITH
APPROVAL OF GOVERNOR.

December 28, 1925.

*H. H. Housman, Esq.,
State Board of Undertakers,
11 S. Gay Street,
Baltimore, Md.*

DEAR MR. HOUSMAN: I have your letter of December 21st, enclosing correspondence between yourself and the State Comptroller with respect to the monies which have been collected by the Board and are now in its custody. In answer to your inquiry I would say that it is the duty of the Board to comply with the request of the Comptroller unless the Comptroller with the approval of the Governor, will exempt your Board from the provisions of Section 7 of Part 2 of Chapter 29 of the Acts of Assembly of 1922, commonly known as the Re-Organization Bill. This section reads as follows:

“Every department, institution or other governmental agency shall monthly account for to the Comptroller and pay to the Treasurer all fees, revenues, collections and income of every kind received by it, and the same shall be credited by the Comptroller, in a special account, to such department, institution or governmental agency, unless a special account is already by law prescribed for such receipts; and such receipts shall become available to and be used by such department, institution or governmental agency, only upon warrant of the Comptroller, in accordance with law, and if not so used, or if not otherwise dedicated by law, the same shall revert in due course to the general treasury; provided, however, that the Comptroller,

with the approval of the Governor, shall have the power and it shall be his duty to exempt from the operation of this section such fees, revenues, collections and income of any department, institution or other governmental agency as he may, from time to time, determine should, in the public interest, be so exempted. In all such cases, a record of such exemptions, showing the reasons therefor, shall be kept in the Comptroller's office, and shall be open to public inspection. The Comptroller shall have the power, from time to time, with the Governor's approval, to cancel such exemptions."

The Comptroller is, in all probability, adverse to granting an exemption to your Board, otherwise he would not have addressed to you the original request of October 16th, 1925. However, in view of the fact that he did not answer your letter of October 28th, I think it would be well for you, or a committee to be appointed by the Board, to have a talk with him for the purpose of discussing your claim for exemption if the Board desires to make such claim, and also with the further view of reaching some understanding with respect to interest.

I feel sure the Comptroller will not wish to impose any hardships upon your Board, and that he will be glad to discuss the matter with you in an effort to reach a conclusion that will be satisfactory to all concerned and to the public welfare.

With kind regards, I am,

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

STATE BOARD OF UNDERTAKERS—CORPORATION ENGAGED IN
UNDERTAKING BUSINESS REQUIRED TO PAY LICENSE FEE
OF \$5.00 PER ANNUM IN ADDITION TO FEE OF OFFICERS
AND EMPLOYEES.

October 9th, 1925.

*H. H. Housman, Jr., Esq.,
Secretary, State Board of Undertakers,
11 S. Gay Street,
Baltimore, Md.*

DEAR SIR: In your letter of October 3rd, you state that Harry E. Hughes and Milton W. Jones, who hold individual undertakers' licenses from the State Board of Undertakers have recently formed a corporation, and request an opinion as to the fee which it would be proper to charge for the issuance of a license to the corporation.

If the officers and employees of the corporation, whose duties engage them in the actual preparation for burial and burial of dead human bodies, are licensed, I think the corporation should be treated in the same manner as corporations which were in business at the time of the passage of the Act of 1924, and that the annual license fee of \$5.00 is the proper charge. Should the corporation desire to have any additional officers or employees examined by the Board, it would be necessary for each of said employees to pay an examination fee of \$25.00 as provided by Section 236A of Chapter 575 of the Acts of 1924.

Trusting that the above will satisfactorily answer your inquiry, and with kind regards, I am

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

STATE BOARD OF UNDERTAKERS — REQUIRED TO ISSUE RE-
NEWAL LICENSES WHEN APPLIED FOR.

June 19, 1925.

*Mr. H. H. Housman, Secretary,
State Board of Undertakers,
11 S. Gay Street,
Baltimore, Md.*

DEAR MR. HOUSMAN: Several days ago, you requested an opinion as to whether or not it is the duty of the State Board of Undertakers to issue renewal licenses to undertakers, who do not apply for the same until after May 1, when the licenses for the previous year expire.

Section 296 of Article 43 of the Code of Public General Laws deals with the question of renewal licenses and provides, among other things, "and such licenses may be renewed annually upon the payment to the State Board of Undertakers of Maryland of an annual renewal license fee of \$5.00." It will be noted that no time is provided within which the application for renewal must be filed and in the opinion of the Attorney General, it is the duty of the Board to grant renewals when applied for.

It should be borne in mind, of course, that all persons who carry on business after the expiration of their licenses and before obtaining a renewal, violate the law and are subject to prosecution, and the penalties provided by Section 304 of the same article. We do not think it is within the authority of the Board to impose the additional penalty of denying to the licensee his right to a renewal.

I have not overlooked Section 1 of your by-laws which are printed at the bottom of the formal application, and which require applications for renewal to be filed in writing at least fifteen (15) days prior to the first day in May in every year. It is my opinion that this by-law is void and of no effect, since it requires a licensee to file his application in a manner that is not authorized by the law.

I am returning the application of W. R. Pumphrey and Frederick A. Cole, which you left with me.

Trusting that the above will satisfactorily answer your inquiry and with kind regards, I am

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

STATE BOARD OF UNDERTAKERS—REGISTRARS OF STATE DEPARTMENT OF HEALTH CANNOT REFUSE TO ISSUE BURIAL PERMITS TO PERSONS WHO ARE NOT LICENSED UNDERTAKERS.

May 15, 1925.

*H. H. Housman, Esq.,
Secretary, State Board of Undertakers,
11 S. Gay Street,
Baltimore, Md.*

DEAR MR. HOUSMAN: In your letter of May 4th, you request an opinion as to whether or not the local registrars of the State Department of Health in the Counties of Maryland are prohibited from issuing burial permits to any except duly licensed undertakers.

Chapter 575 of the Acts of 1924 prohibits persons from engaging in or holding themselves out as engaging in the undertaking business, and penalizes all such persons who do not comply with the provisions of that Act. The Act also provides a penalty for any superintendent or person in charge of any cemetery who shall permit any person or other than a duly licensed undertaker to deliver for burial or cremation the body of a deceased person, but I find nothing in Chapter 575 or in any other provisions of the laws of Maryland which prohibits the local registrar from issuing burial permits to persons who are not licensed undertakers.

Inasmuch as the Act authorizes the punishment of both undertakers and persons in charge of the cemetery who violate its provisions, it seems to me that there need be no fear that the law will become a dead letter since its provisions do not extend to the local registrars. These regis-

trars are doubtless called upon to issue burial permits in many cases where no undertaker has been engaged, and it was probably for this reason that the legislature did not extend the provisions of the law to these officials.

Trusting that the above will satisfactorily answer your inquiry, and with kind regards, I am

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

STATE BOARD OF UNDERTAKERS—WIDOW OF LICENSED UNDERTAKER CANNOT CARRY ON DECEASED HUSBAND'S BUSINESS IN HIS NAME, WITHOUT TAKING EXAMINATION.

April 23rd, 1925.

*H. H. Housman, Jr., Esq., Secretary,
State Board of Undertakers of Maryland,
11 South Gay Street,
Baltimore, Md.*

DEAR MR. HOUSMAN: In your letter of April 16th, you state that Charles S. Zurhorst, a licensed undertaker, died on January 21st, 1925; that his widow desires to continue the business under her husband's name and has applied to the Board for a license so to do. You request an opinion as to whether or not the Board can grant Mrs. Zurhorst an undertaker's license to continue the business of her late husband, provided she employs none but licensed undertakers and embalmers to do the practical work connected with the business.

Chapter 575 of the Acts of 1924 prohibits any person from holding himself or herself out as engaging in the undertaking business in this State without having complied with the provisions of that Act. Mrs. Zurhorst must, therefore, apply for and take the examination provided by Section 236A of the Act of 1924 before she can obtain a license in her name to carry on the business. The license which

the State Board of Undertakers grants under the provisions of this Act of the Assembly is personal and cannot be assigned or transferred. Upon the death of the licensee, the license becomes void, and the heir, widow or personal representative succeeds to no rights thereunder.

Under the provisions of Section 236A of the Act, a corporation may be licensed to carry on the undertaking business, provided the officers and employees of the corporation whose duties engage them in the actual care, preparation and burial, etc., are licensed. I think, therefore, that Mrs. Zurhorst might properly incorporate her business in the name of her husband, and if the officers and employees of the corporation who actually do the work, which is required to be licensed, it would be proper to license the corporation.

Trusting that the above will satisfactorily answer your question, I am, with kind regards,

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

STATE ROADS.

STATE ROADS—TERMINUS OF STATE ROAD AT HOLLAND POINT.

March 3rd, 1925.

*John N. Mackall, Esq.,
Chairman, State Roads Commission,
Baltimore, Md.*

DEAR MR. MACKALL: Your letter of the 27th of February, in reference to the State road at Holland Point in Calvert County with attached plat, has been referred to me.

In this letter you request an opinion as to the rights of the State between the point where the road ends at Holland Point and navigable water, the State having acquired title to part of the terminus of this road by prescription and part by purchase.

Section 48 of Article 54 of the Code of Public General Laws, title "Land Office" and Section 21 of Article 98 of said laws, title, "riparian rights," provides as follows:

48. "The proprietor of land bounding on any of the navigable waters of this State shall be entitled to the exclusive right of making improvements into the waters in front of his said land; such improvements and other accretions as above provided for shall pass to the successive owners of the land to which they are attached, as incident to their respective estates. But no such improvement shall be so made as to interfere with the navigation of the stream of water into which the said improvement is made.

21. "Any person owning real estate in fee simple, or having therein an estate for years renewable forever on any of the navigable waters of this State may construct wharves thereon and extend the same such a distance into the stream as may be required to admit the safe approach thereto of any vessel navigating said waters; provided said

wharves be not extended so as to interfere with the fishing or navigation of said waters.”

I am of the opinion that these two sections are sufficient to support your contention, and that, therefore, the adjoining riparian owners have no right to build fences across the front of the land held by you at this point acquired either by prescription or purchase.

I am, therefore, of the opinion that you would be justified in removing these obstructions without notifying any one.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

STATE ROADS—PER DIEM OF JURY IN APPEALS IN CONDEMNATION CASES.

March 19, 1925.

*John N. Mackall, Esq.,
State Roads Commission,
Garrett Building,
Baltimore, Md.*

DEAR MR. MACKALL: Your letter of the 11th instant in reference to the court costs in the case of Hardesty vs. State, is received, also Mr. Melvin's letter which accompanied the bill. This case was tried under the provisions of Chapter 501 of the Acts of 1910, which provides that in case the land owner does not accept the award made by the State Roads Commission he has the right to appeal to the Circuit Court. This Act provides in part as follows:

“The appellant shall be entitled to have the amount of his damages or benefits assessed by a jury, and shall have the right to appeal to the Court of Appeals on any question of law involved. At every such inquisition the State shall proceed as if party plaintiff, and the costs in the Circuit Court shall be paid by the State.”

I do not think that the above provision was intended to include the per diem of the Jury, as in no case tried before a Circuit Court is the per diem of a Jury taxed as part of the costs.

Hoping this is sufficient answer to your inquiry, I remain,

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

STATE ROADS—JURISDICTION OF SEWERAGE COMMISSIONERS
OF METROPOLITAN DISTRICT OF BALTIMORE COUNTY
OVER STATE HIGHWAYS.

June 17, 1924.

*John N. Mackall, Esq.,
Chairman, State Roads Commission,
Garrett Building,
Baltimore, Md.*

DEAR MR. MACKALL: Your letter of the 3rd inst., asking for a construction of Section 15 of Chapter 539 of the Acts of 1924, in so far as the same applies to State Roads, is received.

This section states in its beginning that the Sewerage Commissioners "may enter upon any State or county street, road or alley or any public highway for the purpose of installing, maintaining and operating the water supply, etc.," upon the receipt of a permit from the public authority having control thereof.

In the case of state roads this clearly means that your office, as the State Roads Commission, has exclusive jurisdiction over these roads. Further on in the section it is stated that in case the Chief Engineer of the Metropolitan District and the Roads Engineer of Baltimore County cannot agree, then the County Commissioners of Baltimore County shall decide and their decision shall be final. It is evident that this latter part of the section, applying to

cases where the Commissioners and the authorities in charge of the roads cannot agree, does not apply to State highways, because it refers only to the County Road Engineer of Baltimore County and the County Commissioners of said county, neither of whom have any jurisdiction over state roads.

In view of the fact that the section in question does not give the Sewerage Commissioners the right to interfere with the roads without the consent of the authorities in charge, and the further fact that no provision is made as to State highways when said authorities and the Commissioners cannot agree, my opinion is that Section 37-A of Article 91 of the Code of Public General Laws (which is Section 32E-A of Chapter 371 of the Acts of 1912) will apply in all cases where the Sewerage Commissioners created under the Act in question desire to interfere with any of the State highways within their jurisdiction.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

STATE ROADS—PLACING OF BROKEN GLASS ON STATE ROADS
TO PROTECT WORKMEN.

July 16, 1925.

*John N. Mackall, Esq.,
State Roads Commission,
Garrett Building,
Baltimore, Md.*

DEAR MR. MACKALL: I am in receipt of your favor of the 13th inst., requesting me to advise you whether under the provisions of Section 155 of the Motor Vehicle Law it would be considered a violation of that Section to place boards on the road and place bottles upon the boards while painting the white traffic lines on the centers of roads on top of hills and the center of curves, or if it would be a violation to erect temporary standards along the white paint and string barbed wire on this.

In reply to your inquiry will say that the section of the law to which you refer provides in part as follows: "No person shall throw or place, or cause to be thrown or to be placed, on or upon any highway or bridge, any tacks, nails, wire, scrap, metal, glass, crockery or other substance injurious to the feet of persons or animals, or to the tires or wheels of vehicles including motor vehicles." I think this provision is binding upon everyone, even those engaged in repair work or painting white traffic lines, and of course to place boards on the road and to place bottles on the boards would not be a very ingenious method of relieving your employees of the consequences for violating the above section, and I do not believe you would be justified in erecting temporary standards along the white paint and stringing barbed wires on the standards.

It is very evident from your statement that some protection should be given to the workmen who are engaged in this character of work, because as hereinbefore stated, it is only on the tops of hills and curves that the white traffic lines are painted, but I would advise you to adopt some other method of protection than the use of glass or barbed wire.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

STATE ROADS—VENDORS OF MERCHANDISE ALONG ANNAPO-
LIS BOULEVARD.

August 20, 1925.

John N. Mackall, Esq.,
Chairman, State Roads Commission,
Baltimore, Md.

DEAR MR. MACKALL: Your letter of the 17th inst., in reference to the vendors of merchandise along the Annapolis Boulevard is received.

I am afraid if you erect a notice as indicated in your letter, that it might make you personally liable to the ven-

dors who are affected. I would suggest that you erect notices to the automobilists requesting them, in view of the width of the road and the large amount of traveling thereon, not to stop their cars unless they go far enough to the side of the road to allow traffic to pass along the road in both directions. I believe this would accomplish the result you desire, and at the same time not make you in any way liable.

The vendors who have complied with your request could use this as a source of advertisement by putting a notice in front of their stands to the effect that in compliance with your request, they have made arrangements for cars to park off the road while making purchases from them.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

TAXATION.

TAXATION — COLLATERAL INHERITANCE TAX — PROCEDURE
FOR COLLECTION WHEN ADMINISTRATION IS PENDING
IN OTHER STATE.

February 3, 1925.

Honorable Perrie E. Waters,
Register of Wills for Montgomery County,
Rockville, Md.

DEAR MR. WATERS: I have your letter of January 21st enclosing certified copy of the last will and testament of Mr. Hugh Wallis. We note that Mr. Wallis was a resident of Wheaton, Montgomery County, and that he died at his home in that county where he had lived for several years.

It appears that the will has been probated in Washington, and the executors apparently intend to administer the estate in that jurisdiction. Approximately \$100,000 of the estate passes under the will to collaterals within the meaning of the Inheritance Tax Law of this State, and you request an opinion as to whether the estate should not properly be administered in the Orphans' Court for your county.

It is my opinion that that portion of the estate of Mr. Wallis which passes to collaterals is undoubtedly subject to the collateral inheritance tax imposed by Section 120 of Article 81, of the Code of Public General Laws of Maryland which, as you know, fixes the rate at 5%. Under the provisions of Section 139 of the same Article, the Orphans' Court of your county is authorized to issue a summons for the parties entitled to administration to show cause why they do not administer, and by Section 140 it is provided that if the parties entitled do not administer within a reasonable time to be fixed by the said Court, administration shall be granted to such person as the Court may deem proper..

I would suggest that the Orphans' Court proceed in accordance with the provisions of the law above referred to which are ample to secure the administration of the estate in Maryland, and also of the collection of the collateral inheritance tax to which the State is rightfully entitled.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

TAXATION—COLLATERAL INHERITANCE TAX—PAYABLE ON
GROUND RENTS IN BALTIMORE CITY OWNED BY A NON-
RESIDENT.

February 16, 1925.

*Honorable Edwin R. Downs,
Register of Wills for Baltimore City,
Baltimore, Md.*

MY DEAR DOCTOR DOWNS: With your letter of January 22nd in regard to the estate of Laura E. Fulton, you enclosed a lengthy communication from Fulton Lewis, Esq., of Washington, D. C., in which he questions the right of the State of Maryland to impose a collateral inheritance tax upon ground rents owned by the said Laura E. Fulton, which are disposed of to collaterals by her last will and testament, a copy of which you also forwarded to this office on January 24th.

I have carefully considered the letter of Mr. Lewis, but cannot adopt his contentions. The ground rents in question are property within the State of Maryland within the meaning of Section 120 of Article 81 of the Code of Public General Laws, and the legal title to them cannot be alienated or transferred except upon compliance with the laws of this State. Mr. Lewis apparently misinterprets the meaning of the words "being in this State." These words relate to the property and not to the testator. I think there

can be no doubt that the State of Maryland is entitled to the collateral inheritance tax at the rate of 5% on the full value of such rents as pass under the will to collaterals.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

TAXATION—COLLATERAL INHERITANCE TAX—WHERE WILL GIVES LIFE ESTATE TO WIFE WITH REMAINDER TO COLLATERAL AND COLLATERALS PAY NO TAX UNTIL DEATH OF LIFE TENANT, THE WHOLE ESTATE IS SUBJECT TO TAXATION AT THE VALUE AT TIME OF DISTRIBUTION.

February 18, 1925.

Mr. William T. Bishop,
Register of Wills,
Centreville, Md.

DEAR MR. BISHOP: I have your letter of February 13th, in which you state that William C. Palmatary died some years ago, leaving a last will by which he devised certain land to his wife for life, provided that after her death the land should be sold by his executors and the proceeds distributed to certain collateral relatives. You further state that the wife is now dead and that the land was not appraised for the purpose of ascertaining the collateral inheritance tax, during her life. You ask for an opinion as to the method of computing the tax to which the State is entitled.

The answer to your inquiry is found in the provisions of Section 134 of Article 81 of the Code of Public General Laws. The collateral relatives under the provisions of this Section could have diminished the amount of tax required to be paid by them, by having the property appraised during the lifetime of the life tenant. Had this been done they would have been required to pay the tax on the value of the reversionary interest alone, which would have been the full value of the property less the value of the life in-

terest. The provisions of the section in question are plain, however, that where there is no payment during the term of the life tenant, the tax is payable on the full value of the estate after the death of such life tenant.

It was held by the Court of Appeals in *Fisher vs. State*, 106 Md. 117, that the collateral inheritance tax is upon the value of the property at the time it is transferred to the beneficiary. In this estate the direction of a sale operates to convert the real estate into personal property, and the tax should be computed on the shares which are distributed to the various collaterals after deduction of the usual expenses.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General*.

TAXATION—SITUS OF BUSES OWNED BY NON-RESIDENT AND OPERATED OVER HIGHWAYS OF MARYLAND IN INTER-STATE COMMERCE, DOMICILE OF OWNER.

March 2, 1925.

Jesse O. Snyder, Esq.,
Attorney-at-Law,
Hagerstown, Md.

DEAR SIR: I am in receipt of your letter of the 25th inst., in which you ask for an opinion as to the right of Washington County to tax jitney buses owned by residents of Pennsylvania who have been granted permission by the Public Service Commission of Maryland to operate over the roads of Maryland.

You refer to the case of a man by the name of Petre, who is a resident of Waynesboro, Pennsylvania. He owns a jitney bus, which he operates between Waynesboro, Pennsylvania, and Hagerstown, Maryland. He is assessed for it and pays taxes on it in Pennsylvania. He makes three round trips daily between the two points. He uses three

miles of Pennsylvania road and nine miles of the Maryland Road in this transportation business. You state that the County Commissioners of Washington County, Maryland, take the position that his business is principally in Maryland, and that he should pay taxes in Maryland on the bus, even though he pays on it in Pennsylvania, where he lives.

It is my opinion that this bus is not taxable. As a general rule, the situs of personal property for purposes of taxation is the domicile of the owner. It is well settled, however, that the State where tangible personal property is more or less permanently located has the power to tax it, although the owner resides out of the State, regardless of whether it has been taxed for the same period at the domicile of the owner, provided there is statutory authority for taxing such property, and provided further that such tax does not constitute an unlawful interference with interstate commerce.

In my opinion, the bus, in the case you mention, is not permanently located in this State. It is only temporarily here while engaged in lawful trade and commerce. For this reason, I believe that, at least in the absence of positive enactment (and I have been unable to find any), its situs for purposes of taxation is in Pennsylvania, the domicile of its owner.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

TAXATION—BALTIMORE AND OHIO R. R. COMPANY MUST
REPORT ITS ROLLING STOCK.

March 26, 1925.

Hon. J. Enos Ray,
State Tax Commission,
Union Trust Building,
Baltimore, Md.

DEAR SIR: In your letter of the 6th instant, you ask whether the Baltimore and Ohio Railroad Company is sub-

ject to the requirements of Chapter 293 of the Acts of 1924, which provides for the valuation and assessment for County and City taxation on rolling stock of steam railroads.

"All rolling stock of all railroads which are subject to the laws of this State relating to the taxation of railroad companies" are declared to be assessable and taxable for county and Baltimore City taxation, and all such railroads are required on or before the 15th day of March in each and every year to report under oath of one of its officers, a complete and detailed return of all such rolling stock in the manner in said act more particularly set forth.

It is true that "it has been frequently held by our Court of Appeals that the charter of the Baltimore and Ohio Railroad Company granted in 1826, constituted a contract between the Railroad Company and the State, and such a contract that the exemption from taxation conferred by Section 18 of that Act was not one which it was within the power of the Legislature to repeal or modify without the assent of the Railroad Company." *State vs. B. & O. R. R. Co.*, 127 Md. 434-437.

However, it is also well established that said tax exemption is not applicable to properties and investments held and owned under franchises granted, subsequent to the Act of 1826, and upon which no exemption from taxation was engrafted. *State vs. B. & O. R. R. Co.*, 49-80.

Furthermore, by the Act of 1878, Chapter 155, which was "an act to adjust and settle finally by an agreement all pending controversies between the B. & O. R. R. Co. and the State of Maryland by subjecting the franchises and property of said Company within this State to taxation for State purposes to a certain extent," it was specifically provided that "nothing in this Act shall be construed as exempting any property or franchises of the said Railroad Company from taxation for county and municipal purposes, which by existing laws and the decisions of the Court of Appeals of this State, is now held liable to taxation."

Without reviewing the several properties owned by the B. & O. R. R. Co., and the manner in which they were respectively acquired, it is impossible for me or your Commission to say whether or not they are subject to taxation,

and I am, therefore, of the opinion, that, inasmuch as they are not necessarily exempt from taxation, it is within the letter and spirit of Chapter 293 of the Acts of 1924, that the report therein provided for should be made by the B. & O. R. R. Co., so that the Commission may be able to determine from said report whether all, or any part, of the rolling stock of said Company is subject to valuation and assessment for county and Baltimore City taxation under the terms of said Act.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

TAXATION—INHERITANCE TAX — STATE MAY COLLECT ON EACH DISTRIBUTION—WHERE ESTATE IS DISTRIBUTED TO ADMINISTRATOR OF A DECEASED COLLATERAL AND BY SUCH ADMINISTRATOR DISTRIBUTED TO THE COLLATERAL KINDRED OF HIS DECEDENT TWO TAXES ARE PAYABLE.

April 8, 1925.

*Ashby Tolson, Esq.,
Knickerbocker Building,
Baltimore, Md.*

DEAR MR. TOLSON: The Attorney General has requested me to answer your inquiry as to the collateral inheritance tax in the case of Joseph H. Prudhomme, et al. vs. J. Krebs Rusk, Jr., Trustee et al., in the Circuit Court of Baltimore City.

As we understand the facts in this proceeding, Charles E. Key died intestate and an agreement was entered into between his heirs and next of kin, whereby the sum of \$40,000 was set apart for the benefit of Mary E. Key, tenant for life, and after her death the remainder to be divided equally between William A. Key, a brother of Charles E. Key, and the descendants of a sister of the said Charles E. Key. We understand further, William A. Key predeceased Mary E. Key, who is now also dead, and that the one-half of the estate to which Mary E. Key would have

been entitled had she survived the said William A. Key, is now being distributed to his administratrix, he having died intestate and without issue. You request an opinion as to whether or not the fund being distributed to the administratrix of William A. Key, is subject to a collateral inheritance tax, since the Orphans' Court will require the payment of a collateral inheritance tax by this administratrix upon distribution of the fund to the collateral next of kin of the said William A. Key.

A similar situation was considered by Governor Ritchie while he was Attorney General, in an opinion rendered by him on February 18th, 1916, and reported at page 262 of the Official Opinions of the Attorney General for that year. Attorney General Armstrong in an opinion rendered on November 10, 1921, and reported at page 534 of the Official Opinions of the Attorney General for that year also considered a similar question, and arrived at the same conclusion reached by Attorney General Ritchie. Both of these opinions hold that the State is entitled to a collateral inheritance tax upon the fund distributed to the administratrix, and a further tax upon the same fund when it is distributed to the collateral kindred of the deceased. In line with the reasoning contained in these two opinions in which the present Attorney General fully concurs, we think it is clear that the fund being distributed to the administratrix is subject to the usual collateral inheritance tax.

I am returning the copy of the account which you left with us in this matter.

Yours very truly,

WILLIS R. JONES, *Asst. Attorney General.*

TAXATION — FREIGHT LINE COMPANIES, NOT ENGAGED IN INTERSTATE COMMERCE, BUT PASSING THROUGH THE STATE IN INTERSTATE COMMERCE, REQUIRED TO REPORT GROSS EARNINGS.

April 13, 1925.

*State Tax Commission,
Union Trust Building,
Baltimore, Md.*

DEAR SIRs: In your letter of the 27th ulto., you ask whether freight line companies, operating tank cars which are not loaded or unloaded in this State, but simply pass through the State in interstate commerce, en route from one State to another, are required to make and file with your Commission a report of their gross earnings under the provisions of Chapter 676 of the Acts of 1916 (codified as Sections 192 to 197, inclusive, of Article 81 of Bagby's Annotated Code of 1924).

Said Act provides for a tax upon the property of freight line companies, as defined by Section 192, based upon the gross receipts thereof, which said tax is declared to be "in lieu of all taxes upon all property of any freight line company so paying the same" (Section 196). By Section 193 all cars of said company "used exclusively in the State or used partially within and without the State," are declared to have a situs in this State, the value of such property for the purpose of taxation to be determined, as provided by Sections 194 and 195, by treating the gross receipts from their use in both intrastate and interstate commerce as an index or measure of their value. The Act clearly covers the cars of a company operating through the State of Maryland, between points outside of the State, in the manner referred to in your letter. By Section 195 companies so operating pay to the State at the prescribed rates upon such proportion of their total gross earnings as the length of their line in this State bears to the whole length of the line over which such business is done.

The only open question, therefore, is whether the taxation of such cars amounts to an unconstitutional restraint upon interstate commerce.

In view of three recent decisions of the Supreme Court of the United States involving practically identical taxing

statutes, it is clear that there is no constitutional objection to this tax.

It has been held that a State, within which property used in interstate commerce is permanently located or commonly used, may tax it.

As well stated by Mr. Justice Van Devanter in the case of Pullman Company vs. Richardson, 261 U. S. 330, 67 L. Ed. 682: "In taxing property so situated and used a state may select and employ any appropriate means of reaching its actual or full value as part of a going concern—such as trading the gross receipts from its use in both intrastate and interstate commerce as an index or measure of its value, and if the means do not involve any discrimination against interstate commerce, and the tax amounts to no more than what would be legitimate as an ordinary tax upon the property, valued with reference to its use, the tax is not open to attack as restraining or burdening such commerce."

The provisions under which the tax was imposed in the Pullman Company case called it a property tax, specified the property subject to it and declared it to be in lieu of all other taxes on such property, and the provisions of the law were broad enough to cover property used in commerce through the State between points outside of the State. The Court, re-affirming the position taken by it in United States Express Company vs. Minnesota, 223 U. S. 335, 56 L. Ed. 459, and Cudahy Packing Company vs. Minnesota, 246 U. S. 453, 62 L. Ed. 827, held it to be a valid property tax. The Court said: "True, it is computed with special regard to the gross receipts; but this as is fairly shown, is done merely as a means of getting at the full value of the property, considering its nature and use. The tax is not claimed to be in excess of what would be legitimate as an ordinary tax on the property, valued as part of a going concern, nor to be relatively higher than the taxes on other kinds of property. There is no ground for thinking that it operates as a discrimination against interstate commerce."

In view of these decisions, it is my opinion that the company in question is required to report, and your Commis-

sion is authorized to enter an assessment on its gross receipts in the manner provided by the Act.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

TAXATION—COLLATERAL INHERITANCE TAX NOT PAYABLE
ON MORTGAGE SECURED BY REAL ESTATE SITUATED
OUTSIDE OF MARYLAND.

June 2, 1925.

*Edwin R. Downs, Esq.,
Register of Wills,
Baltimore, Md.*

DEAR MR. DOWNES: In your letter of June 1st, you state that James D. Cotter, a resident of Baltimore City, died on February 25th, 1919, and that letters on his estate were granted in the Orphans' Court of Baltimore City, and that ancillary letters of administration were also granted in Washington, D. C., where the decedent owned a mortgage secured by the pledge of the Washington real estate, to the extent of \$17,524.22. You request an opinion as to whether or not the State of Maryland is entitled to a collateral inheritance tax on the Washington estate.

It was decided by the Court of Appeals of Maryland in the case of *Helser vs. State*, 128 Md. 228, that the situs of mortgages for the purpose of imposing the collateral inheritance tax is the place where the land is located, upon which the mortgage is secured. In this case the land was situated in Maryland, while the owner of the mortgage was a non-resident of the State. It was there held that the State of Maryland was entitled to collect the inheritance tax.

In the case which you present, the mortgage was protected by the laws of the District of Columbia, where the real estate was situated, and the mortgage being an interest in that real estate which, under the Maryland rule would

be taxable in that jurisdiction, it is my opinion that the State of Maryland is not entitled to collect a tax from the fund in question.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

TAXATION—CORPORATIONS — FRANCHISE TAXES—MUST BE
PAID UNTIL DECREE OF DISTRIBUTION.

June 4th, 1925.

Albert S. Brown, Esq.,
Frederick, Maryland.

DEAR MR. BROWN: In your letter of May 13th you state that you were appointed receiver for the J. L. Bradshaw Company, a body corporate of this State, in November, 1922, by reason of its insolvency. You state that the Comptroller has forwarded to you bills for franchise taxes for the years 1922, 1923 and 1924, aggregating in the total \$250.00, and that the Court being in doubt as to whether or not the State is entitled to the franchise taxes accruing subsequent to your appointment as receiver, directed two audits to be stated, one allowing the taxes in full and the other allowing only the taxes which accrued prior to your appointment as receiver.

You further state that you have filed exceptions to the account which allows the State taxes in full, and that before passing on these exceptions, Judge Worthington requested that I be given notice thereof, and an opportunity to be heard thereon if I so desire.

I have very carefully considered the question which is raised by your exceptions, and in my opinion the State is entitled to the taxes, interest and penalties in full up to the date of the decree of court by which the corporation was dissolved. It is well settled that the appointment of receivers for a corporation does not work its dissolution. A

judicial decree to that effect is necessary. *Woodlawn vs. Wise*, 112 Md. 37; *Records vs. McKim*, 115 Md. 306; *Dietrich vs. O'Brien*, 112 Md. 485; *Chemical Bank Co. vs. Harford Deposit Co.*, 161 U. S. 1.

As the corporation thus continues to exist, its franchises likewise continue, and accordingly taxes are due notwithstanding the receivership. This has been expressly decided in the following cases: *In Re: U. S. Car. Co.*, 60 N. J. Eq. 514 (reversing 57 N. J. Eq. 357); *C. & O. Ry. Co. vs. Atl. Trust Co.*, 62 N. J. Eq. 751; *Hardin vs. Morgan*, 70 N. J. Law, 484; *Kind vs. Amer. El. Vehicle Co.*, 70 N. J. Eq. 568; *Duryea vs. Amer. Woodworking Machine Co.*, 133 Fed. Rep. 329; *Conklin vs. U. S. Shipbuilding Co.*, 148 Fed. Rep. 129.

If, after examination of the above cases, you are still of the opinion that the State is not entitled to the taxes up to the date of the decree of dissolution, I should like an opportunity to be heard in order that I may present this view to the Court. Of course, we should very much appreciate it if, after examination, you could see your way clear to concur in this opinion, and agree to a ratification of the auditor's account allowing taxes in accordance herewith.

I shall appreciate your further advice.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

TAXATION—COLLATERAL INHERITANCE TAX—NOT COLLECTIBLE ON TANGIBLE PERSONAL PROPERTY LOCATED OUTSIDE OF MARYLAND.

June 23, 1925.

T. Hughlett Henry, Esq.,
Easton, Md.

MY DEAR MR. HENRY: Your letter of June 5th, addressed to the Attorney General, has been referred to me for reply.

You state that a resident of Maryland died owning certain household effects and other articles of personal property located in the Dominion of Canada, which by his will were bequeathed to a resident of Canada who was in no way related to the deceased, and request an opinion as to whether or not the particular personal property is subject to the collateral inheritance tax imposed by the laws of Maryland.

This question was decided by the Supreme Court of the United States in the very recent case of Frick vs. Penna., decided on June 1st, 1925. In this case Frick, a resident of Pennsylvania died testate in that State, leaving tangible personal property situated in Massachusetts and New York, and the question arose as to whether or not the State of Pennsylvania could impose a collateral inheritance tax on this class of property. The Court, after citation of authorities in this case said:

"We think it follows from what we have said that the transfer of the tangible personalty in New York and Massachusetts occurred under and in virtue of the jurisdiction and laws of those States and not under the jurisdiction and laws of Pennsylvania, and therefore that Pennsylvania was without power to tax it."

In conformity with the above decision, it is the opinion of the Attorney General that the State of Maryland is not entitled to a collateral inheritance tax on the personal property mentioned in your letter.

Trusting that the above will satisfactorily answer your inquiry, and with kind regards, I am

Very truly yours,

WILLIS R. JONES, *Asst. Attorney General.*

TAXATION—DECISION OF SUPREME COURT IN FRICK VS. PENNSYLVANIA—DOES NOT AFFECT TAXATION OF INTANGIBLE PERSONALTY BY DOMICILIARY STATE.

July 21st, 1925.

Honorable J. Enos Ray,
Chairman, State Tax Commission,
Union Trust Building,
Baltimore, Maryland.

DEAR SIR: In your letter of the 20th inst., you enclose a printed circular recently issued by a banking house in this City. You ask my opinion as to the accuracy of certain statements and observations made therein with reference to a recent decision of the Supreme Court of the United States, involving the State's power of taxation.

Although not identified in the circular by name, I presume that the case referred to is that of Frick vs. Pennsylvania, decided by the Supreme Court of the United States on June 1st, 1925 (Nos. 122, 123, 124 and 125, October Term, 1924).

Three questions are decided by this case:

1. The well established principle that as respects *tangible personal property having an actual situs in a particular State*, the power to subject it to State taxation rests exclusively in that State regardless of the domicile of the owner, has been applied for the first time by the Supreme Court of the United States to embrace taxes on the transfer of property by will or intestate laws. It is perfectly clear from the facts of the case as well as the language of the opinion, that this decision was not intended to include within the operation of the rule announced, *intangible personal property*. Such property is, as heretofore, subject to taxation by the domiciliary State. Therefore, those portions of the circular which apply this decision to intangible personalty are undoubtedly incorrect.

2. In determining the clear value of an estate for inheritance tax purposes, the stock in corporations of States other than the domiciliary State are not to be included at their full value without deducting the transfer tax paid to such States in respect of those stocks.

3. The States have the power to provide by statute, that in determining the value of an estate for the purpose of computing inheritance taxes, there shall be no deduction of the estate tax paid to the United States.

If you wish, you can obtain copies of the Frick opinion from the Clerk of the Supreme Court of the United States.

Upon reading it you will find that it is by no means as revolutionary and as susceptible of furnishing means of escape from taxation as the circular which you enclosed would indicate.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

TAXATION—COLLATERAL INHERITANCE TAX—PROCEEDS OF
POLICY OF WAR RISK INSURANCE TAXABLE WHERE DIS-
TRIBUTION TAKES PLACE UNDER LAWS OF MARYLAND.

July 28, 1925.

*Hon. Edwin R. Downes,
Register of Wills,
Baltimore, Md.*

DEAR MR. DOWNS: Your letter of July 22nd, addressed to the Attorney General has been referred to me for reply. You enclose a letter addressed to you by Isaiah D. Clawson, Esq., stating that he, as administrator of the Estate of Thomas Waters, deceased, has collected from the United States Veterans Bureau, a certain sum of money which be-

came payable under a policy of War Risk Insurance, and requesting an opinion as to whether or not the sum so collected is subject to the payment of a collateral inheritance tax to the State of Maryland.

I have communicated with Mr. Clawson in regard to this matter, and from him I find that he proposes to distribute the proceeds of the above-mentioned policy to the next of kin of the deceased soldier as determined by the laws of distribution of the State of Maryland.

Section 22 of Public Act No. 242 of the 68th Congress, which was enacted for the purpose of codifying, revising and reenacting the laws relating to the Veterans' Bureau and the administration of the War Risk Insurance Act, provides that the insurance payable thereunder "shall be exempt from all taxation." Mr. Clawson contends that this provision of the law controls the question now presented for determination, and by reason of it the State is not entitled to the collateral inheritance tax.

After very careful consideration the Attorney General is unable to accept the contention of Mr. Clawson, and is of the opinion that the State is entitled to the tax at the rate of 5% on the entire fund. Waters, by directing the proceeds of the policy to be paid to his estate, elected to have the laws of this State, being that of his residence, determine for him the persons who would take the proceeds of his policy. The collateral inheritance tax is payable by the administrator, deductible from the distributive shares of the collateral distributees, and is as has been said by the Court of Appeals of this State on a number of occasions, a tax "on the privilege of succession." *Fisher vs. State*, 106 Md. 119. The privilege of taking the proceeds of the policy in question is derived by the distributees from the laws of Maryland, and since they accept the jurisdiction of this State for the purpose of deriving a benefit, it is only equitable that they should comply with its laws relating to taxation.

The provision in the Federal Act which exempts the proceeds of these policies of insurance from all taxation must

be construed to relate to Federal taxation, or at least not to prohibit State taxation where the insurance money is no longer subject to Federal jurisdiction. For illustration, were the proceeds of one of these policies used to purchase a house, the house so purchased would undoubtedly become subject to local taxation, and also were the proceeds of a policy paid to a designated beneficiary, and by him bequeathed to a collateral, certainly the exemption in the Federal Act would not protect the fund when distributed from the estate of the beneficiary named in the policy to his or her collateral distributees.

In the case under consideration the insurance money has been paid in full to the administrator of the estate of the deceased, without deduction for taxes of any kind. In this respect the Federal exemption has been recognized and applied. The administrator appointed by the Orphans' Court of Baltimore City is subject to the jurisdiction of that Court and the fund having been collected by him is likewise subject to its jurisdiction. The Federal Government has ceased to exercise dominion and control over the proceeds of the policy, and in the opinion of the Attorney General the tax laws of Maryland are now applicable to it.

Trusting that the above will satisfactorily answer your inquiry, I am,

Very truly yours,

WILLIS R. JONES, *Asst. Attorney General.*

TAXATION — COLLATERAL INHERITANCE TAX IS PAYABLE
WHERE GROSS VALUE OF ESTATE EXCEEDS \$500.00

August 19, 1925.

Honorable William J. Peach,
Register of Wills for Baltimore County,
Towson, Maryland.

DEAR SIR: In your letter of August 13th, you request an opinion as to whether or not an estate consisting of real property appraised at seven hundred and fifty (\$750.00) dollars, and subject to a mortgage of three hundred (\$300.00) dollars, and personal property amounting to two hundred and fifty-three dollars and ninety-five (\$253.95) cents, the administration account showing an overpayment of the latter to the extent of forty-eight dollars and four (\$48.04) cents, is subject to a collateral inheritance tax under the laws of this State.

The answer to your question depends upon the interpretation to be placed upon the words contained in Section 124 of Article 81 of the Code of Public General Laws, reading: "provided, that no estate which may be valued at a less sum than five hundred (\$500.00) dollars shall be subject to the tax imposed by this section." I think the word "estate" as used in the above provision of the law refers to the estate or property left by the testator and subject to the laws of descent and distribution of the State of Maryland. In the case presented by you, the Orphans' Court was required to appoint appraisers to appraise the real estate valued at seven hundred and fifty (\$750.00) dollars, subject to the mortgage and also to appraise the personal estate value at two hundred and fifty-three dollars and ninety-five (\$253.95) cents. It cannot be said, therefore, that the estate left by the testator was valued "at a less sum than five hundred (\$500.00) dollars."

Governor Ritchie while Attorney General of the State considered this same question and decided, as you will observe, by his opinion reported on page 258 of Volume I

of the Report and Official Opinions of the Attorney General for the year 1916, that the word "estate" as used in the provision of law above referred to means "gross estate" and not "net estate." I concur in the opinion of Governor Ritchie, and am of the opinion that the devisee of the real estate should pay a tax of 5% on the appraised value of the real estate which is distributed to him. If he is required to make up the overpayment of \$48.04 in the personal estate, this amount can be deducted from the net appraised value of the real estate to which he is entitled, which would leave a taxable basis of three hundred and fifty-one dollars and ninety-six (\$351.96) cents upon which the tax should be computed.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

TAXATION—COLLATERAL INHERITANCE TAX MAY BE COLLECTED AFTER SEVEN YEARS, BUT IS NOT A LIEN UPON REAL ESTATE AFTER FOUR YEARS FROM DEATH OF TESTATOR.

August 19, 1925.

Honorable H. J. Hunt III,

*Associate Judge, Orphans' Court for
Montgomery County, Rockville, Md.*

DEAR SIR: In your letter of August 7th, addressed to the Attorney General, you state that Lucinda Connell died in 1917, leaving a last will and testament, by which she devised certain real property to her step-children; that the executor named in the will closed the estate some six or seven years ago, but paid no collateral inheritance tax upon the appraised value of the real estate, and request an opinion as to whether or not first, the tax in question is now collectible, and second, if payable, whether the tax constitutes a lien upon the real estate of the decedent devised as aforesaid.

Section 136 of Article 81 of the Code of Public General Laws of Maryland imposes upon the executor the duty of collecting the collateral inheritance tax upon real estate of the decedent, and his failure to collect such a tax constitutes a breach of the duties of his office for which he and his bondsman are liable. The taxes can probably also be collected from the devisees of the real estate in an action of assumpsit "for money had and received." *Montague vs. State*, 54 Md. 481.

Section 135 of the same article provides that the collateral inheritance tax on the real estate shall be a lien on the said real estate for the period of four years from the day of the death of the decedent, who shall have died seized and possessed thereof. In view of this provision of the law, I think it is clear that inasmuch as Mrs. Connell has been dead for more than four years, the real estate is not now subject to a lien for the tax. Should a suit be brought against the devisees and result in a judgment, the judgment would, of course, automatically become a lien on the property if it is still owned by the devisees.

Undoubtedly the State is entitled to the tax on the real estate in question, and the effort to evade its payment is based upon technical grounds which should not be sustained.

I offer the suggestion that the Register of Wills call upon the executor, his bondsman and distributees for the immediate payment of the taxes due, and if this request is not complied with, and he will so inform this Department, we will be glad to institute the necessary proceeding to enforce collection.

Yours very truly,

WILLIS R. JONES, *Asst. Attorney General.*

TAXATION — COLLATERAL INHERITANCE TAX—BEQUEST TO CEMETERY COMPANY FOR PERPETUAL CARE OF TESTATOR'S GRAVE NOT TAXABLE, CONTRA WHERE BEQUEST IS FOR PERPETUAL CARE OF OLD FAMILY BURYING GROUND—BEQUEST TO CHURCH REQUIRES SANCTION OF LEGISLATURE.

August 24th, 1925.

*Honorable Robert J. McCauley,
Register of Wills,
Elkton, Maryland.*

DEAR SIR: In your letter of August 14th you state that under the will of Robert Ford Wright, The Riverview Cemetery of Wilmington, Delaware, and its successors forever, are bequeathed the sum of two hundred (\$200.00) dollars "in trust to safely invest the same and use and expend the income thereof in keeping my lot in Riverview Cemetery in good order, repair and preservation." The will also contains a bequest "To the trustees of St. Johns Episcopal Church at Kelton and their successors forever \$1,000.00 to be invested in good paying bonds and the interest to be used in keeping the old graveyard in New London Township, where the church formerly stood, in good condition, and the interest to be used annually for the care of the old grave yard in memory of my relatives buried there." You request me to advise you if these bequests are subject to a collateral inheritance tax, and if an Act of the Legislature is required to sanction them.

As to the bequest of \$200.00 to the cemetery for the purpose of keeping the lot of the testator in good order, repair and preservation, I think this is an expenditure in the nature of funeral and burial expenses, and, therefore, not subject to the collateral inheritance tax. It has been expressly decided that the cost of the cemetery lot when reasonable should be treated as a funeral expense and deducted from the taxable basis. See matter of Maverick, 198 N. Y. 618, 92 N. E. 1084.

With respect to the bequest to the trustees of St. Johns Episcopal Church to be used in keeping the old grave yard

in good condition in memory of the relatives of the testator, I think it is clear that this bequest is not for the use of "the father, mother, husband, wife, children or lineal descendants" of the testator within the meaning of Section 124 of Article 81 of the Code of Public General Laws. Neither can it be considered as a part of the funeral expenses of the testator and in my opinion it is subject to the tax of 5% as provided by the law. This bequest being to a religious sect requires the sanction of the legislature to make it valid under the provisions of Article 38 of the Declaration of Rights of Maryland. The bequest to the cemetery company does not require such sanction, as it is not to or for the use of any of the persons or objects mentioned in this Article of the Declaration of Rights.

Trusting that the above will satisfactorily answer your inquiry, and with kind regards, I am

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

TAXATION—ORPHANS' COURT—WHERE TESTATOR BY WILL CANCELS NOTES, THE NOTES ARE A PART OF THE ESTATE AND SUBJECT TO TAX ON EXECUTORS' COMMISSIONS AT THEIR VALUE.

August 24, 1925.

*Honorable I. Irwin Harwood,
Register of Wills,
Denton, Maryland.*

DEAR MR. HARWOOD: I have your letter of August 21st, in which you enclosed a copy of the last will and testament of Mr. Martin L. Williams. It appears that Mr. Williams in his will cancelled certain notes and claims against two of his sons. You request an opinion as to whether or not these notes should be returned as a part of the estate and subject to executors' commission and State tax.

If the notes and claims in question are not outlawed, they should be appraised at their fair market value rather than their appraised value. *Morgan vs. Warner*, 162 N. Y. 612, 57 N. E. 1118. If on the other hand they are valueless, that is, if the beneficiaries are financially irresponsible, there would, of course, be nothing of value to appraise or distribute.

Since the cancellation of the notes and claims is made valid by the execution and probate of the will, I think they should be treated as assets belonging to the estate and subject to tax on commission. Should the estate be insolvent, they would be collectible for the benefit of creditors, as the law would not permit a testator to exhaust his estate by gift while his creditors remained unpaid.

You also ask whether or not it would make any difference if any or all of the notes were made after the execution of the will.

In view of the fact that the testator uses the words, "I bequeath to my son * * * the sum of one dollar in cash and the cancellation of all notes and claims I have against my said son," I think the intention is clear to affect notes or claims incurred both before and after the execution of the will.

Trusting that the above will satisfactorily answer your inquiry, and with best wishes, I am

Yours very truly,

THOMAS H. ROBINSON, *Attorney General*.

TAXATION—COLLATERAL INHERITANCE TAX—NOT PAYABLE
ON TANGIBLE PERSONAL PROPERTY OWNED BY RESI-
DENT OF MARYLAND WHERE PROPERTY SITUATED OUT-
SIDE OF MARYLAND. CONTRA AS TO INTANGIBLE PER-
SONAL PROPERTY.

September 1st, 1925.

*Honorable Edwin R. Downes,
Register of Wills,
Court House, City.*

DEAR MR. DOWNES: The Attorney General has referred to me for reply your letter of August 26th in which you enclosed a communication from the Colonial Trust Company of Baltimore. It appears that Mrs. Julia T. Schwartz, a resident of Maryland, left as a portion of her estate, certain furniture and other tangible chattels in her house at Monterey, Pennsylvania. You request an opinion as to whether or not this personal property is subject to the collateral inheritance tax imposed by the laws of Maryland.

In the recent case of *Frick vs. Pennsylvania*, decided by the Supreme Court of the United States on June 1st, 1925, it was decided that tangible personal property having an actual situs in a particular State, is subject to taxation by that State exclusively regardless of the domicile of the owner, and in accordance with the decision in this case, it is the opinion of the Attorney General that the State of Maryland cannot exact a collateral inheritance tax on the chattels enumerated.

The Colonial Trust Company in its letter also requests an expression of opinion as to whether or not securities of a decedent resident of Maryland, if actually located in a safe deposit box in another State are subject to the collateral inheritance tax.

It is perfectly clear from the facts in the case of *Frick vs. Pennsylvania*, above referred to, as well as the language of the opinion, that this decision was not intended to include within its operation intangible personal property. Such

property is, in the opinion of the Attorney General, subject to the collateral inheritance tax imposed by this State.

Yours very truly,

WILLIS R. JONES, *Asst. Attorney General.*

TAXATION—INHERITANCE TAX—PAYABLE ON BOTH REAL
AND PERSONAL PROPERTY.

September 4th, 1925.

*Honorable R. J. McCauley,
Register of Wills,
Elkton, Maryland.*

DEAR MR. MCCAULEY: In your letter of August 10th, you state that Alexander Evans, Jr., who died in 1915, devised certain property to his wife, the same being subject to a life interest in his mother, and that said property is now about to be distributed to the collateral kindred of the wife of Alexander Evans, Jr., who died in 1917, his mother having died on August 14th, 1924.

You further state that the collateral kindred of Mrs. Alexander Evans, Jr., have paid the collateral inheritance tax on the personal estate, but take the position that the State is not entitled to a tax on the real property appraised at \$12,095. You request an opinion as to whether this real estate is subject to the tax.

It is difficult to perceive the theory upon which the contention is made that the realty is not subject to the tax. The brothers and sisters of Mrs. Evans, Jr., are certainly collaterals within the meaning of the law, and it is entirely proper for them to pay the tax on the personalty. It may be that there is no lien against the real estate for the payment of this tax inasmuch as Mrs. Evans, Jr., has been dead for more than four years, but this does not deprive the State of its right to collect such tax, and the failure of the administrator to pay the same would render his bond liable.

It is also collectible from the heirs in an action of assumpsit for money had and received.

If you experience any difficulty in the collection of this tax, and will notify this Department, we will be glad to advise you as to further procedure.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

TAXATION—COLLATERAL INHERITANCE TAX — COLLECTIBLE
ON BANK DEPOSIT IN WASHINGTON, D. C., WHERE DE-
CEDENT WAS A RESIDENT OF MARYLAND.

October 20, 1925.

William T. Davis, Esq.,
Register of Wills,
Upper Marlboro, Md.

DEAR SIR: I have your letter of October 5th, in which you state that letters testamentary have been granted by the Orphans' Court for Prince George's County, upon the estate of Margaret E. Sullivan, deceased, and request an opinion as to the amount of taxes to which the State of Maryland is entitled from this estate.

It appears that by the will which was executed on May 1st, 1911, the testatrix gave her residence as Washington, D. C., and in the codicil which was executed on December 14, 1924, she gave her residence as Prince George's County, Maryland. The assets of the estate consist of cash in bank in Prince George's County amounting to \$1,015.74, and cash in bank in Washington, D. C., \$4,000. These assets were bequeathed to collaterals. Although the executrix named in the will made formal application for letters testamentary in the Orphans' Court for Prince George's County in January of 1925, in which she alleged under oath that the said Margaret E. Sullivan was a resident of Prince George's

County, and in pursuance of which application letters were granted by the Orphans' Court for Prince George's County, she now, through her attorney, claims that the testatrix was a resident of Washington and threatens to abandon the administration in Maryland and take out letters in the District of Columbia if the State of Maryland insists upon the payment of collateral inheritance taxes to which it would be entitled by reason of the residence of Mrs. Sullivan in this State.

It is for the Orphans' Court of Prince George's County to determine whether or not the letters applied for by the executrix as above set forth, were properly granted and should this decision be in the affirmative, it is the opinion of the Attorney General that the State of Maryland is entitled to the collateral inheritance tax on the cash in bank in Washington as well as the cash in bank in Prince George's County. The deposit of funds in a bank converts the same into a chose in action or intangible property, rendering the same subject to taxation at the residence of the decedent at the time of his or her death.

I assume that the executrix filed a bond at the time letters were issued unto her, and if I am correct in this assumption, the executrix and her counsel will be unable to defeat the claim of the State of Maryland to the taxes to which it is entitled, and upon her failure to pay these taxes a suit against the bond would be maintainable.

If I can be of any further service to you in this matter, I shall be glad to hear from you.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

TAXATION—COLLATERAL INHERITANCE TAX—PAYABLE ON
VALUE OF ESTATE AT TIME OF DISTRIBUTION AND ON
INCOME DURING ADMINISTRATION.

November 3rd, 1925.

*Honorable George Edward Smith,
Register of Wills for Frederick County,
Frederick, Maryland.*

DEAR MR. SMITH: In your letter of October 29th, you state that the will of Cephas M. Thomas, which was admitted to probate in 1920, bequeathed the residue of his estate to trustees for the benefit of certain collaterals. It appears that the total residue of the estate so bequeathed to collaterals amounted to \$55,550.66, and that on May 9th, 1921, the executors filed their first administration account by which they distributed to the trustees certain securities to the value of \$48,000, paying thereon the collateral inheritance tax provided by law, or \$2,400, and retained for their next account the sum of \$7,550.66. You further state that the trustees are now about to distribute to the cestui que trust a certain portion of the securities valued at \$48,000, as the conditions of the trust have been fully performed, and request an opinion as to whether or not the executors are now required to pay an additional inheritance tax on the difference of the value of the residuum between May 9th, 1921, and the date of the final distribution to the cestui que trust.

Inasmuch as the executors paid the full collateral inheritance tax on the securities valued at \$48,000 at the time of the distribution of said securities from the executors to the trustees, there can be no further tax on these securities or any increase in the value thereof.

With respect to the remainder of the residuum amounting to \$7,550.66, it is equally clear that if no tax on this sum has heretofore been paid, the executors are now required to pay the tax at 5% on its value at the time of distribution. In other words, the tax is to be computed on the

value of the estate at the time of distribution, and it has recently been decided by the Court of Appeals in the case of Safe Deposit and Trust Company vs. State, 143 Md. at 644, that the income which accrued during administration is likewise subject to the tax.

If I can be of any further service to you in this matter, I shall be glad to hear from you.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

UNIVERSITY OF MARYLAND.

UNIVERSITY OF MARYLAND—MARKETS—CO-OPERATIVE ASSOCIATIONS.

March 9, 1925.

*F. B. Bomberger, Esq.,
The Maryland State Department of Markets,
University of Maryland,
College Park, Md.*

MY DEAR MR. BOMBERGER: I have your letter of March 5th, enclosing copy of the Capper-Volstead Act, and also Bulletin No. 541 of the United States Department of Agriculture.

As I understand from your letter of February 27th, a number of growers of tomatoes intend to incorporate under Chapter 197 of the Acts of 1922, authorizing the formation of co-operative associations, and that each association so formed will enter into an agreement with a canner for his services and use of his plant in packing the tomatoes, compensating him therefor by a definite amount per dozen or case of canned tomatoes. The agreement between each association and the canner will further provide that after the tomatoes are canned they are to be marketed by mutual agreement between the canner, and the association and the net proceeds divided on an agreed basis.

I further understand from your letter of February 27th, that the several co-operative associations so organized "are to be federated into a co-operative exchange or selling agency for the purpose of marketing the products canned by the several co-operative associations. Such a central exchange would be organized under the Co-operative Association Law of this State, and would have its membership limited to co-operative associations * * * and would sell only the products of these co-operative canning associations."

You call attention to Section 479 of Chapter 197 of the Acts of 1922, which provide that "no director, during the term of his office, shall be a party to a contract for profit with the association differing in any way from the business relations accorded regular members or holders of common stock of the association."

You state the obvious fact that the canner must have his rights in the canned products protected, and that it will be necessary to provide some means of giving him some voice in the sale or distribution of the products, because he has a direct interest in the price at which the products are sold.

Your question is, "Would an agreement, entered into by each of the co-operative canning associations with the central co-operative exchange, whereby the canners having an interest in the products of the respective canning associations should be organized into an Advisory Board with authority to co-operate with the Board of Directors of the central exchange in the sale of such products be legal under our Maryland law?"

In the first place, I doubt very much whether there could be, under the Maryland law, an incorporation of such a central exchange that you have in mind—that is, one, the members of which would be limited to local co-operative associations. Our law authorizes "any number of adult persons, not less than five, at least two of whom are residents of this State, engaged in the production of agricultural products as farmers, planters, ranchmen, dairymen, bee keepers, nut or fruit growers to organize a co-operative association. If such an association as you have in mind could be formed, I do not think that the canner could be one of its Directors in view of the provisions of Section 479 of our law, particularly that part of it quoted above. I do not think that there is any doubt about the validity of the agreement which might be entered into by the co-operative associations under which the canners would be organized into an Advisory Board to co-operate in the sale of products. This is, however, based on the assumption that such a co-operative central exchange as you have in mind could be incorporated.

I call your attention, however, to Section 479, which authorizes each co-operative association "to engage in any activity in connection with producing, marketing, selling, preserving, drying, processing, canning, packing, handling, storing or utilization of any agricultural products of its members; or the manufacturing or marketing of the by-products hereof; or in connection with the purchase, hiring or use by its members of supplies, machinery, or equipment, or in the financing of such activities, or in any one or more of the activities specified in this sub-section."

I am sure that under this section each co-operative association could enter into an agreement one with the other, and also with the canners who might be interested, for the marketing of the canned tomatoes.

But whatever agreement is made along this line should not be in restraint of trade in interstate or foreign commerce to such extent that the price of the canned tomatoes is unduly enhanced. This is one of the provisions in the act to authorize an association of producers of agricultural products passed by Congress February 10th, 1922. This Act especially authorizes the co-operative associations to have marketing agencies in common, with power to make the necessary contracts and agreements to effect such propositions, and the Maryland law confers upon each co-operative association, as indicated above, the power generally to do everything necessary, suitable or proper for the accomplishment of any one of the purposes or objects of the association.

I realize that what I have written may have raised other questions in your mind. It is difficult to discuss the proposition in writing at all. I will be very glad to see you any time you are in Baltimore to talk about it.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

UNIVERSITY OF MARYLAND—FEED STUFF LAW—INTERSTATE
COMMERCE — SALE MADE BY CATALOGUE OUTSIDE
STATE.

March 16, 1925.

Mr. L. E. Bopst,
Assistant State Chemist,
College Park, Md.

DEAR MR. BOPST: I have your letter of March 12th, in which you state that Sears, Roebuck & Co., of Philadelphia, recently sold Mr. Joseph Delera of Broomes, Md., certain commercial feeding stuff which feeding stuff is not licensed in Maryland. You state that the purchase of this feed was made through the medium of a circular catalogue, and that Mr. Delera intends to feed this material to his stock, and will not sell any of it. You ask whether or not Sears, Roebuck & Co., have violated Sections 82 and 83 of the Feed Stuff Law of Maryland by selling, offering or exposing for sale this particular feeding stuff which is not licensed in Maryland.

I think if you read the feed stuff law of Maryland carefully, you will notice that there is a qualification running through it that the selling, offering or exposing for sale must be "in this State." I do not think that it was the intention of this law to prohibit a sale of this character, that is, a sale made by one outside of the State to a citizen of this State, without having the product so sold first registered. It is difficult to see how you can enforce the provisions of the feed stuff law of Maryland against non-residents, and there is always a great danger of an undue and unlawful interference with interstate commerce. If Mr. Delera, for instance received this feeding stuff for re-sale by him in this State and offered it for resale, he would make himself amenable to the provisions of the law.

With your letter of March 12th, you sent me a copy of a letter of Sears, Roebuck & Co. to you under date of February 20th, in which this office is quoted as having ruled on August 18th, 1924 to the following effect:

“A shipment in the original package from another State into the State of Maryland is an interstate shipment, which cannot be regulated or burdened by any law or regulation of the State of Maryland.”

There is no ruling to this effect of August 18th, 1924. I find in going through the files that there was a rough draft of an opinion on August 9th, 1924, which contained the sentence quoted above. This letter, however, was revised, and said sentence stricken out, and I do not see how Sears, Roebuck & Co. got the information, presumably had, of a tentative ruling by this department. In matters affecting the Public Health the police power of the several states may be brought into play even to the extent of affecting or even prohibiting interstate commerce, and a consideration of the question from this angle led to a revision of our ruling of August 9th.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

UNIVERSITY OF MARYLAND—FEED STUFF LAW—CORN FEED MEAL WITHIN PROVISIONS OF MARYLAND FEED STUFF LAW.

March 16, 1925.

Mr. L. E. Bopst,
Assistant State Chemist,
College Park, Md.

DEAR MR. BOPST: I have your letter of February 4th, in which you desire to know whether the product “Corn Feed Meal” comes within the Maryland Feed Stuff Law.

I understand that “Corn Feed Meal” is a commercial feeding stuff. According to the standards adopted by the Association of Feed Control Officers of the United States, “Corn Feed Meal is the by-product obtained in the manufacture of

cracked corn, with or without aspiration products added to the siftings. This name is also correctly applied to the by-product obtained in the manufacture of table meal from the whole grain by the non-degerminating process."

Under Section 83 of the Feed Stuff Law of Maryland, "Corn Feed Meal" is not excepted from the provisions of the law. The nearest substance to "Corn Feed Meal" in the excepting part of the section is pure corn meal. Pure Corn Meal is that hard flinty part of the corn kernel made by grinding and bolting corn, thereby removing corn feed meal, and is the product usually sold for human consumption, although occasionally some of it finds its way on the market as a feeding stuff. Pure corn meal is a different product from corn feed meal, and as corn feed meal is not mentioned in the Act as excepted from its provisions, I am sure that this product falls within the act and is subject to all of its provisions.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

UNIVERSITY OF MARYLAND—FERTILIZER—INFORMATION TO
BE PLACED ON BAG, BARREL OR PACKAGE OF FERTILIZER.

March 16, 1925.

Mr. L. E. Bopst,
Assistant State Chemist,
College Park, Md.

DEAR MR. BOPST: I have your letter of March 12th, in which you desire an expression of opinion as to whether it is legal to add anything to the information required to be placed upon every bag, barrel, or package of fertilizer under Section 4 of the Fertilizer Law of Maryland.

Section 4 of the Fertilizer Law of Maryland provides that:

“Every bag, barrel, or package of fertilizer must bear plainly and conspicuously on the outside of same, and every parcel or lot sold in bulk must be accompanied by a clear and true statement in legible print, in the order herein stated, the following:

“The net weight of the contents of the package or lot in pounds;

“Brand name or trade-mark;

“Grade (as 2-10-2) namely, 2% of Ammonia, 10% Phosphoric Acid, and 2% Potash.

“Guaranteed analysis in percentages;

“Total nitrogen and/or its equivalent to Ammonia (NH);

“Water soluble nitrogen and/or its equivalent to Ammonia (NH);

“Available Phosphoric Acid;

“Water soluble potash (KO);

“Name and address of manufacturer.”

The object of this section of the law, it is very clear, is to inform the prospective purchaser of the fertilizer, what its character and analysis really are. Its design was the prevention of fraud and imposition upon the farmer. I see no reason why any true statement may not be printed on the bag, barrel or package in addition to what is required under the Maryland law. For instance, the Maryland law requires to be stated the amount of available phosphoric acid and in addition to this statement, I do not see why there should not be a further statement of the total phosphoric acid content.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

UNIVERSITY OF MARYLAND—FEED STUFF LAW—REGISTRATION OF BRANDS.

March 17, 1925.

Mr. L. E. Bopst,
Assistant State Chemist,
College Park, Md.

DEAR MR. BOPST: I have your letter of March 11th, in which you desire an expression of opinion from this office in regard to the interpretation and definition of the term "brand" as used in the Maryland Feed Stuff Law. I understand that there is a contention that one who has registered, for instance, "Square Deal Meat Scrap, 55% Protein," may sell, "Square Deal Meat Scrap, 47% Protein" without registering or licensing this last product.

I do not think so. The intention of the Maryland Feed Stuff law is to protect the feed buyer. For this purpose it was necessary to provide a means of registration of the various feed stuffs, the imposition of a license fee sufficient to bear the cost of inspection and analysis. Among other things, it is the intention of this law, when one puts out a brand which is registered as containing 55% protein, he must not thereafter sell any of his brand with less than 55% protein.

Section 88 of the Act makes this very clear by providing a penalty for any one who sells, offers or exposes for sale or distributes in this State any commercial feeding stuff which contains a smaller per centum of crude protein or crude fat than is certified to be contained therein. Now the certification referred to evidently refers to the registration of the brand, and to the filing with the State Chemist a certified copy of the statement specified in Section 81 of the Act, among which is the statement of the minimum per centum of crude protein. The State Chemist makes his analysis at the time of registration, and subsequently inspects the feeding stuff from time to time, analyzes it and checks it for its guaranteed analysis, and sees that the analysis is maintained in accordance with the registration certificate. It was never the intention of this law that the guaranteed in-

redient of a registered feed stuff might be changed at the will of the manufacturer, and should the ingredient be changed in any respect, a new product would be formed, requiring a new registration. There would then be a different product from that registered, and there would necessarily be increased expenses of inspection and analysis.

On March 16th, 1923, Mr. Alexander Armstrong, then Attorney General, ruled that where there are two feeds of different names put out by the same company, the feed, however, having the same ingredients and the same chemical analysis, two registration and inspection fees must be paid.

I should say, therefore, that the term "brand" means the particular registered feed containing the ingredients certified to the State Chemist, and that any change in any of these ingredients will make the changed product a different brand, and that "Square Deal Meat Scrap, 55% Protein" is a different brand in the meaning of the Maryland Feed Stuff Law from "Square Deal Meat Scrap, 47% Protein."

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

UNIVERSITY OF MARYLAND—POWER TO DISPOSE OF PROPERTY.

July 11th, 1925.

Dr. A. F. Woods,
University of Maryland,
College Park, Md.

DEAR DR. WOODS: I am in receipt of your favor of the 30th ultimo, asking whether the Board of Regents of the University of Maryland are empowered by the terms of its charter, to dispose of the property now owned by the Uni-

versity at the Northwest corner of Lombard and Greene Streets, and which has been acquired by the University by purchase, the title to which is now in the University of Maryland. I assume that your inquiry applies to the property which you acquired for the purpose of the further extension and improvement of the institution.

The Legislature of the State of Maryland in the year 1812 (Act of 1812, Chapter 159), granted a charter to the Regents of the University of Maryland, and among other things gave them the power to "grant, demise, alienate or dispose of in such manner as they may judge most promotive of the interests of said University," any property which they might acquire. When the University of Maryland was consolidated with the Maryland Agricultural College by the Legislature of 1920 (Chapter 480 of the Acts of 1920), all of this power was carefully preserved and became vested in the consolidated corporation. Likewise when in 1922 the Legislature made the State Board of Agriculture and the Regents of the University of Maryland (Chapter 29 of the Acts of 1922), a department of the State government, thus changing the University from a State-aided institution, it was again provided that all rights, powers conferred by any and every provision of law upon said Board or upon said Regents, or upon both or either, shall continue in effect by the Act except as therein provided. There was nothing in this Act to limit the power in question. While it is not free from doubt I am inclined to think that under the charter originally granted and the subsequent changes and amendments thereto, the present Board of Regents can dispose of this property.

You further ask, however, in your letter, whether or not it is possible for the University after having disposed of the property to enter upon a lease for a term of years with the privilege of purchase, the money to meet the obligation thus incurred to come from student fees which the Board now has the authority to expend. It is true that the Act of 1920 above referred to and which consolidated the University of Maryland with the Maryland Agricultural College, con-

tained the provision that any department or faculty of the University could retain certain tuition fees for the conduct of that department. At this time, however, the University was not a department of the State, but a State-aided institution, and we find it so treated in the Budget for the years 1920 and 1921. The mere fact that the Regents were appointed by the Governor under this Act did not change its status. The Act of 1922 above referred to changes the entire situation. The University is thus made a department of the State and comes under all the provisions of the Re-Organization Act and the Budget Bill. The Re-Organization Act, section 96, Article 41, of Bagby's Annotated Code, contains the following provision: "Every department, institution or governmental agency shall monthly account for to the Comptroller and pay to the Treasurer all fees, revenues, collections and income of every kind received by it unless exempted as therein provided." Therefore, all tuition fees of every kind whatsoever, unless exempted by the approval of the Governor, must be accounted for to the Comptroller, and are taken into consideration in the preparation of the Budget. Furthermore, Section 3 of Chapter 176 of the Acts of 1924, commonly called the Budget Bill, and which provides for the appropriation of all funds paid by the State to the University, provides that "if any additional funds from any source whatever in excess of the appropriations herein made shall come into the hands of any department, board or institution of the State, the same may be expended by such department, board, etc., with the approval of the Governor; any such excess not so expended shall revert to the Treasury of the State at the end of the fiscal year in which the same is received by such department, board, commission, officer or institution unless there shall be an outstanding obligation against the same incurred with the approval of the Governor."

These two provisions, I think, clearly take precedence over the provision in the Act of 1920, which allows any faculty or department to expend certain tuition fees in their discretion. Therefore, your institution is required to account for all money from all sources unless the Comptroller,

with the approval of the Governor, shall exempt from the operation of these sections such fees, revenues, collections, etc., which he may from time to time determine should, in the public interest be so exempted, and I do not believe that the Governor can approve expenditures to be made in the future over a long series of years or after the expiration of his term. I, therefore, do not think that you have the power or authority to enter into a long term contract of the kind above referred to.

The provisions of the Re-Organization Act and the Budget Bill, which we have just referred to, would apply also to any monies which you might receive from the sale of this property, and they must, in our opinion, be accounted for to the Comptroller and expended only with the approval of the Governor.

As to the other proposition set forth in your letter, that the Regents borrow the money to construct the building, issuing bonds for the purpose and paying the carrying charges and sinking fund from income available, I cannot find any authority in the original charter or in any subsequent legislation that would authorize this course of action.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

UNIVERSITY OF MARYLAND—STATE AGENCY REQUIRED TO
OBTAIN LICENSE FROM CITY.

July 15th, 1925.

Mr. W. V. Maconachy,
Assistant Superintendent,
University of Maryland,
Lombard and Greene Streets,
City.

DEAR SIR: In reply to your letter of July 13th, in regard to the right of the Baltimore City Health Department to de-

mand that the University Hospital make application for a license under Ordinance No. 565, approved 26th of March, 1921. The University Hospital is a part of the University of Maryland, and as such a department of the State of Maryland, I do not believe that a Magistrate or Court could convict the University of Maryland for a violation of this Ordinance, and even if this were done, it would be impossible to collect any fine which might be imposed.

It is, therefore, my opinion that this license ordinance applies only to private individuals or corporations, and that it will not be necessary for your institution to secure a license.

We are returning herewith application for license and copy of the above referred to ordinance.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

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