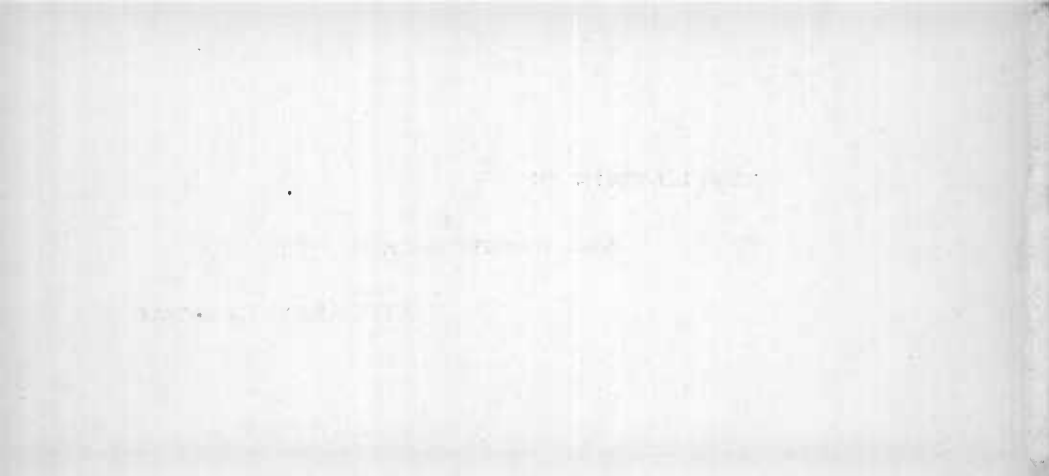


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COMPLIMENTS OF

WM. PRESTON LANE, JR.

ATTORNEY GENERAL



ANNUAL REPORT
AND
OFFICIAL OPINIONS
OF THE
ATTORNEY GENERAL
OF
MARYLAND

1930

THOMAS H. ROBINSON
ATTORNEY GENERAL

CLASSIFIED BY [REDACTED] - [REDACTED]

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 White.....	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 Allan 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.
Wm. L. Marbury, Jr.....Assistant Attorney General.
Mrs. Anna Davis Greer.....Stenographer.
Miss Hattie F. Fuxman.....Stenographer.

Offices:—633-653 Title Building, Baltimore, Md.

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Annual Report for 1930

January 1, 1931.

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

DEAR GOVERNOR RITCHIE:

On behalf of the late Attorney General Thomas H. Robinson, we are submitting the annual report of this department for the year 1930. Mr. Robinson died suddenly at his home in Belair on the morning of October 12th, 1930, and from the date of his death until Hon. Wm. Preston Lane, Jr., the newly elected Attorney General, was sworn in on December 20th, 1930, the work of the department was carried on by the undersigned assistants who had been appointed by Mr. Robinson. The activities of the department subsequent to December 20th, 1930, are excluded from this report as they will be included in the first annual report of Attorney General Lane.

It is felt that there should be some lasting record among the archives of this department, setting forth the career and attainments of the late Attorney General, and to that end we are causing to be printed as an appendix to this report, a transcript of the proceedings at a special memorial sitting in the Circuit Court for Harford County held at Belair on December 16th, 1930, when addresses were made by a number of his associates at the bar, with appropriate responses by Chief Judge Offutt and Judge Walter W. Preston.

It would be impossible to over-estimate our feeling of personal loss in the passing of Mr. Robinson. His uniform courtesy, consideration and kindness, his genial manner and

his extraordinary fund of common sense, combined with his rare legal ability, were such that it was a genuine pleasure and privilege to be associated with him. He endeared himself to us in unmeasured terms and his death marks the passing of one of the State's most useful citizens and a loss to us that cannot be altogether healed.

This report includes a brief summary of the litigation handled by the department during the year; some reference to the enforcement of the Blue Sky Law and to the Special Session of the Legislature which was convened by you on July 29th, 1930; an itemized statement of receipts and disbursements for the fiscal year beginning October 1st, 1929, and ending October 1st, 1930, and the official opinions of the department rendered during the year. In accordance with the usual custom, it does not include any detailed reference to the general correspondence of the office and the multitude of conferences which were held and the oral opinions that were rendered from day to day, nor is there any detailed statement as to the large amount of time that was consumed by the various members of the staff in preparing, examining and approving contracts and other legal documents for the various departments.

Mr. John Hubner Rice resigned as an Assistant Attorney General on January 1st, 1930, and Mr. Wm. L. Marbury, Jr., of Baltimore, was at once appointed as his successor, and has continued to serve the department since that time. There have been no other changes in the personnel of the department during the period covered by this report except that on December 11th, 1930, Mr. Herbert Levy tendered his resignation as Assistant Attorney General in order that he might at once resume private practice.

In conclusion, we wish to express to you individually and collectively, our appreciation of your uniform and unfailing courtesy and consideration to us upon all occasions. Our labors have brought us into intimate contact with the various officials of the state government, and it has been exceedingly gratifying to observe the conscientious and earnest endeavors of all of these officials to perform the func-

tions of government entrusted to their care with the greatest measure of service to the public. We sincerely hope you will have a pleasant and successful administration during the next four years.

Respectfully yours,

ROBERT H. ARCHER,

WILLIS R. JONES,

HERBERT LEVY,

WILLIAM L. MARBURY, JR.,

Assistant Attorneys General.

SUMMARY OF LITIGATION FOR 1930

CASE DISPOSED OF IN THE SUPREME COURT OF THE
UNITED STATES

Thomas M. Wampler vs. E. Lee LeCompte, State Game Warden of Maryland, and Frederick S. Barber, Deputy Game Warden for Charles County, No. 402, October Term, 1930. This was an appeal from the decision of the Court of Appeals of Maryland, sustaining the constitutionality of Sections 39, 40 and 46 of Chapter 568 of the Acts of the Legislature of Maryland for the year 1927, as amended by Chapter 366 of the Acts of 1929. These sections as amended are now codified as Sections 40, 41 and 46 of Article 99 of the Code of Public General Laws of Maryland (Bagby's Code, 1929 Supplement) under the title "Water Fowl, Birds and Game," and relate to the erection of ducking blinds in the waters of the state. The appellant, whose ducking blind had been destroyed by the appellees pursuant to the provisions of the statute, sought an injunction against further interference with the erection of his blind, and contended that the statute of the state violated the provisions of the Fourteenth Amendment to the Constitution of the United States, and denied him the equal protection of the law. He selected for particular attack, the provisions of the statute requiring ducking blinds to be erected at an interval of not less than five hundred yards and not closer than two hundred and fifty yards to the dividing line of the adjoining property owner, subject, however, to the right of the adjacent property owner to waive the latter requirement. He also objected to the fact that certain waters of the state were exempted from the scope of these provisions. The Supreme Court sustained the constitutionality of the provisions in question and affirmed the ruling of the Court of Appeals. Mr. Justice Brandeis delivered the opinion of the court. Mr. Archer and Mr. Marbury appeared for the appellees at the request of the Conservation Commissioner.

CRIMINAL CASES IN THE COURT OF APPEALS,
JANUARY, APRIL AND OCTOBER TERMS, 1930

Roy Norris vs. State of Maryland, No. 38, January Term, 1930. Norris was convicted of assault by a jury in the Circuit Court for Allegany County. The case originated in a warrant sworn out before a Justice of the People's Court of that county. On appeal Norris contended that Chapter 297 of the Acts of 1927, by which the People's Court of Allegany County was created, was unconstitutional, and that for this reason the Circuit Court for Allegany County was without jurisdiction to entertain this proceeding. The Court of Appeals dismissed the appeal, holding that the proceedings in the lower court were final and not appealable. Mr. Marbury appeared for the State.

David O. Wentz vs. State of Maryland, No. 5, April Term, 1930. Wentz was convicted in the Circuit Court for Carroll County on an indictment charging him with incest. Trial was by the court without a jury. The Court of Appeals held that the lower court erred in admitting evidence of prior incestuous intercourse between Wentz and another daughter, and for this reason reversed the judgment and remanded the case for a new trial. Mr. Marbury appeared for the State.

Charles E. O'Connell vs. State of Maryland, No. 48, April Term, 1930. O'Connell was indicted in the Circuit Court for Washington County for book making, in violation of Article 27, Section 247 of the Code of Public General Laws. Trial was by the Court without a jury. On appeal he contended that the statute was not applicable to Washington County, and the Court of Appeals so held. Accordingly the conviction was set aside. Mr. Marbury appeared for the State.

Maurice Hendelman, alias Worcester Reds, alias Bob Wilson vs. State of Maryland, No. 17, October Term, 1930. Hendelman was convicted by a jury in the Criminal Court

of Baltimore City. He appealed, alleging misconduct on the part of the Assistant State's Attorney. The Court of Appeals held that the conduct of the Assistant State's Attorney was proper, and affirmed the judgment of the lower court. Mr. Marbury appeared for the State.

Lorenzo Price vs. State of Maryland, No. 25, October Term, 1930. Appeal from the Criminal Court of Baltimore City. The appellant was convicted of murder in the first degree, and was sentenced to death. The appeal involved the correctness of certain rulings of the trial court made in the course of the examination of talesmen for service on the jury. Several rulings of the trial court on the evidence were also challenged. All of the rulings presented by the record were affirmed, but the court reversed the judgment and awarded a *venire de novo*, upon the ground that the trial court was without jurisdiction to impose a valid sentence. The record showed that the defense of insanity had been raised at the trial, but the jury had not made a specific finding on that issue. It was held that under the provisions of Section 6 of Article 59 of the Code, such a finding was mandatory, and in its absence the judgment entered upon the verdict was a nullity. Mr. Levy appeared for the State.

Charles Cornell vs. State of Maryland, No. 28, October Term, 1930. Cornell was convicted by a jury in the Circuit Court for Cecil County, of assault and carnal knowledge of his step-daughter, and was sentenced to twenty years in the Penitentiary. His appeal was dismissed for the reason that it was not taken within thirty days after entry of final judgment and for the further reason that the transcript of record was not lodged with the Clerk of the Court of Appeals within three months after the order for appeal was filed. Mr. Marbury appeared for the State.

William Waters vs. State of Maryland, No. 78, October Term, 1930. Waters was convicted of assault with intent to kill, by a jury in the Circuit Court for Kent County. His appeal was dismissed for want of a proper bill of excep-

tions duly authenticated by the trial court. Mr. Marbury appeared for the State.

State of Maryland, ex rel. Baynard Wilson vs. Olin B. Stafford, Justice of the Peace, No. 79, October Term, 1930. At a hearing before a Justice of the Peace in Kent County, Wilson entered a plea of guilty to a charge of assault and battery and was sentenced to nine months in the House of Correction. After entering an appeal to the Circuit Court for Kent County, Wilson filed in that court a petition for a writ of certiorari, to quash the proceedings before the magistrate. The writ was issued and therefore on motion of the State's Attorney the writ was quashed. From that action Wilson appealed. The case has been argued in the Court of Appeals but no decision has as yet been rendered. Mr. Marbury appeared for the State.

David O. Wentz vs. State of Maryland, No. 91, October Term, 1930. On a retrial ordered by the Court of Appeals, Wentz was again convicted of incest by a Jury in the Circuit Court for Carroll County. This appeal was dismissed at the request of the counsel for the appellant.

CIVIL CASES TRIED IN THE COURT OF APPEALS,
JANUARY, APRIL AND OCTOBER TERMS, 1930

William W. Murphy, et al. vs. State Roads Commission, No. 26, January Term, 1930. This is an appeal from the Circuit Court for Caroline County, sitting as a court of equity. A bill was filed praying for an injunction against the State Roads Commission to restrain them from constructing a piece of state road which had been advertised in Caroline County. The Court of Appeals affirmed the decision of the lower court. Mr. Archer appeared for the State.

Thomas M. Wampler vs. E. Lee LeCompte, State Game Warden, et al., No. 30, April Term, 1930. This action was instituted in the Circuit Court for Charles County, to restrain the appellees from molesting the appellant in the erection and maintenance of a ducking blind in the waters of the Potomac River upon which his property bordered. The appellees were acting pursuant to the provisions of Sections 39, 40 and 46 of Chapter 568 of the Acts of 1927, as amended by Chapter 366 of the Acts of 1929. Wampler contended that these provisions were contrary to the Constitution of the State of Maryland, and of the United States, and denied him the equal protection of the laws. The Circuit Court for Charles County rejected his contention and denied the injunction and the Court of Appeals affirmed this decree. The case was then taken to the Supreme Court of the United States. Mr. Archer represented the State in the Court of Appeals.

Campbell Coal Company, Employer and the State Accident Fund, Insurer, vs. Melissa C. Stuby, Claimant, No. 36, April Term, 1930. This was an appeal from the Circuit Court for Allegany County for the purpose of obtaining from the Court of Appeals a ruling on the workmen's compensation law with reference to the meaning of the term "average weekly wage" as used in this law. The rulings of the lower court were affirmed. Mr. Jones appeared for the State Accident Fund.

Mt. Savage Mining Company and State Accident Fund and State Industrial Accident Commission vs. Edith Baker, No. 51, April Term, 1930. This was an appeal from the Circuit Court for Allegany County wherein Edith Baker was awarded compensation on account of the death of her husband while in the employ of the Mt. Savage Mining Company, as an alleged result of carbon monoxide gas poisoning. It was contended on behalf of the State Accident Fund that there was not legally sufficient evidence to show that the death of Baker resulted from carbon monoxide gas poisoning, but the Court of Appeals declined to sustain this contention. Mr. Jones appeared for the State Accident Fund.

John S. Dobler, et al. vs. George Winters, No. 60, April Term, 1930. This was an appeal from the Superior Court of Baltimore City where an order was passed by Judge O'Dunne directing the State Board of Electrical Examiners to issue a license as Master Electrician, to George Winters. The case was dismissed before argument at the request of the State Board of Electrical Examiners and Supervisors. Mr. Jones represented the Board in the proceeding.

The Standard Finance Company, Inc., a body corporate, vs. Stephen C. Little, No. 27, October Term, 1930. Appeal from the court of Common Pleas of Baltimore City. This was a suit against the Clerk of the Superior Court of Baltimore City for alleged failure to index properly a mortgage of real and personal property. This appeal was taken from the action of the lower court sustaining a demurrer to the third amended declaration, without leave to amend. The Court of Appeals affirmed the judgment of the lower court. Mr. Marbury appeared for the Clerk.

The Cambridge Manufacturing Company, Employer and the State Accident Fund, Insurer vs. Bertie Lavenia Johnson, Administratrix of Samuel Richard Johnson, Claimant, Deceased, No. 73 October Term, 1930. Appeal from the Circuit Court for Dorchester County. This case originated

in a claim before the State Industrial Accident Commission for compensation which was denied. On appeal to the Circuit Court for Dorchester County, the order of the Commission was reversed. The employer and insurer then appealed to the Court of Appeals contending that the appeal from the Commission should have been dismissed because of the death of the claimant, and that in any event there was no evidence to support the finding of the jury that the claimant sustained an accidental injury arising out of and in the course of his employment. The case has been argued before the Court of Appeals, but no decision has been rendered. Mr. Jones and Mr. Marbury represented the State Accident Fund.

John H. Sieling, et al. vs. G. Clinton Uhl, et al., constituting The State Roads Commission of Maryland, et al., Nos. 93 and 94, October Term, 1930. This was an appeal from the Circuit Court of Baltimore City. A bill was filed praying an injunction against the State Roads Commission to restrain it from widening the Washington Boulevard where it passes in front of the complainants' property in the town of Laurel, the complainants claiming ownership of the ground in question. The Circuit Court dismissed the bill and an appeal was taken by the complainants. Mr. Archer appeared for the State Roads Commission.

CASE PENDING IN THE COURT OF APPEALS

John L. Krebs, et al. vs. State Roads Commission. This is an appeal from the Circuit Court of Baltimore County. In Equity. A bill of complaint was filed asking that the State Roads Commission and the Northern Central Railroad Company be enjoined from closing the grade crossing at Parkton until the people living on the part of the state road which would be "dead-headed" by the erection of the overhead crossing, were compensated in damages. The bill was dismissed, and the case is now No. 16 in the January Term, 1931.

CASES FINALLY DISPOSED OF IN LOWER COURTS

George D. Pratt vs. James Y. Claypoole, Clerk, Garnishee of Mary W. F. Speers. In the Baltimore City Court. George D. Pratt attempted to attach certain funds in the hands of James Y. Claypoole, Clerk of the Court of Common Pleas as Garnishee of Mary W. F. Speers and the Speers Sand and Clay Works, Inc. A motion to quash the attachment was granted. Mr. Marbury appeared for Mr. Claypoole.

John P. Smarr vs. John Shanahan. In the Baltimore City Court. This was a suit for false arrest against a police officer. The jury returned the verdict for the plaintiff in the amount of \$25.00. At the request of the Police Commissioner, Mr. Marbury appeared on behalf of the defendant.

State of Maryland vs. Robert R. Ayres. In the Criminal Court of Baltimore City. The State Auditor discovered that a clerk in the employ of the Baltimore Schools of the University of Maryland was short in his accounts in the amount of \$5,369.67. The State Auditor summoned Ayres for a hearing at which he declined to testify. He was subsequently indicted and convicted of larceny. A claim was made on his bond which resulted in refunding to the University of Maryland the total amount of the shortage. Mr. Marbury assisted Mr. Stewart in the preparation of the case against Ayres, and advised both Mr. Stewart and the Secretary of the Baltimore Schools in reference to the claim against the bonding company.

Frederick Dugdale vs. Board of Medical Examiners. In the Superior Court of Baltimore City. Dr. Dugdale sought a writ of mandamus to require the Board of Medical Examiners to rescind an order revoking his license to practice medicine. It appeared that the license of Dr. Dugdale had never been revoked and that the notice to that effect received by him was inaccurate. Accordingly, counsel for Dr.

Dugdale agreed to dismiss the petition. Mr. Marbury appeared for the Board.

Harry A. Uhler vs. State Board of Chiropractic Examiners. In the Superior Court of Baltimore City. Dr. Uhler sought a writ of mandamus directing the State Board of Chiropractic Examiners to issue to him a renewal license to practice chiropractic. After hearing, the petition for the writ was dismissed. Mr. Marbury appeared for the Board.

Alger H. Abbott vs. Commissioner of Motor Vehicles. In the Circuit Court for Worcester County. Appeal from an order of the Commissioner of Motor Vehicles revoking the appellant's license to operate a motor vehicle. The order of revocation was based upon a final judgment of conviction of a violation of the motor vehicle law. A motion to dismiss was filed on behalf of the Commissioner, upon the ground that the order was not appealable. The motion was granted and the appeal dismissed. Mr. Levy and the State's Attorney for Worcester County represented the Commissioner.

Roland D. Burns vs. Commissioner of Motor Vehicles. In the Circuit Court for Worcester County. Appeal from an order refusing to reinstate the appellant's license to operate a motor vehicle. The appeal was voluntarily dismissed by the appellant. Mr. Levy represented the Commissioner of Motor Vehicles.

Isaac T. Sparklin vs. Commissioner of Motor Vehicles. In the Circuit Court for Caroline County. Appeal from an order revoking the appellant's license to operate a motor vehicle. Appeal dismissed by appellant in open court. Mr. Levy and the State's Attorney for Caroline County appeared for the Commissioner of Motor Vehicles.

Everett E. White vs. Commissioner of Motor Vehicles. In the Circuit Court for Caroline County. Appeal from an order revoking the appellant's license to operate a motor vehicle. The order of the Commissioner was reversed. The

State's Attorney for Caroline County appeared for the Commissioner.

W. G. Kramer vs. Albert Doggie, Justice of the Peace. In the Baltimore City Court. Petition for certiorari. Voluntarily dismissed by petitioner before trial. Mr. Levy appeared for the Justice of the Peace.

The Park Apartments Company, a corporation, vs. State Tax Commission. In the Baltimore City Court, and in the Circuit Court No. 2 of Baltimore City. After the Park Apartments Company had been dissolved by order of the State Tax Commission, passed in pursuance of the provisions of Section 91 of Article 23, it was discovered that the corporation had certain outstanding liabilities. When this fact was brought to the attention of the State Tax Commission, it rescinded its order of dissolution and restored the corporation to good standing. Subsequently, another petition for dissolution was filed, and after a hearing, the Commission decided that it had no jurisdiction to vacate the original order of dissolution and hence the same was still in effect. An order was thereupon entered by the Commission vacating the order rescinding and annulling the original dissolution order and denying the second petition for dissolution. From this order an appeal was entered to the Baltimore City Court, where a motion to dismiss was filed on behalf of the State Tax Commission, upon the ground that the order in question was not an appealable order. The appeal was dismissed.

After the decision of the Baltimore City Court dismissing the appeal, the Park Apartments Company attempted to have the action of the State Tax Commission reviewed by a bill for injunction filed in the Circuit Court No. 2 of Baltimore City. To this bill, there was interposed a demurrer, which after hearing, was sustained, and the bill of complaint was dismissed. Mr. Levy and Mr. Marbury appeared for the Commission in both proceedings.

Harry B. Gorrell vs. State Tax Commission of Maryland; John F. Steinmetz vs. State Tax Commission of Maryland. In the Baltimore City Court. Appeals from orders of the State Tax Commission affirming assessments made by the Appeal Tax Court of Baltimore City with respect to certain promissory notes. The action of the State Tax Commission was affirmed in both cases. It appeared, however, that through an inadvertence the assessment had been entered against the certificates of indebtedness upon their face value, whereas the statute required that they be entered at fifty per centum of their face value. The Court therefore remanded the cases to the State Tax Commission to the end that the assessments be entered at the reduced amount. Mr. Levy and Mr. Marbury appeared for the Commission.

Mayor and City Council of Baltimore vs. State Tax Commission et al. In the Baltimore City Court. The Appeal Tax Court of Baltimore City assessed the life interest of certain resident beneficiaries of trust estates, consisting exclusively of intangibles held by non-resident trustees outside of the state. The Appeal Tax Court, acting upon the advice of the Law Department of the City, sought to avoid the effect of the decision of the Supreme Court in the case of *Brooks vs. City of Norfolk*, 277 U. S. 27, by assessing merely the life interest of the beneficiary rather than the corpus of the trust, as had been the practice before the decision of the Supreme Court. However, on appeal by the beneficiaries to the State Tax Commission from assessments under the law as it stood prior to the passage of the Tax Revision Bill of 1929, the State Tax Commission reversed the action of the Appeal Tax Court and abated the tax, whereupon the City appealed to the Baltimore City Court. Orders affirmed. Mr. Levy appeared for the Commission.

State Roads Commission vs. Richard W. Bozel. In the Superior Court of Baltimore City. Suit for damages to a motor vehicle belonging to the Commission. The case was settled by the payment to the Commission of the actual

amount of the estimate of the cost of repairing the vehicle. Mr. Archer and Mr. Levy appeared for the Commission.

Harford Electric Company vs. State Board of Electrical Examiners and Supervisors. In the Superior Court of Baltimore City. In this case the Harford Electric Company filed a petition for mandamus to compel the reinstatement of its license to carry on the electrical business. The license had been refused because the company did not have a duly qualified representative as required by law. After the trial before Judge Stein, and when the case was still under consideration by him, the company reapplied to the Board for a license and designated a competent Master Electrician as its representative, which license was granted. It therefore became unnecessary for the court to decide the case. Mr. Jones appeared for the State Board.

John Philip Hill vs. Board of Supervisors of Elections of Baltimore City. In the Superior Court of Baltimore City. This case was instituted to compel the Board of Supervisors to preserve the election records in the Third Congressional District for use in connection with the contest between John Philip Hill and Vincent L. Palmisano, for election to the Seventy-First Congress in November of 1928. The ballot boxes in which the ballots in this election were stored, were required for use in the general and primary elections of 1930, and after considerable correspondence and negotiations, the said boxes were released by the Committee of Congress which had the contest under consideration. The two contesting candidates also agreed that all of the said ballots should be destroyed except those in three precincts which were still in dispute, and an order was accordingly obtained from the court authorizing the destruction of the ballots except in the three precincts in question, so that the boxes were ready for use at the elections of 1930. Mr. Jones represented the Supervisors of Elections.

Hudson Seal Fur Company vs. Thomas H. Robinson, Attorney General of Maryland. In the Circuit Court No. 2 of

Baltimore City. The Attorney General passed an order on April 2nd, 1929, under authority conferred by Chapter 552 of the Acts of Assembly of 1920, known as the Blue Sky Law, the effect of which was to restrain the Hudson Seal Fur Company, its agents and employees from selling muskrats and ranching service contracts to citizens of Maryland. The bill of complaint in this case was filed to restrain the Attorney General from interfering with the company in the sale of its muskrats and ranching service contracts, upon the alleged ground that it was not selling securities within the meaning of the Acts of Assembly. After a number of hearings and the taking of a large amount of testimony, it was clearly established that the officers of the company had employed fraudulent practices in the sale of their contracts, and the bill was accordingly dismissed. Mr. Jones and Mr. Marbury appeared for the Attorney General.

Commercial Investment Trust vs. Charles D. Gaither, Police Commissioner of Baltimore City. In the Baltimore City Court. Action of replevin for the recovery of an Essex automobile which came into the possession of the Police Department in the usual course of business. The Department had no interest in the automobile and a verdict was entered in favor of the plaintiff who agreed to pay the costs. Mr. Jones represented the Commissioner in the proceeding.

Sylvester Davis vs. Sullivan Brothers Coal Company and the State Accident Fund. In the Circuit Court for Allegany County. Appeal from the State Industrial Accident Commission. The decision of the commission was reversed. Mr. Jones appeared for the State Accident Fund.

William Patrick Barrett vs. Towson Nurseries and the State Accident Fund. In the Circuit Court for Baltimore County. Appeal from the State Industrial Accident Commission. Claim for permanent partial disability disallowed by the Commission. Reversed on appeal and claimant awarded compensation for fifty weeks at \$8.46 per week. Mr. Jones appeared for the State Accident Fund.

Frank Maggio vs. Charles D. Gaither, Police Commissioner of Baltimore City. In the People's Court of Baltimore City. Action of replevin for the recovery of slot machines which were seized by officers of the Department while upon storage. The Attorney General advised that these machines were not subject to seizure under the facts disclosed, and in accordance with his opinion and the ruling of the Court of Appeals in the case of *Soper vs. Michal*, 123 Md. page 542, a verdict for the plaintiff was rendered. Mr. Jones represented the Commissioner.

Helen D. McClary vs. William Schluderberg-T. J. Kurdle Company and the State Accident Fund. In the Baltimore City Court. Appeal from the State Industrial Accident Commission. George U. McClary was found murdered in an automobile truck belonging to the Wm. Schluderberg-T. J. Kurdle Co., by the side of an abandoned road about 270 feet from the Annapolis Boulevard on August 21st, 1929. McClary had not been seen since Saturday, August 17th, and the principal question at issue was whether the death of McClary resulted from an accidental injury arising out of and in the course of his employment. This issue was decided in favor of the employer and insurer, by the State Industrial Accident Commission. Upon appeal and after the presentation of testimony the case was disposed of by an agreement between the parties, by which it was found that the death of the said McClary did result from an accident arising out of and in the course of his employment, and that his wife and children were partially dependent upon him for support. Mr. Jones appeared for the State Accident Fund.

State Accident Fund, in its own right, and for the use of Carroll C. Serman vs. The DeLuca Construction Company. Serman, a member of the State Police Force, was injured in the course of his employment as a result of the alleged negligence of the DeLuca Construction Company in the maintenance of a barricade across the public highway. The

State Accident Fund paid him compensation during his disability, and also for his medical treatment. The case was compromised and settled without the necessity for any suit, and the State Accident Fund was fully reimbursed for all of its expenses in the matter. Mr. Jones represented the State Accident Fund.

John P. Smarr and H. E. Seton vs. James R. Cadden, Police Magistrate. In the Baltimore City Court. Two separate petitions for mandamus to compel Judge Cadden to strike out bail forfeitures and to compel a hearing of the charges upon which the petitioners were arrested. The cases were dismissed by the petitioners with the understanding that Judge Cadden would comply with the prayers of the petitioners in order to avoid the expense and delay incident to a formal hearing of the cases in the Baltimore City Court. Mr. Jones represented Judge Cadden.

State Roads Commission vs. Ida M. Parks. In the Circuit Court for Queen Anne's County. This property was acquired for the erection of one of the abutments and the approach to the bridge over the Chester River. It was agreed to pay \$750.00 for the property, but there was a defect in the title to the effect that a former bankruptcy proceeding of the defendant was defective. This was finally corrected and payment was made for the property. Mr. Archer appeared for the State Roads Commission.

William Uriah Waters, et al. vs. State Roads Commission. In the Circuit Court for Montgomery County. This was an appeal for an injunction restraining the State Roads Commission from building a road through the property of the complainants located in Montgomery County. It was agreed between the parties complainant and the defendant, that the road should be completed, and the damage determined by a jury of condemnation. This was afterwards done and the complainants were awarded the sum of \$125.00. Mr. Archer appeared for the State Roads Commission.

John F. O'Malley vs. State Roads Commission. In the Circuit Court for Howard County. The jury awarded the defendant the sum of \$5500.00. The State Roads Commission refused to pay this amount and appealed the case to court. While it was pending in the Circuit Court, it was settled and a deed given for the property in question. Mr. Archer appeared for the State Roads Commission.

James P. McKnight vs. State of Maryland. In the Circuit Court for Washington County. This was an action of trespass involving the title to a tract of land lying between the State Game Preserve and the Woodmont Rod and Gun Club in Washington County. The Conservation Department claimed that they had acquired this land in their purchase, and the defendant claimed that he owned it under his title. The case was set for trial several times, but was finally compromised and the line between the properties in question was established by agreement. Mr. Archer appeared for the State Game Warden.

John L. Krebs, et al. vs. State Roads Commission. In the Circuit Court of Baltimore County. In Equity. A bill of complaint was filed asking that the State Roads Commission and the Northern Central Railroad Company be enjoined from closing the grade crossing at Parkton until the people living on the part of the state road which would be "dead-headed" by the erection of the overhead crossing, were compensated in damages. The case was heard by the court *en banc* and an opinion rendered by Judge Offutt dismissing the bill of complaint. The complainants appealed. The case is now pending in the January Term of the Court of Appeals, 1931. Mr. Archer appeared for the State Roads Commission.

Thomas W. Perkins, et al. vs. State Roads Commission. In the Circuit Court for Kent County. In Equity. This was a bill of complaint to enjoin the State Roads Commission from paving certain streets in Chestertown under an agreement with the Commissioners of that town. On hear-

ing, the bill of complaint was dismissed. Mr. Archer appeared for the State Roads Commission.

Floyd B. Olcott vs. E. Lee LeCompte, State Game Warden. In the Circuit Court for Charles County. In Equity. The bill of complaint in this case sought to enjoin the State Game Warden from destroying a ducking blind which had been located in the Potomac River. An answer was filed setting up the fact that the blind was illegally erected, and upon hearing, the bill of complaint was dismissed. Mr. Archer appeared for the State Game Warden.

Joseph C. Rinaudo vs. Basil Daugherty. In the Peoples' Court of Baltimore City. Action for damages against Basil Daugherty, a member of the Police Force, growing out of an automobile accident in which the automobile operated by Daugherty was in collision with an automobile operated by Rinaudo. The trial resulted in a verdict for the defendant. Mr. Jones represented Officer Daugherty.

Joseph C. Rinaudo vs. Basil Daugherty. In the Baltimore City Court. Appeal from the Peoples' Court. Judgment of the Peoples' Court affirmed. Mr. Jones represented Officer Daugherty in the proceeding.

Automobile Bonding Company vs. Charles D. Gaither, Police Commissioner of Baltimore City. In the Baltimore City Court. Action of Replevin for the recovery of an automobile which came into the possession of the department in the usual course of business. A judgment for the plaintiff was entered without objection from the Police Commissioner, with the understanding that the costs would be paid by the plaintiff. Mr. Jones appeared for the Police Commissioner.

William L. Dancer vs. State Accident Fund and Campbell Coal Company. In the Circuit Court for Allegany County. Appeal from the State Industrial Accident Commission

where Dancer's claim for compensation was disallowed. The decision was reversed. Mr. Jones represented the State Accident Fund.

Pete Centofanti vs. Penn-Maryland Collieries. In the Circuit Court for Garrett County. Appeal from the State Industrial Accident Commission. The claimant contended that he was permanently injured as a result of carbon monoxide gas poisoning which he suffered as a result of an accident while working in the mine of his employer. The case was compromised and settled before trial, but after the taking of depositions at Phillipi, West Virginia, from which it appeared that the claimant had been totally disabled for a long period of time, and that he was permanently partially disabled as a result of the alleged accident. Mr. Jones appeared for the State Accident Fund.

Paul E. Liller vs. H. V. Leighton & Sons and the State Accident Fund. In the Circuit Court for Allegany County. Appeal from the State Industrial Accident Commission. In this case the claim of the widow was disallowed by the Commission on the ground that Paul E. Liller was an independent contractor and not an employee of H. V. Leighton & Sons at the time he was fatally injured. This decision was reversed. Mr. Jones appeared for the State Accident Fund.

Thomas A. Schaeffer, trading as the Violet Electric Company vs. State Board of Electrical Examiners and Supervisors. In the Baltimore City Court. Petition for mandamus to compel the reinstatement of the petitioner as a Master Electrician. Petition granted after trial before Judge Dennis. Mr. Jones appeared for the Board.

Fred Wallace vs. H. L. Thomas & Son and the State Accident Fund. In the Court of Common Pleas of Baltimore City. Appeal from the decision of the State Industrial Accident Commission where the claimant was denied compensation. The action was compromised before trial. Mr. Jones represented the State Accident Fund.

Chesapeake Finance & Credit Company vs. Charles D. Gaither, Police Commissioner of Baltimore City. In the Peoples' Court of Baltimore City. Action of replevin for the recovery of an automobile which came into the possession of the department in the usual course of business. The department had no interest in the automobile and without objection a judgment was entered for the return of the automobile to the plaintiff upon payment of costs by it. Mr. Jones appeared for the Police Commissioner.

Independent Retail Grocers vs. Roland Electric Company and John E. Potee, Sheriff of Baltimore City. In the Circuit Court No. 2 of Baltimore City. Bill for injunction to restrain the Sheriff from proceeding with a writ of fieri facias. The Sheriff had no interest in the proceeding except to comply with the order of court, and an answer to this effect has been filed. Mr. Jones appeared for Sheriff Potee.

Joseph Poggioli vs. Andrew Pessaro and the State Accident Fund. In the Baltimore City Court. Appeal from the State Industrial Accident Commission. The Commission after having ordered the payment of compensation to Poggioli during temporary total disability, thereafter passed an order terminating compensation. From this order Poggioli appealed. On appeal the jury held, under instructions of the court, that there was no evidence that Poggioli received an accidental injury in the course of his employment, and accordingly the order of the Commission was affirmed. Mr. Marbury appeared for the State Accident Fund.

State of Maryland vs. Robert Windsor. In the Circuit Court for Wicomico County. Robert Windsor was tried on an indictment for arson in the Circuit Court for Wicomico County. He was acquitted. At the request of Governor Ritchie the Attorney General designated Mr. Marbury to assist the State's Attorney for Wicomico County in the trial of the case.

Martin Gillet & Company, Inc. vs. State Tax Commission. In the Baltimore City Court. Appeal from the action of the State Tax Commission in refusing to grant a tax exemption to the appellant as a manufacturer. The order of the State Tax Commission was reversed. Mr. Levy and Mr. Marbury appeared for the Commission.

The May Realty Co. vs. State Tax Commission of Md.

The May Co. vs. State Tax Commission of Maryland.

Aaron J. Simon vs. State Tax Commission of Maryland.

Louis B. Bernei vs. State Tax Commission of Maryland.

Jennie Nattans vs. State Tax Commission of Maryland.

W. McLean Yost vs. State Tax Commission of Maryland.

Kresge Realty Company vs. State Tax Commission of Maryland. In the Baltimore City Court. See 14 Op. A. G. 38.

Because of the imperfections in the transcripts of the records of the proceedings before the State Tax Commission as transmitted to the Baltimore City Court in the above cases, a stipulation was entered into by the parties that the said cases be remanded to the State Tax Commission for retrial, without prejudice to either party, and it was so ordered by the Court.

Subsequently the cases were retried before the Commission, and the original action of the Commission was reaffirmed. At the request of the Commission Mr. Levy took part in the retrial.

Universal Credit Company vs. Charles D. Gaither, Police Commissioner of Baltimore City. In the Superior Court of Baltimore City. Action for replevin of automobile which came into the possession of the department in the usual course of business. The department had no interest in the automobile and a judgment was entered in favor of the plaintiff for the return of same without cost. Mr. Jones represented the Police Commissioner.

Susan Lee, et al. vs. John E. Potee, Sheriff of Baltimore City. In the Circuit Court No. 2 of Baltimore City. Bill to

enjoin the Sheriff from proceeding with a writ of fieri facias. This case was dismissed after an answer had been filed on behalf of the Sheriff by Mr. Jones.

Wallace O. Thompkins and Bradley Alvey vs. State Roads Commission. In the Circuit Court for Anne Arundel County. The condemnation of this property was completed by awarding the defendants the sum of \$150.00, but the verdict was afterwards set aside by the Court when it was proven that while the Sheriff returned the defendants summoned, they had not actually been. The case was finally settled. Mr. Archer represented the State Roads Commission in the proceedings.

In Re: John W. Creighton. Before the State Employment Commissioner. The hearing in this case was held in Cambridge on Monday, March 3rd, 1930. Mr. Levy assisted the Commissioner and Mr. Archer appeared for the Conservation Department. The employee was dismissed from the service.

On Tuesday, October 28th, 1930, Mr. Jones was engaged in the Superior Court before Judge O'Dunne in defending six appeal cases from various boards of registry in refusing to register the petitioners as qualified voters.

On Friday, October 31st, 1930, Mr. Jones was engaged in the Superior Court before Judge O'Dunne in defending twenty-seven appeal cases from various boards of registry in refusing to register the petitioners as qualified voters.

CONDEMNATION WORK

The following condemnation cases for the purpose of securing the right-of-way for the State Roads Commission were tried and determined by verdict of a jury. Many other cases were instituted but were settled before coming to trial.

Baltimore County:

The Hopkins Company, defendant.

Award: \$4,000.00.

Caroline County:

William Murphy, defendant.
Award: \$200.00.
Wm. Neal, et al., defendants.
Award: \$100.00.

Harford County:

Calvin Hipkins, defendant.
Award: \$150.00.
Morris Forward, defendant.
Award: \$400.00.
Wm. E. Carr, defendant.
Award: \$1,400.00.

Howard County:

John Shaab, defendant.
Award: \$350.00.

Montgomery County:

Charles Eader, defendant.
Award: \$225.00.
Mrs. H. B. Haddox, defendant.
Award: \$475.00.
Mrs. Waters, et al., defendants.
Award: \$234.00.

Prince George's County:

Mrs. Estelle Hall, defendant.
Award: \$525.00.
Charles Berry, defendant.
Award: \$300.00.
P. W. Koble, defendant.
Award: \$750.00.

Worcester County:

Mary A. Cropper, defendant.
Award: \$56.00.
J. R. Bunting, defendant.
Award: \$1.00.

Purchase of Bridges at Point of Rocks and Brunswick, Maryland. See 14 Op. A. G. page 41. The question of the title to these properties was finally adjusted and the purchase consummated. Mr. Archer appeared for the State Roads Commission.

The following grade crossings were completed during the year:

- Over the Pennsylvania Railroad tracks at Salisbury;
- Over the B. & O. Railroad tracks at Gaithersburg;
- Over the Pennsylvania Railroad tracks at Cockeysville;
- Over the B. & O. Railroad tracks at Relay;
- Over the Pennsylvania Railroad tracks at Middle River;
- Over the Pennsylvania Railroad tracks at Melvale;
- Over the B. & O. Railroad tracks at Ridgeville;
- Over the Northern Central Railroad at Parkton.

BEFORE THE STATE INDUSTRIAL ACCIDENT COMMISSION

Joseph Poggioli vs. Andrew Pessaro and the State Accident Fund. At Baltimore.

Arthur Franklin Fendley vs. Beverley Beach Development Company and the State Accident Fund. At Baltimore.

Bennie Snowden vs. State Roads Commission and the State Accident Fund. At Baltimore.

Lillian Wehberg vs. Baltimore Enamel & Novelty Company and the State Accident Fund. At Baltimore.

Charles E. Howeth vs. Commissioner of Motor Vehicles and the State Accident Fund. At Baltimore.

Charles Doehring vs. Baltimore Brush Handle Manufacturing Company and the State Accident Fund. At Baltimore.

Thomas D. Hillard vs. State Roads Commission and the State Accident Fund. At Rockville.

George W. Miller vs. Darby & Snyder and the State Accident Fund. At Rockville.

George McCauley vs. Harrison & Rouse Coal Company and the State Accident Fund. At Baltimore.

Charles C. Bass vs. Reinle Salmon Company and the State Accident Fund. At Baltimore.

Edna B. Arnold vs. Maryland Window & Office Cleaning Company and the State Accident Fund. At Baltimore.

Rosa C. Hinkson vs. C. J. Wolfe and the State Accident Fund. At Baltimore.

William C. Winkler vs. Campbell Coal Company and the State Accident Fund. At Cumberland.

Harmon J. Broadwater vs. A. P. Hoffa Coal Company and the State Accident Fund. At Cumberland.

Mrs. Nora Duckworth vs. Piedmont & George's Creek Coal Company and the State Accident Fund. At Cumberland.

Robert Hotchkiss vs. R. J. Ross Coal Mines, Inc. and the State Accident Fund. At Cumberland.

Clinton Coleman vs. Maryland Coal Company and the State Accident Fund. At Cumberland.

Samuel Weimer vs. McNitt Coal Company and the State Accident Fund. At Cumberland.

Levi Porter vs. Annan & Jeffries and the State Accident Fund. At Cumberland.

Joseph Ahern vs. Piedmont & George's Creek Coal Company and the State Accident Fund. At Cumberland.

Thomas Bray vs. Manor Coal Company and the State Accident Fund. At Oakland.

Walter Fike vs. Potomac Transmission Company and the State Accident Fund. At Oakland.

W. S. Darr vs. Manor Coal Company and the State Accident Fund. At Oakland.

Pete Centofanti vs. Penn-Maryland Collieries and the State Accident Fund. At Oakland.

Mrs. Bessie Jane Liller vs. H. V. Leighton & Son and the State Accident Fund. At Oakland.

Edward Whitacre vs. Manor Coal Company and the State Accident Fund. At Oakland.

Ralph M. Price vs. J. E. Walls and the State Accident Fund. At Elkton.

John T. Hill vs. Alonza R. Conley and the State Accident Fund. At Easton.

James E. Showell vs. O. D. Phillips & Brother and the State Accident Fund. At Salisbury.

John Ennals vs. Granville Hooper and the State Accident Fund. At Salisbury.

Robert C. Hall vs. Cambridge Manufacturing Company and the State Accident Fund. At Cambridge.

Herbert Bonville vs. J. M. Clayton Company and the State Accident Fund. At Cambridge.

James A. Jordan, Jr. vs. Jordan Ice Company and the State Accident Fund. At Cambridge.

Martha Edgar vs. J. M. Clayton Company and the State Accident Fund. At Cambridge.

Edna Banks vs. I. L. Leonard & Company and the State Accident Fund. At Cambridge.

Robert Dail vs. Cambridge Manufacturing Company and the State Accident Fund. At Cambridge.

William Warren vs. W. J. Chapman Coal Company and the State Accident Fund. At Baltimore.

John Wise vs. Florence Silver Plate Company and the State Accident Fund. At Baltimore.

Margaret Lombardi vs. Frank Carozza & Son and the State Accident Fund. At Baltimore.

Denton E. Powell vs. W. F. Myers & Sons and the State Accident Fund. At Westminster.

Paul I. Faith vs. Bester & Long Company and the State Accident Fund. At Hagerstown.

Clarence H. Eyler vs. John B. Wolfkill and the State Accident Fund. At Hagerstown.

John C. Stockslager vs. Brandt Cabinet Works and the State Accident Fund. At Hagerstown.

John Shipley vs. Dickson Construction & Repair Company and the State Accident Fund. At Hagerstown.

Rosa Burgoon vs. William E. Hooper and the State Accident Fund. At Baltimore.

Louis M. Weglein vs. Wm. Schluderberg-T. J. Kurdle Company and the State Accident Fund. At Baltimore.

Charles U. Miller vs. Marva Coal Company and the State Accident Fund. At Cumberland.

Raymond Kress vs. Sullivan Brothers Coal Company and the State Accident Fund. At Cumberland.

Peter Gaudio vs. Mt. Savage Mining Company and the State Accident Fund. At Cumberland.

Frank Broderick vs. Manor Coal Company and the State Accident Fund. At Cumberland.

Jos. R. Ahern vs. Piedmont & George's Creek Coal Company and the State Accident Fund. At Cumberland.

Walter Wier vs. Koontz Coal Company and the State Accident Fund. At Cumberland.

Levi Porter vs. Annan & Jeffries and the State Accident Fund. At Cumberland.

Sylvester Davis vs. Sullivan Brothers and the State Accident Fund. At Cumberland.

Richard J. Hopkins vs. Mt. Savage Mining Company and the State Accident Fund. At Cumberland.

John Karvick vs. Sullivan Brothers Coal Company and the State Accident Fund. At Cumberland.

Robert Moffatt vs. Maryland Coal Company and the State Accident Fund. At Cumberland.

Michael S. Duckworth vs. Campbell Coal Company and the State Accident Fund. At Cumberland.

Mont. Myers vs. Big Vein Coal Company and the State Accident Fund. At Cumberland.

John Brodbeck vs. George's Creek Coal Mining Company and the State Accident Fund. At Cumberland.

Wm. R. Winkler vs. Campbell Coal Company and the State Accident Fund. At Cumberland.

Jas. A. Preston vs. Campbell Coal Company and the State Accident Fund. At Cumberland.

Robert Elliott vs. Campbell Coal Company and the State Accident Fund. At Cumberland.

Osborne Wilson vs. Ross Coal Mines, Inc., and the State Accident Fund. At Cumberland.

Emory Lewis vs. Davis Coal & Coke Company and the State Accident Fund. At Cumberland.

Marcellus Morgan vs. Maryland Coal Company and the State Accident Fund. At Cumberland.

Peter Evans vs. Manor Coal Company and the State Accident Fund. At Oakland.

Ed. Whitacre vs. Manor Coal Company and the State Accident Fund. At Oakland.

Aubrey Bowers vs. Davis Coal & Coke Company and the State Accident Fund. At Oakland.

John L. Brenneman vs. State Roads Commission and the State Accident Fund. At Oakland.

Jas. H. Loughry vs. Manor Coal Company and the State Accident Fund. At Oakland.

Wm. B. Upole vs. Davis Coal & Coke Company and the State Accident Fund. At Oakland.

Claude Simmons vs. Davis Coal & Coke Company and the State Accident Fund. At Oakland.

Melissa Stuby vs. Campbell Coal Company and the State Accident Fund. At Oakland.

Edward Rennes vs. McShane Foundry Company and the State Accident Fund. At Baltimore.

Alfred Shives vs. Dickson Construction & Repair Company and the State Accident Fund. At Baltimore.

Robert Beard vs. Frederick C. Peet and the State Accident Fund. At Baltimore.

Frank Turner vs. Samuel W. Linthicum and the State Accident Fund. At Cambridge.

Robert Marshall vs. Pritchett & Robbins and the State Accident Fund. At Cambridge.

Justin Melvin Johnson vs. J. M. Clayton & Company and the State Accident Fund. At Cambridge.

Ernest Wheatley vs. Thos. E. Jones & Company and the State Accident Fund. At Cambridge.

John Ennells vs. Granville Hooper and the State Accident Fund. At Cambridge.

Joseph Booker vs. Thos. B. Gatch & Sons and the State Accident Fund. At Baltimore.

Julius Weinstock vs. Pariser Bakery and the State Accident Fund. At Baltimore.

John G. Reynolds vs. State Roads Commission and the State Accident Fund. At Baltimore.

John D. Farrell vs. State Roads Commission and the State Accident Fund. At Baltimore.

John Albert Wright vs. Commissioner of Motor Vehicles and the State Accident Fund. At Baltimore.

Edward Flemister vs. Dickson Construction and Repair Company and the State Accident Fund. At Baltimore.

Mrs. Ely Schmidt vs. Campbell & Son and the State Accident Fund. At Baltimore.

Charles O. Nichols vs. Dickson Construction & Repair Company and the State Accident Fund. At Hagerstown.

Isaac Mitchell vs. Dickson Construction & Repair Company and the State Accident Fund. At Hagerstown.

Charles E. Wilson vs. Maryland Pipe Supply Company, Inc. and the State Accident Fund. At Hagerstown.

Harry M. Miller vs. Victor Products Corporation and the State Accident Fund. At Hagerstown.

Paul I. Faith vs. Bester-Long Company and the State Accident Fund. At Hagerstown.

H. S. Williamson vs. Dickson Construction & Repair Company and the State Accident Fund. At Hagerstown.

Harry Tibbett vs. Ross Coal Mining Company and the State Accident Fund. At Cumberland.

Alexander Conrad vs. McNitt Coal Company and the State Accident Fund. At Cumberland.

Albert Broadwater vs. Campbell Coal Company and the State Accident Fund. At Cumberland.

Wm. B. Upole vs. Davis Coal & Coke Company and the State Accident Fund. At Cumberland.

Frank Laurich, deceased vs. Piedmont & George's Creek Coal Company and the State Accident Fund. At Cumberland.

John Brodbeck vs. George's Creek Coal Company and the State Accident Fund. At Cumberland.

Lonnie Marsh vs. Maryland Coal Company and the State Accident Fund. At Cumberland.

W. L. Dancer vs. Campbell Coal Company and the State Accident Fund. At Cumberland.

William A. Dewitt vs. Penn Collieries and the State Accident Fund. At Oakland.

Julia Kudra vs. Davis Coal and Coke Company and the State Accident Fund. At Oakland.

Nick Coker vs. Davis Coal & Coke Company and the State Accident Fund. At Oakland.

Mrs. Charles W. Turner vs. Shallmar Mining Corporation and the State Accident Fund. At Oakland.

Wendell Wilson vs. Hamill Coal & Coke Company and the State Accident Fund. At Oakland.

Frank Broderick vs. Manor Coal Company and the State Accident Fund. At Oakland.

John H. Hunter vs. Elliott Machine Corporation and the State Accident Fund. At Baltimore.

John C. Porter vs. Briddell Transfer Company and the State Accident Fund. At Baltimore.

Mr. Jones appeared for the State Accident Fund in one hundred and five of the above entitled cases, and Mr. Marbury appeared for the Fund in the remaining six cases.

CASES PENDING IN THE LOWER COURTS

State Accident Fund, in its own right and for the use of George D. Hale vs. Cumberland Contracting Company. In the Circuit Court for Allegany County. Hale, an employee of the State Roads Commission, was seriously injured on May 23rd, 1930, as a result of the falling of a rock bin which was being maintained by the Cumberland Contracting Company. It is contended that this accident was due to the negligence of the Contracting Company in the maintenance of said bin, and this action has been instituted under the provisions of Section 58 of the Workmen's Compensation Law to recover the amount of compensation and medical expenses which the State Accident Fund, as the insurer of the State Roads Commission, has been required to pay on account of the accident, and also for the purpose of recovering such additional damages as have been suffered by Mr. Hale. Mr. Jones is representing the State Accident Fund.

State Accident Fund, in its own right and for the use of Ellsworth D. Dryden vs. Miss Jeanette A. MacIntyre. In the Circuit Court for Allegany County. Dryden, a member of the Maryland State Police Force, was injured in the course of his duties on the 13th day of April, 1929, as a result of the collision with an automobile belonging to Miss MacIntyre. It is claimed that the collision in question was occasioned by the negligent operation of the automobile belonging to Miss MacIntyre, and this suit has been filed to enforce her liability on account of said accident, for the benefit of the State Accident Fund, which has been required to pay compensation to Dryden, and for the benefit of Dryden, as their respective interests may appear. Mr. Jones is representing the State Accident Fund.

Mordecai Glaubman vs. Board of Supervisors of Elections of Baltimore City, et al. In the Superior Court of Balti-

more City. Petition for mandamus to compel the registration of Glaubman as a qualified voter. The registration was refused for the reason that the State Department of the United States claimed that Glaubman had lost his citizenship through the cancellation of the naturalization certificate of his father. Mr. Jones is appearing for the Board of Supervisors of Elections.

Henrietta C. Reynolds vs. State Roads Commission and the State Accident Fund. In the Baltimore City Court. Henrietta C. Reynolds, Widow of John C. Reynolds, deceased, filed claim for compensation, alleging that the death of her husband resulted from an accidental injury arising out of and in the course of his employment. An award was passed in favor of the widow, and this decision has been appealed by the State Accident Fund, because it is believed that the death of Reynolds resulted from disease rather than from accident. Mr. Jones is representing the State Accident Fund.

State Accident Fund, in its own right and for the use of Bessie Jane Liller vs. Baltimore & Ohio Railroad Company. In the Circuit Court for Allegany County. Liller was fatally injured while in the course of his employment by H. V. Leighton & Sons, and the State Accident Fund is paying compensation to Mrs. Liller as the dependent widow. It is claimed that the death of Liller which occurred at a railroad crossing, occurred as a result of the negligence of the employees of the B. & O. Railroad Company, and this action has been brought to enforce the liability of the railroad company. Mr. Jones is representing the State Accident Fund.

Roy C. Derry vs. Baltimore & Ohio Railroad Company; John O. Johnson vs. Baltimore & Ohio Railroad Company. In the Baltimore City Court. Derry and Johnson, both employed by the Hampden Transfer Company, were seriously injured on April 16th, 1929, when the automobile truck in which they were riding collided with the upright support

for the B. & O. Railroad bridge over the state road at Silver Spring. The State Accident Fund, as insurer of the Hampden Transfer Company, has paid both of these men compensation, and this action has been instituted under Section 58 of the Workmen's Compensation Law for the purpose of enforcing the liability of the B. & O. Railroad Company for the accident. Mr. Jones is appearing for the State Accident Fund in both cases.

State of Maryland for the use of Catherine Kershaw vs. William Bromwell and the Mayor and City Council of Baltimore City. In the Court of Common Pleas. Action for the recovery of damages for the death of Albert A. Kershaw which is alleged to have resulted from the negligence of Bromwell, who is a member of the Police Force of Baltimore City, and the Mayor and City Council of Baltimore. Mr. Jones is representing Officer Bromwell.

Clarence M. Plitt vs. Charles D. Gaither, Police Commissioner, Garnishee of Miller, Haller & Campbell. In the Court of Common Pleas. Writ of attachment laid in the hands of the Police Commissioner intended to attach an automobile belonging to Miller, Haller and Campbell. The automobile was not in the possession of the department at the time the attachment was laid. Mr. Jones filed a plea of nulla bona, and is representing the Police Commissioner in the proceeding.

Alfred E. Shives vs. Dixon Construction & Repair Company and the State Accident Fund. In the Circuit Court for Washington County. This is an appeal from a decision by the State Industrial Accident Commission by which the claimant's petition to reopen his case was denied. Mr. Jones is representing the State Accident Fund.

General Motors Acceptance Corporation vs. Charles D. Gaither, Police Commissioner of Baltimore City. In the Superior Court of Baltimore City. Action of replevin for the recovery of an automobile. Mr. Jones is representing the Police Commissioner in the proceeding.

Joseph Cohen vs. John E. Potee, Sheriff of Baltimore City, et al. In the Baltimore City Court. Action of trover and conversion. Mr. Jones is representing the Sheriff.

Augustus D. Clements vs. Charles D. Gaither, Police Commissioner of Baltimore City and the Mayor and City Council of Baltimore. In the Circuit Court No. 2 of Baltimore City. Bill for injunction to restrain the interference with the maintenance of a certain advertising sign. Mr. Jones is representing the Police Commissioner.

Martha E. Ford vs. State Roads Commission and the State Accident Fund. In the Circuit Court for Anne Arundel County. Appeal from the State Industrial Accident Commission. This appeal involves the question as to whether or not Martha E. Ford was dependent upon her father at the time of his death. Mr. Jones is representing the State Accident Fund.

Thomas M. Elliott vs. George O'Neill and John E. Potee, Sheriff of Baltimore City. In the Superior Court of Baltimore City. Petition to quash a writ of attachment. Mr. Jones filed an answer on behalf of the Sheriff and is representing him in the proceeding.

National Bond & Investment Company vs. Charles D. Gaither, Police Commissioner of Baltimore City. In the Superior Court of Baltimore City. Action of replevin for the recovery of an automobile which came into the possession of the Police Department in the usual course of business. Mr. Jones filed an answer on behalf of the Police Commissioner and is representing him in the proceeding.

Soloman Berg and Yetta Berg vs. Commercial Savings Bank and John E. Potee, Sheriff of Baltimore City. In the Circuit Court No. 2 of Baltimore City. Bill to enjoin the Sheriff from proceeding with the execution of a writ of fieri facias. Mr. Jones filed an answer on behalf of the Sheriff and is representing him in the proceedings.

Charles I. Silin vs. University of Maryland. In the Circuit Court for Prince George's County. Charles I. Silin, a former teacher at the University, brought suit against the University of Maryland and the Board of Regents, claiming certain monies on account of salary. A demurrer was interposed on behalf of the defendants. Silin moved for judgment on the ground that the demurrer was not properly filed under the Rule Day Act of Prince George's County. After hearing, the court denied this motion. The case was then set down for hearing on demurrer and argued before Mattingly and Loker, JJ., but no decision has as yet been rendered. Mr. Marbury is appearing for the University of Maryland and the Board of Regents.

John H. Hutchins vs. William Lancaster and Joseph F. Dougherty, individually and as co-partners trading as Lancaster & Dougherty. In the Superior Court of Baltimore City. John H. Hutchins brought suit against the two defendants for false arrest in connection with certain investigations made at the request of the Insurance Commissioner. The Insurance Commissioner requested the Attorney General to assign one of his Assistants to defend the case, and Mr. Marbury is appearing on their behalf.

Lillian Wehberg vs. Baltimore Enamel & Novelty Company and the State Accident Fund. In the Superior Court of Baltimore City. Appeal from the State Industrial Accident Commission. Lillian B. Wehberg filed a claim for compensation against the Baltimore Enamel & Novelty Company and the State Accident Fund. This claim was denied on the ground that her disability did not arise out of or in the course of her employment, and the case was appealed and is pending. Mr. Marbury is appearing for the State Accident Fund.

Ralph Palmer Martin vs. Harriet M. Runkel and the Mercantile Trust & Deposit Company, Executors of the Estate of Dr. John F. B. Weaver. In the Circuit Court for Carroll County. This suit was brought by Ralph Palmer

Martin on a promissory note alleged to have been made by Dr. John F. B. Weaver. The claim based on the note was rejected by his executors, and this suit was then instituted. Mr. Marbury is appearing on behalf of the University of Maryland, the residuary legatee under Dr. Weaver's will.

Frank Maxa, Jr. vs. Commissioner of Motor Vehicles and George W. Munford, Deputy Commissioner of Motor Vehicles. In the Circuit Court for Harford County. Appeal from an order suspending the license of the appellant. Mr. Levy is appearing for the Commissioner.

J. Hazelwood Spicer vs. Commissioner of Motor Vehicles. In the Circuit Court for Caroline County. Appeal from an order revoking the appellant's license to operate a motor vehicle. Mr. Levy is appearing for the Commissioner of Motor Vehicles.

Luther Nichols vs. Commissioner of Motor Vehicles. In the Circuit Court for Caroline County. Appeal from an order of the Commissioner of Motor Vehicles revoking the appellant's license to operate a motor vehicle. Motion by appellant for continuance granted upon condition that he would not operate a motor vehicle in this state pending the determination of the appeal. Mr. Levy and the State's Attorney for Caroline County are appearing for the Commissioner.

The Conowingo Electric Light & Power Company vs. State Tax Commission. In the Circuit Court No. 2 of Baltimore City. Appeal from assessment of gross receipts tax for the year 1930, under Section 186 (b) of the Code, Article 81, as reenacted by the Acts of 1929, Chapter 226. Mr. Marbury is appearing for the State Tax Commission.

Joseph P. Connor, Register of Wills of Baltimore County, for the use of the State of Maryland vs. R. Bennett Darnall, Trustee under a Deed of Trust from Sallie C. Brown. In the Baltimore City Court. Claim for collateral inheritance

tax presented upon an agreed statement of facts. Mr. Jones is appearing for the Register of Wills.

William J. Nelson vs. State Accident Fund and Tawes Ice Company. In the Circuit Court for Somerset County. Appeal from the State Industrial Accident Commission, where claim for compensation was disallowed. Mr. Jones is appearing for the State Accident Fund.

G. Ridgely Sappington vs. David H. Blair, Commissioner of Internal Revenue. Before the Board of Tax Appeals. Liability of University professors to Federal income tax. Mr. Marbury is appearing for the University of Maryland.

Jeannette E. Brome Howard and Susette I. Brome Bennett vs. The Hastings and Parsons Company, a body corporate. In the Circuit Court for St. Mary's County. This was an action of trespass brought by the plaintiff against a contractor who was doing certain work on behalf of the St. Mary's Seminary. The question involved relates to the title to the property as between the plaintiffs and the Seminary. Negotiations are pending, looking to a settlement of the boundary line between the parties. Mr. Marbury is appearing for the State.

State Roads Commission vs. Union Trust Company. In the Baltimore City Court. This suit was instituted on May 7th, 1929, to recover the sum of \$271,791.56 wrongfully and unlawfully charged against the account of the State Roads Commission by the Union Trust Company during the period from October 1st, 1920, to March 31st, 1928, as shown by 4,952 checks heretofore presented and tendered to the said company at its request. The defendant demanded the particulars of the claim of the State Roads Commission, to which demand exception was taken on the ground that such particulars had already been furnished it. The defendant then filed an exception to the particulars which had been furnished it on the ground that the same were not sufficiently definite and specific. The State Roads Commission

then moved to dismiss the defendant's exception to the bill of particulars for the reason that the bill of particulars theretofore furnished was adequate. On the point thus presented, a hearing was held, at the conclusion of which the Court ordered the State Roads Commission to furnish a new bill of particulars. This was done. Thereafter the defendant excepted to the amended or additional bill of particulars filed by the State Roads Commission, on the ground of inadequacy. The court overruled these exceptions and the defendant then demurred to the declaration. This demurrer was overruled. Thereupon, the defendant pleaded limitations and the general issue. The State Roads Commission demurred to the plea of limitations and moved that the same be not received, meanwhile joining issue on the other pleas. After hearing the court sustained the demurrer of the State Roads Commission to the plea of limitations. The Attorney General and Mr. Marbury are appearing for the State Roads Commission.

Northern Maryland Power Company vs. State Tax Commission of Maryland. In the Circuit Court No. 2 of Baltimore City. Appeal from the assessment of gross receipts tax, for the year 1930, under section 186 (b) of the Code, Article 81, as reenacted by Chapter 226 of the Acts of 1929. This case involves the same questions as *Northern Maryland Power Company vs. State Tax Commission*, before the State Board of Appeals, *infra*.

William B. Roach vs. State Tax Commission. In the Baltimore City Court. See 11 Op. A. G. 41.

Whitemarsh Sand & Gravel Company vs. State Tax Commission. In the Circuit Court No. 2 of Baltimore City. See 11 Op. A. G. 41.

Helen Brown, et al. vs. Clerk of the Circuit Court of Baltimore City. In the Circuit Court No. 2 of Baltimore City. See 11 Op. A. G. 40.

United States Fidelity & Guaranty Company vs. State Tax Commission. Before the State Board of Appeals. See 14 Op. A. G. 37-38.

Canton Railroad Company vs. State Tax Commission. Before the State Board of Appeals. See 14 Op. A. G. 36.

City Real Estate Company vs. State Tax Commission of Maryland. In the Baltimore City Court. See 14 Op. A. G. 36.

United States Fidelity & Guaranty Company vs. State Tax Commission. In the Circuit Court for Baltimore City. See Op. A. G. 37.

Northern Virginia Power Company vs. State Tax Commission. Before the State Board of Appeals. See 14 Op. A. G. 37.

Northern Maryland Power Company vs. State Tax Commission. Before the State Board of Appeals. See 14 Op. A. G. 37.

Emmitt Butler vs. Commissioner of Motor Vehicles. In the Circuit Court for Howard County. See 14 Op. A. G. 39.

Joseph G. DeGrief et al. vs. Commissioner of Motor Vehicles and the Public Service Commission. In the Circuit Court of Baltimore City. See 11 Op. A. G. 40.

Harry Foreman vs. State of Maryland. In the Baltimore City Court. See 11 Op. A. G. 41.

H. Klaff, Inc. vs. State Tax Commission. In the Baltimore City Court. See 14 Op. A. G. 39.

William E. Woodall & Company vs. State Tax Commission. In the Baltimore City Court. See 11 Op. A. G. 41.

Union Railroad Company vs. State Tax Commission. In the Baltimore City Court. See 13 Op. A. G. 38.

Edward R. Burt vs. The Board of Examiners of Public Accountants of the State of Maryland. In the Superior Court of Baltimore City. See 13 Op. A. G. 35.

James L. Weer, et al. vs. George W. Page, Bank Commissioner. In the Circuit Court No. 2 of Baltimore City. See 14 Op. A. G. 36.

Frederick J. Goddard vs. Millicent Goddard James. In the Supreme Court of the District of Columbia In Equity. See 14 Op. A. G. 41.

Ned Simmons, et al. vs. Conservation Commissioner.

John T. Dean, et al. vs. Conservation Commissioner.

Olin Ruark, et al. vs. Conservation Commissioner.

James F. Tyler, et al. vs. Conservation Commissioner.

Bronze M. Parks, et al. vs. Conservation Commissioner.

W. Riley Lewis, et al. vs. Conservation Commissioner.

Gorman Simmons, et al. vs. Conservation Commissioner.

Irving F. Cannon, et al. vs. Conservation Commissioner.

John A. Brennock, et al. vs. Conservation Commissioner.

In the Circuit Court for Dorchester County. See 14 Op. A. G. 42.

University of Maryland: In Re: Estate of Dr. John F. B. Weaver. The testator bequeathed his entire estate, less a few specific legacies, to the University of Maryland, subject to an annuity. Subsequently, Dr. John S. Ziegler filed a claim against the executors for medical services. This claim was investigated and settled. Thereafter, Ralph Palmer Martin filed a claim against the executors, based on a promissory note. This claim was investigated and disallowed. Mr. Marbury is appearing for the University of Maryland.

University of Maryland: In Re: Estate of Lillie H. Coit. A partial distribution has been made in this estate to the

University of Maryland, one of the residuary legatees, of securities to the value of approximately \$100,000. Mr. Marbury is advising the University in regard to this estate.

In Re: Baltimore Trust Company. Before the State Tax Commission of Maryland. This case involves a number of questions relating to the gross receipts tax on the gross receipts of the Baltimore Trust Company. Mr. Levy is assisting the Commission in the investigation of these questions.

In Re: The Maryland Title Guarantee Company. Before the State Tax Commission of Maryland. Mr. Levy appeared before the State Tax Commission in the above entitled case, at the request of the Commission. The question involved was whether the Maryland Title Guarantee Company should be classified as a domestic guarantee or a domestic finance corporation, in which event it would be taxable on its shares at the rate of \$1.00 and no more for city and county purposes, or whether it should be classified as a title insurance company, in which event it would be taxable at the regular rate of taxation for city and county purposes.

Acquisition of Bridges by West Virginia and Maryland at the Following Points: The interstate highway bridge between Keyser, West Virginia and McCoole, Maryland; the existing interstate bridge between Piedmont, West Virginia and Westernport, Maryland, and the interstate highway bridge known as the "Blue Bridge." These bridges are being acquired under the provisions of Chapter 115 of the Acts of the General Assembly of Maryland of 1929, and a concurrent Act passed by the General Assembly of West Virginia at its session of 1929. The agreement for the acquisition of these bridges was prepared and submitted to the Attorney General of West Virginia, but no action has been taken either by the Attorney General or the State Roads Commission of West Virginia. Mr. Archer is appearing for the State Roads Commission.

In Re: Property of Nancy Miller. The road over this property has been constructed, but no final settlement has ever been made due to the fact that there is a dispute between the said Nancy Miller and John P. Broome who purchased the property at tax sale in the year 1928. Mr. Archer is appearing for the State Roads Commission.

Work is progressing on the grade crossings at Kensington, Rockville, Lutherville, Bare Hills, Elkton, Parkhead and Aiken. In addition to these, the grade crossing over the Pennsylvania Railroad at Aberdeen was avoided.

IN THE NEW YORK COURT OF APPEALS

In the Matter of the Judicial Settlement of the Account of Proceedings of Livingston Platt, as Executor of the Last Will and Testament of Alice C. Martin, deceased. The State of Connecticut, Appellant, Livingston Platt, as Executor, as Aforesaid, and Joseph D. Nunan, Jr., Esq., Special Guardian Respondents. At the request of the Tax Commissioner of the State of Connecticut, the Attorney General of this state, as amicus curiae, filed a joint brief with the Tax Commission of the State of New York, the Commissioner of Corporations and Taxation of the Commonwealth of Massachusetts, and the Attorney General and the Comptroller of the Treasury of the State of New Jersey. The case presents one of the most important questions on the subject of death taxation that has ever been before the courts of this country. If the decisions of the lower courts of New York are affirmed, the collection of death taxes with respect to inheritance will be seriously impeded, if not rendered impossible. The case has been argued before the Court of Appeals of New York, but has not yet been decided. This matter is being handled by Mr. Levy.

RECEIVERSHIPS

Harrison Rider, Insurance Commissioner of Maryland vs. Hampton Rhodes Fire and Marine Insurance Company. In the Circuit Court No. 2 of Baltimore City. An investiga-

tion of the affairs of the Hampton Rhodes Fire and Marine Insurance Company having disclosed that the company was in an insolvent condition, a petition for the appointment of a receiver was filed, to which the company consented. Mr. Denton S. Lowe was appointed receiver on November 19th, 1930, and the court has appointed special counsel to act for the receiver. Mr. Marbury represented the Commissioner in instituting the receivership proceedings.

State of Maryland vs. Chesapeake Bank of Baltimore. In the Circuit Court No. 2 of Baltimore City. Petition for the appointment of the Bank Commissioner as receiver for the Chesapeake Bank of Baltimore, upon the ground that the bank was conducting its business in an unsafe and unauthorized manner, in that its reserves, as required by law, had become exhausted. Mr. Archer filed the petition on behalf of the State.

State of Maryland vs. Southern Maryland Trust Company. See 14 Op. A. G. 42-43. This company has been restored to solvency and, under an order of the Circuit Court of Prince George's County, the Bank Commissioner reopened it for business on March 26th, 1930. It has been in active operation ever since.

DROUGHT RELIEF

The Governor appointed a Commission to take such steps as might be appropriate for the relief of the persons suffering from the effects of the long drought during the summer of 1930. The Commission determined upon the creation of a corporation to be known as the Maryland Drought Loan Corporation, for the purpose of supplementing the credit facilities available through ordinary banking channels. At the request of the Governor, Mr. Levy and Mr. Marbury acted as legal advisers to the Commission and prepared the necessary papers for the incorporation of the Company.

BLUE SKY LAW ENFORCEMENT

The activities of the Department in the enforcement of the Blue Sky Law have been pursued with considerable effect throughout the year. The major portion of complaints under this law came either from the Blue Sky Committee of which Mr. John P. Baer is President, or from the Better Business Bureau of Baltimore, of which Mr. Robert W. Test is the Managing Director. The thanks of the department and of the public are especially due to these two gentlemen for the splendid service which they have rendered in helping to suppress fraudulent security sales in Maryland.

In one case which was brought to our attention by the Better Business Bureau promptly after activities were begun in Maryland, subsequent investigations disclosed that the promoters of the enterprise had swindled the public in various states to the extent of more than a million dollars, but because of the promptness of the Better Business Bureau in bringing the matter to our attention and the passage of a restraining order by the Attorney General, the activities of the company in Maryland were stopped when only \$1,100.00 had been obtained from citizens of this state.

There have been but four formal restraining orders issued by the Attorney General during the year, resulting from the numerous investigations and hearings which were conducted by the department. In a number of cases operators voluntarily agreed to abandon all sales in Maryland, and in many instances have repaid in full the amounts collected from citizens in this state. In other cases the corporate "set-ups" have been rearranged so as to eliminate objectionable features. A large amount of advertising matter has been examined and when misleading statements were discovered, the further use of such advertising has been suppressed.

The thanks of the department and of the public are also due to the newspapers of the city which have given liberal publicity in appropriate cases. It is safe to say that this publicity setting forth as it does the details of particular

instances of fraud from time to time, constitutes a very effective source of education to the public and tends to harden the path of the security swindler.

Mr. Jones was designated by the Attorney General to look after the various complaints that came to the office for attention under this law. The major portion of the information which he has collected has been obtained by summoning officers, salesmen and other witnesses to the office for the purpose of giving sworn testimony relating to the matters under investigation, but much information has also been gathered from independent sources, and the Detective Bureau of the Police Department has rendered valuable assistance when called upon.

During the year a number of questionable transactions have been brought to our attention, involving the sale of profit sharing agreements, membership certificates and the like, which strictly speaking, may not be securities within the meaning of the law. It is therefore, suggested that the law be amended so as to clothe the Attorney General with authority to suppress frauds of this character.

SPECIAL SESSION OF THE LEGISLATURE

Because it was found that each of the four registration days fixed by law for the new general registration of voters in Baltimore City in the year 1930, fell upon sacred Jewish holidays, it became necessary for the Governor to call a special session of the Legislature for the purpose of providing different days of registration. This special session was convened at noon on July 29th, 1930, and within two hours the necessary legislation had been enacted and both Houses had adjourned. Mr. Jones and Mr. Levy spent considerable time in conference with the Governor and various leaders of both parties, with the view of preparing legislation that would meet the emergency and receive the sanction of the Legislature without the necessity for a protracted session. The bills which they prepared and which were enacted into law without amendment were the result of these conferences.

In this connection it may be observed that the days fixed by this legislation were not only changed but they were arranged differently. Instead of providing for two successive days in two separate weeks as had been the previous custom, the new Act provided for two days in one week and one day in each of two other weeks. In other words, a wider stretch in the days of registration was provided. The new arrangement apparently met with public approval and worked satisfactorily, as it is a fact that a great many more voters were registered at the new registration of 1930 than had ever registered at any previous new registration.

COST OF THE STATE'S LEGAL WORK DURING THE YEAR
ENDING SEPTEMBER 30, 1930

Appropriation under Act of 1929, Chap. 134.....		\$28,148.00
Unexpended balance, 1929, carried for'd to 1930.		12,565.60
Appearance fees and miscellaneous funds received during the fiscal year and turned into the State Treasury.....		380.04
		\$41,093.64
Salary of Attorney General.....	\$5,000.00	
Salaries of Asst. Attorneys General..	10,000.00	
Stenographers and Office Help.....	3,900.00	
Rent	2,892.42	
Postage	117.97	
Office Supplies and Stationery.....	391.45	
Printing Annual Report & Opinions.	1,029.60	
Records and Briefs.....	182.30	
Telegraph and Telephone.....	838.70	
Miscellaneous, Water, Ice, Towels, etc.	2,219.96	
Office Equipment	646.15	
Books and Periodicals	280.85	
Traveling Expenses	2,000.00	
Extra Typewriting	140.00	
Blue Sky Enforcement	306.95	
		29,946.35
		\$11,147.29
Less funds turned into State Treasury.....		380.04
Carried forward to 1931.....		\$10,767.25

OFFICIAL OPINIONS
of the
ATTORNEY GENERAL OF MARYLAND

AGRICULTURE

AGRICULTURE—POWER OF STATE BOARD OF AGRICULTURE TO
ISSUE REGULATIONS JOINTLY WITH THE STATE BOARD
OF HEALTH CONCERNING THE CONTROL OF MILK.

October 4th, 1930.

*Samuel M. Shoemaker, Esq.,
Fidelity Building,
Baltimore, Md.*

DEAR SIR: You have asked my opinion as to whether the State Board of Agriculture has the legal power to issue regulations concerning the control of milk and milk products jointly with the State Board of Health. Without considering the questions of policy involved in the issuance of such regulations, I am of the opinion that the State Board of Agriculture has such power.

Bagby's Code, 1924, Art. 2A, Sec. 7, confers powers upon the State Board of Agriculture to "cooperate in the execution and performance" of any powers or duties conferred upon other governmental agencies which would otherwise be within the scope of the powers conferred upon the State Board of Agriculture. Sections 24-34, inclusive of Article 58, Bagby's Code of 1924 (being Chapter 337 of the Acts of 1916) expressly impose upon the State Board of Agriculture the duty to issue regulations governing the control of milk and milk products. The powers thereby conferred upon the State Board of Agriculture would appear to be at least as extensive as those exercised by the State Board of Health under Sections 201-207 of Art. 43 of Bagby's Code of 1924 (being Chapter 678 of the Acts of 1914).

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

BOARD OF WELFARE

BOARD OF WELFARE—LAND PURCHASED FOR NEW PENITENTIARY SHOULD BE DEEDED TO STATE.

July 1st, 1930.

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

DEAR MR. CASE: In your letter of June 30th, you request me to advise you the name by which the title to the new prison site in Washington County should be acquired.

Chapter 232 of the Acts of 1929, by which the funds for the acquisition of this site are made available, is silent as to the name in which the title shall be acquired.

Under these circumstances, I am of the opinion that the title should be conveyed in fee simple to the State of Maryland.

Yours very truly,

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

BOARD OF WELFARE—LAW RELATING TO ASSIGNMENT OF WAGES OF EMPLOYEES DEFINED.

July 26th, 1930.

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

DEAR MR. CASE: In your letter of July 23rd, you enclose copy of an assignment of wages, executed by a guard at the

Maryland Penitentiary, directing the Warden of that Institution to pay monthly, a portion of his wages to the Lendahand Company. The Company is apparently engaged in the small loan business, and I understand that the assignment was executed to secure a loan to the employee in question. You request me to advise you whether it is necessary for the Warden of the Penitentiary to honor this assignment.

The law with respect to this subject is set forth in Section 17 of Chapter 88 of the Acts of Assembly of 1918, Code 1924, Art. 58A, Sec. 17. Paragraph A of Section 17 of this Act reads:

“Under any such assignment or order for the payment of future salary or wages given as security for a loan made under this Act a sum of ten (10) per centum of the borrower’s salary or wages, shall be collectable therefrom by the licensee at the time of each payment of salary or wages, from the time that a copy thereof, verified by the oath of the licensee, or his agent, together with a verified statement of the amount unpaid upon such loan, is served upon the employer.”

It is apparently intended by the law that the employer shall not be bothered with assignments of wages by their employees in the absence of default, and in case of such default, it is contemplated that the notice shall be served upon the employer, and from that time forward, the employer shall pay 10% of the borrower’s salary or wages, until the loan is settled in full. This Act imposes no obligation upon the employer to retain the services of the employee, but so long as the services are retained, I believe the State should respect the apparent intention of the legislature and comply with the assignment, unless the employee voluntarily meets his obligations. In other words, when a State employee assumes an obligation of this character, the State should not assist him in any way in the evasion of his obligation.

If compliance with the apparent intention of the legislature with respect to these matters involves too much incon-

venience and annoyance upon employers, then the law should be modified, but until a change has been made, I think the Board of Welfare should cooperate in carrying out the spirit of the law. The difficulty may be avoided by taking the matter up with the employee, and insisting that he settle without annoyance or inconvenience to the authorities at the Penitentiary. His failure to do so might be made the grounds for dismissal from the service, but I do not believe that this extreme penalty should be imposed in the absence of some well established and uniform rule to that effect of which State employees are fully advised.

Yours very truly,

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

BOARD OF WELFARE—NOT ENTITLED TO COLLECT INSURANCE
MONEY FOR PROPERTY DESTROYED BY FIRE WHERE THE
BOARD ONLY HELD AN OPTION TO PURCHASE THE PROP-
ERTY AND HAD EFFECTED NO INSURANCE ON SAME.

August 4, 1930

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

DEAR MR. CASE: In your letter of August 1st, you state that the Board of Welfare acquired an option to purchase certain real estate from Mr. Daniel Baker, for use as a part of the site for the new State prison in Washington County. During the life of the option, and before the Board of Welfare had signified its intention of exercising its right to purchase the property, a small barn located upon the property was destroyed by fire. This barn had been insured by Mr. Baker, and you request me to advise you whether the

Board of Welfare is entitled to any or all of the proceeds of this insurance.

Unless the policy of insurance had been assigned to the Board of Welfare prior to the occurrence of the fire, the right to all of the proceeds of the insurance remains in Mr. Baker. In the absence of a contract provision to the contrary, neither Mr. Baker nor the Board of Welfare is entitled to the benefit of any insurance that may have been taken upon the property by the other. 26 C. J. 437.

The Board of Welfare might have insured the barn for its benefit, but in the absence of such insurance or assignment of Mr. Baker's policy to it, there can be no doubt that Mr. Baker is entitled to the entire proceeds of the policy.

Very truly yours,

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

BOXING MATCHES

BOXING MATCHES—IN MONTGOMERY COUNTY, PERMIT TO HOLD, MUST BE OBTAINED FROM COUNTY COMMISSIONERS.

May 10th, 1930.

*Hon. Milton A. Reckord,
Brigadier General,
Maryland National Guard,
Annapolis, Md.*

MY DEAR GENERAL RECKORD: I have your letter of May 8th, in which you request me to advise you the state of the law with respect to amateur boxing matches in Montgomery County, Maryland.

Section 116-D of Article 56 of the Code of Public General Laws confers upon the State Athletic Commission, the sole discretion, management, control of and jurisdiction over all boxing, sparring, wrestling matches and exhibits to be conducted, held or given within the State. This section of the law was amended by Chapter 527 of the Acts of Assembly of 1924, by the inserting of the following provision:

“Provided, however, that before said Commission shall issue a license for a boxing, sparring or wrestling match in Montgomery or Prince George’s Counties, it must first secure the permission of the County Commissioners in the County in which said match is to be held.”

There is a further provision contained in Section 117-F of Article 56 to the effect that “every organization of the Maryland National (or State) Guard shall be exempted from the payment of any license fee in connection with any amateur boxing, sparring or wrestling matches held under the auspices or sanction of any of said organizations, but shall be subject to all the other provisions of this sub-title

and to such rules and regulations as have been or shall be adopted by the said Commission."

In the light of the above statutory provisions, I think it is clear that such boxing matches as are held in Montgomery County or Prince George's County must be approved by the County Commissioners and authorized by the State Athletic Commission.

Yours very truly,

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

CHIROPRACTORS

CHIROPRACTORS—NOT AUTHORIZED TO EXECUTE DEATH CERTIFICATES, CORONER OR LOCAL REGISTRAR EXECUTES SUCH CERTIFICATES WHEN CHIROPRACTOR IS IN ATTENDANCE.

February 8th, 1930.

*Mr. Wayne F. Crider,
State Board of Chiropractic Examiners,
Hagerstown, Md.*

DEAR SIR: I have your letter of January 29th, in which you request an opinion as to who is the proper person to sign a death certificate in case of death of a patient with a Chiropractor in attendance.

The answer to your inquiry is found in the provisions of section 21 of Article 43 of the Code of Public General Laws, entitled "Health," where it is provided:

"The certificate of death shall be filled out and signed by the physician last in attendance upon the deceased person within 24 hours after death, excepting in such cases where the body is viewed by the coroner and an inquest is held upon the same, in which case the certificate of death shall be filled out and signed by the coroner. In case of death without medical attendance or in case of sudden or violent death in which the coroner does not deem it necessary to hold an inquest, the certificate of death shall be executed and signed by the local registrar or deputy local registrar from the best information available, and all such certificates of death shall be presented to the undertaker or other person authorized to make disposition of the body."

Inasmuch as Chiropractors are not authorized to execute death certificates, such certificates should be executed in

accordance with the above provisions of law in case of death of any person with a Chiropractor in attendance.

Yours very truly,

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

CHIROPRACTORS—CANNOT PRESCRIBE DIETS.

December 17th, 1930.

Mr. Wayne F. Crider,
State Board of Chiropractic Examiners,
Hagerstown, Md.

DEAR MR. CRIDER: Receipt is acknowledged of your letter of the 28th ultimo. After a careful consideration of the contentions made therein and an examination of the authorities relating to the subject, we are forced to the conclusion that it is unlawful for chiropractors in Maryland to prescribe diets.

In the determination of the question it is first necessary to decide whether the prescribing of a particular diet based on materials, commonly classed as foods, constitutes the practice of medicine. We have found no case specifically dealing with that question, but the following authorities seem to be pertinent.

In *State of Iowa vs. Bresee*, 137 Ia. 673, 114 N. W. 45, decided by the Supreme Court of Iowa, 1907, the question arose as to whether the prescribing of certain "tissue food" constituted the practice of medicine. The Court said:

"The fact that the appellant was careful to call the article which he supplied to the sick 'food,' instead of medicine, is not at all decisive of the merits of the case. . . . The fact that the substance so employed as a remedial agent may have

value as a food, and have a tendency to build up and restore diseased and wasted tissues will not deprive it of its character as a medicine, if it be administered and employed for that purpose."

This case was recently cited with approval in *State vs. Miller*, 229 N. W. 569, decided by the Supreme Court of North Dakota, February 18, 1930. In that case the court held that whether a remedy prescribed and furnished is harmless, or has any effect whatever, or what its ingredients may be, is not material.

In *State vs. Wilhite*, 109 N. W. 730, decided by the Supreme Court of Iowa, 1906, the defendant claimed to be able to remove the cause of disease by "methodical rest and dietetics" thereby giving nature a chance to heal the disease. The Supreme Court of Iowa held that the defendant was practicing medicine within the meaning of the Iowa Medical Practice Act.

In another Iowa case, decided by the Supreme Court of that state, in 1904, the defendant professed to attempt to cure disease by dieting his patients, causing them to take certain exercises and to wear glasses furnished by him. Again the court held that the provisions of the medical practice act were violated. *State vs. Edmunds*, 127 Ia. 333, 101 N. W. 431.

The Supreme Court of Missouri, in *State vs. Smith*, 135 S. W. 465, decided in 1911, said:

"Practicing medicine is not confined to the administering of drugs. . . . When a physician advises a patient to travel for his health, he is practicing medicine."

Other cases bearing upon the subject are as follows:

State vs. Davis, 92 S. W. 484, 194 Mo. 4 L.R.A. (N. S.) 1023;

State vs. Rolph, 140 Minn. 190, 167 N. W. 553, L.R.A. 1918 D 1096;

People vs. Jordan, 172 Cal. 391, 156 P. 451;

People vs. Saunders, 61 Cal. A. 341, 215 P. 120;

Bailey vs. Niebruegge, 211 Ill. A. 82;
People vs. Allcut, 117 App. Div. 546, 102 N. Y. S.
 See also *Underwood vs. Scott (Kan.)* 23 P. 942,
 L.R.A. (N.S.), 1917 C 823.

When the above cases are read in connection with the definitions of chiropractic and the practice of chiropractic in Section 384 (c) of Art. 43 of the 1929 Supplement of the Annotated Code of Maryland, it seems clear that chiropractors are not permitted to prescribe diets as remedies.

The legislative definition in question is as follows:

“Chiropractic is hereby defined to be a drugless health system, the basic principle of which teaches that disease is caused by interference with the transmission of nerve impulses. The practice of chiropractic is defined as diagnosis, the location of misaligned or displaced vertebrae of the human spinal column, the procedure preparatory to and the adjustment by hand of such misaligned or displaced vertebrae of the spinal column and its articulations by any method not including the use of drugs, surgery or obstetrics, nor any branch of medicine, nor osteopathy, for the purpose of relieving such interference.”

Under the above definition, the practice of chiropractic is definitely confined to the adjustment of misaligned or displaced vertebrae of the spinal column and its articulations and chiropractors are specifically prohibited from practicing “any branch of medicine.” When the definition of the practice of medicine contained in Section 138 of Article 43 of the Annotated Code of Maryland of 1924 (Volume 1), is considered in connection with the statute and authorities, above quoted and referred to, it is clear that the prescribing of a diet is not comprehended among the privileges conferred by law upon licentiates of chiropractic.

Yours very truly,

WM. L. MARBURY, *Asst. Attorney General.*

COLMAR MANOR

COLMAR MANOR—TOWN OFFICER NOT AUTHORIZED TO SERVE
CIVIL PROCESS.

January 13, 1930.

*John M. Torvestad, Esq.,
Town Solicitor,
Colmar Manor, Md.*

DEAR SIR: In your letter of December 29th, you request an opinion concerning the provisions of Section 9 of the City Charter for the town of Colmar Manor, which read as follows:

“The Marshall shall preserve the peace and good order of the town, and enforce the ordinances passed by the Mayor and Council, and for this purpose he is vested with the same power and authority within the boundary limits of the said town as constables now have or may have hereafter under the laws of this State.”

In particular you desire to be advised whether the Town Marshall is authorized to serve civil process of all kinds within the limits of Colmar Manor.

The manifest purpose of the language quoted is to confer upon the Marshall full power to act as a peace officer within the limits of the town, and there being other officers who are authorized to serve civil process within the town limits, it is my opinion that the Marshall has no authority to serve civil process.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

CONSERVATION

CONSERVATION—PERSONS REQUIRED TO TAKE OUT LICENSE
TO USE DIP NETS ABOVE TIDEWATER.

January 28th, 1930.

*Harper Ballentine, Esq.,
State's Attorney for Washington County,
Hagerstown, Md.*

DEAR MR. BALLENTINE: I have your letter of the 23rd inst., asking whether it is necessary for a person who accompanies another, who is using a dip net, to have a license under the provisions of Article 39, Section 76.

As I understand your letter, the class of persons you refer to are those who accompany a man who has a license to use a dip net, but who do not use a net themselves, and simply accompany the man who is using it for the purpose of polling the boat or similar service.

My interpretation of the section in question is that the person actually using the net is the only one required to take out the license.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

CONSERVATION—REGULATION OF FISHING IN NON-TIDAL
WATERS APPLICABLE TO PROPERTY OF C. AND O. CANAL;
EXCEPTIONS OF LAWS AS TO POTOMAC RIVER NOT AP-
PLICABLE TO ITS TRIBUTARIES.

April 15, 1930.

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

DEAR MR. LECOMPTE: I have your letter of the 9th instant, asking for a construction of portions of Section 64

of Chapter 471, which section is part of the recodification of Article 39 of the Code of Public General Laws of Maryland, title "Fish and Fisheries," sub-title "Non-tidal Waters." Section 64 prescribes the seasons for, and the manner of taking fish in non-tidal waters. In your letter you submit to me two questions. In the first instance, a man was arrested for using a dip net out of season, and his plea before the magistrate and his basis for an appeal, is that the place where he was using the dip net was in "Little Pool," which is on the property of the C. & O. Canal, and therefore the provisions of the Act would not apply.

This proposition is so ridiculous that I do not feel that it is necessary to submit authorities to show the fallacy of it. If the defendant's contention were correct, a land owner could permit people to shoot game at all seasons of the year on his property, and the game law would only apply to the land owned by the state departments.

On the same theory, riparian owners bordering on non-navigable streams could contend that they owned to the center of the stream and that the fish laws would not apply to the waters in front of their property. This subject has been passed on and decided so often by federal and state courts, that I deem it unnecessary to refer to any authorities.

The second proposition is that a man was arrested for fishing in one of the tributaries of the Potomac River, and claimed that he was not violating the law because he was within the provision of the section in question, which reads as follows:

"Provided that under the same terms and conditions, in Washington County, the same fish may be taken in the *Potomac River*, between the first day of February and the 30th day of April, both dates inclusive."

This provision is an exception to the Act creating the seasons for the taking of fish, and therefore must be construed strictly against the exception. If the Legislature had

intended this exception to apply to the tributaries of the Potomac River, it would have so stated, and therefore, if the party in question was using a dip net in a tributary of the Potomac River after the 31st day of March, he is guilty of violating the provisions of the section in question.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

CONSERVATION—NOT NECESSARY FOR OYSTER INSPECTOR TO BE BONDED IN ORDER TO TESTIFY AGAINST VIOLATOR OF CULL LAW; RIGHT OF STATE'S ATTORNEY TO KEEP UNDERSIZED OYSTERS AS EVIDENCE.

April 15th, 1930.

*Swepson Earle, Esq.,
Conservation Commissioner,
Munsey Building,
Baltimore, Md.*

DEAR MR. EARLE: I have your letter of the 14th inst., enclosing a letter from Mr. William R. Horney, State's Attorney for Queen Anne's County.

As I understand the State's Attorney's letter, a man named Joseph Evans was arrested in Queen Anne's County for the violation of Section 9 of Article 72, Code of Public General Laws, by having in his possession oysters which contain more than 5% of shells and oysters less than 2½ inch from hinge to mouth.

The letter further states that oysters found in Mr. Evans' possession contained 32½% of oysters which violated the provisions of this section. The letter then states that the defendant contends, and with him the State's Attorney is inclined to agree, that Mr. Evans should not be convicted even though he has violated the law, and that one-third of the oysters found in his possession were undersize because

the Inspector who measured the oysters and testified against him, had not at the time qualified as an Oyster Inspector by reason of his failure to furnish a bond as required by Section 80 of the same Article.

I cannot conceive under what theory the Attorney for the defendant and the State's Attorney could have arrived at this conclusion.

Section 9 clearly states that a person who has in his possession more than 5% of undersize oysters is guilty of a violation of the law, the penalty for which is prescribed in Section 11.

Section 80 directs the Conservation Commissioner of Maryland to appoint oyster Inspectors for the purpose of enforcing the laws passed for the protection of oysters, and particularly the sections referring to undersize oysters. It is apparent from the law that no objection was made on the ground of his having failed to object when the Inspector made the inspection of the oysters in question.

It is my opinion, that any one can swear out a warrant for the arrest of a person who is violating the provisions of Section 9, and the testimony of such person would be sufficient to convict the violator. There is nothing in the law which states that a duly qualified Oyster Inspector is the only one who may furnish evidence against a person who is violating the Oyster Cull Laws of the State.

In view of what I have stated, I do not feel that it is necessary to pass upon the question as to whether or not Mr. Benjamin F. Austin was a duly qualified Oyster Inspector at the time of the trial of Mr. Joseph Evans.

The letter from the State's Attorney further asks whether it would be proper for Mr. Austin to retain the undersize oysters for the purpose of using them as evidence against the defendant. There certainly can be no question that a State's Attorney is permitted to retain in his possession articles which are necessary as evidence to convict a violator of the Criminal Laws of the State.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

CONSERVATION—LOCATION OF DUCKING BLINDS AFFECTING
RELATIVE RIGHTS OF RIPARIAN OWNERS IN COVES AND
ON POINTS.

November 18th, 1930.

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

DEAR MR. LECOMPTE: I have your letter of the 27th of October, asking for an opinion as to whether a blind erected by a man named Arthur Larrimore, in the waters of the Choptank River within the limits of Talbot County, has been legally erected under the provisions of the Duck Blind Law.

As I understand the situation, Mr. Larrimore's property lies in a cove known as "Muddy Cove" some distance back from the Choptank River, the extreme southerly point of his property being nearly two thousand feet back in the cove from the Choptank River, and the cove at the point where his land ends being about one thousand yards across, the land enclosing this cove on the west being known as "Change Point," and that on the east as "Long Point." The distance from Mr. Larrimore's property to Change Point is about three hundred yards, and to the land on the east about one hundred and fifty yards. I understand from your letter that Mr. Larrimore on the 2nd of June last secured a license to erect a ducking blind off of the southwesterly point of his land (the law permitting blinds to be erected one thousand yards from shore in this locality), and has located his blind between Change Point and Long Point at a distance of eighteen hundred and eighty feet from his property, and about fifteen hundred feet from Change Point, and a like distance from Long Point. You further state that the location of this blind interferes with the erection of a blind by the riparian owner off of Change Point.

As I understand your letter, you want an opinion as to whether Mr. Larrimore could, under the provisions of the

riparian law, place a stake and erect his blind in such a way as to interfere with the erection of a blind by the riparian owner on Change Point.

I do not think he could, and if the riparian owner on Change Point should, on or before October 10th, secure a license for the erection of a blind off of this point, such location would take precedence over the location of Mr. Larri-more, and his blind must therefore be moved to such a distance that it will be at least five hundred yards from the blind erected off Change Point, provided the latter blind is erected in conformity with the law.

You enclose with your letter a drawing showing the location of the lands, waters and blinds in question, and I will retain the same to be filed with the correspondence in this case.

Yours very truly,

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

CONSERVATION—RIGHTS TO QUALIFICATIONS TO FISH WITH
NETS IN TIDEWATERS OF STATE.

December 9th, 1930.

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

DEAR MR. EARLE: I have your letter of the 4th inst., enclosing a letter from the State's Attorney for Queen Anne's County, dated November 28th, asking for an opinion as to what, under the present law, are the requirements for a person to fish with fyke or gill nets in tide waters within the limits of Queen Anne's County.

I understand from your letter that prior to June 1st, 1929, there was a local law of Queen Anne's County in ref-

erence to the fishing rights within these waters, but as you know, the Legislature of 1929 recodified Article 39 of the Code of Public General Laws, and in so doing, repealed all local fish laws then in effect in the State, so we have to look to this Article alone for any legislation affecting the question referred to in your letter.

Section 21 of Article 39 under the sub-head of "Riparian Rights," gives to riparian owners certain prior rights in reference to fisheries, but at the request of the members of the Legislature from Queen Anne's County, that county was exempt from the provisions of this section.

Section 24 of the same Article is as follows:

"Who May Fish. It shall be unlawful for any person who is not a bona fide citizen or land owner of Maryland to fish in the tidal waters of this State with nets of any description. Nothing in the above shall be construed to permit such citizen to fish in any tributary waters beyond the jurisdictional limits of the county whereof he is a resident or land owner, except that residents or land owners of the counties bordering on a dividing river may fish such river in common, but not in any creek, cove, river, inlet or sound emptying into the said dividing river and lying wholly within a county other than the one of which he is a resident or land owner, except as provided for in Section 21, sub-title "Riparian Rights," except that a non-resident of one county may fish in the waters within the jurisdictional limits of another county after having first obtained the written permission of the abutting land-owner and providing further that the provisions of this section shall not apply to the catching of eels."

The only other sections in the law affecting this question are those under the sub-title "licenses," which are Sections 53 to 56 inclusive. Section 53 provides that any person desiring to engage in the business of taking or catching fish

for commercial purposes by the use of any net mentioned in the Article within the waters of the State shall obtain a license so to do. Section 54 prescribes the oath to be taken by such applicant, and one of the provisions of this oath is that he has been a bona fide resident of the State of Maryland for the twelve months preceding his application for said license, or that he is the owner of land bordering on the tributary waters of the State.

Section 55 prescribes the amount to be charged for the license for the several kinds of nets. This section as originally drawn provided for the licensing of fyke or gill nets, but it was amended during its passage, and as passed, did not prescribe any license for this class of nets.

Under the provisions of Section 24, from which Queen Anne's County is not excepted, it seems apparent that in order to entitle a resident of one county to fish in the waters of another county, he must first obtain the written permission of the abutting land owner except in the catching of eels.

Yours very truly,

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

CONSTITUTIONAL LAW

CONSTITUTIONAL LAW—PROPOSED AMENDMENTS TO CONSTITUTION MUST BE PASSED BY THREE-FIFTHS OF ALL OF THE MEMBERS OF EACH BRANCH OF THE GENERAL ASSEMBLY—PROPOSED AMENDMENT RELATING TO PAY OF MEMBERS OF LEGISLATURE NOT VALIDLY ENACTED.

October 2nd, 1930.

*Hon. David C. Winebrenner, III,
Secretary of State,
Annapolis, Md.*

DEAR MR. WINEBRENNER: In your letter of September 30th, you state that your attention has been called to an apparent irregularity in the passage of Chapter 348 of the Acts of the General Assembly of 1929, proposing an amendment to Section 15 of Article III of the Constitution of Maryland, providing for an increase in the compensation of the members of the General Assembly. You request me to advise you whether this proposed amendment to the Constitution has been validly passed by the Legislature, and also whether the same should be certified by you to the various Boards of Supervisors of Elections for submission to the voters at the election to be held on November 4th, 1930.

By reference to the Journals of proceedings of the Senate and House of Delegates of the 1929 Session of the Legislature, I find that this proposed amendment was introduced in the House on February 25th, read for the first time and referred to the Committee on Constitutional Amendments. On March 13th, the Committee on Constitutional Amendments reported the bill favorably, which report was adopted and the bill was read for the second time and ordered printed for a third reading. On March 18th, the bill came up for a third and final passage by the House of Delegates, when it was passed, the vote being eighty-nine in the affirmative and twenty in the negative.

The bill as introduced in the House and which passed that body as above indicated, provided for an increase in the pay of the members of the General Assembly from \$5.00 per day to \$15.00 per day, and for additional compensation of \$10.00 per day to the presiding officers of the House and Senate.

The bill as thus passed, was sent to the Senate where it was read for the first time on March 19th, and referred to the Committee on Constitutional Amendments. On March 22nd, the bill was favorably reported with an amendment which was adopted by the Senate. The effect of the amendment was to reduce the rate of pay for the members of the General Assembly as proposed by the House Bill, from \$15.00 per day to \$10.00 per day. The bill, as amended, was then read for the second time and ordered passed to the third reading. On March 25th, the bill as amended by the Senate, was read the third time and passed by yeas and nays, there being a total of twenty-six votes in the affirmative and one vote in the negative.

The bill was then returned to the House of Delegates, where on March 27th, a motion to the effect that the House should not concur in the Senate amendment, and that the same be referred to a conference committee was duly adopted. On April 1st, the Conference Committee reported to the House by recommending "that the Senate recede and withdraw its amendment and pass the bill without amendment," which report was read and adopted. On March 30th, the same Conference report was submitted to the Senate where it was adopted by yeas and nays, there being, according to the entries in the Maryland Senate Journal of 1929, at pages 1315 and 1316, seventeen votes in the affirmative and twelve votes in the negative.

Article XIV of the Maryland Constitution, entitled "Amendments to the Constitution," contains the following provision:

"Section 1. The General Assembly may propose amendments to this constitution; provided that each amendment shall be embraced in a separate bill, embodying the article or section, as the same

will stand when amended and passed by three-fifths of all of the members elected to each of the two Houses, by yeas and nays, to be entered in the Journals with the proposed amendment."

Unless the proposed amendment has been passed by the General Assembly in conformity with the above provisions of the Constitution, it can have no validity as an amendment to the Constitution, even though it might, if submitted, be adopted by a majority of the voters at the coming election.

In view of the entries contained in the Journals of proceedings of the Senate and House of Delegates, above referred to, it is very clear that the proposed amendment has not been passed as required by the Constitution, for the reason that the same has not been "passed by three-fifths of all of the members elected" to the Senate, according to the Journal of proceedings of that body. Although the bill proposing this amendment has properly passed the House of Delegates, only seventeen of the twenty-nine elected Senators have concurred in the passage of this bill, according to the Journal of proceedings of the Senate, where the yeas and nays are required to be entered, and as the number of affirmative votes as shown by this Journal is less than "three-fifths of all the members elected" to the Senate, it follows that the proposed amendment has not been passed in accordance with the Constitutional requirements.

For the reasons above set forth, I must advise you that this Act is invalid and of no effect, and that the same should not be certified by you to the respective Boards of Supervisors of Elections.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

CORONERS

CORONERS—DISPOSITION OF PROPERTY FOUND ON PERSON OF DECEASED—NO JURISDICTION OVER OTHER PROPERTY OF DECEASED.

July 9th, 1930.

Dr. Charles H. Brooke,
Coroner,
3601 Third Street,
Brooklyn, Baltimore, Md.

DEAR DOCTOR BROOKE: Your letter of June 25th, addressed to the Attorney General, has been received, and referred to me for reply. You request an opinion as to what disposition should be made of certain articles of property belonging to the estate of Salvadore Vassalla, who was murdered on June 3rd, 1930.

The only statute law upon this subject is that found in Section 297 of the Charter and Public Local Laws of Baltimore City of 1927. It is there provided:

“Each of said Coroners shall also, immediately after holding an inquest, deposit in some bank of Baltimore City, subject to the order of the Judges of the Orphans’ Court of said City, all property, money and other effects found upon the person of those over whom he shall hold inquest, as hereinbefore provided.”

It is quite plain under this section that a Coroner has no jurisdiction over the property, money or estate of the deceased other than such money or property as may be found upon the person of the deceased. You cannot, therefore, direct the disposition of the automobile or any other property or effects that were not found upon the person of the deceased.

As the statute above referred to directs that the money and effects which were found upon the person of the deceased be deposited in some bank subject to the order of the Judges of the Orphans' Court, I suggest that you endeavor to comply with this provision. If, for any reason, you find no bank will accept the money and effects found upon the person of the deceased, then I suggest that these articles be turned over to the property custodian of the Police Department to be held subject to the order of the Judges of the Orphans' Court.

Yours very truly,

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

CORPORATIONS

CORPORATIONS—FORM OF NAME OF CORPORATION WHICH CAN PROPERLY BE APPROVED BY STATE TAX COMMISSION IN ACCEPTING AND FILING CERTIFICATES OF INCORPORATION.

March 6th, 1930.

*State Tax Commission,
Union Trust Building,
Baltimore, Md.*

GENTLEMEN: Receipt is acknowledged of your letter of the 5th inst., requesting my opinion as to the form of name of a corporation which can properly be approved by you in accepting and filing certificates of incorporation.

The provisions of the statute relating to this subject are found in Section 4 (b) of Article 23 of the Code, which provides that there shall be stated in the certificate of incorporation:

“The name of the proposed corporation, which shall always be such as to indicate that it is a corporation as distinguished from a natural person or a partnership. This provision shall be deemed to be complied with if the name of the corporation begin with the word “The” and end with the word “Company,” or if the name contain the word “Corporation” or the word “Incorporated”.”

As stated in the case of *State vs. McGrath*, 75 Mo. 424, 426, the object of statutes such as the above is “to prevent corporations from conducting business in firm names and in the names of individuals, thereby misleading the public into the belief that they are dealing with individuals, and are entitled to the protection afforded by their personal liability.”

In the light of the fundamental purpose of the law, it follows that the statute prohibits a corporate name consisting of the name of an individual or individuals followed by the words "and Company," as such a form is in common use for designating a partnership. However, the use of the word "Company" in a corporate name, not preceded by the conjunction "and," is a compliance with the statute.

I infer from your letter that this is the phase of the question in which you are particularly interested at the present time. I would prefer not to pass upon any other forms of names until the occasion arises.

It is needless to point out that the statute itself expressly recognizes that its provisions shall be deemed to be complied with if the name of the corporation begin with the word "The" and end with the word "Company," or if the name contain the word "Corporation," or the word "Incorporated."

In 14 Corpus Juris, at page 310, you will find a large collection of corporate names which have been either approved or disapproved under statutes similar to ours.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

CORPORATIONS—FOREIGN CORPORATION LAW APPLICABLE TO MASSACHUSETTS TRUSTS.

October 4th, 1930.

*State Tax Commission,
Union Trust Building,
Baltimore, Md.*

GENTLEMEN: Receipt is acknowledged of your letter of the 23rd ultimo, supplementing your letter of August 18th, in which you requested me to advise you whether the laws of Maryland, relating to the registration of foreign corporations, are applicable to the American Optical Company.

That association is of the class commonly known as "Massachusetts trusts," or "common-law trusts."

Section 116 of Article 23 of Volume 1 of the Code of 1924, under the sub-title "Foreign Corporations," reads as follows:

"The term, foreign corporation, as used in this Article, shall mean every corporation, *association* or *organization*, other than a national bank which has been *established*, *organized* or chartered under laws other than those of this state."

Likewise, Section 2, sub-section 1, of Article 81 of the 1929 Supplement of the Annotated Code of Maryland, title "Revenue and Taxes," sub-title "Rules of Construction," reads as follows:

"The term 'corporation' shall include association or joint stock company."

It is manifest from the provisions of the law above quoted, that the laws of this state relating to the registration and taxation of foreign corporations are specifically applicable to associations or organizations of the class here in question.

You suggest that such a construction of our laws might render the same unconstitutional, but in my opinion, all doubt with respect to the power of the state to treat Massachusetts trusts as corporations within the meaning of laws relating to registration and taxation, has been foreclosed by the Supreme Court of the United States in the recent case of *Hemphill vs. Orloff*, 277 U. S. 537, 72 L. Ed. 978.

In that case Mr. Justice McReynolds, after describing the method of conducting such organizations, said:

"Whether a given association is called a corporation, partnership, or trust, is not the essential factor in determining the powers of a state covering it. The real nature of the organization must be considered. If clothed with the ordinary functions and attributes of a corporation, it is subject to similar treatment."

It follows therefore that the American Optical Company is required to comply with our statute.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

CORPORATIONS—FOREIGN CORPORATIONS—DESIGNATION OF PLACE OF BUSINESS IN CERTIFICATE OF INCORPORATION DOES NOT RESTRICT CORPORATION TO DOING BUSINESS IN THE STATE OF ITS INCORPORATION—MAY BE REGISTERED UNDER THE LAWS OF THIS STATE.

November 5th, 1930.

*State Tax Commission,
Union Trust Building,
Baltimore, Md.*

GENTLEMEN: Receipt is acknowledged of your letter of the 30th ulto., in which you request to be advised whether the Masonry Resurfacing Company, incorporated in Pennsylvania in 1928, may lawfully be registered in Maryland as a foreign corporation authorized to transact business therein.

The company's certificate of incorporation provides:

"3d. The business of said corporation is to be transacted in State of Pennsylvania from 806 Green Street, Philadelphia."

You suggest that the above provision may have the effect of restricting the company to doing business in Pennsylvania, but we do not think so.

Every corporation, *unless the law or its charter forbids*, may be permitted to transact corporate business beyond the limits of its own state.

Canada So. R. Co. vs. Gebhard, 109 U. S. 527, 27
L. ed. 1020;
Galveston, H. & S. A. R. Co. vs. Gonzales, 151
U. S. 496, 38 L. ed. 248.

From an examination of all of the provisions of the certificate in question (a photostatic copy of which you sent us), it would appear that the statement therein of the place where the business is to be transacted is merely the designation of the principal office of the corporation, and was not intended as a restriction or limitation upon the power of the corporation to do business elsewhere.

See:

14 C. J. 342-343;
14A C. J. 304-305.

As requested by you, we are returning herewith the photostatic copy of the certificate of incorporation.

Yours very truly,

HERBERT LEVY, *Asst. Attorney General.*

CRIMINAL LAW

CRIMINAL LAW—HOUSE OF CORRECTION—WARDEN AUTHORIZED TO RELEASE PENDING APPEAL UPON PRESENTATION OF PROPER CERTIFICATE.

February 6th, 1930.

*Robert D. Case, Esq.,
Board of Welfare,
Baltimore, Md.*

DEAR MR. CASE: Your letter of January 29th, enclosing communication from Frederick Lee Coburn, Esq., in connection with the case of Arthur Collins, has been received.

It appears that Collins was tried by Justice Joseph Hamburger on December 29, 1929, and convicted of the charge of keeping a disorderly house. He was sentenced to serve three months in the Maryland House of Correction. Subsequently, the traverser entered an appeal to the Circuit Court for Harford County, and has given bond in the penalty of \$200.00 for his appearance in said court at the next ensuing term. The Magistrate issued his certificate to this effect, which has been presented to the Warden at the Maryland House of Correction, and by said certificate the Warden is directed to allow the said Arthur Collins to go at large. You request an opinion as to whether the Warden should honor the certificate in question.

The procedure pursued in this case appears to be in conformity with Section 12 of Article 52 of the Code of Public General Laws, and if the certificate purporting to be executed by the Justice who heard this cause, was actually executed by him, it is the duty of the Warden to release the prisoner at once. If the Warden has any doubt about the authenticity of the certificate, he should verify the same by the Magistrate, using the most expeditious means possible to accomplish this result.

This letter is in conformity with my telephone conversation of this morning. I am returning the certificate of the Magistrate directing the release of the prisoner, which you sent to me.

Very truly yours,

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

CRIMINAL LAW—PROSECUTION FOR ARSON COMMITTED IN
1927 OR 1928, NOT BARRED BY ABSENCE OF SAVING
CLAUSE IN ACT OF 1929.

February 8th, 1930.

*William M. Storm, Esq.,
State's Attorney for Frederick County,
Frederick, Md.*

DEAR MR. STORM: I have your letter of January 24th, 1930, inquiring whether the passage of Chapter 255 of the Acts of 1929, does not prevent prosecution for cases of arson occurring during the years 1927 and 1928, in view of the fact that the Act of 1929 contains no saving clause.

I have examined the authorities which you cite, and find that you stated their purport correctly. However, in 1912, the Legislature passed two Acts each of which is applicable to the present situation, to wit, Art. 89-A, Sec. 1, and Art. 1, Sec. 3 of Bagby's Code of 1924. These statutes do away with the necessity of a saving clause in order to preserve the right of the State to prosecute for penal offenses under a statute which has been repealed. Consequently, Chapter 255 of the Acts of 1929 does not prevent the prosecution of the cases to which you refer.

I am fully aware that the case of State vs. American Bonding Company, 128 Md. 272, which you cite, applied the common law doctrine to a case which arose subsequent to

the passage of the Act of 1912. However, I have examined the briefs of counsel in that case and find that the statute was not called to the attention of the court. Mr. Ogle Marbury, who argued that case on behalf of the appellant, and who introduced the statute in question in the State Legislature, informs me that Judge Stockbridge raised that point on his own initiative, as counsel for both sides were aware of the statute and thought it unnecessary to argue the matter. He stated further that a motion for reargument would have been made had it not been for the fact that the court indicated that the case would be decided adversely to the appellant on other grounds. Under these circumstances, I think that you have the right to prosecute for offenses committed prior to the passage of Chapter 255 of the Acts of 1929.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

CRIMINAL LAW—PRISONER NOT ENTITLED TO HAVE DEDUCTED FROM SENTENCE THE TIME SPENT IN JAIL AWAITING TRIAL.

February 20th, 1930.

*Mr. A. Wilson Mattox,
Prisoners' Aid Association,
Court House,
Baltimore, Md.*

DEAR MR. MATTOX: In your letter of February 14th, you state that a prisoner at the Maryland Penitentiary was arrested on April 7, 1915, charged with murder; that he was held in the Baltimore City Jail without bail, until October 9, 1915, when he was tried, convicted of second degree murder, and sentenced to eighteen years in the Maryland Pen-

itentiary, the maximum penalty for that offense. You further state that you would like the prisoner in question to have credit for the time he was confined in jail awaiting trial, and request an opinion as to whether such credit can be accomplished by means of a writ of Habeas Corpus.

The time during which a prisoner is confined in Jail awaiting trial, constitutes no part of the punishment in a legal sense, and the prisoner in question is not entitled, as a matter of law, to the credit which you wish him to have. This credit may be obtained, however, by means of a parole or conditional pardon which the Governor is, as you know, authorized to grant in his discretion. I would suggest, therefore, that instead of resorting to Habeas Corpus, you refer the matter to the Parole Commissioner for investigation and recommendation to the Governor.

Very truly yours,

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

CRIMINAL LAW—SENTENCES IMPOSED IN DIFFERENT COURTS
AT DIFFERENT TIMES RUN CONSECUTIVELY AND NOT
CONCURRENTLY—REVOCATION OF PAROLE RESTORES ORIGINAL SENTENCE.

April 8th, 1930.

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

DEAR MR. CASE: In your letter of March 11th, you request me to advise you in connection with the case of Simon Holley. It appears that Holley was convicted in Somerset County of the crime of carrying concealed weapons on March 13th, 1929, and sentenced to serve a term of two

years at the Maryland House of Correction, and on March 4th, 1930, he was paroled by the Governor in the custody of the Parole Commissioner.

On March 18th, 1930, Holley was tried and convicted in Wicomico County, of the crime of assault, alleged to have been committed on March 5, 1930, or the day after his parole, and for this crime he was sentenced to serve a term of three months at the Maryland House of Correction.

On March 7th, 1930, the Governor passed an order revoking the parole issued to Holley on the 4th day of March, 1930, and you request an opinion as to whether the original sentence of two years and the subsequent sentence of three months run concurrently or consecutively.

Ordinarily, where two or more sentences are imposed by the same court at the same time, the sentences will run concurrently, unless they contain a specific provision to the contrary. This rule, however, has no application where different sentences are imposed by different courts at different times. 16 C. J. page 1374.

Inasmuch as Holley has been convicted of separate crimes in different jurisdictions, for each of which he has been directed to serve a specific sentence, it is my opinion that he will be required to serve the time imposed by each sentence; that these sentences run consecutively and not concurrently.

Very truly yours,

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

CRIMINAL LAW—PRISONER WHO APPEALS A SENTENCE AND THEN FAILS TO PERFECT APPEAL WITHIN TIME ALLOWED BY LAW—SHOULD BE BROUGHT INTO COURT AND COMMITTED.

May 13, 1930.

A. Theodore Brady, Esq.,
State's Attorney for Anne Arundel County,
Annapolis, Md.

DEAR MR. BRADY: Replying to your letter of May 9th, I note that you inquire what course should be followed in connection with the case of one Shelby McKnight, who, having been convicted and sentenced to the House of Correction for a period of six months, entered an appeal in due time, but failed within three months thereafter to pay for the cost of transcribing the record. I understand that he is now at liberty on bail.

By not paying for the transcript of the record, the traverser has failed to perfect his appeal. As there is nothing on record with the Clerk of the Court of Appeals, there is no action that can be taken by that tribunal. The time for perfecting the appeal having expired, the order of appeal no longer stays execution, and it becomes the duty of the court to order the production of the traverser by executing upon the bail piece if necessary. Upon the production of the traverser in court, he should be committed to the proper authorities in the usual way.

It might be well to note on the docket an entry to the effect that the time in which to file the transcript of record with the Clerk of the Court of Appeals having expired, and the cost of transcribing the record not having been paid, the traverser was this day produced in court and committed to the House of Correction in accordance with the sentence heretofore imposed upon him.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

CROWNSVILLE STATE HOSPITAL

CROWNSVILLE STATE HOSPITAL—HAS POWER TO EXECUTE
AGREEMENT FOR ELECTRIC POWER.

March 31st, 1930.

*Dr. Robert P. Winterode, Supt.,
Crownsville State Hospital,
P. O. Waterbury, Crownsville, Md.*

DEAR DOCTOR WINTERODE: With your letter of March 20th you enclosed form of a proposed agreement between the Annapolis & Chesapeake Bay Power Company and the Board of Managers of the Crownsville State Hospital, for electric light and power service for the period of three years, and request an opinion as to whether this agreement is in proper form for execution by the Board. I understand that the rates which are embodied in this form of agreement are in conformity with the schedules that have been approved by the Public Service Commission, and if I am correct in this assumption, I think the form which you enclosed is in proper shape for execution by the Board.

Strictly speaking, the Board may not be authorized to incur obligations beyond October 31st, 1930, as the meeting of obligations beyond that date will depend upon appropriations made to the institution by the Legislature of 1931. I think it is safe to assume, however, that the General Assembly will continue its appropriations to this institution for necessities such as those contemplated by the proposed agreement for electric light and power service, and in my judgment, the Board may properly execute the agreement proposed, unless it can obtain the same service at the same rates for a shorter period. If this can be done, I believe it would be more desirable to limit the operation of the agreement to some time within the period covered by the present budget.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

EDUCATION

EDUCATION—INVESTMENT OF FUNDS FOR THE TEACHERS RETIREMENT SYSTEM.

January 13th, 1930.

Hon. John M. Dennis,
State Treasurer,
1009 Union Trust Building,
Baltimore, Md.

DEAR MR. DENNIS:

In Re: Investment of Funds for the Teachers'
Retirement System.

I have your letter of January 11th, 1930, inquiring as to the limitations on the investment of the funds which will come into the hands of the Board of Trustees of the Teachers' Retirement System of the State of Maryland.

Article 77, Section 98 (Bagby's Code, 1929 Supp.) confers upon the Board of Trustees power to invest and reinvest under their control "subject to all the terms, conditions, limitations and restrictions imposed by the law of Maryland upon life insurance companies in the making and disposing of their investments; and subject to like terms, conditions, limitations and restrictions, said trustees shall have full power to hold, purchase, sell, assign, transfer and dispose of any of the securities and investments in which any of the funds created herein shall have been invested, as well as the proceeds of said investments and any moneys belonging to said funds."

Referring to the statutes regulating the investment of funds by life insurance companies, I find but one provision which appears to be applicable. Article 48-A, Section 25 (Bagby's Code, 1924), provides that every insurance company, domestic or foreign, authorized to do business in this

State, must have and continually keep an amount equal to its entire reinsurance reserve and all other debts and claims against it, exclusive of capital stock invested in the following securities :

(1). Bonds, coin or treasury notes of the United States ;

(2). Interest or dividend paying bonds or stocks of this or any other State of the United States or of any county, incorporated city or other corporation of this or any other State having legal authority to issue the same, and not in default ;

(3). Ground rents ;

(4). Loans upon first mortgages on unincumbered fee simple or improved leasehold real estate in this or any other State of the United States, to an amount not exceeding 60% of the fair market value of such real estate ; and

(5). Loans on pledges of any of the above named securities, or on the policies of the companies in force.

The section contains other restrictions and limitations affecting the investment of funds which I do not recite at length in this communication.

In my opinion the provisions of Section 25 are applicable and limit the investment of funds by the Board of Trustees. Securities such as those referred to in the clipping enclosed in your letter of January 11th do not appear to provide a proper outlet for the investment of those funds.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

EDUCATION — REFORMATORY INSTITUTIONS — MONTROSE
SCHOOL FOR GIRLS WITHOUT POWER TO AUTHORIZE
AUTOPSY.

January 14, 1930.

Dr. Carrie W. Smith,
Superintendent Montrose School for Girls,
Reisterstown, Md.

DEAR DR. SMITH: I have your letter of January 13th, inquiring as to your authority to permit the performance of an autopsy on the body of one of the girls committed to the Montrose School.

In my opinion you have no authority to do this, without obtaining the permission of the persons entitled to sepulture, that is to say, the husband, parents, brothers and sisters, etc. in the order named. However, I deduce from your letter that Dr. Primakoss desires to perform an autopsy for the purpose of ascertaining the cause of death, in connection with the duty imposed upon him by Article 16, Section 360 (Baltimore City Code, 1927) to certify the cause of death. For this purpose an autopsy may be performed without the consent of persons having the right of sepulture.

The usual proceeding, however, is by coroner's inquest. Article 16, Section 361 (Baltimore City Code, 1927) requires the coroner to furnish a death certificate in cases coming to his attention. Sections 294-299 of the Baltimore City Charter (Edition of 1927) set forth the duties of the coroner. Section 296 provides that "the coroner shall hold an inquest over every person found dead in his district in said city, when the manner and cause of death shall not be already known as accidental, or in the course of nature." The Court of Appeals in the case of *Young vs. College of Physicians and Surgeons*, 81 Md. 358, held that an autopsy performed by a coroner without the consent of the widow did not give rise to any cause of action. However, if it is possible to obtain the consent of the husband, parents,

brothers or sisters, as the case may be, this should be done.

Pursuant to your request, I am sending a copy of this letter to Dr. Primakoss.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

EDUCATION—TEACHERS RETIREMENT SYSTEM—CLERK IN
OFFICE OF COUNTY BOARD IS INCLUDED.

February 10th, 1930.

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

DEAR DR. COOK: I wish to acknowledge receipt of your letter of February 7th, 1930. You ask my opinion as to whether a clerk employed in the office of a County Board of Education is properly classified as a "teacher" for the purpose of the State Retirement System created by Chapter 344 of the Acts of 1927. (Bagby's Code, 1929 Supp. Article 77, Sections 92-105).

After a careful examination of the Act, it is my opinion that your question must be answered in the affirmative. Section 92, Paragraph 3 of the Act, defines the word "teacher" to include any "clerk employed in a public day school within the State or in any State educational institution supported and controlled by the State." In my opinion the words "employed in a public day school" qualify all of the occupations mentioned. This being the case, it appears that a clerk in the office of a County Board of Education is as truly "employed in a public day school," as is the County Superintendent himself.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

EDUCATION—STATE BOARD OF EDUCATION CANNOT INCREASE
LENGTH OF COURSE AT NORMAL SCHOOL.

March 19, 1930.

Dr. Albert S. Cook,
Superintendent of Education,
Lexington Building,
Baltimore, Md.

DEAR DR. COOK: I have for reply your letter of March 15th, 1930. In my opinion, the State Board of Education is not empowered to increase the present two year course at state normal schools to three years.

Article 77, Section 155 of Bagby's Code provides:

"There shall be maintained at each white state normal school a two-year course or courses of study designed for the preparation of teachers for the elementary schools, and to which only graduates of a standard four-year high school course, or the equivalent, may be admitted."

It is suggested that the provision for a two year course is a minimum requirement, but this inference is rebutted by the second sentence above quoted, providing that certain additional courses *might* be maintained.

Furthermore, Article 77, Section 156 of Bagby's Code of 1924, provides in similar fashion for the maintenance of four year preparatory courses. This section was repealed by Chapter 417 of the Acts of 1929. The Legislature in repealing this section must have thought that they were thereby making some change in the law. The only possible change would be to take away the authority previously conferred. While, as was pointed out in my opinion reported in 10 Op. A. G. 105, the powers of the State Board of Education are broad, and limitations will not unnecessarily be implied from the language of the statute, I do not believe that those principles are applicable to this case.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

EDUCATION—MONTROSE SCHOOL FOR GIRLS—SEX OF MEMBERS OF THE BOARD OF MANAGERS—POWER TO DELEGATE TO SUPERINTENDENT AUTHORITY TO EMPLOY AND DISCHARGE.

April 11th, 1930.

*Isaac S. Field, Esq.,
President, Montrose School for Girls,
Baltimore, Md.*

DEAR SIR: You have asked me whether any fixed number of the Board of Managers of the Montrose School for Girls must be men. In my opinion the provisions of Article 27, Section 626, authorizing the Governor to appoint a Board of fifteen managers "eight of whom shall be women," does not prevent the appointment of more than eight women to the Board.

You have also asked me as to the right of the Board of Managers to delegate to the Superintendent of the School, the power to employ and discharge. The Section of the statute quoted above provides that the Board of Managers "shall make rules and regulations for the government of the said Institution, not inconsistent with the laws of this State, which they may deem necessary and proper for the public welfare and the best interests of the said Institution and its inmates * * * *." The Section subsequently provides that the Board of Managers "shall appoint all necessary officers and employees * * * *." In my opinion the Board may delegate to the Superintendent the power to discharge employees, subject to the Merit system. But it would appear that the appointment of officers and employees must be acted upon by the Board itself.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

EDUCATION—SCHOLARSHIPS TO WESTERN MARYLAND COLLEGE—HOW AWARDED.

August 6, 1930.

*T. G. Bennett, Esq.,
Superintendent of Schools for
Queen Anne's County,
Centreville, Md.*

DEAR MR. BENNETT: I have your letter of August 5th, in which you state that after a competitive examination, Kennard Rhodes, Jr., was awarded the scholarship from Queen Anne's County to Western Maryland College, by the School Commissioners, on June 18th, on the basis of his having received the highest number of credits. You further state that you are informed that the Senator for your county refuses to sign this award, and that his refusal is based upon the alleged ground that I, as Attorney General, have asked him to delay action pending an investigation by me. You request me to advise you what, if any, steps have been taken, or are in contemplation by me, in reference to this matter.

In answer to your inquiry, permit me to state that I am making no investigation with reference to this award, and no such investigation has been requested or is contemplated. There must, therefore, be some misunderstanding with respect to the information which you have received.

The law with reference to the granting of these scholarships is set forth in Section 243 of Article 77 of the Code of Public General Laws of Maryland, which reads as follows:

“One male student from each senatorial district of the State shall be educated free of charge for tuition, board, fuel, lights and washing, and shall be appointed by the school commissioners in said senatorial district, by and with the advice and consent of the senator in their respective senatorial districts after a competitive examination of the

candidates; provided, that the said appointment shall not be held by the same student for more than four years, and that each student receiving such appointment shall give bond to the State of Maryland for such amount, with such security as may be approved of by the president of said college, that he will teach school within this State for not less than two years after leaving college."

It is quite clear from the above section of the law, that these scholarships can only be awarded "by and with the advice and consent of the senator in their respective senatorial districts." The determination of questions of this kind, being committed to the discretion of the state senators, neither I, as Attorney General, nor any other state official, can interfere in the exercise of this discretion, and there is no occasion for any investigation by me.

I had no knowledge of the case to which you refer until this morning, and I appreciate your bringing the matter to my attention.

With best wishes, believe me,

Very sincerely yours,

THOMAS H. ROBINSON, *Attorney General.*

EDUCATION — FREE SCHOLARSHIPS — WESTERN MARYLAND COLLEGE AWARDED TO CANDIDATE RECEIVING HIGHEST RATING ON COMPETITIVE EXAMINATION.

August 28th, 1930.

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

DEAR DOCTOR COOK: I have your favor of the 26th inst., enclosing letter from former State Senator Samuel L. Byrn

of Dorchester County, regarding the method of awarding the free scholarships to Western Maryland College, under the provisions of Section 243 of Article 77, of Vol. 2, of Bagby's Annotated Code of Maryland.

Section 243 reads, in part, as follows :

“One male student from each senatorial district of the State shall be educated free of charge for tuition, board, fuel, lights and washing, and shall be appointed by the School Commissioners in said senatorial district, by and with the advice and consent of the Senator in their respective senatorial districts *after a competitive examination* of the candidates * * * *.”

You ask me to advise you whether the School Commissioners are free to appoint any candidate who takes the examination, or whether the law requires that the appointment shall be given to the candidate who receives the highest rating.

The only possible object of the requirement that the examination be competitive is to enable the School Commissioners to determine the relative merit and fitness of the various candidates. If they can ignore the results of the examination, the competitive feature would be a meaningless formality.

I do not believe that this was intended, and it is therefore my opinion that the School Commissioners must award the scholarship to the candidate receiving the highest rating, subject, of course, to the approval of the Senator.

I am returning Mr. Byrn's letter.

With kindest personal regards, believe me,

Sincerely yours,

THOMAS H. ROBINSON, *Attorney General.*

EDUCATION—UNIVERSITY OF MARYLAND — NON-RESIDENT
TUITION FEES.

October 3, 1930.

*Dr. Raymond A. Pearson,
University of Maryland,
College Park, Md.*

DEAR DR. PEARSON: I acknowledge receipt of your letter of September 29th, 1930.

After examining your rules, I do not understand why there is any occasion for any dispute in this case. According to the letter of Mr. James Pittaway dated September 19th, 1930, of which I have already sent you a copy, his son Arthur Pittaway paid a non-resident fee in September 1929, and again for the second semester of that scholastic year. In May 1929, his parents established a residence in University Park, Md., and have been residing there ever since. The question now is whether he shall pay the fee for the first semester of 1930, his parents having established a legal residence in Maryland for nearly sixteen months.

Your catalogue provides "the status of the residence of a student is determined at the time of his first registration in the University, and may not thereafter be changed by him unless his parents or guardians move to and become legal residents of this state."

It is also provided that "students who are minors are considered to be resident students, if at the time of their registration, their parents or guardians have been residents of this state or the District of Columbia for at least one year."

As it appears that Mr. James Pittaway has been living in Maryland since May 1929, his son would seem to be entitled to the status of a resident student for the first semester of the year 1930.

Please let me know whether this meets with your approval, as I wish to inform Mr. Pittaway.

With kind regards and best wishes, I am,

Yours very sincerely,

THOMAS H. ROBINSON, *Attorney General.*

EDUCATION—COUNTY COMMISSIONERS MUST ASSESS AND COLLECT NOT LESS THAN 67 CENTS PER \$100.00 IN ORDER TO SHARE IN EQUALIZATION FUND—CANNOT CLAIM CREDIT FOR UNCOLLECTED TAXES.

October 22, 1930.

J. H. C. Legg, Esq.,
Attorney for Board of County Commissioners,
Centreville, Md.

DEAR MR. LEGG: I have your letter of October 15th, 1930, in which you ask whether the County Commissioners, in making payment to the County Board of Education of \$.67 on each \$100.00 of assessable property as required by Section 204 of Article 77, may claim credit for uncollectible taxes commonly called "insolvent," without forfeiting the right to share in the Equalization Fund referred to in that section.

In my opinion, Section 204 does not permit a credit for uncollectible taxes. The law requires that in order to share in the Equalization Fund, the Board of County Commissioners "shall levy and *collect* an annual tax for the schools of *not less than* sixty-seven cents on each one hundred dollars of assessable property," etc. The requirement that not less than sixty-seven cents on each one hundred dollars be collected, appears to have been inserted in the law by Chapter 382 of the Acts of 1922 for the express purpose of assuring a definite sum to the county Board of Education.

You call attention to Section 210 of Article 77. This section was adopted long before the Equalization Fund was ever heard of, and relates to the state tax of \$.15 on each \$100.00 of taxable property throughout the state, which is now found in Section 205 of Article 77. (See Annotated Code, 1911, Volume 2, Article 77, Sections 135-140, inclusive.)

With kind regards and best wishes, I am,

Very sincerely yours,

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

EDUCATION—REFORMATORIES — POWER OF MONTROSE
SCHOOL FOR GIRLS TO REQUIRE MEDICAL AND SURGICAL
TREATMENT.

Dec. 18th, 1930.

Dr. Carrie W. Smith,
Montrose School for Girls,
Baltimore, Md.

DEAR DOCTOR SMITH: You have asked me as to the extent of the power of the Board of Managers of the Montrose School for Girls to require the children committed to their care to submit to medical and surgical treatment, when in the judgment of the Board or of its delegate such treatment is necessary.

An examination of the laws of this State and of court decisions here and elsewhere has not disclosed any statute or judicial decision which is controlling. The Act from which the Board of Managers derives its powers (Art. 27, Secs. 625-633, Bagby's Code, 1924) provides (Sec. 626):

“The said Board of Managers of the Montrose School for Girls shall make rules and regulations for the government of said institution not inconsistent with the laws of this State, which they may deem necessary and proper for the public welfare and the best interests of the said institution and its inmates * * * *”

Apart from the express provisions of the statute, it is apparent that the purpose for which children are committed to the school is to substitute the guardianship and control of the State for that of the child's parents and natural guardians. It is against this claim that the constitutionality of such laws has been often sustained. *Bryant vs. Brown* 60 A.L.R. 1325 and note.

After careful consideration of the statute, it is my opinion that the Board of Managers may require the child to

submit to such medical and surgical treatment as appears to be necessary for the public welfare, the best interests of the school and of the child herself.

Yours very truly,

WM. L. MARBURY, JR., *Asst. Attorney General.*

ELECTIONS

ELECTIONS—PRIMARY ELECTIONS—WHEN TO BE HELD.

January 20th, 1930.

*Hon. Frank N. H. Lang,
State Chairman, Labor Party of Maryland,
29 East 21st Street,
Baltimore, Maryland.*

DEAR SIR: I have your letter of January 18th, enclosing form of petition which the Labor Party of Maryland proposes to use for the nomination of its candidates at the coming election, and requesting me to advise you whether this form is in compliance with the election laws of this State.

Without undertaking to pass upon the propriety of the particular form which you submit, I would suggest that you use the form which is printed at page 303 of the Registration and Election Laws of Maryland for the year 1928. This form should be addressed to and filed with the Secretary of State in the case of state wide officers, and with the Board of Supervisors of Elections of Baltimore City, or the County in question, in the case of local officers.

The date of the primary election is fixed in accordance with the provisions of Section 191 of the Registration and Election Laws for 1928. Except in those years in which there is an election for President and Vice-President of the United States, when there is a primary election on the first Monday in May, primary elections are held on a day fixed by agreement between the governing bodies of the two leading parties not earlier than the 8th day of September, and not later than the 15th day of September. In the event there is no agreement between the two parties, the primary election is held on the second Monday in September.

From the above you will observe that the Primary Election must be held on some day between the 8th and 15th days of September, 1930, and although it is impossible to

state definitely at this time the date upon which the primary election will be held, your petitions will be in ample time if filed not later than the 8th day of September, 1930.

Yours very truly,

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

ELECTIONS—JUSTICE OF PEACE NOT AUTHORIZED TO ACT AS
ELECTION OFFICIAL.

January 29, 1930.

*Hon. J. Frank Browning,
Supervisor of Elections for
Garrett County,
Oakland, Md.*

DEAR SIR: I have your letter of January 25th, requesting an opinion as to whether a Justice of the Peace may serve as a registration officer.

The appointment of the registration officers is authorized by Section 8 of Article 33 of the Code of Public General Laws of Maryland, and it is specifically provided that these officials shall be "of good capacity and character, able to speak, read and write the English language, and skilled in the four fundamentals of arithmetic, *not holding any other public office or employment, and not a candidate for any office at the next election.*"

It is very clear under this provision of the law, that a Justice of the Peace cannot properly serve as a registration officer.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

ELECTIONS—BOARD OF SUPERVISORS AUTHORIZED TO INCREASE NUMBER OF VOTING PLACES IN EITHER OF TWO WAYS.

February 20th, 1930.

*G. Reynolds Ash, Esq.,
Elkton, Md.*

DEAR MR. ASH: I have your letter of February 17th, stating that the Board of Supervisors of Elections for Cecil County is about to establish an additional voting place in the first precinct, and requesting an opinion as to whether it should proceed under the provisions of Section 137 of Article 33, or Section 138 of the same Article.

I gave you my views concerning this inquiry by telephone this morning, and I am writing to confirm that conversation.

You will observe that Section 138 was originally enacted at the 1920 Special Session of the Legislature, and was designed to meet the very large increase in registration at that time, because of the adoption of the Federal Amendment to the Constitution, by which women were enfranchised. Notwithstanding this purpose which led to the passage of this section, it was repealed and re-enacted by Chapter 318 of the Acts of Assembly of 1922, so that it is still unquestionably a valid part of the election code of this State.

There is no real conflict between Sections 137 and 138. It would be more accurate to say that they provide different methods for creating an additional voting place, and Section 138 was doubtless intended to apply to those cases where there has been an increase in the number of registered voters at the fall registration after it is too late to sub-divide a precinct in the manner prescribed by Section 137.

You will note that where the sub-division is made under the provisions of Section 137, the Supervisors are required to advertise the boundaries of the new precinct three successive weeks before the first of September of the year in

which the sub-division is made. There is no such requirement in the provisions of Section 138, and manifestly no such advertisement could take place where the sub-division is made subsequent to the fall registration.

If the Board of Election Supervisors in your County proposes to create one or more voting places at this time, I believe it should proceed under the provisions of Section 137.

Yours very truly,

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

ELECTIONS—REMOVAL CERTIFICATES MAY BE ISSUED BY SUPERVISORS OF ELECTIONS OR THEIR CLERKS WHEN APPLICATIONS ARE RECEIVED BY MAIL—DUTY OF SUPERVISORS TO PROVIDE BLANKS.

April 28th, 1930.

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

DEAR MR. LAIB: In conformity with our conversation of several days ago, I am calling your attention to the provisions of Chapter 332 of the Acts of Assembly of 1929, authorizing the issuance of removal certificates by the Board of Supervisors of Elections, or a Clerk to be designated by them, upon receipt by mail or otherwise of a written application under oath as therein provided.

This Act imposes a duty upon the respective Boards of Supervisors of Elections throughout the State to furnish upon request of any registered voter, a suitable blank for the making of an application for a certificate of removal. The forms of the application, the affidavit and certificate of removal, are set forth in the Act.

If I can be of any further assistance to you in this matter, I shall be glad to hear from you.

Yours very truly,

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

ELECTIONS—INFAMOUS CRIMES COMMITTED BY MINORS DO
NOT DISFRANCHISE SUCH PERSONS AFTER THEY AT-
TAIN THEIR MAJORITY—ASSAULT WITH INTENT TO KILL
IS NOT AN INFAMOUS CRIME.

June 5, 1930.

*Hon. Ambrose J. Kennedy,
Parole Commissioner,
Morris Building,
Baltimore, Md.*

MY DEAR SENATOR KENNEDY—I have your letter of June 4th, requesting me to advise you whether the two persons named in your letter are entitled to vote in this state without obtaining a pardon from the Governor, covering the offenses for which they have been convicted.

In the first case, you state that the individual named was convicted of a bank robbery when he was nineteen years of age, and that he was sentenced to serve a term of seven years in the Maryland Penitentiary.

Although this offense is an infamous crime within the meaning of the Constitution, it does not operate to disqualify an individual committing the same before he arrives at the age of twenty-one years. The constitutional provision to this effect is found in Section 2 of Article I of the state Constitution, by which it is clearly apparent that the disqualification because of the conviction of infamous crimes, only applies to persons committing such crimes when they are above twenty-one years of age.

In the second case, you state that the party in question was convicted of the crime of assault with intent to kill, and sentenced to eighteen months in the Maryland Penitentiary. Such an assault is not an infamous crime within the meaning of the Constitution, and the party in question is entitled to register. See *State vs. Bixler*, 62 Md. 354.

With kind regards and best wishes, believe me,

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

ELECTIONS—REGISTRATION OF VOTERS—AFFIDAVIT OF APPLICANT FOR REGISTRATION SHOULD BE MADE BEFORE ELECTION OFFICIALS—SUPPORTING AFFIDAVIT UNDER ACT OF 1929 MAY BE MADE BEFORE ANY OFFICER AUTHORIZED TO TAKE AFFIDAVIT.

June 9, 1930.

*Robert H. McCauley, Esq.,
Attorney at Law,
Hagerstown, Md.*

DEAR MR. MCCAULEY: I have your letter of June 5th, with reference to the forms of affidavit required by Chapter 578 of the Acts of Assembly of 1929.

We are in entire accord with your view that the affidavit of the applicant for registration should be made before the officers of registration, and that the supporting affidavit may be executed before any officer authorized to take affidavits. We advised the Supervisors of Elections of Baltimore City to this effect under date of July 31st, 1929.

With kind regards and best wishes, I am,

Very truly yours,

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

ELECTIONS—AMENDMENTS TO CITY CHARTER—PROPOSED AMENDMENT PROVIDING FOR DAYLIGHT SAVING TIME PROPER TO BE SUBMITTED TO VOTERS.

June 12, 1930.

*Hon. Robert B. Ennis, President,
Supervisors of Elections
for Baltimore City,
Court House,
Baltimore, Md.*

MY DEAR MR. ENNIS—I have your letter of June 4th, enclosing certified copy of a Resolution of the Mayor and City

Council of Baltimore, proposing what purports to be an amendment to the charter of Baltimore City, to change the official time of said city during certain periods of each year. You request me to advise you whether this Resolution should be submitted to the legally qualified voters of the city, for adoption or rejection, at the election to be held in November of this year.

The Resolution in question is as follows:

“Resolution to propose an amendment to the Charter of Baltimore City, by adding a new section thereto to be known as section 222½, providing for a change in the official time of said City, as now fixed by Section 89 of Article 1 of the Baltimore City Code of 1927, between the hour of two A. M. of the last Sunday in April and the hour of two A. M. of the last Sunday in September of each year; and providing that between said hours the official time throughout the City of Baltimore shall be advanced one hour, and all courts, public offices, legal and official proceedings, in so far as the same are subject to or under the control of the Mayor and City Council of Baltimore shall be regulated thereby, and that all time shown by the public clocks shall agree therewith; and providing for the submission of said amendment to the qualified voters of the City of Baltimore for adoption or rejection.

“Be it resolved by the Mayor and City Council of Baltimore, That the following amendment to the Charter of Baltimore City, to be known as Section 222½, be and the same is hereby proposed:

“Section 222½. The official time of the City of Baltimore, as now fixed by Section 89 of Article 1 of the Baltimore City Code of 1927, shall conform to standard time based upon the time of the seventy-fifth meridian, except that, from two A. M. of the last Sunday in April until two A. M. of the last Sunday in September of each year, the

official time throughout the City of Baltimore shall be advanced one hour, and all courts, public offices, legal and official proceedings, in so far as the same are subject to or under the control of the Mayor and City Council of Baltimore, shall be regulated thereby, and all time shown by the public clocks shall agree therewith.

“And be it further resolved, That the foregoing Section, hereby proposed as an amendment to the Charter of Baltimore City, shall at the general election to be held on the Tuesday after the first Monday of November, 1930, be submitted to the legally qualified voters of the City of Baltimore for adoption or rejection, in accordance with the provisions of Section 11-A, of the Constitution of Maryland.”

Section 5 of Article 11-A of the Constitution of Maryland, commonly known as the Home Rule Amendment, confers upon the Mayor and City Council of Baltimore, the power to propose amendments to the city charter, which when so proposed are required to be submitted to the voters of Baltimore City.

Under this and the other provisions of Article 11-A of the Constitution, it is quite clear that any proposed amendment to the charter must be within the expressed powers that have been granted by Section 6 of Article 4 of the public local laws, to the Mayor and City Council of Baltimore, or by subsequent act of Legislature (*Williams vs. Broening*, 135 Md. 226, *Jones vs. Broening*, 135 Md. 237), and it would seem also that no such amendment may contravene or conflict with the Constitution or the Public General Laws of this state.

After very careful consideration, I am of the opinion that the Mayor and City Council of Baltimore, under the broad powers that have been granted to it by Section 6 of Article 4 of the Code of Public Local Laws, may legislate with respect to the time for the discharge of official duties by the various officers, employees and departments of the city gov-

ernment. This power has been exercised in a number of instances. (See Baltimore City Code, Article 8, Sections 33 and 38; Article 21, Section 4.)

The question as to whether the proposed amendment to the city charter is in conflict with the Public General Laws of this state is not free from doubt. Chapter 433 of the Acts of 1884, now codified as Article 94, Section 1, (Bagby's Code 1924) reads as follows:

“AN ACT to establish a uniform standard of time throughout the State of Maryland.

Section 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the standard time throughout the State of Maryland, shall be that of the seventy-fifth meridian of longitude west from Greenwich, by which all courts, banking institutions and public offices, and all legal or official proceedings shall be regulated.

Sec. 2. AND BE IT ENACTED, That this act shall take effect from the date of its passage.

Approved April 8, 1884.”

Although the proposed amendment to the city charter has been worded in an effort to avoid any conflict with this law, in the absence of authority, I should have doubted that the language used was effective for that purpose. However, there are two decisions in which this question has been considered, namely, *Cist vs. Cincinnati*, 101 Ohio State, 354, 129 N. E. 595, and *Massachusetts State Grange vs. Benton*, 274 U. S. page 525.

In the Ohio case, the standard time for that state was fixed by a public general law of the state which reads as follows:

“Central Standard Time—The standard of time throughout this State shall be that of the ninetieth meridian of longitude west from Greenwich, and shall be known as ‘Central Standard Time.’ Courts, banks, public offices and legal or official proceedings shall be regulated thereby. * * * *.”

The city of Cincinnati enacted an ordinance providing for an advanced, or daylight saving time, for certain periods of the year, which provided that "all municipal offices and legal proceedings of the city of Cincinnati shall be regulated by such standard of time."

The court held that there was no conflict between this ordinance and the public general law of the State of Ohio above quoted.

The case of *Massachusetts State Grange vs. Benton*, decided by the Supreme Court of the United States, was instituted for the purpose of obtaining a judicial determination that the daylight saving acts of Massachusetts were inconsistent with the Act of Congress of the United States of March 19th, 1918, and therefore unconstitutional. The Act of Congress under consideration, fixed the standard of time "in all statutes, orders, rules and regulations * * * * relating to the time within which any rights shall accrue or determine, or within which any act shall or shall not be performed by any person subject to the jurisdiction of the United States."

The opinion in this case was rendered by Mr. Justice Holmes, and in the course of that opinion it is stated:

"The Massachusetts statute advances the standard time thus fixed by one hour; and provides that the time shall be the United States standard eastern time so advanced, in all laws, regulations, etc. relating to the time of performance of any act by any officer or department of the Commonwealth, or of any county, city, etc. thereof, or relating to the time in which any rights shall accrue or determine, or within which any act shall or shall not be performed by any person subject to the jurisdiction of the Commonwealth * * * *."

In disposing of the question as to whether there was a conflict between the act of Massachusetts and the Act of Congress, Justice Holmes simply stated:

“The court below found no inconsistency between the two acts, and we have seen no sufficient reason for differing from it upon that point.”

The above cases seem to support the conclusion that no conflict exists between the proposed amendment and the general law, and in the light of these decisions, I do not feel justified in ruling that this amendment cannot properly be placed on the ballot on that ground.

If, for the reasons above set forth, the proposed amendment falls within the powers that have been granted to the Mayor and City Council of Baltimore, and is not in conflict with the public general laws of Maryland, then it follows that the effect of the amendment is to withdraw certain legislative powers from the Mayor and City Council, and to substitute in lieu thereof a fixed rule of law regulating the official time for Baltimore City. While there may be some limitations upon the power of amendment granted by Section 5 of Article 11-A in addition to those hereinbefore referred to, I believe that an amendment which seeks only to fix the time for the conduct of municipal affairs does not contravene any such limitation.

I am of the opinion, therefore, that the proposed amendment should be submitted to the voters at the coming election.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

ELECTIONS—TERM OF OFFICE OF MEMBER OF CITIZENS' COMMITTEE OF CHEVY CHASE, MARYLAND—DEFINED.

June 24th, 1930.

Hon. F. E. Meloy,
Secretary-Treasurer, Citizens' Committee,
Section 3, Chevy Chase, Md.

DEAR SIR—I have your letter in which you request an opinion as to the term of office of Mr. Paul S. Anderson, as a member of the Citizens' Committee of Chevy Chase.

It appears that at the election held on April 8th, 1930, Col. E. F. Geddings, was elected as a member of this Committee for the term of two years. On April 11th, 1930, Col. Geddings qualified as a member of this Committee. Thereafter he submitted his resignation which was duly accepted, and Mr. Paul S. Anderson was appointed as his successor.

Authority for the election of this Committee is conferred by Chapter 56 of the Acts of Assembly of 1914 as amended by Chapter 172 of the Acts of Assembly of 1916.

Section 3 of the latter Act of Assembly provides:

“* * * * in case of any vacancy through death, resignation, removal from said Section 3, or otherwise, the remaining Committeemen shall fill such vacancy by the appointment of a resident, registered and qualified voter of said Section 3 of said village, who shall hold office *until the next regular election as hereinafter provided.*

“On the second Tuesday in April, 1917, two members of the said Citizens' Committee shall be elected to serve for one year and three members to serve for two years. On the second Tuesday in April, 1918, and on the second Tuesday in April of each following year an election shall be held at which Committeemen shall be elected for two years to succeed those whose terms expire, *and at which Committeemen shall be elected to fill any vacancies*

which may exist, but the Committeemen so elected to fill such vacancies shall serve only for the remainder of the unexpired term."

In view of the above provisions of the law, it is quite clear that Mr. Anderson is entitled to hold his office as a member of the Committee, "until the next regular election," which will be held on the second Tuesday in April, of 1931, and at that time his successor should be elected "for the remainder of the unexpired term" for which Col. Geddings was elected, or until the election of 1932.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

ELECTIONS—REGISTRATION DAYS ARE FIXED BY LAW AND CANNOT BE CHANGED BY SUPERVISORS OF ELECTIONS.

July 9th, 1930.

*Robert B. Ennis, Esq.,
President, Board of Supervisors of Elections,
Baltimore, Maryland.*

DEAR MR. ENNIS—You have called my attention to the fact that all four of the registration days fixed for this year will fall upon important Jewish holidays. Rosh Hoshonah, or the Jewish New Year, will fall on September 23rd and 24th, and the Feast of Tabernacles will be observed on October 7th and 8th.

You request me to advise you whether there is any method by which the registration days may be changed so as to accommodate those members of the Jewish faith who would not register on one of these days.

The days of registration are fixed by Section 29 of Article 33 of the Code of Public General Laws by which it is provided:

“In the City of Baltimore, there shall be a general registration in the year 1922, and quadrennially thereafter. For such general registration the Boards of Registry shall be in session on the Tuesdays, respectively, six and four weeks preceding such regular election, and on the Wednesday next following said Tuesdays, respectively.”

The Board of Supervisors of Elections has no authority to change the time fixed by the Legislature for the registration of voters, or to grant any additional time for that purpose. While I regret very much that the registration days fixed by law will fall upon these important holidays, I know of no method by which this unfortunate situation can be remedied until the Legislature changes the law.

With kind regards and best wishes, I am

Yours very truly,

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

NOTE: A special session of the Legislature was called by the Governor to change the days of general registration in Baltimore City for 1930, so as to afford all citizens an opportunity to register without violating their religious beliefs.

ELECTIONS—PRIMARY ELECTIONS—PERSONS WHO ARE REGISTERED AS DECLINED VOTERS ARE ENTITLED TO AFFILIATE WITH A PARTY AT THE PRE-PRIMARY REGISTRATION AND TO VOTE AT THE SUCCEEDING PRIMARY.

July 18, 1930.

*H. Maurice Talbott, Esq.,
Attorney to Supervisors of
Elections for Montgomery County,
Rockville, Md.*

DEAR MR. TALBOTT—In your letter of July 15th, you request an opinion as to whether a person who is registered

as an independent or declined voter, may change his affiliation on the registration day immediately preceding the primary, and have himself registered as affiliated with one of the two leading parties in order that he may vote in the primary election of the party of his new choice at the succeeding primary election.

Section 194 of Article 33 of the Code of Public General Laws, provides that "whenever a voter declines to state his party affiliation the word 'declined' shall be written opposite his name." This section further provides that "no person or voter after having had his affiliation registered, shall be permitted to make any change in his party affiliation unless the same shall be made at least six months prior to the day of the primary election."

Section 201 provides that "at any intermediate registration subsequent to the close of the next general registration, such voter may appear before the board of registry," for the purpose of having his party affiliation changed. Further provision is made to the end that any person who has declined to affiliate, or after whose name the word "independent" appears upon the registry books, shall not be permitted to vote at any primary election until he has appeared before the board of registry and affiliated with the party in whose primary election he desires to vote.

These provisions of the election law were before the Court of Appeals for construction in the case of *Murphy vs. Wachter*, 126 Md. 564, where it was held that a voter who is entered upon the books as "declined" cannot be said to have "had his affiliation registered." It was further held in this case, that a person who was entered as "declined" was entitled to affiliate as a "Republican" at the registration shortly before the municipal election in Baltimore City.

In view of the above statutory provisions, and the decision of the Court of Appeals in the case above referred to, I am of the opinion that the prohibition against a change of party affiliation within six months of the primary election, as contained in section 194, has no application to persons who are entered upon the books as "declined" or "independent," and that all such persons may lawfully affiliate

with a party of their choice at the registration immediately preceding the primary election.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

ELECTIONS—PRIMARY ELECTIONS—CANDIDATE FOR HOUSE OF DELEGATES MAY ALSO BE CANDIDATE FOR PARTY COMMITTEE UNLESS RULES OF PARTY PROHIBIT SUCH A COURSE.

July 18, 1930.

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

DEAR MR. LAIB: In your letter of July 14th, you request an opinion as to whether the same person may be a candidate for nomination for the House of Delegates, and also a candidate for party Committeeman at the same primary election.

Article 35 of the Maryland Declaration of Rights, provides that "no person shall hold, at the same time, more than one office of profit, created by the Constitution or laws of this state," and by section 53 of the Registration and Election Laws of 1930, it is provided that "no person shall accept a nomination to more than one office."

A member of the House of Delegates occupies an "office of profit" within the meaning of Article 35 of the Declaration of Rights, but in my opinion, a party Committeeman does not hold such an office. These Committeemen are elected at the primary election, but the office which they hold is created by the rules and regulations of the governing body of the party to which they belong, and not by the Constitution or laws of this state, as provided by Article 35. They receive no compensation from the state and are in no sense state officers.

Inasmuch as the party Committeemen are elected at the primary election, it cannot be said that they are nominated at that election, within the meaning of Section 53 of the election laws above referred to. The obvious purpose of section 53 is to prohibit the same person from accepting nominations for more than one office, when the law prohibits the same person from filling more than one office.

I find no provision in the constitution or laws of this state which prohibits the same person from seeking nomination for the House of Delegates, and election as a party Committeeman at the same primary election, and therefore the answer to your inquiry must be in the affirmative.

My conclusion is based upon the assumption that the rules and regulations of the governing body of the party to which the candidate in question belongs, contain no provision which prohibits a candidate for public office from seeking election as a party Committeeman. The qualifications for membership on party committees are usually prescribed by the rules and regulations of the governing bodies of the respective parties, and a candidate for membership on these committees must possess the prescribed qualifications in order to be validly elected.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

ELECTIONS—PRIMARY ELECTION—CANDIDATE FOR LEGISLATURE NEED NOT BE A REGISTERED VOTER IN THE COUNTY OR DISTRICT HE SEEKS TO REPRESENT.

August 1st, 1930.

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

DEAR MR. LAIB: You have requested me to advise you whether Mr. George Tyler Smith is eligible as a candidate for the Legislature from the Third District of Baltimore City. You state that Mr. Smith resided in Baltimore County until about eighteen months ago, when he moved into the Third District of Baltimore, where he has since resided; that he is a registered voter in Baltimore County and has not qualified in Baltimore City, for the reason that there has been no registration day since he became eligible for registration in the city.

Section 9 of Article III of the Constitution of Maryland, provides that,

“No person shall be eligible as a senator or delegate who, at the time of his election, is not a citizen of the state of Maryland, and who has not resided therein for at least three years next preceding the date of his election, and the last year thereof in the county, or in the legislative district of Baltimore City which he may be chosen to represent.”

If Mr. Smith has been a citizen of the State of Maryland for the last three years and continues to reside in the Third District of Baltimore until the day of his election, he will be eligible for election to the House of Delegates.

There is no provision of law which requires him to be a registered voter in the District which he proposes to repre-

sent, for at least a year before becoming eligible as a candidate. You are, therefore, advised that Mr. Smith is eligible as a candidate in the coming primary election.

Yours very truly,

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

ELECTIONS—PRIMARY ELECTIONS—CANDIDATE NEED NOT
BE A REGISTERED VOTER.

August 2, 1930.

*G. Reynolds Ash, Esq.,
Attorney at Law,
Elkton, Md.*

DEAR MR. ASH: Your letter of July 25th, came to my attention upon my return to the city from Cumberland and Oakland this morning.

You request an opinion as to whether a man who is not a registered voter may file as a candidate subject to the primary elections.

If the person in question is otherwise qualified for the office which he seeks, he is eligible as a candidate at the primary election. This department has recently ruled that a person who is registered in Baltimore County, but who has resided in Baltimore City for more than a year, may become a candidate for the Legislature in Baltimore City. A similar opinion was rendered on June 16th, 1926 which was reported in Volume 11 of the Report and Official Opinions of the Attorney General, at page 98.

If you are in doubt as to the right of any particular candidate, we will be glad to give you an opinion in any particular case which you may present.

With kind regards and best wishes, I am,

Very sincerely yours,

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

ELECTIONS—REGISTRATION OF VOTERS—A FOREIGN BORN
WOMAN WHO MARRIED A CITIZEN OF THE U. S. IN 1923
MUST BE NATURALIZED IN ORDER TO BECOME A CIT-
IZEN AND ENTITLED TO VOTE.

August 4, 1930.

*H. Maurice Talbott, Esq.,
Attorney at Law,
Rockville, Md.*

DEAR MR. TALBOTT: In your letter of August 2nd, you state that an Army officer who is a qualified voter in your county, married a German girl in Germany in the year 1923, and request an opinion as to whether the wife of the officer is entitled to vote without being naturalized.

Under the Act of Congress passed on September 22nd, 1922, a woman who is a citizen of a foreign country who marries a citizen of the United States, does not become a citizen of the United States by reason of such marriage.

It will therefore be necessary for the wife of the Army officer to be naturalized before she becomes eligible to vote.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

ELECTIONS—PRIMARY ELECTIONS—PRE-PRIMARY REGISTRA-
TION NECESSARY IN EVERY COUNTY WHEN THERE IS A
PRIMARY ELECTION IN ANY COUNTY.

August 4, 1930.

*Lawrence E. Ensor, Esq.,
Attorney at Law,
Towson, Md.*

DEAR MR. ENSOR: In your letter of July 22nd, you request an opinion as to whether it will be necessary for the

Boards of Registry for Baltimore County to meet for the registration of voters on the Tuesday preceding the state primary election, as provided by Section 20 of the registration and election laws, in the event there should be no contest in your county, and therefore no primary election in that county.

It has always been my impression that the purpose of this pre-primary registration day is to enable persons who are not registered, to qualify to vote in the primary election, and it would seem that this registration is unnecessary in any county in which there is no primary contest. There are two subsequent supplemental registration days on which persons may qualify for the ensuing general election, and if the Legislature had intended to provide an additional supplemental registration day prior to every election, it would not have made the holding of the pre-primary registration dependent upon the holding of a primary election in the state.

I find, however, that this question was considered by Attorney General Ritchie, and also by Attorney General Armstrong, both of whom reached the conclusion that whenever there is a primary election in the state, the Boards of Registry must meet in every county, on the Tuesday preceding the primary election, even though there may be no primary contest in some of the counties.

Attorney General Ritchie, in an opinion to Mr. R. Grome Parks, on August 21, 1917, and reported in Volume 2 of the Report and Official Opinions of the Attorney General, at page 173, said:

“The law does not except from this registration, counties in which there are no primary contests.
* * * * The condition upon which this registration depends is that a primary election is to be held in the State, and whenever a primary election is to be held in the State, then each county Board of Registration is required to hold this registration.”

The opinion of Attorney General Armstrong to the same effect is found in Volume 5 of the Report and Official Opinions of the Attorney General, at page 147.

In view of the above rulings, I am unwilling to advise a different construction of this section of the law at this time. If it is felt that the interpretation heretofore placed upon the law to impose a needless expense upon those counties in which there are no primary contests, the Legislature is the appropriate tribunal for relief.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

ELECTIONS — PRIMARY ELECTIONS — PERSONS ATTAINING THE AGE OF 21 PRIOR TO ELECTION AND SUBSEQUENT TO LAST REGISTRATION, MAY VOTE IN BALTIMORE CITY ALTHOUGH UNREGISTERED.

August 5, 1930.

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

DEAR MR. LAIB: You have requested me to advise you what class of unregistered persons may vote in the primary election in Baltimore City, to be held on September 8th, 1930.

The answer to this inquiry is found in Section 194 of the election laws where it is provided:

“All persons arriving at the age of twenty-one years, after the closing of the next preceding registration, or who shall attain the age of twenty-one years before the general election for which the primary election is held, entitled to be registered as qualified voters, shall be entitled to vote upon prov-

ing under oath, to the satisfaction of a majority of the judges of election, their right to registration in the precinct in which they claim the right to vote, provided they declare their intentions to vote for the candidate or candidates of the party at whose primary they tender their ballots."

The last registration day in Baltimore City was Tuesday, October 9th, 1928. It is quite clear, therefore, that persons, otherwise qualified, attaining the age of twenty-one years subsequent to October 9th, 1928, and on or before November 5, 1930, are entitled to participate in the primary election on September 7th, subject to the conditions above prescribed. A person is presumed to attain the age of twenty-one on the day before his or her twenty-first birthday, and it is for this reason that persons arriving at the age of twenty-one on November 5th, 1930, will be eligible to vote in the general election on November 4th, 1930.

I have corrected the forms which you sent to me for use by the election officials on primary election day, so as to conform to the views above expressed.

Very truly yours,

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

ELECTIONS—PRIMARY ELECTIONS—PERSONS WHO RESIDE IN COUNTY FOR 6 MONTHS PRIOR TO GENERAL ELECTION ENTITLED TO VOTE IN PRIMARY ALTHOUGH THEY HAVE NOT RESIDED IN COUNTY FOR 6 MONTHS PRIOR TO PRIMARY.

August 5, 1930.

*Edwin H. W. Harlan, Esq.,
Attorney at Law,
Bel Air, Md.*

DEAR MR. HARLAN: In your letter of July 28th, you request an opinion as to whether a person who will have re-

sided in Harford County for six months preceding the general election to be held on November 4, 1930, but who will not have been a resident of the county for that period of time prior to the primary election on September 8th, is entitled to register at the pre-primary registration to be held on Tuesday, September 2, 1930.

The pre-primary registration is provided by Section 20 of the registration and election laws, and authorizes the registration of persons "not previously registered and who may be entitled to vote at the next general election."

The words "not previously registered" are, in my opinion, intended to refer to persons not previously registered in the county. Inasmuch as the persons referred to in your letter will meet the constitutional requirements for the right of franchise in Harford County on the day of election, their registration is specifically authorized by the provisions of Section 20.

It will be necessary for each applicant who is upon the registry books in any other county, or the City of Baltimore, to produce a removal certificate prior to registration in Harford County on September 2nd. The new registration in Baltimore City does not take place until after the primary election, and the old registry books will be used for the primary.

With kind regards and best wishes, I am,

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

ELECTIONS—PRIMARY ELECTIONS—SAMPLE BALLOTS AND
CARDS OF INSTRUCTION ARE NOT REQUIRED TO BE PRINT-
ED FOR PRIMARY ELECTIONS.

August 6, 1930.

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

DEAR MR. LAIB: You have requested me to advise you whether it is necessary for the Board of Supervisors of Elections to print and furnish sample ballots and cards of instructions for the primary election, on September 8, 1930.

The answer to this inquiry is found in the provisions of Section 197 of the registration and election laws, at page 136, where it is provided:

“It shall not be necessary to print sample ballots or cards of instructions for such elections, but either or both shall be printed by the Board of Supervisors of Elections of the City of Baltimore, when requested by any candidate in said primary election, said request to be accompanied by a sum of money necessary to cover the cost of printing.”
With kind regards and best wishes, believe me,

Very sincerely yours,

THOMAS H. ROBINSON, *Attorney General.*

ELECTIONS—REGISTRATION OF VOTERS—WHAT CONSTITUTES
A SUFFICIENT RESIDENCE IN THE STATE DEFINED.

August 6, 1930.

*Joseph E. Brimer, Esq.,
Circuit Court for Worcester County,
Snow Hill, Md.*

DEAR MR. BRIMER: I have your letter of August 5th, in which you request my opinion as to whether a lady is entitled to register and vote in your county, under the following state of facts set forth in your letter:

“A lady owning property here with her home furnished and calling this her home has been in New Jersey nursing for the past three years coming here at different intervals probably two or three times a year, at some times staying a month at a time, today applied for registration and was refused on the grounds that she was not entitled to get registered not being a resident of this State. Worcester County as you remember has a new general registration this year, and up to this time this lady has been on the registration books of this County and has never missed an election since she has been nursing away from here. She says that she calls this her home and expects to return here permanently to live when she stops nursing,”

The right of franchise in Maryland is conferred by Section 1 of Article I of the Constitution, by which it is provided that every “citizen of the United States, of the age of twenty-one years or upwards, who has been a resident of the state for one year, and of the legislative district of Baltimore City, or of the county, in which he may offer to vote, for six months next preceding the election, shall be entitled to vote, in the ward or election district in which he resides.”

The word "residence" as used in this section of the Constitution, has been construed by the Court of Appeals in a number of cases, among which are the following:

Howard vs. Skinner, 87 Md. 558;
 Schaeffer vs. Gilbert, 73 Md. 69;
 McLane vs. Hobbs, 74 Md. 170;
 Langhammer vs. Munter, 80 Md. 518.

The effect of all of these decisions is that the idea of residence as used in our Constitution, is a combination of fact and intention; to constitute a change of residence there must be an actual removal to another habitation, and there must be an intention of adopting a new abode as a place of domicile.

In the case of Howard vs. Skinner, the court stated that "in determining whether any person is or is not a resident of any voting precinct, it shall be presumed that if a person is shown to have acquired a residence in one locality, he retains the same until it is affirmatively shown that he has acquired a residence in another locality."

The case of Langhammer vs. Munter, illustrates the point that a person may acquire and retain a residence for voting purposes by spending a very small portion of his or her time at the address from which he or she registers.

In this case an effort was made to strike from the registry list, the name of a voter registered as having lived for four years in a certain ward in Baltimore City. The evidence showed that his name was not upon the police census of voters of that ward, and that he did not live at the particular house given as his residence, but had occasionally slept there; that he had received the permission of the occupier of the house who had known him for years, to register therefrom; that a subpoena for him had been returned non est, and that he was a seafaring man.

The court held that the above evidence was not sufficient to warrant the removal of the name of the voter in question, from the list of voters, and in the course of its opinion said:

"Residence, therefore, is a question depending upon fact and intention, and if so it may be ap-

plicable to a particular spot, or to a whole country. A person who wanders from country to country, with no intention of remaining fixedly anywhere, acquires no new residence."

From the facts set forth in your letter, it is quite apparent that the lady referred to, intends that Worcester County shall be her home, and unless she has qualified as a voter in some other state by registering or actually participating in an election outside the state, I am of the opinion that she is entitled to register and vote in your county.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

ELECTIONS—REGISTRATION OF VOTERS—RESIDENCE IN COUNTY FOR SIX MONTHS BEFORE ELECTION REQUIRED —REMOVAL CERTIFICATES MAY BE ISSUED BEFORE APPLICATION BY MAIL UNDER CERTAIN CONDITIONS.

August 7, 1930.

*J. Owen Knotts, Esq.,
Attorney at Law,
Denton, Md.*

DEAR MR. KNOTTS: Answering your letter of August 6th, I beg to advise you as follows

First: Voters who are now upon the registry books in the City of Baltimore, or some county of the state, but who will have resided in Caroline County for six months prior to November 4th, 1930, are entitled to registration in Caroline County, at the pre-primary registration on September 2nd, upon presentation of a removal certificate.

Second: The Boards of Registry are authorized to issue removal certificates at the pre-primary registration on September 2nd, 1930.

Third: Section 39-A of the registration and election laws of 1930, being a codification of Chapter 332 of the Acts of 1929, authorizes the issuance of removal certificates by the Boards of Supervisors of Elections or a clerk to be designated by such boards, upon written application of any voter, under oath, as therein provided. These applications may be delivered to the Board of Supervisors either by mail, messenger or by the voter in person.

With kind regards and best wishes, I am,

Very sincerely yours,

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

ELECTIONS — PRIMARY ELECTIONS — ALL NOMINATIONS
MUST BE MADE NOT LATER THAN DAY OF PRIMARY
ELECTION.

August 14, 1930.

Hon. Wm. C. Walsh,
Cumberland, Md.

DEAR JUDGE: In your letter of August 7th, you request me to advise you whether it is necessary for each party to make its nominations for public offices not later than the day on which the primary election is held. You refer to Chapter 240 of the Acts of Assembly of 1927, now codified as Section 55 of Article 33 of the Code, and express the view that this section makes it necessary that nominations be made on or before the day of the primary election.

I am in full accord with your views. In fact, the Act of the Legislature referred to was passed for the express purpose of requiring nominations to be made not later than the day of the primary election. The idea of this change in the law was that the public should be informed as to who would be the candidates of the respective parties for the public

offices to be filled at the ensuing election, at least for the length of time intervening between the primary and general elections.

Because of this change in the law, it will no longer be possible for either party to wait until after the primary election to nominate its candidates, except in those cases where a person nominated may die before election day, or decline a nomination, in which event, vacancies thus created may be filled in accordance with the provisions of Section 59 of Article 33 of the Code.

If no candidate of a particular party qualifies by filing a certificate of candidacy within the time required by the primary election law, the vacancies in such cases "shall be filled as the rules and regulations of the governing bodies of the respective parties in the counties, city, or state may now or shall hereafter provide." See Section 203, Registration and Election Laws of 1930.

Such vacancies, however, must be filled before the day of the primary election, under the concluding provisions of Section 55, reading as follows:

"And in case of any vacancies which may exist in respect to any office or delegates to convention, by reason of there being no candidate to file for same in any such primary election, such vacancies shall be filled and the certificate of nomination filed with the Secretary of State or the Board of Supervisors of Elections, as the case may be, not later than the day on which the primary election is held, or should be held under the primary election law."

With kind regards and best wishes, believe me,

Yours very sincerely,

THOMAS H. ROBINSON, *Attorney General.*

ELECTIONS—BOARD OF SUPERVISORS MAY NOT SHORTEN
USUAL OFFICE HOURS ON LAST DAY FOR FILING, BUT
MAY IN THEIR DISCRETION EXTEND TIME FOR CLOSING.

August 14, 1930.

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

DEAR MR. LAIB: In your letter of August 8th, you state that Monday, August 18th, will be the last day on which candidates may file for the primary election, and that August 23rd, will be the last day on which any such candidates may withdraw and receive a return of the filing fee. You request me to advise you with regard to the hours during which your office should be kept open on the above mentioned days.

There is no statutory provision which covers your inquiry. In my opinion, the law only contemplates that the office shall be kept open on these days during the usual and customary hours. It would be manifestly improper to close the office at an earlier hour on either of these days. Subject to the condition that the office should not be closed earlier on either of these days, I believe the hours to be observed should be fixed by the Board of Supervisors, and that public notice of the hour so fixed should be given.

With kind regards, I am,

Very truly yours,

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

ELECTIONS—PRIMARY ELECTIONS—TIME FOR FILING FOR
LOCAL OFFICES EXPIRES ON AUGUST 18, 1930.

August 14, 1930.

*Edward J. Edelen, Esq.,
State's Attorney,
La Plata, Md.*

DEAR MR. EDELEN: Answering your letter of August 11th, you are advised that local candidates in the primary election must qualify by filing their certificates of candidacy with the Board of Supervisors of Elections, not less than twenty clear days before the day of the primary election. The primary election this year will be held on September 8th, and local candidates must therefore file not later than August 18th.

With respect to your request for my interpretation of Section 55 of the registration and election laws, I am enclosing herewith, copy of an opinion which I have this day sent to Hon. William C. Walsh of Cumberland, setting forth my views as to this section of the law.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

ELECTIONS—PRIMARY ELECTIONS—A VOTER AFFILIATED
WITH ONE PARTY MAY BECOME A CANDIDATE FOR NOM-
INATION BY ANOTHER PARTY.

August 14, 1930.

*Mr. Hewlett B. Cox,
Attorney at Law,
Hearst Tower Building,
Baltimore, Md.*

DEAR MR. COX: In your letter of August 12th, 1930, you state that you desire to file as a candidate for the Demo-

cratic nomination for the House of Delegates from the 6th Legislative District; that you are registered as a declined voter, and request my opinion as to whether the fact that you are at present unaffiliated, precludes your filing as a candidate for the Democratic nomination.

If you possess the constitutional qualifications for the office which you seek, as prescribed by Section 9 of Article III of the Maryland Constitution, I see no reason why you may not become a candidate for the Democratic nomination. There is nothing in the primary or general election laws of this state which requires that a party must be registered and affiliated with a particular party before he can become a candidate at the primary election of that party.

In the case of *German vs. Sauter*, 136 Md. 52, it was held that one registered as a Democrat was entitled to become a candidate in the Republican primary election to the State Central Committee.

The identical question which you present, was also passed upon by Attorney General Armstrong in an opinion rendered on August 23rd, 1921, reported in Volume 6 of the Report and Official Opinions of the Attorney General at page 191, where it was held that a person who was registered as declined, was entitled to become a candidate on the Democratic ticket for nomination as a member of the House of Delegates at the primary election.

In view of the above decisions, and for the reasons set forth, I am of the opinion that the fact that you are registered as a declined voter does not preclude your becoming a candidate for the Democratic nomination.

Very truly yours,

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

ELECTIONS — PRIMARY ELECTIONS — PARTY COMMITTEES
MUST BE SELECTED AT PRIMARY—PERSONS WHOSE 21ST
BIRTHDAY IS NOVEMBER 5, 1930, ARE ENTITLED TO VOTE
ON NOVEMBER 4, 1930.

August 16, 1930.

*Benjamin B. Rosenstock, Esq.,
Attorney at Law,
Frederick, Md.*

DEAR MR. ROSENSTOCK: In your letter of August 15th you request an opinion on the following questions:

1. If there are two factions in an election district, of any party, each desiring to control the membership of the Central Committee of their district, and each of said factions file with the Board their list of candidates, will the Board have to print the names of these candidates on the primary ballots to be distributed in that particular election district?

2. If a voter becomes of age on November 5th, or the day after election, will he be entitled to register and vote at the coming primary election?

3. Before allowing a former resident of Baltimore City to register here, will it be necessary for him to produce a strike off certificate from Baltimore City, in view of the general registration in Baltimore?

1. Section 190 of Article 33 of the Code of Public General Laws entitled "Elections," sub-title, "primary elections," requires that all party committees shall elect the managing bodies of the political parties by means of the primary election. It is therefore necessary for the Supervisors to print the names of the various candidates for these positions, upon the official ballots at the primary election, if there is any contest.

2. The general rule of law is that a person becomes twenty-one years of age on the day preceding the twenty-first anniversary of his birth. See 31 Corpus Juris, page 987. This rule has been adopted and followed by this de-

partment with respect to the right of franchise, and therefore any person otherwise qualified, whose twenty-first birthday falls upon November 5, 1930, is entitled to register at the pre-primary registration and to vote in both the primary and general elections of 1930.

3. The new general registration in Baltimore City will not take place until after the primary election on September 8, and it will therefore be necessary for any registered voter in Baltimore City who has removed to Frederick County, to produce a removal certificate before being entitled to registration in that county at the pre-primary registration on September 2nd, 1930.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

ELECTIONS—MOVING PICTURES ON SUNDAY—VOTERS OF
BALTIMORE NOT AUTHORIZED TO VOTE UPON THIS QUES-
TION IN THE ABSENCE OF ADDITIONAL LEGISLATION.

August 16, 1930.

*Hon. John G. Callan,
132 N. Collington Ave.,
Baltimore, Md.*

DEAR SIR: I have your letter of August 11th, in which you request to be advised whether the voters of Baltimore may, by a referendum at the election to be held on November 4th, 1930, determine whether moving picture shows may or may not be exhibited on Sunday in Baltimore City.

The Court of Appeals of Maryland has decided that the exhibition of moving pictures on Sunday is prohibited by Sections 436 and 438 of Article 27 of the Public General Laws of this State. (See *Levering vs. Supervisors of Elections*, 137 Md. 281.)

Any action on the part of the Mayor and City Council of Baltimore, or the voters thereof, to repeal or modify the aforesaid provisions of the Public General Law, would be clearly in conflict with Article 11-A of the Maryland Constitution (commonly known as the Home Rule Amendment). This article provides that any charter adopted under the provisions thereof, or any local law enacted in pursuance thereof, shall be subject to the constitution and public general laws of this state, and further that the powers granted to the city "shall not be enlarged or extended by any charter formed under the provisions of this Article." (See Sections 1, 2 and 3.)

The question you present is entirely different from that which I recently passed upon in connection with the Resolution of the Mayor and City Council regarding the so-called daylight saving time. In that case my opinion was based upon two court decisions from which it appeared that the proposed amendment was not in conflict with the public general laws of this state.

As to your inquiry, the Court of Appeals having expressly decided that the subject matter of the referendum which you propose, is now covered by the public general laws, it is clear that there can be no vote upon this question by the people of Baltimore in the absence of additional appropriate legislation by the General Assembly.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

ELECTIONS — PRIMARY ELECTIONS — PARTY AFFILIATIONS
MAY NOT BE CHANGED AT THE PRE-PRIMARY REGISTRATION.

August 18th, 1930.

*George H. Handy, Esq.,
Weston, Md., P. O. Box 32.*

DEAR SIR: In answer to your letter of August 15th, you are advised that a voter may not change his party affiliation

at the pre-primary registration to be held on September 2nd, 1930. The law to this effect is specifically set forth in Section 194 of the Registration and Election Laws, where it is provided:

“No person or voter after having had his affiliation registered, shall be permitted to make any change in his party affiliation unless the same shall be made at least six months prior to the date of the primary election.”

A person who is registered on the books as a “Declined” voter, or as an “Independent,” may appear before the Board of Registry at the pre-primary registration day and affiliate with a definite party, but a person who is affiliated as a “Democrat,” “Republican,” “Socialist” or as a member of any other definitely named party, cannot change his affiliation on this day.

Yours very truly,

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

ELECTIONS—REGISTRATION OF VOTERS—FORMER NON-RESIDENTS WHO PRODUCE DECLARATIONS OF INTENTIONS NOT REQUIRED TO PRODUCE AFFIDAVITS.

August 19, 1930.

*Board of Supervisors of Elections,
Rockville, Md.*

GENTLEMEN: You have requested me to give you my interpretation of Chapter 578 of the Acts of Assembly of 1929, with respect to the rights of persons, who have moved into Maryland from some other State, to register and vote in the coming primary and general elections.

The object and purpose of this legislation was to abolish the requirement that a person who moves into Maryland from another State must declare an intention to become a citizen of this State at least one year before a general election, in order to be qualified for registration on one of the days provided by law prior to such general election.

The old law with respect to declarations of intention, embodied in Section 31 of the Registration and Election Laws for 1930, remains in effect in Baltimore County and Prince George's County, and copies of declarations of intentions will be required from applicants for registration, in these two counties, who have moved into Maryland from other States in the same manner that such declarations were required prior to the Act of 1929.

Under the new law, in Baltimore City and in all counties of the State except Baltimore County and Prince George's County, a person who has moved into the State may now prove his or her right to register by making and signing an affidavit before the Board of Registry to the effect that he or she will have resided in the State at least one year immediately preceding the ensuing general election, and by filing supporting affidavits of two credible registered voters of the precinct in which he or she offers to register. Persons who furnish these affidavits are no longer required to produce copies of declarations of intention. The forms of the affidavits required by the new law are set forth in Section 32 of the registration and election laws, and are obtainable from the Boards of Supervisors of Elections or the Boards of Registry when in session.

A person who declared an intention to become a citizen of Maryland prior to June 1st, 1929, the date upon which the Act of 1929 became effective, and who produces before the Board of Registry an official copy of his or her declaration of intention, should not be required to furnish, in addition, the affidavits provided for by Section 32. In other words, persons who will have resided in Maryland for one year or more prior to the coming election, and who have declared their intention of becoming citizens of this State prior to June 1st, 1929, are entitled to register upon presen-

tation of an official copy of his or her declaration of intention, provided such person is otherwise qualified.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

ELECTIONS—PRIMARY ELECTIONS—CERTIFICATES OF CANDIDACY MAY NOT BE CORRECTED AFTER TIME ALLOWED BY LAW FOR FILING HAS EXPIRED WHERE THE EFFECT WOULD BE TO ALLOW A CANDIDATE TO FILE IN A DIFFERENT DISTRICT.

August 23rd, 1930.

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

DEAR MR. LAIB: You have sent to me a letter from Mrs. Louise M. Hartman, 2133 E. Chase Street, from which it appears that she has qualified as a candidate for the Republican State Central Committee for the Third District. She further states that a mistake was made in filling out her certificate, and requests the Board of Supervisors of Elections to correct her certificate to read "Second" District instead of "Third" District. You request me to advise you whether the Board may properly make this correction.

I find no authority in the law which authorizes the Board of Supervisors of Elections to make corrections of this character. The time for filing Certificates of Candidacy under the Primary Election Law expired on August 18th. If the requested change is made, the effect will be to qualify Mrs. Hartman as an additional candidate in the Second District after the time allowed by law for the qualification of candidates in that district has expired.

Such a course would contravene the provisions of the primary election law and the application should, therefore, be denied.

Yours very truly,

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

ELECTIONS—PRIMARY ELECTIONS—CANDIDATES MUST FILE WITH SUPERVISORS WITHIN TIME FIXED BY LAW—DELAY OF POSTAL AUTHORITIES DOES NOT EXCUSE CANDIDATE.

August 25th, 1930.

*A. T. Matthews, Esq.,
Oakland, Md.*

DEAR MR. MATTHEWS: In accordance with your request, I am writing to confirm our telephone conversation of this morning. In that conversation you stated that a candidate for nomination for County Commissioner filled out a certificate of candidacy on the morning of August 18th, and deposited the same, together with a check to cover the filing fee, in the mails, addressed to the Board of Supervisors of Elections. The certificate in question was not received by the Board of Supervisors of Elections until the afternoon of August 20th, and you request to be advised as to whether this candidate is entitled to have his name printed upon the ballots at the primary election.

The answer to your inquiry is in the negative. Section 198 of the Registration and Election Laws of 1930 requires that all candidates for local offices in primary elections shall file their certificates and make the payments required "not less than twenty days before said primary election." Under this Section of the law, the time for filing certificates of candidacy for local offices for the primary election of this

year expired on August 18th, 1930, and as the certificate in question was not received by the Supervisors on or before that date, the candidate has failed to comply with the legal requirements necessary to secure the printing of his name upon the official ballots at the primary election.

With kind regards and best wishes, I am,

Yours very sincerely,

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

ELECTIONS—REGISTRATION OF VOTERS—REMOVAL CERTIFICATE NOT REQUIRED OF VOTER WHO HAS MOVED TO COUNTY IN ORDER TO REGISTER IN THE COUNTY FOR THE GENERAL ELECTION OF 1930—CONTRA AS TO PRIMARY ELECTION OF 1930.

August 28th, 1930.

*Thomas J. Keating, Esq.,
Centreville, Md.*

DEAR MR. KEATING: In answer to your letter of August 26th, I beg to advise you that any voter who is now registered in Baltimore City, and who has moved into your County, should be required to produce a removal certificate before being registered at the pre-primary registration on Tuesday September 2nd.

The present registration in Baltimore City will become inoperative immediately after the primary election on September 8th, and it will therefore be unnecessary for a voter, who has removed to the county from Baltimore City, to produce a removal certificate in order to register on one of the supplemental registration days following the primary election and preceding the general election on November 4th.

With kind regards and best wishes, I am,

Yours very truly,

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

ELECTIONS—FILING FEES—NO FEES ARE PAYABLE BY INDEPENDENT CANDIDATES.

September 2, 1930.

*Franklin Upshur, Esq.,
Snow Hill, Md.*

DEAR MR. UPSHUR: In your letter of August 25th, you request an opinion as to whether candidates who qualify by filing a petition under the provisions of Section 51 of the registration and election laws, are required to pay a filing fee.

No fee is required to be paid by such candidates. Only those who become candidates subject to the primary election law are obliged to pay a fee, and the fees in these cases are prescribed by Section 198 of the registration and election laws.

Very truly yours,

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

ELECTIONS—NEW REGISTRATION IN WORCESTER COUNTY—
PERSONS NOT BOUND BY REGISTRATION ON OLD BOOKS.

September 2nd, 1930.

*Franklin Upshur, Esq.,
Snow Hill, Md.*

DEAR MR. UPSHUR: In your letter of August 25th, you request me to advise you concerning the new registration in Worcester County, for the year 1930, which is authorized by Chapter 500 of the Acts of Assembly of 1929. You call attention to the concluding provision of Section 194 of the Registration and Election Laws which reads as follows:

“No person or voter after having had his affiliation registered shall be permitted to make any

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

You further state that on the first three days of the new registration a number of persons have affiliated with a different party from the one with which they were affiliated on the old books, and request an opinion as to whether these persons may lawfully vote in the primary election of the party with which they are now affiliated, which will be held on September 8th, 1930.

The obvious purpose of the Act of 1929, providing for the new registration in Worcester County, is to create a new list of the qualified voters of Worcester County which, according to the title of the act, shall "supersede all the registers of voters of said county now in existence." The Act itself specifically provides that "the registry of voters that shall be made at the first three sittings above provided in August shall be used at the primaries thereafter to be held in said year 1930, as the sole list of voters who may be entitled to vote at said primaries."

From the above provisions, it is clear that the old registration books in Worcester County are now obsolete. As registration on these old books is now inoperative, it follows that the party affiliation as disclosed by these old books, is likewise inoperative.

The inhibition against a change of party affiliation within six months prior to the primary election applies only to voters whose names are registered upon the books as affiliated with a given party. It does not apply to a new registration, nor does it apply to a voter who is registering in Maryland for the first time.

There is nothing in the Act of 1929 which precludes a voter from affiliating with any party he may choose at the new registration, nor is there any provision in that act which limits the right of franchise. A holding to the effect that a voter who has, at the new registration, affiliated with a different party, is not entitled to vote at the primary election of the party with which he is now affiliated, would

operate to disfranchise that voter at the primary election, because other provisions of the election laws prohibit a person from voting in the primary election of any party with which he is not affiliated upon the registry books. Since the registry books as made at the new registration constitute *the sole list of voters* who are entitled to vote at the primary election, it is clear that no person can derive the right to vote at the primary election from the old registry books.

For the reasons above set forth, I am of the opinion that voters in Worcester County are entitled to vote at the primary election of the party with which they are affiliated on the new registry books, and that the entries in the old books cannot be considered by the election officials in determining whether a given voter is entitled to vote at the primary election.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

ELECTIONS—SOCIALIST PARTY AUTHORIZED TO NOMINATE
CANDIDATE FOR CONGRESS IN 3RD DISTRICT BY CONVEN-
TION.

September 4, 1930.

Mr. Murray G. Hooper,
Executive Offices,
Annapolis, Md.

DEAR MR. HOOPER: I have your letter of August 29th, enclosing certificate of nomination by the Socialist Party, of Samuel M. Neistadt, for the office of Congressman from the Third Congressional District, which has been executed by the Presiding Officer and Secretary of the Convention of this

I note by the election returns for the year 1928, that the Socialist Party polled more than 1% of the votes in this District, and therefore the Socialist Party is, under the provisions of Section 49 of the Registration and Election Laws, authorized to nominate its candidates by means of a Convention. The certificate being in proper form, I have approved the same as to form and legal sufficiency, and advise that it be certified to the Supervisors of Elections in the usual way.

You have also sent me form of a petition which has been filed with the Secretary of State, nominating the candidates of the Socialist Party for the state-wide offices to be filled at the election to be held in November of this year. You state that a petition in like form has been signed by 2,172 voters.

It is apparent from the election returns of 1928 that the Socialist Party did not poll as much as 1% of the entire vote cast in the state at large at that election, and therefore the only method by which this Party can nominate its state-wide candidates for the coming election is by means of a petition in accordance with the provisions of Section 51 of the Registration and Election Laws. This section requires that candidates for state-wide offices may be nominated by petition when signed by not less than 2,000 voters in the manner therein prescribed. I understand from your letter that the signatures attached to the petition which have been filed in your office are in compliance with this section, and for this reason I have approved as to form and legal sufficiency the copy of the petition which you sent to me.

Very truly yours,

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

ELECTIONS—NOMINATIONS BY PARTY COMMITTEES—VACANCIES SHOULD BE FILLED BY OLD COMMITTEE UNTIL RESULTS OF ELECTION ARE DETERMINED.

September 6, 1930.

*Benjamin Hance, Esq.,
Attorney at Law,
Prince Frederick, Md.*

DEAR MR. HANCE: In our telephone conversation of today you stated that certain vacancies in nominations exist in your county in both parties, by reason of there being no candidate to file in the primary election for a number of offices on or before the 18th day of August, when the time for filing for the primary election expired. You further stated that no contest exists in the selection of the Democratic State Central Committee, by reason of the fact that the number of candidates who filed for those offices is equal to the number of Committeemen to be selected. You requested an opinion as to whether the existing vacancies as to the nominations for the other offices should be filled by the old State Central Committee, or by the new Committeemen who have been, or will be selected by reason of there being no opposition to the candidates who have filed at the primary election.

I am writing to confirm what I told you in person, to the effect that it is my opinion that the new Committeemen are not entitled to exercise the functions of party Committeemen until the results of the primary election are determined, and therefore the existing vacancies in party nominations should be filled by the old Committee.

It is true that the new Committeemen are virtually elected at this time, by reason of the fact that no candidates filed in the primary election to oppose them, but until these facts are duly certified by the canvassing board, and certificates are issued to the new Committeemen, they are not entitled to exercise the functions of the office. Unless this conclusion be adopted, it would mean that an unopposed Committeeman

would take office earlier than one who had been selected after a contest at the primary election, and it is my view that the law contemplates no such discrimination.

I may add that so far as I am informed, it has been the uniform custom for the old Committee to function until the results of the primary election have been determined, and in keeping with this custom, I am satisfied that the old Committee is authorized to fill vacancies in party nominations.

Very truly yours,

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

ELECTIONS—JUDGE OF ELECTION MAY ACCEPT PARTY NOMINATION FOR AN OFFICE, BUT BY SO DOING HE IS NO LONGER ELIGIBLE AS JUDGE AND THE SUPERVISORS SHOULD FILL THE VACANCY.

September 6, 1930.

*Benjamin Hance, Esq.,
Attorney at Law,
Prince Frederick, Md.*

DEAR MR. HANCE: In your letter of September 3rd, you state that a duly qualified voter of your county was appointed and acted as registration officer at the pre-primary registration on September 2, 1930. You further state that this voter and registration officer has since been nominated by the State Central Committee of his party as a candidate to fill a vacancy by reason of there being no candidate to file for the particular office for which he has been nominated. You request an opinion as to whether the fact that the party in question has heretofore acted as a registration officer, operates to render him ineligible as a candidate.

There is nothing in the law which provides that a registration officer may not later become a candidate. The

qualifications of judges and clerks of elections are set forth in Section 8 of the registration and election laws, and it is there provided that the Supervisors of Elections shall not select for these offices a person who is "a candidate for any office at the next election."

By virtue of this provision, the party concerning whom you make inquiry, is now ineligible to continue as an election official. I understand that he has resigned from his office as an election official, and it therefore becomes the duty of the Supervisors of Elections to select another person to take his place.

Inasmuch as the party concerning whom you make inquiry is not interested in any way in the outcome of the primary election, his nomination having been accorded to him by the State Central Committee of his party, and not depending upon the action of the voters at the primary election to be held on September 8th, I am satisfied that his participation in the registration of voters at the pre-primary registration, violates neither the letter nor the spirit of Section 8 above referred to.

You are therefore advised that the party concerning whom you make inquiry, is eligible to accept the nomination which has been tendered to him by the State Central Committee of his party.

Very truly yours,

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

ELECTIONS—PRIMARY ELECTIONS—CANDIDATE FOR HOUSE OF DELEGATES MAY WITHDRAW AND ACCEPT NOMINATION FROM PARTY COMMITTEE FOR COUNTY COMMISSIONER.

September 10, 1930.

*Arthur Everett Williams, Esq.,
Salisbury, Maryland.*

DEAR MR. WILLIAMS: In your letter of September 9th, you state that the Republican State Central Committee for

Wicomico County has named Mr. Olin B. Humphreys as a candidate of the Republican Party for the House of Delegates, and that his certificate of nomination was duly filed prior to the primary election. You further state that Mr. Humphreys has declined to accept the nomination for the House of Delegates, and request an opinion as to whether he may now accept a nomination of the Republican Party for County Commissioner in event of the withdrawal of one of the duly nominated candidates for this office.

Section 58 of the Registration and Election Laws of Maryland provides:

“Whenever any person nominated for public office as in this Article provided, shall at least fifteen days before election, in a writing signed by him and acknowledged before a Justice of the Peace or a Notary Public, notify the officer with whom the certificate nominating him is by this Article required to be filed, that he declines such nomination, such nomination shall be void, and the name of any person so withdrawing shall not be printed upon the ballots.”

By virtue of the above provisions, Mr. Humphreys is clearly within his rights in declining to accept the nomination which has been tendered to him by his party, and it will be the duty of the Supervisors of Elections to omit his name from the ballot as a candidate for the House of Delegates in event he files a certificate of withdrawal, properly executed, with the Board in conformity with this section.

Section 59 of the Registration and Election Laws provides:

“Should any persons so nominated die before election day or decline the nomination, as in this Article provided, or should any certificate of nomination be or become insufficient or inoperative from any cause, the vacancy or vacancies thus occasioned may be filled in the manner required for original nominations.”

Under this section of the law considered in connection with Section 219, the Republican State Central Committee is authorized to fill any vacancy in the nomination for any county office occasioned through the withdrawal of a candidate in the manner provided by Section 58.

There is no provision in the law which prohibits a candidate who has declined a nomination for a particular office from accepting a nomination for another office. The provision contained in Section 58 to the effect that "the name of any person so withdrawing shall not be printed upon the ballots" simply means that the name of the person withdrawing shall not be printed upon the ballots as a candidate for the office for which his nomination has become void by reason of his withdrawal.

From what I have said it follows that Mr. Humphreys is eligible as a candidate for County Commissioner to fill any vacancy that may occur by reason of the withdrawal of one of the duly nominated candidates of the Republican Party for this office.

Yours very truly,

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

ELECTIONS—PRIMARY ELECTIONS—WHEN TWO CANDIDATES FOR A NOMINATION RECEIVE AN EQUAL NUMBER OF VOTES, NEITHER IS NOMINATED AND THERE IS A VACANCY—BOTH CANDIDATES ARE DEFEATED AND MAY PETITION FOR A RECOUNT.

September 13th, 1930.

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

DEAR SIR: You have informed me that as a result of the official canvass of the votes in the Fifth Legislative Dis-

trict of Baltimore City, which were voted at the Primary Election on September 8th, it appears that five Democratic candidates were nominated, and that two candidates, namely, Raymond E. Kennedy and C. Damer McKenrick, have received an equal number of votes for the sixth place. You request me to advise you which one, if either of these candidates, has been nominated, and if neither has been nominated, the method to be pursued in selecting the sixth Democratic nominee for the House of Delegates in this District.

A similar situation arose in Kent County at the Primary Election of 1910, with respect to the Judges of the Orphans' Court. Under the law three Judges were required to be nominated, and as a result of the official canvass, it appeared that two candidates were nominated and two other candidates received an equal number of votes for the third place. This situation was considered by the Court of Appeals in the case of *Usilton vs. Bramble*, 117 Md. page 10, where it was decided that "when there is a tie between two candidates at the primaries, there is a vacancy," within the meaning of Section 203 of the Registration and Election Laws. It was further held in this case that the vacancy thus occurring should be filled by the newly elected State Central Committee of the County.

In the light of the above decision, it follows that only five Democratic candidates have been nominated for the House of Delegates in the Fifth District, and unless there is some change in the result as determined by the Board of Canvassers, through the process of a recount at the instance of one or more of the candidates, the sixth nominee of the Democratic Party for this office should be selected by the Democratic State Central Committee for Baltimore City, which was elected at the Primary Election on September 8th.

Section 217 of the Registration and Election Laws provides that within seven days after the date of the Primary Election any candidate who has been defeated on the face of the returns may petition the Supervisors of Elections for a recanvass and a recount of the ballots. In my judgment, the two candidates who are tied for the sixth place in the Fifth District are defeated candidates within the meaning

of this section, and either of these candidates or any other defeated candidate may properly petition for a recount under this section of the law.

Yours very truly,

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

ELECTIONS—REVISION DAY—NEW LAW FIXES REVISION
DAY BETWEEN TWO SUPPLEMENTAL REGISTRATION
DAYS.

September 18th, 1930.

Samuel A. Wyvill, Esq.,
Clerk of Supervisors of Elections,
Upper Marlboro, Md.

DEAR MR. WYVILL: Answering your letter of September 12th, 1930, you are advised that the supplemental days in your county for this year are Tuesday, September 30th, and Tuesday, October 14th. Revision day will take place on Tuesday, October 7th. Heretofore revision day has been held at the end of the two registration days. The Legislature of 1929 changed the law in this respect so that revision day now falls within the two registration days. The object of this change in the law was to permit persons who are removed from the registry on revision day because of their removal to some other precinct, to register at a later registration day in the precinct in which they are lawfully entitled to vote.

Yours very truly,

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

ELECTIONS—REGISTRATION OF VOTERS—MALE APPLICANT
MUST STATE HIS AGE UPON APPLICATION FOR REGIS-
TRATION.

September 25, 1930.

Mr. Carl W. Crawley,
741 N. Payson St.,
Baltimore, Md.

DEAR SIR: In your letter of September 20th, addressed to the Attorney General, you request an opinion as to whether it is necessary for a male voter to state his age at the time of registration.

Section 18 of the Registration and Election Laws of 1930, provides that "the name and age of every applicant shall be entered in such registry book, and all the facts of his application shall be therein stated as herein provided whether he be entitled to vote or not."

Section 19 of the Registration and Election Laws of 1930, which is a codification of Chapter 299 of the Acts of Assembly of 1924, provides that,

"A female applicant for registration as a voter shall not be required to state her exact age, but it shall be sufficient for said applicant to state, in answer to any and all questions relating to her age, that she will be at least twenty-one years of age on the regular election day next succeeding the day of registration, and entry shall be made accordingly under the column 'Age' of the registry books, anything in Section 18 of this Article or any other section of this article to the contrary notwithstanding."

It is plainly apparent, therefore, that the Legislature has clearly indicated that a male person shall be required to state his age in order to qualify as a registered voter, while a female may be qualified merely by stating that she will be

at least twenty-one years of age at the next regular election.

The validity of this legislation has never been passed upon by the courts of this state, and in the absence of some court ruling to the contrary, we are of the opinion that it is the duty of the registration officials to comply with the law as enacted by the Legislature.

The age of the applicant as disclosed upon the registry books is of material assistance to the judges of election on the day of election as a means of identification of voters. I know of no case in which a male applicant for registration has persisted in his refusal to state his age, and this accounts for the fact that there has been no test case upon the subject. If you desire to have the law in this respect tested, we will be very glad to cooperate with you, but in the absence of a court ruling to the contrary, I feel that it would be improper for us to advise the election officials to ignore the plain provisions of the acts of the Legislature.

Very truly yours,

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

ELECTIONS—SUPERVISORS OF ELECTIONS AUTHORIZED TO
SELECT PLACES FOR REGISTRATION AND VOTING—DUTIES
DEFINED.

Sept 25th, 1930.

Mr. Nick Evans,
Ewell, Md.

DEAR MR. EVANS: I have your letter of September 24th, requesting an opinion as to whether it is lawful to have a voting place in a public place of business of any kind. The answer to your inquiry is found in the provisions of Sec-

tions 13 and 14 of the Registration and Election laws of 1930, which read as follows:

13. "It shall be the duty of said board of supervisors to appoint the place of registration and also the polling place in each precinct of their county or city and to cause the same to be fitted up, warmed, lighted and cleaned. The places for registration and polling shall in all cases be upon the ground floor of a building, the entrance to which is from the highway or from a public street at least forty feet wide if in the city of Baltimore and at least twenty-five feet wide if in the counties, in a room facing on said street or highway and shall be as near the centre of the voting population of the precinct and as convenient to the greatest number of voters as is practicable, and in no case shall a registration or election be held in any building, or part of the building, used or occupied as a saloon, dram shop, poolroom, billiard hall or bowling alley, or communicating therewith by doors or hallways. If no suitable place is found the supervisors shall provide one.

14. "It shall be the duty of the Board of Supervisors of Elections of the City of Baltimore and of the several counties, to use, wherever possible and practicable, public buildings, such as school houses, fire engine houses, etc., for the registration and polling places. It shall be the duty of all public officials who have charge of such buildings to place them or any of them at the disposal of said Boards of Supervisors of Elections on the days of registration and elections when application is made by the said Supervisors of Elections for any of the above mentioned public buildings."

I think the Board of Supervisors of Elections may select as a polling place a public place of business provided the place selected is not within the classes prohibited by Section 13. Manifestly, the Supervisors cannot be required to select

vacant places in every precinct. The object of the law is to promote the convenience of the greatest number of voters, and if the Supervisors are of the opinion that this purpose can be more nearly accomplished by the selection of a place of business than by the selection of a private residence or vacant place, they are clearly within their rights in selecting a place of business so long as it is not within the prohibitions contained in Section 13.

Yours very truly,

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

ELECTIONS—COUNTY COMMISSIONERS—WHERE LOCAL LAW REQUIRES ONE FROM EACH DISTRICT, BALLOTS SHOULD BE PRINTED ACCORDINGLY—REGISTRY BOOKS NEED NOT NOW BE RETURNED TO SUPERVISORS AFTER REVISION DAY, BUT SHOULD BE RETURNED PROMPTLY AFTER LAST DAY OF REGISTRATION.

September 25th, 1930.

*Benjamin Hance, Esq.,
Prince Frederick, Md.*

DEAR MR. HANCE: In your letter of September 23rd, you call attention to Chapter 400 of the Acts of Assembly of 1914, providing for the election of one county commissioner from each of the three election districts of Calvert County, and request an opinion as to whether all of the candidates should be arranged on the election ballot in one group or whether there should be separate groups of candidates for each district.

You express the view that there should be separate groups, and I am in full accord with your view. In other words, the ballots should contain three separate headings for County Commissioners reading substantially as follows: For County Commissioner from the (first, second or third) Election District, Vote for One. Of course, all of the candidates from each district will be submitted to the voters of

the entire county, so that the ballot will be uniform and each voter will be permitted to vote for not less than three Commissioners.

You further ask to be advised whether it is necessary for the Boards of Registry to return the registry books to the Supervisors not later than noon on the second day after revision, which, in this year, will occur on October 7th. By the passage of Chapter 355 of the Acts of Assembly of 1929, the Legislature has provided that revision day shall hereafter be held in between the two supplemental registration days. The object of this change in the law was to enable persons whose names are removed from the registry books on revision day because of their removal to some other precinct in the State to register on a subsequent registration day in the precinct in which they are lawfully qualified to register and vote. Heretofore all such persons whose names were removed from the registry books on the day of revision have been disfranchised at the ensuing election.

While it is true as pointed out in your letter that Section 43 requires the books to be returned by noon on the second day after revision, that section was enacted when revision day took place after the two supplemental registry days. Section 44 requires the Supervisors of Elections to prepare an alphabetical list of names registered or erased at the supplemental registration and revision.

In my judgment Sections 43 and 44 should now be construed to require the registry books to be returned not later than noon of the second day after the last day of registration and the preparation of the alphabetical list of names registered or erased, immediately after the return of the books.

I appreciate very much the kind expressions contained in your recent letter which I apologize for not answering sooner. I assure you that it is a pleasure to be of assistance to you when I can.

With kind regards and best wishes, I am,

Yours very sincerely,

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

ELECTIONS—REGISTRATION OF VOTERS RESIDENCE—WHAT
CONSTITUTES, AND METHOD OF DETERMINATION FOR
VOTING PURPOSES.

September 30, 1930.

Mr. William H. Ruby,
1206 Union Ave.,
Baltimore, Md.

DEAR SIR: On behalf of the Attorney General, I am answering your letter of September 18th.

The law of this state requires that a person must be a resident of the state for at least a year before being eligible for registration. Residence is largely a question of intention, and if a person maintains a household in Maryland where he keeps his clothing and household effects and spends his holidays, I think he would probably be justified in claiming a voting residence in this state. Of course the question of residence is one to be determined primarily by the Board of Registration, in the light of all of the facts and circumstances surrounding each particular case. If the applicant for registration, or any other person, feels aggrieved by the decision of the Board of Registry, a right of appeal to the courts is provided.

If you desire any further information on the subject, I shall be glad to discuss the matter with you personally, if you will call at the office.

Very truly yours,

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

ELECTIONS—NOMINATIONS BY LABOR PARTY—MAY FILL
VACANCIES OCCURRING AFTER TIME FOR ORIGINAL
NOMINATIONS HAS EXPIRED.

October 2, 1930.

*Hon. David C. Winebrenner, 3d,
Secretary of State,
Annapolis, Md.*

DEAR SIR: I have your letter of October 1st, enclosing copy of form of petition of nomination filed with you by representatives of the Labor Party on October 1st, 1930. The petition certifies to the nomination of the candidates of the Labor Party for Governor, Attorney General and Comptroller, and has, I understand, been signed by 2295 voters. You request me to advise you whether the names of the candidates nominated by this petition should be certified to the various Boards of Supervisors of Elections, and printed upon the official ballots at the coming election.

This petition constitutes the second effort of the Labor Party to nominate candidates for these offices at the coming election. On September 16th, you sent me copy of a petition purporting to nominate the candidates of the Labor Party for these offices, but as the same was not signed by two thousand or more voters as required by Section 51 of the Registration and Election Laws, and was not filed on or before the day of the primary election as required by Section 55 of the Registration and Election Laws, I was obliged to advise you under date of September 18th, that that petition was defective and inoperative.

The petition now submitted, recites that there are certain vacancies among the candidates of the Labor Party of Maryland for the offices in question, and that said vacancies were occasioned "when the original certificate of nomination made by the Labor Party became insufficient and inoperative by reason that said certificate of nomination was filed in your office later than the day of the primary election last past."

The question arises, therefore, as to whether the Labor Party which filed no certificate of nomination of any kind on or before the day of the primary election, in accordance with the provisions of Section 55, may now nominate its candidates by means of a petition to fill vacancies.

A similar question was considered by the Court of Appeals in the case of *Graham vs. Wellington*, 121 Md. 656. In that case the Progressive Party of Maryland filed a certificate of nomination after the time allowed by law had expired, and this certificate was held inoperative. The Court further decided that the vacancies thus occasioned could be filled by the Party Committee of the Progressive Party.

Section 59 of the Election Laws provides that:

“Should any certificate of nomination be or become insufficient or inoperative from any cause, the vacancy or vacancies thus occasioned may be filled in the manner required for original nominations.”

The law in this respect has not been changed since the decision of the Court of Appeals in the case of *Graham vs. Wellington*, and it follows that the Labor Party may now fill the vacancies in the nominations of that Party “in the manner required for original nominations.”

The Labor Party did not poll as much as 1% of the entire vote cast at the election of 1928, and therefore the only method by which this Party could make its original nominations was by means of a petition signed by not less than 2,000 voters as provided by Section 51. Since the effort to supply the vacancies has been pursued “in the manner required for original nominations,” I am satisfied, on authority of the decision of the Court of Appeals in *Graham vs. Wellington*, above referred to, that the present petition should be accepted by you, and that it is your duty to cer-

tify the names of the candidates nominated by this petition to the various Supervisors of Elections.

Very truly yours,

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

ELECTIONS—REGISTRATION OF VOTERS—PERSON RETAINS OLD VOTING RESIDENCE UNTIL NEW RESIDENCE IS ACQUIRED.

October 6, 1930.

*Dr. Victor F. Cullen,
Maryland Tuberculosis Sanatorium,
Sanatorium, Md.*

DEAR DR. CULLEN: Mr. M. Harry Laib, Chief Clerk of the Board of Supervisors of Elections, has forwarded to this office your letter in regard to the registration of Dr. Leo V. Schneider and wife. I understand that Dr. Schneider and his wife were naturalized in November, 1928, at which time they were residing in Frederick County and they have continued to reside there until September 1st, 1930, when they moved to Baltimore. I understand further, that Dr. Schneider and his wife have registered in Frederick County, and that their right to do so has been challenged.

Article I, Section 1 of the Constitution of Maryland, provides that six months' residence next preceding the election in the Legislative District of Baltimore City or in the County in which a citizen shall offer to vote, shall be sufficient, and further provides that,

“A person, who shall have acquired a residence in such county or city entitling him to vote at any such election, shall be entitled to vote in the election district from which he removed until he shall

have acquired a residence in the part of the county or city to which he removed.”

Under this provision it is clear that Dr. Schneider and his wife are legally entitled to vote in Frederick County, at the coming election.

Very truly yours,

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

ELECTIONS—REGISTRATION OF VOTERS—PERSONS RESIDING ON GOVERNMENT RESERVATION RETAIN RESIDENCE IN COUNTY FROM WHICH THEY MOVED, ESPECIALLY WHEN THEY MAINTAIN LIVING QUARTERS IN THAT COUNTY.

October 6th, 1930.

*Jerome A. Loughran, Esq.,
Clerk, Board of Supervisors of Elections
for Howard County,
Ellicott City, Md.*

DEAR SIR: Your letter of October 2nd, 1930, has been referred to me for reply. You state that Ashby Corum and his wife are now registered in the Sixth Election District of Howard County, that they still maintain a room and some furniture at the home of Mr. Corum's parents in Howard County, but that for the past year and a half they have been living at the District Training School at Annapolis Junction, Anne Arundel County on a United States Government Reservation, and are accordingly not entitled to register in Anne Arundel County. The question is whether their names may be stricken from the registry books in Howard County. In my opinion this cannot be done. Under the decisions of the Court of Appeals, residence is a matter of both fact and intention and depends upon the circumstances. A citizen once having acquired a residence for voting purposes does

not lose the same until a new residence is acquired. In my judgment upon the facts as they are presented to me, neither Ashby Corum nor his wife have acquired any new residence, and hence are entitled to vote in the Sixth Election District of Howard County.

Yours very truly,

WM. L. MARBURY, JR., *Asst. Attorney General.*

ELECTIONS—CERTIFICATES OF NOMINATION BY INDEPENDENT CANDIDATE MUST BE FILED NOT LATER THAN DAY OF PRIMARY ELECTION.

October 11, 1930.

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

DEAR MR. LAIB: You have just now informed me that a certificate of nomination has this day been filed with the Board of Supervisors of Elections nominating Mr. George Pattinson as an independent candidate for Sheriff. You state that the certificate in question is signed by approximately 1,800 voters, and request an opinion as to whether the name of Mr. Pattinson should be printed upon the official ballots at the coming election as an independent candidate for Sheriff.

Section 55 of the Registration and Election Laws requires that certificates of nomination shall be filed not later than the day on which the primary election is held. It has been decided by the Court of Appeals in the case of *Graham vs. Wellington*, 121 Md. 659, that the provisions of this section as to the time within which certificates of nomination shall be filed, are mandatory and not directory.

As the certificate nominating Mr. Pattinson has been filed after the time allowed by law for the filing of such certifi-

cates has expired, I must advise you that it is inoperative as a certificate of nomination, and therefore improper to print his name upon the official ballots as an independent candidate for Sheriff at the coming election.

Very truly yours,

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

ELECTIONS—REGISTRATION OF VOTERS—NATURALIZED CITIZEN NEED NOT WAIT A YEAR AFTER HIS NATURALIZATION BEFORE BEING ENTITLED TO REGISTER.

October 17th, 1930.

*Fletcher Gorsuch, Esq.,
Towson, Md.*

DEAR MR. GORSUCH: You told me over the telephone yesterday that a man named Dircks, who has been living in Baltimore County for a number of years, obtained his naturalization papers on September 29th, 1930, and offered himself for registration at the fifth precinct of the 15th Election District on Tuesday, October 14th, 1930, but was refused on the ground that he had not been residing in Baltimore County for a year after having declared his intention to become a citizen. Naturalization is similar to attaining the age of 21.

In my opinion, Mr. Dircks is clearly entitled to vote and should be registered. This has been the uniform ruling of this office.

Yours very truly,

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

ELECTIONS—ATTORNEY FOR BOARD OF SUPERVISORS MAY ALSO BE STATE'S ATTORNEY—NO LAW WHICH PROHIBITS CANDIDATE FROM ACTING AS ATTORNEY FOR BOARD OF SUPERVISORS.

October 21, 1930.

*Hon. J. Frank Browning,
Oakland, Md.*

DEAR MR. BROWNING: We have your letter of October 17th, requesting an opinion as to whether the State's Attorney for your county who is a candidate for reelection at the coming election, may continue to serve as attorney for the Board of Supervisors of Elections.

It was decided by the Maryland Court of Appeals in the case of State Tax Commission vs. Harrington, 126 Md., at page 157, that the attorney for the Tax Commission who was authorized to be appointed by the Legislature, was not an officer, but rather an employee of the Commission. For the reasons set forth in that opinion, we do not believe that the attorney for the Board of Supervisors of Elections is an officer within the meaning of the Constitution, and there is no legal authority for holding that the State's Attorney may not also act as attorney for the Board of Supervisors of Elections and be a candidate at the coming election.

Very truly yours,

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

ELECTIONS—CLOSING OF POLLS—PERSONS WHO ARE PRESENT AT POLLING PLACE AT CLOSING HOUR MAY VOTE AFTER TIME FIXED FOR CLOSING IF NECESSARY.

October 28th, 1930.

*Hon. J. Grant Mays,
Judge of Election,
Glencoe, Md., R.F.D.*

DEAR SIR: I have your letter of October 25th, requesting an opinion as to whether a voter who presents himself at the polling place on election day before the hour fixed by law for the closing of the polls, is entitled to cast his vote after the time fixed for the closing of the polls.

This question was the subject of an opinion by the Attorney General rendered to Mr. Lawrence E. Ensor, attorney for the Board of Supervisors for Baltimore County under date of October 25th, 1928, in which opinion the law relative to your inquiry is stated as follows:

“Any voter who presents himself at the voting place at which he is registered within the hours fixed by law for the conduct of the election, is entitled to cast his ballot. This right cannot be lawfully denied simply because a large number of voters call at the polling place during the last hours fixed for holding the election.

“The hours fixed by Section 69 of the Registration and Election Laws for the closing of the polls simply mean that no person who presents himself at the polling place after the time specified, is entitled to participate in the election. If the number of voters waiting at the polling place to cast their ballots at the closing hour is so large that all cannot be admitted to the room in which the voting is taking place, a line should be formed of those present at that hour, and all registered voters in this line, at that time, are entitled to vote. Care should be exercised, however, to see that no voter

is permitted to get in line or to cast his ballot who arrives after the time fixed for the closing of the polls.”

Yours very truly,

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

ELECTIONS—REGISTRATION OF VOTERS—THE NAME OF PERSONS WHO REGISTER UNDER STATUTE LATER DECLARED INVALID CANNOT BE STRICKEN FROM THE REGISTRY BOOKS, UNLESS THEIR NAMES ARE PLACED UPON THE SUSPECT LIST AND THEY ARE GIVEN AN OPPORTUNITY TO BE HEARD IN CONFORMITY WITH LAW.—PERSONS SO REGISTERED ARE ENTITLED TO VOTE UNTIL THEIR NAMES ARE REMOVED IN THE REGULAR WAY.

October 30, 1930.

Laurason B. Riggs, Jr., Esq.,
Board of Supervisors of Elections,
Rockville, Md.

DEAR SIR: You have requested me to advise you whether persons who registered as qualified voters at the recent registration in conformity with the Act of 1929, requiring new residents of Maryland to produce supporting affidavits, are in any manner affected by the recent ruling of the Circuit Court for Anne Arundel County, holding the new Act to be invalid in certain particulars.

The only registered voters in Maryland whose rights to vote at the coming election are affected by the decision in question, are those individuals who have been complained against in the manner prescribed by law, and whose names are ordered from the registry books by the courts.

The right of franchise is conferred by the Constitution to all citizens above twenty-one years of age, who have been residents of the state for one year or more, and of a particular county or district for six months or more. Before

this right can be exercised, the citizen must register, and when registered as a qualified voter, the citizen is entitled to vote unless his or her name is removed from the registry books for cause, after notice to the individual in question.

The law provides that after a voter has been registered as qualified, any one of the registration officials of his or her own motion, or upon sworn complaint of any other registered voter, may place the name of any voter upon a list of suspected voters. It then becomes the duty of the registration officials to notify the suspected voter to appear on Revision Day and show cause, if any, why his or her name should not be removed from the registry books as a qualified voter. On Revision Day the registration officials judicially decide whether the name of the suspected voter so notified shall or shall not remain upon the books as a qualified voter. From the decision of the Board of Registry a right of appeal to the courts is provided, but in the absence of such an appeal, the decision of the Board of Registry becomes final.

It has been expressly held by the Court of Appeals of this state in the case of *Wilson vs Carter*, 103 Md., 120, that the courts are without jurisdiction to order the name of a voter to be removed from the registry books unless the name of the voter in question has been placed upon the suspect list and the other requirements above referred to have been met.

As Revision Day for 1930 has passed, it is very clear that no action can now be taken to remove from the registry books the names of any voters except those who were notified to appear on Revision Day. It therefore follows that all persons whose names are entered upon the registry books as qualified voters, are lawfully entitled to vote, and these voters are not subject to challenge on the day of election because of any alleged irregularity in their registration.

Very truly yours,

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

ELECTIONS—JUDGES OF ELECTION—CANNOT INQUIRE INTO
 PROPRIETY OF REGISTRATION ON ELECTION DAY—ONLY
 QUESTION TO BE DETERMINED ON THAT DAY IS THAT OF
 IDENTITY OF VOTER.

November 3, 1930.

*To the Judges of Election,
 10th Precinct, 26th Ward,
 Baltimore, Md.*

GENTLEMEN: Mr. George Hofferbert has informed me that he understands that a voter registered in your precinct, will be challenged on the day of election on the ground that she was improperly registered, and has requested me to advise you whether a challenge should be entertained for this reason.

The law on this subject is set forth in the instructions of the Attorney General, at page 256 of the Registration and Election Laws of Maryland for the year 1930. It is as follows:

“If a majority of the judges are of the opinion that he (the applicant for a ballot) is the person who was registered, his vote shall be received. The judges have nothing to do with the question whether he was or was not entitled to be registered. Under the Constitution of the State, the fact that he has registered is, so far as the judges of election are concerned, conclusive of his right to vote; their business is simply to satisfy themselves that the person offering to vote is the person who registered. (Art. 33, Sec. 77.)”

I trust that the above will be of assistance to you in the determination of the question mentioned by Mr. Hofferbert, if it should arise.

Very truly yours,

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

ELECTIONS—CONTEST FOR OFFICE OF SHERIFF—GOVERNOR
SHOULD BE NOTIFIED OF COURT'S DECISION, BUT NOT
MANDATORY.

December 17, 1930.

John H. T. Briscoe, Esq.,
Leonardtown, Md.

DEAR MR. BRISCOE: In our telephone conversation on Monday, you informed me that the Circuit Court for your County has decided that one of the candidates for Sheriff at the recent election had been duly elected, notwithstanding the official returns of the canvassing board which showed that the two candidates received an equal number of votes, and requested me to advise you whether a copy of this decision should be brought to the attention of the Governor.

Section 141 of Article 33 of the Code of Public General Laws, authorizes the Circuit Court to decide all cases of contested elections as provided for in the Constitution, and the case of *Anderson vs. Levely*, 58 Md. 192, sustains the power of the Circuit Court to decide contests between candidates for Sheriff. I believe the Sheriff who has been declared by the Court to be entitled to the office is entitled to hold the same by virtue of the court decision, and that notice to the Governor is not mandatory. You will observe, however, that the results of an election as determined by the County Board of Canvassers are required to be returned to the Governor, the Secretary of State and the Treasurer, under the provisions of Section 91 of Article 33 of the Code of Public General Laws. Inasmuch as the original returns in this case showed that the two candidates for Sheriff received an equal number of votes, I believe it would be desirable to send a certified copy of the Court's decision to each of these officials in order that there may be in their respective offices a record of the final determination of this election. This will also provide the Governor with adequate information with which to issue a commission to the successful candidate, and relieve him of the responsibility of call-

ing a special election to supply the vacancy occasioned by the tie, under the provisions of Section 4 of Article XV of the Constitution.

With kind regards and best wishes, I am,

Yours very sincerely,

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

FEES

FEES—PEOPLE'S COURT OF BALTIMORE AUTHORIZED TO CHARGE POUNDAGE FEES PRESCRIBED BY SEC. 15 OF ART 36, BUT THERE IS NO AUTHORITY FOR THE COLLECTION OF SUCH FEES IN ADVANCE.

October 10, 1930.

*Hon. T. Bayard Williams,
Presiding Justice,
People's Court,
Baltimore, Md.*

MY DEAR JUDGE WILLIAMS: On behalf of the Attorney General, I am answering your letter of October 1st, in which you request an opinion as to whether the People's Court is authorized to charge poundage fees in distraint proceedings, and if so, whether such fees are collectable in advance at the time of the institution of the proceeding.

It was specifically decided by the Court of Appeals in the case of Levin vs. Hewes, 118 Md., 648, that the constables appointed by the Mayor and City Council of Baltimore are entitled to compensation in accordance with the provisions of Section 15 of Article 36 of the Code of Public General Laws. This section authorizes constables to charge poundage fees in any distraint proceeding at the rate of 8% on the first \$25.00, and 3% on the residue. There is no authority for the collection of such fees in advance, and it is the opinion of the Attorney General that these fees are to be collected upon the sum collected as a result of the distraint proceeding.

I believe the above will answer your inquiry, but if you desire any additional information, I shall be glad to hear from you further.

With kind regards and best wishes, believe me,

Very sincerely yours,

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

FISCAL

FISCAL—DISPOSITION OF FINES IMPOSED FOR VIOLATIONS OF
TOWN ORDINANCES OF THE INCORPORATED TOWNS OF
PRINCE GEORGE'S COUNTY.

March 17th, 1930.

*H. J. Moffatt, Esq.,
Justice of the Peace for
Prince George's County,
Hyattsville, Maryland.*

DEAR SIR: I have your letter of the 15th inst., asking my opinion as to the proper disposition of fines imposed by justices of the peace of Prince George's County, since June 1st, 1929, for violation of the town ordinances of the incorporated towns of said county.

By Section 14 of Chapter 426 of the Acts of 1927, it was provided that one-half of such fines should be paid over to the County Commissioners for the use of Prince George's County. The disposition of the other one-half was governed by Section 2 of Article 38 of the Code of 1924, which provides that "all fines, penalties and forfeitures, when recovered, shall be paid to the county or city where the same may be imposed unless directed to be paid otherwise by the law imposing them * * * *"

By Chapter 211 of the Acts of 1929, which became effective on June 1st, 1929, Section 14 of Chapter 426 of the Acts of 1927 was repealed and re-enacted with amendments. It is now provided that all fines imposed by the justices of the peace of Prince George's County shall be paid over to the County Commissioners for the use of Prince George's County, but it is declared that this provision shall not be applied to "fines, penalties or forfeitures as contained in any ordinance of any incorporated town in Prince George's County."

In my opinion, the effect of this amendment is to make Section 2 of Article 38 again operative so far as the fines

in question are concerned. In other words, all fines imposed since June 1st, 1929, for violations of the town ordinances of the incorporated towns of Prince George's County should be paid to the city where the same may be imposed, unless directed to be paid otherwise by the ordinance imposing them or by the provisions of the municipal charter.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

FISCAL—MARYLAND—NATIONAL CAPITAL PARK AND PLANNING COMMISSION—DISBURSEMENT OF APPROPRIATION BY COMPTROLLER.

June 19, 1930.

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

DEAR SIR: Replying to your letter of June 18th, 1930, I see no reason why the Comptroller should not proceed in the usual manner in this case, that is to say, upon requisition presented by the Maryland-National Capital Park and Planning Commission, showing that they have incurred an obligation for the purchase of lands lying within the Maryland-Washington Metropolitan District, you may properly disburse to the Commission the funds now credited to it, pursuant to the provisions of Chapter 345 of the Acts of 1927.

You will observe that Section 5 of Chapter 448 of the Acts of 1927, specifically provides that the title to the property shall be taken in the name of the District.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

FISCAL—STATE GAME PROTECTION FUND—INTEREST
EARNED THEREON WHILE IN THE HANDS OF STATE
GAME WARDEN, MUST BE PAID INTO GENERAL TREAS-
URY.

December 8th, 1930.

*Hon. Wm. S. Gordy,
State Comptroller,
Annapolis, Md.*

DEAR MR. GORDY: Receipt is acknowledged of your favor of the 3rd inst., enclosing copy of the letter from E. Lee LeCompte, State Game Warden, in which Mr. LeCompte contends that the interest collected on the bank balances, in the State Game Protection Fund, to the credit of the Conservation Department, while in the hands of the State Game Warden, need not be paid into the general treasury, in accordance with the ruling of this department dated November 27th, 1929 (14 Op. A. G. 124).

After careful consideration of Mr. LeCompte's contentions, I am unable to agree that the ruling in question is inapplicable.

Mr. Robinson, the late Attorney General, ruled specifically that "no appropriation carries with it the interest earned on the fund out of which it is paid, unless such an intention is clearly and unequivocally expressed in the appropriation act, and this is true whether the appropriation is payable out of general or special funds."

There is nothing in the law creating the "State Game Protection Fund" (Art. 99, Sec. 17, 1929 Supplement of the Annotated Code of Maryland) which can reasonably be construed to carry the interest accruing thereon, while in the hands of the State Game Warden. Nor does the provision of the Budget Bill (Sec. 4, Chap. 134, Acts of 1929), referred to in Mr. LeCompte's letter, constitute an appropria-

tion of such interest. It merely saves the *principal* of the fund from reverting to the general treasury.

I am therefore of the opinion that you are justified in the position you have taken upon this question.

Yours very truly,

HERBERT LEVY, *Asst. Attorney General.*

FORESTRY

FORESTRY—POWER OF FOREST WARDEN TO SUMMON ASSIST-
ANCE AND TO ARREST OFFENDERS.

October 6th, 1930.

*F. W. Besley, Esq.,
State Forester,
Fidelity Building,
Baltimore, Md.*

DEAR MR. BESLEY: You have brought to my attention, the fact that a Magistrate, sitting in Worcester County, has denied the authority of a duly appointed Forest Warden to require two men to assist him in extinguishing a forest fire and to arrest them for refusing to comply with his summons. This action of the Magistrate appears to be plainly wrong.

Section 6 of Article 39-A, Bagby's Code, 1924, clearly provides that the Forest Warden has full authority to summon any male inhabitants of the county between the ages of 18 and 50 to assist in extinguishing fires and imposes a penalty on any one who is physically able to do so who refuses to respond to this summons. The Magistrate was therefore plainly wrong in dismissing the case that had been brought before him.

Furthermore, the authority of a Forest Warden to arrest without a warrant for misdemeanors committed in his presence is fully covered by Section 5 of Article 39-A, Bagby's Code, 1924, which provides as follows:

“Forest Wardens thus appointed shall before entering upon the duties of their office take the proper official oath before the Clerk of the Court of the County in which they reside, after which they shall while holding said office, possess and exercise all the authority and power held and exer-

cised by constables at common law under the statutes of this State, so far as arresting and prosecuting persons for all violations of any of the forest laws or of the laws, rules and regulations enacted or to be enacted for the protection of the State forestry reservations, or for the protection of the fish and game contained therein are concerned."

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

GASOLINE TAX

GASOLINE TAX—LIABILITY FOR—IN CASE OF SALES OF
MOTOR VEHICLE FUEL WITHIN THIS STATE BY DEALER
TO COMPOUNDER.

January 11, 1930.

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

DEAR MR. MCCUSKER: Receipt is acknowledged of your letter of the 6th instant, requesting me to advise you upon whom the liability for the gasoline tax falls in the case of a sale of motor vehicle fuel within this State by a dealer to a compounder.

It is clear, under the provisions of Sections 211-(c), 212, 214 and 217 of Article 56, that the tax liability is imposed upon the dealer who first sells the motor vehicle fuel within this State, except in cases where the fuel is sold for compounding purposes. In those cases, a proviso in Section 212 expressly declares that the tax shall be paid by the compounder.

I have read over the files of this Department relating to the drafting of the gasoline tax law, and find that this proviso was inserted at the request of representatives of the dealers in order to avoid any possibility of double taxation.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

GOVERNOR

GOVERNOR—REFERENDUM—LAWS SUBMITTED TO VOTE OF
PEOPLE SHOULD BE ADVERTISED.

June 20th, 1930.

*Hon. David C. Winebrenner, 3d,
Secretary of State,
Annapolis, Md.*

DEAR MR. WINEBRENNER: In conformity with your request of June 12th, I have examined the proposed proclamations of the Governor which are intended to give notice of a referendum vote in Anne Arundel County on Chapter 203 of the Acts of Assembly of 1929, and in Howard County on Chapter 213 of the Acts of 1929.

I believe that these proclamations should recite the fact that a petition has been filed with the Secretary of State requesting a referendum vote and I suggest that you insert in each proclamation, immediately after the Act of Assembly, a clause to the following effect:

“And whereas a petition has been filed with the Secretary of State for the State of Maryland, requesting that the aforesaid Act of Assembly be submitted to the qualified voters of _____ County for adoption or rejection at the election to be held on November 4th, 1930, and said petition appears to be in conformity with the provisions of Article XVI of the Constitution of Maryland entitled the ‘Referendum’.”

The obvious purpose of requiring publication of these laws is to give notice to the voters that the same will be submitted to a referendum at the approaching election, and unless some language such as I have indicated be inserted

in the proclamations to be published, the voters will not be advised as to the reason for the publication.

You also ask whether it is necessary for the Governor to issue a proclamation for the publication of laws that are to be submitted to a referendum vote.

Section 5 of Article XVI requires, unless otherwise provided by the legislature, that all such laws "shall be published in the manner prescribed by Article XIV of the Constitution for the publication of proposed constitutional amendments." The Legislature has prescribed no different method for the publication of these laws, and I believe the proposed proclamations submitted, subject to the additions above indicated, are necessary and proper.

With kind regards and best wishes, I am,

Yours very truly,

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

GOVERNOR—PROCEDURE FOR SUSPENDING EXECUTION OF
SENTENCE OF PREGNANT FEMALE PRISONERS.

August 5, 1930.

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

DEAR GOVERNOR RITCHIE: I am in receipt of your letter of the 30th ultimo, enclosing a copy of your certificate suspending the execution of the sentence of a pregnant female prisoner confined in the Maryland House of Correction, in accordance with the provisions of Chapter 258 of the Acts of 1929, codified as Section 694-A of Article 27 of the 1929 Supplement of the Annotated Code of Maryland.

You ask me to advise you whether in such cases, before granting a suspension of sentence, you are required to "give notice, in one or more newspapers, of the application made for it, and of the day on or after which" your decision will

be given, as provided by Section 20 of Article II of the Constitution of this State.

I do not think so. The constitutional requirement of notice applies only to the granting of a *nolle prosequi* or pardon. The suspension of the execution of the sentence is neither. It is a reprieve which, by the same section of the constitution, you are also empowered to grant.

A reprieve has been defined as "the withdrawing of a sentence for an interval of time whereby the execution is suspended". At common law one of the well recognized forms of reprieve was in the case of pregnancy, where a woman was convicted of felony or treason. See *Ex Parte U. S.* 242 U. S. 27, 43.

It seems, therefore, that whether your authority to grant a suspension of the execution of sentence in the case of the pregnancy of a female prisoner, be derived from the statute or section 20 of Article II of the Constitution, no notice is required. The statute specifically authorizes the exercise of the power "without notice", and the constitution, although it empowers you to grant both reprieves and pardons, makes no provision for notice in the case of reprieves.

With kind regards and best wishes, believe me,

Yours very sincerely,

THOMAS H. ROBINSON, *Attorney General.*

GOVERNOR—PROCLAMATIONS SETTING FORTH ELECTION RESULTS WHEN TO BE ISSUED AND PUBLISHED.

December 1st, 1930.

Hon. Murray G. Hooper,
Executive Department,
Annapolis, Md.

DEAR MR. HOOPER: In your letter of November 29th, you request me to advise you whether the Governor is required

to publish proclamations setting forth the results of the recent election on the following questions:

- (1) Constitutional Amendment
- (2) Constitutional Convention
- (3) Proclaiming the election of the Attorney General
- (4) Proclaiming the election of the Representatives in Congress
- (5) Anne Arundel County Referendum,
- (6) Howard County Referendum

(1) Article XIV of the Constitution relating to Amendments contains the following provision:

“The votes cast for and against said proposed amendment or amendments, severally, shall be returned to the Governor, in the manner prescribed in other cases, and if it shall appear to the Governor that a majority of the votes cast at said election on said amendment or amendments, severally, were cast in favor thereof, the Governor shall, by his proclamation, declare the said amendment or amendments having received said majority of votes, to have been adopted by the people of Maryland as part of the Constitution thereof, and thenceforth said amendment or amendments shall be part of the said Constitution.”

It is therefore clearly the duty of the Governor to issue a proclamation declaring the result of the recent election with reference to the constitutional amendment.

(2) There is no provision in the Constitution or laws of this State which requires a proclamation to be issued by the Governor setting forth the result of the election with reference to the action of the voters upon the proposal in regard to calling a convention for altering the Constitution.

Section 2 of Article XIV simply provides that “if a majority of voters at such election or elections shall vote for a

convention, the General Assembly, at its next session, shall provide by law for the assembling of such convention, and for the election of Delegates thereto."

It is not even mandatory upon the Governor to lay the results of the election on this proposal before the General Assembly, but obviously that should be done either by the Governor or the Secretary of State. It would seem that the public should have official notice of the result of the election, and I believe it desirable for the Governor to issue a proclamation on this subject in the same manner that he issues his proclamation with respect to the amendment to the Constitution.

(3) Section 2 of Article V of the Constitution provides that the election returns with respect to the Attorney General shall be certified to the Governor "whose duty it shall be to decide on the election and qualification of the person returned; and in case of a tie between two or more persons to designate which of said persons shall qualify as Attorney General and to administer the oath to the person elected."

The determination which the Governor is required to make under this section of the Constitution should be evidenced in some official way and in my judgment the usual proclamation is proper.

(4) The duties of the Governor with respect to the results of an election for members of Congress are prescribed by Section 27 of Article 41 of the Code of Public General Laws which reads as follows:

"The Governor upon receiving the returns of election for electors to choose a President and Vice-President of the United States and for members to represent this State in the Congress of the United States shall enumerate and ascertain the number of votes given for each person voted for as an elector and member of Congress respectively, and shall thereupon declare by proclamation signed by him, the name or names of the person or persons duly elected, and shall cause such proclamation to be inserted in such newspapers as he may direct."

(5 and 6) Sub-section B of Section 5 of Article XVI of the Constitution entitled "The Referendum" contains the following provision:

"The votes cast for and against any such referred law shall be returned to the Governor in the manner prescribed with respect to proposed amendments to the Constitution under Article XIV of this Constitution, and the Governor shall proclaim the result of the election, and, if it shall appear that the majority of the votes cast on any such measure were cast in favor thereof, the Governor shall by his proclamation declare the same having received a majority of the votes to have been adopted by the people of Maryland as a part of the laws of the State * * * *"

It is therefore plainly the duty of the Governor to issue a proclamation declaring the result of any election on any law which is referred to the people under the provisions of Article XVI entitled "The Referendum".

I have heretofore approved, as to form and legal sufficiency and returned to you forms of proclamations to be executed by the Governor covering all of the above subjects. No amount of publicity as to any of these proclamations is prescribed by the Constitution or laws of the State except with reference to the election of members of Congress, where it is provided that the Governor "shall cause such proclamation to be inserted in such newspapers as he may direct". By reason of this language, it is the duty of the Governor to publish, as directed, the proclamations relating to the election of members of Congress.

I understand that it has been customary for the Governor to publish proclamations covering the other subjects mentioned in your letter and above referred to, and as all of these matters are of vital interest to the public, I believe that all of the proclamations should be published in such papers as the Governor may in his discretion decide upon.

The results of the election with respect to local laws which were referred to the people in Anne Arundel and Howard Counties would, of course, be of more interest to the people of those counties, and I would suggest that these results be published in one or more papers in the respective counties.

Yours very truly,

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

INSURANCE

INSURANCE—DISCRIMINATION—FAILURE TO MAKE REDUC-
TION IN RATES APPLICABLE TO EXISTING CONTRACTS
NOT DISCRIMINATORY.

January 11th, 1930.

*Hazelton A. Joyce, Jr., Esq.,
State Insurance Department,
Baltimore, Md.*

Re: Reduction on fire insurance premiums.

DEAR SIR: I have your letter of January 7th, enclosing a communication from R. D. Tweeddale Company, asking your opinion as to whether the reduction in fire insurance rates effected by the action of the Association of Fire Underwriters of Baltimore City on August 15th, 1929, can legally be held applicable only to new policies or renewal policies. Neither the State Insurance Department nor I can undertake to construe any contracts between the companies and their policy holders. I understand, however, that my opinion is desired on the question as to whether the companies, by refusing to give the benefit of the reduced rates to existing policy holders whose contracts have not expired, are in any way violating the provisions of Art. 48-A, Sec. 45 (Bagby's Code, 1924), entitled "*Rebating and discriminations prohibited (fire and miscellaneous).*"

Upon a careful examination of that section, I do not find any language which would prevent the companies from reducing their rates as to new policies without giving the old policy holders the benefit of such a reduction. The prohibitions of the law are confined to rebate from the premiums specified in the policy of contract of insurance, and to the granting of any special favor or advantage in the dividends or other benefits to accrue thereon, or any valuable

consideration or inducement whatsoever not specified in the policy or contract of insurance, issued or to be issued.

Manifestly these provisions are not applicable to policies to be written in the future with new rates.

The difference between the treatment of old and new policy holders may be supported upon an independent ground, namely, that every change must begin somewhere. If all policies written beyond a certain date, are treated alike, there is no wrongful discrimination.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

INSURANCE—POWER OF CREDITOR TO ATTACH CASH SURRENDER VALUE OF POLICY.

September 11th, 1930.

*Harrison Rider, Esq.,
Insurance Commissioner,
Lexington Building,
Baltimore, Md.*

DEAR SIR: Your letter of September 10th, 1930, has been referred to me for reply. Following my telephone conversation with Mr. Joyce, I looked into the question as to whether or not the cash value of a life insurance policy may be attached by a creditor. I find that the answer to this question generally depends upon the precise terms of the policy involved. I also find that the question has not been passed upon by the Court of Appeals of Maryland, but that there appears to be some difference of opinion in other States.

The provisions of Sections 8 and 9 of Article 45 protecting the interest of a wife and children in life insurance have been held by Judge Rose not to apply where there is a power in the insured to change the beneficiary. On the

other hand, Judge Rose, Judge Soper and the Circuit Court of Appeals for the 4th Circuit Court of Appeals (Judge Coleman dissenting) have held that even where the insured reserves the right to change the beneficiary, the proceeds in question are exempt to the extent of \$500 under Article 83, Section 8 of the Code.

See in re: Jones, 249 Fed. 487;

in re: Cooper's Estate, 28 Fed. 2nd, 438;
Hickman vs. Hanover, 33 Fed. 873.

But even though the exemption statutes do not apply, a question arises as to whether creditors can reach the cash surrender value of a life policy. On this point, there is a conflict of authority, depending somewhat upon the terms of local statutes, and upon the terms of the policies in question. The cases are collected in 42 A. L. R. 1188 and 57 A. L. R. 695.

It is probable that in most cases which will come up to you, the creditor will not be able to prevail and I think that you should advise any one who should ask you about it not to make any payments without first submitting the matter to their counsel. I am very much afraid that this is as far as I can go in answering your letter. I doubt whether in private controversies of this character the Insurance Commissioner would wish to give an opinion in a question of such difficulty.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

INSURANCE—TAX ON PREMIUMS—METHOD OF CALCULATION
UNDER RETALIATORY PROVISIONS.

December 1st, 1930.

Mr. Harrison Rider,
Insurance Commissioner,
Lexington Building,
Baltimore, Md.

DEAR SIR: I have your letter of November 25th, 1930, enclosing communication from The Pacific Mutual Life Insurance Company of California, in reference to the tax on premiums imposed upon that company pursuant to Article 48-A, Sections 39 and 41. From this letter it appears that the California statutes exact a tax on premiums at the rate of 2.6%, the first half of the tax being payable by the "sixth Monday after the first Monday in July", and the second half of the tax being payable by the "first Monday in February following."

While the tax on premiums imposed by Section 39 of Article 48-A is only one and one-half percent, the Pacific Mutual Life Insurance Company, being incorporated under the laws of the State of California, is subject to the retaliatory provisions of Section 41 of Article 48-A, which provides:

"Retaliatory Provisions. 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.”

Heretofore, the insurance company has been required to pay a tax on premiums at the rate of 2.6% at the time of filing the return, which under the provision of Section 39 of Article 48-A, must be made in January of each year. The question for determination is whether the insurance company is entitled to defer payment of the taxes until the California due dates, or to be permitted to pay the taxes on a discounted basis.

I find nothing in Section 39 or Section 41, which requires the tax on premiums to be paid at any fixed time. There is no reason, therefore, why the law should not be construed so as to make the burden imposed upon the California company the equivalent of that imposed upon Maryland companies doing business in California.

In my opinion, therefore, it would be proper for you to permit the payment of the tax at the rate of 2.6% to be deferred until the California due dates. However, as we are not informed that there is any provision in the California statute for the payment of the tax on a discounted basis, I do not think that this should be permitted.

Very truly yours,

WM. L. MARBURY, JR., *Asst. Attorney General.*

INSURANCE—CONTRACT OF THE MARYLAND SERVICE COMPANY HELD TO BE POLICY OF INSURANCE.

December 8th, 1930.

*Harrison Rider, Esq.,
Insurance Commissioner,
Lexington Building,
Baltimore, Md.*

DEAR MR. RIDER: You have submitted to me a so-called Service Agreement which the Maryland Service Company

negotiates with its customers, and have asked whether this is an insurance contract within the meaning of our laws.

Article 48-A, Sec. 1 defines "insurance business" to mean, among other things "any obligation or undertaking of any kind or nature whatsoever insuring against or undertaking to indemnify any person from loss resulting from any contingency, hazard or casualty". The service contract, a specimen of which has been submitted to me provides:

"(1) The Maryland Service Company will repair your automobile, without charge, to the extent of two hundred dollars (\$200.00) including parts, resulting from an accident with some other automobile in the State of Maryland, excepting when other automobile is owned or driven by this contract holder or member of his or her family or agent and not covered by a service contract with this Company".

This provision imposes upon the Company a clear obligation to indemnify its customers against loss resulting from a contingency, hazard or casualty, and the Company is therefore, subject to the provisions of Article 48-A.

Yours very truly,

WM. L. MARBURY, JR., *Asst. Attorney General.*

INSURANCE—CONTRACT OF INVESTORS SYNDICATE DOES NOT
CONSTITUTE POLICY OF INSURANCE.

December 19, 1930.

*Harrison Rider, Esq.,
State Insurance Commissioner,
Lexington Building,
Baltimore, Md.*

DEAR MR. RIDER: You have asked my opinion as to whether a certain contract issued to Miss Virginia Thread-

gill of Catonsville, by the Investors Syndicate, Inc., is an insurance contract within the meaning of Article 48-A of the Code of Public General Laws.

The contract in question calls for the payment of \$74.00 annually in advance during the period of ten years from date, at the expiration of which time the Company agrees to pay the sum of \$1,000. There is provision for a fixed cash value in case of surrender and for an identical loan value. The contract further provides as follows:

“4. DEATH AND PERMANENT TOTAL DISABILITY. In the event of the death of the second party, this Certificate being in force and uncanceled on the books of the company, his legal representatives may elect (a) to continue this Certificate by making payments thereon, or (b) to surrender the same and accept the full amount paid herein with interest at the rate of 4% per annum compounded annually, computed on sums from dates paid to date of death, subject to the provisions of Paragraph 10 hereof. Should the second party, as a result of sickness or injury, become totally and permanently disabled before he attains the age of sixty years, and unable to engage in any gainful occupation for the balance of his life he shall be entitled to the benefits stated in the preceding sentence of this paragraph, interest being computed on sums from dates paid to date when second party first becomes so totally and permanently disabled. No sums will be payable until the company has received legal proof of death or the proof of permanent total disability required by it. If this Certificate is issued in the name of one person for the benefit of another, the second option (b) herein shall apply only in the event of the death or such permanent total disability of the first person but the proceeds should belong to the beneficiary.”

It has been suggested that this provision of the contract brings it within the language of Article 48-A, Section 1, which defines insurance as "any obligation or undertaking of any kind or nature whatsoever insuring against or undertaking to indemnify any person for loss resulting from any contingency, hazard or casualty."

In my opinion, the provisions of the contract in question do not fall within the terms of the statute. The privilege conferred upon death or disability does not extend beyond the right to terminate the contract and receive a refund of payments theretofore made with interest calculated at a rate less than that which the certificate holder would have been entitled to receive had the contract been fulfilled. Only by artificial reasoning can it be said that there is a loss against which the certificate holder is insured or indemnified upon death or disability. Loss could arise only out of forfeiture of payments already made but the contract does not provide for such forfeiture. The contract cannot be construed as a contract of insurance on the theory that it protects against a hypothetical loss arising out of its own terms.

It is true that section 82 of Article 48-A provides:

"Any company making an engagement for the payment of money or other 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, or entering into any contract or agreement in which the changes or probabilities of the duration of life, or the rate of mortality or hazard of occupation are in any way involved as an element or condition of such contract or agreement, shall be deemed and taken to be a life insurance company within the meaning of this article, and shall be subject to all the requirements of law applicable to said life insurance company."

If this section be taken literally it cannot be denied that it applies to the contract under consideration, for by its terms the certificate holder receives money in the event of sickness, accident or death. But in my opinion, the section should be taken as an entirety and construed in connection with the definition contained in Section 1. So construed, Section 82 does not apply to this contract.

Accordingly, I am of the opinion that the contract in question is not a contract of insurance.

Very truly yours,

WM. L. MARBURY, JR., *Asst. Attorney General.*

JUSTICES OF THE PEACE

JUSTICES OF THE PEACE—JURISDICTION OF JUSTICE OF PEACE EXERCISING JURISDICTION IN THE TOWN OF RIVERDALE, PRINCE GEORGE'S COUNTY—HAS POWER TO HEAR AND DETERMINE CASES ARISING UNDER ORDINANCE OF RIVERDALE WHERE DEFENDANT DOES NOT EXERCISE RIGHT OF REMOVAL TO POLICE JUSTICE—VALIDITY OF ORDINANCES RELATING TO MOTOR VEHICLES QUESTIONED.

April 1st, 1930.

Hon. Harry K. Clare,
Justice of the Peace,
Riverdale, Prince George's Co., Md.

DEAR SIR: I reply to your letter of the 18th ulto., supplemented by your letter of the 28th ulto., requesting me to advise you whether you have jurisdiction to hear and determine violations of the ordinances of the Town of Riverdale, known as Article XXI, adopted February 14th, 1925, and Article XXX-D, adopted August 6th, 1926.

By Section 6 of Chapter 426 of the Acts of 1927, creating the office of Police Justice of Prince George's County, it is provided "that where by town ordinance of any incorporated town in Prince George's County, jurisdiction is conferred upon a Justice of the Peace to hear and determine any violation of said ordinance or ordinances, or where said Justice of the Peace other than the Police Justice shall have jurisdiction to hear and determine any criminal violation of town ordinance or ordinances, in either event, the parties litigant, plaintiff or defendant in case of a criminal violation of said ordinance or ordinances shall have the right of removal to the Police Justice by making the affidavit as herein provided".

The ordinances in question confer jurisdiction to hear and determine violations thereof upon "any authorized tribunal."

Both were adopted before the passage of Chapter 426 of the Acts of 1927, and at the time of their adoption, the Justice of the Peace exercising jurisdiction in the Town of Riverdale undoubtedly had the power to hear and determine cases arising thereunder.

It seems to me, therefore, that the provisions of Section 6 of Chapter 426 of the Acts of 1927, above quoted, are applicable, and that you as a duly appointed and qualified Justice of the Peace, exercising jurisdiction in the Town of Riverdale, have the power to hear and determine cases arising under said ordinances provided the defendant in such cases does not exercise his right of removal to the Police Justice.

However, I might call your attention to the fact that there are a number of provisions in the ordinances which are in violation of Sections 171 and 171-A of Article 56 of the 1929 supplement of the Annotated Code of Maryland, in that they embrace subjects for which provision is made by the general motor vehicle law of this State.

I am sending copies of the ordinances to the Commissioner of Motor Vehicles, who will advise you in due course with respect to this phase of the matter.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

JUSTICE OF PEACE—PROCEDURE FOR PROCURING RELEASE OF BOND.

May 21, 1930

*Hon. David C. Winebrenner, 3d.,
Secretary of State,
Annapolis, Md.*

DEAR MR. WINEBRENNER: I have your letter of May 19th, in which you ask what official is authorized to release

a bond of a Justice of the Peace, At Large, in Baltimore City, which has been executed by the Hartford Accident and Indemnity Company.

The procedure in such matters is prescribed by Section 7 of Article 90 of the Code of Public General Laws, where it is provided, among other things, that the application for release must be addressed "to the court, judge, officer, board or other person or persons or body having authority to approve such bond."

By Section 624 of the charter and Public Local Laws of Baltimore City of 1927, it is provided that the bonds of the Justices of the Peace in Baltimore City shall be approved by the Judge of the Superior Court of Baltimore City. It follows, therefore, that the application for release in the case mentioned in your letter, should be addressed to the Judge of the Superior Court of Baltimore City.

Very truly yours,

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

LICENSES

LICENSES—BEAUTY PARLOR—WHERE HAIR OF FEMALES IS CUT AND BOBBED, REQUIRED TO OBTAIN BARBER'S LICENSE.

January 14, 1930.

*Mr. George W. Sanders,
State Board of Barber Examiners,
18 W. Saratoga Street,
Baltimore, Md.*

DEAR SIR: In your letter of January 6th, you request an opinion as to whether operators who cut or bob hair in beauty parlors are required to obtain a license in accordance with the provisions of Chapter 226 of the Acts of Assembly of 1904.

Section 6 of the Acts of Assembly in question provides, "that no person shall hereafter practice the occupation of barber in this state unless such person shall have first received a certificate of qualification from the Board of Examiners."

Section 13 defines the occupation of a barber in the following language:

"That to shave, trim the beard, or cut the hair of any person for hire or reward, received by the person performing such service, or any other person, shall be construed as practicing the occupation of a barber within the meaning of this Act."

The cutting or bobbing of hair in beauty parlors for hire, therefore, falls directly within the provisions of the Act in question, and I think that there can be no doubt that such operators are required to obtain a certificate from the State Board of Barber Examiners.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

LICENSES — TRADER'S LICENSE — REQUIRED BY A FIRM
WHICH CONVERTS MERCHANDISE THROUGH OTHER
AGENCIES AND SELLS THE SAME FOR PROFIT—WHAT
CONSTITUTES MANUFACTURING UNDER LICENSE LAWS?

February 20th, 1930.

Mr. Frank P. Bratten,
Chief Inspector, State License Bureau,
1002 Union Trust Building
Baltimore, Md.

DEAR SIR: In your letter of February 4th, you request an opinion as to whether the firm of A. Frank & Sons is required to obtain a trader's license.

It is contended on behalf of this firm that it is not required to obtain a license on the theory that it is the maker or manufacturer of the goods which it sells. It appears that this concern orders cotton goods to be made for it at various textile mills throughout the country, the goods being manufactured in accordance with the directions of A. Frank & Sons. Upon completion of the goods at the textile mills, they are, at the direction of A. Frank & Sons, shipped to other establishments where the goods in question are bleached, processed, dyed and finished into such designs as may be directed by A. Frank & Sons. Upon completion at the latter establishments, the goods are shipped to the place of business of A. Frank & Sons, in Baltimore, from whence they are sold to merchants and manufacturers.

Since the receipt of your letter, Mr. Frank called at this office with his attorney, Mr. Philip B. Perlman, and left for my consideration a sample of the goods as manufactured at the textile mills, and another sample of the goods as bleached, processed and dyed in the manner above indicated. These samples have been carefully examined, and in my opinion there is not a sufficient change in the character of the goods from the time they are finished at the textile mills up until their sale by A. Frank & Sons to characterize the bleaching, dyeing and processing as manufacturing within

the meaning of Section 42 of Article 56 of the Code of Public General Laws, by which "the grower, maker or manufacturer" is exempt from the requirement of procuring a trader's license.

This conclusion is supported by the decision of the Supreme Court of the United States in the case of *Hartranft vs. Weigman*, 121 U. S. 609. In that case the Supreme Court had under consideration the question as to whether certain shells were manufactured within the meaning of the tariff laws. The shells in question were cleaned and prepared for market by acid and were ground on an emery wheel and printed matter was placed upon them for the purpose of making them suitable for souvenirs. In holding that the shells were not manufactured articles within the meaning of the tariff laws, the Supreme Court said:

"They were still shells. They had not been manufactured into a new and different article, having a distinctive name, character or use, from that of a shell. The application of labor to an article, either by hand or machinery, does not make the article necessarily a manufactured article, within the meaning of the tariff laws. *Washing and scouring wool does not make the resulting wool a manufacture of wool. Cleaning and ginning cotton does not make the resulting cotton a manufacture of cotton.*"

Aside from the question as to whether there is a sufficient change in the goods from the time of their manufacture by the textile mills until their arrival at the place of business of A. Frank & Sons to constitute manufacturing within the meaning of the Trader's License Law, it is clear, under the ruling of the Court of Appeals in the case of *Rowe vs. Tax Commission*, 149 Md. at page 251, that A. Frank & Sons are not entitled to be exempted as manufacturers inasmuch as the alleged manufacturing is done by others.

The question under consideration in this later case was whether the printing and binding of certain books and pam-

phlets constituted manufacturing where a substantial portion of the work was done by others. In holding that the H. M. Rowe Co. was not entitled to the manufacturer's exemption, the Court said at page 261:

"It may be conceded, without however so deciding, that the business of printing, binding and preparing for use or sale by manual or mechanical labor, books, pamphlets, forms, stationery and similar articles, is manufacturing, but that concession alone cannot help the appellant, because it does none of those things itself, but has them done by others; and it can only avail the appellant if it be also conceded that in doing that work by the hands of another it does it itself. But such a concession not only involves a palpable fiction, but is contrary to the general rule that, in construing statutes exempting property from taxation, no presumption or intendment in favor of an exemption shall be made unless it is clearly warranted by the letter or the spirit of the statute (1 Cooley on Taxation, 356; Broadbent Mantel Co. vs. Baltimore, 134 Md. 90) and that rule prohibits us from extending the scope of the exemption by giving to the language of the statute creating it a construction so forced, strained and unnatural as would be necessary to permit us to hold that one who procures the products which he markets to be manufactured by another, not his agent, manufactures them himself. We have been unable to find any satisfactory authority for such a construction, although it has some support."

The manifest purpose of the exemption in the Trader's License Law in favor of the "grower, maker or manufacturer" is to encourage the production of useful goods, wares and merchandise in the State of Maryland, and in my opinion, the Legislature never intended the manufacturer's exemption to apply to any person, firm or corporation which

performs no part of the labor which constitutes manufacturing, but procures such work and labor to be done by others.

For the reasons above set forth, I am of the opinion that A. Frank & Sons are required to obtain a trader's license as required by Section 42 of Article 56.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

LICENSES—RESTAURANTS—OFFICIAL U. S. CENSUS FIGURES
AS TO POPULATION SHOULD BE ACCEPTED.

April 15, 1930.

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

DEAR MR. GORDY: I have your letter of April 11, 1930, in which you ask whether, in issuing restaurant licenses under Article 56, Section 244, of Bagby's Code of 1924, you are to accept the figures of the 1920 census, or are to take notice of the fact that since 1920 the population of Salisbury has increased.

In my opinion, you should be guided by the census of 1920. In the case of cities or towns of more than ten thousand inhabitants, the Bureau of Census of the Department of Commerce at Washington gives unofficial estimates from time to time supplementing the regular decennial census. I have no occasion, however, to consider whether these figures have any application, as the last unofficial estimates were given out in 1927, and at that time it is my understanding that the population of Salisbury did not exceed 10,000 inhabitants.

There is no other official calculation which could serve as a guide to the clerk in estimating the population, and I am

sure that he was not expected to make any estimate on his own responsibility.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

LICENSES—JUNK DEALERS—REQUIRED TO OBTAIN LICENSE
IN EACH COUNTY WHERE A PLACE OF BUSINESS IS
MAINTAINED.

May 29, 1930.

*Hon. Edwin M. Mellor, Jr.,
Clerk Circuit Court for Carroll County,
Westminster, Md.*

DEAR MR. MELLOR: I have your letter of May 22nd, in which you request me to advise you whether a certain Mr. Mackley is required to obtain a junk dealer's license in Carroll County, under the following state of facts, as set forth in your letter:

"A Mr. Mackley, who lives in Union Bridge, Carroll County, Maryland, conducts a junk business. This business stand is located in Frederick County directly opposite the town of Union Bridge, just across a small stream from his home, which stream represents the dividing line separating the two counties, Carroll and Frederick County.

"Mr. Mackley has a Junk dealer's license for Frederick County and he does not feel that he should be compelled to procure a license also for Carroll County as he simply stores, for the purpose of convenience, a small amount of Junk in Carroll County."

If Mr. Mackley does nothing more than store his wares at the place in Carroll County, I do not believe he is re-

quired to obtain a license in that county. On the other hand, if his patrons visit the place of business in Carroll County with a representative of the seller for the purpose of selecting the articles they wish to purchase, he is maintaining a place of business in Carroll County within the meaning of the statute and a license should be obtained in that county.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

LICENSES—NO STATE LICENSE REQUIRED FOR OPERATION OF
MINIATURE GOLF COURSE.

July 18, 1930.

*Edwin M. Mellor, Jr., Esq.,
Clerk of the Circuit Court,
Westminster, Md.*

DEAR SIR: In your letter of July 17th, you request an opinion as to whether a state license is required for the conduct of a miniature golf course, which is operated for profit, each player being required to pay twenty cents per game.

So far as I have been able to find, there is no state-wide law which requires a license for the conduct of such an enterprise, so long as no articles of merchandise are sold by the operators of the business. If any articles of merchandise are sold or offered for sale, then of course a trader's license would be required.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

LICENSES—HAWKERS' AND PEDDLERS' LICENSE REQUIRED
UNDER FACTS STATED—NO LICENSE REQUIRED TO
SOLICIT ORDERS.

September 4, 1930.

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

DEAR MR. SHAFFER: I have your letter of September 3rd, enclosing communication from Mr. George M. Dersch, 1229 E. Preston St., Baltimore, Md., dated July 28th, requesting an opinion as to what, if any, license is required in the following cases:

1. Where a salesman who represents a non-resident company and takes an order in Maryland, together with an initial deposit, which are forwarded to the non-resident company by whom the goods are shipped to the purchaser in Maryland.

2. Where a salesman representing a non-resident company, carries with him a stock of goods and makes deliveries of such goods at the time of sale, the salesman collecting for the goods either at the time of the delivery of the goods or later.

In the first case to which you refer, no license is required.

In the second case however, a hawker's and peddler's license is required as provided by Sections 26 and 27 of Article 56 of the Code of Public General Laws.

Very truly yours,

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

LICENSES—INSURANCE—AUTHORITY OF MUNICIPALITY TO
IMPOSE A LICENSE TAX UPON FIRE AND LIFE INSUR-
ANCE AGENTS.

September 22, 1930.

*Harrison Rider, Esq.,
Insurance Commissioner,
Lexington Building,
Baltimore, Md.*

DEAR SIR: You have asked whether the town of Cambridge has the authority to impose a license tax upon life and fire insurance agents doing business in the town. This is really a question which must finally be determined between the insurance companies and the Town Commissioners. However, I have taken the matter up with Mr. V. Calvin Trice, attorney for the town, who has referred me to the statutes and ordinances involved.

I find that Chapter 339 of the Acts of 1900, Section 75, sub-sections 9 and 10, confers upon the Commissioners of the town of Cambridge authority to exact license fees from the agents of life and fire insurance companies having offices within the town, and to exact similar fees from solicitors of life insurance companies. I find nothing in the Public General Laws to take away this power. The provisions of Sections 60 and 61 of Article 48-A, Bagby's Code (1929 Supplement) do not appear to me to be inconsistent with the local law in question.

A similar ruling was made by Attorney General Albert C. Ritchie and will be found reported in 2 Op. A. G., page 232, where it was held that the City of Westminster might properly exact a license fee from fire insurance companies and agents located in or doing business in said City.

Until the Legislature prohibits the exaction of such license fees as are here complained of, I know of no ground upon which the authority of the town can be challenged. If, as a matter of legislative policy, the agents should be

subjected to the exaction of but a single license tax, the remedy is with the Legislature.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

LICENSES—DETECTIVE AGENCIES—REQUIRED TO OBTAIN
LICENSE TO CARRY ON BUSINESS.

October 2, 1930.

Hon. Lloyd L. Shaffer,
Clerk of the Circuit Court,
Cumberland, Md.

DEAR MR. SHAFFER: You request an opinion as to whether a certain individual who is about to operate for himself a detective agency, is required to obtain a license. You state that the party in question has his office in his home; has no employees and does private detective work.

The answer to your inquiry depends upon the construction of Section 226 of Article 56 of the Code of Public General Laws, which reads as follows:

“Every person, firm or corporation, resident or non-resident, maintaining a private detective agency in this State shall, before acting as such, take out a license therefor and pay to the Clerk of the Circuit Court in the County in which such person, firm or corporation may be located, or to the Clerk of the Court of Common Pleas of Baltimore City, if located in Baltimore City, the sum of one hundred dollars per annum. Provided, however, this Section shall not apply to detectives regularly employed by any State, County or City.”

This Section of the Code was considered by Attorney General Armstrong in an informal opinion rendered to Mr. J. C. Turner of your city, under date of July 3rd, 1922, in which he said:

“It is certain, however, that wherever an individual or corporation announces in any way to the public that he or it is maintaining an office for the purpose of furnishing detective service the license is required.”

I am in accord with the above opinion of Attorney General Armstrong, and believe that the party to whom you refer is required to obtain a license under the provisions of Section 226.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

LICENSES—MARRIAGE—PROCEDURE WHEN A MINOR APPLIES
FOR AND THERE IS NO PARENT OR GUARDIAN.

October 10, 1930.

*S. Ralph Andrews, Esq.,
Clerk of the Circuit Court,
Elkton, Md.*

DEAR MR. ANDREWS: I have your letter of October 2nd, in which you request an opinion as to how to proceed in the issuance of a marriage license where the female is under the age of eighteen years, and whose parents are dead, and for whom the court has appointed no legal guardian.

The law applicable to your inquiry is found in Section 7 of Article 62 of the Code of Public General Laws, which reads as follows:

“No such license shall issue unless the male be above the age of twenty-one years and the female

above the age of eighteen years; provided, however, that if the parents or guardian assent thereto, in person or by writing, attested by two witnesses, such license may issue and the fact of such assent shall be made part of the record aforesaid."

I know of no court decision in which the above section has been construed, but upon inquiry from the Clerk of the Court of Common Pleas of Baltimore City, I find that it has been the uniform practice of this official to accept the assent of the step-parent of the minor in cases where there is a step-parent, where such step-parent has exercised parental authority over the minor for a substantial period of time.

There are no exceptions in the statute, and where there is neither parent, step-parent nor guardian, I believe that a guardian should be appointed and that the assent of that guardian should be obtained before the license is issued. Letters of guardianship may be obtained promptly and with little expense, and it would certainly be more desirable for applicants in this class of cases to comply with the letter of the statute.

With kind regards and best wishes, believe me,

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

LICENSES—HAWKERS AND PEDDLERS—SELLER OF PECANS IN
PACKAGES REQUIRED TO OBTAIN LICENSE.

October 29, 1930.

*Eugene Talmadge, Esq.,
Commissioner of Agriculture,
Atlanta, Ga.*

DEAR SIR: At the request of Dr. R. A. Pearson, I am replying to your inquiry of October 18th, addressed to him.

The question is whether an individual passing through the State of Maryland may sell pecans in packages along the route without payment of a license fee.

In my opinion, the payment of the hawkers' and peddlers' license prescribed by Sections 26 to 35 of Article 56 of Bagby's Code of 1924, would be necessary. Every hawker and peddler is required to obtain a license from each county in which sales are made, the amount of the fee being \$300.00 per county where sales are to be made from a motor vehicle of any description.

The only exception in the statute relates to "peddlers of oysters and fish in their unpreserved and natural condition, or of fruits and vegetables perishable in their nature that are sold in their natural condition in this State."

In my opinion, pecans in packages do not fall within this exception.

Very truly yours,

WM. L. MARBURY, JR., *Asst. Attorney General.*

LICENSES—STOCK BROKERS—GENERAL LAW NOT APPLICABLE TO COUNTIES OF MARYLAND.

December 8, 1930.

Mr. Frank P. Bratten,
Chief License Inspector,
Union Trust Building,
Baltimore, Md.

DEAR MR. BRATTEN: I have your letter of November 10th, requesting an opinion as to whether the National Investors Corporation of America, is required to obtain a license for the sale of its securities in this state. Before answering this inquiry, I wrote to the Corporation and find that it proposes to sell its securities in Garrett and Alle-

gany Counties, through the National Investors Sales Agency.

Since the receipt of their letter, I have examined the law further, and I am surprised to find that the general law requiring a stock broker's license is not applicable outside of Baltimore City. Unless, therefore, there is some local law in Allegany or Garrett Counties, or in the municipalities of those counties with which we are not familiar, it is apparent that no license is required either by the National Investors Corporation of America, or its sales agency, the National Investors Sales Agency, unless it should extend its operations to Baltimore City, in which event a broker's license will be required.

I am sending a copy of this letter to the National Investors Corporation of America and enclose a copy of my letter to them.

With kind regards and best wishes, I am,

Very sincerely yours,

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

MILITARY DEPARTMENT.

MILITARY DEPARTMENT—NOT LIABLE TO STATE ACCIDENT
FUND FOR COMPENSATION PREMIUMS UNDER FACTS
STATED.

May 10, 1930.

*State Accident Fund,
Equitable Building,
Baltimore, Md.*

Att. Mr. James E. Green.

GENTLEMEN: On March 6, 1930, you wrote to me requesting an opinion as to the legal liability of the Military Department of the State of Maryland to pay to the State Accident Fund the sum of \$1,650.00, on account of compensation premiums alleged to be due from July 31st, 1924, up until May 31st, 1927.

A copy of your letter was sent to Brigadier General Reckord for a statement of the position of his department with reference to this claim, and since that time I have had considerable correspondence with General Reckord, one or two personal conferences with him, as well as a number of telephone conversations with you or other members of your department. The following appears to be the facts.

The General Assembly of 1924 enacted legislation by which members of the Maryland National Guard became entitled to the benefits provided by the Workmen's Compensation Law, and the policy in question was executed by the State Accident Fund in pursuance of an application made by the Military Department under authority conferred by this legislation.

The State Accident Fund has received from the Military Department a premium of \$1,500.00 under this policy, and the claim of the State Accident Fund represents the differ-

ence between this payment and the total premiums accruing between July 31st, 1924, and May 31st, 1927. Shortly after this policy became effective, a member of the Maryland National Guard, Mr. Corbin H. Merrill, was injured in line of his duty on August 5, 1924, and as a result of this injury, a question arose as to the method of determining the average weekly wage of members of the National Guard. This question was submitted to the Attorney General for an opinion, who ruled on April 21st, 1925, that the average weekly wage of a member of the Militia was $\frac{1}{52}$ of his actual wages paid by the Military Department, or \$1.70 per week. This opinion was reviewed by the courts, being sustained in the Baltimore City Court, and reversed by the Court of Appeals in the spring of 1927. By virtue of the ruling of the Attorney General and its affirmance by the Baltimore City Court, the Military Department became very much dissatisfied with the efficacy of compensation insurance as a remedy for members of the Guard who were injured in line of duty, and consequently only three claims for compensation insurance were filed against the State Accident Fund under this policy. Upon these claims the State Accident Fund has paid, according to figures obtained from your department, the total sum of \$560.33, which includes compensation and legal expenses, the medical attention having been taken care of by the Military Department.

It will be observed, therefore, that the Military Department has already paid to the State Accident Fund, almost three times as much as the State Accident Fund has been required to pay out on account of this policy, and that the State Accident Fund has derived a profit from this policy of nearly \$1,000.

In the early part of 1925, when the Military Department became dissatisfied with the very nominal compensation which members of the Guard would receive under the rulings of the Attorney General and the Baltimore City Court, it decided to make no more claims for compensation, and all members of the Guard who were injured in line of duty after that date were compensated out of other funds in the hands of the Military Department, and no additional claims

for compensation other than the three above referred to, have been made. The law by which members of the Militia were entitled to compensation, was repealed by legislation enacted at the regular session of 1927, which became effective on June 1st, 1927.

In view of the above facts, I am of the opinion that the Military Department should not be required to pay any additional premiums to the State Accident Fund, and I therefore recommend that your claim against this department be cancelled.

Very truly yours,

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

MOTHERS' RELIEF.

MOTHER'S RELIEF—WHEN SUCH RELIEF MAY BE GRANTED.

April 15, 1930.

*H. Courtenay Jenifer, Esq.,
States' Attorney,
Towson, Maryland.*

MY DEAR MR. JENIFER: In your letter of April 9th, you request an opinion as to whether a mother who has \$235.00 in cash, is eligible for the relief provided by Sections 21 to 31, inclusive, of Article 88-A of the Code of Public General Laws, entitled "Mothers' Relief."

Your inquiry involves an interpretation of a provision contained in Section 22, under sub-title "conditions for relief," which reads as follows:

"A mother shall not receive such relief who is the owner of real property or personal property other than the household goods."

Upon a careful consideration of all of the provisions of the statute, it is clearly apparent that the Legislature intended that this relief should not be granted except in those cases where the mother is found to be destitute of all means except the household goods. The word "property" as used in Section 22, necessarily includes money. See Volume 6, "Words and Phrases," page 5717.

As a practical matter, it seems to me that in those cases where the applicant has a small sum of money, the ownership of the money would not preclude the filing of the application and its investigation and consideration by the County Commissioners before this money has been entirely exhausted.

In their decision upon the application, the Board might provide that the payment of the relief granted would begin upon the exhaustion of the available cash belonging to the mother, and thus gratify the provisions of Section 22 above quoted. By following this course, the mothers who are lawfully entitled to the relief will be able to obtain the same promptly, and avoid the hardships that would result from requiring them to delay the filing of the application until their last dollar had been exhausted.

To make the investigation and hold the hearing contemplated by the statute necessarily requires considerable time in each case, and in order to avoid the delay that would otherwise result in providing assistance for the destitute mother, I suggest that the course above indicated be pursued.

With kind regards, I am,

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

MOTOR VEHICLES.

MOTOR VEHICLES—GRATUITOUS MARKERS SHOULD BE ISSUED FOR VEHICLES USED FOR THE IMPROVEMENT AND MAINTENANCE OF THE STREETS OF EAST RIVERDALE, PRINCE GEORGE'S COUNTY.

February 25th, 1930.

*Colonel E. Austin Baughman,
Commissioner of Motor Vehicles,
Baltimore, Maryland.*

DEAR COLONEL BAUGHMAN: Receipt is acknowledged of your letter of the 19th inst., requesting me to advise you whether you are authorized to issue identification markers, without requiring the payment of registration fees, for certain motor vehicles used for the improvement and maintenance of the streets and roads of East Riverdale, an unincorporated town of Prince George's County.

After carefully considering the provisions of Section 174 of Article 56 of the Code, exempting public vehicles from the provisions of the law requiring the payment of registration fees, I have come to the conclusion that the vehicles in question come within both the letter and spirit of that section, and I, therefore, believe you should issue the markers free of charge.

Yours very truly,

HERBERT LEVY, *Asst. Attorney General.*

MOTOR VEHICLES—METHOD OF DISPOSING OF VEHICLES
CONFISCATED UNDER THE LOCAL OPTION LAW OF
MONTGOMERY COUNTY.

March 18, 1930.

Col. E. Austin Baughman,
Commissioner of Motor Vehicles,
Baltimore, Md.

DEAR COLONEL BAUGHMAN: Receipt is acknowledged of your letter of the 13th instant, in which you request my opinion as to the proper method of disposing of motor vehicles confiscated under the local option law of Montgomery County.

By Section 391-A of Article 16 of the Code of Public Local Laws of Maryland, as enacted by Chapter 117 of the Acts of 1927, it is provided as follows:

“ * * * * Any automobile or other vehicle in which intoxicating liquor shall have been found in violation of any section of this act, shall be forfeited to the County and disposed of in accordance with the order of the Court having jurisdiction to try violations of this act. The Court is hereby authorized in its discretion to * * * direct the sale of such (automobiles or other vehicles) by the Chief of Police of Montgomery County, and the payment of the proceeds of said sale to the County Commissioners for Montgomery County for the use of the County.”

By Chapter 320 of the Acts of 1929, the Chief of Police of Montgomery County is authorized and empowered to sell abandoned, stolen or lawfully seized motor vehicles held in the possession of the Montgomery County police, and the question which now arises is whether motor vehicles confiscated under the provisions of Section 391-A of Article 16 of the Code of Public Local Laws of Maryland, must be sold

pursuant to the provisions of Chapter 320 of the Acts of 1929.

The Act of 1929 applies to motor vehicles "remaining unclaimed for sixty days or more in the possession or under the control of the Montgomery County Police," whereas the motor vehicles sold under the provisions of the Act of 1927 are in the possession and under the control of the court which orders the confiscation, and the Chief of Police of Montgomery County is merely the officer of the court authorized by law to make the sale.

It follows that in the case of motor vehicles confiscated under the local option law, the method of conducting and the terms of the sale must be determined by the court which orders the confiscation, and the Act of 1929 is therefore inapplicable.

In issuing titles to motor vehicles so sold, you should require the order of the court to be filed with the application for title, and should satisfy yourself that all of the terms of said order have been fully complied with.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

MOTOR VEHICLES—TRAFFIC COURT OF BALTIMORE CITY—
HAS NO JURISDICTION OVER VIOLATIONS OF REGULA-
TIONS RELATING TO "FOR RENT CARS," CODIFIED AS
SECTIONS 187-A—187-H OF ARTICLE 27 OF THE CODE.

March 20th, 1930.

Col. E. Austin Baughman,
Commissioner of Motor Vehicles,
Baltimore, Md.

DEAR COLONEL BAUGHMAN: I am in receipt of your letter of the 18th inst., in which you request me to advise you

whether the Traffic Court has jurisdiction over offenses arising under the provisions of Chapter 533 of the Acts of 1927, codified as Sections 187-A—187-H (both inclusive) of Article 27 of the 1929 Supplement of the Annotated Code of Maryland.

The jurisdiction of the Traffic Court is defined by Section 205 of Article 56 of the 1929 Supplement of the Annotated Code of Maryland as follows:

“Said Traffic Court shall have exclusive jurisdiction within the City of Baltimore to hear and determine all complaints of violations of the Motor Vehicle Laws of the State, and shall have exclusive jurisdiction where jurisdiction now or may hereafter be given to any Justice of the Peace in Baltimore City to try or commit for trial any person accused of violating any of the traffic ordinances of Baltimore City, and shall have concurrent jurisdiction with Justices of the Peace, committing magistrates or police justices throughout the State outside of Baltimore City, to hear and determine all complaints of violations of the Motor Vehicle Laws of the State in those cases where it is convenient for the accused to have such complaint heard and determined in Baltimore City. The jurisdiction, powers and duties heretofore vested in and required of Justices of the Peace in Baltimore City under Section 204 of this sub-title shall hereafter be exclusively vested in and required of the Justices of the Peace of the Traffic Court.”

Chapter 533 of the Acts of 1927 cannot be regarded as one of the motor vehicle laws of this State within the meaning of the above quoted provisions of Section 205 of Article 56. It is codified under the title “Crimes and Punishments,” sub-title “Fraud-By Hirers,” and although it regulates the use of the so-called “for-rent cars,” there is nothing either in the title or the body of the act to indicate that it was intended to be made a part of the motor vehicle code.

In fact, Section 187-H expressly negatives this intent. It provides as follows:

“Whenever complaint is made of a violation within the City of Baltimore of any of the provisions of any of the sections of this sub-title, the justice of the peace having criminal jurisdiction before whom such complaint is brought shall have jurisdiction to hear and determine such complaint, and in the event of conviction, to impose penalties, fine or imprisonment, or both, as prescribed in this sub-title, but any person so convicted shall have the right of appeal to the Criminal Court of Baltimore City, provided that the appeal be taken within ten days from the date of judgment and sentence, and the Criminal Court, on such appeal, shall hear and determine the case de novo. In all such appeals the procedure as to bail, trial and appeal shall be the same as provided in Section 204 of Article 56 of the Annotated Code for the disposition of cases arising in Baltimore City under the Motor Vehicles Laws.

This language clearly indicates that jurisdiction over violations of the law within the City of Baltimore shall be vested in the Justices of the Peace having general criminal jurisdiction, and not in the Justices of the Peace constituting the Traffic Court, whose jurisdiction is limited to offenses arising under the motor vehicle laws of this State.

I am returning the correspondence enclosed in your letter.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

MOTOR VEHICLES — POLICE JUSTICE OF MONTGOMERY COUNTY—HAS NO POWER TO SUSPEND SENTENCES IN MOTOR VEHICLE CASES.

March 22nd, 1930.

*Col. E. Austin Baughman,
Commissioner of Motor Vehicles,
Baltimore, Maryland.*

DEAR COLONEL BAUGHMAN: Receipt is acknowledged of your letter of the 19th inst., requesting me to advise you whether the Police Justice of Montgomery County has the power to suspend the operation of sentences imposed by him in cases involving violations of the general motor vehicle law.

You refer to my opinion of February 6, 1928, reported in 13 Op. A. G. at pages 178-181, in which I held that the Judge of the Peoples' Court at Salisbury could not suspend sentence in motor vehicle prosecutions, and you ask me whether that ruling applies to the Police Justice of Montgomery County.

In my opinion there is no difference between the two cases. For the reasons set forth in my former opinion, I do not believe that the provision in the local law (Section 4 of Chapter 321 of the Acts of 1927), vesting in the Police Justice of Montgomery County "the power in any and all cases to suspend the operation of any sentence for such time as he may see fit," can properly be construed to apply to motor vehicle prosecutions.

But even if it could be so construed, it must give way to the general law, which was enacted later. Sections 171 and 171-A of Article 56, under which the provisions of the general motor vehicle law are made exclusive of all public local laws covering the same subject matter, were repealed and re-enacted by Chapter 319 of the Acts of 1929, and must therefore be held to take precedence over the earlier local

law, even if it be assumed that the two statutes are in conflict.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

MOTOR VEHICLES—FIRE DEPARTMENT VEHICLES—SPECIAL PRIVILEGES UNDER ARTICLE 56, SECTION 209—WHEN APPLICABLE UPON RETURN FROM FIRE CALL.

April 5th, 1930.

Col. E. Austin Baughman,
Commissioner of Motor Vehicles,
Baltimore, Md.

DEAR COLONEL BAUGHMAN: Receipt is acknowledged of your letter of the 3rd inst., requesting me to advise you whether the provisions of Section 209 of Article 56 of the 1929 Supplement of the Annotated Code of Maryland, relating to fire department vehicles, are applicable to such vehicles upon their return from a fire call.

The statute in question consists of five separate and distinct regulations, only three of which are here pertinent, viz:

(1) "The operator of a vehicle upon a highway shall yield the right of way to ambulances and police and fire department vehicles when the latter are operated upon official business and the drivers thereof sound audible signal by bell, siren or exhaust whistle."

(2) "Upon the approach of any ambulance or police or fire department vehicle giving audible signal by bell, siren or exhaust whistle, the operator of every other vehicle shall immediately drive the same to a position as near as possible and parallel to the right-hand edge or curb of the highway, clear of any intersection of highways, and shall

stop and remain in such position unless otherwise directed by a police or traffic officer until the ambulance, police or fire department vehicle shall have passed."

(3) "It shall be unlawful for the operator of any vehicle other than one on official business to follow any fire apparatus traveling in response to a fire alarm closer than 600 feet * * * * ."

(1) The right-of-way provision applies "to fire department vehicles when * * * * operated upon official business." In my opinion, such vehicles are "operated upon official business" whether they are traveling in response to a fire alarm or returning from a fire call. It is equally important that such vehicles be returned to their stations with despatch and thereby be prepared to respond to another emergency, as it is for them to reach the scene of the fire without delay, and it was undoubtedly with this thought in mind that the legislation was framed so as to apply to the return trip.

(2) What is said as to the right-of-way provision applies with equal force to the regulation requiring other vehicles, upon the approach of a fire department vehicle, to stop until the fire department vehicle shall have passed.

(3) However, the prohibition against other vehicles following fire department vehicles closer than 600 feet is by its express terms confined to "fire apparatus traveling in response to a fire alarm."

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

MOTOR VEHICLES—ORDINANCES OF RIVERDALE REGULATING
PARKING, VALID—ORDINANCES RELATING TO DISPLAY
OF LIGHTS INVALID.

August 18th, 1930.

*Harry K. Clare, Esq.,
Justice of the Peace,
Riverdale, Prince George's County, Md.*

DEAR SIR: I hereby acknowledge receipt of your letter of the 16th inst., addressed to the Attorney General, enclosing copy of the town ordinance of Riverdale, relating to parking and the display of lights on parked vehicles.

I see no objection to the provisions which relate to parking, but inasmuch as the general law provides for the display of lights, the local ordinance must give way to the general law with respect to that subject. Therefore, violations for the failure to display lights should be prosecuted under the general law and not under the local ordinance.

Yours very truly,

HERBERT LEVY, *Asst. Attorney General.*

MOTOR VEHICLES—PRIORITY AS BETWEEN CONDITIONAL SALE
CONTRACTS, ETC., AND LIEN FOR REPAIRS, STORAGE,
ETC.—DUTY OF COMMISSIONER OF MOTOR VEHICLES TO
REGISTERED LIEN HOLDERS.

September 3rd, 1930.

*Col. E. Austin Baughman,
Commissioner of Motor Vehicles,
Baltimore, Md.*

DEAR COLONEL BAUGHMAN: In your letter of the 29th ulto., you ask me to advise you, first, whether the "rights

of the holders of conditional sale contracts, bills of sale, chattel mortgages or other liens or claims of any kind," upon motor vehicles, are superior to the lien for repair, rebuilding, storage, etc., given by Chapter 417 of the Acts of 1924, codified as Sections 54-58, both inclusive, of Article 63 of the Code of 1924, and commonly known as the "Automobile Mechanics' Lien Law."

This question is answered specifically by Section 54 of the law, which provides that "said lien shall be *superior* to the rights of the holders of conditional sale contracts, bills of sale, chattel mortgages or other liens or claims of any kind which *are not theretofore* executed and recorded or filed for record as required by law, but shall be *subordinate* thereto where the same *have been theretofore* executed and recorded as required by law.

See: *Goldenberg vs. Federal Finance and Credit Co.*,
150 Md. 298.

You also ask whether before issuing a certificate of title for a motor vehicle sold under the provisions of the said "Automobile Merchants' Lien Law," you are required to mail a notice to the holder of a prior conditional sale contract, bill of sale, chattel mortgage, or other lien or claim (duly executed and recorded or filed for record), or whether it is your duty to see that said prior lien is paid or satisfied.

I know of no provision of law which imposes either of these obligations upon you. Your duty is entirely fulfilled if the new certificate of title which you issue shows on its face that it is subject to the prior lien.

However, as a matter of policy, it seems to me that the mailing of a notice to the holder of a prior lien would serve a very useful purpose, in that it would give notice to such prior lien-holder of the change in the title of the motor vehicle upon which his lien exists. I would therefore suggest that you mail such a notice contemporaneously with the issuance of the certificate.

Yours very truly,

HERBERT LEVY, *Asst. Attorney General.*

MOTOR VEHICLES—PROSECUTIONS—JURY TRIAL—VALIDITY
OF PROCEDURAL PROVISIONS NOT AFFECTED BY SUPREME COURT
DECISION IN DISTRICT OF COLUMBIA VS. COLTS.

December 10th, 1930.

Col. E. Austin Baughman,
Commissioner of Motor Vehicles,
Baltimore, Md.

DEAR COLONEL BAUGHMAN: I am in receipt of your letter of the 2nd inst., enclosing a copy of the opinion of the Supreme Court of the United States in the case of *District of Columbia, Petitioner, vs. William H. Colts* (No. 96, October Term, 1930).

It was there held that the District of Columbia Traffic Act, in so far as it denies to persons accused of the more serious motor vehicle violations, was in conflict with Article III, Sec. 2, Cl. 3 of the Federal Constitution, which provides that "the trial of all crimes, except in cases of impeachment, shall be by jury."

You ask me to advise you whether this decision would affect the validity of any of the provisions of the general motor vehicle law of this State. I do not think so.

While the decision of the Supreme Court might be persuasive in the absence of an adjudication upon the subject of our own Court of Appeals, it is not controlling with respect to the legislation of this State, because the Supreme Court was dealing with a provision of the Federal Constitution which relates exclusively to Federal action. In other words, Article III, Sec. 2, Cl. 3 is a limitation upon the power of Congress to create offenses within the scope of Federal legislative authority, and has no application whatsoever to the trial of offenses created by the States.

Moreover, it seems to me that our Court of Appeals has expressly recognized the validity of the procedural provisions of our motor vehicle law.

In *Crichton vs. State*, 115 Md. 423, which dealt with the provisions relating to the speed of motor vehicles, in the motor vehicle code of 1910, the Court said (p. 427) :

“It may also be well to remark before considering the particular grounds relied on by the appellant that in the brief filed on his behalf it is said: ‘It is undisputed, upon the authority of leading Maryland cases, to go no further, that the Legislature may, constitutionally “confer summary jurisdiction upon a justice of the peace to try and convict a party for an offense” of a certain “minor character”—citing *State vs. Glenn*, 54 Md. 572; *Kane vs. State*, 70 Md. 546; *Danner vs. State*, 89 Md. 220; *Lancaster vs. State*, 90 Md. 211, and *State vs. Ward*, 95 Md. 118. As those decisions and others which might be cited conclusively establish the power of the Legislature of this State to confer jurisdiction upon justices of the peace to hear and determine cases similar to these, especially when the right of appeal is given to Courts where jury trials can be had, as is done by this statute, and as that power is not denied, it will be unnecessary for us to further discuss the constitutionality of such a law.”

And in the later case of *Dougherty vs. Superintendent of the Maryland House of Correction*, 144 Md. 204, the Court of Appeals upheld the validity of the procedural provisions relating to another serious traffic offense created under the so-called “Title Registration Act” (Chap. 407, Acts of 1920), now codified as Section 202 of Art. 56.

It will be observed that in both of the above cases the Court of Appeals laid stress upon the fact that the exclusive original jurisdiction of the justices of the peace is coupled with the right of appeal and the right of a jury trial upon such appeal.

It does not appear from the opinion in *District of Columbia vs. Colts* whether the District of Columbia Traffic

Act provided for an appeal and the right to a jury trial upon such appeal, but if it did not contain such a provision that would seem to be a valid ground of distinction between the District of Columbia and the Maryland statutes.

In any event, I think it is clear, under the Maryland authorities, which alone are applicable to the question, that the motor vehicle laws of this State are not in conflict with the provisions of Article XXI of the Declaration of Rights of the Maryland statute which guarantees a jury trial in all criminal prosecutions; and I am also of the opinion that the decision of the Supreme Court in *District of Columbia vs. Colts* does not render our laws invalid under the provisions of the Federal Constitution.

Yours very truly,

HERBERT LEVY, *Asst. Attorney General.*

OFFICERS.

OFFICERS—NOTARY PUBLIC MAY NOT SERVE AS DEPUTY
REGISTER OF WILLS.

April 11, 1930.

Wm. P. Lane, Jr., Esq.,
Attorney at Law,
Hagerstown, Md.

MY DEAR MR. LANE: I have your letter of April 1st, in which you request an opinion as to whether a Deputy Register of Wills may lawfully hold the office of a Notary Public without violating the provisions of Article 35 of the Declaration of Rights of Maryland, by which it is provided that no person shall hold at the same time more than one office of profit created by the Constitution or laws of this State.

Section 45 of Article IV of the Maryland Constitution provides for the appointment of Notaries Public, for such purposes and with such powers as may be prescribed by law.

Section 1 of Article 68 of the Code of Public General Laws provides that the Notary shall take an oath of office before the Clerk of the Circuit Court and shall receive a commission signed by the Governor and Secretary of State. By Section 2 of the same Article, it is provided that the Notary shall give bond for the faithful performance of his or her duties. Other provisions are made for the fees which the Notary is authorized to charge, and in my opinion, a Notary Public is clearly an officer of profit and trust within the meaning of Section 35 of the Declaration of Rights.

The office of Register of Wills is also clearly an office of profit and trust, and inasmuch as the Deputy Register of Wills receives a salary and is authorized "to act in the place and stead of the Register of Wills," it seems clear that the

Deputy Register of Wills also occupies an office of profit and trust within the meaning of Section 35.

I am of the opinion, therefore, that the same person may not at the same time hold the office of Notary Public and that of Deputy Register of Wills.

With kind regards and best wishes, I am,

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

OFFICERS—COUNTY COMMISSIONERS—A COMMISSIONER WHO IS IN OFFICE BY APPOINTMENT TO FILL OUT AN UNEXPIRED TERM MAY BECOME CANDIDATE AT ENSUING ELECTION IN PRINCE GEORGE'S COUNTY.

August 6, 1930.

Clarence M. Roberts,
426 Fifth Street, N. W.,
Washington, D. C.

DEAR MR. ROBERTS: In your letter of August 4th, 1930, you request an opinion as to whether a County Commissioner who is now holding office under an appointment of the Governor to fill out the unexpired term of a deceased County Commissioner, is eligible as a candidate for the office which he holds, in the coming primary election.

Section 86-B of Chapter 312 of the Acts of Assembly of 1892, provides with respect to the County Commissioners for Prince George's County, that "the said County Commissioners shall not be eligible for re-election until not less than two years from the expiration of their term of office respectively."

The Commissioner to whom you refer is not in office by virtue of an election and therefore not a candidate for *re-election*, within the meaning of this statute. There is no prohibition against the election of a person who has been

appointed to fill out an unexpired term, and in my opinion, the Commissioner to whom you refer is eligible as a candidate for the office which he holds, in the coming primary election.

This opinion is in conformity with an opinion of Attorney General Armstrong, rendered on July 18th, 1923, in which he advised that the Governor's appointee as Sheriff to fill an unexpired term was eligible as a candidate to succeed himself. See Volume 8, Report and Official Opinions of Attorney General, page 151.

With kind regards and best wishes, believe me,

Very sincerely yours,

THOMAS H. ROBINSON, *Attorney General.*

OFFICERS—JUDGE OF ORPHANS' COURT MAY NOT HOLD COMMISSION AS NOTARY PUBLIC.

November 29, 1930.

Hon. C. D. Carpenter,
Pisgah, Md.

DEAR SIR: Mr. Wm. Preston Lane, Jr., has referred to me your letter of November 24th, in which you desire to know whether it will be necessary to resign your commission as Notary Public before accepting a commission as a Judge of the Orphans' Court.

Article 33 of the Declaration of Rights provides that no Judge shall hold any other office, civil or military, or political trust, or employment of any kind whatsoever, under the Constitution or Laws of this State, or of the United States, or any of them; or receive fees, or perquisites of any kind, for the discharge of his official duties. Article 35 further provides that no person shall hold at the same time more than one office of profit created by the Constitution or Laws of this State.

In my opinion it would be a violation of both of these Articles for you to hold the position of Notary Public as well as that of Judge of the Orphans' Court.

Section 45 of Article IV of the Maryland Constitution provides for the appointment of Notaries Public, for such purposes and with such powers as may be prescribed by law.

Section 1 of Article 68 of the Code of Public General Laws, provides that the Notary shall take an oath of office before the Clerk of the Circuit Court and shall receive a commission signed by the Governor and Secretary of State. By Section 2 of the same Article, it is provided that the Notary shall give bond for the faithful performance of his or her duties. Other provisions are made for the fees which the Notary is authorized to charge, and in my opinion, a Notary Public is clearly an officer of profit and trust within the meaning of Section 35 of the Declaration of Rights.

Of course, there can be no doubt that a Judge of the Orphans' Court comes within the provisions of Article 33 and Article 35. I am of the opinion, therefore, that it will be necessary for you to resign your position as Notary Public before a commission as Judge of the Orphans' Court may be issued to you.

Very truly yours,

WM. L. MARBURY, JR., *Asst. Attorney General.*

OFFICERS—STATE SENATOR MAY CONTINUE AS MEMBER OF
COUNTY BOARD OF EDUCATION.

December 18th, 1930.

*William H. Price, Esq.,
Staton, Whaley & Price,
Snow Hill, Md.*

DEAR SIR: You ask whether the Honorable Milton L. Veasey, recently elected State Senator from Worcester

County, may continue as a member of the Board of Education of that County in view of the provisions of Art. 35 of the Declaration of Rights, that no person shall hold at the same time, more than one office of profit, created by the Constitution or Laws of this State. You call my attention to a ruling of Attorney General Robinson, reported in 13 Op., A. G. 210, in which it was held that a member of a County Board of Education is not the holder of an office of profit within the meaning of Art. 35.

In my opinion this ruling is controlling, and I think you may properly advise the Board that Mr. Veasey may legally continue as a member notwithstanding his election to the State Senate.

Very truly yours,

WM. L. MARBURY, JR., *Asst. Attorney General.*

OPTOMETRY.

OPTOMETRY—POWER OF BOARD OVER OPTOMETRISTS POSSESSING CERTIFICATES OF REGISTRATION.

January 27th, 1930.

Dr. J. Fred Andreae,
Secretary, Board of Examiners in Optometry,
Lexington Building,
Baltimore, Md.

DEAR SIR: Your letter of January 23rd, 1930, addressed to Mr. Robinson, has been referred to me for reply. The only powers which your Board may exercise over persons who have received certificates of registration as provided for by Article 43, Section 317, Bagby's Code 1924 (Section 7, Chapter 652, of the Acts of 1914) are set forth in Section 323 of Article 43, Bagby's Code 1924. Provision is there made for the revocation of any certificate of registration, because of the gross incompetency of the holder thereof to practice optometry. This language must be construed in relation to the provisions of Section 317, permitting the granting of certificates of registration.

Obviously, it is not possible to give a categorical reply to your questions as the matter is one pre-eminently for the determination of experts. If any holder of a certificate of registration is deemed to be grossly incompetent by the Board, there is no reason why they should not proceed in accordance with Section 323. However, the mere fact that the holder of the certificate has not had certain educational advantages now required by the Board would not appear to justify a finding of gross incompetency.

Yours very truly,

WM. L. MARBURY, JR., *Asst. Attorney General.*

OPTOMETRY—BOARD OF EXAMINERS WITHOUT POWER TO RE-
FUND LICENSE FEE.

December 8, 1930.

*Dr. J. Fred Andreae,
Lexington Building,
Baltimore, Md.*

DEAR DR. ANDREAE: I have your letter of December 6th, 1930, in which you inquire whether you have authority to refund a license fee of \$5.00 paid to your Board for a license to practice optometry for the year beginning September 30th, 1930, the licensee having died on October 10th, 1930.

Section 314 of Article 43 of Bagby's Code, 1929 Supplement, provides:

"All monies received in excess of such compensation and mileage as before provided for, shall be held by the State Treasurer as a special fund for meeting expenses of such Board and carrying out the provisions of this sub-title."

Manifestly, the refund of legally collected licenses is not an expense of the Board, nor does it tend to carry out the provisions of the law. In my judgment, the State Treasurer would not be authorized to make payment of the money in question to you for any such purpose as suggested in your letter. Accordingly, it is impossible for you to refund the license fee in question.

Very truly yours,

WM. L. MARBURY, JR., *Asst. Attorney General.*

ORPHANS' COURT.

ORPHANS' COURTS—DISTRIBUTION OF ESTATE—GROUND RENTS ARE REAL ESTATE AND PASS BY INHERITANCE AS SUCH.

February 8, 1930.

*Perrie E. Waters, Esq.,
Register of Wills,
Rockville, Md.*

DEAR MR. WATERS: In your letter of February 7th, 1930, you state that the will of Martha N. Vickers, of Sandy Spring, has been admitted to probate in the Orphans' Court for your County, and that the testatrix owned a ground rent in Baltimore City. You request an opinion as to whether this ground rent should be treated as real or personal property.

A ground rent is treated as real estate in the distribution of estates.

Very truly yours,

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

ORPHANS' COURT—DISTRIBUTION OF ESTATES—CHILDREN OF FIRST COUSINS NOT ENTITLED TO SHARE IN DISTRIBUTION.

March 5th, 1930.

*Hon. J. Irwin Harwood,
Register of Wills,
Denton, Md.*

DEAR SIR: In your letter of March 3rd, you request an opinion concerning the distribution of an estate where the

decedent left surviving him no issue, father, mother, brother, sister or descendants of either brother or sister, but did leave surviving him first cousins and children of deceased first cousins. You desire to know whether the children of the deceased first cousins take by representation the share which their parent would have taken had they survived the decedent.

The answer to this question is found in the provisions of Section 135 of Article 93, which reads:

“After children, descendants, father, mother, brothers and sisters of the deceased, the child or children, grandchild or grandchildren of brothers and sisters of the deceased and their descendants, all collateral relations in equal degree shall take, and no representation amongst such collateral shall be allowed, and there shall be no distinction between the whole and half blood.”

This section of the law was under consideration by the Court of Appeals in the case of *Suman vs. Harvey*, 114 Md. at page 241, where it was said at page 259:

“As the children of the first cousins of the testatrix are more remotely related to her than her first cousins, and as such children cannot take by representation, it follows that if Mrs. Harvey had died intestate, they would not have been entitled to any part of her real or personal estate.”

Although Section 135 has been amended by the Legislature since the decision of the Court of Appeals in this case, the amendment does not affect the question which you present.

It is quite clear, therefore, that the children of the deceased first cousins of the decedent, are not entitled to share in the distribution of the estate.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

ORPHAN'S COURTS—WIDOW OF A DECEASED BROTHER OF A
DECEDENT IS NOT ENTITLED TO SHARE IN THE DISTRIBUTION
OF AN ESTATE.

June 24th, 1930.

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

DEAR SIR: In your letter of June 20th, you state that Nathaniel Phillips died on the 11th day of June, 1930, leaving as his heirs and next of kin certain children of deceased brothers. You further state that a widow of a deceased brother survived the testator, and request an opinion as to whether this widow is entitled to share in the estate of the decedent.

The distribution of the personal estate is controlled by Section 133 of Article 93 of the Code, and the real estate descends to the same persons who are entitled to the personal estate under the provisions of Section 1 of Article 46 of the Code.

Under these two sections of the law it is quite clear that the widow of the deceased brother is not entitled to share in the estate.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

ORPHANS' COURTS—POWER TO COMPEL PROMPT ADMINISTRATION OF ESTATES DEFINED.

August 5, 1930.

*Hon. C. S. Parran,
Register of Wills,
Prince Frederick, Md.*

DEAR MR. PARRAN: In your letter of July 29th you state that the Administration Docket of the Orphans' Court for

Calvert County shows a number of cases in which no final accounting has been made by executors and administrators; that citations have been issued for the delinquents and the court has used its persuasive efforts to have these cases settled, without success. You request an opinion as to what action the court may take to compel a final accounting by the delinquents, in order that these cases may be finally closed.

Section 3 of Article 93, authorizes the court to revoke the letters of a delinquent executor or administrator, on application of any person interested in the estate, and grant administration to some other person. In proceeding under this section, it is necessary that the executor or administrator be cited and given an opportunity to be heard. The Register of Wills, as the State official charged by law with the duty of collecting State taxes, in addition to the fees of his office, is, in my opinion, an interested party within the meaning of this statute, and may, on behalf of the State, appeal to the court for a revocation of letters, under the provisions of Section 3.

You will note that Section 3 above referred to, further provides that the "administrator to whom letters may be granted shall be entitled to put the delinquent's bond in suit, and to recover such damages thereon as the jury may find, and in assessing such damages the jury shall allow such sum as will be equal to 6 per centum per annum of the amount of the inventory or inventories, from the time of the return or returns to the time of the verdict, over and beyond the damages, for such loss or injury as the estate may have sustained by the delinquent's conduct."

Section 269 of Article 93, authorizes the Orphans' Court, ex officio, to revoke the letters of a delinquent executor or administrator after citation and an opportunity to be heard, and upon such revocation to appoint another person to administer the estate. For some reason, this section contains a provision to the effect that no executor or administrator can be summoned ex officio, after more than three years have elapsed since his default. In view of this provision, this section cannot be relied upon as authority for ex officio

action by the court in those cases where the default has continued for more than three years.

Additional statutory powers are conferred upon the court by Section 243 of Article 93. It is there provided that the court shall have full power to "direct the conduct and accounting of executors and administrators, superintend the administration of estates of intestates, secure the rights of orphans and legatees, and administer justice in all matters relating to the affairs of deceased persons."

In the light of the above provisions of law, it is very clear that the various Orphans' Courts of this State are fully authorized to compel the administration of estates in their respective jurisdictions.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

ORPHANS' COURTS—RESIDENT OF WEST VIRGINIA CANNOT
ACT AS EXECUTOR OF THE ESTATE OF A DECEASED RESI-
DENT OF MARYLAND.

September 26, 1930.

Hon. E. E. Friend,
Register of Wills,
Oakland, Md.

DEAR MR. FRIEND: In your letter of September 3rd you state that a deceased testator who was a resident of Garrett County, by his will appointed his two sons as the executors of his estate; that one of his sons is a resident of West Virginia and you request an opinion as to whether the non-resident son may qualify as co-executor by reason of the provisions of Chapter 341 of the Acts of Assembly of 1929, reading as follows:

"Any person residing in any other State, which by its laws denies to residents of Maryland the

right to act or to qualify as a personal representative of a deceased resident of such State at the time of his death shall not be appointed or allowed to qualify as the personal representative of a deceased resident of this State at the time of his death."

Promptly after the receipt of your letter, we communicated with the Attorney General of West Virginia to ascertain the law of that State on this subject. We are now advised by that official that in West Virginia no person not a resident of that State "shall be appointed or act as such personal representative, *unless the deceased be a non-resident of the State at the time of his death, and names in his will a non-resident as his executor.*"

In the light of this provision contained in the statutes of West Virginia, it is clear that a resident of Maryland would not be permitted to qualify as executor or co-executor of the estate of a deceased resident of West Virginia. In order to give effect to Chapter 341 of the Acts of Assembly of this State of 1929, I must advise you that the son of the testator who is a resident of West Virginia is not eligible to qualify as co-executor of the estate of his deceased father who was a resident of Maryland.

Very truly yours,

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

ORPHANS' COURTS—SPECIFIC LEGACIES—INCOME FROM,
SUBSEQUENT TO DEATH OF DECEDENT GO TO LEGATEE.

November 19, 1930.

*Hon. Robert J. McCauley,
Register of Wills,
Elkton, Md.*

DEAR MR. MCCAULEY: In your letter of November 14th you request an opinion as to whether the income upon a

specific bequest of stocks and bonds to a certain legatee, which accrues between the date of death of the testator and the date of distribution, belongs to the legatee or to the estate.

The Maryland Law of Executors and Administrators, by Alfred Bagby, Jr., sets forth the law with respect to your inquiry at page 124, as follows:

“Although the income from all the personal estate is subject to the payment of debts, if necessary, the income and increment of specific legacies from the death of the testator ordinarily belong to the legatees thereof, when the debts can be satisfied from some other source, because such legacies are considered as separated from the general estate and appropriated for the benefit of the legatees thereof at the time of the testator’s death.”

In support of the above statement of the law, the author cites among others, the case of *Harrison vs. Denney, Trustee*, 113 Md., where the court said:

“If these were specific legacies the income and increment would go to the legatees from the death of the testatrix.”

You are therefore advised that the income accruing upon a specific legacy after the death of the testator, belongs to the legatee when the debts of the testator can be satisfied from other sources.

Yours very truly,

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

PAROLE COMMISSIONER.

PAROLE COMMISSIONER—PERSON PAROLED ON CONDITION THAT HE LEAVE THE STATE MAY BE COMPELLED TO RETURN TO THE INSTITUTION FOR VIOLATION OF PAROLE.

February 6th, 1930.

*Hon. Ambrose J. Kennedy,
Parole Commissioner,
Morris Building,
Baltimore, Md.*

DEAR MR. KENNEDY: In your letter of January 23rd you request an opinion as to whether a prisoner, who has been paroled on condition that he live in another State, may be compelled, upon violation of his parole, to return to Maryland and complete the sentence imposed upon him.

The authority for the granting of paroles or conditional pardons is conferred by Section 51 of Article 41 of the Code of Public General Laws. It is specifically provided that the Governor may grant these conditional pardons "on such conditions as he may prescribe." By Section 52 of the same Article, it is provided that the Governor shall be the sole judge of whether or not the conditions of the pardon have been breached, and that his determination of this question is final and not subject to review by the Courts. Section 53 authorizes the Governor to revoke the conditional pardon on breach of any of its conditions, and upon such revocation the person in question "shall be required, unless otherwise ordered by the Governor, to serve the unserved portion of the sentence originally imposed upon him."

Under the statutes above referred to, the Governor is empowered to grant a conditional pardon upon the condition that the person affected thereby shall reside in another State, and upon a breach of that condition the Governor is likewise authorized to revoke the conditional pardon. Upon

such revocation, the party in question is required to return to the institution to serve the unserved portion of the sentence imposed upon him, unless otherwise ordered by the Governor.

If the prisoner should fail to return voluntarily, he becomes a fugitive from justice, and in my opinion, may be compelled to return to Maryland in compliance with the laws of this State, and if necessary extradition may be resorted to to accomplish this purpose.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

POLICE.

POLICE—POWERS OF POLICE OFFICERS OF TOWN OF EASTON.

June 12th, 1930.

*Edward T. Miller, Esq.,
Town Attorney,
Easton, Maryland.*

DEAR MR. MILLER: In your letter of the 4th inst. as supplemented by your letter of the 10th instant, you request me to advise you whether the police officers of the town of Easton are authorized (1) to serve and execute criminal process in cases other than those arising under the town ordinances; and (2) to make arrests without a warrant for misdemeanors committed in their presence, if the offense has not been created by a municipal ordinance.

The powers of the town police are defined by Chapter 142 of the Acts of 1914, which reads, in part, as follows:

“The Chief of Police, together with such deputies or other policemen as may be appointed, shall see that all ordinances are enforced and they shall have power to arrest any person or persons for the violation of town ordinances wherein an arrest for violation is provided, and in addition thereto they shall perform such other duties as are now or may hereafter be prescribed by the laws relating to said town and by the ordinances thereof, and shall have all and the same powers and functions that constables of Talbot County now have or may hereafter possess as conservators of the peace.”

It will be observed from the above enactment that the Legislature has created for the municipality a special police force, with the power not only to enforce town ordinances,

but to "have all and the same powers and functions that constables of Talbot County now have or may hereafter possess as conservators of the peace."

The constitutional authority of the Legislature to enact such a law is clearly established by the case of *Baltimore vs. State*, 15 Md., 465.

It remains to be determined, therefore, whether constables are vested with the general power of serving and executing criminal process and of making arrests without warrant for offenses committed in their presence.

The first power is conferred specifically by Section 7 of Art. 20 of the Code of Public General Laws of Maryland, Edition of 1924; and the second power is vested in such officers by virtue of Section 42 of Art. 5 of the Constitution of this State, which declares that "constables * * * * shall be conservators of the peace."

The police officers of the town of Easton and the constables of Talbot County being vested with concurrent authority by Chapter 142 of the Acts of 1914, it follows that the powers of the town officers are not limited to cases arising under the town ordinances.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General*.

POLICE COMMISSIONER.

POLICE COMMISSIONER—DEALERS IN JUNK OR SECOND-HAND PERSONAL PROPERTY REQUIRED TO KEEP DESCRIPTION OF ARTICLES PURCHASED AND REPORT TO POLICE DEPARTMENT.

March 27, 1930.

*General Charles D. Gaither,
Police Commissioner,
Baltimore, Md.*

DEAR GENERAL GAITHER: I have your letter of March 25th in which you request an opinion as to whether a certain person is required to comply with the provisions of Ordinance of the Mayor and City Council, No. 496, approved July 19th, 1920. You state that the party in question claims to be an agent acting on behalf of a local auction house for the purpose of buying second-hand furniture. The auction house advances the purchase price and the agent is paid no regular salary, but is compensated by his principal after the furniture purchased by the agent has been disposed of.

Ordinance No. 496 referred to in your letter, contains the following provisions:

“23. Every junk dealer and dealer in second-hand personal property shall keep at his place of business a book or books in which shall be legibly written, in English, at the time of each transaction in the course of his business, an accurate account of such transaction (except as to the purchase of rags, bones, old iron and paper by junk dealers), setting forth an accurate description of the goods, articles or things purchased or received on account of money paid therefor, and the name, residence and description of the person selling or delivering the same; the said description shall con-

sist of the color, sex, approximate height and age, and any distinguishing feature of such person.”

“24. Every junk dealer and dealer in second-hand personal property shall every day, except Sunday, before the hour of 10 o'clock in the forenoon, deliver to the Chief Inspector of Police on blank forms to be prescribed and furnished by the Police Commissioner of Baltimore City, a legible and accurate description of every article or thing received by him during the business day next preceding (except as to the purchase of rags, bones, old iron or paper by a junk dealer), together with a description of the person selling or delivering the same, including the color, sex, approximate height and age, and any distinguishing features of such person.”

“25. Every person who shall be convicted of violating any of the provisions of this sub-title shall forfeit and pay a fine not exceeding fifty dollars.”

The manifest purpose of this Ordinance is to assist the Police Department in the detection and apprehension of persons who dispose of property that has been illegally acquired or sold in violation of some provision of the law. As you point out in your letter, second-hand dealers may frequently purchase second-hand furniture that has been sold on a conditional sales contract before the purchase price has been fully paid. The Ordinance in question makes no exceptions, and applies to “every junk dealer and dealer in second-hand personal property.” The fact that the principal who purchases the goods through his agent is a licensed auctioneer, does not relieve him from compliance with the provisions of this Ordinance, and under the plan of operation outlined in your letter, I am clearly of the opinion that the auctioneer in question who is buying and selling second-hand furniture must comply with the provisions of this Ordinance, or be subject to the penalties imposed for non-compliance.

You further ask whether either the auctioneer or his agent is required to obtain a junk dealer's license in accordance with the provisions of Section 234 of Article 56 of the Code of Public General Laws.

The answer to this inquiry must depend upon the character of the property which is being bought and sold by the auctioneer. The statute contains no definition as to what shall constitute a "junk dealer," but this term was defined by the Court of Appeals in the case of *State vs. Shapiro*, 131 Md., at page 174, 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.'"

Unless the auctioneer in question is buying and selling some of the articles described in the above definition, I do not think he is required to obtain a junk dealer's license.

In my opinion, second-hand furniture that is usable as furniture in the condition in which it is bought and sold, is not junk within the meaning of this statute.

I believe the above will answer your inquiry, but if you desire any further information, I shall be glad to have you call upon me.

Very truly yours,

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

POLICE COMMISSIONER—SLOT MACHINES, USABLE ONLY FOR GAMING PURPOSES, MAY BE REPLEVIED FROM POLICE COMMISSIONER, UNLESS SUCH MACHINES ARE SEIZED WHEN IN USE FOR ILLEGAL PURPOSES.

April 30th, 1930.

*Hon. Charles D. Gaither,
Police Commissioner,
Police Building,
Baltimore, Md.*

MY DEAR GENERAL GAITHER: I have your letter of April 24th with reference to the replevin case of Frank Maggio against yourself as Police Commissioner, for the recovery of two slot machines which were seized by Lieutenant Wallace and other officers of the Police Department upon the premises of Leo Flynn at 1900 W. Pratt Street, on March 23rd, 1930.

It appears that the machines in question are gaming devices. You further state that a charge was placed against Leo Flynn for setting up and maintaining a gaming device contrary to law, and this case came up for trial before Judge Albert S. J. Owens in the Criminal Court of Baltimore, Part 2, on April 7th, 1930, when Flynn was acquitted of the charge of maintaining a gaming device. You request me to advise you whether the machines should be delivered on the writ of replevin.

I have obtained from the Official Court Reporter of the Criminal Court of Baltimore, Part 2, a transcript of the testimony and decision of Judge Owens in the case against Flynn. This testimony shows that the machines were not in use at the time of their seizure, nor were they in the room where the group of men were found to be assembled. On the contrary, the men had assembled in a room on the second floor and the machines were found on the third floor in what appeared to be, according to Lieutenant Wallace, a store room. Lieutenant Wallace further testified

that no men were found in the room on the third floor where the machines were found.

Under these circumstances, I am of the opinion that your inquiry must be governed by the decision of the Court of Appeals in the case of Soper vs. Michal, 123 Md., at page 542, where the owner of certain gaming devices was permitted to replevy the same from the Police Commissioners of Baltimore City by whom, or at the direction of whom, they had been seized from a store room. In this case some of the machines were susceptible of no use except for gaming. In holding that these machines could be replevied from the Police Commissioners, the Court said at page 544:

“It is within the power of the Legislature to make the possession of gambling implements or machines an offense, as was done with regard to policy slips, game at certain seasons, and oysters below a certain size, but it has not thus far done so, and the mere possession of such a device can not, as the law stands, be deemed and treated in the criminal courts as a violation of law.”

In view of this decision by the Court of Appeals, I am of the opinion that the machines involved in the pending case are subject to an action of replevin, and that it is your duty to honor the writ by delivery of the machines to the Constable.

In what has been said, I do not mean to be understood as advising you that the Police Department may not seize gambling devices where it can be established that the articles were procured, held or used for an illegal purpose. There must, however, be more than the mere possession of the machine in order to justify a seizure or conviction. The Court of Appeals in deciding the case of Soper vs. Michal, above referred to, clearly recognized the right of the Police Commissioners to seize, hold and under certain circumstances confiscate devices of this character by the following quotation from page 545:

“In what has been said this Court must not be understood as holding that the police may not seize property for use as evidence, or that in a proper case and before a proper tribunal, they may not, upon a conviction, confiscate or even destroy the property so taken.”

With kind regards and best wishes, believe me,

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

POLICE COMMISSIONER—TAXICAB STANDS—POLICE COMMISSIONER HAS POWER TO DESIGNATE STANDS.

May 5th, 1930.

*Hon. Charles D. Gaither,
Police Commissioner,
Police Building,
Baltimore, Md.*

MY DEAR GENERAL GAITHER: I have looked into the question of your authority to designate public or private stands for hackney carriages, including taxicabs, as provided by Section 286 of the City Charter.

This provision of law was before the Court of Appeals in the case of *Swann vs. Mayor and City Council of Baltimore*, 132 Md. 256, where certain licensed operators of automobiles for hire sought to enjoin the Board of Police Commissioners from the enforcement of this section of the law, which was alleged to be invalid, null and void. The Court sustained the validity of the Act and refused to issue the injunction. Upon authority of this decision I am of the opinion that your power to designate public or private stands for taxicabs is clearly established, and that the regulations which you make in this connection will be recognized and enforced by the Courts.

Attorney General Armstrong rendered an opinion upon this subject, under date of February 2nd, 1921, which opinion is found in Volume 6 of the Report and Official Opinions of the Attorney General, at page 410.

I believe the above will answer the questions which you had in mind when I talked to you about this matter, but if you desire any further assistance from this department I shall be glad to have you command me.

Very truly yours,

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

POLICE COMMISSIONER—PISTOLS—PERSONS WHO SELL RE-
QUIRED TO REPORT TO POLICE COMMISSIONER.

September 4, 1930.

*Hon. Charles D. Gaither,
Police Commissioner,
Police Building,
Baltimore, Md.*

MY DEAR GENERAL GAITHER: In your letter of August 25th you state that a local company is engaged in the business of selling pistols; that you have a request from the police authorities of another jurisdiction for information in connection with a criminal prosecution, as to the name and address of the person to whom a particular pistol was sold by this concern. You further state that your efforts to obtain this information have been unavailing, the local company making the claim that it does a mail order business exclusively and does not keep any record of pistols they send to purchasers.

You request an opinion as to whether this concern is subject to prosecution under the provisions of Section 39 of Article 32 of the Baltimore City Code. This section

specifically requires every person before giving, loaning or selling a pistol to keep a written register of the name and residence of every person to whom a pistol is delivered, and to report all such sales to the Chief Inspector of Police of Baltimore on or before the first Tuesday in each and every month.

There is no exemption in favor of persons who carry on a mail order business, and in my opinion the company concerning which you make inquiry, is subject to the penalties provided by Section 39.

With kind regards and best wishes, I am,

Very truly yours,

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

POLICE COMMISSIONER—SPECIAL POLICE OFFICERS MAY BE APPOINTED FOR ADDITIONAL PROTECTION TO PRIVATE PREMISES.

November 17th, 1930.

*Hon. Charles D. Gaither,
Police Commissioner,
Police Building,
Baltimore, Md.*

MY DEAR GENERAL GAITHER: I have your letter of November 12th stating that you have an application from Mr. Reginald Winans Hutton for appointment as a special officer of police in the protection of the estate known as "Crimea," which I understand is located in Baltimore City. You further state that Mr. Hutton has heretofore been appointed as a special officer for duty on or about this property under application of his mother, Mrs. C. M. Hutton, who then owned the property. It appears that Mr. Hutton now owns the property and you request me to advise you whether he may be appointed under the provisions

of Chapter 471 of the Acts of Assembly of 1906, which read as follows:

“Section 1. Be it enacted by the General Assembly of Maryland that the Board of Police Commissioners for the City of Baltimore be and they are hereby authorized, in the exercise of this discretion, upon the application of any corporation or person in the City of Baltimore, that the said Board may deem responsible, to appoint suitable persons as special police officers to serve without pay from the said city or the State of Maryland, and the corporation or person applying for an appointment under this Act shall be liable for the official misconduct of the officer appointed on such application, as for the torts of any servant or agent in the employ of such corporation or person. Every special officer appointed under the provisions of this Act shall serve for not more than one year, and shall enforce the laws and ordinances of said State and City in and about any park, public ground, place of amusement, place of public worship, wharf, manufactory or other locality in the City of Baltimore specified in the application, and shall have the power to preserve the public peace, prevent crime, arrest offenders and protect the rights of persons and property in and about such locality and premises as fully as a regular police officer of Baltimore City. A record of such appointments shall be kept in the office of the said Board and any appointments so made may be revoked by the said Board at any time, and the form of badge to be worn by such special officer shall be prescribed by the said Board of Police Commissioners.”

By Chapter 559 of the Acts of Assembly of 1920 all of the powers of the Board of Police Commissioners were transferred to the Police Commissioner. When these two acts are considered together, I think it is very clear that you are authorized to make the appointment under consideration if you deem it proper to do so.

There is nothing in the Act of 1906 which prohibits you from appointing the applicant himself, who is the owner of the property. The only requirements are that the appli-

cation shall be made by some person whom you "deem responsible," and the appointee shall be a person whom you shall regard as "suitable." If Mr. Hutton meets these requirements he is eligible for the appointment.

I am returning herewith Mr. Hutton's letter of application.

Yours very truly,

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

ROADS.

ROAD COMMISSIONERS OF CHARLES COUNTY DO NOT HAVE
POWER TO CLOSE EXISTING COUNTY ROADS.

July 1st, 1930.

Mr. Wilson C. Bowling,
Clerk to Board of Road Commissioners
of Charles County
La Plata, Md.

DEAR SIR: Your recent letter addressed to this office and supplemented by additional information given over the telephone, has been referred to me for reply.

I understand that you want an opinion as to whether the Board of Road Commissioners of Charles County has the power to close an existing public road in Charles County. The Board in question was created by Chapter 126 of the Acts of the General Assembly of Maryland of 1918, and I understand this Act has not been amended by any subsequent legislation.

There is no question that a Board of County Commissioners has power to open, alter or close any public road, (Article 25, Section 13, and Sections 142 to 160, inclusive), but this authority has not, by the Act in question, been delegated to the Road Commissioners of Charles County, the nearest approach to such authority being the right of condemnation given it for the purpose of relocating and improving certain county roads. It was evidently the intention of the Legislature to only confer limited rights and powers upon these commissioners, for in Section 157 of the Act we find this provision:

“The County Commissioners of Charles County shall have the control and regulation of the public roads and bridges in said county, insofar as the

same shall not be regulated by the provisions of this Act.”

From what I have already said, I think it is quite clear that the Commissioners in question do not have the power to close existing public roads in Charles County.

Very truly yours,

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

ROSEWOOD STATE TRAINING SCHOOL.

ROSEWOOD STATE TRAINING SCHOOL—HAS POWER TO GRANT RIGHT OF WAY TO MARYLAND GAS TRANSMISSION CORPORATION, IF THE SCHOOL DERIVES ANY BENEFIT FROM THE GRANT.

November 30, 1930.

Dr. Frank W. Keating,
Rosewood State Training School,
Owings Mills, Md.

DEAR DR. KEATING: You have requested me to advise you whether the Board of Visitors of the Rosewood State Training School may lawfully grant to the Maryland Gas Transmission Corporation a right-of-way across the property of the School for the purpose of laying a gas main for the transmission of natural gas. You also desire to be advised whether said corporation may condemn a right-of-way across this property if the Board should refuse to grant the same.

By the charter of the Training School its Board of Visitors is authorized to "purchase, hold and receive, sell, demise or dispose of any property, real, personal or mixed, as they shall judge to be most beneficial and advantageous to the good and charitable ends and purposes of the Institution."

By virtue of this language, I think it is clear that the Board of Visitors may grant such a right-of-way to the Corporation, provided the Board regards such a grant as beneficial to the Institution. On the other hand, if the Board should be of the opinion that the Institution will derive no benefit or advantage from the presence of the pipe line on the property, it should refuse to grant the right-of-way requested.

Since the receipt of your inquiry, I have discussed this matter with Mr. James Piper, attorney for the Corporation, and he informs me that the Corporation is willing that the agreement shall contain provisions by which it will bind itself to procure for the Institution the use of natural gas in such quantities as it may require, within six months after application for such service is made by the Institution. But if for any reason the Corporation should find it impossible to procure the service for the Institution, then the agreement would authorize the Board of Visitors to terminate and revoke the grant of the right-of-way, and upon such revocation the Corporation will agree to remove its pipe line and all paraphernalia within six months, and pay any damages that may be caused by such removal.

Under these circumstances I think the pipe line may be regarded as of potential value to the Institution, and that the Board of Visitors would be justified in treating the same as of benefit and advantage within the meaning of the charter provisions above referred to. For these reasons, I am ready to approve as to form and legal sufficiency, any agreement along the lines indicated that may meet with the approval of the Board of Visitors of the Institution.

With reference to your inquiry as to whether the Corporation may condemn a right-of-way for the laying of a pipe line for the transmission of natural gas, I am obliged to advise you that the authorities upon this subject are in conflict.

After an examination of several court decisions dealing with the subject, I am inclined to the view that the Board of Visitors could successfully contest any effort to condemn a right-of-way for the laying of this pipe line. Certainly any effort to condemn a right-of-way will fail if it should be found by the court that the construction or maintenance of the line would in any material manner interfere with the usual and customary uses of the property by the Institution.

If the Board is unable to reach a satisfactory agreement with the Corporation and finally concludes that it desires

to prevent the laying of the pipe line across its property, this department will, at the request of the Board, contest any condemnation proceeding that may be started, and endeavor to sustain the position of the Board in the courts.

With kind regards and best wishes, I am,

Very sincerely yours,

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

ROSEWOOD STATE TRAINING SCHOOL—RIGHTS UNDER AGREEMENT WITH MARYLAND GAS TRANSMISSION CORPORATION.

Dec. 20th, 1930.

*Dr. Frank W. Keating,
Rosewood State Training School,
Owings Mills, Md.*

DEAR DR. KEATING: I have your letter of December 20th in which you ask for an opinion on the following four questions pertaining to the terms of the proposed agreement between the Rosewood State Training School and the Maryland Gas Transmission Corporation:

1. Would the Maryland Gas Transmission Corporation, its successors and assigns, have the right to construct and maintain at any future time *more* than one 20-inch gas pipe line and one telephone or telegraph line in or on the strip of 20 feet of land mentioned in this agreement, or to erect any buildings or other appurtenances pertaining to its business on said strip of land, or the roads within the Rosewood property, without a further written agreement with our Board to be allowed to do so?

2. Would the said Gas Corporation, its successors and assigns, be *compelled* to apply to the Public Service Commission of Maryland for the right to furnish natural gas

to this institution, through some person or corporation, as set forth in this agreement, when our Board requests a supply of natural gas from its pipe line?

3. Would the said Gas Corporation, its successors and assigns, upon notice from our Board, be compelled to remove its pipe and telephone or telegraph lines from the strip of land mentioned in this agreement if the Public Service Commission of Maryland should fail to approve of it furnishing natural gas to this institution as set forth in the agreement?

4. Will the said Gas Corporation be required under this agreement to submit its plans to the State Department of Health and obtain the latter's approval of said plans before beginning the excavation of the trench in which to construct the pipe lines across Gwynns Falls and the approaches there-to on each side of the main stream and any branch thereof close above our water supply?

Since the receipt of your letter I have made certain changes in the proposed agreement and these changes have been accepted by the corporation. The agreement as changed has been executed by the corporation, and is herewith transmitted to you for execution by the President and Secretary of the Board of Visitors of the Training School. I will now answer your four questions in the light of the agreement as it has been redrafted.

1. The second clause of the agreement provides that the corporation shall have "the right to lay, maintain, operate and remove one 20-inch pipe line for the transmission of gas and the right to install, maintain, operate and remove a telephone or telegraph line as an appurtenance to the same." The last paragraph of page 3 provides that "the telephone or telegraph line to be installed under this grant shall be constructed and operated in the same trench as the gas pipe line, 20 inches below the surface, and that no poles, aeri-als or other structures of any kind shall be erected above ground on any portion of the land embodied in this grant." By virtue of these provisions of the agreement it is clear that the corporation acquires no power to

lay more than one gas pipe line and one telephone or telegraph line under this grant.

2. Before any corporation can engage in the business of distributing gas to consumers in Maryland it is necessary for that corporation to apply to and obtain authority from the Public Service Commission of Maryland. The law to this effect is specifically set forth in Section 390 of Article 23 of the Code of Public General Laws of Maryland.

3. The answer to your third question is found in the provisions of the agreement set forth on page 3 of the agreement, which read as follows:

“If the Grantor does not obtain natural gas as herein provided, due to any cause whatsoever from the pipe line of the Grantee for use on said lands within six months after it has notified the Grantee in writing that it desires to use said natural gas in the buildings erected on said premises, the Grantor may, upon such failure to obtain said natural gas, terminate and revoke the right of way or easement herein granted and the Grantee shall, upon notice of such termination and revocation, remove its pipe line and telephone or telegraph line from the lands of the Grantor within a period of six months after said termination or revocation, the Grantee agreeing to pay all damages caused by said removal and to restore said land to the condition existing before said removal.”

The above language has been inserted in the agreement for the express purpose of compelling the removal of the pipe line in the event the Training School finds it impossible to obtain natural gas from the pipe line, and I am satisfied the Training School can enforce these provisions of the agreement.

4. The answer to your fourth question is found in the concluding portion of the first paragraph on page 4 of the agreement, where it is stated “that the said work will not

be commenced until the plans for same have been submitted to and approved by the State Department of Health." I understand from Dr. Wolman of the Department of Health, that proposed plans for the construction of the work have already been submitted to his department and that these plans, with such, if any modifications as may be necessary, will doubtless be approved without any serious controversy. At all events, the agreement as now framed will protect the Training School and the work cannot be commenced until the plans have been approved by the State Department of Health.

I am also enclosing the check of Piper, Carey & Hall in the amount of \$700, payable to the Board of Visitors of the Rosewood State Training School to cover the stated price for the right-of-way as set forth in the agreement.

If I can be of any further assistance to you in this matter I shall be glad to have you command me.

Yours very sincerely,

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

RACING COMMISSION.

RACING COMMISSION—CONDUCT OF RACING AS A BUSINESS
RESTRICTED WITHIN LIMITS DEFINED BY ART. 78-B OF
THE CODE OF PUBLIC GENERAL LAWS.

May 6, 1930.

*Maryland Racing Commission,
Fidelity Building,
Baltimore, Md.*

GENTLEMEN: I have the letter of the Worthington Valley Horse Show, Inc., dated May 2nd, 1930, with respect to the horse races to be run on May 22nd, 23rd and 24th, in the Worthington Valley, immediately after the conclusion of the Worthington Valley Horse Show.

You request me to advise you whether there is any legal objection to the running of these races.

On May 31st, 1928, I wrote you that in my opinion the conduct of racing as a business is restricted within the limits defined by Art. 78-B of the Code. If the races to be run in the Worthington Valley constitute, either directly or indirectly the conduct of racing as a business, they should be prohibited; but whether or not the running of said races constitutes a commercial enterprise is a question of fact, which you must determine after careful consideration of all of the circumstances of the case.

I am returning herewith the papers you left with me.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

REGISTER OF WILLS.

REGISTER OF WILLS—BONDS OF, ARE REQUIRED TO BE RE-
NEWED EVERY SECOND YEAR.

May 6, 1930.

Henry M. Warfield-Roloson Company,
101-103 Chamber of Commerce Building,
Baltimore, Md.

Att. Mr. Preston D. Callum.

DEAR SIR: Your letter of April 30th with reference to the bond of Dr. Merritt Brice, Register of Wills for Kent County, has been referred to the writer for reply.

The bonds of these officials are furnished in accordance with the provisions of Section 272 of Article 93 of the Code, which read as follows:

“The register of wills in each county and of the City of Baltimore, before he acts as such, shall give bond with two good and sufficient securities in the penal sum of seven thousand dollars, payable to this State, conditioned for the faithful performance of his said office of register of wills, which bond shall be taken and securities approved by the judges of the Orphans' Court and recorded in the office of the Clerk of the Circuit Court for the county, or the Superior Court of Baltimore City, as the case may be; and every register shall renew his bond on or before the thirty-first day of December in every second year.”

You will observe that there is no provision which authorizes any official to cancel the old bond upon the furnishing of a new bond, and in the view of this department no such cancellation is necessary. There would be no objec-

tion to a provision in the renewal bond to the following effect:

"This instrument is intended to be a renewal bond as required by Section 272 of Article 93 of the Code of Public General Laws of Maryland, and is executed upon the condition that the obligations of the two bonds shall be consecutive and shall not be concurrent, and that the obligations of the former bond shall not be binding upon the surety for any act, matter or thing occurring from and after the date upon which this bond becomes effective."

The above provision or any other provision of similar import would be sufficient to relieve the surety of concurrent liability under separate instruments, which I assume to be the object which you have in mind by desiring a cancellation.

Very truly yours,

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

REGISTER OF WILLS—FEES OF OFFICE—NOT ENTITLED TO
FEE FOR COLLECTING MARYLAND ESTATE TAX.

June 24, 1930.

*Hon. George A. Wade,
Register of Wills,
La Plata, Md.*

DEAR SIR: I have your letter in which you request an opinion as to whether a Register of Wills is entitled to any commission for the collection of the Maryland Estate Tax which is imposed by Chapter 275 of the Acts of Assembly of 1929, codified as Article 62-A of the Code of Public General Laws.

Section 4 of this Article provides: "The several Registers of Wills in this State shall account to the Comptroller for all monies so collected monthly, who shall receipt there-

for and forthwith pay over to the State Treasurer all monies thus received." There is no provision in this Act of the Legislature, or in any other statute, which authorizes a Register of Wills to deduct a commission for the collection of the tax imposed by this Article.

Section 147 of Article 81 authorizes a Register of Wills to deduct a commission for collecting collateral inheritance taxes, and taxes on official commissions of executors and administrators, but this section has no application to the taxes imposed by Article 62-A.

In my opinion a Register of Wills has no authority to deduct a commission for the collection of the tax imposed by the Act of 1929, known as the Maryland Estate Tax.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

REGISTER OF WILLS—RETIRING REGISTER ENTITLED TO
EARNED FEES UP UNTIL END OF HIS TERM—SUBJECT
TO ACCOUNTING TO COMPTROLLER.

December 8, 1930.

Hon. Wm. T. Bishop,
Centreville, Md. ...

DEAR MR. BISHOP: In answer to your letter of November 26th you are advised that the retiring Register of Wills is entitled to all earned fees up to the date of his retirement, subject to the usual accounting to the Treasury Department. Mr. J. O. McCusker, Chief Clerk in the Comptroller's Office, informs me that it is customary for the new Register to collect the earned but uncollected fees for his predecessor and to credit the same to his account.

If, upon the retirement of the Register of Wills there are sufficient funds on hand to pay all salaries and expenses, it is proper for the retiring Register to make a final

report to the Comptroller showing the balance on hand in the fee account, the said balance to be paid to the incoming Register to meet accruing expenses. On the other hand, if the fees collected have not been sufficient to pay the salaries and expenses of the office and it becomes necessary for the retiring Register to avail of the six months' period allowed by law for the collection of the earned fees, it then becomes necessary for the retiring Register to account for the fees during the six months' period after deducting salaries and expenses prior to the beginning of the new term. No extra compensation is allowable for the collection of the previously earned fees during the six months' period.

I know of no law which requires the County Commissioners to make up the salary of the Register in the event the fees of his office are insufficient. It is entirely proper, however, to deduct from the fees collected all proper office expenses by way of printing, record books, fixtures and the like, in addition to the salaries.

I believe the above will fully answer your inquiry, but if you desire any further information I shall be glad to hear from you.

Very truly yours,

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

SHERIFF OF HARFORD COUNTY.

SHERIFF OF HARFORD COUNTY—REQUIRED TO ACCOUNT FOR ALL RECEIPTS AND EXPENDITURES FOR CARE OF PRISONERS.

January 8, 1930.

*Edmund R. Stewart, Esq.,
State Auditor,
Union Trust Building,
Baltimore, Md.*

DEAR SIR: Receipt is acknowledged of your letter of the 4th instant in which you request my opinion as to whether the Sheriff of Harford County is required to show in his accounts the detailed items of his expenditures for the support and maintenance of persons committed to the jail of said County.

By Section 251-A of Article 13 of the Public Local Laws of Harford County, as enacted by Chapter 98 of the Acts of 1918, the Sheriff is allowed \$.60 per day for the support and maintenance of each person confined in the jail, said sum to be levied by the Board of County Commissioners and paid by said Board to the Sheriff monthly. It is contended that the duties of a Sheriff do not include those of a warden or turnkey of a jail, and that the State is not concerned in the question of whether or not the Sheriff, acting in the capacity of warden or turnkey, makes any profit from the aforementioned per diem allowance for each prisoner.

With this contention I cannot agree. The Sheriff is a fee officer and under the provisions of Section 1 of Article XV of the Constitution of this State, he is limited in the compensation for his services to the sum of \$3,000 per year, and if the allowances made by law for his expenses exceed his actual expenses, the Sheriff is required to account to

the Comptroller for the amount of such excess. Cecil County vs. Beasley, 121 Md. 626.

This duty cannot be avoided upon the theory that the Sheriff in providing for the support and maintenance of persons committed to the jail is acting in the capacity of a warden or a turnkey of the jail, and not as the Sheriff, because Section 251-A, above referred to, expressly imposes such duties upon the Sheriff, acting in the capacity of Sheriff, and does not create a separate office of turnkey or warden of the jail.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

SPRING GROVE STATE HOSPITAL.

SPRING GROVE STATE HOSPITAL—NOT CIVILLY LIABLE FOR
NEGLIGENCE OF ITS EMPLOYEES.

July 8, 1930.

*Mr. Howard Bryant, Secretary,
Spring Grove State Hospital,
Catonsville, Md.*

DEAR MR. BRYANT: In your letter of June 20th you request an opinion as to whether Section 2 of Article 44 of the Code of Public General Laws relating to the Spring Grove State Hospital, was amended by the re-organization act.

Section 704 of Article 27 of the Code of Public General Laws, which is a codification of Section 3 of the re-organization act of 1922, places the Spring Grove State Hospital in the Department of Welfare, and imposes certain obligations upon the Hospital, as well as the Director of Welfare. This section further provides that the Hospital shall continue under the management of its Board of Managers "having and continuing to exercise the same rights, powers, duties, obligations and functions." Except as provided by this section, there appears to have been no modification of Section 2 of Article 44.

You further ask whether this institution or the Board of Managers may be held liable for negligence of its employees.

The answer to this question is in the negative. The Hospital is owned by the State, and therefore immune from suit, except as authorized by statute. The statutory provision contained in Section 2 to the effect that the Hospital may sue and be sued, does not mean that the Hospital or its Board of Managers may be sued for damages on account of negligence of its or their employees. This ques-

tion appears to have been settled by the case of Weddell vs. School Commissioners, 94 Md. 334, where it was held that the Code provision that the Board should be capable to sue and be sued, did not have the effect "of subjecting it to liability for negligence in the performance of its duties, inasmuch as it had no power to raise money for the purpose of paying damages, and the funds placed in its custody were appropriated by law to other objects from which they could not be diverted."

With kind regards and best wishes, I am,

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

STATE ACCIDENT FUND.

STATE ACCIDENT FUND—CANNOT INSURE AGAINST ANY LIABILITY EXCEPT THAT IMPOSED BY WORKMEN'S COMPENSATION LAW.

November 10th, 1930.

*James E. Green, Esq.,
Superintendent, State Accident Fund,
Equitable Building,
Baltimore, Md.*

DEAR MR. GREEN: I have your letter of October 20th enclosing communication from Wilcox & Ziegler, Inc., with reference to the policy of compensation insurance issued to this company by the State Accident Fund.

It appears that the company has entered into a lease with the Pennsylvania Railroad Company by which the former is to occupy, as lessee, certain property belonging to the Railroad Company, over a portion of which the Railroad Company operates locomotives. The lease contains the following provision:

“That the said lessee shall and will save and keep harmless and indemnify the lessor from and against all claims for damages of whatsoever kind or nature arising in any manner or under any circumstances through the exercising of any right granted or conferred hereby, whether such damages be sustained by the lessee or by other persons or corporations which seek to hold the lessor liable.”

I understand that the above provision was inserted in the lease for the purpose, among others, of relieving the Railroad Company from ultimate responsibility in the event of

injuries to the employees of the lessee or any other persons on the premises by invitation of the lessee even though such injuries are occasioned by the wrongful act of the Railroad Company. You request me to advise you whether the State Accident Fund is authorized to issue an endorsement upon its policy of compensation insurance, issued to Wilcox & Ziegler, Inc., by which the latter company will be assured against the liability imposed by the lease.

After careful consideration of this matter I am satisfied that the State Accident Fund is without authority to issue the requested endorsement. As you know, the State Accident Fund is a State agency and its powers, rights and duties are limited by statute. It has no power to issue any form of insurance except Workmen's Compensation Insurance, as provided by Article 101 of the Code of Public General Laws.

If an employee of Wilcox & Ziegler, Inc., is injured in the course of his employment on the premises as a result of the negligent operation of a locomotive by the agents and employees of the Railroad Company, a common law liability at once arises in the Railroad Company for the benefit of the injured employee. This liability is not imposed by the Workmen's Compensation Law, and consequently the State Accident Fund is without authority to assume the same.

Although an injured employee of Wilcox & Ziegler, Inc., under the circumstances above indicated would also be entitled to claim compensation from his employer and the State Accident Fund, Section 58 of the Workmen's Compensation Law preserves to such employee the right to pursue a common law claim against the Railroad Company. In the event of a recovery, the State Accident Fund is reimbursed for compensation paid and medical expenses incurred to the extent of the recovery, unless the amount recovered is in excess of the compensation and medical expenses paid, in which event the surplus belongs to the injured employee. The State Accident Fund cannot, by agreement with its assured, deprive the employees of the latter of the rights

secured to them by this section of the Compensation Law.

If the injured party is not an employee of Wilcox & Ziegler, Inc., or some other employer insured by the State Accident Fund, then there could be no claim for compensation against the State Accident Fund, and the latter is without authority to assume any liability in such cases.

For the reason above indicated I am of the opinion that Wilcox & Ziegler, Inc., must either assume liability which they have accepted under the lease referred to or secure protection against that liability by means of another policy of insurance issued by a company authorized to insure against risks of this character.

Yours very truly,

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

STATE BOARD OF ELECTRICAL EXAMINERS

STATE BOARD OF ELECTRICAL EXAMINERS—MEMBERS INCUR
PERSONAL LIABILITY IF THEY TRANSCEND AUTHORITY.

March 29th, 1930.

Hon. John S. Dobler,
President, State Board of Electrical Examiners
and Supervisors,
22 Light Street,
Baltimore, Md.

DEAR MR. DOBLER: I have your letter of March 28th in which you request to be advised whether the members of the State Board of Electrical Examiners and Supervisors "may be individually or collectively liable for official actions of the Board while they are in office or after their term has expired."

So long as the members of the Board confine their actions to the performance of the duties imposed upon them by law, there can be no civil responsibility, either individually or collectively. This does not mean, however, that the members of the Board would be relieved of the responsibility for every action which it may take, because of their membership on the Board. If, for instance, the members of the Board should transcend the authority conferred upon them by law and injury should result to some individual because of this action, the members may be held accountable for such actions.

As you do not state the particular conduct which you have in mind in making your inquiry, I am unable to advise you more definitely, but if the Board contemplates any action about which there is any doubt as to its authority, I will be glad to have you submit the matter to me for further advice.

With kind regards and best wishes, I am

Yours very truly,

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

STATE BOARD OF EXAMINING ENGINEERS

STATE BOARD OF EXAMINING ENGINEERS—MAY TAKE INTO CONSIDERATION THE PARTICULAR PLANT WHICH AN APPLICANT FOR A LICENSE PROPOSES TO OPERATE IN PASSING UPON THE APPLICATION.

January 16, 1930.

*State Board of Examining Engineers,
Union Trust Building,
Baltimore, Md.*

GENTLEMEN: You have requested an opinion from this department concerning the powers of your Board in the examination of stationary engineers. You state that there are a large number of business establishments in the city which use boilers of considerable size primarily for heating purposes, and that there is little or no machinery connected with the operation of such boilers, except possibly a small pump for the purpose of pumping the steam to distant portions of the premises of the owner. The persons operating these plants are fully conversant with the boilers and such machinery as is in operation, and are entirely competent to operate them in such a manner as to promote the public safety, but many such persons are not competent to pass an examination to operate any plant of machinery, including complicated machinery, engines, etc., and the question submitted to us is whether your Board may, in the conduct of its examination, take into consideration the plant which the applicant proposes to operate, and if found proficient to operate that particular plant, grant him a license limited to that particular establishment.

Section 140 of Article 48 of the Code of Public General Laws confers upon your Board general supervision of all stationary engineers within the State of Maryland, with certain exceptions not pertinent to your inquiry. Power and discretion to pass upon the proficiency of the applicant is conferred upon the Board, and so long as this dis-

cretion is not abused by arbitrary and unreasonable action, its judgment will be sustained by the courts.

It is further provided in Section 140 that no engineer having a certificate shall have charge of more than one plant of machinery at the same time. This is followed by a provision in Section 141, to the effect that the certificate of proficiency shall be framed "and kept in a conspicuous place, at such place as such persons may be respectively at work."

The manifest purpose of the law under consideration is to promote the public safety, and it should be interpreted so as to effectuate its general purpose and avoid any undue hardship upon any individual. So long as an individual is qualified to perform in a safe and proper manner the work which he proposes to do, it would constitute an improper and unjust restriction of the right of liberty and the pursuit of happiness to undertake to require that individual to possess qualifications for work which he does not intend to perform.

After careful consideration of the question submitted by you, the Attorney General has reached the conclusion that it is not only proper, but the duty of your Board to take into consideration the character of the plant of machinery which the applicant proposes to operate. The provisions, above referred to, to the effect that no engineer shall have charge of more than one plant at the same time and that his certificate shall be kept in a conspicuous place at his place of employment, clearly authorize the Board to issue a license to a given applicant, limited to the operation of a particular plant, and where an applicant is found by the Board to be proficient for the operation of the plant which he proposes to operate, it is the duty of the Board to issue a license to such applicant for the operation of that plant.

I believe the above will fully answer your inquiry, but if you desire any further information on this subject, I shall be glad to hear from you.

Very truly yours,

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

STATE BOARD OF EXAMINING ENGINEERS—JURISDICTION
LIMITED TO PLANTS OPERATED BY STEAM.

August 5, 1930.

*N. Carter Hammond, Esq.,
Attorney at Law,
1163 Calvert Building,
Baltimore, Md.*

DEAR MR. HAMMOND: Some time ago you brought to my attention the practice being followed by the State Board of Examining Engineers of inserting in the license issued by this Board the word "steam" so as to clearly indicate that the holder of such a license is only authorized to operate steam plants, as distinguished from plants operated by other forms of power. You stated that your clients were of the opinion that the license certificate should read "any plant of machinery," and that the word "steam" should not appear upon the certificate, and requested my views with respect to this contention.

Since the receipt of your inquiry, I have discussed this matter with the State Board of Examining Engineers and also indicated my views to you and your clients at a conference which took place at this office several days ago. I now have your letter of July 24th, in which you state that your clients are very insistent that they have an opinion from this office with respect to the wording of the license. I am therefore writing this letter to confirm the views which I expressed at our conference.

Under date of September 9th, 1920, Attorney General Armstrong ruled that the power of the State Board of Examining Engineers was limited "to the examination and licensing of engineers in charge of machinery operated by *steam*." In the same opinion he held that the Board had no power to examine and license engineers using electric apparatus for hoisting materials. I am in full accord with the conclusion reached by Attorney General Armstrong in the opinion above referred to.

If the powers of the State Board of Examining Engineers are limited to the examination and licensing of engineers in charge of plants of machinery operated by *steam*, I can see no possible objection to the use of the word "steam" in the form of license now being used by the Board. If this word is omitted from the license it might indicate to persons unfamiliar with the law that the holder is authorized to operate any plant of machinery, including electrical plants or some other form of power, with which neither the Board of Examining Engineers nor the holder of the license may be familiar.

I therefore reiterate the views orally expressed to you and your clients, that in my opinion the form of license being used by the State Board of Examining Engineers is in conformity with the law as it now stands. If it is desired to enlarge the powers of the State Board of Examining Engineers to include plants operated by electricity or other forms of power, the Legislature is the appropriate tribunal to which such a proposal should be submitted.

Very truly yours,

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

STATE BOARD OF HEALTH

STATE BOARD OF HEALTH—NOT REQUIRED TO APPROVE ISSUANCE OF BONDS BY WASHINGTON AND SUBURBAN SANITARY COMMISSION.

June 17th, 1930.

*Abel Wolman, Esq.,
Chief Engineer,
State Board of Health,
Baltimore, Md.*

DEAR MR. WOLMAN: In your letter of the 14th instant you request me to advise you whether the State Board of Health is required, under the provisions of Section 335 of Article 43 of the Code of 1924, to approve the issuance of bonds by the Washington Suburban Sanitary Commission.

I assume that you refer to Section 336 of Article 43, which provides as follows:

“No public moneys shall be expended by the State, any County, legally constituted public water, sewerage or sanitary district for any of the purposes enumerated within this sub-title, unless such expenditure and the amount thereof had been approved by the State Board of Health.”

It will be observed that this provision relates to the expenditure and not to the borrowing of money. The aggregate amount of the bonds to be issued is determined by the *estimated* cost of the improvements; the jurisdiction of the State Board of Health does not begin until it becomes necessary to determine the *actual* cost. In my opinion, it is clear that Section 336 was intended solely for the purpose of enabling the State Board of Health to control the amount

of the actual expenditure; and in the case of the Washington Suburban Sanitary Commission, whose issuance of bonds must first be approved by the Public Service Commission of Maryland, it would seem to be an entirely needless formality to require the concurrent approval of the State Board of Health.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

STATE ROADS COMMISSION.

STATE ROADS COMMISSION—RIGHTS OF STATE ROADS COMMISSION TO BED OF ABANDONED ROAD.

May 2, 1930. -

*H. D. Williar, Jr., Esq.,
State Roads Commission,
Baltimore, Md.*

DEAR MAJOR WILLIAR: I have your letter of the 28th ultimo in reference to an abandoned road at Kilby's Corners. If the State secured the title to the old road bed by deed or condemnation, it may be that you are still entitled to use it, but if the old road was simply a right-of-way used by the public and is not now necessary to be used as a road, I am of the opinion that it would revert to the owners of the land by whom it was originally dedicated.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

STATE ROADS COMMISSION—COUNTY COMMISSIONERS NOT AUTHORIZED TO BID FOR CONSTRUCTION OF STATE ROADS.

June 17th, 1930.

*Mr. Levin C. Bailey,
State's Attorney,
Salisbury, Md.*

DEAR MR. BAILEY: I have your letter of the 16th inst. asking whether the County Commissioners of Wicomico

County can bid as contractors for the construction of State roads.

Boards of County Commissioners are corporations of limited jurisdiction and can only exercise the power conferred upon them by the Legislature, together with the duties necessarily incident thereto.

In the absence of a statute expressly giving the County Commissioners the right to bid for the construction of State roads, I think such action on their part would be ultra vires.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

STATE ROADS COMMISSION—RIGHT OF STATE ROADS COMMISSION TO DISPOSE OF A PIER AT QUEENSTOWN.

July 2nd, 1930.

*State Roads Commission,
Federal Reserve Bank Building,
Baltimore, Md.*

GENTLEMEN: I have your letter of the first inst. asking whether the State Roads Commission has the right to dispose of a pier which was acquired for the State at Queenstown, Maryland, for the use of the Peninsula Ferry Corporation.

I do not have before me any reference to the deed whereby this property was acquired by the State, but a copy of the agreement between the State Roads Commission and the Peninsula Ferry Corporation, dated the 29th of April, 1922, executed by Mr. Mackall on behalf of the Commission, and the President of the Corporation is enclosed in your letter. For the purpose of this opinion I will assume that the State of Maryland has a valid deed in fee simple

for the property in question. The granting clause in this agreement is as follows:

“NOW, Therefore, in consideration of the premises and the sum of one dollar and other good and valuable considerations, the said State Roads Commission of Maryland does hereby grant and convey unto the Peninsula Ferry Corporation, its successors and assigns, the exclusive right to the use of said pier and wharf so constructed by it out of the funds appropriated by the General Assembly of Maryland of 1920 to the Peninsula Ferry Corporation, together with the right of egress and ingress thereto, and all of the rights, ways, waters, privileges and appurtenances incident thereto for general transportation and ferry purposes, and does hereby agree that it will not permit or grant to any individual or corporation the right to use said pier in competition with said Peninsula Ferry Corporation.”

The agreement is duly acknowledged before a Notary Public. I understand from your letter, supplemented by your recent conversation with me, that the Ferry Corporation no longer operates a ferry with a terminus at Queens-town, and further understand both from you and the preamble to the agreement that the money for the purchase of this property was appropriated by the Legislature of 1920, as a subsidy for the use of said Peninsula Ferry Corporation.

If my assumption of facts is correct, I do not think that your Commission can execute a valid deed for the transfer of this property unless the same is also executed by the Ferry Corporation. There is no reverter clause in the agreement, and while a Court might, in the event that this property has not been used by the Ferry Corporation for a long period of time, rule that the rights of the company under the agreement had been surrendered and abandoned by reason of the long non-use, I do not think that

a sufficient length of time has elapsed for such an assumption to exist.

I am returning the agreement to you as per your request.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

STATE ROADS COMMISSION—JURISDICTION OF STATE ROADS
COMMISSION OVER STATE ROADS IN INCORPORATED
TOWNS.

July 15th, 1930.

Mr. Robert Reindollar,
Assistant Chief Engineer,
Federal Reserve Bank Building,
Baltimore, Md.

DEAR MR. REINDOLLAR: I have your letter of the 9th inst. enclosing correspondence in reference to the tearing up of the State highway in the corporate limits of Westminster.

In nearly every instance in which the State has taken over a highway through an incorporated town, the town has reserved police jurisdiction over the bed of the street taken by the State, but this is only for the purpose of maintaining order within the town limits. For instance, the right to arrest a man who has committed or is committing an offense against the town in question, but is standing on the State roads at the time the officer makes the arrest. A number of similar cases could be cited in which the town would have the right to exercise this police power which is reserved at the time of the grant.

The question of the right to maintain the surface of the roadbed and regulate the through traffic over the road is, however, an entirely different matter, and is a regula-

tion which is vested in the State Roads Commission from the time that it takes over the road.

It is my opinion, therefore, that in the case in question, the State Roads Commission has the power and authority to regulate when and in what manner the surface of the roadbed can be interfered with, and also has the right and power to regulate lights and other devices which affect the traffic over the State Road, regardless of the fact that the town may have reserved this police regulation.

If this was not the fact, the municipal authorities could create dangerous conditions affecting the through traffic over these streets which are maintained by the State and by the use of lights and other traffic regulating devices seriously interfere with the progress of the through traffic over these thoroughfares.

I am returning herewith the correspondence you forwarded to me with the exception of your letter to me.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

STATE ROADS COMMISSION—STATE ROADS COMMISSION NOT
LIABLE IN DAMAGES TO BUSINESS PROPERTIES AFFECTED
BUT NOT TOUCHED BY RELOCATION OF ROAD TO ELIMI-
NATE GRADE CROSSING.

August 9, 1930.

*State Roads Commission,
Federal Reserve Bank Bldg.,
Baltimore, Md.*

GENTLEMEN: I have your letter of the 7th instant asking whether your Commission is liable for damages for loss of business by a person conducting a general store in the vicinity of Parkton, due to the elimination of the grade

crossing at that place, and the erection of an overhead bridge, under the provisions of the Grade Elimination Act. Mr. Arthur Machen has also talked to me about this matter.

I do not feel that the State Roads Commission is liable for any damages arising under this class of cases, and I do not think that the Commission would be justified under the law in paying property owners for any alleged loss of business occasioned by the construction of either overhead or under grade crossings, under the provisions of the Grade Elimination Act, and I have so advised Mr. Machen.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

STATE ROADS COMMISSION—RIGHT OF STATE ROADS COMMISSION TO ABANDON SECTION OF STATE ROAD NO LONGER REQUIRED FOR ITS USE AS PART OF SYSTEM.

November 18th, 1930.

*G. Clinton Uhl, Esq.,
State Roads Commission,
Baltimore, Md.*

DEAR MR. UHL: I have your letter of the 12th inst. asking whether the Commission has the right to abandon a section of the State road when they have made a relocation and the part in question is not necessary for the State Roads System.

There is no specific act giving you authority to abandon any part of the State Roads System, but in the case of *Huffman et al. vs. State Roads Commission*, which was decided by the Court of Appeals on March 22nd, 1927, and reported in 152 Md. at page 566, the Court, by its opinion, expressly gave you that authority. When it is abandoned by you, I think it would immediately revert to the county or city authorities. The act of abandonment by you should

be by minute of the Commission duly adopted and recorded
in your minute book.

Yours very truly,

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

STATE TOBACCO WAREHOUSE.

STATE TOBACCO WAREHOUSE CHIEF INSPECTOR NOT AUTHORIZED TO WRITE ON LABEL OF SAMPLES ANY DESCRIPTIVE WORDS EXCEPT THOSE SPECIFICALLY AUTHORIZED BY LAW.

March 29, 1930.

F. Brooke Matthews, Esq.,
Chief Inspector,
State Tobacco Warehouse,
Baltimore, Md.

DEAR MR. MATTHEWS: You have requested an opinion as to whether it would be proper for you as the Chief State Tobacco Inspector to cause to be written or printed on the labels that are attached to samples of tobacco that are drawn from hogsheads in your custody, any descriptive words or matter other than those provided by Section 27 of Article 48. You state that you have been requested to make a notation on the labels attached to these samples, indicating the name of the sampler who drew the sample and also whether the sample contained any frosted leaves at the time it was drawn from the hogshead.

Your duties as Inspector are specifically defined by law and under the provisions of Section 17 of Article 48 you are required to cause each hogshead of tobacco delivered at the warehouse to be numbered in succession as received, and to cause said number to be entered in a book kept for that purpose, which book shall contain certain other information therein required. I find no provision which authorizes you to make any marks upon the hogsheads except the numbers of the hogsheads. Section 27 of Article 48 contains the following provision:

“It shall be the duty of the Inspector to confine the sample of each hogshead of tobacco in-

spected, by tying them together with a strong tape run through the head of said sample in such manner as shall be most likely to prevent the bundles from separating or being pulled out, and shall fasten on said sample a pasteboard label on which shall be written the marks and number of the hogshead, the date of inspection and the name or number of the warehouse, and shall seal said tape and label with sealing wax, and shall stamp it with the seal of the warehouse."

The law, therefore, specifically defines the subject matter which you are authorized to place upon the label that is attached to the sample, and in my judgment, it would be improper for you to include any additional information, descriptive or otherwise, other than that specifically enumerated by Section 27 of Article 48, above mentioned.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

SUNDAY LAWS.

SUNDAY LAWS—MINIATURE GOLF ON SUNDAY NOT PROHIBITED.

Sept. 2nd, 1930.

*Hon. Charles D. Gaither,
Police Commissioner,
Police Building,
Baltimore, Md.*

MY DEAR GENERAL GAITHER: In your letter of August 27th you request me to advise you whether the operation of miniature golf courses in Baltimore City on Sunday, is prohibited by law.

You have very kindly supplemented your inquiry by a number of reports from the Northwestern District, showing the manner in which these courses are operated. From these reports, it is apparent that the courses are conducted for the amusement of the patrons; that the management charges a fee which entitles the patron to the use of the course, a golf ball and a club for the playing of the game.

In the consideration of this question, recognition must be accorded to the well established rule of interpretation that before a particular act may be declared to be unlawful, there must be some specific statutory authority upon which such a conclusion can be based. That this principle is applicable to laws with respect to Sunday observance is clearly established. The rule is stated in 37 Cyc. at page 550, as follows:

“To make the indulgence on Sunday in the various sports and amusements, etc., unlawful, a specific statutory provision is necessary, as these things are not within the meaning of statutes prohibiting common labor or worldly employment.”

There is another rule of construction applicable to Sunday laws, and that is, that they should be construed in the light of contemporaneous history and in reference to the habits and activities of the people. This rule has been accorded recognition by the Supreme Court of Tennessee in the case of *State vs. Nashville Baseball Association*, 211 S. W. 357, and other cases therein referred to.

To the same effect is the decision of the Court of Appeals of this State in the case of *Arnreich vs. State*, 150 Md. 91, where the Court had under consideration a penal statute, and, in holding that the accused had committed no offense, said:

“At any rate, the long unvarying and uninterrupted contemporaneous construction put upon this section of the Code by the administrative officers must at this time be given the force of law.”

Considering your inquiry in the light of the above principles, I find that there is no statute law of this State which expressly prohibits golf games on Sunday, either on miniature courses or on regular courses.

Section 485 of Article 27 of the Code of Public General Laws entitled “Crimes and Punishments” prohibits the operation on Sunday of certain types of places of amusement, but golf courses are not mentioned. It is noteworthy, too, that public amusement parks are not within the prohibited class, and as a consequence, these parks, such as Bay Shore Park, Carlin’s Park and others, have operated on Sunday for years without interference from the public authorities, although large numbers of people have been employed in the sale of tickets and the operation of the various devices for the amusement of the public.

It is well known, as pointed out in your letter, that the game of golf has been played on Sunday for a number of years at Clifton Park and other City parks; that admission fees are charged by the City officials for the use of these courses and that City employees are engaged to collect these fees and to see that the games are conducted in an orderly

fashion. Similarly, the game has been played on Sunday at the various country clubs throughout the State where caddies and other club attendants have been employed as incidental to the recreation of the members. These facts being within the knowledge of every person familiar with the habits and activities of the people, it would seem that if it had been the intent of the Legislature to condemn these forms of amusement and the performance of the work incidental thereto, on Sunday, as criminal, it would have been an easy matter for the Legislature to have done so in express words.

In this connection, I refer again to the decision of the Maryland Court of Appeals in the case of Arnreich vs. State, where it is stated at page 103:

“It must be presumed that the Legislature during all these years knew that the people engaged in this business were not being required by the administrative officers to secure a trader’s license, and that this was the administrative interpretation put upon the section, and, therefore, by acquiescence, the Legislature had approved this administrative construction; for if they had not, it would have been a simple matter to specifically include stall owners in the markets of Baltimore City among those required to obtain this license.”

I am not unmindful that Section 483 of Article 27 of the Code prohibits work and bodily labor on Sunday except “works of necessity and charity,” but just what constitutes a work of “necessity and charity” has never been clearly defined by the Courts of this State, and it has not been defined by the Legislature. Decisions in other jurisdictions are in hopeless conflict. In our own State so many forms of work on Sunday have been sanctioned by public officials and society generally, since the passage of this law in 1723, that it is now impossible for any individual to designate with any degree of certainty the types of work that are permissible and the types that are prohibited.

In the light of the construction that has heretofore been placed upon Section 483 by the constituted authorities and the public generally, I am unable to conclude that the small amount of work incidental to the operation of a miniature golf course on Sunday is prohibited by this section.

Unfortunately, as the law now stands, any citizen may be brought into Court at any time for the performance of almost any kind of work on Sunday, and his conviction or acquittal will depend largely upon the point of view of the magistrate or the jury before whom he may be brought for trial. This most unsatisfactory ambiguity in the law with respect to Sunday observance can and should be clarified by the Legislature by a revision of the existing law so as to make it conform to the enlightened sentiments of the people of today.

Clearly, the Courts should not be called upon to make the law, that being the province of the Legislature, consisting of duly elected representatives of the people who are chosen for that purpose. It is equally clear that it is no part of my duty to pass upon the question of policy as to whether the games concerning which you make inquiry should or should not be permitted on Sunday, and no opinion as to the propriety of such games on Sunday is here expressed. The determination of this question is likewise within the province of the Legislature.

I may add that the Legislature has conferred upon the City of Baltimore and various incorporated towns throughout the State, certain powers of legislation within the corporate limits of the respective cities, and if the Mayor and City Council of Baltimore should be of the opinion that the playing of these games on Sunday is detrimental to the welfare of the community, it can, by an appropriate ordinance, prohibit all such games on Sunday within the limits of the City.

I am unwilling to usurp any of the legislative functions of the City or State in the settlement of the question as to whether the operation of these places of amusement should or should not be prohibited on Sunday, but for the

reasons above indicated, I am of the opinion that the law as it presently stands does not prohibit the operation of miniature golf courses in Baltimore City on Sunday.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

TAXATION.

TAXATION—SUPERVISOR OF ASSESSMENTS—METHOD OF CALCULATIONS.

January 15th, 1930.

Mr. S. L. Fyle,
Supervisor of Assessments,
Harford County, Belair Md.

DEAR MR. FYLE: I have your letter of December 31st, 1929, inquiring as to whether, in ascertaining the aggregate value of property subject to taxation in Harford County for the purpose of fixing your salary for the year 1929, there should be included an assessment of \$6,000,000.00 upon the stock of the Susquehanna Power Company which was not certified to the Commissioners of Harford County until December, 1929.

In my opinion the assessment value of that stock should not be taken into account for the purpose of fixing your salary during the year 1929, although in one sense this stock is undoubtedly property assessed for taxation in Harford County for the year 1929.

Prior to the passage of Chapter 226 of the laws of 1929 (Tax Revision Law), the salary of Supervisor of Assessments was controlled by the provisions of Section 255, Article 81, Bagby's Code, 1924. This section provides that the salary of Supervisor "shall be based on the aggregate value of property subject to taxation under his supervision." After fixing the amounts in question the statute continues:

"Such salary shall be payable monthly and the County Commissioners of each County and the Mayor and City Council of Baltimore are hereby directed to raise such sum annually as will pay

said salaries, and in case the expenditures for any County or Baltimore City have been fully computed on May 29th, 1914, then the County Commissioners of said County or the proper officials in Baltimore City shall be required to provide in the next levy for the payment of the salary from the date of the Supervisor taking office."

Under this provision of the Code, it was the duty of the County Commissioners in fixing the levy for the year 1929 to provide sufficient funds to pay the salary of the Supervisor in monthly installments. I think it reasonable to suppose that the monthly installments were intended to be equal, and that the tax levy was intended to be based on the tax roll as it stood at the time when the Commissioners fixed the amount of the levy. The express requirement that the Commissioners include in the levy for the following year such salary as might be payable during the year 1914, would seem to indicate that in the absence of any such express exception no salaries could be paid except such as were provided for in the tax levy for the year in question. So in this case the fixing of the tax rate for the year 1929 finally determined the amount available for the purpose of paying your salary for that year.

Nor in my opinion is this conclusion affected by the passage of the Tax Revision Law, and particularly the revision of the section in question which now appears as Section 170, Article 81, Bagby's Code 1929 Supp. In the first place, unless the tax levy was fixed subsequent to June 1st, 1929, the section would not seem to be applicable. Even if it were held to apply, there is no substantial change in the language upon which I have relied in reaching my conclusion.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

TAXATION—COLLATERAL INHERITANCE TAX—NOT PAYABLE
ON BEQUEST TO PERPETUAL CARE OF LOT IN WHICH
BODY OF DECEDENT IS BURIED—BEQUESTS FOR PER-
PETUAL CARE OF OTHER LOTS TAXABLE.

February 14th, 1930.

Hon. Chas. H. Reed,
Register of Wills for Harford County.
Bel Air, Md.

MY DEAR SIR: I have your letter of February 12th, enclosing copy of certain clauses contained in the will of J. Wiley Norris, deceased, and requesting an opinion as to whether or not the items in question are subject to the payment of a collateral inheritance tax. The first item about which you make inquiry reads as follows:

“I give and bequeath to the Norrisville Methodist Protestant Church Cemetery Fund the sum of two hundred dollars (\$200.00) which shall be invested by the Trustees and their successors, and enough of the income thereof shall be used to keep the lot in which I am buried and the monuments and the lettering thereon in good condition, the overplus, if any, shall be used with the general fund for the care of the cemetery.”

So much of the above bequest as may be used for the care of the lot in which the testator is buried may be treated as in the nature of a burial expense rather than as a gift, and to that extent only the fund is exempt from taxation. So much of it as may be used with the general fund for the care of the cemetery should be treated as a bequest to the cemetery and subject to taxation.

I realize that this is not a very definite answer to your inquiry respecting this item, but it is the best advice I can give you under the circumstances. If you will inquire into the probable cost of keeping the lot of the testator in

condition as specified, you will no doubt be able to arrive at an apportionment that will be fair and equitable.

The second item concerning which you make inquiry, reads as follows:

“I give and bequeath to the Center Cemetery Association the sum of fifty dollars (\$50.00) which shall be invested by the Trustees and the interest thereof shall be used by them annually, for the keeping of the Vincent and John S. Norris lots in good condition.”

As no part of the fund mentioned in this item can be said properly to constitute a portion of the burial expenses of the decedent, and all of it amounts to a gift to the Cemetery Association, it is clearly subject to the tax imposed by Section 124 of Article 81.

Very truly yours,

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

TAXATION—COLLATERAL INHERITANCE TAX—METHOD OF VALUING LIFE INTEREST DEFINED.

February 20, 1930.

Hon. Perrie E. Waters,
Register of Wills,
Rockville, Md.

DEAR MR. WATERS: In your letter of February 15th you request me to advise you concerning the amount of collateral inheritance tax which should be paid by a female beneficiary sixty-four years of age, who is receiving a bequest of \$4,000 for life, with remainder to other collaterals.

By Section 137 of Article 81 of the Code of Public General Laws, the Orphans' Court of the county or city in

which administration is granted, is authorized in its discretion to determine the proportion of the tax which is payable by the life tenant. There is no method provided by statute to govern the Orphan's Court in the exercise of this discretion. It is customary, however, for such courts to establish rules upon the subject, and the Orphans' Court of Baltimore City has adopted the equity rule prevailing in the Circuit Courts of this city. The rule of the Orphans' Court for Baltimore City on the subject is known as Rule 16, and reads as follows:

"Valuation of Life Estate.

"The rule of the Circuit Courts of this city, fixing the value of life estates, be, and the same is hereby adopted as the rule of this court."

(RULE OF CIRCUIT COURTS, No. XXV.)

"The allowance to a healthy widow, in lieu of her right of dower in lands sold under a decree of this court, shall be as follows: If she be under forty years of age, not more than one-seventh; if above forty and under forty-five, not more than two-fifteenths; if above forty-five and under fifty one, not more than one-eighth; if above fifty-one and under fifty-six, not more than one-ninth; if above fifty-six, not less than one-tenth of the net proceeds of the sale out of which she may be dowerable.

"The allowance to a healthy tenant for life shall be three times as much as would be allowed to a widow of the same age."

If the estate concerning which you make inquiry were being administered in the Orphans' Court of Baltimore City, the life tenant would be required to pay a tax on $\frac{3}{10}$ of \$4,000, or upon \$1,200.00, under the rule above referred to. Since the decision of questions of this kind is by statute committed to the discretion of the Orphans' Court of the county where the estate is administered, the

court for your county may or may not, in its discretion, adopt a rule similar to that prevailing in the city.

It is my view that the courts throughout the State should pursue a uniform procedure in matters of this kind, and I believe that the practice above indicated is generally followed by the Orphans' Courts of the various counties.

With kind regards, I am,

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

TAXATION—COLLATERAL INHERITANCE TAX NOT PAYABLE ON
PROPERTY PASSING UNDER WILL OF CLARA M. HODSON
EXECUTED IN PURSUANCE OF POWER CONFERRED BY
WILL OF HER HUSBAND UNDER FACTS STATED.

March 29, 1930.

Mrs. Florence E. Dryden,
Register of Wills,
Princess Anne, Md.

MY DEAR MRS. DRYDEN: I have your letter of March 19th in which you request me to advise you whether a collateral inheritance tax is payable on certain property passing under the wills of Mr. Thomas S. Hodson and his wife, Clara M. Hodson. It appears that Thomas S. Hodson died in 1920 leaving a will by which he devised and bequeathed his estate as follows:

"I give to my said wife, Clara, all my estate, both real and personal, wherever situated, to her, for her own use and enjoyment, during her natural life, with the request that knowing my heart and how tenderly I love my children, each and every one of them and all my dear grandchildren she

will look after them in my absence and provide, in case of necessity, as well as she can for them, to a reasonable extent only, during her life time and at her death distribute the same among them, to the best of her judgment, in the light of the circumstances then existing, endeavoring in doing so, to do, as she may believe that I, myself, would, if then living, and she shall have power to sell any part of my real estate and give a good title there-to in her life time and distribute the proceeds, in her discretion for her own use or that of my children or grandchildren, as aforesaid."

Clara M. Hodson, the wife of Thomas S. Hodson, died in 1930, and by the first clause of her will she disposes of the property devised and bequeathed to her by her husband as follows:

"I give, bequeath and devise to the children of my late husband, Thomas S. Hodson, namely, Clarence Hodson, of East Orange, N. J.; T. Sherwood Hodson, Jr., of New York, N. Y., and Mary King Hodson Brown, wife of Rufus D. Brown, of Maplewood, N. J., or their heirs, as tenants in common, all the real and personal property which I acquired under last will of my late husband at his death, Sept. 29, 1920, which may be owned by me at the time of my death, after the payment of all taxes or expenses due or in arrears against said property, from its rentals, the same to be divided equally among them. It is hereby intended to carry out the request of my deceased husband as to the property he left me * * * ."

The residuary legatee of the estate of Clara M. Hodson is a daughter of Mary King Hodson Brown and a granddaughter of Thomas S. Hodson.

You further state that Clara M. Hodson during her lifetime and after the execution of her will, sold and conveyed

a part of the real estate which was devised to her by her husband as above set forth, and that she accepted a mortgage of \$6,000 to secure the payment of a part of the purchase money for said real estate. This mortgage was unpaid at the time of her death and you request an opinion as to whether the mortgage or the real estate now passing under the will of Clara M. Hodson is subject to the payment of a collateral inheritance tax.

It is very clear from the will of Thomas S Hodson that his wife Clara M. Hodson did not acquire a fee simple interest in any of the property which passed to her under the will of her husband. She simply acquired the right of enjoyment for the term of her life, with power of sale and disposition of the proceeds for her own use or that of her children or grandchildren. Upon her death the property could not pass to her heirs and could only pass to the children and grandchildren of Thomas S. Hodson in the proportions provided by the last will of Clara M. Hodson.

Under these circumstances the law regards Clara M. Hodson as the agent of her husband, Thomas S. Hodson, from whom the present beneficiaries are presumed to take. It follows, therefore, that no tax is payable upon any of the property passing under the will of Clara M. Hodson that was acquired by her under the will of her husband. The mortgage about which you make inquiry obviously constitutes a part of the estate of Thomas S. Hodson and is not subject to taxation.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

TAXATION—COLLATERAL INHERITANCE TAX NOT PAYABLE
ON PROPERTY PASSING UNDER WILL OF FRANK L.
GRIFFITH.

April 1st, 1930.

*Oden B. Duckett, Esq.,
Register of Wills,
Annapolis, Md.*

DEAR MR. DUCKETT: You have requested me to advise you whether any collateral inheritance tax is now payable upon certain property which was devised and bequeathed by the will of Frank L. Griffith, which was probated in the Orphans' Court for Anne Arundel County on the 30th day of July, 1912. You sent to me an abstract from the will of Frank L. Griffith, which reads as follows:

"I give, devise and bequeath unto my daughter, Sallie A. Griffith, all the land with the buildings thereon, and all the stock and farming utensils of the farm occupied by me and known as my home farm. Also the dwelling house on lot of one acre or more of ground, and all of which is situated and lying at Friendship, in Anne Arundel County, State of Maryland, and the same to be held by my said daughter for her sole use, as long as she remains single, but should she marry, then shall the same be sold and the proceeds therefrom shall be equally divided between my children share and share alike. And in case of death of any of my said children then shall the share of such deceased child be equally divided between the children of such deceased child."

You further state that Sallie A. Griffith died on the 27th day of January, 1930, having remained single all of her life, and that letters of administration were granted upon her estate on the 11th of February, 1930. I understand

that she died intestate, and that her estate will pass to her brothers and sisters as her heirs and next of kin.

The answer to your inquiry depends upon a determination of the question as to whether Sallie A. Griffith acquired a fee simple estate in any of the property or whether she acquired merely a life interest during the time that she remained single.

It is a well settled rule of law that the intention of a testator must be gathered from a consideration of all of the provisions of his will. Although the first sentence of the above quoted abstract indicates an apparent design on the part of the testator to give his daughter Sallie A. Griffith a fee simple title to the home farm, as well as the stock and farming implements, this apparent intention is negated by the provisions of the succeeding sentence. The words "all of which is situated and lying at Friendship in Anne Arundel County, State of Maryland, and the same to be held by my said daughter for her sole use, as long as she remains single," apparently refer to the home farm, stock and farming implements thereon, as well as the house and lot.

In my opinion the testator did not intend his daughter Sallie A. Griffith to acquire a fee simple title to any of the property mentioned in this abstract, but he intended that all of the property should be held by her as long as she remained single.

It follows, therefore, that no inheritance tax is payable to the State of Maryland upon any of this property.

With kind regards and best wishes, I am,

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

TAXATION—COLLATERAL INHERITANCE TAX—ADMINISTRATOR CANNOT MARSHAL ASSETS BY PAYING COLLATERAL LEGACIES OUT OF FOREIGN ASSETS SO AS TO DEFEAT TAX IN MARYLAND.

April 11, 1930.

Hon. J. Irwin Harwood,
Register of Wills,
Denton, Md.

MY DEAR MR. HARWOOD: In your letter of March 31st you request me to advise you concerning the collateral inheritance tax payable by the estate of Frederick H. Anstee, deceased. You state that Mr. Anstee died testate in your county, where his will was admitted to probate, and that letters of administration C. T. A. were granted to Margaret E. Anstee and William J. Rickards.

It appears that the testator bequeathed the sum of \$500.00 each to two brothers and one sister, and the residue of his estate was devised and bequeathed to his widow. The administrators have filed an account of administration in the Orphans' Court for your county, which shows a balance of \$1,288.61 remaining for distribution. You further state that the testator left personal estate in the Dominion of Canada amounting to \$4,500.00 in the form of a mortgage secured by a lien upon real estate in Canada. Ancillary letters of administration have been obtained in Canada and the legacies of the two brothers and one sister have been paid from the proceeds of the mortgage. You request an opinion as to whether the action taken by the ancillary administrators in Canada operates to defeat the payment of any collateral inheritance tax in the State of Maryland.

For taxation purposes the mortgage secured by the real estate situated in Canada is regarded by our courts as an interest in real estate in Canada and not subject to taxation in this State. *Helser vs. State*, 128 Md. 228. The question therefore arises as to whether the administrators may properly marshal the assets belonging to the estate

by paying the legacies to the collateral kindred of the decedent out of that portion of the estate which is exempt from taxation in the State of Maryland, so as to leave the residue of the estate for distribution to the widow who is not required to pay any tax. So far as I am informed, this question has not been before the Court of Appeals of this State for decision, but it has been the subject of judicial determination and also of statutory regulation in other States.

After very careful consideration, I have concluded that the rule established by the Supreme Court of Massachusetts in the case of *Kingsbury vs. Chapin*, 196 Mass. 533, should be followed in this State. In that case an effort was made to pay certain debts and legacies out of the property of the testator situated in Massachusetts so as to leave exempt from taxation certain other property of the testator which was situated in New Hampshire, and strictly speaking, not subject to taxation in Massachusetts. In disapproving this course the Massachusetts court said:

“The rights of all parties, including the Commonwealth to its tax, vest at the death of the testator. It is true that the interest of a legatee is subject to an accounting; but it is an interest in the existing fund and is analogous to that of a cestui que trust. The executors cannot, by independent action, in attempting to marshal assets according to their personal wishes, enlarge or diminish the rights of legatees or of the Commonwealth * * * * . The debts, the legacies in Massachusetts exempt from taxation and the expenses of administration are chargeable upon the general assets, as well as those in New Hampshire as those in Massachusetts, and only a proportional part of the property in Massachusetts should be used in paying them.”

Under the reasoning of the court in the above case, with which I am in full accord, it would follow that the estate

of Frederick W. Anstee is subject to a collateral inheritance tax in Maryland. This tax, however, should not be computed upon the full amount of the three bequests to the brothers and sister of the decedent, but rather upon the proportion of these bequests which they bear to the total net estate of the testator remaining for distribution after the payment of the expenses of administration in both jurisdictions.

With kind regards and best wishes, believe me,

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

TAXATION — COLLATERAL INHERITANCE TAX — PAYABLE
WHEN GROSS ESTATE EXCEEDS \$500.00.

April 28th, 1930.

*M. H. Nelson, Esq.,
Register of Wills,
Salisbury, Md.*

DEAR SIR: In your letter of April 10th you request an opinion as to whether a collateral inheritance tax is payable upon an estate the net amount of which is less than \$500, where the gross estate exceeds \$500.

This question has been before this department on a number of occasions and the department has repeatedly ruled that the tax is payable upon such portion of the estate as passes to collaterals where the gross estate exceeds \$500.00.

Yours very truly,

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

TAXATION—COLLATERAL INHERITANCE TAX—NOT BARRED
BY LIMITATIONS.

May 13th, 1930.

Joseph O. McCusker,
Chief Clerk, Comptroller's Office,
Annapolis, Md.

DEAR MR. MCCUSKER: In your letter of May 1st you request an opinion as to whether a collateral inheritance tax is due from the estate of Laura E. Fiery. You enclosed a copy of a letter from Charles A. Weagly, Register of Wills for Washington County, by which it appears that Laura E. Fiery died intestate on the 18th day of January, 1926, leaving as her only heir her sister, Virginia Fiery. Letters of administration on the estate of the deceased were not issued until April 29th, 1930, when such letters were granted to The Nicodemus National Bank of Hagerstown, Maryland. It further appears that the deceased owned, at the time of her death, personal property to the value of about \$4,000, and that she also owned a one-half interest in certain real estate.

Both the personal estate and the real property which pass to the sister are subject to the payment of the tax imposed by Section 124 of Article 81. By Section 125 of this Article it is made the duty of the administrator to pay this tax upon the personal estate before making distribution.

The real estate is taxable upon the appraised value, which should be determined in accordance with the provisions of Section 127-134, inclusive, of the same Article. By Section 136 it is made the duty of the administrator to collect the tax on the real estate and pay the same to the Register of Wills within thirteen months from the date of his administration.

Although the tax upon the real estate is no longer a lien upon this property by reason of the provisions contained in Section 135, this does not relieve the administrator from

the obligation to collect this tax or the person receiving the property from the obligation to pay the same. Limitations do not run against the State. If the tax is not paid in due time appropriate action may be had to enforce payment.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

TAXATION—STATE PROPERTY NOT SUBJECT TO LOCAL ASSESSMENTS AND CHARGES IN METROPOLITAN DISTRICT OF BALTIMORE COUNTY.

July 9th, 1930.

Elmer J. Cook, Esq.,
Attorney for Metropolitan District,
Towson, Maryland.

DEAR MR. COOK: I have your letter of June 30th with further reference to the bill of Mr. Thomas C. Hunter, Treasurer, covering a sewer charge against the Pikesville Armory, and I have sent a copy of this letter to General Reckord for his consideration.

Strictly speaking, I do not believe payment of this bill can be enforced for the reasons set forth by the Court of Appeals in the case of County Commissioners vs. The Maryland Hospital for the Insane, 62 Md. 127, where it was held that the property of the Hospital for the Insane was not subject to assessment to cover the cost of opening a public road adjacent to the property. In the course of this opinion the Court said:

“Guided by the principle, that to bind the land of the State in a way that may divest it from the State, or destroy or impair one of its established agencies or means for carrying on its functions, the Legislature must unequivocally give its sanc-

tion; we see no evidence of such expressed or clearly implied intent in the Act of 1876, ch. 101. It is not material whether the State's property may be taken from it by a tax in the nature of assessment for benefits or in some other way. The danger exists of taking that which belongs to and is essential to the State; and it cannot be exposed to this danger without its direct sanction. The phraseology of the Act on which this suit is sought to be maintained, is that common and appropriate to legislation designed to affect private property only. The word 'owner' is used interchangeably with the word 'person'; and it is not to be supposed that the State would refer to itself by such designations, if meaning to subject its own property to the operation of the Act. The question at issue being one of the intent of the Legislature, it cannot be successfully contended that the State meant to become a party litigant before the County Commissioners, or the Circuit Court, under the description of 'any person aggrieved'; nor to subject its property to a lien and execution on failure to pay the assessment, as is provided in case of default in Sec. 6 of said Act. Plain and apt words to subject the property of the State to such a process cannot be found in our opinion in the Act in question, which by fair and reasonable construction can be held to apply to the case only of such private parties or bodies corporate as owned their property, and whose property would be benefited by an improvement confessedly local.

"It is always to be presumed that the State, while from public policy not permitting itself to be sued, without its express permission, will always deal justly with its citizens, and that it will by an appropriation through the Legislature meet any just claim upon its consideration."

As you know, the Pikesville Armory is operated as a State agency, as a part of the Military system of the State, and its expenditures must be limited to appropriations that are granted to it. Apparently, the Military Department has no appropriation at the present time from which this bill for sewer charges can be properly paid.

As soon as I have an opportunity to discuss this matter further with General Reckord, I will write you again.

With kind regards, I am,

Yours very truly,

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

TAXATION—EXEMPTION—BONDS OF NORTHERN CENTRAL
RAILWAY CO. NOT EXEMPT FROM TAXATION IN THE
HANDS OF RESIDENTS OF MARYLAND.

July 18th, 1930.

*State Tax Commission,
Union Trust Building,
Baltimore, Maryland.*

GENTLEMEN: In your letter of the 10th instant you state that a firm of brokers in Baltimore is offering for sale certain bonds of the Northern Central Railway Company and in the advertisement it is stated that these bonds are tax-exempt in the hands of residents of Maryland. You ask me to advise you whether there is any basis for this representation.

“The Northern Central Railway Company was formed in 1854, by the consolidation of four railway companies, three of which had been incorporated under the laws of Pennsylvania and one under a Maryland statute.” *Northern Central Railroad Co. vs. Trust Company*, 152 Md. 94, 95.

In the above case it was held that where several corporations organized in different states are consolidated under

sanction of legislation of each state, the legal entity thus brought into existence in one of the states is as completely a corporation of that state as though the incorporation had not occurred in the other state.

But if the bonds in question are interest-bearing, it is immaterial whether the Railway Company is a domestic or foreign corporation, for by Subsection 3 of Section 6 of Article 81 of the 1929 Supplement of the Annotated Code of Maryland, it is provided that "all interest-bearing bonds * * * * owned by residents of the state of whatsoever form made or issued, by any * * * * private domestic corporation * * * * or by any foreign private corporation * * * * shall be subject to assessment to the owners thereof in the county and/or city in which they respectively reside."

It seems clear therefore that the representation that the bonds are tax-exempt is without foundation, and I would suggest that you call this matter to the attention of the brokers.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

TAXATION—COLLATERAL INHERITANCE TAX—NOT PAYABLE
ON BEQUEST TO UNIVERSITY OF MARYLAND.

August 23rd, 1930,

*Hon. William F. Bricker,
Register of Wills,
Westminster, Md.*

DEAR MR. BRICKER: The Mercantile Trust and Deposit Company of this City has requested an opinion from this department as to whether a bequest, passing under the will of Dr. J. F. B. Weaver, a deceased resident of Carroll County, to the Trustees of the Endowment Fund of the

University of Maryland, is subject to the payment of a collateral inheritance tax.

Section 105 of Article 81 of the 1929 Supplement of the Annotated Code of Maryland, specifically exempts bequests to the State. As the University of Maryland is an agency of the State Government the bequest in question is exempt from taxation under the terms of the statute.

If we can be of any further assistance to you in the matter, we shall be glad to have you command us.

Yours very truly,

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

TAXATION—COLLATERAL INHERITANCE TAX—PAYABLE UPON
APPRAISED VALUE OF SECURITIES.

Sept. 2nd, 1930.

*Hon. Robert J. McCauley,
Register of Wills,
Elkton, Md.*

DEAR MR. MCCAULEY: In your letter of August 25th you state that an estate which is being administered in the Orphans' Court for your County consists in part of shares of stock of the Pennsylvania Railroad Company and of the United States Steel Corporation. You further state that the market value of these securities has changed since the time of their appraisal, and that they are now about to be distributed in kind to collateral kindred of the deceased. You request an opinion as to whether the collateral inheritance tax should be computed upon the appraised value of the shares or upon their actual value at the time of distribution.

The answer to your inquiry is found in the provisions of Sections 106 and 107 of Article 81 of the 1929 Supplement of the Annotated Code of Maryland.

Section 106 provides that the collateral inheritance tax "shall not be paid or collected upon any increase in value of the estate or income thereon accrued subsequent to the date of death of the decedent."

Section 107 provides that "whenever any species of property other than money or real estate shall be subject to said tax, the tax shall be paid on the appraised value thereof as filed in the office of the Register of Wills of the proper county."

In view of the above provisions of the statute it is quite clear that the change in the value of the securities referred to in your letter since the date of death of the decedent should not be considered in the determination of the collateral inheritance tax, and that the tax should be computed upon the appraised value of the securities as filed in your office.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

TAXATION—COLLATERAL INHERITANCE TAX—NOT PAYABLE
UNTIL THE COLLATERALS COME INTO POSSESSION.

September 18th, 1930.

Hon. John Pleasants,

*Clerk, Circuit Court, No. 2, of Baltimore City,
Baltimore, Maryland.*

Re: Estates of Dr. Joshua I. Cohen
and Colonel Mendes I. Cohen.

DEAR SIR: You have asked me to advise you as to what, if any, collateral inheritance tax is now payable on the transfer of certain real and personal property originally belonging to Joshua I. Cohen. Joshua I. Cohen devised and bequeathed this property to his nephew Mendes I. Cohen for life, remainder to his sister-in-law Harriet Cohen and her unmarried daughters until their death or marriage, re-

mainder to her married daughters absolutely. By the will of Mendes I. Cohen, a similar bequest of personalty was made to Harriet Cohen and her daughters. Harriet Cohen predeceased the last of her unmarried daughters, Bertha Cohen, who died on June 17th, 1929, at which time the married daughters of Harriet Cohen had all died, some having disposed of their entire property by will and others having died intestate. Distribution of the property is now about to be made to the devisees, legatees and distributees of the married daughters.

It appears that a collateral inheritance tax of $1\frac{1}{2}$ percent (the rate in force at the time of the death of Dr. Joshua I. Cohen) has heretofore been paid upon the full value of the realty and personalty passing under his will, and that the tax has similarly been paid on the personalty passing under the will of Mendes I. Cohen. The question for determination is whether a further tax is payable on the transmission of the remainders which vested in the married daughters of Harriet Cohen, which remainders have passed either by will or by intestacy to collaterals of said married daughters.

A tax has already been paid upon the actual passage of the realty and personalty into the hands of the present distributees, the administrators of the estates of Joshua I. Cohen and Mendes I. Cohen having availed themselves of the privilege conferred by the provisions of Article 81, Sec. 119, Bagby's Code (1929 Supp.) of paying the entire collateral inheritance tax on the passage of this property both to the life tenant and to remaindermen. The question therefore is whether the transmission—not of the property itself—but of a vested remainder therein, is taxable under Section 105 of Article 81, Bagby's Code (1929 Supp.) which reads as follows:

“All estates, real, personal and mixed, money, public and private securities for money of every kind passing from any person who may die seized and possessed thereof, being in this State, either by will or under the intestate laws of this State,

or any part of such estate or estates, money or securities, or interest therein, transferred by deed, grant, bargain, gift or sale, made or intended to take effect in possession after the death of the grantor, bargainor, devisor or donor, to any person or persons, or bodies corporate, in trust or otherwise, other than to or for the use of the father, mother, husband, wife, children and lineal descendants of the grantor, bargainor or testator, donor or intestate shall be subject to a tax of five per centum in every hundred dollars of the clear value of such estate, money or securities * * * .”

I think that the answer to this question is to be found in the decision of *Lilly vs. State*, 156 Md. 94, 103-105. There Channing Lilly conveyed certain property for a nominal consideration to one James Cummings, who thereupon reconveyed the same to Channing Lilly as trustee, to pay the income to his wife for life, then to himself for life if he survived her, and upon the death of the survivor of such persons as he might by his will direct. Certain powers over the property were reserved to Channing Lilly during his life. Channing Lilly predeceased his wife, leaving a will appointing his nephews and nieces to receive the remainder under the deed. Upon the death of the wife the question arose as to what, if any, collateral inheritance tax was payable.

The Court of Appeals held that a tax was payable on the passage of this property from Channing Lilly to his nephews and nieces; that the rate of this tax must be ascertained as of the death of Channing Lilly when the remainders vested in *the collateral*s; but that the amount of tax was to be measured by the value of the estate as of the death of the wife. The reasoning upon which that conclusion is based is stated by Judge Digges, as follows (p. 103, italics ours) :

“Finally, it is the contention of the appellants that whatever rate may be determined upon, the

tax at that rate is to be computed upon the value of the estate at the time of Channing Lilly's death, and not at the termination of the life estate, at which time they came into possession. This contention is fully answered by the decisions of this Court. It was directly passed upon in *Fisher vs. State*, supra. In that case Mr. Henry E. Johnston left a will in which his wife was given the life estate, with remainder to such persons or corporations as Mrs. Johnston might appoint by her will, and in default of such appointment to the Harriet Lane Home for Invalid Children of Baltimore City. Mrs. Johnston executed her will, by the provisions of which her brother-in-law was given the life estate, with remainder to the same corporation which had been named to take the residuary estate in the event she made no appointment, by the will of her husband. At the time of the death of Mr. Johnston the estate amounted to \$231,394.44, while at the death of Mrs. Johnston the value of the estate had increased to \$734,439.36; and the question there was, upon which of these amounts the tax should be computed. In dealing with that question the court said: 'It is urged, however, by the appellant that upon whatever estate the collateral inheritance tax is imposed by the statute, it is imposed as of the death of the testator (Mr. Johnston), from whom the estate comes, and not upon the value of the estate at the time of the death of Mrs. Johnston. This contention, we think, is answered by the statute itself. The tax is imposed upon the clear value of all estates passing by will or otherwise, *at the time it is transferred and received by the collateral beneficiary. The tax is on the transmission of the property, and upon the estate the beneficiary is to receive and enjoy.* There could be no transfer or enjoyment of the property, by the beneficiary in this case, until the death of Mrs. Johnston, and this being so, the collateral in-

heritance tax was payable, upon the clear value of the estate at her death, and at the time the collateral beneficiary *received the benefit* of the bequest and devise under the will. In other words, the tax is imposed upon the clear value of the estate at the "passing and transferring" of the estate to the collateral beneficiary.' And in the *Dalrymple's Case*, supra, this court said that, 'the amount of the tax will depend upon *the sum in the hands of the appellees payable to the legatee*'. In *Safe Deposit and Trust Co. vs. State*, 143 Md. 644, Judge Urner, speaking for the court, said: 'It is with the estate *as it passes to the beneficiary*, and not merely with the estate as it passes from the person who dies 'seized and possessed thereof,' that the collateral inheritance tax law is concerned. The express purpose of the law is that *any property or money passing from a decedent to one not related within the limits prescribed 'shall be subject' to the tax*, and that it shall be paid by the executor or administrator at the rate of five per cent. of 'every hundred dollars he may hold for distribution' among the persons entitled. * * * * As the tax is 'on the transmission' of the estate, and is 'a premium for the enjoyment of the benefit thereby secured,' it should be held to affect equally the current money and the appraised assets thus transmitted and acquired."

As I understand this decision it holds specifically that the collateral inheritance tax is imposed not upon the vesting of a remainder in property, but upon the actual transmission of the realty or personalty in question, into the hands of the remainderman. It seems to me to make it plain that the passage of an interest in remainder to a collateral is not a taxable transmission as it is not "the transmission of property or money." It was upon this reasoning that the Court of Appeals in *Safe Deposit and Trust Company vs. State*, 143 Md. 644, held that the collateral

inheritance tax was payable upon the increase in value of property subsequent to the death of the testator.

My conclusion is that no transfer is taxable under the Maryland statute unless there is an actual possession and enjoyment of the realty or personalty in question by the collateral, and inasmuch as the estates of Joshua I. Cohen and Mendes I. Cohen have already paid the tax on the full value of the property here involved, no further tax is payable.

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

TAXATION—COLLATERAL INHERITANCE TAX—INCOME AND INCREASE SUBSEQUENT TO JUNE 1, 1927, NOT TAXABLE, BUT EXPENSES SUBSEQUENT TO THAT DATE CANNOT BE CHARGED AGAINST INCOME PRIOR TO THAT DATE.

October 21st, 1930.

Hon. Duke Bond,
Court House,
Baltimore, Md.

MY DEAR JUDGE BOND: We have your letter of October 18th requesting an opinion from this department in connection with the collateral inheritance tax payable out of the estate of Anna Z. Forney.

We understand that the textatrix died in 1920 leaving a last will and testament which was probated in Baltimore City. The residue of her estate was left in trust during the life of her husband, who was given a fixed monthly income payable out of the income if sufficient, otherwise from the corpus to the extent necessary. The will further provides that upon the death of her husband, the estate remaining in the hands of the trustee shall be distributed

to certain collateral kindred of the testatrix who were named in the will.

You further state that the husband of the decedent recently died and that the estate is now about to be distributed as directed by the will; that the income from the estate was more than sufficient to pay the fixed monthly income to the husband and the personal estate, now about to be distributed to collaterals, accordingly exceeds in value the personal estate owned by the decedent at the time of her death.

The answer to your inquiry is controlled by the provisions of Chapter 43 of the Acts of Assembly of 1927, as interpreted by the Court of Appeals in the case of Florence E. Dryden, Register of Wills vs. Baltimore Trust Co., executor, 157 Md. 559. This act became effective on June 1st, 1927, and provided that the collateral inheritance tax "shall not be paid or collected upon any increase in value of the estate or income accrued thereon subsequent to the date of death of the decedent". This language was construed by the Court to mean that the tax was collectible upon the income which accrued and became payable prior to June 1st, 1927, the date upon which the legislative enactment became effective. Of course, that portion of the income of Mrs. Forney's estate which was paid to her husband, is exempt from the tax, because he is not a collateral within the meaning of the law.

The further question therefore arises as to whether the income paid to the husband after June 1st, 1927, should be charged against the income accumulated in the hands of the trustee prior to that date, so as to reduce the amount of the tax.

It appears that the income from the estate subsequent to June 1st, 1927, has also been in excess of the fixed monthly payments to the husband of the decedent, and under these circumstances it would seem to be improper to charge the payments to the husband subsequent to June 1st, 1927, against the income which accumulated prior to that date. Such a course would operate to exempt from taxation the excess income which accumulated prior to June 1st, 1927,

and which, under the terms of the will, is now distributable to collateral kindred.

In our opinion the tax should be computed upon the value of the personal estate as it stood on June 1st, 1927. The excess income in the hands of the trustees at that time, less all proper deductions for expenses incurred prior to that date, should be included, and the excess income subsequent to June 1st should be excluded. We believe this to be a fair and just application of the Act of 1927 as interpreted by the Court of Appeals in the case above referred to.

Yours very truly,

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

TAXATION—COLLATERAL INHERITANCE TAX—REMAINDERMAN PAYS TAX ON FULL VALUE OF REAL ESTATE AT DEATH OF LIFE TENANT WHEN NO TAX IS PREVIOUSLY PAID—INCREASE IN VALUE OF STOCKS AND BONDS AFTER JUNE 1, 1927, NOT TAXABLE WHERE FARM IS SOLD IN ACCORDANCE WITH DIRECTIONS OF WILL AND PROCEEDS ARE DISTRIBUTED TO COLLATERALS—TAX IS PROPERLY PAYABLE ON THE DISTRIBUTIVE SHARES.

October 21, 1930.

Hon. Wm. T. Bishop,
Register of Wills,
Centreville, Md.

DEAR MR. BISHOP: We have your letter of October 16th asking a number of questions in connection with the collateral inheritance tax payable by the beneficiaries of the estate of Charles C. Willson, who died in your county in 1923.

Your first question relates to a tract of land which was devised to the wife of the testator for life, with remainder

to collateral kindred. The life tenant died on April 5th, 1930. You state that no tax was paid upon this property during the life of the life tenant, and it is contended by the executor that the land should be appraised as of April 5th, 1930, the date of the death of the life tenant, and that the tax should be computed upon such an appraisal. The case of *Fisher vs. State*, 106 Md. 117, is cited in support of this contention.

The contention of the executor is correct. It is in accord with Section 119 of Article 81 of the 1929 Supplement of the Annotated Code of Maryland.

Your second question relates to certain stocks and bonds which were left in trust for the benefit of the wife of the testator for life, with remainder to collaterals. Although these stocks and bonds were appraised shortly after the death of the testator, no apportionment of the collateral inheritance tax was made during the lifetime of Mrs. Willson, and no collateral inheritance tax has been paid. The executor contends that these stocks and bonds should now be appraised as of April 5th, 1930, and that the tax should be computed upon such appraised valuation.

We are unable to agree with this contention because of the passage of Chapter 43 of the Acts of Assembly of 1927, providing that the collateral inheritance tax "shall not be paid or collected upon any increase in value of the estate or income accrued thereon subsequent to the date of death of the decedent."

This act was construed by the Court of Appeals in the case of *Dryden vs. Baltimore Trust Co.*, 157 Md. page 559, where it was held that the income accruing between the date of death of the testator and June 1st, 1927, was subject to the tax and the income accruing subsequent to that date was not subject to the tax. By the same reasoning it follows that the increase in the estate between the date of death of the testator and June 1st, 1927, is taxable, while the increase subsequent to that date is not taxable. This section of the law must be construed in connection with the provisions of Section 119 above referred to. It follows, therefore, that the stocks and bonds should be ap-

praised as of June 1st, 1927, and as of April 5th, 1930, and the tax should be computed upon the lesser valuation.

This conclusion must be adopted, since section 119 of Article 81 limits the tax to the whole value of the stocks and bonds at the time the collaterals come into possession of same, and Chapter 43 of the Acts of 1927 (now codified as Section 106 of Article 81, 1929, Supplement) provides that the increase in value subsequent to June 1st, 1927, shall not be taxable.

Your third question relates to a farm which was devised to the wife of the testator for life, and at her death the executor was directed to sell the same and distribute the proceeds to persons who are not exempt from the tax. This farm was also appraised shortly after the death of Mr. Willson, but no collateral inheritance tax was paid during the life of Mrs. Willson, and the farm has now been sold, the proceeds being ready for distribution to the collaterals named in the will.

While the proceeds of this farm are subject to the statutory provisions above referred to, I believe that as a practical matter the distributees of these proceeds should be required to pay the tax upon the respective shares as they are distributed to them. This will give effect to the intent and purport of Section 119.

It is believed that the above will fully answer your letter, but if any additional information is required we shall be glad to hear from you.

Very truly yours,

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

TAXATION—COLLATERAL INHERITANCE TAX—PAYABLE ON
PROCEEDS OF WAR RISK INSURANCE POLICY WHEN DIS-
TRIBUTED TO COLLATERALS UNDER LAWS OF THIS STATE.

November 3, 1930.

*Charles E. V. Myers, Esq.,
Register of Wills,
Frederick, Md.*

DEAR MR. MYERS: In your letter of October 31st you state that an administrator of the estate of a deceased soldier has collected a sum of money from the United States Government, representing the balance of the proceeds of a government policy of insurance upon the life of the deceased soldier. This sum of money is now about to be distributed by the administrator under the jurisdiction of the Orphans' Court for Frederick County, to the brothers and sisters of the deceased soldier as his next of kin. You request an opinion as to whether the distributive shares of the respective brothers and sisters are subject to the payment of a collateral inheritance tax.

A similar inquiry was presented to this department by the Register of Wills of Baltimore City in 1925 and in an official opinion rendered to him under date of July 28th, 1925, it was held that the proceeds of such policies are subject to the laws of this State relating to the collateral inheritance tax. For your further information on the subject, I am enclosing a copy of that opinion. I understand also that a similar conclusion has been reached in the courts of several other States in which this question has arisen.

Very truly yours,

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

TAXATION—CORPORATION FRANCHISE TAX—WHEN TRUSTEE
IN BANKRUPTCY LIABLE.

November 5, 1930.

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

MY DEAR MR. MCCUSKER: Receipt is acknowledged of your letter of the 27th ultimo in which you request to be advised whether the trustee in bankruptcy of the Morocto Roofing Company, bankrupt, is liable to the State of Maryland for the 1930 franchise tax.

We have carefully considered the contentions of Mr. William Pepper Constable, attorney for the trustee, as set forth in his letter to the State Comptroller dated October 15th, 1930, the original of which you forwarded to us. We have also ascertained from Mr. Constable that the Morocto Roofing Company filed a voluntary petition in bankruptcy and was adjudicated a bankrupt on April 9th, 1928; that on the same day Mr. Charles S. Pyle was appointed receiver and that on May 19th, 1928, Mr. Pyle was elected trustee.

It is contended by Mr. Constable that the trustee can be required to pay only such franchise taxes as are due and owing when he is elected, and that obviously the 1930 tax assessed against the Morocto Roofing Company was not due and owing on the 19th day of May, 1928, the date of Mr. Pyle's election.

This contention is sustained in a well reasoned opinion of the District Court of New York, (Augustus Hand, J.) decided in 1925, in the case of *In re: Century Silk Mills*, 12 F. (2d) 292.

Upon the authority of the above case, we are of the opinion that your claim against the trustee cannot be maintained.

Very truly yours,

HERBERT LEVY, *Asst. Attorney General.*

TAXATION—COUNTY TREASURER OF KENT COUNTY—LIMIT
OF AUTHORITY IN MAKING OR RECOMMENDING ASSES-
MENTS.

November 6th, 1930.

Herbert E. Perkins, Esq.,
Chestertown, Md.

DEAR SIR: Receipt is acknowledged of your letter of the 31st ulto., in which you request to be advised whether Chapter 146 of the Acts of 1929 vests in the county treasurer of Kent County exclusive authority in the assessment of new or unassessed property.

The act in question provides for the election of a county treasurer for Kent County and prescribes among his duties the following:

“* * * * * and said treasurer shall have the power and authority to assess all new or unassessed property in said county, and for this purpose he is clothed with all the powers possessed by collectors of taxes under the provisions of the Code of Public General Laws.”

At the time the act was approved, Chapter 226 of the Act of 1929, which was a complete recodification and revision of the revenue and tax laws, had already been approved. Neither act, however, became effective until June 1, 1929.

An examination of the provisions of the tax revision act reveals that no reference is made to the power and duty of county collectors to make assessments, and therefore, the provision in the Kent County act, conferring upon the treasurer “all the powers possessed by collectors of taxes under the provisions of the Code of Public General Laws,” must have reference to Sections 13, 14 and 18 of Article 81, as it stood prior to the enactment of the tax revision act.

Section 13 requires that:

“Every assessor appointed by the mayor and city council of Baltimore and every collector of State and county taxes in this State shall annually inform himself by all lawful means of all property, stocks or investments in his county, district or city liable to taxation and which may have been omitted in the assessment, and all buildings and improvements, and all property created or acquired since said assessment, and shall value the same at the full cash value thereof, and shall make return thereof to the county commissioners or appeal tax court, if in the city of Baltimore; and for the purposes of this section, the said collectors and assessors are hereby clothed with the powers of general assessors, and their valuation shall be subject to revision and correction by the county commissions and appeal tax court.”

The next section (14) reads:

“The collectors and assessors shall be allowed such compensation for the performance of their duties as assessors as the county commissioners or the mayor and city council of Baltimore may by ordinance direct.”

And Section 18 is as follows:

“In all cases where discoveries of assessable property are made by the collectors, county commissioners or appeal tax courts of Baltimore City, either from the returns of clerks, registers or assessors or in any other way, the said county commissioners or appeal tax court shall assess the same and add the same to the amount on which taxes are to be levied.”

Section 18, as reproduced in Section 36 of the Tax Revision act, omits "collectors". This is a further indication that the "powers possessed by collectors of taxes," conferred on the county treasurer by the Kent County act were those vested in collectors by Article 81 of the Code of 1924.

In view of the above quoted provisions of Sections 13, 14 and 18 of Article 81 of the Code of 1924, it is our opinion that the Kent County act was intended to give the treasurer merely the powers of an assessor of omitted property, and was not intended to deprive the county commissioners of their function of taking final action in such cases.

To hold that the treasurer of Kent County was to be given power to assume the authority of the county commissioners in the matter of new and omitted property would mean that in cases of assessments made by the treasurer, there would be no appeal to the State Tax Commission, since Section 183 of the tax revision act allows an appeal only from action taken by the "County Commissioners, Appeal Tax Court of Baltimore City, or the assessing authorities in any other city."

The Kent County act must certainly be read in harmony with the general scheme which gives the State Tax Commission authority to review the action of subordinate assessing officials. Section 25 of Article 81, as it existed before the passage of the tax revision act of 1929, allowed an appeal from the action of the county commissioners, but not from the action of any other county official, so that the Kent County act of 1929 would be out of harmony with the old law as well as the new, unless construed to limit the power of the county treasurer to that of an assessor, with jurisdiction to recommend assessments to the county commissioners, and not to take the place of the county commissioners in making them.

We are furthermore of the opinion that in giving the county treasurer "power and authority to assess all new or unassessed property in said county", there was no intention to give him exclusive authority even in the matter of

recommending assessments; but that his authority is co-extensive with that of the supervisors of assessments and the county assessors. He has authority over all new or unassessed property in exactly the same way as the supervisors and county assessors have such authority.

Yours very truly,

HERBERT LEVY, *Asst. Attorney General.*

TAXATION—SUPERVISOR OF ASSESSMENTS—METHOD OF CALCULATION.

November 17th, 1930.

Mr. S. L. Fyle,
Supervisor of Assessments,
Harford County, Bel Air, Md.

DEAR MR. FYLE: On January 15th, 1930, Mr. Robinson addressed a letter to you in which he ruled that, in determining "the aggregate value of property subject to taxation" under your supervision for the purpose of fixing your salary for the year 1929 as provided by Section 255 of Art. 81 of Bagby's Code of 1924 (now Section 170, Art. 81, Bagby's Code, 1929 Supp.), there should not be included an assessment of \$6,000,000, upon the stock of the Susquehanna Power Company which was not certified to the Commissioners of Harford County until December, 1929.

You have now asked whether, in ascertaining your salary, there shall be included the assessment placed by the County Commissioners on the real property of the Susquehanna Power Company, which assessment was reduced by the State Tax Commission after the Commissioners of Harford County had fixed the amount of the levy for the year 1929.

In my opinion you are entitled to have included, for the purpose of determining your salary, the assessed value of

all property appearing on the tax roll at the time when the County Commissioners fixed the levy for the year 1929 at the values then placed upon them. The statute requires the Commissioners in fixing the levy to provide sufficient funds to pay the salary of the Supervisor in monthly installments. Manifestly, this cannot be done if subsequent modifications of the amount of the assessment by the State Tax Commission or the Courts is to be taken into account.

Yours very truly,

WM. L. MARBURY, JR., *Asst. Attorney General.*

TAXATION—COLLATERAL INHERITANCE TAX—REAL ESTATE
IN MARYLAND BELONGING TO NON-RESIDENT DECEDENT
TAXABLE.

November 25, 1930.

*Hon. Edwin R. Downes,
Register of Wills,
Baltimore, Md.*

DEAR DR. DOWNES: I have your letter of November 22nd, enclosing communication from the Safe Deposit & Trust Company, dated November 8th, 1930, with reference to the Estate of Lavinia Hopkinson Smith.

It appears that Mrs. Smith died in Florence, Italy, on April 1st, 1930, leaving a last will and testament by which her entire estate was devised and bequeathed to collaterals. Her estate consists of intangible personal property of the value of approximately \$34,000, and four annual ground rents situated in Baltimore City, valued at \$9,614.81. You request an opinion as to what portion of this estate, if any, is subject to the collateral inheritance tax imposed by the laws of Maryland.

The answer to your inquiry depends upon the place of residence of Mrs. Smith at the time of her death. If she

did not have a residence in the State of Maryland at that time, the intangible personal property belonging to her estate is not subject to the collateral inheritance tax laws of Maryland. In determining whether she was a resident of Maryland at the time of her death, it is necessary to ascertain whether she acquired a residence in some other jurisdiction. A person who travels about from place to place with no fixed intention of remaining at any place, acquires no new residence, and until a new residence is acquired, the old residence is presumed to be retained.

With respect to the intangible personal estate, therefore, no tax is payable in Maryland if Mrs. Smith had acquired a residence in a foreign jurisdiction prior to her death. On the other hand, if no such residence was acquired after she left Maryland, this property is subject to taxation in this State.

Regardless of where Mrs. Smith had her residence at the time of her death, there can be no doubt that the ground rents in Baltimore City are subject to the collateral inheritance tax laws of this State.

With kind regards and best wishes, I am,

Very truly yours,

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

TREASURER OF MARYLAND.

TREASURER OF MARYLAND—STATE ACCIDENT FUND—SECURITIES IN WHICH THE MONIES BELONGING TO STATE ACCIDENT FUND MAY BE INVESTED.

September 4, 1930.

*Hon. John M. Dennis,
State Treasurer,
1009 Union Trust Building,
Baltimore, Md.*

MY DEAR MR. DENNIS: On behalf of the Attorney General, I am answering your letter of to-day.

It appears that the State Accident Fund has \$100,000 to invest, and you request an opinion as to whether this sum may be invested in railroad equipment bonds.

The investment of monies held by the Treasurer for the State Accident Fund is controlled by Section 25 of Article 101 of the Code of Public General Laws, entitled "Workmen's Compensation", sub-title "State Accident Fund," which reads as follows:

"Whenever and as often as there shall be in the hands of the Treasurer any sum belonging to the State Accident Fund not likely, in the opinion of the Commission, to be required for immediate use, it shall be the duty of the Board of Public Works, when called upon by the Commission, to invest the same in interest-bearing securities, such as are accepted by the equity courts of Baltimore City for the investment of trust funds, and when and as it may become necessary or expedient to use the moneys so loaned or invested the Board of Public Works shall, when called upon by the Commission, collect or sell or otherwise realize upon any such

loan or investment, and any interest accruing upon any such loan or investment, as well as any interest, received upon the deposit or moneys belonging to said fund shall be accredited to said fund.

“The State Treasurer may deposit any portion of the State fund not needed for immediate use, in the manner and subject to all provisions of law respecting the deposit of other State funds by him. Interest earned by such portion of the State Accident Fund deposited by the State Treasurer shall be collected by him and placed to the credit of the fund.”

It will be noted that it is the duty of the Board of Public Works to invest such monies “in interest-bearing securities such as are accepted by the equity courts of Baltimore City for the investment of trust funds.” The investment of trust funds being administered under the jurisdiction of the equity courts of Baltimore City, is controlled by Rules 23 and 23-A of the Supreme Bench of Baltimore City, Revised 1929, pages 51 and 52.

Rule 23 provides “that to be relieved of responsibility for the choice of investments to be made of funds under the jurisdiction of the equity courts, a trustee must invest in such bonds issued or guaranteed by the United States, the State of Maryland, Baltimore City stock or bonds or Federal Land Bank bonds or in mortgages on real estate made or assigned directly to the investing trustee, and ground rents within the following limits, that is to say:

“First mortgages on real estate in Maryland to the extent of 60 per cent. of the value thereof if dwelling house, store or office property and productive; 50 per cent. of its actual value if farm property and improved, or 30 per cent. of its actual value if unproductive or manufacturing property.

“Ground rents on unincumbered real estate situate in Maryland where the amount of the rent capitalized at 6 per cent. is not over 50 per cent. of the value of the property from which they issue.”

It is further provided that other investments may be made by trustees "but only under full personal responsibility of the investing trustees in each instance."

In view of the above provisions, it is clear that there is no authority for the investment of the sum of money to which you refer, in railroad equipment bonds.

With kind regards, I am,

Very truly yours,

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

TREASURER OF MARYLAND—DEEDS TO STATE OF MARYLAND
—SHOULD BE DELIVERED TO TREASURER FOR SAFE KEEP-
ING.

August 7, 1930.

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

DEAR MR. CASE: I have your letter of August 6th in which you state that you have a number of deeds covering property recently purchased by the Board of Welfare in Washington County, for the location of the new State prison. You request me to advise you whether these deeds should remain in the office of the Board of Welfare or be sent to some other department of the State government for safe keeping.

Section 28 of Article 95, of the Code of Public General Laws, provides that "all bonds, certificates of stock and other securities belonging to the State, shall be deposited and kept in some safe deposit company in the City of Baltimore, to be selected by the Treasurer, with the approval of the Board of Public Works."

Although this Section does not refer specifically to deeds, I am of the opinion that these documents should be turned over to the Treasurer for safe keeping.

Very truly yours,

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

UNDERTAKERS.

UNDERTAKERS—ALL MEMBERS OF PARTNERSHIP ENGAGED IN UNDERTAKING BUSINESS NEED NOT BE LICENSED— ONLY THOSE WHO ENGAGE IN THE PRACTICAL WORK CONNECTED WITH THE FUNERAL REQUIRE LICENSE.

January 22, 1930.

*Mr. H. H. Housman, Jr.,
State Board of Undertakers,
11 S. Gay St.,
Baltimore, Md.*

DEAR SIR: In your letter of January 20th you request an opinion as to whether it is necessary for all of the individual members of a partnership engaged in the undertaking and embalming business, to be licensed. You cite the case of C. E. Cline & Son, of Frederick, Md., where one of the members of the partnership holds an individual license as an undertaker and embalmer, and the other member of the partnership holds no such individual license.

The manifest purpose of the law requiring undertakers and embalmers to be licensed, is to promote the public health, and so long as the business is conducted in a manner to effectuate the general purposes of the act, it is permissible.

The answer to your inquiry depends upon the interpretation of Section 236-A of Chapter 575 of the Acts of Assembly of 1924, where it is provided that,

“Before any person, co-partnership or corporation shall hereafter engage in the business of undertaking, * * * * such person, co-partnership or corporation shall apply to the Board of Undertakers for a license to carry on the business of undertaking, and *all such individuals, members*

*of such co-partnership and officers and employees of such corporation whose duties shall engage him or her in the care, preparation for burial, burial or shipment of dead human bodies, and the disinfection of the clothing and bedding of such deceased person who shall have died from an infectious or contagious disease, or the premises in which he or she shall have died, shall present himself or herself before the Board at the time and place fixed by the Board * * * for examination * * *."*

In my opinion, it was not intended by the Legislature to prohibit a non-licensed individual from becoming a member of a partnership engaged in the undertaking and embalming business, so long as the actual work is performed by or under the supervision of a duly licensed undertaker or embalmer.

If the non-licensed member of the partnership in question engages "in the care, preparation for burial, burial or shipment of dead human bodies," etc., then manifestly he is subject to examination by the Board and must obtain a license before he can properly perform such work. On the other hand, if he does not actually engage in such work, no license is required, notwithstanding his membership in the firm.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

UNDERTAKERS—UNLICENSED EMPLOYEES OF LICENSED UNDERTAKERS—NOT AUTHORIZED TO SUPERVISE BURIAL OF DEAD BODIES.

July 8, 1930.

*H. H. Housman, Jr., Esq.,
State Board of Undertakers,
308 Old Town Bank Building,
Baltimore, Md.*

DEAR SIR: I have your letter of June 16th enclosing communication from Mr. David G. McIntosh, Jr., requesting an opinion as to whether the law requires a licensed undertaker to accompany a dead human body to a cemetery and supervise the burial of same.

It is contended that there is no danger to the public health and safety involved in the transportation of the corpse to the cemetery for burial, and the actual burial of same, and therefore it is unnecessary to require a licensed undertaker to perform this portion of the work involved in the conduct of a funeral.

Section 297 of Article 43, requires that all individuals, members of co-partnerships or officers and employees of corporations "whose duties shall engage him or her in the care, preparation for burial, burial, or shipment of dead human bodies, etc. * * * *", shall obtain a license from the State Board of Undertakers. This section of the law concludes with a provision which reads as follows:

"Provided that nothing contained herein shall apply to any bona fide employee of a licensed undertaker acting under his or her supervision."

The question arises, therefore, as to whether this exemption in favor of the bona fide employees of a licensed undertaker acting under his or her supervision, may properly be construed to mean that an unlicensed employee of a licensed undertaker may be permitted to accompany the

dead body to the cemetery and supervise the burial of same, without the attendance of a licensed undertaker.

The case of *Keller vs. State*, 122 Md. 677, involved the validity of an act of Assembly of 1902, requiring applicants for licenses to act as undertakers, to qualify by showing their knowledge of the business. In sustaining the validity of this act, the Court quoted with approval from the case of *People vs. Ringe*, 197 N. Y. 143, as follows:

“The care of dead human bodies and the disposition of them by burial or otherwise is so closely related to the health and general welfare of a community that the business of caring for and disposing of such bodies may be regulated by license and special regulations under the general police power of the State. The danger that may arise from the body of a person who has died from some infectious, contagious and communicable disease or otherwise, is to some extent obviated by the sanitary regulations of local boards of health; but such regulations are quite inadequate to protect the health and general welfare of a community unless the person who comes into immediate contact with the dead body and upon whose care and skill the public are principally dependent in preventing the spread of infection or contagion and protecting the health, good order and general welfare of a community, is selected with special reference to his skill, knowledge and experience.”

In view of the above statement of the law, I am unable to agree with the contention that the “burial” of a dead human body may be supervised by unlicensed employees without danger to the public health.

Section 297 specifically requires that all employees whose duties shall engage him or her in the “burial” of dead human bodies, shall possess the qualifications required by the act, and obtain a license before engaging in such work, and in my opinion the exemption contained at the end of

Section 297 was not intended to permit unlicensed employees to supervise burials.

This conclusion is supported by the provisions of Section 304 of Article 43, where it is provided that "any Superintendent or person in charge (in the absence of the Superintendent) of any cemetery or burial place, who shall permit any other person than a duly licensed undertaker, under Sections 296 and 297 of this Article, to deliver for burial or offer for cremation, the body of a deceased person, shall be guilty of a misdemeanor, etc." An unlicensed employee of a licensed undertaker cannot, in my opinion, be held to be "a duly licensed undertaker" within the meaning of this section.

For the reasons above set forth, you are advised that the law requires a duly licensed undertaker to accompany a dead human body to a cemetery for burial.

Very truly yours,

THOMAS H. ROBINSON, *Attorney General.*

UNDERTAKERS—LAW DOES NOT REQUIRE THAT EVERY
BURIAL BE CONDUCTED BY A LICENSED UNDERTAKER.

Sept. 25th, 1930.

*H. H. Housman, Jr., Esq.,
Secretary, State Board of Undertakers,
Old Town Bank Bldg.,
Baltimore, Md.*

DEAR MR. HOUSMAN: I have your letter of September 23rd, enclosing copies of opinions rendered to your Board on July 8th, 1930, May 15th, 1925, and also an opinion rendered to Walter N. Kirkman on February 5th, 1930.

There is no inconsistency in any of these opinions. The application for a burial permit requires no expert knowledge

of any kind, and there is nothing in the law which prohibits a registrar from issuing burial permits to persons who are not licensed undertakers. The burial of a dead body by a person who is engaged in the business of undertaking is a different matter altogether, and what was said by the Attorney General in his letter of July 8th, 1930, related to an undertaker who was engaged in the business.

There is nothing in the law which requires that every dead human body must be buried by a licensed undertaker, and your Board has no jurisdiction over a private individual who may bury a deceased member of his family. To hold that a registrar cannot issue a burial permit except to a duly licensed undertaker would mean that such an undertaker must be employed to bury every dead human body. The legislature has enacted no such requirement, and even if such legislation were passed, it would probably be unconstitutional.

With kind regards, I am,

Yours very truly,

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

UNIVERSITY OF MARYLAND.

UNIVERSITY OF MARYLAND—NON-RESIDENT TUITION FEES.

December 4, 1930.

Dr. R. A. Pearson,
University of Maryland,
College Park, Md.

DEAR DR. PEARSON: Referring to your various letters in relation to the problem of non-resident tuition, it is my opinion that the Board of Regents may establish such rules with regard to tuition, either resident or non-resident, as it may see fit, provided that the catalogue states the tuition which is payable. Furthermore, the catalogue may define "residence" in such manner as the Board of Regents shall determine. There is, therefore, no reason why the provisions of the catalogue of the University of Maryland and of the Baltimore Schools, with relation to residence, may not be enforced.

The present rule with regard to the branch of the University located at College Park, is as follows:

“DEFINITION OF RESIDENCE AND NON-RESIDENCE

“Students who are minors are considered to be resident students, if at the time of their registration their parents or guardians have been residents of this State or the District of Columbia for at least one year. Students from the District of Columbia have non-resident status if entered in the schools of the University in Baltimore.

“Adult students are considered to be resident students, if at the time of their registration, they have been residents of this State for at least one year.

“The status of the residence of a student is determined at the time of his first registration in the University, and may not thereafter be changed by him unless his parents or guardians move to and become legal residents of this State.”

The definition with regard to the Baltimore Schools differs, in that the status of the residence of a student may be changed after his first registration only in case of a minor.

As I interpret the provisions of the catalogue, at College Park the status of a student whether adult or minor, is immediately changed if his parents or guardians move to and become legal residents of the State. This is the only means by which the status of a student may be changed after his first registration. In the Baltimore Schools, the status of the adult student may not be changed after his first registration, but the status of a minor student may be changed if his parents or guardians move to and become legal residents of the State.

I would suggest that the rule be formulated in such a way as to use the phrase “domiciled in the State”, rather than “legal residents of this State.” I would also suggest that instead of “parents or guardians”, the phrase “parents or persons in loco parentis” be substituted. These changes are in the interest of exactitude.

Very truly yours,

WM. L. MARBURY, JR., *Asst. Attorney General.*

WORKMEN'S COMPENSATION.

WORKMEN'S COMPENSATION—PRISONERS EMPLOYED BY
CONTRACTOR ENTITLED TO COMPENSATION FROM THE
CONTRACTOR.

Sept. 1st, 1930.

*Mr. Robert D. Case,
Secretary-Treasurer, Board of Welfare,
Union Trust Building,
Baltimore, Md.*

DEAR MR. CASE: I have your letter of August 29th stating that two prisoners assigned to work for the Standard Overall Company, under contract dated February 1st, 1930, have been injured in the course of their employment. You request an opinion as to whether the contractor or the Board of Welfare is liable for compensation to these prisoners.

In my opinion, the contractor is liable for compensation under the provisions of Section 35-A of the Workmen's Compensation Law, and I suggest that the prisoners be advised to file claims with the State Industrial Accident Commission.

I am returning the contract which accompanied your letter.

Yours very truly,

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



APPENDIX

MEMORIAL MEETING IN HONOR OF THOMAS H. ROBINSON, LATE ATTORNEY GENERAL OF MARYLAND

Memorial services were held in the Circuit Court for Harford County, at Bel Air, Md., on Tuesday, December 16th, 1930, at 3 P. M., in honor of Thomas H. Robinson, late Attorney General of Maryland. Chief Judge T. Scott Offutt and Associate Judges Frank I. Duncan, Walter W. Preston and C. Gus Grason presided during the services.

The meeting was arranged by a committee consisting of Philip H. Close, Robert H. Archer, John L. G. Lee, Charles H. MacNabb and Edwin H. W. Harlan. The memorial minute was presented to the Court by Mr. Close, who after reading it, moved that the same be adopted. The motion was seconded by the remaining members of the committee and the Court ordered the resolution spread upon the minutes.

Addresses were delivered by Assistant Attorney General Robert H. Archer, John L. G. Lee, Charles H. MacNabb, Stevenson A. Williams, William L. Rawls, William L. Marbury, Ernest Volkart, Chief Judge T. Scott Offutt and Judge Walter W. Preston.

The addresses follow:

MEMORIAL MINUTE READ BY PHILIP H. CLOSE.

In the early morning of the twelfth day of October, in the year 1930, Honorable Thomas Hall Robinson, Attorney General of Maryland, and for forty-eight years a member of the Bar, departed this life. The announcement of his death was a distinct shock to his host of friends throughout the State and the unanimous verdict was that a great life had ended at a time when he had the right to believe he had years of usefulness before him, and that he had so lived

his life as to leave an example of service which will remain with us a cherished and instructive memory.

Thomas Hall Robinson was born near the Hickory in Harford County, Maryland, on the second day of March, 1860. He was the son of Dr. Samuel S. and Mary C. Robinson, both representing the leading families of the county whose members had always taken an active part in business and politics. After an education in the public schools of the county and under private tutors, he entered the law office of Mr. Henry D. Fernandis, a noted lawyer of his day, with offices at Bel Air. At that time Mr. William G. Scott was associated with Mr. Fernandis and died in the early part of 1883, shortly after Mr. Robinson was admitted to the Bar. After Mr. Scott's death, Mr. Fernandis soon began to rely upon Mr. Robinson in the conduct of his large affairs and he early demonstrated his ability as a lawyer, and the traits of self-reliance and independence which were always manifest in his handling of legal matters.

In 1891, Mr. Robinson was elected to fill the unexpired term of Benjamin Silver in the Maryland Senate and was again elected to the Senate in 1901. He was five times a delegate to the Democratic National Convention and was Chairman of the Maryland Delegation to the Conventions which nominated for President James F. Cox, in 1920, and John W. Davis, in 1924.

He was first elected Attorney General in 1923, again elected in 1927, and was in the midst of the campaign for re-election at the time of his death. During his professional life, Mr. Robinson built up an extensive law practice with important clients throughout the State, and from the death of Mr. Fernandis was the counsel for the Pennsylvania Railroad in this county.

He was an able lawyer, painstaking and thorough in the preparation of his cases and clear and vigorous in their presentation. His knowledge of legal principles was comprehensive, his judgment keen and discriminating and he maintained throughout his life a lofty devotion to the highest ideals of the profession. He was a man of charming

personality and in his dealings with others always considerately kind and courteous.

He was a devout and unostentatious Christian and his home life was in every respect ideal. He lived a life of high service enriched by honors deservedly bestowed, and he died, as he had lived, in the cherished home in the county where his whole life was spent, with the confidence of the public, loved and honored by his fellowmen and with his devoted family about him.

Be it therefore resolved by the members of the Bar of Harford County here assembled and voicing the feelings of their brethren throughout the State that the life and labors of the late Attorney General constitute a notable contribution to the achievements of this Bar, of which he was so long a member; that by his constant efforts in behalf of his fellowmen, by his faithful adherence to the best traditions of this profession and his steadfast devotion to the highest principles of public and private virtue, he has left to us a memory of ennobling inspiration and priceless example; and

Be it further resolved that these resolutions be inscribed upon the records of this Court, and a copy of these resolutions sent to Mrs. Robinson as an expression of the sympathy of this Bar.

Philip H. Close,
Robert H. Archer,
John L. G. Lee,
Charles H. MacNabb,
Edwin H. W. Harlan,
Committee.

REMARKS OF ASSISTANT ATTORNEY GENERAL
ROBERT H. ARCHER.

May it please the Court: I probably didn't know Mr. Robinson as intimately as some of the other members of the Bar prior to his election as Attorney General, which was about seven years ago. However, since that time I have learned to know him intimately and to love him. I think

that Mr. Robinson was one of those persons the longer you associated with him the better you knew and loved him, and the more you appreciated his ability.

When Mr. Robinson entered the Attorney General's office, he took with him the sound legal ability that characterized him as one of the outstanding members of this Bar. When, as the head of the Law Department of the State, he was called upon to write an opinion, he was confronted by entirely different conditions than would confront one in giving an opinion in private practice. In many instances the question had arisen and been widely advertised in the newspapers and there had been a great deal of discussion pro and con about it before it was finally submitted to the Attorney General for his opinion. In many instances these questions affected questions vital to public policy and in a great many instances the matter of expediency was impressed upon him in reference to his opinion, and I want to say that Mr. Robinson never allowed such matters to in any way affect his sound legal opinion. I have heard him say time and again, "Gentlemen, just leave your request for the opinion with me and the opinion will be written." I think that the results show what these opinions were because, while Mr. Robinson was the Attorney General, there has been but one opinion that was not fully affirmed either by the Court of Appeals or a lower Court, and that case involved some County Commissioners in one of our counties. In that instance Mr. Robinson and the lower Court did not entirely agree and the Court of Appeals adopted a middle ground. I think that, without exception, all of his other opinions to be passed upon by the Courts were affirmed.

In conclusion I wish to say that, in the death of Mr. Robinson, I lost one of my best and truest friends, and that our Bar and this county have suffered an irreparable loss.

REMARKS OF JOHN L. G. LEE.

Mr. Robinson practiced law at this Bar for nearly forty-eight years. This Bar has had fine traditions and a high reputation, and Mr. Robinson came here at a time when it

was particularly strong—when Mr. Henry D. Fernandis, Mr. Otho Scott, Mr. William G. Scott, Mr. Henry W. Archer and Col. Edwin H. Webster were in full practice here, and when the arguments of Mr. Pinkney M. Wirt, Mr. Schley, Mr. Campbell and other great lawyers had been heard in this Court, Mr. Robinson took up where they left off. The ideals he had of the profession were of the finest. He was a lawyer whose chief delight was in the trial of cases no matter whether he was appearing in a *nisi prius* or arguing before the Court of Appeals a fine legal question—in either case he was thoroughly at home and enjoyed what he was doing. He was a real lawyer because he loved the trial work and that is the test in the final analysis.

If I were to be asked what was his outstanding characteristic, I would say that it was *self-reliance*. He was a self-reliant man, depending upon himself, and that has been defined to be a multiplex virtue, an abundance of courage, energy, hope, grit, ambition, enthusiasm and endurance. Now Mr. Robinson had all of these, so I would say that self-reliance was his outstanding characteristic.

Marshall Hall, the great English criminal lawyer, in addressing Sir John Simon—then the Attorney General of England, and now one of the most prominent Liberals in England, and a member of His Majesty's Indian Commission—said, using these words: "You are the custodian of the honor of the English Bar," and I wish to say that Mr. Robinson, as the Attorney General of Maryland, was the custodian of the honor of the lawyers of Maryland, and worthily he sustained it.

May it please the Court, we can get no better knowledge of the ideals of a man than studying what he admired and praised in others. Senator Robinson, speaking in the Court of Appeals, on the death of one of the judges, said in referring to that deceased judge: "He was not a mere legal machine, in him the social instinct was developed to a high degree. His home life was most happy, grief had entered that home but it had been borne with the fortitude of those who believe in the destiny of the human soul, his daily life stands as an example of right living to his people." Then

on a similar occasion, in the same Court, speaking of the late Judge Burke, he used these words: "His lovable personal qualities and uniform courtesy extended to members of the Bench and Bar, and all who came in contact with him, made him a conspicuous figure in all walks of life."

To all of us who knew Senator Robinson well, those words describe him. He was a man of high ideals all of his life and a most public spirited citizen being interested in any question that came before the community for the public good. He was a splendid lawyer, a man devoted to his family and he worked for all that was best in life. Senator Robinson was an ornament to our profession, a credit to himself, his county and his State, and he was honored and respected by all who knew him. He will be missed in this community; and gentlemen of the Bar, we will miss our brother lawyer—we will miss him in his accustomed seat at this trial table, miss his genial smile, his counsel and advice, but is it not some consolation to remember his character, his honesty, his fearlessness, his humanity and high ideals of our profession. I too move that this resolution be adopted.

REMARKS OF CHARLES H. MACNABB.

Fellow members of the Bar, ladies and gentlemen:

We are met here this afternoon to honor the memory of the Honorable Thomas H. Robinson, late of the Harford County Bar.

I have known Mr. Robinson for a long time, but my earliest recollection of him is seeing him drive into Dublin attired in an English walking coat and a derby hat and driving a chestnut horse hooked to a red-wheeled buggy. I asked who that man was and one of the boys present said, "That is the man who is going to beat your daddy in the next primaries."

Since that time I have known Mr. Robinson, but in the last three years I realized that I had never previously known him intimately, although we have always been friends. It was in the past three years that I came to know him inti-

mately. It has been said that, to know a man, you must live with him. I would say that, to know a man you must work with him, and I wish to say that it was a real pleasure to work with Mr. Robinson. He was a student and had a clear vision of what he was studying, and always went direct to the point. He was a tireless worker and was never satisfied to stop until his work had been finished.

He was always courteous and ready to get your viewpoint and ready to understand it. He was a willing worker and never satisfied with anything less than the best could be done.

Quite recently a client of his of long standing came to me in reference to a matter on which Mr. Robinson had worked and almost completed—only the final terms were to be settled. In my handling of that case, Mr. Robinson's files were placed at my disposal, and I went through them. This was a case in the United States District Court and there was a real fight in it. By the correspondence in that file, I noted that Mr. Robinson had left no pebble unturned, let alone no stone unturned, in an effort to get his client out of the difficulty in which he found himself. He had used every resource at his command to secure the truth—his master mind used every honest effort to save his client; and last Saturday his plans were consummated—carried out just as he would have carried them out; and I believe that both sides to that controversy were well satisfied.

If there was any one attribute in his character that stands out more than any other, it is the object lesson to the living members of this Bar of his work—he worked hard with his whole soul and body for the benefit of his clients. He made a firm effort to give his best in this regard.

His honesty and efforts were a great example to all of us, and it was by his own efforts that he succeeded. I second the motion that these resolutions be adopted.

REMARKS OF STEVENSON A. WILLIAMS.

My acquaintance with Mr. Robinson began fifty years ago this winter—I had not known him until that time. I was

brought in touch with him by the late William G. Scott, with whom I had been very intimate. He was six years my senior and I considered it a great honor to be requested to do anything by William Scott. At that time I was serving as a member of the School Board and there was a vacancy and some trouble about a school at Hickory. I mentioned it to Mr. Scott and he said that he would bring Tom Robinson in to see me and he was sure he could help me out, and he did.

At that time Mr. Robinson had not come to the Bar, and he always considered he had a great advantage in having the criticisms of Mr. Scott, who questioned him every day and insisted upon directing his reading. I have heard him say that he would never be able to repay the great advantages he had in associating with Mr. William G. Scott. Just about the time that he came to the Bar, Mr. Scott was taken ill with scarlet fever and died in Baltimore, and then it was up to Mr. Robinson to take charge of the greater part of the work in Mr. Fernandis' office—the work that Mr. Scott had always taken care of while he was associated with Mr. Fernandis.

I remember waiting with interest his coming into Court and handling the cases that were brought before him. I want to say that I was struck with his preparation of them and the self-reliance exhibited by him. I don't put that as his chief characteristic, but his high and independent character and along with that came industry and self-reliance.

From that day until his death I had the honor of being one of his intimate friends, and he was a loyal friend. As an illustration of that, I wish to say that I am reminded of an incident at the Republican National Convention in 1908 at Chicago. Some contests were being disposed of before Mr. Taft was nominated and I was in a lunchroom and five or six people were sitting about. There was a man there by the name of Sturgis, from Arizona, who lived seventy miles from a railroad; and when he wanted to go there, he had to hook four mules to a wagon and drive over. There was a discussion about friendship and its value in the far

West, and Mr. Sturgis called to a gentleman two or three seats away and said, "Stevenson, in the West, when we have a friend who needs aid, we don't wait until we are called upon, we just go without waiting to be sent for." That is the kind of a friend that Mr. Robinson has been to me all these years. There have been times when I needed help; and, although I never said a word on the subject, aid was always forthcoming. Aid always came and I tell you, may it please your Honors, gentlemen of the Bar there is no friend like that. Loyalty was one of his attributes, and I want to say that, through the years, on more than one occasion, he exhibited friendship like that.

Speaking of him as a lawyer, I want to say that I had the opportunity to see him from the beginning. We were in many hot contests and more often on opposite sides than together, and there have been some aggressive fights, but there was never the slightest thing outside of the Court room or after the fight was over to indicate that there had been such a hot fight—the same courteous friendship lasted through it all. As a lawyer, I think that the characteristics I have mentioned stand out the most. I have been at this Bar since 1872 and I have not known any better trial lawyer, and I feel that he has been an honor to this Bar. I second the motion that these resolutions be adopted and placed upon the records of this Court.

REMARKS OF WILLIAM L. RAWLS.

May it please your Honors and Gentlemen of the Bar: When I came here today I did not expect to have anything to say at this meeting—I just came here as one of the hundreds of the members of the Maryland Bar who admired Attorney General Robinson and are anxious to show in every way within their power their respect and regard for him.

It would be incorrect, however, may it please your Honors, to say that Senator Robinson had not been very much in my thoughts since that beautiful autumn morning when we laid him down forever in his own county.

There are two characteristics that seem to me to be outstanding in that fine personality that I knew as Thomas H. Robinson—one was loyalty and the other was courage. Loyalty to principles and ideals that made him throughout his life steadfast and immovable in the maintenance of what he believed the high essentials of right and justice—loyalty also to his fellowman and to all the fine, honest and noble things in life; and courage, may it please your Honors, that gave him the fearlessness to pursue and attain those things to which he was loyal.

It seems to me, may it please the Court, that the Bar of this State may well pause to note and record the fact that there wasn't any case that came into a Court of justice that Senator Robinson believed was just or right for which he would not face anything—he would face anything and make any sacrifice to maintain what he believed was right. He was absolutely fearless in his pursuit of justice. He believed that every man was entitled to a fair trial and he would have faced anything or made any sacrifice to have seen that it was secured for him. In that respect, and in many other respects, may it please the Court, he was the very ideal of the splendid lawyer. And might I say finally that he had a gracious and kindly personality, and it was a combination of all of these qualities that made men love him.

I recall at this time a figure of speech the Chief Judge used in reference to another splendid figure in the Circuit Court—he said that “he looked like a knight of old just stepped from his shining armor.” There was something about Senator Robinson that always suggested the warrior or fighting man—he was so willing to fight for a just cause.

As I think of him, may it please your Honors, the gifts that he had and the splendid life that he lived, there comes to mind those words about the Happy Warrior, “This was the Happy Warrior. This was he that other men-in-arms should wish to be.”

REMARKS OF WILLIAM L. MARBURY

I had no thought, when I came here, of adding anything to these interesting lines; but, before we adjourn, I think

I ought to call attention to something for which Mr. Robinson was responsible and which it is possible most men have forgotten. It is a great public service that Senator Robinson rendered to the people of this State—his State. It was many years ago and few people remember it.

Senator Robinson was largely responsible for the direct primary law in this State—an election law that did more to end political corruption and fraud than any other law, than any act in modern times. Few realize what the situation was prior to the enactment of this law—not so much in the counties as in the City of Baltimore. I remember the primary elections of old, especially in the Seventh Ward, when the only notice of the time and place of the primary election was in the afternoon paper of the same day, when there was an announcement that the voting would be at a certain place between the hours of four and six o'clock in the afternoon; and, when you did arrive there, you would find a long, long line of office holders would be there and the polls would be closed before you got an opportunity to vote. This condition existed in many parts of the State, and of course such a thing was conducive to fraud and corruption; but, with the passage of the primary law, this condition was remedied, and it placed Maryland as high in the clean conduct of its primaries as any State in the United States.

At the time that that was done, it took courage to favor such a law; and, because Senator Robinson possessed such courage and such a personality, he was selected to be the champion of that great statute; and I say that, because of his courage and high character, it was fitting that he be so chosen.

I wish to say that it gives me genuine pleasure to be here and bear witness to the truth of the views expressed by his friends and associates, and to second the motion to adopt the resolutions.

REMARKS OF ERNEST VOLKART.

May it please your Honors, Members of the Bar, Ladies and Gentlemen: It is seldom that Bench and Bar has met

to honor the memory of a finer character than he in whose name we are gathered here today. I consider it a sad privilege, but still a privilege, to be permitted to pay my humble tribute to our departed friend and brother, the Honorable Thomas H. Robinson, who, at the time of his death, was the Attorney General of Maryland—a man who was loved by his family and friends, honored in his profession and esteemed by all who knew him.

I shall always recall with deep and abiding appreciation his cordiality and kindness to me when I first came to the Bar, a stranger in a strange land, needing so sorely the counsel and advice, which from his wealth of knowledge and experience, he so graciously gave and continued to give up to the day of his untimely death.

I have been very fortunate in being permitted to be associated with Mr. Robinson in various cases in which he gave me the opportunity to observe his painstaking preparation of a case, his masterful examination of witnesses and presentation of a cause before the Court and jury, which ever has been an inspiration to the young lawyer.

It was my purpose in framing these remarks to speak rather of Mr. Robinson as a lawyer than as a man, but I found the two were so completely co-mingled that, in talking about the one, you unconsciously touch upon the other.

Mr. Robinson exemplified so many of the now abandoned and yet ever essential elements of old-fashioned standards of virtue and courtesy which alone would have made him an outstanding man in his community.

He radiated the broadest tolerance, and practiced it, he was the progenitor of charity, that greatest of all virtues and mercy, kind and intelligent mercy, never knocked in vain at his door.

It is easier to describe the rugged mountains than the quiet and placid river, and it is easier to tell about certain pointed facts in a man than any specific reason why we admire and esteem him. Our brother, Mr. Robinson, was always dignified but was not cold, and many of us learned to lean upon his experience and wisdom.

The high elective offices which Mr. Robinson held during the past forty years stand out as a mute testimonial of the public confidence that was reposed in him and his rugged virtues—not only by the people of his own county but by the people of the entire State of Maryland.

Mr. Robinson was strong in his convictions, fearless and honest, never hesitating to voice his opinion in public matters.

He showed mercy to those who had erred, he was courteous to his brethren at the Bar, loyal to his friends and humane in all things. He was a good citizen, a good neighbor and a good friend. He loved his home and found his greatest pleasure with his family. His private life was as unblemished as his public life was useful.

No finer tribute can be paid than when it is sincerely said of a man, as we say of our departed brother:

He was a friend of truth, of soul sincere,
In action faithful and in honor clear,
Who broke no promises, served no private ends,
Sought no favors and forsook no friends.

RESPONSE OF CHIEF JUDGE T. SCOTT OFFUTT.

It is rather difficult for those who knew and loved him to speak in measured terms or level tones of Thomas H. Robinson, and that is also true of me.

It so happened that he was my early associate at the Bar; and, from the time that I first saw him in this Court room until the day of his death, I counted his friendship as one of my most valued privileges. One cannot add to his character anything more than has been so beautifully said of him.

For more than a generation he was a part of the history of this Bar; and, by his life, he has added much to the tradition, credit and glory of it. As, has been so well said, Mr. Robinson was, first and last, a lawyer—no case was too great for the reach of his splendid intelligence, and none too small for his fullest professional devotion. There are

few men—there have been few men—who have had the splendid courage that he had—few men who were as devoted to the honor of his profession as he was; and, as an illustration of that, you have only to recall to mind what has been said by those in seconding the motion to adopt these resolutions.

There was one thing that would make him an outstanding man, and that was his devotion to truth and his splendid courage. He counted not what faced him, but advocated what he believed in, and he never considered personal benefit or expediency—those things never swayed him.

To those, who were associated with him in his profession, I am sure that one of the most impressive things about him was the thoroughness with which he prepared his cases, and the quick way in which his keen and brilliant intellect passed over the nonessentials to the very heart of the case. He did well anything that he was called upon to perform.

I have not spoken of his energy and industry. Those of you who have lived with him can bear witness to his zeal that kept him at his tasks and it is true that, in a case, he did not count the time, but the task he had to do.

Another of his virtues was loyalty—splendid loyalty, the kind of loyalty that did not wait for a demand but volunteers in times of need.

Mr. Robinson was first and last a lawyer; but after all he was more than a lawyer—he was a part of the Bar of the State, and he was an example of the fine traditions of the American Bar. This Bar is better for his having lived, this State is better for his having lived in it, and his death leaves a void which will never be quite filled. His home life was delightful in its simplicity and beautiful because of the spirit of truth and affection that was present there.

RESPONSE OF JUDGE WALTER W. PRESTON.

I concur in the resolutions presented by the committee on the death of Thomas H. Robinson, and in the remarks of Judge Offutt and the members of the Bar. Our departed friend was an outstanding man in the public life of his

county and State. Of a Bar of eminent distinction, he ranked among the first even considering the high qualities of those who have passed away during a period as long as the oldest of us can remember.

He was called to important offices and his official life was connected with large affairs, in all of which he conducted himself with absolute integrity and marked distinction. During a greater part of his life he was active in public matters and was long in high office, nevertheless political affairs were largely incidents in his life. It was as a lawyer that he was chiefly distinguished, and in his chosen profession he was one of the first—not only in his own county, but in the entire State.

He had a brilliant mind and capacity for hard and sustained labor. What we call “case sense” was one of his chief characteristics, and his estimate of what could or could not be done in any particular litigation was of the best.

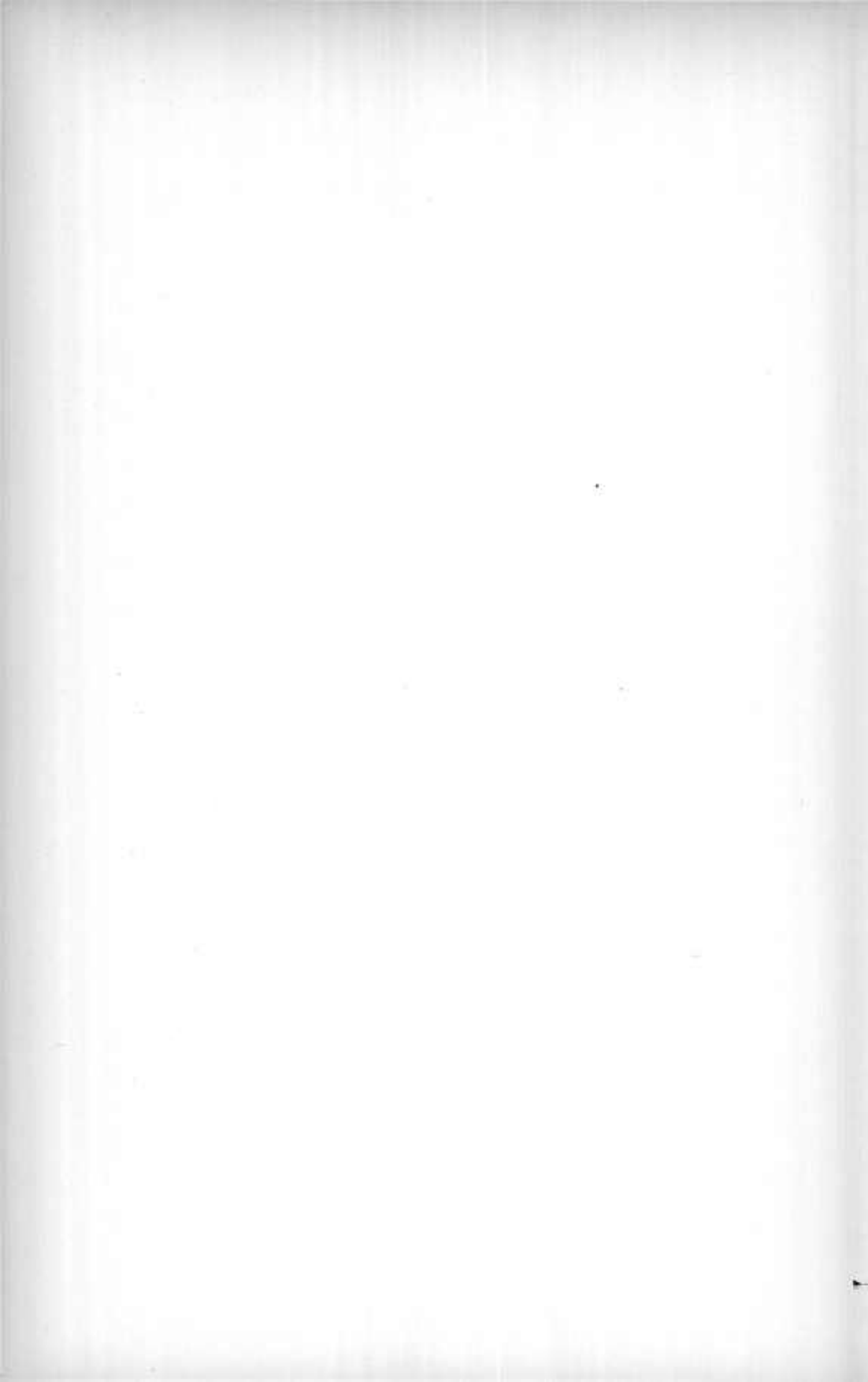
Our association for long years was very close. We came to the Bar within a year or two of each other, we lived as near neighbors for most of that time and were intimate friends. We both have been long in public service, and never was there a lessening of our friendship or mutual regard. I am indebted to him for many valuable services. Indeed I know of no one who more delighted in doing favors for his friends.

Taking into consideration his great legal ability, his high character and his kind heart, his place at our Bar will not easily be filled.

This occasion marks the passing out from amongst us of a great man. For myself, I can only say further, “farewell, dear friend.”

RESOLUTION ACCEPTED BY CHIEF JUDGE OFFUTT.

The resolutions will be spread upon the minutes of the Court, and a copy of them will be sent to Mrs. Robinson. As a mark of respect to our brother, the Court will now adjourn.



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