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COMPLIMENTS OF

WM. PRESTON LANE, JR.

ATTORNEY GENERAL

ANNUAL REPORT

AND

OFFICIAL OPINIONS

OF THE

ATTORNEY GENERAL

OF

MARYLAND

1932

WM. PRESTON LANE, Jr.
ATTORNEY GENERAL

20th Century Printing Co.
Baltimore, Md.

ATTORNEYS GENERAL OF MARYLAND

Luther Martin	1778
William Pinkney	1805
John Thomas Mason	1806
John Johnson	1806
John Montgomery	1811
Luther Martin	1818
Nathaniel Williams, Assistant Attorney General	1820
Thomas B. Dorsey	1822
Thomas Kell	1824
Roger B. Taney	1827
Josiah Bayley	1831
George R. Richardson	1845
Robert J. Brent	1851
*Alexander Randall	1864
Isaac D. Jones	1867
Andrew K. Syester	1871
Charles J. M. Gwynn	1875
Charles B. Roberts	1883
William Pinkney 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
Wm. Preston Lane, Jr.	1930

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

STATE LAW DEPARTMENT

Wm. Preston Lane, Jr.	Attorney General.
Willis R. Jones	Deputy Attorney General.
William L. Henderson	Assistant Attorney General.
G. C. A. Anderson	Assistant Attorney General.
John B. Gray, Jr.	Special Assistant Attorney General for the State Roads Commission.
Harry J. Green	Special Attorney for State Accident Fund.
Mrs. Anna Davis Greer	Stenographer.
Miss Hattie F. Fuxman	Stenographer.

Offices: 1901 Baltimore Trust Building, Baltimore, Md.

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ANNUAL REPORT FOR 1932

OFFICIAL OPINIONS

Annual Report for 1932

January 1st, 1933.

Hon. Albert C. Ritchie,

Governor of Maryland,

Annapolis, Md.

DEAR GOVERNOR RITCHIE:

I herewith submit to you, as required by Section 8 of Article 32-A of the Code of Public General Laws, a report of the business and proceedings of the Department of Law for the year 1932, together with a statement of the receipts and disbursements during that year. The official opinions rendered by my Department during the year follow this report.

There was no change in the organization of the Department during the year except on April 1st, 1932, when Mr. Robert H. Archer resigned as Special Assistant Attorney General for the State Roads Commission, and I appointed Mr. John B. Gray, Jr., of Calvert County, as his successor.

Our cordial relations with all of the officials connected with your Administration have facilitated and made possible the performance of the constantly increasing duties of this Department, and it has been a pleasure to render to them the services which they have requested.

I desire to again express to you my very deep appreciation of your continued courtesy and cooperation, and to assure you that all of the members of my Department hold

themselves ready to respond to any call for service that may come from you or the other members of your official family at any time.

I have the honor to be,

Respectfully yours,

WM. PRESTON LANE, JR.,

Attorney General.

SUMMARY OF LITIGATION FOR 1932

CASE DISPOSED OF IN THE SUPREME COURT OF THE UNITED STATES

Anna Bartsch Dunne, Appellant vs. State of Maryland. No. 243, October Term, 1932. This was an appeal from the Court of Appeals of Maryland, where it was decided that the appellant could not maintain an action for damages against the State of Maryland for an alleged taking of property. The appeal was dismissed for want of jurisdiction, upon motion of the State. The Attorney General and Mr. Gray represented the State.

CASES DISPOSED OF IN THE DISTRICT COURT OF THE UNITED STATES

United States of America vs. William S. Gordy, Jr., Comptroller. This proceeding was brought by the United States to enjoin the collection of the gasoline tax insofar as the same applies to sales made to Post Exchanges established on military reservations. The case was heard by Judge Coleman, who ruled that under the present provisions of the Maryland statute the Post Exchange was exempt from the payment of the State tax. The Attorney General and Mr. Anderson appeared for the Comptroller.

In the matter of the condemnation of 7,424.34 acres, more or less, of lands in Dorchester County, Maryland, for use by the United States of America under the Migratory Bird Conservation Act. Under the provisions of the Migratory Bird Conservation Act of 1929, the United States first sought to purchase the aforesaid land in Dorchester County, but finding the title imperfect, instituted condemnation proceedings in the District Court of the United States. The Land Commissioner was made a party, and the Attorney General was also served with notice of the proceeding and invited to inform the court as to any right, title or interest claimed by the State of Maryland in the lands in question. The matter was taken up with the Land Commissioner who raised no specific objections to the proceeding, but it appeared from the bill that certain questions should be raised by the Attorney General involving the sovereignty of the State of Maryland over the lands in question in regard to both criminal and civil jurisdiction of the State, and as to the right of the State to collect taxes upon said lands insofar as they might be used or leased by the United States Government for non-federal purposes. Numerous conferences were held with counsel for the Government, preliminary to filing an answer on behalf of the State and on behalf of the Land Commissioner. Answers were filed in the proceeding raising the jurisdictional questions above referred to, both on behalf of the State and on behalf of the Land Commissioner. A decree was signed by the Court reserving to the

State concurrent jurisdiction, and also providing that the State should reserve its right to tax non-Federal uses of the property condemned. It also appeared from an examination of the title that certain property belonging to three persons had been erroneously included in the assessment against the Delmarvia Company. An abatement of taxes covering the last three years was allowed by the County Commissioners, and the claim for refund of State taxes was made to be included in the Budget of 1933, in the sum of $157.65. Mr. Henderson appeared for the State.

Case Pending in the District Court of the United States

George H. Whitten, Emma V. Sweeney vs. Consolidation Coal Company. In this case the Consolidation Coal Company, a self insurer with the State Industrial Accident Commission, was placed in receivership. A claim was filed by the State Industrial Accident Commission for a preference in the distribution of the assets to the extent of the tax imposed upon all self insurers and insurance companies for the maintenance of the State Industrial Accident Commission.

CRIMINAL CASES IN THE COURT OF APPEALS, JANUARY, APRIL AND OCTOBER TERMS, 1932

State of Maryland vs. Eric Lassotovitch and Anthony Lassotovitch. No. 16, January Term, 1932.

State of Maryland vs. Basil B. Wells. No. 17, January Term, 1932.

State of Maryland vs. The Whiting-Turner Construction Company, a body corporate. No. 18, January Term, 1932.

State of Maryland vs. The Mullan Contracting Company, a body corporate. No. 19, January Term, 1932. Appeals from the Criminal Court of Baltimore City, where the Court sustained the defendants' demurrers to an indictment charging the employment of labor in Baltimore City on public work, at less than the current rate of per diem wages for that locality, in violation of Chapter 94 of the Acts of 1910. The decision of the lower Court was affirmed on the ground that the indictments were insufficient, but the Court sustained the constitutionality of the statute. Mr. Henderson appeared for the State.

In the Matter of Reuben D. Day, for a Writ of Habeas Corpus. No. 38, January Term, 1932. This case was transmitted to the Court of Appeals for review in accordance with the terms of Article 42, Section 16 of the Code of Public General Laws, providing that when a Judge of any Court shall discharge a person under a writ of habeas corpus upon the ground that the Act of Assembly, with the violation of which such person has been charged, is unconstitutional, such Judge shall reduce his opinion to writing and transmit the original papers in such case together with a copy of his order and of his opinion, to the Clerk of the Court of Appeals, and it shall be the duty of said Court of Appeals to give its opinion in writing upon the case so presented. The Court of Appeals sustained the action of the lower Court. Mr. Henderson appeared for the State.

General News Bureau, Inc., Ex Parte. Nos. 18 and 19, April Term, 1932. This case involved two appeals from a judgment of the Criminal Court of Baltimore City rendered in contempt proceedings instituted against the General News Bureau, Inc., a foreign corporation, for failure to appear and produce certain documentary evidence from its records in response to summons issued out of the Criminal Court of Baltimore City. The appeal was taken under the provisions of Article 5, Section 105 of the Code, involving the right of appeal in such cases. The Court of Appeals affirmed both judgments of the lower Court. Mr. Henderson appeared for the State.

Herman Webb Duker vs. State of Maryland. No. 26, April Term, 1932. This was an appeal from the Criminal Court of Baltimore City, wherein the defendant pled guilty to the crime of murder and was duly sentenced to be hanged. On appeal the ruling of the lower Court was affirmed. Mr. Anderson appeared for the State.

Samuel Blager vs. the State of Maryland. No. 31, April Term, 1932. This was an appeal from a judgment of the Criminal Court of Baltimore City, wherein the defendant was found guilty of violating the criminal code pertaining to lotteries. The Court of Appeals affirmed the ruling of the lower Court. Mr. Anderson appeared for the State.

Albert Baum, Thomas Kelly, William Lewis and Horace Rockwell vs. State of Maryland. No. 45, April Term, 1932. This was an appeal in a criminal case from the Criminal Court of Baltimore City, wherein the defendants were found guilty of a violation of the criminal code pertaining to lotteries. The ruling of the lower court was affirmed. Mr. Anderson appeared for the State.

Erwin Vogel vs. State of Maryland. No. 5, October Term, 1932.

Irvin Ellingham vs. State of Maryland. No. 6, October Term, 1932. These were appeals from the Criminal Court of Baltimore City, in which the defendants were convicted

of violating Section 121 of Article 23 of the Code, by transacting business on behalf of a foreign corporation not qualified to do business in this State. The judgment of the lower court was reversed. Mr. Henderson appeared for the State.

Eddie Mechanic vs. State of Maryland. Nos. 7 and 58, October Term, 1932. These were appeals from the Criminal Court of Baltimore City, wherein the defendant was found guilty of an assault on, and carnal knowledge of, a minor under sixteen years of age. The ruling of the lower court was affirmed. Mr. Anderson appeared for the State.

William A. Spoorer, alias Albert C. Smith vs. State of Maryland. No. 9, October Term, 1932. This was an appeal from the Circuit Court for Harford County, wherein the defendant was found guilty of assault at common law. Briefs not being filed for the appellant within the time fixed by the rule of Court, the appeal was dismissed.

Edward Callahan vs. State of Maryland. No. 10, October Term, 1932. This was an appeal from the Circuit Court for Anne Arundel County, where the defendant was found guilty of possessing liquor in violation of a public local law of Anne Arundel County. The ruling of the lower court was affirmed. Mr. Anderson appeared for the State.

Euel Lee, alias Orphan Jones vs. State of Maryland. No. 14, October Term, 1932. After the removal of this case from the Circuit Court for Worcester County, the trial was had in the Circuit Court for Baltimore County, where the defendant was convicted and sentenced to be hanged. An appeal was taken to the Court of Appeals, which was argued on May 19th, 1932, being advanced from the October Term. The Court of Appeals decided that the judgment and sentence be reversed upon the ground that negroes had not been considered in the selection of the panel of 200, from which the petit jury of twenty-five was selected, it being shown that no negro had been selected upon the panel for a period of twenty-six years, and that this was a violation of the right guaranteed to the defendant by the Federal Constitution. The case was accordingly sent back for a new

trial, which was duly had in September, again resulting in a conviction and sentence of death. The defendant again entered an appeal to the Court of Appeals. Mr. Henderson appeared for the State.

State of Maryland vs. Algie P. Gregg. No. 23, October Term, 1932. This was an appeal in a criminal case from the Circuit Court for Montgomery County, involving an indictment for malicious mischief. In the lower court a demurrer to the first and second counts of the indictment was sustained. On appeal the Court of Appeals affirmed the ruling of the lower court. Mr. Anderson appeared for the State.

John R. Larkins vs. State of Maryland. No. 35, October Term, 1932. This was an appeal in a criminal case from the Criminal Court of Baltimore City, wherein the defendant was found guilty of a violation of the criminal code of this State relating to abortions. On appeal the Court of Appeals reversed the verdict of the lower court, sustaining the defendant's demurrer to the indictment. Mr. Anderson appeared for the State.

Nevin W. Crouse vs. State of Maryland. No. 60, October Term, 1932. This was an appeal from the judgment and sentence of the Circuit Court for Carroll County, whereby the traverser was convicted of embezzlement and sentenced to three years in the House of Correction. The case involved only the validity of the indictment. The judgment and sentence were affirmed by the Court of Appeals. Mr. Henderson appeared for the State.

Joseph Gamble, Allison Wenk, Roland Hamilton and Dudley Willett vs. State of Maryland. No. 64, October Term, 1932. This was an appeal from the Circuit Court for St. Mary's County on behalf of four defendants involving the validity of an indictment based upon the testimony of the accused before the Grand Jury of Charles County, from which county the case was removed, the defendants claiming that their constitutional privilege against self-incrimi-

nation had been violated. The judgment of the lower court was affirmed with costs. Mr. Henderson appeared for the State.

State of Maryland vs. George W. Page. No. 87, October Term, 1932. This was an appeal from the judgment of the Circuit Court for Allegany County sustaining a demurrer to an indictment charging the Bank Commissioner with dereliction of official duty in Howard County, the case having been removed to Allegany County from Howard County for trial. The sole question involved in the case was as to the validity of the various counts in the indictment. The judgment of the lower court was affirmed. Mr. Henderson appeared for the State.

Civil Cases Tried in the Court of Appeals, January, April and October Terms, 1932

Anna Bartsch Dunne vs. State of Maryland. No. 34, January Term, 1932. Appeal from the Circuit Court for Montgomery County, where the Court sustained the State's demurrer to the plaintiff's declaration for damages. The decision was affirmed. Mr. Archer appeared for the State.

Charles M. Ness, et al, Committee and as Individuals and Taxpayers of the City of Baltimore and State of Maryland, vs. Robert B. Ennis, et al, constituting the Board of Supervisors of Elections of Baltimore City. No. 35, April Term, 1932. This was an appeal from a decision of Judge O'Dunne in the Superior Court sustaining the validity of Chapter 287 of the Acts of 1931, and permitting the Supervisors of Elections of Baltimore City to submit to the voters of the City a certain Ordinance legalizing certain amusements and games on Sunday. The decision of the lower court was affirmed. The Attorney General and Mr. Jones appeared for the Supervisors.

Aaron J. Kahn vs. the State Board of Examiners of Optometry of the State of Maryland. No. 36, April Term, 1932. This was an appeal from the Baltimore City Court,

denying the petition for mandamus to compel the Board to issue a license to a party who formerly held a license but had forfeited it by failing to pay for annual renewals. Kahn contended that he was entitled to a license without standing the examination required by the statute of new applicants for a license. The Court of Appeals held that under the circumstances of this case no examination was necessary, and reversed the lower court. Mr. Henderson appeared for the Board.

The Waddell George's Creek Coal Company, Inc., Employer, State Accident Fund, Insurer, and State Industrial Accident Commission vs. Ocea Chisholm. No. 50, April Term, 1932. This was an appeal from the Circuit Court for Allegany County solely on the question of whether or not a recovery might be had on an accidental injury when the only testimony of an accident lay in hearsay testimony of a statement purported to have been made by the injured workman. The Court of Appeals affirmed the action of the lower court and ordered that compensation be paid. Mr. Green appeared for the State Fund.

Mayor and City Council of Baltimore, a municipal corporation, vs. Joseph C. Deegan, Sheriff of Baltimore City. No. 60, April Term, 1932. This was an appeal from the judgment of the Superior Court of Baltimore City in favor of the Sheriff of Baltimore City, where it was decided that the City was not entitled to collect more than half of certain fines and penalties. The decision of the lower court was affirmed. Mr. Henderson appeared for the Sheriff.

Edwin R. Downes, Register of Wills of Baltimore City, for the use of the State of Maryland, vs. Safe Deposit & Trust Company of Baltimore, Trustee under Deed from Eliza L. Jenkins. No. 61, April Term, 1932. This was an appeal from the Superior Court of Baltimore City involving the question as to whether the Register of Wills of Baltimore City was entitled to collect a collateral inheritance tax where the property passed under a revocable deed of trust and the grantor did not exercise the power of revocation or

enjoy any beneficial interest in the property after the execution of the deed. The decision of the lower court holding that no tax was payable in such case, was affirmed. Mr. Jones represented the Register of Wills.

Edwin R. Downes, Register of Wills of Baltimore City, for the use of the State of Maryland, vs. Safe Deposit and Trust Company of Baltimore, Executor of the Will of William F. Southcomb, Deceased, and Trustee under said Will. Nos. 99 and 100, October Term, 1932. These were cross appeals from two judgments of the Superior Court of Baltimore City, in the Southcomb Estate, involving questions as to the power of said Court to permit reappraisement for purposes of collateral inheritance tax and State tax on commissions, and also as to whether the original appraisal should be taken as of the date of the decedent's death. The cases were argued on December 1st, and the judgment of the lower court was affirmed in part and reversed in part, the Court holding that a reappraisement was permissible where there was a decrease in value, and that both the collateral inheritance tax and tax on commissions should be calculated upon the value as reappraised, rather than the inventory value. Mr. Henderson appeared for the Register of Wills.

Francis R. Cross and D. List Warner, Executors of the Estate of James C. Gittings, Deceased, vs. Edwin R. Downes, Register of Wills of Baltimore City, for the use of the State of Maryland. No. 111, October Term, 1932. This was an appeal from a decision of Judge Dennis in the Baltimore City Court holding that the executors of the Estate of James C. Gittings were not entitled to deduct from the Maryland Estate Tax, the amount paid by the Executors as tax upon their commissions. The decision of the lower court was affirmed. Mr. Jones and Mr. Henderson represented the Register of Wills.

Dudley Page Cotton, Appellant, vs. Robert B. Ennis, et al. Constituting the Board of Supervisors of Elections of Baltimore City, Appellees. No. 7, January Term, 1933. (Ad-

vanced to October Term.) Appeal from a decision of Judge O'Dunne in the Superior Court of Baltimore City, holding that the Board of Supervisors of Elections might properly insist upon the use of no less than five voting machines in each precinct in which such machines were used. The decision of the lower court was affirmed. Mr. Jones appeared for the Supervisors.

Cases Pending in the Court of Appeals

Emory L. Coblentz vs. State of Maryland. No. 21, January Term, 1933. This is an appeal from the Circuit Court for Allegany County, where the appellant, as President of the Central Trust Company of Maryland, was convicted of accepting deposits when said institution was known to be insolvent.

Leo Rosenberg and John Bradley vs. State of Maryland. No. 42, January Term, 1933. This is an appeal from the Circuit Court for Allegany County, where the appellants were convicted of the malicious destruction of property in violation of Section 98 of Article 27 of the Code of Public General Laws.

State Roads Commission of Maryland, Employer, and State Accident Fund, Insurer, vs. Henrietta C. Reynolds, Widow of John C. Reynolds, Deceased Employee, Claimant. No. 45, January Term, 1933. This was an appeal from the Baltimore City Court, sustaining the contention of the claimant that the death of her husband was the result of an accidental injury rather than from disease.

Cases Finally Disposed of in Lower Courts

Maurice E. Zepp vs. E. Austin Baughman, Commissioner of Motor Vehicles. In the Circuit Court for Harford County. Appeal from an order of the Commissioner of Motor Vehicles, revoking the appellant's license to operate a motor vehicle. The ruling of the Commissioner was reversed. Mr. Anderson and the State's Attorney represented the Commissioner.

Robert W. White vs. E. Austin Baughman, Commissioner of Motor Vehicles. In the Baltimore City Court. Appeal from an order of the Commissioner of Motor Vehicles, revoking the appellant's license to operate a motor vehicle. The ruling of the Commissioner was reversed on the ground that the finding of a Magistrate of a foreign jurisdiction does not justify a revocation of a license without an independent hearing. Mr. Anderson represented the Commissioner.

J. Frank Toadvine vs. E. Austin Baughman, Commissioner of Motor Vehicles. In the Circuit Court for Wicomico County. Appeal from an order of the Commissioner of Motor Vehicles, revoking the appellant's license to operate a motor vehicle. The ruling of the Commissioner was reversed by the Circuit Court. Mr. Anderson and the State's Attorney represented the Commissioner.

Wynne A. Stevens vs. E. Austin Baughman, Commissioner of Motor Vehicles. In the Baltimore City Court. Appeal from an order of the Commissioner of Motor Vehicles, revoking the appellant's license to operate a motor vehicle. Judgment of the Commissioner reversed and the license returned to the appellant. Mr. Anderson appeared for the Commissioner.

State of Maryland for the use of the Commissioner of Motor Vehicles of Maryland vs. S. Lorelli, Inc., and Andrew Lorelli. In the Superior Court of Baltimore City. This was a suit filed against the above defendants by the Commissioner of Motor Vehicles for damage done to a motor vehicle

owned by the State. The defendants filed general issue pleas, after which the case was compromised for $175.00. Mr. Anderson appeared for the Commissioner.

Walter H. Somerville vs. E. Austin Baughman, Commissioner of Motor Vehicles. In the Circuit Court for Harford County. Appeal from an order of the Commissioner of Motor Vehicles, revoking the appellant's license to operate a motor vehicle. The case was tried and the ruling of the Commissioner was reversed. Mr. Anderson and the State's Attorney represented the Commissioner.

Lillian Shipley vs. E. Austin Baughman, Commissioner of Motor Vehicles. In the Circuit Court for Carroll County. Appeal from an order of the Commissioner of Motor Vehicles, revoking the appellant's license to operate a motor vehicle. The ruling of the Commissioner was affirmed. Mr. Anderson and the State's Attorney represented the Commissioner.

Fred P. Stafford vs. E. Austin Baughman, 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. The order of the Commissioner was reversed. Mr. Anderson and the State's Attorney represented the Commissioner.

Lawrence E. Cohee vs. E. Austin Baughman, 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. The appeal was dismissed in open court by the appellant's attorney. Mr. Anderson and the State's Attorney represented the Commissioner.

John Runge vs. E. Austin Baughman, Commissioner of Motor Vehicles. In the Baltimore City Court. Appeal from an order of the Commissioner of Motor Vehicles, revoking the appellant's license to operate a motor vehicle. The ruling of the Commissioner was reversed on appeal. Mr. Anderson represented the Commissioner.

Dominick Roberts vs. E. Austin Baughman, Commissioner of Motor Vehicles. In the Baltimore City Court. Appeal from an order of the Commissioner of Motor Vehicles, revoking the appellant's license to operate a motor vehicle. The appellant's license was suspended from December 10th, 1931, until June 22nd, 1932, when it was reissued by the Commissioner, and the appeal was dismissed. Mr. Anderson represented the Commissioner.

Elmer Randolph vs. E. Austin Baughman, Commissioner of Motor Vehicles. In the Baltimore City Court. Appeal from an order of the Commissioner of Motor Vehicles, revoking the appellant's license to operate a motor vehicle. The appeal not having been properly entered, there was nothing before the Court and the license of the appellant was retaken by the Commissioner. Mr. Anderson represented the Commissioner.

Grover C. Quinn vs. E. Austin Baughman, Commissioner of Motor Vehicles. In the Baltimore City Court. Appeal from an order of the Commissioner of Motor Vehicles, revoking the appellant's license to operate a motor vehicle. Pending the appeal the appellant's license was suspended on another charge. He turned in his license to the Commissioner who held same during the period of suspension. The appeal was dismissed. Mr. Anderson represented the Commissioner.

Marshall B. Payne vs. E. Austin Baughman, Commissioner of Motor Vehicles. In the Baltimore City Court. Appeal from an order of the Commissioner of Motor Vehicles, revoking the appellant's license to operate a motor vehicle. The ruling of the Commissioner was affirmed, with recommendation that the license be returned upon application. Mr. Anderson represented the Commissioner.

William H. Parrott vs. E. Austin Baughman, Commissioner of Motor Vehicles. In the Circuit Court for Harford County. Appeal from an order of the Commissioner of Motor Vehicles, revoking the appellant's license to operate

a motor vehicle. The case was tried and the ruling of the Commissioner was reversed. Mr. Anderson and the State's Attorney represented the Commissioner.

Edward F. Murray vs. E. Austin Baughman, Commissioner of Motor Vehicles. In the Circuit Court for Baltimore County. Appeal from an order of the Commissioner of Motor Vehicles, revoking the appellant's license to operate a motor vehicle. The ruling of the Commissioner was affirmed. Mr. Anderson and the State's Attorney represented the Commissioner.

Laverne H. Miller vs. E. Austin Baughman, Commissioner of Motor Vehicles. In the Circuit Court for Carroll County. Appeal from an order of the Commissioner of Motor Vehicles, revoking the appellant's license to operate a motor vehicle. The ruling of the Commissioner was affirmed. Mr. Anderson and the State's Attorney represented the Commissioner.

William F. McLaughlin vs. E. Austin Baughman, Commissioner of Motor Vehicles. In the Baltimore City Court. Appeal from an order of the Commissioner of Motor Vehicles, revoking the appellant's license to operate a motor vehicle. The ruling of the Commissioner was affirmed, but on suggestion of the Court the suspension was reduced. Mr. Anderson represented the Commissioner.

Albert Matthews vs. E. Austin Baughman, 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. The appeal was dismissed in open court by order of the appellant's attorney. Mr. Anderson and the State's Attorney represented the Commissioner.

Hyland P. Marcus vs. E. Austin Baughman, Commissioner of Motor Vehicles. In the Circuit Court for Cecil County. Appeal from an order of the Commissioner of Motor Vehicles, revoking the appellant's license to operate a

motor vehicle. The ruling of the Commissioner was affirmed. Mr. Anderson and the State's Attorney represented the State.

William L. Lewis vs. E. Austin Baughman, Commissioner of Motor Vehicles. In the Circuit Court for Baltimore County. This is an appeal from an order of the Commissioner of Motor Vehicles, revoking the appellant's license to operate a motor vehicle. The ruling of the Commissioner was affirmed. Mr. Anderson and the State's Attorney represented the Commissioner.

Thomas M. Lee vs. E. Austin Baughman, Commissioner of Motor Vehicles. In the Circuit Court for Harford County. Appeal from an order of the Commissioner of Motor Vehicles, revoking the appellant's license to operate a motor vehicle. The ruling of the Commissioner was reversed. Mr. Anderson and the State's Attorney represented the Commissioner.

Daniel S. Baer vs. E. Austin Baughman, Commissioner of Motor Vehicles. In the Baltimore City Court. This was an appeal from the order of the Commissioner of Motor Vehicles, revoking the appellant's license to operate a motor vehicle. The ruling of the Commissioner was affirmed with recommendation that the license be returned as of January 10th, 1933. Mr. Anderson represented the Commissioner.

Daniel S. Baer vs. E. Austin Baughman, Commissioner of Motor Vehicles. In the Baltimore City Court. This was a petition for a writ of mandamus requesting an order of court directing the Commissioner to return the license of the plaintiff. On hearing before Judge Owens the petition was dismissed. Mr. Anderson represented the Commissioner.

Herbert E. Beck vs. E. Austin Baughman, Commissioner of Motor Vehicles. In the Circuit Court for Kent County. Appeal from an order of the Commissioner of Motor Vehicles, revoking the appellant's license to operate a motor vehicle. On advice of the State's Attorney this case was

not prosecuted and the ruling of the Commissioner was accordingly reversed upon the failure of the State to introduce evidence. Mr. Anderson and the State's Attorney represented the Commissioner.

Glen Bennington vs. E. Austin Baughman, Commissioner of Motor Vehicles. In the Baltimore City Court. Appeal from an order of the Commissioner of Motor Vehicles, revoking the appellant's license to operate a motor vehicle. After hearing, the ruling of the Commissioner was affirmed. Mr. Anderson represented the Commissioner.

Millard S. Braun vs. E. Austin Baughman, Commissioner of Motor Vehicles. In the Baltimore City Court. Appeal from an order of the Commissioner of Motor Vehicles, revoking the appellant's license to operate a motor vehicle. The appellant dismissed the appeal and the license was returned. Mr. Anderson represented the Commissioner.

Jacob Brooks vs. E. Austin Baughman, Commissioner of Motor Vehicles. In the Circuit Court for Anne Arundel County. Appeal from an order of the Commissioner of Motor Vehicles, revoking the appellant's license to operate a motor vehicle. The order of the Commissioner was reversed. Mr. Anderson and the State's Attorney represented the Commissioner.

Walter H. Buck vs. E. Austin Baughman, Commissioner of Motor Vehicles. In the Circuit Court for Baltimore County. Appeal from an order of the Commissioner of Motor Vehicles, revoking the appellant's license to operate a motor vehicle. The ruling of the Commissioner was reversed. Mr. Anderson and the State's Attorney represented the Commissioner.

Juliet P. Butcher vs. E. Austin Baughman, Commissioner of Motor Vehicles. In the Circuit Court for Kent County. Appeal from an order of the Commissioner of Motor Vehicles, revoking the appellant's license to operate a motor vehicle. The ruling of the Commissioner was affirmed on appeal. Mr. Anderson and the State's Attorney represented the Commissioner.

Harry Guy Campbell vs. E. Austin Baughman, Commissioner of Motor Vehicles. In the Circuit Court for Baltimore County. Appeal from an order of the Commissioner of Motor Vehicles, revoking the appellant's license to operate a motor vehicle. The appeal was dismissed before the Circuit Court, because of the faulty warrant of the proceeding before the Magistrate. Mr. Anderson and the State's Attorney represented the Commissioner.

Erskon Corder vs. E. Austin Baughman, Commissioner of Motor Vehicles. In the Baltimore City Court. Appeal from an order of the Commissioner of Motor Vehicles, revoking the appellant's license to operate a motor vehicle. The ruling of the Commissioner was affirmed, with recommendation of a thirty day suspension, by the Court. Mr. Anderson appeared for the Commissioner.

Joseph P. Cozzens vs. E. Austin Baughman, Commissioner of Motor Vehicles. In the Baltimore City Court. Appeal from an order of the Commissioner of Motor Vehicles, revoking the appellant's license to operate a motor vehicle. The license was returned by the Commissioner and the appeal dismissed. Mr. Anderson represented the Commissioner.

Frank L. Norton vs. E. Austin Baughman, Commissioner of Motor Vehicles. In the Circuit Court for Baltimore County. Appeal from an order of the Commissioner of Motor Vehicles, revoking the appellant's license to operate a motor vehicle. The ruling of the Commissioner was reversed. Mr. Anderson and the State's Attorney represented the Commissioner.

Albert C. Craft vs. E. Austin Baughman, 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. The appeal was dismissed. Mr. Anderson and the State's Attorney represented the Commissioner.

Joseph Doetzer vs. E. Austin Baughman, Commissioner of Motor Vehicles. In the Circuit Court for Harford

County. Appeal from an order of the Commissioner of Motor Vehicles, revoking the appellant's license to operate a motor vehicle. The ruling of the Commissioner was reversed. Mr. Anderson and the State's Attorney represented the Commissioner.

Grant Donaldson vs. E. Austin Baughman, Commissioner of Motor Vehicles. In the Circuit Court for Anne Arundel County. Appeal from an order of the Commissioner of Motor Vehicles, revoking the appellant's license to operate a motor vehicle. Mr. Anderson and the State's Attorney represented the Commissioner.

Edwin L. Kirkwood vs. E. Austin Baughman, Commissioner of Motor Vehicles. In the Circuit Court for Harford County. Appeal from an order of the Commissioner of Motor Vehicles, revoking the appellant's license to operate a motor vehicle. The case was tried and the ruling of the Commissioner was reversed. Mr. Anderson and the State's Attorney represented the Commissioner.

Henry M. Kilian vs. E. Austin Baughman, Commissioner of Motor Vehicles. In the Baltimore City Court. Appeal from an order of the Commissioner of Motor Vehicles, revoking the appellant's license to operate a motor vehicle, following a conviction before a Magistrate. After a hearing, the ruling of the Commissioner was affirmed, with the recommendation that the license be returned as of January 1st, 1933. Mr. Anderson represented the Commissioner.

Glencoe K. Kelley vs. E. Austin Baughman, 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. The appeal was dismissed by order of the appellant's attorney. Mr. Anderson and the State's Attorney represented the Commissioner.

Raymond O. Jolly vs. E. Austin Baughman, Commissioner of Motor Vehicles. In the Circuit Court for Cecil County. Appeal from an order of the Commissioner of Motor Ve-

hicles, revoking the appellant's license to operate a motor vehicle. The ruling of the Commissioner was affirmed. Mr. Anderson and the State's Attorney represented the Commissioner.

John Holloway vs. E. Austin Baughman, Commissioner of Motor Vehicles. In the Circuit Court for Harford County. Appeal from an order of the Commissioner of Motor Vehicles, revoking the appellant's license to operate a motor vehicle. The case was tried and the ruling of the Commissioner was reversed. Mr. Anderson and the State's Attorney represented the Commissioner.

Oscar H. Haskins vs. E. Austin Baughman, Commissioner of Motor Vehicles. In the Circuit Court for Cecil County. Appeal from an order of the Commissioner of Motor Vehicles, revoking the appellant's license to operate a motor vehicle. The ruling of the Commissioner was affirmed. Mr. Anderson and the State's Attorney represented the Commissioner.

Morris Goldseker vs. E. Austin Baughman, Commissioner of Motor Vehicles. In the Baltimore City Court. Appeal from an order of the Commissioner of Motor Vehicles, revoking the appellant's license to operate a motor vehicle. The ruling of the Commissioner was affirmed and an appeal was filed to the Court of Appeals, but was later dismissed, the appellant surrendering his license which was suspended for thirty days. Mr. Anderson appeared for the Commissioner.

Clarence Griffin vs. E. Austin Baughman, Commissioner of Motor Vehicles. In the Baltimore City Court. Appeal from an order of the Commissioner of Motor Vehicles, revoking the appellant's license to operate a motor vehicle. The license was subsequently returned and the appeal was dismissed. Mr. Anderson represented the Commissioner.

M. D. Grason vs. E. Austin Baughman, Commissioner of Motor Vehicles. In the Circuit Court for Harford County. Appeal from an order of the Commissioner of Motor Ve-

hicles, revoking the appellant's license to operate a motor vehicle. The appeal was dismissed by the appellant. Mr. Anderson and the State's Attorney represented the Commissioner.

Richard Graham vs. E. Austin Baughman, Commissioner of Motor Vehicles. In the Circuit Court for Cecil County. Appeal from an order of the Commissioner of Motor Vehicles, revoking the appellant's license to operate a motor vehicle. The appeal was dismissed. Mr. Anderson and the State's Attorney represented the Commissioner.

Walter Green vs. E. Austin Baughman, Commissioner of Motor Vehicles. In the Circuit Court for Baltimore County. Appeal from an order of the Commissioner of Motor Vehicles, revoking the appellant's license to operate a motor vehicle. The ruling of the Commissioner was affirmed. Mr. Anderson and the State's Attorney represented the Commissioner.

Reynold C. Feldt vs. E. Austin Baughman, Commissioner of Motor Vehicles. In the Circuit Court for Harford County. Appeal from an order of the Commissioner of Motor Vehicles, revoking the appellant's license to operate a motor vehicle. The case was dismissed. Mr. Anderson and the State's Attorney represented the Commissioner.

General Motors Acceptance Corporation vs. E. Austin Baughman, Commissioner of Motor Vehicles of the State of Maryland. In the Baltimore City Court. This was a writ of mandamus filed against the Commissioner of Motor Vehicles, for the purpose of clarifying the title to certain motor vehicles. The mandamus was granted and the titles issued. Mr. Anderson represented the Commissioner.

State of Maryland for the use of the Commissioner of Motor Vehicles vs. Charles M. Kamberger. In the People's Court of Baltimore City. This was a suit filed by the Commissioner for damages to a motorcycle. The case was dismissed by the plaintiff. Mr. Anderson represented the Commissioner.

State of Maryland for the use of E. Austin Baughman, Commissioner of Motor Vehicles vs. Woodrow Haines. In the People's Court of Baltimore City. This was a suit instituted by the Commissioner of Motor Vehicles to recover damages sustained to a motorcycle operated by a State Policeman. The defendant moved from the State and service was not obtained. Mr. Anderson represented the Commissioner.

Joseph G. Whinney, td. as Whinney's Express vs. E. Austin Baughman, Commissioner of Motor Vehicles. In the Circuit Court of Baltimore City. This case, as well as a large number of other cases, were injunction proceedings issued out of the Circuit Court of Baltimore City, enjoining the Commissioner of Motor Vehicles from enforcing the Public Freight and Public Passenger Law, alleging that these laws are unconstitutional and void. In two of the cases hearings were held before the Circuit Court of Baltimore City; an appeal from the Circuit Court was taken to the Court of Appeals; a hearing was held before a Magistrate in Howard County involving seventeen cases, wherein there were sixteen convictions, and an appeal was entered from the sixteen convictions to the Circuit Court for Howard County. Mr. Anderson represented the Commissioner in all of these cases.

The Singer Transfer Company, Incorporated, Plaintiff, vs. Harold E. West, et al, Constituting the Public Service Commission, and E. Austin Baughman, Commissioner of Motor Vehicles, Defendants. In the Circuit Court of Baltimore City. The Singer Transfer Company claimed that it was not engaged in trucking between Baltimore and Washington. It asserted that its mode of operation was not such as to require it to obtain permits under the Public Freight carrier law, and to pay the road tax required by Sections 258 and 259 of Article 56. In March, 1931, after conference, an agreement was reached whereby the company agreed to apply for permits, but this was not done. Subsequently, numerous arrests were made and several convictions obtained before a Magistrate in Howard County, and

also in Baltimore City, which convictions were appealed. A bill for injunction was filed in the Circuit Court of Baltimore City against the Commissioner and the Public Service Commission. The demurrer to this bill was sustained by the Court and the bill dismissed. The complainant then attempted to file an amended bill which the Court would not allow. After further conferences, the Company again agreed to apply for licenses, conceding that a part of its operation was subject to the law. Mr. Henderson represented the Commissioner.

Charles M. Lewis vs. E. Austin Baughman, Commissioner of Motor Vehicles. In the Circuit Court for Baltimore County. Appeal from an order of the Commissioner of Motor Vehicles, revoking the appellant's license to operate a motor vehicle. The ruling of the Commissioner was reversed upon the findings of the Magistrate being reversed by the Circuit Court. Mr. Anderson and the State's Attorney represented the Commissioner.

Dudley Page Cotton vs. Robert B. Ennis, et al, Constituting the Board of Supervisors of Elections of Baltimore City. In the Superior Court of Baltimore City. Petition for mandamus to compel the Board of Supervisors of Elections to use less than five voting machines in each precinct. The case was heard by Judge O'Dunne, who sustained the previous opinions of the Attorney General, and dismissed the petition. Mr. Jones represented the Supervisors.

Edwin R. Downes, Register of Wills of Baltimore City, for the use of the State of Maryland, vs. Safe Deposit & Trust Company, Trustee under Deed from Eliza L. Jenkins. In the Superior Court of Baltimore City. Suit was filed upon an agreed statement of facts for the recovery of collateral inheritance tax alleged to be due upon property which passed under a deed of trust. The grantor retained the power to revoke the deed but did not exercise this power or retain any beneficial interest in the property during her lifetime. The case was heard by Judge Dennis who decided that no tax was payable. Mr. Jones represented the Register of Wills.

Bradley Martin Haller, td. as Haller Electric Company vs. John S. Dobler, et al, Constituting the State Board of Electrical Examiners and Supervisors. In the Baltimore City Court. Petition for mandamus to require the defendant Board to vacate and rescind the revocation of petitioner's license as a Master Electrician. The case was heard by Judge Owens who dismissed the petition. Mr. Jones represented the State Board of Electrical Examiners.

Hughes Engineering and Construction Corporation, and Charles Sweglar, Sr. vs. Dr. Robert E. Garrett, et al, Constituting the Board of Managers of the Spring Grove State Hospital. In the Superior Court of Baltimore City. This was an application for mandamus to compel the Board of Managers of the Spring Grove State Hospital to award a contract to the petitioner who was the lowest bidder. The contract was actually awarded to the second lowest bidder because the Board of Managers were of the opinion that this bidder was of superior financial responsibility and wider experience, and for these reasons it would be advantageous to the Hospital to award the contract to him. The case was heard by Judge O'Dunne who sustained the action of the Board and dismissed the petition for mandamus. Mr. Jones represented the Board of Managers of the Hospital.

Paul W. Miller, trading as the Capital Loan Company vs. Charles D. Gaither, Police Commissioner of Baltimore City. In the Superior Court of Baltimore City. Action of replevin for the recovery of certain articles of jewelry which came into the possession of the Department in the usual course of business. The case was heard by Judge O'Dunne who decided that the plaintiff was entitled to the possession of the articles in question. The costs were paid by the plaintiff. Mr. Jones represented the Commissioner.

Charles M. Ness, et al, Constituting a Committee of the Lord's Day Alliance, a body corporate, and as individuals and taxpayers of the City of Baltimore and State of Maryland, vs. Robert B. Ennis, et al, Constituting the Board of Supervisors of Elections of Baltimore City. In the Superior Court of Baltimore City. This was a petition for mandamus

to restrain the Supervisors of Elections for Baltimore City from submitting to the voters an Ordinance of the Mayor and City Council of Baltimore, permitting certain games and amusements on Sunday. The case involved the validity of Chapter 287 of the Acts of 1931. It was heard before Judge O'Dunne who sustained the validity of the Act in question and dismissed the petition. The Attorney General and Messrs. Jones and Henderson appeared for the Supervisors.

Francis R. Cross, et al, Executors of Estate of James C. Gittings, vs. Edwin R. Downes, Register of Wills of Baltimore City. In the Baltimore City Court. This proceeding was instituted upon an agreed statement of facts for the purpose of obtaining a determination of the question as to whether the amount paid by the Executors to the State as a tax upon their commissions, was deductible from the Maryland Estate Tax. The case was heard by Judge Dennis who ruled against the Executors. Mr. Jones represented the Register of Wills.

Frank Serio vs. William L. Martindale, Arthur H. Block and John J. Stapleton. In the Court of Common Pleas of Baltimore City. Suit for damages against the defendants who were members of the Police Force of Baltimore City, for alleged false arrest. After considerable negotiations the suit was dismissed upon payment of costs by the defendants. Mr. Jones represented the defendants.

Election Cases—In the Baltimore City Court. Mr. Jones was engaged in the trial of ten appeals from various Boards of Registry, relating to the registration of voters. These appeals were heard by Judge Solter who ordered seven of the petitioners to be registered and the remaining three petitions were dismissed.

Robert H. Bennix vs. Charles D. Gaither, Police Commissioner of Baltimore City, Garnishee of Frank D. Smith. In the Court of Common Pleas. Attachment laid in the hands of the Police Commissioner. Prior to the trial of this case the attachment was dismissed by the plaintiff. Mr. Henderson appeared for the Police Commissioner.

Somerville Nicholson vs. County Commissioners of Allegany County. Before the State Tax Commission. This is an appeal taken by the Supervisors of Assessments for Allegany County from the refusal of the County Commissioners of Allegany County to assess certain property belonging to the Potomac Transmission Company. The question involved is as to the date of finality for assessments in Allegany County. After numerous conferences in connection with the matter, the Attorney General on October 10th, 1932, rendered an opinion to the Chief Supervisor of Assessments connected with the State Tax Commission, recommending that the appeal of the local Supervisor for Allegany County be dismissed on the ground that the assessment of the County Commissioners was correct under the circumstances of the case. Mr. Lane and Mr. Henderson handled the matter.

United States Fidelity and Guaranty Company, a Corporation, vs. Jesse D. Price, Chairman, et al, members of the State Tax Commission of the State of Maryland. In the Circuit Court No. 2 of Baltimore City. The U. S. F. & G. Co. took an appeal to the Board of Tax Appeals, consisting of the Comptroller of the Treasury and the State Treasurer, under the provisions of Section 170 of Article 81 of the Code, as it stood prior to the codification of 1929, from an assessment made by the State Tax Commission for the year 1929. The Company also took an appeal for the year 1929 to the Circuit Court No. 2 of Baltimore City, upon the theory that the codification of 1929 did away with appeals to the Comptroller of the Treasury and the Treasurer, and permitted appeals to the equity courts. A demurrer to this proceeding was interposed on behalf of the State Tax Commission and this demurrer was sustained upon the theory that by Section 14 of Chapter 226 of the Acts of 1929, it was provided that the new law should not apply to taxes levied or which ought to have been levied prior to June 1st, 1929, the effective date of the Act. Mr. Henderson represented the State.

William C. Walsh, Insurance Commissioner vs. Mount Vernon Life Insurance Company, Inc. In the Circuit Court of Baltimore City. In this case bills for a receiver were filed against the Mount Vernon Life Insurance Company, and the Insurance Commissioner in August, 1932, with allegations of insolvency. Answers were filed on behalf of the Company, but no answer on behalf of the Insurance Commissioner, upon the understanding with the Court that the cases would be continued in order to permit an investigation by the Insurance Commissioner. On October 14th, 1932, the Attorney General filed a bill for Receiver against the Company and the Court appointed a commission to investigate the affairs of the Company in accordance with Section 51 and Section 97 of Article 48-A of the Code. The commission subsequently reported the Company to be insolvent, and on October 20th, 1932, the Court appointed J. P. Albert and Milton Dashiell Receivers of the Company. Mr. Henderson represented the Insurance Commissioner.

Oviller Stevens, et al vs. Swepson Earle, Conservation Commissioner. In the Circuit Court for Kent County. This was an oyster protest against the application of Edgar N. Culley for leasing certain oyster ground in Kent County. An answer was filed on behalf of the Conservation Commissioner. After conference the protest was allowed by consent. Mr. Henderson represented the Commissioner.

John Q. Newman, et al vs. Swepson Earle, Constituting the Conservation Department of Maryland. In the Circuit Court for Talbot County. This was an oyster protest filed in the Circuit Court for Talbot County against the application of Arthur A. Larrimore. An answer was filed on behalf of the Commissioner, neither admitting nor denying the allegations of the protest which depended, as in all of these cases, upon a question of fact, to wit, whether or not the land covered by said application is a natural bed or bar and this question in turn depends upon proof that "the public have successfully resorted to such beds or bars for a livelihood whether continuously or by intervals during any oyster season within five years prior to the time of filing of

the application." After conference between the Conservation Department and this office, it was decided that since all of these cases depend solely upon the aforesaid question, the Department would take no part in the trial of the case other than to produce its records, leaving to the protestant or the applicant, as the case might be, the production of local witnesses and the trial of the case. In accordance with this policy, the Department took no part in the trial of this case other than to file a formal answer as aforesaid. The Commissioner was represented by Mr. Henderson.

In the Matter of National Publishing Society of Mountain Lake Park. In the Circuit Court for Garrett County. The State filed a claim for taxes in a receivership proceeding in Garrett County. The Receivers took the position that the State's claim for taxes should be subordinated to the labor claims and an execution claim under the provisions of a public local law. The State's claim was based on the provisions of Section 142 of Article 81, being for the years 1929, 1930 and 1931. The State's claim, in the amount of $236.49, was asserted through petition to the Court, which petition was contested by the Receivers and the case submitted on brief. The Court decided against the State's claim so far as the labor claim was involved. The State thereupon filed a supplemental brief in the nature of a petition for a rehearing and the Court thereafter modified its opinion to allow the State's claim in full, which was duly paid by the Receivers in December, 1932. Mr. Henderson appeared for the State.

Mayor and City Council of Baltimore, a municipal corporation vs. Joseph C. Deegan, Sheriff of Baltimore City. In the Superior Court of Baltimore City. An action at law was instituted against the Sheriff upon a special case stated to recover the sum of $1,111.35 representing fines and penalties collected during the month of February, 1932. The City contended that by the passage of Chapter 37 of the Acts of 1931, the Legislature changed the existing rule whereby one-half of all fines and penalties in Baltimore City were payable to the City and one-half to the State, and con-

tended that the Sheriff was required by said Act to pay all fines and penalties to the City from the effective date of said Act. The case was tried before Judge O'Dunne in the Superior Court, who decided that the City was entitled to only one-half of such fines and penalties and that the balance was due to the State. Mr. Henderson represented the Sheriff.

The Lyric Company vs. State Tax Commission. In the Baltimore City Court. This is an appeal from a decision of the State Tax Commission refusing to grant an exemption to the company on the ground that it was an educational institution. The case was argued before Judge Dennis in the Baltimore City Court, who rendered an opinion confirming the decision of the State Tax Commission. Mr. Henderson represented the State Tax Commission.

The Gosman Company vs. the State Tax Commission. In the Circuit Court of Baltimore City. This was an appeal from the action of the State Tax Commission in refusing to grant an exemption to the Company for the year 1931, upon certain bottles, crowns, cases, barrels, bottle wrappers, labels and factory supplies claimed by the company to be exempt as personal property used generally in connection with manufacturing. The State Tax Commission had held that this company was engaged in manufacturing but had declined to grant the exemption on the items enumerated, on the ground that until they were actually used in the bottling process they were not entitled to the exemption. The case was tried before Judge Stein, and the Court reversed the action of the State Tax Commission relating to the articles in question and remanded the case. Mr. Henderson represented the State Tax Commission.

Fairfield Western Maryland Dairy vs. State Tax Commission. In the Baltimore City Court. This is an appeal from the State Tax Commission. The question presented is whether the Western Maryland Dairy Company is entitled to exemption on its bottle and can washing machinery, bottle filling machinery and pasteurizing machinery, on the ground

that this apparatus is used in connection with manufacturing. The case was argued at length before Judge Dennis in the Baltimore City Court on February 15th, 1932, and on February 25th, Judge Dennis affirmed the State Tax Commission in refusing the exemption claimed. No appeal was taken from this decision. Mr. Henderson represented the State Tax Commission.

Edwin R. Downes, Register of Wills of Baltimore City, for the use of the State of Maryland vs. Safe Deposit and Trust Company of Baltimore, Executor of the Will of William F. Southcomb, deceased, and Trustee under said Will. In the Superior Court of Baltimore City. The question was raised as to whether the appraisement of securities for inventory purposes in the Orphans' Court should be made as of the date of death of the decedent or as of the date when the appraisement is made. The further questions were raised as to whether the Orphans' Court had power to order a reappraisement, and if so, whether the Executor could calculate the State collateral inheritance tax upon a diminished value shown by said reappraisement and whether the Executor could calculate the State tax on commissions upon such diminished value. The case was argued in the Superior Court, which rendered a judgment in favor of the Executor as to the matter of the State collateral inheritance tax, but in favor of the State as to the tax on commissions. Cross appeals were entered from each of these judgments to the Court of Appeals. Mr. Henderson appeared for the Register of Wills.

Herman H. Borchers, trading as H. H. Borchers and Son vs. Charles H. Wolters, trading as Wolter's Restaurant. In the Baltimore City Court. This was a bill in the Baltimore City Court praying that the Sheriff allocate funds which had come into his hands in a certain manner. The money was duly paid into Court under a Court order. Mr. Anderson represented the Sheriff.

Perry W. Fuller vs. Edythe Johns Cotten, and Joseph C. Deegan, Sheriff of Baltimore City. In the Superior Court

of Baltimore City. This was a suit for damages growing out of distraint proceedings issuing out of the Superior Court of Baltimore City, under which the Sheriff of Baltimore City seized certain chattels alleged to be the property of the plaintiff. The Sheriff was a nominal party at interest. Mr. Anderson represented the Sheriff.

Mrs. Anna Otto vs. William F. Herz. In the People's Court of Baltimore City. This was a suit against a police officer for damages growing out of an automobile accident in which both machines were damaged. The plaintiff brought suit and a judgment amounting to $29.85 was entered against the defendant. Mr. Anderson represented the defendant.

State of Maryland vs. B. Ross Duling and Robert Jarrell, Jr. In the Circuit Court for Caroline County. The defendants in this case were indicted for conspiracy to cheat and defraud the depositors of the Goldsboro Bank and for false entries in reports made to the Bank Commissioner. The defendants pled guilty to the charge of false entries and the defendant Jarrell was sentenced to eight years in the Maryland Penitentiary, and the defendant Duling was sentenced to four years in the Maryland Penitentiary. Mr. Anderson and the State's Attorney represented the State.

State of Maryland, for the use of the Maryland Training School for Boys vs. Raymond Nortrup, John H. Nortrup and Elizabeth Nortrup. In the Circuit Court for Baltimore County. This was a suit in tort by the State of Maryland against the above defendants, growing out of an automobile accident, wherein an automobile, the property of the Maryland Training School for Boys, was damaged. The defendants filed a general issue plea, but prior to trial the case was compromised and settled for $125.00. Mr. Anderson represented the Training School.

George Sapourn vs. Harry T. Ambrose and Joseph C. Deegan, Sheriff of Baltimore City. In the Circuit Court of Baltimore City. This was a bill in equity to enjoin the

Sheriff of Baltimore City from selling certain property seized under a fi. fa. The position of the Sheriff was essentially that of a stakeholder, the real proceeding being between other parties, each claiming certain rights. The bill against the Sheriff was dismissed. Mr. Anderson represented the Sheriff.

The Public Loan Company, a body corporate vs. Mano Swartz, Joseph C. Deegan, Sheriff of Baltimore City, and David L. Morrison. In the Baltimore City Court. This was an action in tort. The case was dismissed by the plaintiff. Mr. Anderson represented the Sheriff.

Lillie M. Martin, et al vs. Harriet M. Runkle and Mercantile Trust and Deposit Company. In the Circuit Court for Carroll County. This is a proceeding attacking the will of Dr. John B. F. Weaver, under which the University of Maryland was given a bequest. The case was settled and the will sustained, by agreement. Mr. Anderson represented the University.

Thomas E. Jones vs. Joseph C. Deegan, Sheriff of Baltimore City, and the A. S. Abell Company, a body corporate. In the Superior Court of Baltimore City. This was an action in tort. The case was dismissed by the plaintiff. Mr. Anderson represented the Sheriff.

The Finance Company of America at Baltimore vs. F. H. Johnson and Ethel S. Johnson. In the Superior Court of Baltimore City. This was an order issued out of the Superior Court of Baltimore City directing the Sheriff to show cause why certain money realized from the sale of certain goods and chattels sold under attachment proceedings should not be paid over to the plaintiff, the Finance Company of America. The Sheriff filed an answer and the case was heard by Judge O'Dunne and the prayer of the plaintiff was dismissed. Mr. Anderson represented the Sheriff.

Lawrence E. Ensor and J. Glasgow Archer, Jr., Receivers of Estate of George W. White vs. Samuel M. Shoemaker,

et al, Constituting the State Board of Agriculture of Maryland. In the Superior Court of Baltimore City. This was a petition for mandamus filed against the State Board of Agriculture to compel the Board to pay for certain condemned cattle. A hearing was held on demurrer filed by the Board. The demurrer was sustained and the writ denied. Mr. Anderson represented the University, of which the Board of Agriculture is a part.

Charles I. Silin vs. University of Maryland, a corporation, and the Regents of the University of Maryland. In the Circuit Court for Prince George's County. Suit was entered by Charles I. Silin, former teacher of the University, claiming certain monies on account of salary. See Volume 15 of the Report and Opinions of the Attorney General for full details. The demurrer of the State was sustained, and the plaintiff did not appeal. Mr. Marbury appeared for the University when the case was argued in 1931, but the case was not decided until 1932.

William Whitehead vs. Georges Creek Coal Company, Inc., and the State Accident Fund. In the Circuit Court for Allegany County. This was a hernia case which was disallowed because the claimant failed to report an accident within forty-eight hours. An appeal was entered to the Circuit Court for Allegany County. At the time of trial the case was settled for $75.00. Mr. Green appeared for the State Fund.

Simon Stokes vs. the State Accident Fund and the Welsh Construction Company. In the Baltimore City Court. Several petitions filed by the claimant to reopen this case were heard by the Commission, as a result of an injury to the claimant's back, and after allowing compensation for a period, the Commission terminated compensation payments. The claimant alleged that he was permanently and totally disabled and entered an appeal to the Baltimore City Court. At the time of trial the case was settled for $300.00. Mr. Green represented the State Fund.

Marie Rider vs. the Progress Laundry Company and the State Accident Fund. In the Superior Court of Baltimore City. A hearing was held by the State Industrial Accident Commission in this case, to determine the nature and extent of disability, and compensation was allowed the claimant for the period of forty-five weeks for permanent partial disability occasioned by one-half loss of use of the first finger and two-thirds loss of use of the second and third fingers, and ordered that the temporary total disability cease as of March 2, 1931. An appeal was entered by the claimant to the Superior Court of Baltimore City. On appeal the action of the State Industrial Accident Commission was affirmed. Mr. Green represented the State Fund.

Henry Phyles, for his own use and for the use of the State Accident Fund vs. Frederick A. Levering, III. In the Superior Court of Baltimore City. Claim for compensation in this case was allowed and claim was then made upon the operator of an automobile whose vehicle had collided with the truck in which the claimant was riding. Compensation having been awarded, suit was entered against the third party in the Baltimore City Court. This suit was compromised and settled. Mr. Green represented the State Fund.

Jesse B. Ours vs. R. J. Ross Coal Mines Company, Inc., and the State Accident Fund. In the Circuit Court for Allegany County. In this case the claimant alleged that she was the wife of an employee who was killed in the course of his employment. The case was contested by the State Fund on the ground that she was not the widow of the deceased employee. The claimant produced a wedding certificate of a marriage in West Virginia, but investigation showed that no license had ever been issued and that no marriage could be found in the name which appeared on the certificate. The testimony was conflicting as to whether the deceased and claimant held themselves out to be husband and wife. She claimed that she was totally dependent upon the deceased. The claim for compensation was disallowed, and at the time of trial the case was settled for $250.00. Mr. Green represented the State Fund.

Walter L. Nogle vs. Shallmar Mining Company and the State Accident Fund. In the Circuit Court for Allegany County. The claimant was injured while working in a coal mine. His injury resulted in peritonitis following a crushing injury to the sacroiliac joint of the back. The claim was disallowed by the Commission, and on appeal a jury reversed the action of the Commission. The case was then settled for $1400.00. Mr. Green represented the State Fund.

Marcellus F. Morgan vs. Maryland Coal Company and the State Accident Fund. In the Circuit Court for Allegany County. Claim was filed for compensation in this case on December 6, 1930. The Commission disallowed the claim. No appeal was taken and no petition to reopen was filed until 1932, at which time the Commission, after hearing, granted the motion of the State Accident Fund to dismiss the claim because more than one year had elapsed from the time of the previous action of the Commission. On appeal the ruling of the Commission was affirmed. Mr. Green represented the State Fund.

Myrtle Long vs. Queen City Window Cleaning Company and the State Accident Fund. In the Superior Court of Baltimore City. The claimant in this case alleged that she was the widow of one Richard Long, who was killed in the course of his employment. She alleged that she had been married to the deceased for about two years, but was unable to produce any marriage certificate. She did not know the name of the minister who performed the ceremony, nor his exact address in Baltimore. However, it was admitted that the claimant and deceased were known by all with whom they came in contact, including the employer, as man and wife. The claim was disallowed by the Commission, and on appeal to the Superior Court its action was reversed. The case was settled for $3,333.33. Mr. Green represented the State Fund.

John Korich vs. Sullivan Brothers Coal Company and the State Accident Fund. In the Circuit Court for Allegany County. The Commission decided adversely to the claim of

the petitioner for an increase in the amount of compensation. An appeal was entered to the Circuit Court for Allegany County and the action of the Commission was affirmed. Mr. Green represented the State Fund.

Annie Kiddy vs. Jackson Big Vein Georges Creek Coal Company, employer, and the State Accident Fund. In the Circuit Court for Allegany County. Mrs. Annie Kiddy is the mother of George R. Kiddy, who was fatally injured on May 9th, 1931, while in the employ of the Jackson Big Vein Georges Creek Coal Company. The State Industrial Accident Commission, by its order of July 16th, 1931, held that Mrs. Kiddy was a partial dependent and allowed her compensation in the amount of $3,000.00. From this order Mrs. Kiddy appealed. In order to avoid further litigation, settlement was entered into by the payment of $750.00 in addition to the compensation already allowed, which settlement was approved by the Commission. Mr. Green represented the State Fund.

Elick Kerensky vs. the Davis Coal and Coke Company and the State Accident Fund. In the Circuit Court for Allegany County. Claim was made in this case for a back injury and an award was made by the State Industrial Accident Commission in the amount of $3,000, and an appeal was entered to the Circuit Court for Allegany County by the claimant. On appeal this case was settled for $3,500.00. Mr. Green represented the State Fund.

George W. Hobbs, vs. E. A. Kelbaugh and the State Accident Fund. In the Baltimore City Court. George Hobbs was injured on March 12th, 1931, while shingling a house for E. A. Kelbaugh. This case was defended by the State Accident Fund on the ground that Hobbs was an independent contractor rather than an employee. On the 15th day of May, 1931, the State Industrial Accident Commission disallowed the claim for compensation on the ground that Hobbs was an independent contractor. From this order an appeal was taken. This case was settled on appeal for $325.00 which has been paid to the claimant in accordance

with the agreement approved by the Commission. Mr. Green represented the State Fund.

Howard G. Freshour vs. Dickson Construction & Repair Company and the State Accident Fund. In the Circuit Court for Washington County. Freshour made claim for compensation as a result of an accidental injury sustained by him. The State Industrial Accident Commission on the 29th day of June, 1931, ordered the payments of compensation to cease as of January 3rd, 1931. From this order the plaintiff entered an appeal. This case was decided against the State Accident Fund in the Circuit Court, and a further hearing was held by the Commission on February 5, 1932, at which time an agreement was entered into, and the State Industrial Accident Commission awarded compensation during the period of fifty-six and one-quarter weeks from January 5th, 1931. Mr. Green represented the State Fund.

Edward Flemister vs. Dickson Construction and Repair Company and the State Accident Fund. In the Baltimore City Court. Edward Flemister, an employee of the Dickson Construction and Repair Company, was injured on October 16th, 1927. He was allowed compensation for his injury in the amount of $1,500.00. He petitioned to reopen his case, and on November 23rd, 1929, he was allowed an additional $750.00. He again petitioned to reopen his case and the State Industrial Accident Commission after hearing on October 30th, 1930, denied the petition and refused to reopen the case. An appeal was taken to the Baltimore City Court from the above order. The case was finally compromised by the payment of $225.00. The Commission ratified the settlement agreement. Mr. Green represented the State Fund.

State Accident Fund of the State of Maryland, for its own use and for the use of George Edward Fauth vs. Andrew Lorelli, and S. Lorelli, Incorporated, a body corporate, all non-residents of the State of Maryland. In the Superior Court of Baltimore City. George E. Fauth, a motorcycle policeman, was run into by an automobile belonging to the Lorelli Brothers, near Havre de Grace. He was taken to

Havre de Grace where one of his legs was partially amputated, and compensation was allowed him. Suit was then entered in his behalf and in behalf of the State Accident Fund against the Lorelli brothers, in the Superior Court of Baltimore City, resulting in a verdict of $10,000 in favor of the plaintiffs. Mr. Green represented the State Fund.

Joseph Blackburn vs. Dailey Coal Company and the State Accident Fund. In the Circuit Court for Allegany County. Blackburn claimed to have sustained an accidental injury arising out of and in the course of his employment. The Commission found that Blackburn did not sustain an accidental injury arising out of and in the course of his employment, and Blackburn appealed. The case was tried and the jury returned a verdict in favor of the State Accident Fund. Mr. Green represented the State Fund.

Morton William Bregor, for his own use and for the use of the State Accident Fund vs. Frederick A. Levering, III. In the Superior Court of Baltimore City. Claim was made for compensation in this case by an employee who was injured while riding in a truck of his employer when the truck was struck by another automobile. Compensation was allowed and suit was then entered on behalf of the claimant for the use of the State Fund against the third party. The case was settled for $2,300.00, of which the State Fund received $725.00 in reimbursement, and a complete release from the claimant. Mr. Green represented the State Fund.

Lee Cadwallader vs. Georges Creek Coal Company and the State Accident Fund. In the Circuit Court for Allegany County. This is a claim for compensation in a hernia case which the Commission disallowed, largely on the ground that no report had been filed within the time required by law. The action of the Commission was affirmed by the Circuit Court for Allegany County. Mr. Green represented the State Fund.

Ocea Chisholm, widow of Abram Chisholm, deceased vs. The Waddell Georges Creek Coal Company, Inc., and the

State Accident Fund. In the Circuit Court for Allegany County. Claim was made by the widow of the deceased employee who died following an operation for hernia. There was no direct testimony of any injury and the only testimony of the occurrence was a hearsay statement alleged to have been made by the deceased that "something slipped" while he was working. The claim was disallowed by the Commission, which action was reversed by the Circuit Court for Allegany County. An appeal was entered to the Court of Appeals. Mr. Green represented the State Fund.

The State Accident Fund, in its own right and for the use of George Coombs vs. George J. Krausser. In the Circuit Court for Baltimore County. Coombs, an employee of the State Roads Commission, was seriously injured on December 12th, 1930, as a result of being struck by an automobile owned and driven by George Krausser. It is contended that this accident was due to the negligence of Krausser in the operation of his automobile 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, by which the State Accident Fund, as insurer of the State Roads Commission, has been and may be in the future, required to pay on account of the accident, and also for the purpose of recovering additional damages for the injuries to and suffering of Coombs. This case was settled for $200.00. In order to obtain a final release from the claimant and avoid any possible future claims for further disability, the State Fund accepted $25.00 of the settlement and the balance was paid to the claimant. Mr. Green represented the State Fund.

Henrietta C. Reynolds vs. State Roads Commission and the State Accident Fund. In the Baltimore City Court. See Volume 16 of the Report and Official Opinions of the Attorney General. Following a verdict in favor of the claimant, an appeal was entered to the Court of Appeals. Mr. Green represented the State Fund.

Condemnation Work

The following condemnation cases for the purpose of securing the rights-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.

Allegany County:

Evelyn I. Johnson, et al., defendants.
Award: $3,400.00.
Arthur P. Hoffa, et al., defendants.
Award: $500.00.

Anne Arundel County:

Phillip Peterson, et al., defendants.
Award: $18,000.00.

Baltimore County:

Laura V. Fuller, et al., defendants.
Award: $500.00.
Jacob C. Dennis, et al., defendants.
Award: $675.00.
Otto Jacbosky, et al., defendants.
Award: $400.00.

Cecil County:

Alice H. Sherbert, et al., defendants.
Award: $125.00.
Alice H. Sherbert, et al., defendants.
Award: $5.00.

Calvert County:

J. Horace Ward, et al., defendants.
Award: $850.00.

Montgomery County:

Craft Heirs, defendants.
Award: $1,000.00.

Prince George's County:

Mrs. J. P. Hines and J. Brown, defendants.
Award: $100.00.
Anna W. Frey, et al., defendants.
Award: $280.00.

In addition to the above mentioned condemnation cases, the Commission acquired approximately two thousand separate and distinct rights-of-way during the year, and the Special Assistant Attorney General for the State Roads Commission performed all of the intricate and exacting legal services which were required in these transactions.

BEFORE THE STATE INDUSTRIAL ACCIDENT COMMISSION

Oliver Harrison vs. The Davis Coal and Coke Company and the State Accident Fund. At Baltimore.

Louis Biddle vs. Piedmont and Georges Creek Coal Company and the State Accident Fund. At Baltimore.

William H. Steel vs. George Transfer Company and the State Accident Fund. At Baltimore.

Richard Long (Deceased) Claimant Myrtle Long (Widow) vs. Queen City Window Cleaning Company and the State Accident Fund. At Baltimore.

George Crayton vs. Edwin Bennett Pottery Company and the State Accident Fund. At Baltimore.

Glenn Edward Brandenburg vs. the State Roads Commission and the State Accident Fund. At Frederick.

Carmie E. Houpt vs. State Roads Commission and the State Accident Fund. At Hagerstown.

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

Sam Lavoretti vs. Dickson Construction and Repair Company and the State Accident Fund. At Baltimore.

John L. Storms vs. George E. Fowble and the State Accident Fund. At Baltimore.

Presley B. Harris vs. Jacob D. Ott and the State Accident Fund. At Baltimore.

Joseph W. Tracy (deceased) Carrie Virginia Tracy (widow) vs. Lower Stoker Company and the State Accident Fund. At Baltimore.

Charles J. Horich vs. J. Daniel Dienst and the State Accident Fund. At Westminster.

Isaac E. Redman vs. Falls Road Quarry Company, Inc., and the State Accident Fund. At Baltimore.

Irvin W. Schmidt vs. Becker Pretzel Bakeries, Inc., and the State Accident Fund. At Baltimore.

William Bradley vs. Theodore L. Cypull and the State Accident Fund. At Baltimore.

Charles Edward Walsh vs. Sullivan Brothers Coal Company and the State Accident Fund. At Cumberland.

Albert Lashbaugh vs. Piedmont and Georges Creek Coal Company and the State Accident Fund. At Cumberland.

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

William Whitehead vs. Georges Creek Coal Company, Inc., and the State Accident Fund. At Cumberland.

Walter L. Nogle vs. Shallmar Mining Corporation and the State Accident Fund. At Cumberland.

James Bray Thompson vs. Mayor and Council of Frostburg and the State Accident Fund. At Cumberland.

Leonard William Embly vs. Springfield State Hospital. At Baltimore. (Two cases.)

Paul Dukusic vs. The Davis Coal and Coke Company and the State Accident Fund. At Baltimore.

Elmer E. Korb vs. Capital Press, Inc., and the State Accident Fund. At Baltimore.

John Sudler vs. Edwin Bennett Pottery Company and the State Accident Fund. At Baltimore.

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

George Willinger vs. Edwin Bennett Pottery Company and the State Accident Fund. At Baltimore.

John R. Dent vs. Maryland Office Window Cleaning Company and the State Accident Fund. At Baltimore.

George Romeo vs. Linwood Building Company, Anthony Bressi and the State Accident Fund. At Baltimore.

Daniel E. Feeney vs. the Reckord Motor Company and the State Accident Fund. At Baltimore.

Morton William Bregor vs. H. Stevenson Clopper and the State Accident Fund. At Baltimore.

Henry Phyles vs. B. Stevenson Clopper and the State Accident Fund. At Baltimore.

William Showell vs. Clinton A. Kephart and the State Accident Fund. At Cambridge.

Thomas Oakley Lantz vs. Commissioner of Motor Vehicles and the State Accident Fund. At Cambridge.

Denard A. Lokey vs. Salisbury Ice Company and the State Accident Fund. At Salisbury.

William Washington Tyler vs. John T. Handy Company, Inc., and the State Accident Fund. At Salisbury.

Dixon C. Sloan vs. Alexander Sloan and Dixon C. Sloan, trading as Sloan Brothers, and the State Accident Fund. At Baltimore.

Walter Hickman (Deceased) Noldia Bowen and John Emory Bowen vs. the Columbia Gas Construction Company and the State Accident Fund. At Job, Kentucky.

George Coombs vs. State Roads Commission and the State Accident Fund. At Baltimore.

Earl Sentz vs. the State Roads Commission and the State Accident Fund. At Westminster.

George E. Bair vs. the Welsh Construction Company and the State Accident Fund. At Westminster.

Paul Baker vs. the State Roads Commission and the State Accident Fund. At Baltimore.

Ralph Kerr vs. W. A. Fingles Incorporated and the State Accident Fund. At Baltimore.

David R. Kennord vs. State Roads Commission and the State Accident Fund. At Baltimore.

Charles Capalino vs. Frank Carozza & Son and the State Accident Fund. At Baltimore.

James H. Baldwin vs. Edward V. Stockham, Inc., and the State Accident Fund. At Havre de Grace.

William J. Wilson vs. Koontz Coal Company, Inc., and the State Accident Fund. At Cumberland.

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

John G. Bauer vs. John D. Rees and the State Accident Fund. At Cumberland.

Edward J. Rager vs. the Georgian Coal Mining Company and the State Accident Fund. At Cumberland.

William A. Greenhorn vs. R. J. Ross Coal Mines, Inc., and the State Accident Fund. At Cumberland.

Henry F. Durst vs. John B. Otter and J. Raymond Otter, trading as John B. Otter and Son, and the State Accident Fund. At Cumberland.

Rudolph Maybeck vs. Big Vein Coal Company of Lonaconing and the State Accident Fund. At Cumberland.

Ben F. Preando vs. Shallmar Mining Corporation and the State Accident Fund. At Cumberland.

Earl Burkett vs. Sullivan Brothers Coal Company and the State Accident Fund. At Cumberland.

Henry F. Durst vs. John B. Otter and the State Accident Fund. At Oakland.

Wm. Henry Kissner vs. Black & Fiazee and the State Accident Fund. At Oakland.

Victor Smith vs. Manor Coal Company and the State Accident Fund. At Oakland.

Dixon C. Sloan vs. Sloan Brothers and the State Accident Fund. At Cumberland.

Jesse B. Ours vs. R. J. Ross Coal Mining Corporation and the State Accident Fund. At Cumberland.

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

James Paugh vs. Davis Coal and Coke Company and the State Accident Fund. At Cumberland.

Urban McKenzie vs. Jackson Big Vein Georges Creek Coal Company and the State Accident Fund. At Cumberland.

Pat McDonough vs. Jackson Big Vein Georges Creek Coal Company and the State Accident Fund. At Cumberland.

W. J. Wilson vs. Koontz Coal Company, Inc., and the State Accident Fund. At Cumberland.

Walter E. Swift vs. Shallmar Mining Corporation and the State Accident Fund. At Cumberland.

Charles Willison vs. State Roads Commission and the State Accident Fund. At Cumberland.

Nickolaus Magyar vs. State Roads Commission and the State Accident Fund. At Baltimore.

William Henry Knapp vs. Eckhardt Brothers and the State Accident Fund. At Baltimore.

William L. Hayworth vs. Harry J. Baker; E. L. Pyle Co. Hartford Accident and Indemnity Company and the State Accident Fund. At Baltimore.

Henry S. Williamson (Deceased) Mary E. Williamson (Widow) vs. Dickson Construction and Repair Company and the State Accident Fund. At Hagerstown.

Charles B. Vaughan vs. Dickson Construction & Repair Company and the State Accident Fund. At Hagerstown.

Harry C. Shrader vs. State Roads Commission and the State Accident Fund. At Hagerstown.

John F. Eyring vs. Maryland Penitentiary and the State Accident Fund. At Baltimore.

Charles H. McDaniels vs. Clifford C. Geare and the State Accident Fund. At Baltimore.

James Paugh vs. the Davis Coal and Coke Company and the State Accident Fund. At Baltimore.

Frank Brusack vs. Mrs. Y. Sline, trading as Sline & Sons, and the State Accident Fund. At Baltimore.

Nicholas Berna vs. Frank Carozza and Son and the State Accident Fund. At Baltimore.

Walter Martin vs. T. C. Davis Building Supply Company and the State Accident Fund. At Baltimore.

Jennings Dixon vs. James C. Davis and Howard Smith and the State Accident Fund. At Cambridge.

Levin Edward Marshall vs. Phillips Packing Company and the State Accident Fund. At Cambridge.

Berry L. Cannon vs. the Jordan Ice Company and the State Accident Fund. At Cambridge.

Thomas Taylor vs. Phillips Can Company and the State Accident Fund. At Cambridge.

Edward R. Williams vs. Lingan T. Spicer and the State Accident Fund. At Salisbury.

Harrison Parsons, Jr., vs. the Wicomico Hotel and the State Accident Fund. At Salisbury.

John Manlaf Pusey vs. William B. Tilghman Co. and the State Accident Fund. At Salisbury.

Algie B. Morgan vs. Walter Lee Wheatley and the State Accident Fund. At Salisbury.

John L. Storms vs. George E. Fowble and the State Accident Fund. At Baltimore.

Solomon O. Meyers vs. Roman Tile and Cement Company and the State Accident Fund. At Baltimore.

James Paugh vs. the Davis Coal and Coke Company and the State Accident Fund. At Baltimore.

Anthony Lombardi (Deceased) Mrs. Margaret Lombardi vs. Frank Carozza & Son and the State Accident Fund. At Baltimore.

Howard Gibson vs. O. Lee Ford, operating as Ford Iron and Metal Company, and the State Accident Fund. At Baltimore.

Dixon C. Sloan vs. Lonaconing Cut Glass Company, Inc., and the State Accident Fund. At Baltimore.

Wm. Washington Tyler vs. John T. Handy Co., Inc., and the State Accident Fund. At Salisbury.

Enoch S. Creamer vs. State Roads Commission and the State Accident Fund. At Rockville.

Dixon C. Sloan vs. Lonaconing Cut Glass Company, Inc., and the State Accident Fund. At Baltimore.

Alfonso Di Francesco (Deceased) Guiseppina Di Francesco, widow, vs. Frank Carozza & Son and the State Accident Fund. At Baltimore.

Charles T. Crothers vs. Harry N. Dinsmore, trading as Arthur Dinsmore and Brother, and the State Accident Fund. At Baltimore.

Leo Butler vs. Edwin Bennett Pottery Company and the State Accident Fund. At Baltimore.

Benjamin F. Murray vs. State Roads Commission and the State Accident Fund. At Baltimore.

Felix Nowicki vs. Chesapeake Smelting & Refining Company and the State Accident Fund. At Baltimore.

Urban McKenzie vs. Jackson Big Vein Georges Creek Coal Company and the State Accident Fund. At Cumberland.

Jennings M. Kline vs. R. J. Ross Coal Mines, Inc., and the State Accident Fund. At Cumberland.

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

Lloyd Williams vs. Potomac Lumber Co., Inc., and the State Accident Fund. At Baltimore.

Charles Willison vs. State Roads Commission and the State Accident Fund. At Cumberland.

Earl Paugh vs. Manor Coal Company and the State Accident Fund. At Cumberland.

Samuel E. Barnes vs. Ira Gould Robinson and the State Accident Fund. At Cumberland.

Walter L. Nogle vs. Shallmar Mining Corporation and the State Accident Fund. At Cumberland.

James Hanline vs. Shallmar Mining Corporation and the State Accident Fund. At Cumberland.

Sol Finkelberg vs. Jacob M. Levy, trading as Levy's International Shrinking Company, and the State Accident Fund. At Baltimore.

Charlie Gray vs. George Transfer Company, Inc., and the State Accident Fund. At Baltimore.

Melvin E. Burns vs. H. Stevenson Clopper and the State Accident Fund. At Baltimore.

Nicholas Berna vs. Frank Carozza & Son and the State Accident Fund. At Baltimore.

Edgar Jackson vs. Harry T. Campbell Sons Co., Inc., and the State Accident Fund. At Baltimore.

Melvin E. Burns vs. H. Stevenson Clopper and the State Accident Fund. At Baltimore. (Two cases.)

John J. Smith, Jr., vs. Bugle Coat and Apron Company, Inc., and the State Accident Fund. At Baltimore.

Allie Perry vs. Chas. A. Jording and the State Accident Fund. At Baltimore.

Michael Kriechauf vs. Wm. Schluderberg-T. J. Kurdle Company and the State Accident Fund. At Baltimore.

Wm. E. Kegg (claimants) Allegany Hospital-Reba Rohman, R.N., and Mary E. Degg, R.N., vs. Farmers Dairy Products Company, Inc., and the State Accident Fund. At Cumberland.

Louis Biddle vs. Piedmont and Georges Creek Coal Company and the State Accident Fund. At Cumberland.

Clem J. McKenzie (deceased) claimant Beda McKenzie, widow, vs. County Commissioners of Garrett County and the State Accident Fund. At Cumberland.

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

Leonard Miller vs. McNitt Coal Company, Inc., and the State Accident Fund. At Cumberland.

John Brodbeck vs. Georges Creek Coal Mining Company and the State Accident Fund. At Cumberland.

Edward Johnson vs. W. Y. Chapman Coal Company and the State Accident Fund. At Cumberland.

Alex. Talley vs. Carroll Independent Coal Company and the State Accident Fund. At Baltimore.

Jesse B. Ours (Deceased) Claimant, Celia Ours vs. R. J. Ross Coal Company and the State Accident Fund. At Cumberland.

John Wanex (Claimant) Dr. Tillman B. Marden vs. Choptank Canning Company and the State Accident Fund. At Denton.

John Manlaf Pusey vs. William B. Tilghman Co. and the State Accident Fund. At Salisbury.

Walter C. Swift vs. Shallmar Mining Corporation and the State Accident Fund. At Cumberland.

Joseph Pigowski vs. State Roads Commission and the State Accident Fund. At Baltimore.

Simon Stokes vs. Welsh Construction Company and the State Accident Fund. At Baltimore.

Wm. L. Hayworth vs. Harry J. Baker, E. L. Pyle Company, Harford Accident and Indemnity Company and the State Accident Fund. At Baltimore.

John Manet vs. Choptank Canning Company and the State Accident Fund. At Denton.

Thomas R. Dowler vs. State Roads Commission and the State Accident Fund. At Denton.

Algie B. Morgan vs. Walter Lee Wheatley and the State Accident Fund. At Salisbury.

Jennings Dixon vs. James C. Davis, Howard Smith and the State Accident Fund. At Salisbury.

In nine of the above cases the State Accident Fund was represented by Mr. Anderson, and in the remainder by Mr. Green.

Cases Pending in the Lower Courts

State of Maryland for the use of the Board of Welfare vs. the Board of County Commissioners of Anne Arundel County, Maryland, a body corporate. In the Circuit Court for Anne Arundel County. Suit was instituted by the State Board of Welfare against the County Commissioners of Anne Arundel County, on account stated, growing out of the execution of one William Rawlings.

Rebecca T. Briscoe, et al vs. Swepson Earle, Commissioner of Conservation Department of State of Maryland, and Francis X. McNaney. In the Circuit Court for Calvert County. This is a petition in the nature of an oyster protest against an application of Francis X. McNaney filed with the Conservation Department for a lease of oyster bottom in the Patuxent River. The ground of the protest, however, was that the granting of the said lease would damage the property of the protestants and particularly their bathing beach. An answer and demurrer were filed on behalf of the Commissioner, stating that the protestants had not made out a case for relief, the sole issue in a protest case being whether or not the ground in question is a natural bar within Section 98 of Article 72.

Louis Bright vs. Joseph C. Deegan, Sheriff of Baltimore City. In the Court of Common Pleas of Baltimore City. This is a suit filed against the Sheriff of Baltimore City, alleging false arrest.

John R. Wolfe vs. E. Austin Baughman, Commissioner of Motor Vehicles. In the Circuit Court for Baltimore County.

T. Evans Whitely vs. E. Austin Baughman, Commissioner of Motor Vehicles. In the Circuit Court for Baltimore County.

Irvin Weil vs. E. Austin Baughman, Commissioner of Motor Vehicles. In the Circuit Court for Frederick County.

Mrs. Clarence Burriss vs. E. Austin Baughman, Commissioner of Motor Vehicles. In the Circuit Court for Montgomery County.

Alexander C. McNeill vs. E. Austin Baughman, Commissioner of Motor Vehicles. In the Circuit Court for Frederick County.

Frank Maxa, Jr. vs. E. Austin Baughman, Commissioner of Motor Vehicles. In the Circuit Court for Harford County.

R. C. Jensen vs. E. Austin Baughman, Commissioner of Motor Vehicles. In the Circuit Court for Frederick County.

John C. Shinolt vs. E. Austin Baughman, Commissioner of Motor Vehicles. In the Circuit Court for Allegany County.

Townsend Streett vs. E. Austin Baughman, Commissioner of Motor Vehicles. In the Circuit Court for Baltimore County.

William S. Seymour vs. E. Austin Baughman, Commissioner of Motor Vehicles. In the Circuit Court for Cecil County.

William E. Hahn vs. E. Austin Baughman, Commissioner of Motor Vehicles. In the Circuit Court for Frederick County.

John H. Stauffer, Jr. vs. E. Austin Baughman, Commissioner of Motor Vehicles. In the Circuit Court for Frederick County.

Chester H. Durham vs. E. Austin Baughman, Commissioner of Motor Vehicles. (Two cases.) In the Circuit Court for Harford County.

Charles F. McCarthy vs. E. Austin Baughman, Commissioner of Motor Vehicles. In the Circuit Court for Harford County.

George C. Nickens vs. E. Austin Baughman, Commissioner of Motor Vehicles. In the Circuit Court for Howard County.

James Horace Proctor vs. E. Austin Baughman, Commissioner of Motor Vehicles. In the Circuit Court for Prince George's County.

Roy E. Newman vs. E. Austin Baughman, Commissioner of Motor Vehicles. In the Circuit Court for Prince George's County. Appeals from orders of the Commissioner of Motor Vehicles, revoking the appellants' licenses to operate motor vehicles.

John F. Somerville vs. Joseph C. Deegan, Sheriff of Baltimore City, and Kenneth N. Gilpin. In the Baltimore City Court. This was an action in trespass against the Sheriff and one Kenneth N. Gilpin. Gilpin was returned non est. The Sheriff demanded a bill of particulars which was granted by the Court. An exception was noted to the bill of particulars, which was sustained, with leave granted to file further particulars.

State of Maryland for the use of the Comptroller of the State of Maryland vs. F. Guerney Jump. In the Circuit Court for Queen Anne's County. This is a suit in assumpsit on an account stated, against the defendant, by the State of Maryland, for the payment of gasoline taxes.

State of Maryland vs. Melvin F. Shepley. In the Circuit Court for Frederick County. Melvin F. Shepley is Register of Wills for Frederick County, and had a sum of money on

deposit at the Central Trust Company at the time of its closing. The bond of the Register contained a special provision exempting the surety from liability for public monies on deposit. Demand was accordingly made for the sum of $7,369.53, representing the amount due the State as of September 30th, 1931. After extended correspondence in an effort to settle the claim, suit was instituted. The defendant filed a demurrer to the suit, which has not yet been heard.

State of Maryland vs. J. S. Frindt. In the Superior Court of Baltimore City. This is a claim in the amount of $385.50 referred to this office by the University Hospital, the claim being for services rendered to Mrs. Lena McKnight. It appeared that one J. S. Frindt, who had injured Mrs. McKnight in an automobile accident, signed an admittance contract at the time she was admitted to the hospital on October 4th, 1930, agreeing to pay the hospital charges. Suit was instituted against Frindt for the amount of this claim, but the case has not yet been reached for trial.

State of Maryland vs. O'Keefe Bros., Inc. In the Superior Court of Baltimore City. This is a claim of the University Hospital in the amount of $204.00 for services rendered to David H. Dutrow, an employee of O'Keefe Bros., Inc. The bill was approved by the State Industrial Accident Commission on January 3rd, 1931, on which date the Commission issued an order directing the employer to pay the bill. Suit was instituted against O'Keefe and judgment by default taken on May 12th, 1932. Meanwhile, receivership proceedings were instituted against O'Keefe in the Circuit Court No. 2 of Baltimore City, but on November 11, 1932, the receivership proceeding was entered "Agreed and Settled." Efforts to collect the judgment have, however, been unsuccessful.

The National Bank of Perryville, a Corporation, vs. Joel Acker, The Cecil National Bank of Port Deposit, a Corporation, vs. Joel Acker. In the Circuit Court for Cecil County. In April, 1930, the former Sheriff of Cecil County levied on

the property of one Joel Acker under a writ of fi. fa. On June 17th, 1930, Acker was adjudicated a bankrupt and the Sheriff delivered the property to the Receiver in Bankruptcy who sold it under an order of the Bankrupt Court, and collected the proceeds. On May 5th, 1931, the bankruptcy court rescinded the adjudication, and on April 22nd, 1932, directed the Receiver to pay the net proceeds of sale to the Circuit Court for Cecil County. The former Sheriff, whose term expired July 1st, 1930, claimed to be entitled to the fees and costs had not his term expired. The Circuit Court for Cecil County passed an order requiring the State Auditor and the former Sheriff to show cause why the Ex-Sheriff should not retain said fees. An answer was filed on behalf of the State Auditor, taking the position that such fees and costs should be paid to the present incumbent of the office rather than the ex-sheriff, who has fully earned his constitutional salary of $4,000 during his term, expiring December 1st, 1930. The matter was submitted on brief.

Selwyn Marcus vs. Wm. H. Hudgins, et al and Joseph C. Deegan, Sheriff of Baltimore City. In the Circuit Court No. 2 of Baltimore City. Bill of complaint to restrain the Sheriff of Baltimore City from proceeding with a certain execution. An answer was filed.

Ennis H. Coale, infant, by Howard Cronin Coale, his father and next friend, and Howard Cronin Coale, individually, vs. Raymond A. Pearson, President and Executive Head of the University of Maryland, et. al. constituting the Board of Regents of the University of Maryland. In the Superior Court of Baltimore City. Petition for mandamus to compel the University of Maryland to reinstate Ennis H. Coale as a student at the University, and to excuse him from taking any part of the course in military training. Mr. Jones prepared an answer for the University and will represent him in the proceeding.

Bertha V. Assman vs. John Ryan, et al and Charles D. Gaither, Police Commissioner of Baltimore City. In the Circuit Court No. 2 of Baltimore City. This was a bill of

complaint to restrain the Police Commissioner of Baltimore City from selling certain automobiles which came into the possession of the Department in the usual course of business. Mr. Jones prepared and filed an answer on behalf of the Commissioner and will represent him in the proceeding.

William Robert Harper vs. State Accident Fund and the University Hospital. In the Superior Court of Baltimore City. In this case claim for compensation was made by an employee of the University Hospital, and the claim was disallowed by the State Industrial Accident Commission, on the ground that it was exempt from the operation of the Workmen's Compensation Law. This ruling was reversed on appeal, and the case returned to the Commission for trial.

Anthony Lombardi, deceased, Margaret Lombardi, his wife, et el. claimant, vs. Frank Carozza and Son and the State Accident Fund. In the Baltimore City Court. Claim was made for compensation by the widow and seven children of an employee whose death was alleged to have resulted from a hernia received while in the course of his employment. There was no evidence of a hernia, but the employee's medical record showed a kidney condition. The claim for compensation was disallowed by the Commission and an appeal was entered to the Baltimore City Court. The case was remanded for additional testimony on a motion filed by the claimant's counsel and at the hearing the Commission declined to take further testimony and returned the record to the Baltimore City Court, where it is now pending, as to whether or not the Baltimore City Court has the power to remand such a case to take additional testimony.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

The National City Bank of New York, as Trustee, et al, Complainant, vs. Cuban Dominican Sugar Corporation and Irving Trust Company and Lorenzo D. Armstrong, Esq., as Receivers, et al, Defendant. In December, 1932, the Comptroller forwarded a petition by the Receivers of the Cuban Dominican Company, and an order of Court thereon, requiring the State of Maryland to show cause why its claim for franchise taxes for the years 1931 and 1932 should not be allowed as a general claim instead of being accorded a preference. The Company is a Maryland corporation, but all of its assets were located in New York City, and the proceeding in which Receivers were appointed was in the Federal District Court for the Southern District of New York, the principal proceeding being in the nature of a foreclosure by the trustee under mortgage indenture securing bonds. The State filed an answer to the petition, asserting a right to priority or preference in the distribution, relying upon the provisions of Article 81, Section 142-B, of the Maryland law, and claiming that the New York Court should give effect to the Maryland statute on principles of comity.

BANK RECEIVERSHIPS

State of Maryland vs. the Detour Bank. In the Circuit Court for Carroll County. This bank was reopened under the terms of an agreement between the Bank and its depositors, which was approved by the Bank Commissioner, after the receipts and disbursements of the Bank Commissioner, as Receiver, had been approved by the court. The Attorney General and Mr. Jones represented the Bank Commissioner.

State of Maryland vs. the Savings Bank of Williamsport. In the Circuit Court for Washington County. This bank was reopened under the terms of an agreement between the bank and its depositors, which was approved by the Bank Commissioner, after the receipts and disbursements of the

Bank Commissioner, as Receiver, had been approved by the Court. Mr. Jones represented the Bank Commissioner.

State of Maryland vs. Provident State Bank. In the Circuit Court for Caroline County. This bank was reopened under the terms of an agreement between the bank and its depositors, which was approved by the Bank Commissioner, after the receipts and disbursements of the Bank Commissioner, as Receiver, had been approved by the Court. Mr. Jones represented the Bank Commissioner.

State of Maryland vs. Farmers Bank of Somerset County. In the Circuit Court for Somerset County. This bank was reopened under the terms of an agreement between the Bank and its depositors, which was approved by the Bank Commissioner after the receipts and disbursements of the Bank Commissioner, as Receiver, had been approved by the Court. Mr. Jones represented the Bank Commissioner.

State of Maryland vs. the First State Bank. In the Circuit Court for Garrett County. This bank was reopened under the terms of an agreement between the bank and its depositors, which was approved by the Bank Commissioner, after the receipts and disbursements of the Bank Commissioner, as Receiver, had been approved by the Court. Mr. Henderson represented the Bank Commissioner.

State of Maryland vs. Exchange and Savings Bank of Berlin. In the Circuit Court for Worcester County. Bill for appointment of a Receiver. The Bank consented to the granting of the relief prayed, and George W. Page, State Bank Commissioner, was duly appointed and qualified as Receiver. This bank was subsequently reopened under the terms of an agreement which was executed by substantially all of the depositors and approved by the Bank Commissioner, after the receipts and disbursements of the Bank Commissioner, as Receiver, had been approved by the Court. Mr. Jones represented the Bank Commissioner.

State of Maryland vs. Citizens Bank of Hurlock, Maryland. In the Circuit Court for Dorchester County. Bill for

appointment of Receiver. The bank consented to the granting of the relief prayed, and George W. Page, State Bank Commissioner, was duly appointed and qualified as Receiver. The Attorney General and Mr. Jones represented the Bank Commissioner in the proceeding.

State of Maryland vs. the Park Bank. In the Circuit Court of Baltimore City. Bill of complaint for appointment of a Receiver. The Bank consented to the granting of the relief prayed, and George W. Page, Bank Commissioner, was duly appointed and qualified as Receiver. In this proceeding certain depositors filed a petition objecting to the appointment of counsel for the Receiver, contending that the legal services for the Receivers should be performed by the Attorney General and his Assistants. This question was argued by the Attorney General and Mr. Jones before Judge Stein, who ruled that the Court had power to appoint counsel for the Receiver. See Opinion, Daily Record, December 27th, 1932.

Blue Sky Law

During the year approximately one hundred hearings were conducted by the Department in the investigation of various security selling enterprises. While only three restraining orders were passed, in most of the other cases the parties complained against either voluntarily suspended sales altogether, or changed their plans so as to eliminate the objectionable features.

In this work the Department has continued to have the wholehearted co-operation of the Blue Sky Committee of the Investment Bankers of the State, of which Mr. C. T. Williams is the Chairman, and of the Better Business Bureau, of which Mr. Robert W. Test is the Managing Director. The helpful assistance of these agencies has been of inestimable value to the Department in curbing the activities of persons who are seeking to sell undesirable securities to residents of this State.

Cost of the State's Legal Work During the Year Ending September 30, 1932

Appropriation under Act of 1931, Chap. 150		$33,108.00
Unexpended balance, 1931, carried forward to 1932		2,889.18
Appearance fees and miscellaneous funds received during the fiscal year and turned into the State Treasury		67.57
Sundry reimbursements		315.15
		$36,379.80
Salary of Attorney General	$5,000.00	
Deputy Attorney General	4,500.00	
Assistant Attorneys General (2)	8,000.00	
Stenographers	3,900.00	
Rent	4,596.00	
Postage	203.20	
Office Supplies	331.41	
Printing Report and Official Opinions.	1,090.40	
Records and Briefs	32.70	
Telephone and Telegraph	1,770.64	
Miscellaneous	422.79	
Office Equipment	141.14	
Books and Periodicals	285.00	
Travelling	943.65	
Extra Typewriting	500.00	
Blue Sky Law Enforcement	57.80	
Amount paid re: Investigation of lynching of Matthew Williams	1,660.39	33,435.12
		$ 2,944.68
Less funds turned into State Treasury		67.57
Carried forward to 1933		$ 2,877.11

OFFICIAL OPINIONS

of the

ATTORNEY GENERAL OF MARYLAND

BANKS AND TRUST COMPANIES

BANKS AND TRUST COMPANIES—A SAVINGS BANK MAY LEND MONEY UPON NOTE OF THE BORROWER.

January 4, 1932.

John D. Hospelhorn, Esq.,
Deputy Bank Commissioner,
Union Trust Building,
Baltimore, Md.

DEAR MR. HOSPELHORN: In your letter of December 31st, you request an opinion as to whether a savings bank may lend money on an open note, with one or more signatures.

Section 33 of Article 11 of the Code of Public General Laws provides that savings institutions "shall be capable of receiving from any person or persons or bodies corporate or politic, any deposit of money, which shall be invested or loaned out on good security, in the discretion of the directors; provided, no part of the funds of such corporation shall be loaned to any officer, director or employee thereof."

Section 36 of the same Article sets forth the method by which these institutions are required to report to the Bank Commissioner, and among other things the report made in pursuance of this section must show "the amount loaned upon pledge of securities of whatever kind, designating each particular loan with a statement of the securities pledged therefor, and the estimated market value thereof."

In the early case of *Duncan vs. Maryland Savings Institution,* 10 G & J, 308, the Court had under consideration the provisions of the charter of the Maryland Savings Institution by which the Institution was authorized to invest monies "in public stocks or other securities at the discretion of the directors." In this case it was held that the Institution had power to lend money upon bills, bonds, notes and

mortgages, as well as stocks, and also the power of making loans by way of discount. At page 308, the Court said:

> "The words 'other securities', therefore, embrace bills, bonds, notes, mortgages, etc., and the authority to make investments therein clothes the institution with the power of making loans by way of discount."

The word "securities" was again defined by the Maryland Court of Appeals in the recent case of *Newton vs. State,* 147 Md. 71, where the Court at page 88 said:

> "The term 'securities' includes 'evidence of indebtedness' (35 Cyc. 1238), and embraces bills of exchange, bonds for the payment of money and promissory notes."

In the light of the above decisions, it is clear that savings banks have power to lend money upon notes that are good. The Directors of any savings institution should, for obvious reasons, exercise this power with great care and caution so as to protect the assets of the institution. Any abuse of the discretion conferred upon the Directors by the making of loans upon worthless notes or notes of questionable value, would render the Directors personally liable for any loss that might result from such action.

You are therefore advised that a savings bank may, under the provisions of the Code above quoted, lend money upon notes in all cases where the notes are good.

With kind regards and best wishes, I am,

Very sincerely yours,

WILLIS R. JONES, *Deputy Attorney General.*

BANKS AND TRUST COMPANIES—DIRECTOR OF BANK MAY BE PROSECUTED FOR CONSPIRACY FOR ACCEPTING FEE FOR PROCURING A LOAN FROM THE BANK WHERE LOSS TO THE INSTITUTION ENSUES.

Ernest Ray Jones, Esq.,
Attorney at Law,
Oakland, Md.

DEAR MR. JONES: Please pardon my delay in answering your letter of December 19th, in which you ask whether a Director of a state bank may be prosecuted for asking and receiving from a borrower a fee for arranging a loan from the bank.

I know of no statute which makes this a criminal offense, but if the action results in a loss to the bank, and if the security offered for the loan was not adequate, the Director would, in my opinion, be liable to prosecution for conspiracy to defraud.

With kindest regards and best wishes for a prosperous New Year, I am,

Very sincerely yours,

WILLIS R. JONES, *Deputy Attorney General.*

BANKS AND TRUST COMPANIES—NON-RESIDENT TRUST COMPANY MUST GIVE BOND TO QUALIFY AS EXECUTOR OR ADMINISTRATOR IN MARYLAND.

February 17, 1932.

Hervey W. Shuck, Esq.,
Register of Wills,
Cumberland, Md.

DEAR MR. SHUCK: In your letter of February 13th, you request an opinion as to whether the Union Trust Company of Washington, D. C., is relieved of the obligation of filing a bond as executor by the provisions of Section 48 of Article 11 of the Code of Public General Laws. The Code provisions referred to relate only to Trust Companies organized under the laws of this State, and if a foreign Trust Company is permitted to qualify as executor or administrator, it must furnish bond in like manner and to the same extent that an individual would be required to furnish such bond.

For your further information on the subject, I am enclosing an opinion rendered by the Attorney General during the last year with respect to the question as to whether a foreign Trust Company may qualify as an executor or administrator under the laws of this State.

Yours very truly,

WILLIS R. JONES, *Deputy Attorney General.*

BANKS AND TRUST COMPANIES—BANK COMMISSIONER AS RECEIVER FOR A BANKING INSTITUTION MAY, WITH THE APPROVAL OF THE COURT HAVING JURISDICTION, BORROW MONEY FOR DISTRIBUTION TO CREDITORS.

March 30, 1932.

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

DEAR MR. PAGE: Some time ago you sent me a letter which you received from the Reconstruction Finance Corporation, under date of February 24th, requesting an opinion as to whether you, as Receiver for banking institutions which have closed in this State, have authority to borrow money upon the assets of these institutions for the purpose of making a partial distribution to the depositors in advance of the time when distribution could be made through liquidation.

There is no statute in this State which expressly authorizes a Receiver to borrow money for the purpose indicated. A Receiver has no authority to bind a trust estate by contract or otherwise, without the authority of the Court in which the estate is being administered. This rule is well established by a number of Court decisions which are referred to in Millers Equity Procedure, at page 721.

While I know of no case in this jurisdiction in which a Receiver has been authorized to borrow money for distribution to creditors, it has been held that a Court may empower a Receiver to continue a business and incur obligations which will be recognized as preferred claims against the estate. By analogy, I am satisfied that the equity Courts have power to authorize the borrowing of money for the relief of creditors where such a course appears to be of advantage and benefit to the creditors and the estate as a whole.

The Courts will necessarily be extremely cautious in authorizing a pledge of the assets of the estate that will place the disposition of such assets, even for a limited time, beyond the control of the Receiver or the Court. Certainly, no loan and pledge of the assets should be authorized except upon a conservative basis, and no obligations with respect to repayment should be incurred that the Receiver may not be able to repay at maturity, so as to avoid any jeopardy to the assets that may be pledged.

If, as Receiver for any of the closed banking institutions, you should desire to avail of the facilities of the Reconstruction Finance Corporation, it will therefore be necessary for you to apply for and obtain an order of the Circuit Court in which the affairs of the particular institution are being administered, and the Court, before acting upon such application, will no doubt require a detailed statement of the terms and conditions upon which the money may be borrowed, and also that the depositors and creditors be afforded an opportunity to express their approval or disapproval of the plan proposed.

I suggest that you obtain from the Reconstruction Finance Corporation a statement of the terms and conditions upon which it will make funds available to Receivers of closed banks for distribution to the depositors of said institution, and upon receipt of this information, you will be able to determine whether it will be desirable to apply for loans on behalf of any one or more of the institutions for which you may be acting as Receiver.

With kind regards and best wishes, I am,

Yours very sincerely,

WILLIS R. JONES, *Deputy Attorney General.*

BANKS AND TRUST COMPANIES—REDUCTION OF CAPITAL STOCK PROCEDURE.

April 7, 1932.

Clarence M. Roberts, Esq.,
426 5*th Street,*
Washington, D. C.

DEAR MR. ROBERTS: In accordance with your request I have given further consideration to the necessary requirements in order to accomplish a reduction of the capital stock of the Southern Maryland Trust Company, and the separation of its two branches.

In my opinion, it will be necessary for all of the shareholders of the Trust Company to assent, either by express agreement or by necessary implication, to any plan that may be adopted for the reduction of the capital stock if the plan involves any payment of cash or parting with any of the assets of the Trust Company. It is fundamental that all shareholders must be treated alike in any distribution of assets, and to permit one group of shareholders to have their shares retired at a given price or for a specified consideration in the form of assets while denying such privilege to the remaining shareholders, would involve a discrimination which the law will not sanction.

It is true that shareholders may by conduct waive their rights to a prorata retirement, but this will require some time and actual notice to all of them. Since the waiver must be clearly established, I am satisfied that the only satisfactory course to pursue is to obtain the written assent of all shareholders to any plan that may be adopted. The procedure for accomplishing a reduction in the capital stock of a bank or trust company is rather involved and complicated, as you will observe by a reference to the case of *Maryland Trust Company vs. Mechanics Bank,* 102 Md. 608.

Because of the great amount of work we now have on hand for the various State Departments, it will not be possible for me to work out, in any satisfactory way, the pro-

cedure to be followed for the separation of these two branches of the Southern Maryland Trust Company.

As you know, this work does not fall within the scope of our duties, and for us to undertake it at this time would necessitate a neglect of other matters which are pressing for attention.

With kind regards and best wishes, I am,

Yours very sincerely,

WILLIS R. JONES, *Deputy Attorney General.*

BANKS AND TRUST COMPANIES—COPY OF REPORT OF EXAMINATION BY BANK EXAMINER MAY BE SENT TO BANK EXAMINED.

April 16, 1932.

John D. Hospelhorn, Esq.,
Deputy Bank Commissioner,
Union Trust Building,
Baltimore, Md.

DEAR MR. HOSPELHORN: In your letter of April 15th, you request me to advise you whether the Bank Commissioner may properly send to a bank a report of its examination by one of the examiners of the department where the report contains a statement with respect to a particular borrower to the extent of $2,950.00, reading as follows:

> "$800 secured by listed and local securities. $2,150 with wife. Cashier has no idea of his worth. Supposed to own property in Salisbury. Bank should have a statement from him. He carries no account at this bank, and is borrowing at other banks in the surrounding territory. This line should be better secured, and should be reduced at each maturity."

The question arises as to whether the portion of the above statement which states that the creditor "is borrowing at other banks in the surrounding territory" constitutes a violation of Section 14 of Article 11 of the Code of Public General Laws, which provides that:

> "If any Bank Commissioner, deputy, clerk or examiner in such department shall disclose the name of any debtor of any banking institution, or anything relative to the private accounts or transactions of such institution, or shall disclose any fact discovered in the course of his examination, except as herein provided, he shall be subject, on conviction thereof, to forfeiture of his office, and to the payment of not more than one thousand dollars or imprisonment not more than two years, or both."

In my judgment, there is no violation of Section 14 by sending to the bank examined a copy of the report including the above statement. The statement does not show the names of the other banks to which the borrower is indebted, and obviously, no other bank could complain that information concerning its affairs had been improperly disclosed by the department.

While I see nothing objectionable in the statement contained in the report so long as it is not sent or given to any one except the bank examined, I believe it would be improper and within the prohibition of Section 14 to include any statement as to the name of the other bank to which the borrower is indebted.

With kind regards and best wishes, I am,

Yours very sincerely,

WILLIS R. JONES, *Deputy Attorney General.*

BANKS AND TRUST COMPANIES—WHERE SUCH INSTITUTIONS ARE PLACED IN THE HANDS OF THE BANK COMMISSIONER AS RECEIVER, THE ASSETS ARE EXEMPT FROM ATTACHMENT.

August 9, 1932.

John D. Hospelhorn, Esq.,
Deputy Bank Commissioner,
Union Trust Building,
Baltimore, Md.

DEAR MR. HOSPELHORN: I have your letter of August 6th, requesting the views of this department as to whether the assets of a banking institution placed in the hands of the Bank Commissioner, as Receiver, under the provisions of Section 61 of Article 11 of the Code of Public General Laws operates as a bar to all attachments, etc.

Section 61 provides that the action of the Directors in placing the institution in the hands of the Bank "shall be sufficient to place all its assets and property of whatever nature in the possession of the Bank Commissioner, as receiver." The Bank Commissioner uniformly administers these assets under the jurisdiction of the Court in the County in which the Bank is located. When the Court assumes jurisdiction this operates to place the assets in the technical custody of the Court, commonly called in "custodia legis", and this alone, in my opinion, would operate as a bar to attachments, etc. Creditors of the defunct bank, who would otherwise be entitled to preferences, or to share as common creditors should pursue their remedies in the receivership proceeding without resorting to attachment, distraint or other proceedings.

Aside from the above, Section 9 expressly provides that where the institution is taken over by the Bank Commissioner, with the approval of the Governor and the Attorney General, and the sign is posted "the property, assets and business of such institution shall be considered to be in the possession of the Bank Commissioner, which fact shall operate as a bar to any and all attachments, liens, executions or distraints of any kind, and shall also operate to place the

assets of said institution in the hands of said Bank Commissioner, as receiver, the same as if he had been appointed by an order of court."

While this language is not in Section 61, it should be considered in connection with Section 61. It will also be noted that Section 61 makes no provision for the administration of the assets of a bank, which voluntarily places its assets in the hands of the Bank Commissioner, as receiver, under the jurisdiction of any Court, but the Courts have uniformly held that the provisions of Section 9, requiring the Bank Commissioner to "forthwith cause proper proceedings to be instituted in the name of the State of Maryland vs. said institution, in a Court of competent jurisdiction, for the purpose of having the Court assume jurisdiction over its property and business for final liquidation," are applicable to cases where banks are closed under the provisions of Section 61.

For all of the above reasons, it is the opinion of this department that the assets of banks which are placed in the hands of the Bank Commissioner under the provisions of Section 61, are immune from attachment, execution, etc.

With kind regards and best wishes, I am

Yours very truly,

WILLIS R. JONES, *Deputy Attorney General.*

BANKS AND TRUST COMPANIES—WHEN BANK IS NOTIFIED TO STOP PAYMENT UPON A GIVEN CHECK BEFORE ITS PRESENTATION TO THE BANK UPON WHICH IT IS DRAWN, THE BANK BECOMES LIABLE FOR ANY SUBSEQUENT PAYMENT.

December 15, 1932.

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

DEAR MR. DENNIS: In your letter of November 25th, you request an opinion as to the legal responsibility of a bank which pays a check after the bank has been notified by the maker that payment upon the particular check has been stopped.

In Maryland the law is clear that a bank holds a deposit subject to the order of the depositor and any check against a deposit may be revoked by the maker at any time before the check has been presented to and accepted by the bank upon which it is drawn.

If, in the case to which you refer, the bank should pay both the original and duplicate checks after it has been notified of the revocation of the original check, the bank would be obliged to bear the loss resulting from the payment of the original check, and can only charge the depositor's account with the payment of the duplicate check which was not revoked.

Before issuing a duplicate check in any case the depositor should be thoroughly satisfied that the bank has actually received the notice to stop payment upon the original and in order to avoid dispute the notice should be in writing and the maker should be satisfied of its delivery to the bank.

Yours very truly,

WILLIS R. JONES, *Deputy Attorney General.*

BARBER EXAMINERS

BARBER EXAMINERS—NO RIGHT TO CHARGE FEE FOR NEW LICENSE—NO POWER TO HAVE SANITARY RULES POSTED IN BARBER SHOPS.

February 5, 1932.

State Board of Barber Examiners,
Royal Arcanum Building,
18 *W. Saratoga Street,*
Baltimore, Md.

Attention: Mr. George W. Sanders, Secretary.

DEAR SIR: Your letter of February 2nd was duly received. I understand the questions therein stated to be as follows:

1. Does the State Board of Barber Examiners have the power to compel proprietors of barber shops to display sanitary rules compiled by the Board, and approved by the State Board of Public Health, in a conspicuous place in the barber shop?

2. Does the State Board of Barber Examiners have the right to charge a small fee for duplicate licenses issued in place of original licenses which have been lost?

First Question: The State Board of Barber Examiners was created by Art. 43, Secs. 269-282, inclusive. The power of the Board with respect to sanitary conditions in barber shops is specifically covered by Sections 278 and 280 of this Article. Under these two sections the Board is given ample authority to insure cleanliness and proper sanitation in all barber shops. However, there is nothing in these sections giving the Board the authority to post, or cause to be posted,

in or about barber shops, such rules as it might promulgate. The posting of such rules would not materially assist the Board in the enforcement of Sections 278 and 280. Hence, there is no implied authority in the Board to justify such action. Therefore, it is my opinion that the Board does not have the power to compel proprietors of barber shops to display such rules in conspicuous places in the shop.

Second Question: The right of the Board to charge fees of any character is defined by Sections 275 and 276 of Article 45. Both of these sections provide for the payment of a charge or fee for the issuance of a certificate of qualification upon due compliance by the recipient with other conditions of the Act. Upon the issuance of this certificate of qualification, the Board issues a license. Thus there is no direct provision for payment of any fees for a license, since it is only the certificate of qualification for which a fee may be charged. It therefore follows that the Board does not have the authority to charge a fee for the issuance of new licenses where the old ones have been lost.

Yours very truly,

WM. PRESTON LANE, JR., *Attorney General.*

CHILD LABOR

CHILD LABOR — RADIO BROADCASTING — EMPLOYMENT OF MINORS UNDER 14 YEARS OF AGE PROHIBITED.

September 20, 1932.

Dr. J. Knox Insley,
Commissioner of Labor and Statistics,
16 *W. Saratoga St.,*
Baltimore, Md.

DEAR DR. INSLEY: On behalf of the Attorney General, I am answering your letter of September 7th, in which you request an opinion as to the status of children under sixteen years of age acting as radio entertainers at broadcasting stations.

Section 4 of Article 100 of the Code of Public General Laws provides that "no child under fourteen years of age shall be employed, permitted or suffered to work in, about or in connection with any * * * place of amusement." This section is applicable to radio broadcasting stations, as these stations are maintained and operated for the amusement of the public and it clearly prohibits the regular employment for compensation, of children in broadcasting programs. It is not believed, however, that it prohibits the appearance of all such children on all occasions and an occasional appearance of a child in a broadcasting program without pay for the purpose of demonstrating its talents or participating in a religious or educational program is no doubt permissible.

It is difficult to undertake to define exactly what constitutes work within the meaning of this section of the law, but in the opinion of this Department the same should be given a practical construction that will effectuate the general purpose of the law relating to work of children. In the absence of further particulars as to any activity which you may have in mind, it is impossible for us to give you

any more definite advice, but if you are in doubt as to any particular set of facts which may arise, we will be glad to advise you concerning those facts if you will submit them to us.

There is a further provision contained in Section 8 of Article 100 of the Code of Public General Laws which provides that no children under sixteen years of age shall "be employed, permitted or suffered to appear upon the stage of any theatre or concert hall in connection with any professional theatrical performance, exhibition or show."

It is not believed that the usual broadcasting station constitutes a stage, theatre or concert hall within the meaning of this section. If the broadcasting takes place, however, at a theatre or concert hall, the prohibition of this section would apply and the fact that the program was being broadcasted would not change the situation. Here, however, the statute is limited in its application to "any *professional* theatrical performance, exhibition or show," and entertainments such as school plays, Sunday School and religious entertainments which are not professional in character, would not fall within the prohibition contained in the statute.

Very truly yours,

WILLIS R. JONES, *Deputy Attorney General.*

CHIROPODY

CHIROPODY—A LICENSE IS REQUIRED BY FOOT SPECIALIST.

June 3, 1932.

Mr. Harry P. Clifton,
Board of Chiropody Examiners,
Union Trust Building,
Baltimore, Md.

DEAR MR. CLIFTON: I have your letter of June 3rd, enclosing report of Detective Lieutenant Joseph H. Itzel, in connection with the business of the Orthomec Arch Support System, and also copies of advertisements being circulated by this System. You request an opinion as to whether the operations described constitute a violation of the laws of this State relating to chiropody.

Section 363 of Article 43 of the Code of Public General Laws provides that "it shall be unlawful for any person to designate himself or his occupation by the use of any words or letters or trade diplomas calculated to lead others to believe that he is a chiropodist or foot specialist unless he is duly licensed as provided for in this sub-title."

Section 373 of the same Article defines chiropody in the following language:

> "Chiropody as defined by this sub-title is the surgical, medical or mechanical treatment of all ailments of the human foot, except the correction of deformities requiring the use of the knife, amputation of the foot or toes or the use of an anesthetic other than local."

From the facts disclosed by the report of Detective Lieutenant Itzel and the advertisements, it is plainly apparent that the operations of the Orthomec Arch Support System fall within the purview of the statutory provisions above

referred to, and that a license is required to carry on this business.

I am returning herewith report and advertisements enclosed in your letter.

Very truly yours,

WILLIS R. JONES, *Deputy Attorney General.*

CLERKS OF COURT

CLERKS OF COURT—MUST ACCOUNT FOR UNEXPLAINED ITEMS IN FIDUCIARY ACCOUNT.

May 11, 1932.

Edmund R. Stewart, Esq.,
State Auditor,
Union Trust Building,
Baltimore, Md.

DEAR MR. STEWART: I have your letter of May 9th, in which you state that in the examination of the accounts of Clerks of Court throughout the State, you have on several occasions found amounts in hand or deposited in fiduciary bank accounts maintained by the Clerks in their official capacity, which amounts cannot be identified as to origin nor shown to be due to the personal account of the Clerk or any other person. You inquire whether such sums should be accounted for to the State.

Attorney General Armstrong appears to have ruled that under such circumstances, where the State could not prove, by a check of all sources of official income, that the deposit originated from official sources, the State was not entitled to any balance, over and above the amount shown by the records of the office to be due to the State, and that such balance could be retained by the Clerk (6 Op. A. G. 254).

I cannot agree with this ruling. As I view the case, while it is true that the Clerk is only responsible for funds coming into his hands in his official capacity, the mere fact that the funds in question are mingled with other fiduciary funds raises a presumption that they were received by him in his official capacity, and imposes upon the Clerk the duty to account and the burden of coming forward with evidence to negative the presumption. Any other conclusion would result in an absurdity, for it would mean that a Clerk who by carelessness or design kept inadequate records could thereby profit at the expense of the State.

In this connection, see the opinion of this office rendered on June 18th, 1931, to R. Ernest Smith, County Treasurer of Prince George's County, relating to the proper disposition of a balance accumulated by reason of fractional excesses in the collection of taxes.

In my opinion, all unexplained items in the fiduciary accounts of State officers must be paid to the State.

Very truly yours,

WM. PRESTON LANE, JR., *Attorney General.*

CONSERVATION

CONSERVATION—SALARIES OF DUCKING POLICE—LIMITED TO SUMS PAID IN TO GAME FUND FROM THE PROCEEDS OF GUNNING RIG LICENSES.

January 7, 1932.

State Conservation Department,
Game Division,
512 *Munsey Building,*
Baltimore, Md.

Attention: Mr. E. Lee LeCompte.

DEAR SIR: I have your letter of Jan. 6th, in which you inquire whether the ducking police for Cecil and Harford Counties appointed under Art. 99, Sec. 54 of the Code, are entitled to an annual salary of $400.00 each, or whether they are only entitled to the sums collected by the Clerks from the sale of gunning rig licenses in each county, up to $400 as a maximum.

Prior to the codification of Art. 99 in 1927, these ducking police were appointed and paid by the County authorities from the proceeds of the sale of gunning rig licenses. By Ch. 340, Acts 1927, Sec. 5, it was provided that two police in each County be appointed by the Governor, by and with the consent of the Senate; that they be also appointed by the Game Warden, to serve under his supervision, and that they be paid $400 a year out of the State Game Protection Fund. It was expressly stated, however, that they should not be paid a salary by the State or Counties. By Section 8, it was provided that the Clerks of each County should collect gunning rig licenses and transmit the same to the Comptroller. $800 of the amount so received was to be paid by the Comptroller into a fund to be known as the Game Protection Fund "and shall be used for the purpose of paying the Ducking Police provided for in Sec. 5". Any balance

received by the Comptroller from the Clerk was to be paid to the County Treasurer of each County, but the amount repaid to Cecil County was to be used for paying a special police for Elk and Bohemia Rivers.

This Act was further amended in 1929 by Ch. 549, constituting Sections 50-58, inclusive, of Bagby's Code, 1929 Suppl., but the provisions of Sections 5 and 7, recited above, are substantially the same as Sections 54 and 57 of the present Code, except that the special police mentioned above is brought under the general law.

Reading Sections 54 and 57 together, and in the light of the history of the prior enactments, I am clearly of the opinion that none of the police have any claim for salary beyond the sum paid in to the Game Protection Fund from the particular source designated. It is especially worthy of note that Ch. 340 of the Acts of 1927, was passed prior to Ch. 568, Acts of 1927, recodifying the law, therefore the "State Game Protection Fund" referred to in Ch. 340 was at that time composed solely of the $800.00 payments mentioned in the Act. Any sums over and above the $800.00 was in each case to be returned to the County.

I further find that in 1928, while the Cecil County receipts were sufficient to pay the two designated police full salary, the special police for Elk and Bohemia Rivers received only $178.25. In the same year, the two police for Harford County received a total of only $764.75, instead of $800. This situation has existed as to one County or the other in nearly every year since, but the invariable practice of the Department has been in accordance with this opinion.

Yours very truly,

WM. PRESTON LANE, JR., *Attorney General.*

CONSERVATION — HUNTING LICENSE REQUIRED OF THE LESSEES OF MARSH LANDS TRAPPING MUSKRATS THEREON.

January 29, 1932.

Oliver S. Mullikin, Esq.,
State's Attorney,
Easton, Md.

DEAR MR. MULLIKIN: I have your letter of Jan. 27th, inquiring as to whether the lessees of marsh lands engaged in the business of trapping muskrats thereon, are required to procure hunting licenses or whether they are exempt under the provisions of Chapter 568 of the Acts of 1927.

This same contention was considered by Attorney General Robinson in an opinion dated March 9th, 1926, and reported in 11 Op. A. G., page 58. In that case, however, the trapping was done by permit of the owner rather than by formal lease of the marsh lands.

I am of the opinion that the exemption is limited strictly to the owners or lessees of *farm lands,* or the children of such owners or lessees. The exemption must, of course, be strictly construed, and I am satisfied that the Legislature never intended the exemption to apply to commercial trappers.

Yours very truly,

WM. PRESTON LANE, JR., *Attorney General.*

CONSERVATION—FISHING IN UPPER POTOMAC—COOPERATION BETWEEN THE STATES TO IMPROVE CONDITIONS.

March 2nd, 1932.

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

DEAR MR. EARLE: You have asked for an expression of my views as to the proper form of Act to carry out the proposals put forward and tentatively agreed upon at the last conference in Washington relating to fishing in the Upper Potomac. You particularly mentioned the suggestion emanating from the Virginia authorities, that a special license be created by laws adopted in the three States, the proceeds to be used solely for the purpose of stocking and restocking the river with game fish, eliminating pollution and policing the river for the better enforcement of the law, said funds to be administered by a joint commission consisting of the Commissioners of the three States and a representative of the U. S. Bureau of Fisheries. It was further suggested that the residents of all Counties bordering on the river be exempted from the operation of the Special License Law.

After careful consideration, I can see no necessity for the somewhat cumbrous machinery of a special license and special commission to handle this matter, and I can see several objections. The only special license now authorized in Maryland is for fishing in Deep Lake in Garrett County. This is purely a local matter, and the license is issued by the Clerk of the Circuit Court for Garrett County, the proceeds being paid to the Comptroller of the State, who puts them in a special account for the Conservation Department. This plan could hardly be applied to a special license issued by three States, and applicable to so many different Counties; further, the payment of license fees to other than the State Fiscal Authorities would present legal difficulties;

further, the Legislature in recently enacting a codified State-wide law, clearly indicated an intention to do away with local differences and preferences.

It seems to me that the Conservation Department, under its general powers, has ample authority to annually set aside a sum from the general license funds, to be devoted to the Upper Potomac. If each of the Conservation Commissioners of the other States will agree to devote an equal amount, the money could be spent in accordance with a plan prearranged by the three Commissioners and the U. S. Fisheries Bureau, without the necessity of a formal commission.

I have drafted a form of Act to be presented to the next Maryland Legislature, extending full fishing privileges to persons holding licenses of Virginia or West Virginia; if it should develop that either of these States fails or neglects to expend their agreed quota in those waters, the Maryland Legislature could always revoke the privilege by repealing the Act. I hope such a situation will never arise.

It would be desirable that Virginia and West Virginia adopt the same fishing laws as Maryland, in those waters, and I understand that this can be done by the adoption of regulations in those States, without any Act of Legislature.

Of course, if either Virginia or West Virginia desire to create a special license in order to raise their equal contribution to the sum agreed upon by the three Commissioners, for use in the Upper Potomac, Maryland should have no objection, so long as the money is forthcoming. I think the amount to be expended in each year should be determined annually by the three Commissioners.

Yours very truly,

WM. PRESTON LANE, JR., *Attorney General.*

CONSERVATION—SPONGE CRABS—SALE OR POSSESSION PROHIBITED IN MARYLAND WHETHER CAUGHT IN MARYLAND WATERS OR SHIPPED INTO THE STATE.

April 4, 1932.

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

DEAR MR. EARLE: I have your letter of April 4th, enclosing a letter from Mr. L. R. Carson, of Crisfield, relative to the Sponge Crab Law which went into effect in Virginia on April 1st. Mr. Carson inquires whether it is permissible for him to buy and pack sponge crabs legally caught in Virginia under the new law, and shipped to him as the purchaser in interstate commerce. Mr. Carson refers to an opinion of Attorney General Armstrong in 1922, holding that under the Maryland law in effect at that time, the prohibition upon the use of sponge crabs did not apply to such crabs when shipped into the State.

I have carefully examined the opinion of Attorney General Armstrong, referred to, and also his later opinion, reported in 7 Opinions of the Attorney General, page 72, relating to the same subject. Both of these opinions are based upon the fact that the Maryland law as it then stood did not apply to sponge crabs captured outside of Maryland. Mr. Armstrong recognized, however, that the law might so provide, without raising any constitutional question, and stated "Maryland does have jurisdiction over crabs caught in Virginia and shipped into Maryland, and this jurisdiction could be exercised by the use of explicit language as has been done in the statute prohibiting the possession of game, whether killed in Maryland or outside of Maryland. In the case of crabs, however, this power possessed by the State has not been exercised".

The present law relating to sponge crabs is found in Article 39, Sections 2, 4, 97 and 98, of Bagby's Code of

Public General Laws, 1929 Suppl., the law having been codified and re-enacted in its present form in 1929 by Chapter 471 of the Acts of 1929. Sec. 97 reads as follows:

> "It shall be unlawful for any person to catch, offer for sale *or hold in his possession at any time*, any female crabs bearing eggs visible thereon (sponge crabs) or any female crab from which the egg pouch or bunion has been removed."

Section 98 provides:

> " * * * nor shall any person take, catch or have in his possession any egg-bearing female crab, known as the spawn crab, sponge crab, blooming female crab, or mother crab, nor any female crab from which the egg pouch or bunion has been removed * * *".

Section 2 provides:

> "All local and general laws of this State fixing or regulating minimum and maximum sizes of fish, crabs or clams, or regulating or prohibiting the sale of fish, crabs or clams, respectively, shall apply whether the same be caught in the waters of the State of Maryland or in the waters of any other State, Country or territory and brought into this State, and the fines and penalties prescribed for violation of said laws respectively shall apply to the same extent."

Section 4 provides:

> "It shall be the duty of the Conservation Commissioner or his Deputy Commanders and Inspectors * * * to seize any and all fish, crabs and clams that may be caught, sold, offered for sale

> or are being held in possession in violation of any of the provisions of this Article, to be disposed of at the discretion of the Conservation Commissioner to the best interests of the State * * *".

In my opinion the above sections when read together prohibit the sale or possession of sponge crabs in the State of Maryland whether they have been caught in Maryland waters or are shipped into this State from the State of Virginia or elsewhere.

Yours very truly,

WM. PRESTON LANE, JR., *Attorney General.*

CONSERVATION—UNLAWFUL TO CATCH FISH BY USE OF RODS NOT HELD BY THE HAND.

April 14, 1932.

Walter E. Sinn, Esq.,
State's Attorney for Frederick County,
Frederick, Maryland.

DEAR MR. SINN: I have your letter of April 13th, asking for an opinion in regard to the construction of the following paragraph of Chapter 442 of the Acts of 1931:

> "It shall be unlawful to catch or attempt to catch aforesaid fish, except eels, by any contrivance other than rod, hook and line, held by the hand."

In your letter you refer to this passage as being set out in Chapter 422, but this was evidently a typographical error.

You inquire whether it would be a violation of the aforegoing paragraph for a fisherman to use a number of rods

placed along the bank of a stream, said rods not being held by the hand, but being personally attended to by the individual; you also inquire whether it would be a violation for a person to leave a number of rods along the bank overnight, for the purpose of catching fish.

I have no doubt that the words "held by the hand" as applied to fishing with rod, hook and line, were intended to prevent and do prevent the practices to which you refer. These words were added for the first time in the Act of 1931, evidently for the express purpose of clarifying the law upon this point.

Yours very truly,

WM. PRESTON LANE, JR., *Attorney General.*

CONSERVATION—FINES AND FORFEITURES—FOR VIOLATION OF LAW AGAINST TRESPASS ON POSTED PROPERTY—NOT PAYABLE TO LAND OWNER OR TENANT OF PROPERTY.

June 3, 1932.

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

DEAR MR. LECOMPTE: I have your letter of June 2nd, in which you inquire as to the disposition of a fine imposed by a Justice of the Peace in Garrett County, for a violation of Section 242 of Article 27 of the Code of Public General Laws, relating to trespass to real property. This section provides that the prosecution shall be instituted by the landowner or tenant of the property unlawfully entered, and fixes a flat fine of $15.00. The section does not, however, provide for the disposition of the fine, and you suggest that it

should be paid to the landowner or tenant instituting the proceeding.

I cannot agree with this construction of the statute, as I believe the case is covered by Art. 12, Sec. 244, of the Public Local Laws of Garrett County (Flack's Code of 1930), which provides, in effect, that all fines shall be paid to the County.

I note that the State's Attorney for Garrett County contends that the fine is payable to the State, and in the absence of additional information as to the local practice, I am not prepared to state that the fine is payable to the County under the provisions of the local law, or to the State under the provisions of the Public General Law.

A case involving this point is now pending in the Court of Appeals from Baltimore City and I will write you further as soon as the case has been decided. It is perfectly clear, however, that the fine in question cannot lawfully be paid to the landowner or tenant.

Yours very truly,

WM. PRESTON LANE, JR., *Attorney General.*

CONSERVATION—POUND NET LICENSES IN UNDEFINED AREA BETWEEN NORTH EAST RIVER AND CHESAPEAKE BAY—EITHER BAY OR TRIBUTARY LICENSE VALID.

June 9, 1932.

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

DEAR MR. EARLE: I have your letter of June 2nd, in which you state that the question has arisen concerning the interpretation of Section 47 of Article 39 of the Code, in connection with certain cases tried at North East recently,

involving pound net licenses. You state that Mr. Rollins, the State's Attorney for Cecil County, desires an opinion from this office on the point.

Section 47 seems to prohibit the use of pound nets (with certain exceptions) in all waters west and south of a line drawn from Carpenter's point to Grove Point. This line runs almost north and south, and the controversy has arisen, as I understand it, in connection with nets located to the east of this line, the question being whether nets in this area are located in the Chesapeake Bay or tributaries of the Chesapeake Bay.

Under Section 55 of Article 39, there is a charge of $5.00 for the first net, and one dollar for each additional net operated in the Chesapeake Bay, whereas there is a flat sum of $2.00 for each net operated in a tributary of the Bay. The question, therefore, seems to resolve itself into one of determining where North East River stops and the Chesapeake Bay begins, and on this point, there is nothing in the statute which throws any light. The question turns on an issue of fact about which there may well be an honest difference of opinion, and I do not believe that the State would be justified in prosecuting persons who hold either tributary or Bay licenses for fishing in this area, in view of the absence of a definite line fixed by statute.

It seems to me that the matter should be left as it is until the next session of the Legislature, at which time the section should be amended so as to define more accurately the limits of this area. In the meantime, I think, as above stated, that either license should be recognized.

Yours very truly,

WM. PRESTON LANE, JR., *Attorney General.*

CONSERVATION—DEPARTMENT MAY TAKE CARP BY THE USE OF NETS WHERE NECESSARY TO PROTECT SPAWNING GROUNDS.

June 18, 1932.

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

DEAR MR. EARLE: I have your letter of June 16th, enclosing correspondence with reference to the proposed taking of german carp in the Susquehanna River immediately below the Conowingo Dam. I understand that an unusual number of these predatory fish have congregated near the dam, and that in your opinion their presence is highly destructive to the spawn of rock, shad, and other fish gathered there for spawning. I further understand that a resident of Havre de Grace has applied to you for permission to catch a limited number of these carp by the use of seines for commercial purposes. You inquire as to your legal right to permit this.

The taking of carp in those waters appears to be regulated by Sec. 71 of Art. 39, as amended by the Acts of 1931, Ch. 442. This Section makes it unlawful to catch carp in that locality, except by rod, hook and line.

In an opinion dated March 24th, 1931, the Attorney General ruled that the Conservation Department, acting under the general power to establish fish hatcheries conferred by Sec. 3 of Art. 39, could remove predatory fish by the use of nets, in spite of Sec. 49 of Art. 39, prohibiting nets in the waters of the Severn River.

I am of the opinion that under the general powers conferred by Sec. 3, Art. 19A, you could lawfully remove fish by seine to protect spawn upon natural spawning grounds, even though such grounds have not been expressly designated as fish hatcheries. Such a construction is somewhat supported by the fact that Sec. 75, Art. 39, which prohibits the taking of fish on their spawning grounds, expressly ex-

cepts the Conservation Commissioner and his agents, and the same thing should be true of predatory fish destructive of spawn.

As to the proposition that you should permit a commercial fisherman to perform this work, however, I am opposed to this, both as a legal proposition and as a matter of policy. All work of this character should only be performed by, or under the immediate supervision of the department, and not for profit. I am satisfied that any such farming out of what is virtually a police power would subject the department to criticism, and to complaints from other fishermen who were not so privileged.

As to what disposition could be made of the carp when caught by the department, I am not in a position to say; perhaps they could be liberated at other points; but at all events, the proceeds of any sale of the fish should go to the Conservation Fund, and not to an individual.

Very truly yours,

WM. PRESTON LANE, JR., *Attorney General.*

CONSERVATION—OYSTER LEASE—COMMISSIONER HAS NO POWER TO REFUSE LEASE WHERE PROTESTED ON GROUNDS NOT SPECIFIED IN STATUTE.

June 21, 1932.

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

DEAR MR. EARLE: I have before me the communication addressed to you by Mr. Emmet W. Beach, of Parker's Wharf in Calvert County, which you referred to me this morning. Mr. Beach protests against the leasing of oyster ground ap-

plied for by Mr. Francis X. McNaney, on the ground that the planting of oysters in this area will destroy the bathing beach in front of his property, and suggests that the application is not made in good faith, since the ground is totally unsuited to the cultivation of oysters. He attaches a certificate signed by thirty practical oystermen of that locality to support the latter statement.

I understand that the bottom in question is shown upon your official survey chart as available for leasing purposes, and that the application therefor was made in the usual form. Under these circumstances, I do not think that the Conservation Commissioner has any discretion in the matter, and I am of the opinion that he must issue the lease, as required by Art. 72, Sec. 122, of the Code, unless the lease is protested on the ground mentioned in Section 121, or unless the issuance is enjoined by appropriate Court action. In other words, I believe the Commissioner in these cases acts in a ministerial rather than a judicial capacity. Doubtless the protestant could contest the matter by an injunction proceeding against the Commissioner, or against the proposed use of the bottom by the applicant, on grounds of fraud and bad faith and deprivation of his property rights, but in my opinion it would be improper for you to attempt to adjudicate these questions.

I am returning herewith the communication in question.

Yours very truly,

WM. PRESTON LANE, JR., *Attorney General.*

CONSERVATION—FINES AND FORFEITURES—FOR VIOLATION OF LAW AGAINST TRESPASS ON POSTED PROPERTY—PAYABLE TO COUNTY IN GARRETT COUNTY UNDER PROVISIONS OF LOCAL LAW.

July 7, 1932.

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

DEAR MR. LECOMPTE: I wrote you on June 3rd, 1932, in response to your inquiry as to the proper disposition of a fine imposed by a Justice of the Peace in Garrett County for a violation of Section 242 of Article 27 of the Code of Public General Laws, relating to trespass on posted property, stating that in my opinion the fine was not payable to the prosecuting landowner or tenant. I did not answer your further inquiry as to whether the fine should be paid to the County or to the State.

I am now of the opinion that the fine must be paid to the County, in view of the provisions of Article 12, Section 244 of the Public Local Laws of Garrett County. There is nothing in the recent decision of the Court of Appeals, in *Mayor and City Council of Baltimore vs. Deegan,* at variance with this ruling.

Very truly yours,

WM. PRESTON LANE, JR., *Attorney General.*

CONSERVATION—OYSTER PROTEST CASES—DEPARTMENT NOT LIABLE FOR COSTS.

July 14, 1932.

J. H. C. Legg, Esq.,
Centerville, Md.

DEAR MR. LEGG: I have your letter of July 11th relative to a bill of costs in the amount of $297.85, growing out of nine oyster protest cases tried at your May Term of Court. You suggest that this bill should be paid by the Conservation Commissioner, on the ground that he is the party defendant, against whom the judgment, carrying costs, was awarded.

The Commissioner in these proceedings is acting solely in a ministerial and official capacity, so that, in my opinion, the doctrine of State immunity applies. I think the cases of *State vs. Williams*, 101 Md. 529, and *Red Star Line vs. Baughman*, 153 Md. 607, are in point in this connection. Further, there is no specific fund available to the department for the payment of costs in these cases, or appropriation for the purpose, and if the Commissioner should undertake to pay costs in every county, you can see that it would curtail his other operations, notably the purchase and planting of shells on natural bars, besides subjecting him to possible criticism for exceeding his statutory authority.

The department, of course, has no monetary interest in establishing its right to lease the ground, since it derives no income from the lease, other than the filing fee of $5.00, which hardly pays the cost of advertising, survey and recording, and even this is returnable to the applicant if the protest is sustained.

I, of course, regret that this view leaves the costs unpaid, and thereby deprives the Clerk's office of revenue to which it would normally be entitled.

Yours very truly,

WM. PRESTON LANE, JR., *Attorney General.*

CONSERVATION—PURSE AND BUCK NETS DEFINED.

August 18, 1932.

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

DEAR MR. EARLE: You asked me a few days ago for an opinion as to the legality of certain nets now being used in the Bay for the taking of rock and blue fish. It appears that these nets are of the gill net type, but deeper and longer than the usual gill net, and with a smaller mesh. They are set from boats, for the purpose of surrounding a school of fish when located. The ends are closed, and the fish are caught by the gills when attempting to escape.

Sec. 25, Art. 39, of the Code, prior to 1931, read as follows:

> "It shall not be lawful to take or catch fish for commercial purposes in the tidal waters of this State by the use of a drag net or drag seine, hauled by boat (purse and buck net excepted), beam trawl, trammel net or troll net, or any similar destructive device."

By the Acts of 1931, Ch. 442, the words "purse and buck net excepted" were stricken out, and by Ch. 175, Acts of 1931, it was provided "on and after November 1, 1931, it shall not be lawful for any person, at any time, to fish with a purse net or buck net in any of the waters of the State of Maryland."

The exception in Sec. 25, as it stood prior to 1931, as to purse and buck nets, indicates that they were customarily hauled by boat, and further that they were "destructive devices" within the meaning of the section, as otherwise it would have been unnecessary to except them. It might well be contended that any net, of whatever type, is now unlawful, where hauled by boat.

I have been unable to find any legal or dictionary definition of the term "buck net," but I have talked to several persons in the business of manufacturing nets, who state that the term is well known in the local trade as a type of net developed around Smith's Island in the Bay. The net is of gill net type, set from boats, and hauled by closing the ends. The method of operation is similar to that employed in purse netting, but the fish are gilled instead of being caught by the closing of the net by a draw-rope. I have no hesitation in saying that the net described above is a "buck net" and hence illegal.

The distinction between the net in question and the ordinary gill net seems to be in the fact that the latter is set in a straight line, and is usually fastened to stakes. The chance for fish to escape is hence much greater, and as the fish are not alarmed by being surrounded, it does not have the same destructive effect, with which the Legislature was primarily concerned. The net is distinguishable from a "haul seine" by the fact that the latter net is operated from, and hauled to the shore.

As to the suggestion that an essential part of the operation of a "buck net" consists in thrashing the water to alarm the fish, and that it is not a "buck net" unless this is done, I may say that such a practice was expressly forbidden by Sec. 16 of Art. 39, even at a time when "buck nets" were legal. It cannot be contended, therefore, that the Legislature only intended to outlaw this practice when it made the use of the "buck nets" illegal.

Very truly yours,

WM. PRESTON LANE, JR., *Attorney General.*

CONSERVATION—TERRAPIN—MAY BE CAUGHT ONLY BY RESIDENTS OF THE COUNTY WHERE FOUND.

September 20, 1932.

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

DEAR MR. EARLE: I have your letter of September 17th, inquiring as to the proper construction of Section 105 of Article 39 of the Code, which reads as follows:

> "It shall be unlawful for any person, except a bona fide resident of any county in this State, to take or catch any terrapin mentioned in this Act from the waters of any county other than that of which he is a resident."

While inartistically expressed, I think the intention of the statute was to permit the catching of terrapin in any given County of the State only by residents of that County. The sense of the section would be clearer if the entire exception clause were stricken out, and a separate sentence added prohibiting the catching of terrapin by non-residents of the respective Counties.

Very truly yours,

WM. PRESTON LANE, JR., *Attorney General.*

CONSERVATION — HUNTING LICENSE — WHAT CONSTITUTES RESIDENCE FOR PURPOSE OF.

September 21, 1932.

Miss Bessie Bowen,
Clerk, Circuit Court for Worcester County,
Snow Hill, Md.

DEAR MISS BOWEN: I have your letter of September 20th, in which you inquire whether a person living in Ocean City twelve months in the year, in a house owned by his brother, but who votes and works in Delaware and drives a car with Delaware license tags, is entitled to procure a resident hunting license in Worcester County. You further state that the applicant owns no real estate in the County.

On the facts stated, I am of the opinion that the applicant is not a resident of the County within the meaning of Section 14, Article 99, of the Code, and must therefore obtain a non-resident hunting license. Mere physical presence in a County is not sufficient to establish residence, which is a mixed question of fact and intention. It is generally held that a person can have only one residence in the legal sense, and the fact that the applicant in this case must have declared himself a Delaware resident in order to vote there and obtain his automobile license there, is inconsistent with his present claim to residence in Maryland.

Very truly yours,

WM. PRESTON LANE, JR., *Attorney General.*

CRIMINAL LAW

CRIMINAL LAW—POLICE COMMISSIONER HAS POWER TO STATION POLICE OFFICERS UPON PREMISES WHERE GAMBLING OPERATIONS ARE SUSPECTED.

April 13, 1932.

General Charles D. Gaither,
Police Commissioner,
Baltimore, Md.

MY DEAR GENERAL GAITHER: I have carefully considered the contents of your letter of April 12th, with reference to the premises known as 4801 Eastern Avenue, in the City of Baltimore, and also the accompanying statement of Inspector Lurz with reference to the same premises.

It is apparent that gambling operations have been going on in these premises for a considerable period of time, and for several months the members of the Police Force have been refused admittance. Their access to the building has been prevented by means of a steel door, which was carefully guarded by employees, who apparently admitted any one who was not suspected of being either a Policeman or a Prohibition Agent. The place has been frequented by large numbers of persons and when the officers of the Department raided the place on April 9th, for the purpose of executing a warrant, they found and took into custody more than one hundred persons as witnesses. A similar raid during the year 1931 resulted in the arrest and conviction of John O'Connor and Bernard Kenny on charges of operating a hand book in said premises.

Following the raid on April 9th, it appears that Inspector Lurz stationed two police officers in this property and the Inspector explains his reasons for this action by a statement to you under date of April 11th, in which he says:

> "I beg to report that the reason for stationing these men at this place is because it is a public

> place,—a bootblack shop licensed in the name of George Korn—and on account of the gambling activities in the basement of the building, members of the force have always been refused admittance. From my investigation of the last several months, I have had proof that gambling was going on in there and that not only members of the supposed club, but anyone who was not suspected of being a prohibition officer or a police officer was allowed to enter. The men stationed there are instructed not to forbid anyone going in there—merely to see that the doors are not closed and locked so that the same thing which occurred before may not occur again. If the men were taken away from there, they would no doubt immediately begin their gambling activities again."

Attached to your letter of April 12th is a communication from William Curran, Esq., which reads as follows:

> "I am advised by Mr. George Korn, lessee of property, 4801 Eastern Avenue, that you stationed two police officers in this property. I spoke to Inspector Lurz yesterday and he tells me that it is his purpose to keep the men there notwithstanding the protest of the lessee.
>
> "Of course, you realize this is just a piece of high-handed policing and that there is no warrant in law for any such procedure. I am asking you to see that proper instructions are issued to Inspector Lurz or whomever is responsible for this invasion of private property. I hope you will not make it necessary for me to go into Court with the attendant publicity."

You have requested me to advise you whether the Police Department should comply with the request of Mr. Curran or continue the detail of officers at this location for the purpose indicated.

Section 744 of the Baltimore City Charter sets forth the duties of the Police Commissioner, and by this section it is provided, among other things, that "he shall at all times of the day and night within the boundaries of the City of Baltimore, as well on the water as on the land, preserve the public peace, prevent crime and arrest offenders."

The Court of Appeals in the case of *Graham vs. Gaither*, 140 Md. 330, said:

> "There can be no doubt that the Police Commissioner has a large discretion as to the best method to be pursued in order to stop the violation of law."

Mr. Curran does not set forth in his letter any particular reason for demanding that the officers be removed from this property, but in your letter you state that "this Department has good and sufficient reasons to believe that it is the intention of the owners and operators of this enterprise to continue such unlawful operations."

As I understand your letter, the Police Department has no desire or intention to prevent, or in any manner interfere with any lawful or legitimate use of this or any other property within the City, and if the Department could be satisfied that the owner and tenant will keep within the law, there would be no objection to the immediate withdrawal of the police officers.

Under the above circumstances, it is my opinion that you, as the Police Commissioner, in the exercise of the judgment and discretion which has been conferred upon you by law for the purpose of preventing crime, may properly refuse to remove the officers from this location unless the owner and lessee of the premises will enter into an agreement by which they will permit the representatives of the Department to have prompt access to said premises at any time they may deem proper to inspect the same. The operators of the property can have no objection to this course of procedure unless they wish to persist in the criminal conduct that has heretofore been carried on at this location, and if they should refuse to enter into an arrangement of this kind, it

would seem to constitute additional evidence that the suspicions of the Department with respect to the future use of the property are well founded.

While I realize that the rights of private property must always be respected by public officers, I know of no principle of law which will permit a group of criminals to set up an establishment for carrying on their unlawful practices and bar the duly constituted police officers from entering the premises. Certainly the police officers who are maintained at great expense for the purpose of preventing crime and preserving the public peace, ought not to be unduly restricted in the suppression of crime, especially where previous prosecutions have not operated to deter the parties.

As I view the entire matter, your position with respect to the detail of officers at this location is entirely justified, and I think you are fully warranted in refusing to withdraw the officers unless the owner and lessee will assent to some such arrangement as I have indicated above.

I am enclosing an extra copy of this letter, which you may, if you choose, send to Mr. Curran, so that he may be in a position to institute such proceedings as he may desire if he feels that the Department has exceeded its authority.

With kind regards and best wishes, I am,

Very sincerely yours,

WILLIS R. JONES, *Deputy Attorney General.*

CRIMINAL LAW—SUNDAY OBSERVANCE—SUNDAY SALES OF BREAD AT WHOLESALE PROHIBITED.

May 5th, 1932.

General Charles D. Gaither,
Police Commissioner,
Police Building,
Baltimore, Md.

DEAR GENERAL GAITHER: I have your letter of May 4th, requesting an opinion as to whether bread may be sold and delivered at wholesale on Sunday, under the new Ordinance of the Mayor and City Council which was approved by the voters at the election on Monday.

The Ordinance provides that "no person in the City of Baltimore shall sell, dispose of, barter, deal in, or give away any articles of merchandise on Sunday, except retailers, who may sell and deliver on said day" certain articles of merchandise, including bread.

This provision of the Ordinance follows the State Law on the subject which was before the Court of Appeals for consideration in the case of *Lansman vs. State,* 142 Md. at page 398, where a conviction of Lansman for selling and delivering bread at wholesale on Sunday was sustained. In this case it was contended on behalf of Lansman that he was engaged in selling bread both at wholesale and at retail; that he was therefore a "retailer" within the meaning of the statute and entitled to sell his bread either at wholesale or retail. The Court rejected this contention and said:

> "The exception set out in the statute, it is clear, applies to and exempts *only* retailers and not wholesale dealers."

Inasmuch as there is no material difference between the terms of the Ordinance and the State Law with respect to the sale of bread on Sunday, the conclusion is unavoidable

that it will be a violation of the Ordinance to sell and deliver bread on Sunday other than at retail.

With kind regards and best wishes, I am,

Yours very sincerely,

WILLIS R. JONES, *Deputy Attorney General.*

CRIMINAL LAW — SUNDAY OBSERVANCE — COMMERCIAL SWIMMING POOL MAY NOT OPERATE BEFORE 2 P. M. ON SUNDAY.

July 5, 1932.

General Charles D. Gaither,
Police Commissioner,
Baltimore, Md.

MY DEAR GENERAL GAITHER: I have your letter of June 29th, enclosing communication from Mr. Victor I. Cook, requesting an opinion as to whether the Lakewood Swimming Club at 2519 N. Charles Street may operate before 2 P. M. on Sunday.

Before answering your inquiry, I communicated with Mr. Cook, who informed me that the Club is a commercial enterprise conducted for profit, and that the memberships which are sold are in the regular course of its business. Under these circumstances, it is very clear that Section 4 of the recent Ordinance relating to Sunday observance prohibits the operation of the Club before 2 P. M. on Sunday. Under this Section a person may swim for recreation at any time on Sunday, but it is expressly provided that swimming meets cannot be conducted for profit until after the hour of 2 P. M. on that day.

I am sending a copy of this letter to Mr. Cook and returning his letter to you.

With kind regards and best wishes, I am,

Very sincerely yours,

WILLIS R. JONES, *Deputy Attorney General.*

EDUCATION

EDUCATION—SCHOLARSHIPS TO ST. JOHN'S COLLEGE—AWARD BY SCHOOL COMMISSIONERS IS SUBJECT TO APPROVAL BY STATE SENATOR.

September 26, 1932.

Hon. Raymond S. Williams,
President, Board of School Commissioners,
3 E. 25th Street,
Baltimore, Md.

MY DEAR MR. WILLIAMS: I have your letter of September 22nd, requesting me to advise you concerning the duties of the Board of School Commissioners in awarding scholarships to St. John's College.

The statute law applicable to your inquiry is set forth in Section 242 of Article 77 of the Code of Public General Laws, entitled "Public Education," and reads as follows:

> "One scholar 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 board of school commissioners of the several counties and city of Baltimore, by and with the advice and consent of the senator in their respective counties and senatorial districts, after a competitive examination of the candidates for such appointments, who shall produce before the said Commissioners satisfactory evidence of their moral character, and of their inability or the inability of their parents or guardians to pay the regular college charges; provided, that no one of the said appointments shall be held by the same student for more than four years, unless the time of holding such appointment be extended by the faculty of the college, and that each student receiving such appointment shall pledge himself upon entering the

college that he will continue a student thereof for the full term of four years, unless prevented by unavoidable necessity, and that he will teach school within the State for not less than two years, immediately after leaving college, or as soon thereafter as may be practicable."

You state that the Board of School Commissioners of Baltimore City conducted an examination on June 21st, 1932, at which time seven applicants for the vacant scholarship to St. John's College, from the Second Legislative District for Baltimore City, were examined, and that the results of this examination were as follows:

One applicant scored 253 points
One applicant scored 249 points
One applicant scored 237 points
One applicant scored 234 points
One applicant scored 195 points
One applicant scored 153 points
One applicant scored 116 points

On July 7th, 1932, the Board notified Senator George Arnold Frick, from the Second Legislative District, that it had awarded the scholarship from that District to Reuben Alperstein, who was the applicant who had scored the highest number of points in the competitive examination, and that the award was subject to the approval of Senator Frick. On September 8th, 1932, Senator Frick addressed a letter to the President of the Board, saying "I regret that I have found it impossible to consent to the appointment of Reuben Alperstein by the School Board to the scholarship at St. John's College. I shall be glad to confer with you with reference to another choice." This communication from Senator Frick was submitted to the School Board at a meeting on September 15th, 1932, at which time the following letter was sent to Senator Frick in pursuance of a resolution by the Board.

September 26, 1932.

"Dear Senator Frick: Your communication of the 8th inst. addressed to President Williams has been presented to the School Board. The Board of School Commissioners has directed me to inform you that, in accordance with your request, we are sending you herewith a list of the names and averages made by all the candidates in your legislative district for the vacant scholarship in St. John's College. In submitting this list to you the Board wishes it to be distinctly understood that it does not recommend, certify nor award the vacant scholarship to any one except the individual who stands highest in the competitive examination and who has met all other requirements set forth in the law covering the matter. It has been the policy of the Board for some time in carrying out the legislative provision, also in accordance with the opinion rendered in 1930 by the late Attorney General Robinson to State Superintendent of Education Cook, that the name of the individual standing highest in the competitive examination and who meets all the other requirements set forth in the law shall be the only one to receive the award of the scholarship and be submitted to the State Senator for approval.

Very truly yours,

Joshua R. Jolly,
Acting Secretary."

To the above letter Senator Frick replied:

"My Dear Mr. Williams: I have just received from the acting secretary of the School Board a letter directed by the School Board dated September 15th. In this letter the School Board declines to 'recommend, certify or award' the vacant scholarship at St. John's College to anyone except the individual already designated by it. I am satisfied

that the statute requires not only the appointment by the School Board but also the consent of the Senator. I have declined to give my consent to the designation made by you, for reasons which are to me compelling. If the School Board persists in its attitude, this vacancy will not be filled. If, however, the School Board is inclined to be law abiding and reasonable about this matter, I am sure that an appointment may properly be made."

Under the provisions of the statute above quoted, it is clear that the person selected for the scholarship shall first "be appointed by the Board," and that the Senator has no power to originate an appointment. It is equally clear that the person selected by the Board for the scholarship is not entitled to receive the same without the approval of the Senator from the District for which the selection is made. The duties of the Senator are limited to the confirmation or rejection of the person selected by the School Board, and until the selection is approved by the Senator, it is ineffective.

The statute contemplates that these scholarships shall be awarded after a consideration of the mental qualifications, character and financial condition of the applicant. The School Board is not required to select, nor the Senator to confirm, the applicant who has scored the highest number of points, if in its or his sound judgment other considerations of character and financial standing outweigh the superior mental qualifications of the applicant receiving the highest rating.

In view of the facts set forth in your letter, I am of the opinion that it now becomes the duty of the Board of School Commissioners to select another candidate for the scholarship to St. John's College from the Second Legislative District, and the selection so made should be submitted to Senator Frick for his confirmation or rejection.

Very truly yours,

WM. PRESTON LANE, JR., *Attorney General.*

EDUCATION—DISMISSAL OF PUBLIC SCHOOL TEACHERS—BEFORE DISMISSAL A TEACHER IS ENTITLED TO AN OPPORTUNITY TO BE HEARD AND AT LEAST 10 DAYS' NOTICE.

October 1st, 1932.

Hon. Albert S. Cook,
State Department of Education,
Lexington Building,
Baltimore, Md.

DEAR DR. COOK: On behalf of the Attorney General, I am answering your letter of September 21st, in which you request an opinion as to the procedure to be followed in the dismissal of public school teachers.

Your inquiry is controlled by Section 52 of Article 77 of the Code of Public General Laws, which reads as follows:

> "52. The county board of education shall appoint, on the written recommendation of the county superintendent, all principals and assistant teachers, and fix their salaries, subject to the provisions of Chapter 8 of this article. The county board may suspend or dismiss without appeal any teacher so appointed, on the written recommendation of the county superintendent, for immorality, misconduct in office, insubordination, incompetency, or wilful neglect of duty, provided that the charges be stated in writing, and that the teacher be given an opportunity to be heard by the board upon not less than ten days' notice; provided further that in all cases when the board is not unanimous in its decisions to suspend or dismiss, the right of appeal shall lie to the State Superintendent of Schools."

It will be noted that the County Superintendent has no authority to dismiss a teacher from the service. This action can only be taken by the Board on the written recommendation of the County Superintendent. The Board is only authorized to take this action upon written charges after ten

days' notice to the teacher in question. The statute clearly contemplates that the teacher shall have an opportunity to be heard before being dismissed from the service.

If a County Superintendent desires to procure the dismissal of a given teacher he should make his recommendations to the County Board of Education, setting forth the reasons for such action. The Board should then notify the teacher in question of the receipt of the recommendations of the Superintendent and send a copy of same to the teacher with a notice as to the time and place when the recommendations and charges will be heard. The time fixed for the hearing should not be less than ten days from the receipt of the notice by the teacher, and she should be further informed of her rights to be heard in defense at the hearing, and that upon her failure to appear the Board will take such action as may be deemed appropriate upon the facts disclosed.

I believe the above will satisfactorily answer the question raised by your letter, but if you desire any additional information I will be glad to have you write me again.

With kind regards and best wishes, I am,

Very sincerely yours,

WILLIS R. JONES, *Deputy Attorney General.*

ELECTIONS

ELECTIONS—CANDIDATES FOR CONGRESS AT THE PRIMARY ELECTION MUST FILE CERTIFICATES WITH SECRETARY OF STATE AT LEAST 20 DAYS BEFORE PRIMARY ELECTION.

February 17, 1932.

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

DEAR MR. WINEBRENNER: You have requested me to advise you the time when candidates for Congress may qualify for the coming primary election to be held on May 2nd, 1932.

Section 198A of Article 33, being a codification of Chapter 405 of the Acts of 1931 and requiring candidates for Congress to file their certificates of candidacy with the Secretary of State, prescribes no time within which such certificates shall be filed. There is, however, a provision contained in Section 198 which requires that certificates of candidacy shall be filed by State-wide candidates "not less than thirty days before the day of said primary election, and by all other candidates not less than twenty days before said primary election."

By reason of the above provision, it is clear that candidates for Congress must qualify at least twenty full days before the day of the primary election. According to my calculation, the last day upon which candidates for this office may qualify in 1932 will be Monday, April 11th.

Yours very truly,

WILLIS R. JONES, *Deputy Attorney General.*

ELECTIONS—SPECIAL ELECTION TO FILL VACANCY IN HOUSE OF DELEGATES MAY BE HELD ON THE DAY OF THE PRESIDENTIAL ELECTION. WARRANT OF THE GOVERNOR NECESSARY.

February 18, 1932.

Hon. David C. Winebrenner, 3d,
Secretary of State,
Annapolis, Md.

DEAR MR. WINEBRENNER: I have your letter of February 17th, enclosing communication from Mr. Benjamin Hance of Prince Frederick, calling attention to the death of Mr. James C. Chaney, a member of the House of Delegates from Calvert County.

No formal method of directing the Governor's attention to a vacancy of this kind is prescribed, and I suggest that Mr. Hance's letter be referred to the Governor for the purpose of issuing a warrant of election to supply the vacancy in accordance with the provisions of Section 13 of Article 3 of the Constitution.

In the past, it has been customary to hold these special elections on the same day fixed by law for the holding of the Presidential Election, which in 1932 will be on November 9th. I am enclosing copy of letter I have sent to Mr. Hance.

With kind regards and best wishes, I am,

Very truly yours,

WILLIS R. JONES, *Deputy Attorney General.*

ELECTIONS—SUNDAY ORDINANCE IN PROPER SHAPE FOR SUBMISSION TO VOTERS AT SPECIAL ELECTION ON PRIMARY ELECTION DAY.

February 19, 1932.

Hon. Robert B. Ennis,
Supervisors of Elections,
Court House,
Baltimore, Md.

DEAR MR. ENNIS: You have submitted to this Department Ordinance No. 130, of the Mayor and City Council of Baltimore, approved February 15th, 1932, which provides for its submission at a special election to be held on May 2nd, 1932. You desire to be advised whether the Ordinance in question is in proper shape for submission to the voters.

The Ordinance has been adopted by the City in accordance with the provisions of Chapter 287 of the Acts of the General Assembly of 1931, and in the opinion of the Attorney General, it is the duty of the Board of Supervisors to comply with all provisions of the Ordinance with respect to its submission to the voters. The Ordinance is herewith returned to you.

Very truly yours,

WILLIS R. JONES, *Deputy Attorney General.*

ELECTIONS—LIST OF VOTERS—SUPERVISORS OF ELECTIONS IN ANNE ARUNDEL COUNTY REQUIRED TO FURNISH AT ONE-HALF CENT PER NAME.

March 8, 1932.

Mr. Edgar S. Sunderland,
6 Linden Ave.,
Annapolis, Md.

DEAR MR. SUNDERLAND: In your letter of March 5th, you request an opinion as to the interpretation of Section 26 of Article 33 of the Code of Public General Laws, entitled

"Elections." The particular language which you desire to be construed reads as follows:

> "The said Boards of Supervisors in the counties and in the City of Baltimore shall furnish to any one making written application therefor, within ten days after such application has been received, or in less time, if practicable, a certified copy, under their hands, of the names, addresses, color and ages of all persons registered in any ward in said city, or in any election precinct or district of said county, for the sum of two dollars for a precinct, and for the sum of half a cent for each voter's name on said registry in the counties, which said sum shall be applied towards paying the expenses of making said certified copies."

We are in accord with the views expressed in your letter that the proper charge to be made for furnishing the list of voters in Anne Arundel County is one-half cent for each voter's name and that the rate of two dollars per precinct applies to Baltimore City only.

Yours very truly,

WILLIS R. JONES, *Deputy Attorney General.*

ELECTIONS—CANDIDATES FOR CONGRESS AND U. S. SENATE MUST FILE CERTIFICATE OF CANDIDACY WITH SECRETARY OF STATE WITHIN THE TIME AND PAY THE FEES PRESCRIBED BY STATUTE.

March 29, 1932.

Hon. David C. Winebrenner, 3d,
Secretary of State,
Annapolis, Md.

DEAR MR. WINEBRENNER: Answering your letter of March 28th, you are advised that you are correct in your assumption that candidates for the United States Senate

are required to file their certificates of candidacy in the office of the Secretary of State thirty clear days before the date of the Primary Election; that the fee of $270.00 must be paid at the time of filing the certificate; that candidates for Congress are required to file their certificates not less than twenty days before the date of the Primary Election; that the fee of $100 for this office shall be paid upon the filing of the certificate, and it is the duty of the Secretary of State to certify all candidates to the Board of Supervisors of Elections not less than eighteen days before the Primary Election.

With kind regards and best wishes, I am,

Very truly yours,

WILLIS R. JONES, *Deputy Attorney General.*

ELECTIONS—METHOD OF PROCEDURE FOR STRIKING FROM THE REGISTRY BOOKS THE NAMES OF PERSONS WHO ARE DISQUALIFIED.

March 29, 1932.

Mr. Benjamin B. Rosenstock,
Attorney at Law,
Frederick, Md.

DEAR MR. ROSENSTOCK: Your letter of March 23rd, addressed to the Attorney General, has been referred to me for reply. You request an opinion as to the procedure in removing from the registry books the names of voters who registered under the provisions of Chapter 578 of the Acts of Assembly of 1929, since declared invalid by the Court of Appeals.

The only method by which the names of these persons may be removed from the books as qualified voters is by means of the suspect list, and the procedure set forth in Sections 24 and 25 of Article 33 of the Code of Public General Laws should be strictly followed. It will be noted that

the issue to be determined in the case of each voter whose name is placed upon the suspect list is whether the individual named is a qualified voter. If a particular person whose name is sought to be placed upon the suspect list is known by the Board of Registry to be a qualified voter, then such name need not be placed upon the list of suspected persons unless required by a member of the Board. If the name is placed upon the suspect list and the voter appears, a majority of the Board of Registry must be of the opinion that the person is not a qualified voter before his name may be removed. It therefore follows that any person who has declared his intention to become a citizen of this State at least one year prior to the coming Presidential election, and who is now upon the registry books under the Act of 1929, is a qualified voter for the Presidential election and need not be placed upon the suspect list and cannot be removed from the registry books in the absence of some other disqualifying circumstances.

I believe the above will fully answer your inquiry, but if you desire any additional information, I shall be glad to have you write me further.

Very truly yours,

WILLIS R. JONES, *Deputy Attorney General.*

ELECTIONS—CANDIDATES FOR NOMINATION FOR PRESIDENT MUST FILE AT LEAST 15 DAYS BEFORE DAY OF PRIMARY ELECTION.

March 31, 1932.

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

DEAR MR. WINEBRENNER: I am sorry I overlooked answering your inquiry with respect to Presidential candidates contained in your letter of March 28th. You desire to be advised within what time a candidate for President may

qualify and this question is answered by the provisions of Section 190 of Article 33, which will be found at page 130 of the Registration and Election Laws of Maryland, Edition of 1932. The pertinent provisions of this Section read as follows:

> "Any person * * * who may desire to obtain the vote of the delegates from Maryland of any such party in its national convention may become a candidate for such nomination in primary elections * * * by making the payment required and by filing a certificate of candidacy specifying the party to which he belongs and the national convention whose nomination for President he seeks and in form and in substance like the certificate of candidacy required of candidates for the nomination for the office of Governor of Maryland by Section 198 of this Article, except that such payment shall be made and such certificate filed by said candidate or candidates for said office of President within fifteen days before the date of the primary election for delegates to the State Convention * * *; and the Secretary of State immediately on receipt of such certificate and payment shall certify the fact of the filing of each certificate and the name and description of each person so filing such certificate as specified therein to the Supervisors of Election of Baltimore City and of every county in the State. * * *"

While the language employed above is that the certificates "shall be filed within fifteen days before the day of the primary election," the obvious intention is that such certificates must be filed at least fifteen days before the primary election. If the section be construed so as to permit the filing of certificates at any time within fifteen days before the day of the primary election, such candidates might qualify on the day before the election, and it would be utterly impossible for the Boards of Supervisors of Elections throughout the State to arrange for the printing of the nec-

essary ballots. These considerations lead to the inescapable conclusion that the Legislature intended to require these certificates to be filed not less than fifteen days before the primary election.

Yours very truly,

WILLIS R. JONES, *Deputy Attorney General.*

ELECTIONS—REGISTRATION OF VOTERS—VOTERS WHO REGISTER AT PRE-PRIMARY REGISTRATION MUST AGAIN REGISTER IN THOSE COUNTIES HOLDING NEW REGISTRATION.

March 31, 1932.

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

DEAR MR. TAIT: Answering your letter of March 29th, you are advised that those who register at the pre-primary registration on April 26th, in counties where there will be a subsequent *new* general registration this year, will be required to register on one of the new registration days after the primary election in order to vote at the coming Presidential election.

I believe the above will answer your inquiry, but if you desire any additional information, I will be glad to have you write me further.

Yours very truly,

WILLIS R. JONES, *Deputy Attorney General.*

ELECTIONS—DATE FOR HOLDING PRIMARY ELECTIONS AND PRE-PRIMARY REGISTRATION IN 1932.

April 6, 1932.

Mr. Frederick J. Werner,
Board of Supervisors of Elections,
Ellicott City, Md.

DEAR SIR: Answering your recent letter, you are advised that the primary election this year will be held on the first Monday in May, or May 2nd. The law which prescribes this time for the holding of the primary is set forth in Section 191 of the Registration and Election Laws.

The pre-primary registration will take place on Tuesday, April 26th, 1932. The law to this effect is set forth in Section 20 of the Registration and Election laws of 1932.

With kind regards and best wishes, I am,

Very truly yours,

WILLIS R. JONES, *Deputy Attorney General.*

ELECTIONS—PRIMARY ELECTIONS—NEED NOT BE HELD WHERE THERE ARE NO OPPOSING CANDIDATES.

April 6, 1932.

Mr. Thomas J. Keating, Jr.,
Attorney at Law,
Centreville, Md.

MY DEAR MR. KEATING: In your letter of April 4th, you request an opinion as to whether it will be necessary to hold a Democratic Primary Election in your County if there is but one candidate for each office to be filled.

The answer to this question is found in Section 203 of the Registration and Election Laws of 1932, beginning at the bottom of page 150, where it is stated:

> "provided, that if after the expiration of the time allowed by this sub-title for candidates for public office, delegates to conventions, members of managing bodies, precinct, ward, city and county executives or executive committees to qualify for the purpose of having their names placed upon the official primary election ballot in any legislative district of Baltimore City or in any County of the State it shall appear that only one set of candidates of any such political party have so qualified, then and in that event, certificates of nomination or selection shall be issued to the candidates, so qualified in a similar manner to that herein provided for successful candidates as at primary elections, and no such primary election shall be held for such political party."

With kind regards and best wishes, I am,

Very truly yours,

WILLIS R. JONES, *Deputy Attorney General.*

ELECTIONS—CERTIFICATES OF NOMINATION BY PETITION—MUST STATE THAT THE SIGNERS INTEND TO VOTE FOR THE PERSON NOMINATED.

April 13, 1932.

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

DEAR MR. WINEBRENNER: I have your letter of April 11th, enclosing copy of petition of nomination which has been filed with you by the Labor Party purporting to nominate certain candidates of this Party for the coming Presidential Election.

This certificate does not conform to the provisions of Section 51 of the Registration and Election Laws in that it fails to contain any statement "that the persons signing the same intend to vote for the person nominated thereby". The statute requires a statement to this effect, and in my judgment, this provision is mandatory. Unless it be so held, the various counties and the City of Baltimore would be required to incur the expense of printing the names of the persons nominated upon the official ballots without any reasonable assurance that the persons nominated would receive any votes.

You are therefore advised that the petition which has been filed with you by the Labor Party is ineffective, for the purpose of authorizing the printing of the names of the candidates nominated thereby upon the official ballots at the November Election, and you may properly decline to certify these candidates to the various Boards of Supervisors of Elections throughout the State.

Yours very truly,

WILLIS R. JONES, *Deputy Attorney General.*

ELECTIONS—PETITIONS NOMINATING CANDIDATES REQUIRED TO BE FILED NOT LATER THAN APRIL 16TH IN THE YEAR 1932.

April 13, 1932.

Mr. George Millie,
Room 2, 9 S. Greene Street,
Baltimore, Md.

DEAR SIR: Your letter of April 9th, addressed to the Secretary of State, has been referred to this department for reply. You desire to be advised of the latest date upon which the candidates of the Communist Party may qualify for the coming November Election.

The answer to your inquiry is found in the provisions of Section 55 of the Registration and Election Laws of 1932,

by which certificates of nomination by petition are required to be filed not later than fifteen days before the day of the Primary Election. You are therefore advised that all certificates of nomination by petition to be effective must be filed not later than April 16th, 1932.

Yours very truly,

WILLIS R. JONES, *Deputy Attorney General.*

ELECTIONS—FORM AND ARRANGEMENT OF BALLOT WHERE ONE OR MORE CANDIDATES FOR PRESIDENT FILE IN PRIMARY ELECTION.

April 18, 1932.

Thomas J. Keating, Jr., Esq.,
Centreville, Md.

DEAR MR. KEATING: In your letter of April 16th, you request an opinion as to whether the name of Hon. Joseph I. France must appear upon the primary ballot, it appearing at the time your letter was written that he would have no opposition in this State for the Republican nomination for President. The answer to your question is found in Section 190 of the Registration and Election Laws, Edition of 1932, at page 134, where it is provided:

> "The Board of Supervisors of Elections in each county of the State and of Baltimore City shall cause to be printed upon the Presidential primary election ballots in each of said counties and in each legislative district of Baltimore City, and beneath the name or group of names of any qualified candidate or candidates for the nomination of President of any of such parties and distinctly separated by appropriate lines from the name or names of such qualified candidates and in plainly legible type the words 'For an Uninstructed Delegation' and to the

right thereof a square for the cross-mark of the voter in the same manner and relative location as the square for the cross-mark is printed to the right of the name of any candidate upon the primary election ballots as in this sub-title provided, so that such voters of the party who wish to vote for an uninstructed delegation to the national convention of their party may do so: * * *".

Since your letter was written, President Hoover has qualified as a candidate and his name will no doubt be certified to the Supervisors by the Secretary of State sometime today or tomorrow. In view of the above provisions, it will be necessary for the Supervisors to print the names of both candidates, and also a designation for an uninstructed delegation.

With kind regards and best wishes, I am

Yours very sincerely,

WILLIS R. JONES, *Deputy Attorney General.*

ELECTIONS—CANDIDATES FOR CONGRESS—WHEN NOMINATED BY PETITION, THE SIGNATURES OF 1,500 VOTERS ARE REQUIRED.

April 23, 1932.

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

DEAR MR. WINEBRENNER: I have your letter of April 21st, enclosing petition of nomination by the Communist Party of Lena Lipman, as a candidate for Congress in the 3rd Congressional District. You state that the certificate is said to contain 794 signatures, and request me to advise you whether it meets the requirements of the Registration and Election Laws of this State.

Section 51 of Article 33 of the Code of Public General Laws requires that a petition of nomination for Congress shall be signed by not less than 1,500 voters. Inasmuch as this certificate does not meet the requirements of this section, it must be held to be invalid and ineffective. It will therefore be improper for you to certify to the Board of Supervisors the name of Lena Lipman as a candidate for Congress from this District.

Yours very truly,

WILLIS R. JONES, *Deputy Attorney General.*

ELECTIONS—RIGHTS OF PERSONS WHO REGISTERED UNDER ACT LATER DECLARED INVALID.

April 23, 1932.

Hon. Galen L. Tait,
Chairman, Republican State Central Committee,
Custom House,
Baltimore, Md.

DEAR MR. TAIT: In your letter of April 21st, you request an opinion as to the rights of persons who registered as qualified voters upon affidavits in the fall of 1930, in accordance with the provisions of the Act of 1929 which was declared invalid by the Court of Appeals on October 31st, 1930.

All persons who registered upon affidavits in the Fall of 1930 are fully entitled to vote in the primary election on May 2nd, 1932, and they are not required to re-register in order to exercise this right. The names of these persons cannot be removed at the pre-primary registration on April 26th, and they are entitled to have their names remain upon the registry books as qualified voters until their names have been placed upon the suspect list, and they have been notified to appear before the Board to show cause why their names should not be removed on revision day, which will be held in the Fall.

If a person who registered upon affidavits in the Fall of 1930 has declared his intention to become a resident of this State at least one year before the coming Presidential election on November 8th, and desires to prevent his name from being removed from the registry books as a qualified voter on the revision day, which will be held in the Fall, he may do so by appearing at the Board of Registry and producing a copy of his declaration of intention either on the pre-primary registration day on April 26th, or on one of the intermediate registration days in the Fall.

When a voter who registered upon affidavits in the Fall of 1930 appears before the Board of Registry with a declaration of intention made at least one year before the approaching Presidential election on November 8th, it will be the duty of the registration officers to note in the column headed "Remarks" that a copy of the declaration of intention has been produced and the date on which the declaration is actually produced. No such entry should be made unless it appears that the declaration of intention was made at least one year before Nov. 8th, 1932.

When the above entry has been made in the registry books by the officers of registration, the voter will be entitled to have his name remain upon the books as a qualified voter as fully as if he had originally registered upon a declaration of intention.

Yours very truly,

WILLIS R. JONES, *Deputy Attorney General.*

ELECTIONS—CHALLENGERS AND WATCHERS—LORD'S DAY ALLIANCE AND OTHER ORGANIZATIONS INTERESTED IN SUNDAY ORDINANCE AUTHORIZED TO DESIGNATE CHALLENGERS AND WATCHERS.

April 26, 1932.

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

DEAR MR. LAIB: I have your letter of April 25th, enclosing communication from the Lord's Day Alliance, requesting an opinion as to whether the Alliance will be permitted to designate watchers at the polling places at the special election on May 2nd, for the adoption or rejection of the City Ordinance relating to Sunday observance.

The appointment of challengers and watchers is authorized by Section 71 of the Registration and Election Laws. It is there provided:

> "Each political party or other body of voters having a candidate or candidates duly nominated shall have the right to designate and keep a challenger and watcher at each place of registration and election."

Although there is no provision which expressly authorizes the appointment of challengers and watchers by a group of voters having an interest in a question to be submitted, other than the nomination and election of a candidate, it is my judgment that the above provision of law should be liberally construed so as to allow the Lord's Day Alliance to designate challengers and watchers. There is no good reason why the submission of a question of this kind should not be subject to the same safeguards that apply to the nomination and election of candidates for public office.

For the above reasons, you are advised that the Lord's Day Alliance may properly designate a challenger and watcher for each of the precincts for the special election,

and it will be the duty of the Judges of election to accord to the challengers and watchers so designated, the same rights that are accorded to such challengers and watchers when duly appointed by a political party or candidate.

What I have said with respect to the Lord's Day Alliance is equally applicable to the group of voters that are interested in the ratification of the Ordinance. If the respective groups desire to have challengers and watchers at the polling places, they should be advised to authorize some individual to sign appropriate credentials for the challengers and watchers for presentation to the election officials on the day of election.

With kind regards and best wishes, I am,

Very sincerely yours,

WILLIS R. JONES, *Deputy Attorney General.*

ELECTIONS—COUNTING OF BALLOTS—WHEN THE VOTER IN A PRIMARY ELECTION VOTES FOR A NAMED CANDIDATE FOR PRESIDENT AND ALSO FOR AN UNINSTRUCTED DELEGATION, THE BALLOT SHOULD NOT BE COUNTED FOR THE OFFICE OF PRESIDENT.

April 27, 1932.

Mr. John Jones,
Clerk, Supervisors of Elections,
Rockville, Md.

DEAR MR. JONES: Your letter of April 26th, addressed to the Attorney General, has been referred to me for reply.

You desire to be advised how a Republican ballot at the approaching primary election should be counted where it is apparent that the voter marks the ballot for Herbert Hoover and also for an uninstructed delegation.

A ballot marked as above indicated should not be counted either for Mr. Hoover or for an uninstructed delegation. Under the provisions of Section 190 of the Registration and

Election Laws of 1932, a voter may elect whether he wishes to vote for any of the candidates for President whose names appear on the ballot, or for an uninstructed delegation to the National Convention. Where there are marks for a candidate and for an uninstructed delegation, the voter has not indicated a choice, and the ballot should be treated in the same manner as if the voter had voted for too many candidates for the particular office. The marking of the ballot in this manner does not invalidate the rest of the ballot, and if the voter has properly marked his ballot for one of the candidates for the United States Senate, the ballot should be counted for the person indicated for this office.

Very truly yours,

WILLIS R. JONES, *Deputy Attorney General.*

ELECTIONS—PERSONS WHO DO NOT VOTE FOR SEVERAL ELECTIONS DO NOT LOSE THE RIGHT TO VOTE—PERSON WHO ACQUIRES RESIDENCE IN DISTRICT OF COLUMBIA MUST AFTER RETURNING TO MARYLAND DECLARE INTENTION TO BECOME CITIZEN OF THE STATE.

May 6, 1932.

Hon. Lloyd L. Shaffer,
Clerk, Circuit Court,
Cumberland, Md.

DEAR MR. SHAFFER: Your letter of May 5th, addressed to the Attorney General, has been referred to me for reply. You ask to be advised whether a voter who has not voted in several previous elections has lost his right to vote.

Unless a person removes from the State of Maryland and acquires a residence in some other jurisdiction, he retains his right to vote in this State so long as his name remains upon the official registration books. There is no provision in the Constitution and laws of this State which requires a voter to continue to exercise his right of franchise in order to retain such right.

You further ask whether a man who years ago voted in this State and subsequently moved to the District of Columbia without declaring his intention to remain a citizen, and whose name was removed from the registry books as a qualified voter, is now entitled to vote.

The answer to this question is in the negative. By acquiring a residence in the District of Columbia, the party in question lost his right of franchise in the State of Maryland, and this fact was apparently determined by the removal of his name from the registry books.

Before a person who has abandoned his residence in the State of Maryland can regain the right to vote in this State, such person must declare his intention to become a citizen and resident of this State at least one year before the election at which he offers to vote.

Yours very truly,

WILLIS R. JONES, *Deputy Attorney General.*

ELECTIONS—STATE BOARD OF CANVASSERS NOT REQUIRED TO CANVASS RESULTS OF PRIMARY ELECTIONS.

May 27, 1932.

Hon. David C. Winebrenner, 3d,
Secretary of State,
Annapolis, Md.

DEAR MR. WINEBRENNER: I have your letter of May 26th, requesting me to advise you whether the law requires the results of a primary election to be canvassed by the State Board of Canvassers.

In my judgment, the provisions of the General Election Law creating and prescribing the duties of the State Board of Canvassers have no application to primary elections.

With kind regards and best wishes, I am,

Very sincerely yours,

WILLIS R. JONES, *Deputy Attorney General.*

ELECTIONS—NOMINATION OF CANDIDATES FOR PRESIDENT—NO TIME FIXED BY LAW FOR FILING OF CERTIFICATES OF NOMINATION BY OFFICERS OF NATIONAL CONVENTIONS.

September 2nd, 1932.

Mr. Galen L. Tait,
Custom House,
Baltimore, Md.

DEAR MR. TAIT: Answering your telephone inquiry of today, you are advised that no time is fixed by the Registration and Election Laws within which the officers of party conventions, delegates to which are elected under the primary election law, shall certify the nominees of these conventions to the Secretary of State.

Section 56 of the Registration and Election Laws of 1932 provides, however, that the Secretary of State shall certify all nominations not less than eighteen days before the day of election. It is therefore important that the officers of the convention should make their certifications to the Secretary of State in ample time to permit that official to comply with the provisions of Section 56.

With kind regards, I am,

Very truly yours,

WILLIS R. JONES, *Deputy Attorney General.*

ELECTIONS—INTERMEDIATE REGISTRATION DAYS IN HOWARD COUNTY IN 1932.

September 8, 1932.

C. Ferdinand Sybert, Esq.,
Attorney at Law,
Ellicott City, Md.

DEAR MR. SYBERT: Answering your letter of September 2nd, addressed to the Attorney General, you are advised that the days of intermediate registration and revision are fixed by Sections 39 and 42 of the Registration and Election Laws of 1932.

On page 226 of the Registration and Election Laws of 1932 you will find that the Attorney General in his instructions has set forth the actual registration and revision days in 1932 as follows:

First sitting—Tuesday, October 4th, 1932.
Second sitting—Tuesday, October 11th, 1932.
Third sitting (Revision Day)—Tuesday, October 18th, 1932.

Very truly yours,

WILLIS R. JONES, *Deputy Attorney General.*

ELECTIONS—NOTICE TO BE GIVEN AND PUBLISHED IS PRESCRIBED BY STATUTE.

September 14, 1932.

Mr. E. O. Diffendal,
Board of Supervisors of Elections,
Westminster, Md.

DEAR SIR: On behalf of the Attorney General I am answering your letter of September 12th, in which you request an opinion as to the distribution of the advertising in connection with elections.

Your inquiry is controlled by the provisions of Section 15 of the Registration and Election Laws by which it is provided,

> "Said Board of Supervisors shall give ten days' notice of the time and place of registration, and of revision thereof, and of elections in each precinct of such county or city, by handbills set up in the most public places in such precinct, and also in the counties, by advertisements in two newspapers (one of which newspapers, if possible, shall be of opposite political faith from that of the majority of said supervisors) or general circulation therein."

This Department cannot undertake to decide for the Supervisors the particular papers which should be selected for the advertisements required by the above provisions of law. In discharging this function the Board should endeavor to comply with the letter and spirit of the law so as to give the widest possible notice to the voters.

With kind regards and best wishes, I am,

Very truly yours,

WILLIS R. JONES, *Deputy Attorney General.*

ELECTIONS—U. S. GOVERNMENT RESERVATION—PERSONS RESIDING ON U. S. GOVERNMENT RESERVATION AT PERRY POINT NOT ENTITLED TO REGISTER AND VOTE IN THIS STATE.

September 20, 1932.

Mr. Robert R. Lawder,
Havre de Grace, Md.

DEAR MR. LAWDER: I have your letter of September 16th, asking whether persons who reside on the Government Reservation at Perry Point are entitled to vote in this State.

This question was considered by the Court of Appeals in the case of Lowe vs. Lowe, 150 Md. 592, where it was said:

> "It is, therefore, clear that persons residing upon the Government Reservation at Perry Point are not residents of the State of Maryland for the purpose of exercising the right of franchise, for taxation purposes or for school purposes, for the reason that they reside upon territory belonging to the United States."

In view of the above decision, it is clear that the persons to whom you refer will not be entitled to vote at the coming

election unless they have maintained a residence off the Reservation and within the jurisdiction of the State.

With kind regards and best wishes, I am,

Very sincerely yours,

WILLIS R. JONES, *Deputy Attorney General.*

ELECTIONS—NOMINATIONS TO FILL VACANCIES—WHAT PETITION SHOULD CONTAIN AND TIME FOR FILING.

September 22, 1932.

Mr. George Willies,
Room 2, 9 S. Greene St.,
Baltimore, Md.

DEAR SIR: Answering your letter of September 21st, you are advised that the Secretary of State is required by Section 56 of the Election Laws to certify all nominations to the Boards of Supervisors of Elections not less than eighteen days before the date of election, and your certificate of nomination should be in the hands of that official in ample time to enable him to comply with this provision of law. As the certification of the Secretary of State is usually printed, and as there are a large number of candidates to be certified, I think your certificate should be in his hands at least thirty days before the election.

The facts to be set forth in the original petition are prescribed by Section 51 of the Registration and Election Laws, and the petition to supply a vacancy must contain the information required by this Section, as well as the information as to the cause of vacancy which is required by Section 59. If you are in doubt as to the sufficiency of the petition which you are about to file, I will be glad to go over the same with you and give you my views as to its legality before it is actually filed with the Secretary of State.

I am not unmindful of the provision contained in Section 59 relative to petitions of nomination to fill vacancies, requiring that such petitions "except in the case of a nominee dying be filed at least ten days before the day of election." Since the invalidity of the petitions filed by your Party were determined in April of the present year, it is very doubtful whether this provision would be applicable to the petitions which you now wish to file, especially since the Secretary of State would not be able to comply with the provisions of Section 56 requiring the candidates to be certified not less than eighteen days before the election, and for this reason I certainly urge upon you the importance of completing and filing your petitions at the earliest possible time.

Very truly yours,

WILLIS R. JONES, *Deputy Attorney General.*

ELECTIONS—A CHINESE BORN IN THE U. S. IS A CITIZEN AND ENTITLED TO VOTE.

September 27, 1932.

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

DEAR MR. LAIB: I have your letter of September 26th, requesting me to advise you whether a son of Chinese parents who was born in Baltimore and who has resided in this city since the date of his birth, is entitled to register as a qualified voter.

Section 1, Article 14 of the Constitution of the United States provides that "all persons born or naturalized in the United States and subject to the jurisdiction of the United States, are citizens of the United States and of the State wherein they reside." Section 1 of Article I of the Mary-

land Constitution provides that "every male citizen of the United States of the age of twenty-one years or upwards," who possesses the necessary qualifications as to residence shall be entitled to vote in this State. The Supreme Court of the United States in the case of *United States vs. Wong Kim Ark,* 169 U. S. 649, decided that a Chinese born in the United States is a citizen thereof.

In view of the above decision and the Constitutional provisions above quoted, you are advised that the person concerning whom you make inquiry is entitled to register and vote in this State.

Very truly yours,

WILLIS R. JONES, *Deputy Attorney General.*

ELECTIONS—VOTING MACHINES—NUMBER REQUIRED TO BE USED IN EACH PRECINCT.

September 28, 1932.

Hon. Bernard J. Flynn,
Secretary, Board of Supervisors of Elections,
Court House, City.

DEAR MR. FLYNN: I have your letter of September 23rd, enclosing communication addressed to Mr. Robert B. Ennis, President of the Board of Supervisors of Elections, by Mayor Howard W. Jackson, requesting that he be advised what disposition the Board of Supervisors of Elections will make of fifty voting machines which were purchased by the City during the Broening administration. Mayor Jackson expresses the view that one and certainly two machines would be sufficient to record the vote in any of the precincts of the City, and I understand you desire to know how many machines the law requires to be used in each precinct and also whether it is the duty of the Board of Supervisors of Elections to use these machines at the approaching election.

In an opinion rendered to your Board under date of January 5th, 1928, by Attorney General Robinson, you were advised that it would be necessary to install no less than five voting machines in each precinct in which they were used. This conclusion was inescapable as pointed out by Attorney General Robinson for the reason that the law allows each voter seven minutes in which to cast his ballot, and tends to facilitate voting during rush hours by requiring ample equipment to be supplied. There has been no change in the statute law relative to this subject since the opinion rendered by Attorney General Robinson, and I am obliged to agree with the conclusion which he reached.

There is nothing in the law which requires the Board of Supervisors of Elections to use the voting machines referred to in Mayor Jackson's letter at the approaching election.

Under Section 222 of the Registration and Election Laws the Board is authorized to use voting machines as they "may deem advisable or necessary". Your Board therefore has full power to determine whether the machines referred to by Mayor Jackson will be used at the approaching election, and if you decide to make use of the machines you are further empowered under Section 224 of the Registration and Election Laws to determine the precincts in which they shall be used.

Yours very truly,

WM. PRESTON LANE, JR., *Attorney General.*

ELECTIONS—BOARD OF SUPERVISORS OF ELECTIONS MAY REMOVE ANY JUDGE OR CLERK FOR CAUSE AFTER HEARING.

October 4, 1932.

Mr. A. Everett Williams,
Attorney at Law,
Salisbury, Md.

DEAR MR. WILLIAMS: I have your letter of October 1st, requesting me to advise you concerning the powers of the

Board of Supervisors of Elections with respect to the removal of judges of election.

The judges and clerks are appointed by the Supervisors upon authority conferred by Section 8 of the Registration and Election Laws. The officials so appointed are selected for a term of two years, as provided by Section 10. Section 12 provides that "it shall be the duty of the said boards to examine promptly into any complaints which may be preferred to them in writing against the fitness or qualifications of any person so appointed judge or clerk, and to remove any such judge or clerk whom upon inquiry they shall find to be unfit or incapable."

The Board of Supervisors of Elections has no power to remove an official except in accordance with the provisions of Section 12, and in exercising its powers to remove, it is my opinion that the Board should accord to the judge or clerk an opportunity to be heard in defense before removing him from office.

With kind regards and best wishes, I am,

Very sincerely yours,

WILLIS R. JONES, *Deputy Attorney General.*

ELECTIONS—INFAMOUS CRIMES—CONVICTION OF VIOLATING THE NATIONAL PROHIBITION LAWS DOES NOT DESTROY THE RIGHT TO VOTE.

October 5, 1932.

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

DEAR MR. LAIB: You have requested me to advise you whether convictions in the United States courts of violations of the Federal Prohibition laws operate to disqualify persons so convicted from voting in this State.

Section 2 of Article 1 of the Maryland Constitution provides that "no person above the age of twenty-one years convicted of larceny or other infamous crime, unless pardoned by the Governor, shall hereafter be entitled to vote at any election in this state." Violations of the Federal Prohibition laws are not infamous crimes within the meaning of the above Constitutional provision and such convictions do not operate to disfranchise the parties involved.

Very truly yours,

WILLIS R. JONES, *Deputy Attorney General.*

ELECTIONS—DECLARATIONS OF INTENTION MAY BE TAKEN BY CLERKS OF COURT OR THEIR DEPUTIES OUTSIDE OF OFFICE.

October 5, 1932.

Mr. Louis McLane Merryman,
Clerk of the Circuit Court,
Towson, Md.

DEAR MR. MERRYMAN: I have your letter of October 3rd, requesting an opinion as to whether the Clerk of the Circuit Court for Baltimore County, or his duly authorized deputy, may properly take declarations of intentions to become a citizen and resident of this State for voting purposes, from persons who move into Maryland from another State, outside of the Clerk's office and within the confines of the County.

Your inquiry is controlled by Section 31 of Article 33 of the Code of Public General Laws, entitled "Elections," subtitle "Registration," which reads as follows:

> "31. All persons who after the passage of the Act of 1902, Ch. 133, shall remove into any county of this State or into the city of Baltimore from

any other State, district or territory shall indicate their intent to become citizens and residents of this State by registering their names in a suitable record book to be procured and kept for the purpose by the clerk of the Circuit Court for the several counties, and by the clerk of the Superior Court of Baltimore City; such record to contain their names, residence, age and occupation; and the intent of such persons to become citizens and residents of this State shall date from the day on which such registry shall be so entered in such record book by the clerk of the Circuit Court for the county, or of the Superior Court of Baltimore City, as the case may be, into which county or city such person shall so remove from any other State, district or territory. And no person coming into this State from any other State, district or territory shall be entitled to registration as a legal voter of this State until one year after his intent to become such legal voter shall be thus evidenced by such entry in such record book, and such entry or a duly certified copy thereof shall be the only competent and admissible evidence of such intent. And the clerk of the Superior Court of Baltimore City and of the several courts of the several counties shall immediately, upon the passage of the Act, procure a suitable record book for the recording therein of such entries arranged alphabetically under the names of such persons. For every person so registered under the provisions of this Section they shall be entitled to demand and receive the sum of twenty-five cents, to be paid to said clerks by the Mayor and City Council of Baltimore and the County Commissioners, respectively. A copy of such record duly certified by said clerk shall be evidence of the right of such person to registration as legal voters, according to law, and each person so registered shall be entitled to such certified copy upon demand without charge."

There is nothing in the above Section which requires the personal appearance of the declarant at the office of the Clerk of the Court, and no method is prescribed for the registering of names. The requirements of the statute are met when the declarant causes his name and description to be entered in the record book which is kept by the clerk, and it is expressly provided that the intent of such persons "shall date from the day on which such entry shall be so entered." It was never intended that the making of these declarations should be surrounded by the same formalities that must be complied with in the registration of voters. The object of the law is to provide record proof that persons who have removed into the State have resided here for at least one year prior to the election, and when the entry has been made in the record book by the Clerk, this record or a duly certified copy thereof, constitutes ample proof that the provisions of the statute have been satisfied.

From what I have said, it follows that the Clerk may arrange for the taking of these declarations, either in his office or elsewhere in the county for which he was elected, and there can be no doubt that a duly authorized deputy has power to act for the Clerk in the taking of these declarations and the making of the necessary entry in the record book.

With kind regards and best wishes, I am,

Very sincerely yours,

WILLIS R. JONES, *Deputy Attorney General.*

ELECTIONS—HOUSE OF DELEGATES—SPECIAL ELECTION TO FILL VACANCY IN HOUSE OF DELEGATES—PROCEDURE.

October 6, 1932.

Benjamin Hance, Esq.,
Attorney at Law,
Prince Frederick, Md.

DEAR MR. HANCE: I have your letter of October 4th, in connection with the existing vacancy in the House of Delegates from your County. The candidates of the two leading parties should be nominated by the State Central Committee of the respective parties for the county and the certificates of nomination must be filed with the Board of Supervisors of Elections at least ten days before the day of election. The warrant of election which has been issued by the Governor provides that all of the provisions of the election laws of the State shall be applicable in the conduct of this special election which is to be held on the same day as the Presidential Election.

It is customary to print the names of candidates to supply vacancies on the official ballot on which the names of the Presidential Candidates, Electors, etc., appear. A proper heading for the special election to fill the vacancy for the House of Delegates would be as follows:

"FOR MEMBER OF THE HOUSE OF DELEGATES
OF MARYLAND, UNEXPIRED TERM.
VOTE FOR ONE."

Underneath the above heading the names of the candidates, with appropriate boxes for marking by the voters, should be printed.

With kind regards and best wishes, I am,

Very truly yours,

WILLIS R. JONES, *Deputy Attorney General.*

ELECTIONS—PERSONS OVER 21 YEARS OF AGE WHO MOVE INTO MARYLAND MUST DECLARE INTENTION TO BECOME CITIZENS OF THIS STATE BEFORE BEING ENTITLED TO REGISTRATION. AN IMPROPER PRIOR REGISTRATION DOES NOT ENTITLE THE PERSON TO A RE-REGISTRATION.

October 6, 1932.

Mr. Frederick J. Werner,
Board of Supervisors of Elections for Howard County,
Ellicott City, Md.

DEAR MR. WERNER: In your letter of October 5th, you request an opinion as to whether a former resident of Pennsylvania is now entitled to register in your county. It appears that the party in question moved from Pennsylvania into Baltimore City, and that he registered in Baltimore City without having declared his intention to become a citizen of this State. He subsequently moved to Howard County, where he has applied for registration and presented a removal certificate duly issued by the proper authority in Baltimore City.

Section 31 of Article 33 of the Code of Public General Laws of Maryland, entitled "Elections," specifically provides that "no person coming into this State from any other State, district or territory shall be entitled to registration as a legal voter of this State until one year after his intent to become such legal voter shall be thus evidenced by such entry in such record book." The record referred to is a book which the Clerk of the Court is required to keep, showing the name, residence, age and occupation of persons declaring their intentions to become citizens and residents of this State.

If the party to whom you refer was above twenty-one years of age when he moved into Maryland, he is not entitled to registration at this time unless he has declared his intention to become a citizen and resident of this State and had his name recorded in the record book kept by the Clerk of the Court. It has been uniformly held that persons who are residents of this State at the time they reach twenty-

one years of age are not required to comply with the declaration of intentions Act unless they subsequently abandon their residence in the State of Maryland.

With kind regards and best wishes, I am,

Very sincerely yours,

WILLIS R. JONES, *Deputy Attorney General.*

ELECTIONS—VOTING AGE—A PERSON WHOSE 21ST BIRTHDAY FALLS ON THE DAY AFTER AN ELECTION IS ENTITLED TO REGISTER AND VOTE AT THAT ELECTION.

October 7, 1932.

Hon. Humphrey D. Wolf,
Glenwood,
Howard County, Md.

DEAR SENATOR WOLF: In our telephone conversation of today you requested me to write you whether a citizen of Maryland who will become of age on November 9th, 1932, is entitled to register and vote at the approaching Presidential Election on November 8th, 1932.

The rule of law as to when a person is deemed to have attained the age of majority is stated in 31 C. J. at page 987, as follows:

> "One becomes of full age on the day preceding the twenty-first anniversary of his or her birth, on the first moment of that day."

There are a number of cases decided by the courts which sustain the above statement of the law, and in accordance therewith, you are advised that the person to whom you refer is entitled to register and vote at the approaching election.

With kind regards and best wishes, I am,

Very sincerely yours,

WILLIS R. JONES, *Deputy Attorney General.*

ELECTIONS—A PERSON NATURALIZED IN ANOTHER STATE WHO MOVES INTO MARYLAND MUST DECLARE INTENTION TO BECOME CITIZEN OF THIS STATE BEFORE VOTING HERE.

October 8, 1932.

Hon. James P. Harris,
Gaithersburg, Md.

DEAR JUDGE HARRIS: Your letter of October 5th has been received. You desire to be advised whether an Italian who was naturalized in the State of Pennsylvania, in 1929, and who moved to Maryland approximately twelve months ago, is entitled to registration in this State as a qualified voter.

Section 31 of the Registration and Election Laws of 1932 requires all persons who move into Maryland from another State to indicate their intent to become citizens and residents of this State by causing their names to be registered in a suitable record book to be kept by the Clerk of the Circuit Court. This Section further provides that "no person coming into this State from any other State, District or Territory shall be entitled to registration as a legal voter of this State until one year after his intent to become such legal voter shall be thus evidenced by such entry in such record book."

Under Section 32 these declarations of intent may be made in Montgomery County before the Board of Registry, and when so made it is the duty of the Board of Registry to furnish one copy to the declarant, without charge, and to forward another copy to the Clerk of the Circuit Court for the County to be recorded in the record book."

The above statutory provisions are applicable to the party concerning whom you make inquiry, and he is not entitled to registration in this State until he has complied with those provisions.

Yours very truly,

WILLIS R. JONES, *Deputy Attorney General.*

ELECTIONS—CANDIDATE WHO HAS OBTAINED NOMINATION UNDER THE PRIMARY ELECTION LAW BY REASON OF NO OPPOSING CANDIDATE IS NOT ENTITLED TO RETURN OF DEPOSIT.

October 11, 1932.

Hon. David C. Winebrenner, 3d,
Secretary of State,
Annapolis, Md.

DEAR MR. WINEBRENNER: I have your letter of October 10th, 1932, enclosing certificate of withdrawal which has been filed with you by Charles L. Weigand, who was duly nominated as the candidate of the Republican Party for election to the House of Representatives from the Fourth Congressional District.

I understand that Mr. Weigand filed a certificate and paid the customary fee of $100.00 prior to the primary election, and that he obtained the nomination by reason of there being no opposing candidate. He now desires that the fee of $100.00 be refunded to him and you request me to advise you whether you may properly comply with this request.

Section 199 of the Registration and Election Laws, entitled "Elections," sub-title "Primary Elections," reads as follows:

> "In the event that the name of any candidate who shall have made a deposit with the Supervisors of Elections, as hereinabove provided, shall not appear on the official ballot at said primary election, by reason of there being no opposing candidate, such candidate shall not be entitled to a return of his deposit, but the same shall be retained by the Mayor and City Council of Baltimore, or the County Commissioners of the County to which the same shall have been paid by the Supervisors of Elections, and used in defraying the expenses of such primary election."

The above Section is a codification of Section 184-B of Chapter 261 of the Acts of 1914, and at the time of the passage of that Act candidates for Congress filed their certificates of candidacy and made the deposits with the Supervisors of Elections. It was not until after the passage of Chapter 405 of the Acts of 1931 that candidates for Congress qualified by filing with the Secretary of State. The Secretary of State does not retain any portion of the fee, but the Act of 1931 specifically requires him to remit the fee paid by Mr. Wiegand to the Supervisors of Elections of Baltimore City for payment to the Mayor and City Council.

By reason of the above statutory provisions, it is clear that Mr. Wiegand is not now entitled to the return of his deposit.

With kind regards and best wishes, I am,

Very sincerely yours,

WILLIS R. JONES, *Deputy Attorney General.*

ELECTIONS—A TRUST OFFICER IN A NATIONAL BANK IS ELIGIBLE AS A PRESIDENTIAL ELECTOR.

October 18, 1932.

Hon. Albert J. Almony,
Secretary, Democratic State Central Committee,
Royal Arcanum Building,
Baltimore, Md.

DEAR MR. ALMONY: With reference to the telegram from Hon. Robert Jackson, Secretary of the Democratic National Committee, stating that officers and directors of National Banks are barred from serving as Presidential Electors, you are advised as follows:

So far as we are informed, no one of the Democratic nominees for Presidential Electors at the approaching election

is an officer or director of a National Bank. One of the nominees, however, does occupy the position of trust officer for a National Bank, but his duties are purely clerical, and he has no authority to bind the bank by any contract. In my judgment, his status is clearly that of an employee rather than that of a director.

I had occasion to consider this question before the nominee mentioned was selected by the State Convention, and you will recall that you were then advised that he was eligible for the office of elector.

I have been unable to find any Court decisions sustaining the proposition that Article 2, Section 1, of the Federal Constitution prohibits officers and directors of National Banks from serving as Presidential Electors, but even if this Section should be so construed, it would have no application to a trust officer who occupies the status of an "employee" as distinguished from an "officer."

Section 161 of Article 33 of the Code of Public General Laws of this State, relating to the selection of Presidential Electors, authorizes the persons who are returned as elected, or as many of said persons as may attend on the day appointed by the Constitution to "fill any vacancy which may exist in said college of electors at such meeting, whether such vacancy be occasioned by absence or otherwise; and the said person or persons so appointed to fill such vacancy or vacancies shall be entitled to all rights and privileges of those proclaimed by the Governor as duly elected electors."

In the light of this Section, I think it is clear that if, after the election, one of the electors should be found to be disqualified, the remaining electors would have ample authority to fill the vacancy.

For the above reasons, you are advised that there is no necessity for any new nominations of Presidential Electors in this State.

I may add that since you referred to me the telegram from the Secretary of the Democratic National Committee, I have discussed this matter with Judge Jackson, the coun-

sel for the Democratic National Committee, and it is my understanding that he concurs in the view that no new nominations need be made in this State.

I would suggest that a copy of this letter be sent to Secretary Jackson, so that he may be acquainted with the situation in this State.

With kind regards and best wishes, I am,

Yours very sincerely,

WILLIS R. JONES, *Deputy Attorney General.*

ELECTIONS—CORRUPT PRACTICES—TREASURER FOR COUNTY COMMITTEE SHOULD FILE CERTIFICATE OF APPOINTMENT AND BOND WITH CLERK OF THE CIRCUIT COURT OF THE COUNTY IN WHICH HE ACTS.

October 18, 1932.

Hon. David C. Winebrenner, 3d,
Secretary of State,
Annapolis, Maryland.

DEAR MR. WINEBRENNER: I have your letter of October 15th enclosing certificate of appointment and bond of C. Ferdinand Sybert as Treasurer of the Democratic State Central Committee for Howard County. You request an opinion as to whether this certificate should be filed with you or with the Clerk of the Circuit Court for Howard County.

Section 175 of the Registration and Election Laws provides that where the duties of the Treasurer relate to the County exclusively, the certificate shall be filed with the Clerk of the Circuit Court of the County. Under this Section, I believe Mr. Sybert's certificate should be filed with the Clerk of the Court.

With kind regards and best wishes, I am,

Very truly yours,

WILLIS R. JONES, *Deputy Attorney General.*

ELECTIONS—FORM AND ARRANGEMENT OF BALLOT AT PRESIDENTIAL ELECTION.

October 26, 1932.

Hon. Harry A. Melvin,
Pocomoke City, Md.

DEAR SIR: In your letter of October 25th, you request an opinion as to the form and arrangement of the ballot which the Board of Supervisors of Elections of Worcester County proposes to use at the approaching Presidential election. You enclose a typewritten copy of the ballot intended to be used and state that the form and arrangement of this ballot, as regards the grouping of the several candidates for President, Vice-President and Presidential Electors, has been questioned. You desire to be advised whether the grouping of these candidates as indicated upon this ballot is in conformity with law.

Your inquiry is controlled by Section 63 of the Registration and Election Laws of 1932, by which it is provided:

> "The names of the candidates for the office of Electors of President and Vice-President of the United States shall be arranged in groups, as presented in the several certificates of nomination papers and the several groups shall be arranged in such order of the surnames of the candidates for President as the several Boards of Supervisors shall prescribe in the City of Baltimore, and in the several counties, respectively."

In view of this statutory provision, it is clear that the Board of Supervisors has full authority to adopt the form and arrangement of the candidates for President, Vice-President and Electors, as indicated on the copy which accompanied your letter, and which copy is herewith returned.

Very truly yours,

WILLIS R. JONES, *Deputy Attorney General.*

ELECTIONS—POLITICAL AGENT FOR A CANDIDATE FOR CONGRESS SHOULD FILE CERTIFICATE WITH SECRETARY OF STATE.

October 29, 1932.

Wendell D. Allen, Esq.,
Calvert Building,
Baltimore, Md.

DEAR SIR: I have your letter of October 27th, requesting my opinion as to whether the political agent appointed by Col. Claude B. Sweezey should file his certificate of appointment with the Secretary of State or with the Clerk of the Circuit Court of Baltimore City.

As you point out in your letter, the Fourth Congressional District, in which Colonel Sweezey is a candidate, lies wholly within the limits of Baltimore City, and I am inclined to agree wth you that the filing of the certificate of appointment of his political agent with the Clerk of the Circuit Court of Baltimore City will satisfy the provisions of Section 175 of Article 33.

If the political agent solicits or receives any contributions from persons residing outside of Baltimore City, it might be necessary to file the certificate with the Secretary of State. Since the Treasurers and Political Agents for candidates for Congress from the County districts must file their certificates of appointment with the Secretary of State, I believe that the safer course for the City candidates to pursue is to file duplicate certificates, one with the Secretary of State, and one with the Clerk of the Circuit Court.

I do not mean to say that it is necessary that the certificates be filed at both places, but for the reason above set forth, and in view of the uncertainty as to the true meaning of the statute, I suggest that that course be pursued.

Yours very truly,

WILLIS R. JONES, *Deputy Attorney General.*

ELECTIONS—NOMINATIONS BY SOCIALIST PARTY. CERTIFICATES INVALID FOR REASONS STATED.

November 2, 1932.

Hon. David C. Winebrenner, 3d,
Secretary of State,
Annapolis, Md.

DEAR MR. WINEBRENNER: I have your letter of October 29th, enclosing two certificates of nomination which have been filed by the Socialist Party, purporting to nominate a candidate for Congress from the Second Congressional District of Maryland.

One of the certificates executed by the presiding officer and secretary of the Convention of the Socialist Party indicates that Mr. Clarence H. Taylor was nominated at a Convention of this Party held on the 22nd day of August, 1932. The other certificate indicates that there is a vacancy in the nominee of the Socialist Party for the Second Congressional District, the said vacancy being occasioned because the original certificate was filed too late. This certificate further shows that at the Convention held on the 22nd day of August, 1932, a Committee was appointed to fill any vacancy that might exist and the latter certificate indicates that the Committee on the 25th day of October, 1932, attempted to fill the vacancy occasioned as aforesaid by again nominating Mr. Taylor as the candidate of the Socialist Party from this District. Both of the above certificates were filed in your office at 9 o'clock on October 29th, 1932, and you desire to be advised whether they are sufficient to justify the printing of the name of Mr. Taylor upon the ballots at the approaching election.

Both of the certificates are clearly invalid and of no effect. The first certificate does not meet the requirements of Section 55 of the Registration and Election Laws, in that it was not filed at least fifteen days before the day of the primary election. The second certificate fails to meet the requirements of Section 59 of the Registration and Election Laws,

in that it was not filed with you "at least ten days before the date of the election."

You are therefore advised that neither of the certificates referred to meet the requirements of the election laws of this State, and you need not certify the name of Mr. Taylor to the Boards of Supervisors of Elections.

Very truly yours,

WILLIS R. JONES, *Deputy Attorney General.*

ELECTIONS—GOVERNOR IS REQUIRED TO PUBLISH THE RESULTS OF ELECTIONS FOR PRESIDENTIAL ELECTORS AND MEMBERS OF CONGRESS.

December 1st, 1932.

Mr. Murray G. Hooper,
Executive Offices,
Annapolis, Md.

DEAR MR. HOOPER: You have requested me to advise you which of the proclamations to be issued by the Governor in connection with the recent election are required to be published.

Section 27 of Article 41 expressly requires that the proclamations with respect to Presidential Electors and members of Congress shall be inserted in such newspapers as the Governor may direct. In my opinion, this Section includes the result of the election for United States Senator and all of these proclamations are subject to this Section of the Code.

There is no provision contained in the Constitution or laws of this State which requires the Governor to publish the results of the election with respect to a constitutional amendment or laws submitted to the vote of the people under the provisions of Article XVI of the Constitution, entitled "The Referendum."

Very truly yours,

WILLIS R. JONES, *Deputy Attorney General.*

ELECTIONS—CORRUPT PRACTICES—CANDIDATES FOR CONGRESS MUST FILE REPORTS OF EXPENDITURES WITH CLERK OF CIRCUIT COURT OF THE COUNTY IN WHICH CANDIDATE RESIDES.

December 9, 1932.

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

DEAR MR. WINEBRENNER: In your letter of December 7th, you request an opinion as to where a candidate for Congress should file the report of campaign expenses. The answer to your question is found in Section 181 of the Registration and Election Laws, the second paragraph of this Section reading as follows:

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

The statement referred to includes the receipts and disbursements for campaign purposes. It should be filed with the Clerk of the Court, and there is no requirement that it be filed with the Secretary of State.

Yours very truly,

WILLIS R. JONES, *Deputy Attorney General.*

FINES AND FORFEITURES

FINES AND FORFEITURES—SHERIFF—DISPOSITION OF FINES IN ANNE ARUNDEL COUNTY.

January 2, 1932.

Edmund R. Stewart, Esq.,
State Auditor,
Union Trust Building,
Baltimore, Md.

DEAR MR. STEWART: I have your letter of December 31st, in which you state that the Sheriff of Anne Arundel County has in his possession the sum of eighteen hundred dollars ($1800.00), derived from gaming, slot machine, assault and liquor fines and bail forfeitures, and that he has requested advice as to the proper disposition of this sum.

One-half of the fines and forfeitures in question should be paid to the Clerk of the Circuit Court for Anne Arundel County into what is known as the Library Fund. It is true that Art. 38, Sec. 4, of the Code particularly exempts Anne Arundel County from the requirement of that Section, but the Public Local Laws of Anne Arundel County contain a similar provision. See Flack's Code, Public Local Laws of Maryland, 1930, Secs. 187 and 188.

The remaining one-half of the fines and forfeitures should be paid by the Sheriff into the Treasury, under the provisions of Section 42, Article 87, of the Code of Public General Laws.

Fines imposed for violation of the Automobile Laws, of course, have a different disposition under Section 178 of Article 56 of the Code.

This opinion is in accord with an opinion of Attorney General Robinson, reported in 11 Official Opinions of the Attorney General, page 157. Since the passage of Chapter

37 of the Acts of 1931, no portion of any fine, penalty or forfeiture may be paid to any informer.

With kind regards and best wishes, I am,

Yours very sincerely,

WM. PRESTON LANE, JR., *Attorney General.*

FINES AND FORFEITURES—SHERIFF—DISPOSITION OF FINES IN ST. MARY'S COUNTY—SHERIFF AND NOT CLERK IS THE PROPER OFFICIAL TO COLLECT.

January 14, 1932.

Edmund R. Stewart, Esq.,
State Auditor,
Union Trust Building,
Baltimore, Md.

DEAR MR. STEWART: I have your letter of December 31st, in which you state that the Clerk of the Circuit Court for St. Mary's County has been collecting both common law and statutory fines and bail forfeitures and expending one-half thereof on the Bar Library and paying the other one-half to the County Commissioners of St. Mary's County. You further state that he has been deducting 5 per cent commission on the portion set apart for the Bar Library, but not on the portion paid to the County. You inquire, first, whether these collections should have been made by the Clerk, and, second, whether the proper disposition of these was made.

1. As to the first question, I am satisfied that the Sheriff and not the Clerk is the proper State officer to collect and receive fines and forfeitures.

In an opinion rendered by this Department on June 16th, 1931, to the Commissioner of Motor Vehicles, it was held that the Clerks of the various Circuit Courts might deduct

5 per cent commissions upon fines collected in automobile cases where the judgment of a Justice of the Peace was affirmed on appeal. That opinion assumed, without discussion, that the Clerk was the proper person to collect and receive fines in such cases, and held that the provisions of Art. 17, Sec. 12, and Art. 36, Sec. 12, allowing Clerks to deduct 5 per cent "for receiving and paying over all public moneys for licenses, fines or otherwise," applied to payments made to the Commissioner of Motor Vehicles under Art. 56, Sec. 178, upon the theory that the right to commissions accrued upon their receipt by the Clerk in his official capacity, and that this right was not further conditioned upon their payment by him to the State Treasurer. The opinion confirmed two earlier opinions of the Attorney General, reported in 7 Op. A. G. 345 and 14 Op. A. G. 206.

In my present view of the matter, all of these opinions must be modified to this extent, that where a fine is imposed by the Circuit Court of any County, the fine shall not be collected or received by the Clerk, and hence no fines or forfeitures should come into his hands in the first instance.

Art. 87, Sec. 38, provides:

> "The Sheriff shall be answerable for all fines, penalties and forfeitures imposed on the inhabitants of his County or of Baltimore City by any Court of record of this State unless he can show that the party on whom the same was imposed is insolvent."

Art. 87, Sec. 42, provides:

> "All fines, forfeitures, penalties and costs imposed as aforesaid are to be paid to the Sheriff, who shall pay the same, except the costs, to the treasurer * * * ".

In the ordinary case, of course, it is the exclusive duty of the Sheriff to hold the prisoner in custody, in the event that the fine is not paid; hence even in the absence of stat-

ute, the duty of enforcing the sentence of the Court would seem to rest exclusively upon the Sheriff, as at common law.

2. As to the disposition of fines collected by the Sheriff, the matter is usually covered by local laws in the various Counties.

In my letter to you of January 2nd, 1932, I gave my opinion to the effect that the Sheriff of Anne Arundel County should remit one-half of all fines and forfeitures (except motor vehicle fines) to the State Treasurer under Art. 87, Sec. 42, and one-half to the Clerk of the Court for what is known as the Bar Library Fund, under the Public Local Laws of Anne Arundel County, Art. 2, Sections 187, 188 (Flack's Code, 1930). On the one-half paid to the Clerk, the Clerk is, of course, entitled to his 5% commission. I referred to a previous opinion of the Attorney General dealing with Anne Arundel County, reported in 11 Op. A. G. 157 to the same effect. This opinion relied largely upon the cases of *State v. Green*, 120 Md. 681, and *Green v. State*, 122 Md. 292, in which our Court of Appeals held that one-half of the statutory fines there involved was payable to Baltimore City under a local law and the remaining one-half was payable to the State under Art. 87, Sec. 42, notwithstanding the provisions of Art. 38, Sec. 2.

By the Acts of 1931, Ch. 37, Sec. 2, of Art. 38, was repealed and re-enacted, but only for the purpose of doing away with informers' fees. I cannot believe that the passage of this Act was intended to in any way disturb the existing practice.

St. Mary's County has no local law on this subject, nor is it exempted from the operation of Sec. 4 of Art. 38. I am of the opinion, in the light of the Green case, that the Sheriff must transmit one-half of all fines and forfeitures collected (except those collected under the Motor Vehicle Law) in accordance with Art. 38, Sec. 4, and one-half to the State under Art. 87, Sec. 42.

Yours very truly,

WM. PRESTON LANE, JR., *Attorney General.*

FINES AND FORFEITURES—MOTION PICTURES—FINES IMPOSED BY CRIMINAL COURT OF BALTIMORE CITY FOR SHOWING UNCENSORED OR OBSCENE FILMS SHOULD BE PAID TO SHERIFF AND BY HIM REMITTED TO THE TREASURER.

February 1st, 1932.

Dr. George Heller,
Board of Motion Picture Censors,
211 N. Calvert Street,
Baltimore, Md.

DEAR DR. HELLER: In your letter of January 28th, you state that certain parties have been fined in the Criminal Court of Baltimore City for exhibiting an uncensored film and also for showing an obscene film. You desire to be advised whether the Sheriff of Baltimore City should remit these fines to your Board or directly to the State Treasurer.

There are two provisions of law which relate to your inquiry. Section 13 of Article 66-A of the Code of Public General Laws, entitled "Moving Pictures," provides that "all fines imposed for the violation of this Article shall be paid into the State Treasury." Section 20 of the same Article contains a provision reading, "all fines shall be paid by the Magistrate or Justice of the Peace to the Board, and by it paid into the State Treasury."

From the above provisions, it will be noted that all fines imposed for the violation of this Article must ultimately be paid into the State Treasury. As there is no specific provision which directs the Sheriff to remit the fines imposed by Judge Frank to your Board, it is my opinion that it would be proper for him to remit these fines directly to the State Treasurer. By following this course the disposition of the fines as provided by the Act will be accomplished and there will be no necessity for separate accountings by your Board and the Sheriff.

I am sending a copy of this letter to the Sheriff of Baltimore City.

Very truly yours,

WILLIS R. JONES, *Deputy Attorney General.*

FINES AND FORFEITURES—PROCEDURE TO COLLECT UNPAID FINES AND FORFEITURES.

August 11, 1932.

Edmund R. Stewart, Esq.,
State Auditor,
Union Trust Building,
Baltimore, Md.

DEAR MR. STEWART: I have your letter of July 28th, enclosing copy of a statement showing unpaid fines and forfeitures on the Criminal Docket of Anne Arundel County, and also a letter to you from the State's Attorney requesting an opinion as to the proper procedure to be followed in collecting forfeited recognizances and bail forfeitures.

An examination of the statement shows a number of cases where fines were imposed and personal sureties taken, the entries in some cases indicating that the defendant was allowed 60 days in which to pay the fine. It is ordinarily the duty of the sheriff to hold a prisoner in custody until the fine is paid or an equivalent sentence served, but I assume that the security in each of these cases was furnished in accordance with the express provisions of the Code, Art. 87, Sec. 40, requiring payment within 60 days. The cases of *Backus v. State,* 118 Md. 536, and *Albrecht v. State,* 132 Md. 150, seem to authorize such procedure, although the statutory provisions as to supersedeas are applicable only to civil judgments. However, the statute must be strictly followed, and the recognizance forfeited by court order before execution is levied. It seems clear that no civil action, other than court order is necessary to reduce the claim to judgment.

A few of the cases listed on the statement, appear to be bail forfeitures. In such cases the order of court is equivalent to a judgment, upon which fi fa can be issued forthwith. The matter is governed by the Code, Art. 75, Sec. 22. See also *Schultz v. State,* 43 Md. 295, 306; and Hochheimers' Criminal Law, 2nd Ed., Pg. 98.

I am enclosing a copy of this opinion for transmittal to the State's Attorney.

Very truly yours,

WM. PRESTON LANE, JR., *Attorney General.*

FORESTRY

FORESTRY—FINES AND FORFEITURES—FOR VIOLATION OF FORESTRY LAWS, FOLLOW SAME DISPOSITION AS FINES IMPOSED FOR OTHER MISDEMEANORS.

April 7, 1932.

Mr. F. W. Besley,
State Forester,
Fidelity Building,
Baltimore, Md.

DEAR MR. BESLEY: I have your letter of March 31st, asking my opinion as to the disposition of fines collected by a Justice of the Peace in Baltimore County for a violation of Section 525 of Article 27 of the Code, making it a misdemeanor for any person to cut trees upon the premises of another. This particular fine you state was imposed for cutting trees on the Patapsco State Forest.

As the provisions of Article 27, Section 525, do not specify the disposition of fines imposed thereunder, such fines would follow the same disposition as fines imposed for other misdemeanors. Under the previous opinions of this office, and particularly an opinion rendered to the State Auditor dated June 24th, 1931, relating to the disposition of fines in Baltimore County, the fines in question should be paid to the County Commissioners to be applied in part for the use of the Bar Library, and in part for general county purposes. No part of the fine is payable to the State Treasurer, since the situation in Baltimore County is controlled by a Public Local Law.

I am sending a copy of this opinion to Justice of the Peace Stapleton, who, I understand, has requested a ruling in this matter.

Very truly yours,

WM. PRESTON LANE, JR., *Attorney General.*

FORESTRY—TITLE EXAMINATIONS IN PURCHASES BY DEPARTMENT.

October 3, 1932.

F. W. Besley, Esq.,
State Forester,
Fidelity Building,
Baltimore, Md.

DEAR MR. BESLEY: You asked me a few days ago as to the proper procedure to be followed in acquiring certain lots, from time to time, in the tract of land formerly owned by the Allegany Orchards Company. I understand that this company, some years ago, acquired a large tract in Allegany County, laid it off in ten acre orchard lots, identified by numbers on a recorded plat, and sold a number of these lots to persons throughout the United States. You have recently completed the purchase of the greater portion of the tract, comprising all the unsold lots from this company, and before doing so, had the title examined and certified by competent counsel. I understand that you now have an opportunity to purchase, and you anticipate that you may in future have further opportunities to purchase, certain lots from persons who bought from the corporation. The purchase price of an individual lot is, however, so nominal in amount, as to hardly justify a separate title examination by counsel in each case, and you inquire whether it will be possible to dispense with this, in view of the small outlay and that no expenditure upon the property, other than policing the area already acquired, is contemplated.

Since the basic title has been examined, the only thing necessary to an examination of the title to individual lots, would be a search of the public land records to determine whether there were any assignments or mortgages by the respective lot owners subsequent to their deeds from the corporation, or any judgments or decrees against the lot owners, and whether taxes have been paid. As you suggest, these are matters that can be determined by a layman, and, if you consider him competent, I see no objection to your

having the search made by your district forester, whom you state is familiar with records of this character through his knowledge of surveying. Assignments or mortgages are ordinarily indexed in the land records, judgments and decrees in the Court records, and taxes in the tax records. While the indexing system varies in different counties, I am sure the Clerk would be glad to explain his system to your District Forester, upon request.

Yours very truly,

WM. PRESTON LANE, JR., *Attorney General.*

FORESTRY—JURISDICTION OF JUSTICES OF THE PEACE TO TRY VIOLATIONS OF THE FORESTRY LAW.

December 16, 1932.

F. W. Besley, Esq.,
State Forester,
Fidelity Building,
City.

DEAR MR. BESLEY: Confirming the opinion I expressed to you verbally yesterday, with reference to the authority of a Justice of the Peace to try a criminal charge of wilfully and maliciously setting fire to woods, contrary to the provisions of Art. 39A, Sec. 10 (Bagby's Code, 1929 Suppl.), I am of the opinion that, by a proper construction of the applicable statutory provisions, a Justice of the Peace has no jurisdiction to try such a charge.

While the offense is made a misdemeanor, the punishment prescribed is a fine of not less than $25.00 or more than $2,000, or imprisonment for not less than 30 days or more than five years, or both such fine and imprisonment. By the provisions of Art. 39A, Sec. 14 (Bagby's Code, 1924), the jurisdiction of Justices of the Peace to enforce fines and penalties for violation of the forestry law is limited to fines not exceeding $100.00.

In prosecutions under Sec. 10, I think it is contemplated by Sec. 14 that Justices of the Peace should hold offenders charged with the violation of Sec. 10 "under proper bail, if necessary, for hearing before the Circuit Court".

Very truly yours,

WM. PRESTON LANE, JR., *Attorney General.*

GOVERNOR

GOVERNOR—MORATORIUM—GOVERNOR HAS NO POWER TO DECLARE MORATORIUM.

September 2nd, 1932.

Hon. Frank C. Purdum,
5500 Harford Road,
Baltimore, Md.

DEAR MR. PURDUM: On behalf of the Attorney General, I am answering your letter of September 1st, in which you request an opinion as to whether the Governor has authority to declare a moratorium of sixty or ninety days for the payment of confessed judgment notes.

There is no provision in the Constitution or laws of this State which gives the Governor any such power, and it is not believed that the Legislature could confer such authority upon the Governor, since the legislation would impair the obligations of pre-existing contracts.

With kind regards and best wishes, I am,

Very sincerely yours,

WILLIS R. JONES, *Deputy Attorney General.*

GRAND JURORS

GRAND JURORS—ALTHOUGH STATUTE REQUIRES PAYMENT FOR SERVICES AT END OF TERM, THERE IS NO OBJECTION TO PAYMENT AT INTERVALS DURING THE TERM.

June 18, 1932.

Hon. Edward Gross, Clerk,
Criminal Court of Baltimore City,
Court House,
Baltimore, Md.

MY DEAR MR. GROSS: On behalf of the Attorney General, I am answering your letter of June 16th, in which you request an opinion as to whether the law permits the members of the Grand Jury to be paid for their services at the end of each month instead of at the end of their respective terms as has heretofore been the practice.

The statute dealing with this subject is Section 621 of the Baltimore City Charter of 1927, and reads as follows:

> "Section 621. Jurors in any of the Courts of the City of Baltimore shall receive three dollars per day for each and every day they shall attend the several courts of this State in said City as jurors; and it shall be the duty of the clerk of the court to which the jurors shall be summoned, to furnish on the day their services shall terminate, to each juror, a certificate showing the days he has been in attendance on the court, and the amount payable to him for such service; and the City Register shall pay the jurors the sums payable for such service in cash, and immediately upon the presentation and surrender of such certificate, with the receipt of the juror, and said payment shall not be demanded save upon the surrender of said certificates, and the said certificates shall not be the subject of assignment."

It will be noted that the statute makes no distinction between the petit jurors and grand jurors in so far as the amount of their compensation and the time for its payment are concerned. Other sections of the City Charter, however, require petit jurors to serve for terms of three weeks, while the grand jurors are required to serve for full court terms, or periods of four months.

We know of no other instance in which court officials are required to wait for a period of four months for the payment of compensation earned by them, and it does not occur to us to be just that the grand jurors should be required to wait for this extraordinary length of time. No loss to the public will ensue from paying the jurors at the end of each month, and we believe that their just claims outweigh the small amount of extra work and labor that will be required by the issuance of certificates and checks at the end of each month.

After careful consideration of your inquiry, we have concluded that Section 621 of the City Charter, above quoted, is directory and not mandatory in so far as the time for payment of compensation to grand jurors is concerned, and that if suitable arrangements can be made with the office of the City Register, there is no valid reason why the Clerk of the Criminal Court may not issue the certificates for payment at the end of each month.

While we are satisfied that the Clerk has power to issue these certificates for payment at the end of each month, it is equally clear under the statute, that the Clerk may not be compelled to issue such certificates until the end of the respective terms for which the grand jurors are selected.

With kind regards and best wishes, I am,

Very sincerely yours,

WILLIS R. JONES, *Deputy Attorney General.*

INSURANCE

INSURANCE—POWER OF COMMISSIONER TO ADOPT METHOD OF VALUATION OF SECURITIES ADOPTED BY CONVENTION OF INSURANCE COMMISSIONERS.

January 4, 1932.

Hon. Wm. C. Walsh,
Insurance Commissioner,
Lexington Building,
Baltimore, Md.

DEAR JUDGE WALSH: I have your letter of December 30th, enclosing copy of a resolution regarding the valuation of securities of insurance companies, passed by the convention of Insurance Commissioners recently held in New York. The resolution would permit all insurance companies, in making their annual reports, to use an average value over the last five quarterly periods ending September 30th, 1931, instead of market value as of December 31, 1931. You inquire whether your Department has a legal right to adopt the rule set out in the Resolution.

There is nothing in the Maryland law specifying a fixed rule of valuation as of any definite date. Sec. 30 of Art. 48-A merely requires each company to transmit "a statement of its condition and business for the year ending on the preceding 31st day of December". The Commissioner may further, at any time, require statements "on such points as he may deem necessary and proper to elicit a full exhibit of its business and standing."

It is my opinion under this section that the Commissioner is clothed with a measure of discretion as to the method of valuation best calculated to reflect the actual value of securities from an investment point of view, and that he is not bound to require valuation at market prices, where such prices do not reflect actual value. If, in your opinion, the

rule set out in the Resolution is fair and reasonable, I can see no legal objection to its adoption.

Yours very truly,

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

INSURANCE—INSTALLMENT PROFIT-SHARING CERTIFICATES —LOAN COMPANY SELLING STOCK IN INSTALLMENTS, THE PROCEEDS TO BE USED SOLELY IN ITS BUSINESS, EXEMPT FROM THE REQUIREMENTS OF CH. 530, ACTS 1931.

February 9, 1932.

Hon. William C. Walsh,
State Insurance Commissioner,
Lexington Building,
Baltimore, Md.

DEAR SIR: You have asked for a ruling as to whether the proposed sale of installment profit sharing certificates by the State Loan Company of Mount Rainier, Maryland, falls within the purview of Chapter 530 of the Acts of 1931. I have discussed this matter with the officers and counsel for the Company, and understand that their present plan of operation is as follows:

This Company is a Maryland corporation organized in 1930, to do a small loan business under the provisions of Art. 58-A of the Code. It has obtained a license from the State Bank Commissioner, and is actually engaged in such business. In order to raise additional capital, it proposes to sell installment certificates to the general public, whereby subscribers agree to purchase preferred profit sharing capital stock of the Company, in installments, payable monthly, quarterly or semi-annually. Title to such shares is to remain in the Company until fully paid for, but the

Company agrees to credit against the purchase price interest at 6% per annum on installment payments from the date of their receipt, and also to credit a ratable share of any dividends declared on the preferred stock from 1/3 of its net profits in proportion to the installments paid, provided such installments amount to not less than ¼ of the total purchase price at such time. When fully paid, certificates of preferred stock, carrying the right to a cumulative dividend of 6% and participation in other dividends from not less than 1/3 of the net profits of the Company, are to be delivered. Such shares are entitled to priority upon dissolution and are redeemable at par, but have no voting rights.

In the event of the death of a subscriber, his representative is entitled to a cash refund of all payments, credits and accumulation. In the event of voluntary or involuntary default, except by death, the subscriber shall receive a paid-up certificate of preferred stock in an amount equal to the payments, credits and accumulations, on such contract, less a percentage, of the total purchase price graduated as to years from 10% to 2%.

Without attempting at this time to pass on the legality of the above-mentioned subscription agreement, or to determine what rights and liabilities are thereby created, as between the Company, its creditors and the subscribers to its certificates, the plan seems clearly to contemplate that all the funds received from this source, after the deduction of sales commissions, be used in the principal business of the Company. The information submitted by the Company indicates that the funds received to date have been so applied.

Section 199 of Chapter 530, Acts of 1931, provides in part "the provisions of this sub-title shall not apply * * * to contracts issued by a company for the purpose of raising money for its principal business, if its principal business is other than the issuing or negotiating or selling of contracts or obligations described in Sec. 185 of this sub-title."

The contracts described in Sec. 185 include "any contract payable on the installment plan, with or without definite maturity dates, which contracts contemplate the accumu-

lating of money or funds for making loans or investments and undertaking or agreeing to pay or deliver at any future time any sum of money, contract or other thing of value * * *".

In my opinion the test prescribed by these sections is not whether the funds collected are to be used in making loans or investments, but whether the *principal business* of the Company is or is not the selling of such contracts. I do not think the Legislature intended to prevent the raising of money for use in any legitimate business by means of contracts for the installment sale of stocks, bonds or other obligations of the Company, except where the selling of such contracts is the principal business of the vendor. In each case this must necessarily be a question of fact.

So long as the funds received by the Company are actually devoted to its principal business of making small loans, I am of the opinion that it is exempt from compliance with the provisions of Chapter 530.

Yours very truly,

WM. PRESTON LANE, JR., *Attorney General.*

INSURANCE—COMMISSIONER MAY INCREASE RATES ON LIABILITY POLICIES WHERE PRESENT RATES ARE INSUFFICIENT.

June 1st, 1932.

Hon. William C. Walsh,
State Insurance Commissioner,
Lexington Building,
Baltimore, Md.

DEAR JUDGE WALSH: I have your letter of May 31st, asking my opinion as to what authority the Insurance Department has to fix or otherwise regulate the premiums charged by insurance companies for writing compulsory

taxicab insurance policies, which policies under the law provide for $5,000 and $10,000 liability in case of personal injury, and $1,000 liability for property damage. I understand that most of the companies now writing this business are losing money at the present rates and that the Department has been specifically asked to authorize a higher insurance rate than that now being charged.

In my opinion, the matter is covered by Section 92 of Article 48-A of the Code. If the actuary for the Department thinks that "any insurance company doing business in this State is writing and issuing policies upon an insufficient, insecure, or impracticable table of rates," then the Commissioner may require such company "to adjust its rates in accordance with the advice of said actuary."

In my opinion, this Section is broad enough to authorize the Commissioner to require an increase if the present rates are in fact insufficient.

With kind regards, I am,

Very truly yours,

WM. PRESTON LANE, JR., *Attorney General.*

INSURANCE—NON-ASSESSABLE POLICIES OF FIRE INSURANCE ISSUED BY MUTUAL COMPANY—CAN ONLY BE ISSUED WHERE SURPLUS UNIMPAIRED.

July 13, 1932.

Hon. William C. Walsh,
Insurance Commissioner,
1400 Lexington Bldg.,
Baltimore, Md.

MY DEAR JUDGE WALSH: I have your letter of July 12th enclosing correspondence with Mr. W. Emmert Swigart relative to the existing policies of the American Mutual Insurance Company of Indianapolis, Ind., a mutual company writing fire insurance, and duly qualified to do business in Maryland. The facts of the case are not entirely clear, but I

understand that upon the request of the Indiana State Insurance Commissioner, the directors of the company have laid an assessment upon all Maryland policyholders who purchased policies subsequent to June 1, 1931. Mr. Swigart states that the policy contract used in Maryland is a cash, non-assessable stock policy, and I assume that he means by this that non-assessable policies were written in Maryland subsequent to that date, and further, that the surplus of the company was impaired as of that date, to an extent that rendered the issuance of a non-assessable policy improper under the provisions of Sec. 117, Art. 48-A, of the Public General Laws.

The Section referred to, in my opinion, permits the issuance of non-assessable policies, but only in the event that the surplus, at the time of issuing such policy, is not less than the capital stock and surplus required of domestic stock companies writing similar insurance.

Under this Section it seems clear that the company should be immediately notified, as soon as any impairment is ascertained, to cease writing non-assessable policies until its surplus is restored. Not only is the violation of Sec. 117 made a misdemeanor, but the Commissioner may act to revoke the license under Sec. 133 of Art. 48-A.

Mr. Swigart's inquiry, however, relates to the status of persons holding policies purporting to be non-assessable, issued subsequent to June 1, 1931, and their liability to assessment notwithstanding the terms of their policies. It would seem to be a grave hardship upon such persons to require them to determine, at the risk of assessment, the status of the company as to surplus at the time the policy is written, and it is certainly arguable that such persons are entitled to rely upon the express language of the contract. Since, however, the assessment has been levied, and will doubtless be brought before the Courts, I do not feel that I should now express an opinion upon this point, particularly since such opinion would not be binding upon either party.

Very truly yours,

WM. PRESTON LANE, JR., *Attorney General.*

INSURANCE—COMMISSIONER MAY, IN HIS DISCRETION, ADOPT AMORTIZED VALUE INSTEAD OF MARKET VALUE, IN THE CASE OF BONDS HELD BY INSURANCE COMPANIES.

July 15, 1932.

Hon. William C. Walsh,
Insurance Commissioner,
Cumberland, Md.

DEAR JUDGE WALSH: I have your letter of July 14th in which you refer to the fact that a resolution was unanimously adopted, at the National Convention of Insurance Commissioners recently held in Chicago, recommending that the bonds of insurance companies be valued on their amortized values instead of their market values. You inquire whether this method of valuation is permissible under the Maryland law.

I find nothing in the Maryland law prescribing any definite method of valuation of securities held by insurance companies in general. Under Sec. 30, Art. 48-A, of the Code, every Company is required to submit "a statement of its condition and business" and the Commissioner may at any time call for statements "to elicit a full exhibit of its business and standing". The Commissioner is required by Sec. 50 to examine every company periodically "with special regard to its financial condition and its ability to fulfill its obligations", while he is required to take action under Sec. 51 whenever he has "reason to believe that any insurance company is insolvent", or under Sec. 112-A if he finds the capital stock "impaired to the extent of 25%".

In the case of life insurance companies, however, there is a specific provision (Sec. 85, Art. 48-A) allowing the valuation of their securities on an amortized basis, "if amply secured and not in default as to principal and interest". In my opinion this section is not to be construed as an additional grant of power to the Insurance Commissioner, but on the contrary, as a limitation, in favor of this class of companies, allowing them to adopt this method even over the objection of the Insurance Commissioner.

In regard to all other classes of insurance companies, I believe any reasonable method of valuation may be adopted, in the sound discretion of the Commissioner, subject, of course, to the provisions of Art. 48-A, above referred to.

Very truly yours,

WM. PRESTON LANE, JR., *Attorney General.*

INSURANCE—COMPANY WRITING CREDIT INDEMNITY INSURANCE IS NOT A CASUALTY OR SURETY COMPANY WITHIN THE MEANING OF THE MARYLAND STATUTE.

September 3, 1932.

Hon. William C. Walsh,
State Insurance Commissioner,
Lexington Building,
Baltimore, Md.

DEAR JUDGE WALSH: I have your letter of August 25th, in which you inquire whether a domestic Company, incorporated to write credit indemnity insurance should be classified under the Maryland law as a casualty company, a surety company or as a company in a special class.

Sec. 17, Art. 48-A, provides that "the capital stock of any insurance company incorporated under the laws of this State" (with the exception of mutual companies and industrial life companies) "shall be not less than $100,000.00 * * * and every such company must have approved assets of at least $100,000.00 in excess of its capital stock, reserves and other liabilities. The capital stock of any company writing fidelity or surety bonds, or liability or workmen's compensation insurance, shall not be less than $250,000.00, and every such company must have approved assets of at least $125,000, in excess of its capital stock, reserves and other liabilities".

I am of the opinion that the writing of credit indemnity insurance does not fall in the limited category embraced by

the second sentence of this section, but in the general class embraced by the first sentence. The larger capital required by the legislature for companies writing "fidelity or surety bonds, or liability or workmen's compensation" can perhaps be explained on the ground that there is a greater public interest in the payment of such claims than in the payment of mere business risks.

Section 19 of Article 48-A provides that "every domestic company writing life, health, accident, liability, compensation or casualty insurance, or fidelity or surety bonds, except industrial life insurance companies * * * shall, before being entitled to transact any business of insurance, assign to and deposit with the Treasurer of the State * * *" securities of the type designated having a market value not less than $100,000.00.

I am of the opinion that credit indemnity insurance does not fall within any of the classes of insurance mentioned in this section.

Sections 36, 37 and 38 of Article 48-A deal with the matter of license fees. Since credit indemnity insurance is not expressly mentioned in Sections 36 and 37, I think it must fall into the general category embraced by Section 38.

Credit indemnity insurance is not expressly mentioned in any of the sections relating to domestic companies, but it is enumerated in Sec. 35, Art. 48-A, relating to foreign insurance companies. This indicates, at least that it was known to the legislature, and it is therefore arguable that it was intentionally excluded from the class of casualty or surety companies.

It is also provided in Sec. 16, Art. 48-A, that "any company incorporated under the laws of this State for insurance purposes may include in its certificate of incorporation * * * the following: To guarantee the payment, punctual performance and collection of * * * accounts, claims * * * etc."

Yours very truly,

WM. PRESTON LANE, JR., *Attorney General.*

INSURANCE—COMMISSIONER MAY ACCEPT SECURITIES OF A SUBSIDIARY COMPANY AS "APPROVED ASSETS", IF THEY ARE OTHERWISE OF REQUISITE VALUE.

September 8, 1932.

Hon. William C. Walsh,
State Insurance Commissioner,
Lexington Building,
Baltimore, Md.

DEAR JUDGE WALSH: In your letter of August 25th, you inquire whether your department should accept the preference notes of a subsidiary company, carried in the surplus account of an insurance company, as "approved assets", within the meaning of Sec. 17, Art. 48-A. This section provides that every insurance company, except mutual and industrial life companies, shall "have approved assets of at least $100,000.00, in excess of its capital stock, reserves and all other liabilities", and further provides that every company writing fidelity or surety bonds, or liability or workmen's compensation insurance, shall have "approved assets of at least $125,000."

Sec. 17 does not, however, define or limit the type of assets that may be approved, although Sec. 19, dealing with the deposit of securities with the department, definitely limits the type of securities that may be accepted, and Sec. 25, dealing with the investment of reserves, is also more specific.

The latter section permits the investment of reserves in the interest or dividend paying bonds or stocks of any State, County, City or other corporation. There is nothing in this section to prohibit the approval of securities of subsidiary companies.

In my opinion, the legislature, in adopting both Sec. 17 and Sec. 19, was solely concerned with values, and not with questions of interlocking companies and pyramided control. So long as the assets or securities are found to have the requisite value, I do not believe you would be justified in

ruling them out on the ground that they were issued by a subsidiary company.

Very truly yours,

WM. PRESTON LANE, JR., *Attorney General.*

INSURANCE—DUTY OF STATE'S ATTORNEY TO PROSECUTE FOR VIOLATION OF INSURANCE LAW—LIMITATIONS STATUTE APPLIES TO SUCH PROSECUTIONS.

October 13, 1932.

Hon. William C. Walsh,
Insurance Commissioner,
Lexington Building,
Baltimore, Md.

DEAR JUDGE WALSH: I have your letter of October 12th, in which you refer to charges brought against a Life Insurance Agent by the Baltimore Association of Life Insurance Agents for violation of Sec. 93 of Art. 48-A, now pending before you. You request a ruling of this office upon the question whether a prosecution under Art. 48-A, Sec. 96, will lie after the lapse of a year from the commission of the alleged offense. This is the same question you asked me a few days ago, and at that time I wrote you, in my letter of October 7th, that I felt the Attorney General should not render an opinion in the matter, since the duty of prosecuting such offenses lies with the State's Attorneys. You now call my attention to Sec. 10 of Art. 48-A, reading in part as follows:

> "It shall be his duty (the State Insurance Commissioner) to report in detail to the Attorney General any violations of the law relative to insurance companies or the business of insurance, and he shall have power to institute suits and prosecutions

> either by the Attorney General or such other attorney as the Attorney General may select, for any violation of the provisions of this article."

This section has never been construed by the Courts, but I am quite clear that it was not the intention of the legislature to in any way relieve the State's Attorneys of their general constitutional duty to prosecute offenses under the criminal law. See Art. 48-A, Sec. 47, requiring the Commissioner to report to the State's Attorney any misrepresentations. In view of the language used, however, I think the Attorney General may properly advise you as to alleged violations of the insurance law.

Sec. 93, Art. 48-A, forbids insurance companies and their agents from misrepresenting policies. Sec. 96 provides that "any Insurance Company, agent, solicitor or broker, or any person whatsoever violating any provisions of Sections 93, 94 and 95 shall, upon conviction, be sentenced to pay a fine of not less than $100.00, nor more than $500.00 for each and every violation, or in the discretion of the Court, to an imprisonment for a period of not more than six months."

Art. 57, Sec. 11, provides: "No prosecution or suit shall be commenced for any fine, penalty or forfeiture, or any misdemeanor, except those punished by confinement in the penitentiary, unless within one year from the time of the offense committed."

In my opinion this limitation is clearly applicable to prosecutions under Sec. 96, Art. 48-A. The section has been frequently construed by the Courts, the latest case being *Archer vs. State*, 145 Md. 128, 138, where the Court said:

> "We are clearly of the opinion that Section 11 of Article 57 means * * * that the prosecution of persons charged with conspiracies or other misdemeanors not 'placed along with felonies' by the grades of punishment fixed for them by the common law or by statute, must be begun within one year from the date of the conspiracy."

The imprisonment referred to in Sec. 96 need not be in the penitentiary, and indeed there need be no imprisonment at all, since that is discretionary with the Court.

Yours very truly,

WM. PRESTON LANE, JR., *Attorney General.*

INSURANCE—TAX ON PREMIUMS IMPOSED BY SECTION 74, ARTICLE 48A, DOES NOT APPLY TO CONTRACTS MADE AND TO BE PERFORMED OUTSIDE THE STATE.

October 17, 1932.

Hon. William C. Walsh,
Insurance Commissioner,
Lexington Building,
Baltimore, Md.

DEAR JUDGE WALSH: I have your letter of October 13th, enclosing copy of a letter from Messrs. Galvin & McCourt, asking for a construction of Section 74, Article 48A, which reads as follows:

> "All persons obtaining insurance on property situate in the State (owned by individuals or firms resident in this State, or corporations incorporated under the laws of this State), from companies, associations, firms or corporations not authorized to transact business in this State, shall file with the Insurance Commissioner a statement or declaration setting forth the name of the company, number of policy, amount of insurance, rate, premium and description of property; shall be required to pay a tax thereon of five per cent. of the premium paid on such policies to the said Commissioner, and shall further pay a fee to said Insurance Commissioner of one dollar on each policy

> for making a record of the said statement or declaration. Any insurance broker placing insurance on property situate in this State in companies not authorized to transact business in this State, shall, between the first and tenth days of each month, submit in writing to the commissioner a true list of such policies of insurance so placed by him in the preceding month, together with a statement or declaration setting forth the information above required. Upon the failure of any broker to so file the true list, statement and declaration herein specified, within the limit of time herein mentioned, the Insurance Commissioner may suspend his or their license for a period not exceeding ninety days."

The facts in the particular case before you are not given in sufficient detail to enable me to express an opinion, but the general scope of this statute seems to be clear.

In the case of *Allgeyer v. Louisiana,* 165 U. S., 578, the Supreme Court of the United States, referring to a Louisiana statute similar to ours, held that such statute was in violation of the 14th Amendment insofar as it had been construed by the State courts to forbid the making of a contract of insurance outside the State, upon goods temporarily within the State, where such contract was to be wholly performed outside the State, the policy in question being a marine policy covering a shipment of cotton to foreign ports. The Court did not expressly overrule the earlier case of *Hooper v. California,* 155 U. S. 648, in which a similar contract was placed by a broker within the State, but, in effect, it did so. See the dissenting opinion of Mr. Justice Harlan in the Hooper case, and see also the comment of Mr. Justice Brandeis in the recent case of *Burnett v. Coronado Oil and Gas Co.,* 76 L. ed. 590, 596.

While it may be observed that our statute does not attempt to forbid such contracts, but merely requires that they be reported and a tax paid on the amount of the premium, I think the principle is the same. *Equitable Ins. v. Penn.* 238 U. S. 143.

In my opinion, Sec. 74 should not be construed, in view of these Federal decisions, to include contracts of insurance made outside the State and to be performed outside the State, even though the insurance is placed upon property temporarily situate in this State and owned by residents or domestic corporations of this State. Whether a particular contract falls within or without the statute is a question of fact in each case.

Yours very truly,

WM. PRESTON LANE, JR., *Attorney General.*

INSURANCE—COMMISSIONER HAS NO AUTHORITY TO PRESCRIBE DIFFERENT RATES FOR STOCK COMPANIES AND MUTUAL COMPANIES WRITING COMPENSATION INSURANCE.

December 14, 1932.

Hon. William C. Walsh,
State Insurance Commissioner,
Lexington Building,
Baltimore, Md.

DEAR JUDGE WALSH: I have your letter of December 2nd, with enclosures, in which you inquire, first, whether under the Maryland law you have authority to approve different rates in Maryland, that is to say, one set of rates for the stock companies writing workmen's compensation insurance, and another set of rates for the mutual companies, writing such insurance, and, second, whether you may legally authorize a set of rates providing for a 12½% discount on the excess of any premium above $1,000.00, in this special class of insurance.

I have examined the statutory provisions bearing upon the question, particularly Sec. 29, Art. 101 of the Code of

1924, and Sec. 19, Art. 81, of the Code as amended by Ch. 340 of the Acts of 1931, and read the exhaustive briefs furnished by counsel for both classes of companies. In my opinion, both questions must be answered in the negative.

While the question of the adequacy of rates is a matter left to your sound discretion, I believe that the standard set up by the law limits your power of classification to a consideration of hazard or risk; hence, it is not permissible for you to make any discrimination between different classes of companies, or to fix different rates based upon the amount of the premiums paid.

I am returning the enclosures herewith as requested.

Yours very truly,

WM. PRESTON LANE, JR., *Attorney General.*

JUSTICES OF THE PEACE

JUSTICE OF THE PEACE—RIGHT TO HOLD OFFICE OF AUDITOR IN EQUITY COURT.

February 3, 1932.

Stanley S. Spencer, Esq.,
Justice of the Peace,
Belair, Md.

DEAR SIR: Your letter of the 27th has been duly received.

I understand the question as therein stated to be as follows:

> Is it a violation of Article 35 of the Declaration of Rights to be a duly commissioned Justice of the Peace of this State, and an Auditor for a Court of Equity of this State, at one and the same time?

Article 35 of the 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 * * *".

The "office" of Justice of the Peace is an "office" within the meaning of this Article.

(Official Opinions, Vol. 3, p. 272).

Thus the question is reduced to a single issue:

Does an Auditor for a Court of Equity hold an "office" within the meaning of Article 35 of the Declaration of Rights?

This issue, in turn, depends upon the distinction between an "office" and an "employment." It is only an "office" which is within the constitutional prohibition and not an "employment".

State Tax Commission vs. Harrington, 126 Md. 157;

Clark vs. Harford Agri. & Breeders Asso., 118 Md. 608.

In determining the question whether the position is an "office" or an "employment" various tests have been devised. The more important of these tests are:

A. Does the recipient take the oath prescribed by Article 1, Section 6 of the Constitution?

B. Is a commission issued by the State?

C. Does the State vest in the "office" the sovereign power to act for the State?

State Tax Commission vs. Harrington, supra.
Clark vs. Harford Agri. & Breeders Asso., Supra.

If such elements are present the place in controversy is an "office", while their absence usually denotes an "employment."

An Auditor of a Court of Equity is not required to file a bond nor to take the oath prescribed by Article 1, Section 6. (Art. 16, Sec. 19.)

No sovereign power is vested in the Auditor, since his acts are of no finality until passed upon by the Court. An Auditor is nothing more than a ministerial officer of the Court.

Dorsey vs. Hammond, 1 Bland, 463.

Thus an Auditor does not come within the definition of an "office" as defined by the Court of Appeals of this State.

Therefore it is my opinion that a Justice of the Peace may also be an Auditor for a Court of Equity.

Yours very truly,

WM. PRESTON LANE, JR., *Attorney General.*

JUSTICE OF THE PEACE—POWER TO TRY CASES ON SUNDAY. —MOTOR VEHICLES—TRIAL OF MOTOR VEHICLE VIOLATION ON SUNDAY.

February 10, 1932.

Mr. John W. Lloyd,
Justice of the Peace,
Knoxville, Md.

DEAR SIR: In a letter dated November 10th, 1931, you requested an opinion on the following question:

> Is it legal for a Justice of the Peace to try minor violations of the Motor Vehicle law of this State on Sunday?

On November 16th, I gave you an opinion based upon a ruling in the Circuit Court for Harford County, in the case of *Blaine R. Burchett vs. State of Maryland.*

An appeal was taken in this case to the Court of Appeals of this State. On appeal the ruling of the Circuit Court was sustained and the conviction of the Magistrate was affirmed. However, this conviction was only affirmed because the question of the right of a Magistrate to hear cases on Sunday was not properly before the Court, due to certain procedural matters which were injected into the case upon the appeal from the Magistrate to the Circuit Court. The Court of Appeals held that because of these procedural matters it could not pass upon the specific question involved, and accordingly affirmed the lower Court.

However, the Court of Appeals declared most emphatically that, if the question had been before the Court, the ruling of the Court would have been that a Justice of the Peace cannot try violations of the Motor Vehicle Law on Sunday. This opinion was published in the Daily Record of Tuesday, February 9th, 1932. Therefore since the Court of Appeals has clearly indicated its opinion on this question, there can be no doubt that a Justice of the Peace can-

not hear minor violations of the Motor Vehicle Law on Sunday.

Yours very truly,

WM. PRESTON LANE, JR., *Attorney General.*

JUSTICE OF THE PEACE—BOUSE ACT—VALID SEARCH AND SEIZURE—MOTOR VEHICLES.

March 4th, 1932.

William A. Wheatley, Esq.,
Justice of the Peace,
Chestertown, Md.

DEAR SIR: Your letter of the 23rd has been duly received. Allow me to thank you for your courtesy in holding this matter in abeyance, following my request of January 18th, until the Court of Appeals decided the Gorman and Heyward cases. The opinion in both of these cases appeared recently in the Daily Record.

I understand the questions stated in your letter to be as follows:

> *First Question:* In case a State Police Officer without a warrant, arrests a person for driving while under the influence of liquor, has he the right to search the car and the person of the violator, and if liquor is found, to use such liquor as evidence at the trial?
>
> *Second Question:* If the officer detects a smell of liquor on the violator is that a sufficient evidence for conviction?

First Question. The answer to this question depends upon the construction of that Act, popularly known as the "Bouse Act", Chapter 194 of the Acts of 1929, Bagby's An-

notated Code of Public General Laws of Maryland, Vol. 3, Art. 35, Sec. 4A, 1929 Edition, providing:

> "No evidence in the trial of a misdemeanor shall be deemed admissible where the same shall have been procured by, through or in consequence of an illegal search or seizure or of any search and seizure prohibited by the Declaration of Rights of this State."

Prior to the passage of this Act, the method of obtaining evidence used in the trial of a criminal case, was immaterial.

Nolan vs. State, 157 Md. 332

The "Bouse Act" is a legislative mandate reversing this line of authority as it forbids the introduction of evidence which has been obtained by an illegal search and seizure. Therefore the essential question before you is:

> Was the action of the officer in searching the person and car of the accused an illegal search, and the resulting seizure of liquor found by the officer an illegal seizure?

The answer to this question depends upon the validity of the arrest.

If the arrest is valid, the officer making the same has the right to search the immediate person of the accused.

Cornelius on Search and Seizure, 2nd Ed. page 95, par. 37;

Cooley's Constitutional Limitations, 8th Ed. Vol. 1, pages 628-629;

Carroll vs. U. S. 267 U. S. 132 at 158;

See Cases collected in U. S. C. A. Const. Part 2, page 468, par. 45.

This right has been extended to the search of a car driven by the accused.

Heyward vs. State, Daily Record, Feb. 23rd, 1932.

If the arrest was illegal the officer had no right to make the search and hence the evidence was inadmissible.

Gorman vs. State, Daily Record, Feb. 24, 1932.

Thus the question is reduced to a single inquiry: Was the arrest valid? The fact that the officer did not have a warrant does not necessarily make the same void.

Wharton's Cr. Procedure, 10th Ed. (Kerr) Vol. 1.
U. S. C. A. Const. Part 2, page 465, Par. 34;
5 C. J. page 416, Par. 46.

A duly commissioned officer may make an arrest without a warrant provided:

1. He sees a crime being committed.

   5 C. J. page 407, Par. 32;
   Wharton's Criminal Law, 11th Ed. (Kerr) Par. 136, p. 179.

2. He has reasonable grounds of suspicion supported by circumstances, sufficiently strong in themselves to warrant a cautious man in believing the accused to be guilty of the crime for which he was arrested.

   Heyward vs. State, supra.
   Wharton's Criminal Procedure 10th Ed. (Kerr) Vol. 1, pages 69-70, par. 34.

The Supreme Court of the United States has definitely followed this ruling in several recent cases under the National Prohibition Act, wherein automobiles were stopped and searched by prohibition officers without a warrant.

Carroll vs. U. S. 267 U. S., 132, 69 L. Ed. 543.
Husty vs. U. S., 75 L. Ed. (Adv. Sheets) 294.

Thus if the officer sees the traffic laws of this State being violated, the arrest is valid, or if the officer has reasonable grounds of suspicion, supported by circumstances sufficiently strong in themselves to warrant him, as a cautious man, in believing that the accused is driving while under the influence of liquor, the arrest is justified. The existence of these facts depends upon the evidence which will be introduced before you. If you find that the evidence falls within either of the above categories, the arrest is valid and the evidence is admissible.

Second Question: The State must prove beyond a reasonable doubt that the defendant is guilty of the crime charged. Whether such proof has been offered depends upon the facts of each case. The officer's testimony concerning the smell of intoxicating liquor on the breath of an accused is one of the pertinent facts in the case. Such evidence must be duly weighed with all the evidence, and upon all of the facts if you feel beyond a reasonable doubt that the accused is guilty, you should find accordingly. If all the evidence does not convince you beyond a reasonable doubt of the accused's guilt, then you will naturally find a verdict of not guilty.

Yours very truly,

WM. PRESTON LANE, JR., *Attorney General.*

JUSTICE OF PEACE—CLERKS OF COURTS—UNIFORMITY OF FEES.

April 14, 1932.

Charles O. Clemson, Esq.,
Westminster, Md.

DEAR MR. CLEMSON: I have your letter of April 11th, referring to a lack of uniformity in the fees and charges of Justices of the Peace in the different counties, particullarly in Carroll County, Frederick County, Howard County and Baltimore County. You also state that the Clerk's fees are not uniform.

I do not find any rulings by the Attorney General relating to these matters, probably because it has been the invariable practice of the office not to render official opinions unless requested by a State officer or department. If counsel in a given case questions the legality of any charge, he should request the Justice or Clerk to ask the Attorney General for a ruling, in which case we should be glad to consider any legal question presented. However, the difficulty seems to lie rather in the general unwillingness of litigants to complain, even when they are obviously overcharged. If any such charges are made against any Justice of the Peace, we will, of course, take action as we have done in several instances.

The matter of fees is covered generally by the Public General Law, but may be different in a particular county by reason of exceptions in the general law, or by reason of a public local law in a particular county. For example, Justices of the Peace in Carroll County would appear to be governed by Art. 36, Sec. 20 of the Code (1929 Suppl.), but in Baltimore County, by Section 20 as it appears in the 1924 edition; I do not find any public local law fixing the charges of Justices of the Peace in civil cases in any of the counties mentioned.

Section 20 does not specify any charge for entering confession of judgment, so that it might be questioned whether

the justice could make a charge based on existing practice, or would be concluded by the charge of $1.00 specified for "judgment rendered where there is no trial."

The charges of Clerks of the Court would appear to be governed by Art. 36, Sec. 12 (1929 Suppl.), but here again, no charge is specified for entering judgment by confession. Probably the situation could be improved by the adoption of a more comprehensive State-wide law on this subject. Also, the State Auditor, who is trying to install a uniform accounting system, could assist in enforcing the law, by checking the various charges made by Clerks of the Courts. In the last analysis, however, I believe litigants will have to help themselves by timely complaint.

Yours very truly,

WM. PRESTON LANE, JR., *Attorney General.*

JUSTICES OF THE PEACE—GENERAL JURISDICTION AND JURISDICTION IN MOTOR VEHICLE CASES.

April 21, 1932.

Levin H. Hall, Esq.,
Justice of the Peace,
Ocean City, Md.

DEAR MR. HALL: Your letter of April 7th has been received. I understand from this letter that in your opinion the arresting officers of the State and County are ignoring you by taking before neighboring magistrates many cases which should be heard in your Court. You desire to know, what, if any, geographical limitation there is upon the jurisdiction of a Justice of the Peace. A broad distinction must be immediately drawn between motor vehicle cases and all other cases of a criminal and civil nature. Motor Vehicle cases are governed by a special section of the Code, that is,

Art. 56, Sec. 204 of the Code of Public General Laws of Maryland, Bagby's Edition, 1929 Suppl. This section provides:

> "In case any person shall be taken into custody because of a violation of any of the provisions of this sub-title, he shall forthwith be taken in the counties of this State before the nearest Justice of the Peace, committing Magistrate or Police Justice of the county in which the offense is committed * * *".

Under this section the accused upon being taken in custody by a police officer should be taken before that magistrate which is the nearest to the point of arrest. Thus, there should be brought before you all cases of arrest for the violation of the motor vehicle laws of this State in which you are the Justice of the Peace nearest the point of the arrest itself. This ruling is confirmed by an earlier opinion of this office found in Vol. 6, page 386, Official Opinions of the Attorney General.

In the absence of a special statutory limitation all other cases, both civil and criminal are governed by Art. 52, Sec. 5 of the Code of Public General Laws of Maryland, Bagby's Edition 1924. This section provides as follows:

> "Any Justice of the Peace where the defendant resides may, if the case be within his jurisdiction, try, hear and determine the matter in controversy between the plaintiff and defendant * * *".

Under this section any Justice of the Peace of the County where the defendant resides, may hear any case within the statutory limitation of the magistrate's jurisdiction. Thus such cases are not subject to any special delimitation as to where or before whom the same shall be tried.

I believe that you are also uncertain as to the costs which are allowed a magistrate for issuing a warrant. Such costs

are determined by Art. 56, Sec. 208 of the Code of Public General Laws of Maryland, Bagby's Edition 1924. Under this Section the only costs which are allowed a magistrate for the issuing of the warrant is the sum of fifty cents.

Yours very truly,

WM. PRESTON LANE, JR., *Attorney General.*

JUSTICE OF THE PEACE—SHOULD NOT ISSUE A SHOW CAUSE SUMMONS EXCEPT FOR PROBABLE CAUSE.

April 23, 1932.

Hon. Charles D. Gaither,
Police Commissioner,
Baltimore, Md.

MY DEAR GENERAL GAITHER: I have your letter of April 22nd, enclosing summons issued by Magistrate Joseph F. O'Donnell for Melern Jones of the Latrobe Apartments, and also a statement of Captain Frank Lindung relative to this summons. It appears that the summons was issued upon complaint of Melvin Green, who is a collector for Butler Brothers, Inc., 308 N. Eutaw Street. Magistrate O'Donnell states that the summons was merely a show cause summons and he did not know the nature or cause for which it was issued. You request me to advise you as to whether this summons was properly issued.

As I understand your letter and also the statement of Captain Lindung, you are of the impression that this summons was issued merely for the purpose of assisting the collector for Butler Bros., in the collection of a civil claim. Clearly the Police Department and the processes of the Police Magistrates at the Station houses should not be used for any such purpose. Unless the Police Justice has prob-

able cause to believe, upon sworn testimony produced before him, that a crime has been committed, he should not issue a summons such as was issued in this case.

I am enclosing a copy of a letter which I have sent to Judge O'Donnell.

With kind regards and best wishes, I am,

Very sincerely yours,

WILLIS R. JONES, *Deputy Attorney General.*

JUSTICE OF THE PEACE—FEES IN MOTOR VEHICLE CASES.

May 6, 1932.

Col. E. Austin Baughman,
Commissioner of Motor Vehicles,
Baltimore, Md.

DEAR COLONEL: I am in receipt of several inquiries forwarded to me from your office relative to the proper fees allowed justices of the peace in cases involving violations of the motor vehicle laws of this State. There seems to be some confusion in this matter among various magistrates of the State, and I am herewith giving you my opinion in an endeavor to clarify the situation.

Fees of a justice of the peace are determined by Art. 56, Sec. 208 of the Code of Public General Laws of Maryland, Bagby's Edition 1924. Under this section of the Code, it is apparent that costs will vary in at least three different sets of cases. These cases might be summarized as follows:

1. A defendant may be arrested; a warrant issued; and a plea of not guilty entered. In that event, assuming there is no question of a continuance, bail, or copies of warrants, etc. involved, the fees would be:

For issuing a warrant	$ .50
For trial	.50
For administering the oath to witness	.20
For entering the judgment	.25
Total	$1.45

2. A defendant may be arrested; a warrant issued, and a plea of guilty entered. In this event, assuming there is no question of a continuance, bail, or copies of docket entries, etc. involved, the fees would be as follows:

For issuing a warrant	$ .50
For entering the judgment	.25
Total	$ .75

3. A defendant may be given a summons by an officer and immediately go before the magistrate with the plea of guilty before a warrant has been sworn out. In this event, assuming there is no question of a continuance, bail, or copies of docket entries, etc. involved, the fees would be

For entering a judgment.....$ .25

For a further discussion of this matter see:

Official Opinions, A. G. Vol. 1, page 228
Official Opinions, A. G. Vol. 6, page 393.

Yours very truly,

WM. PRESTON LANE, JR., *Attorney General.*

JUSTICE OF PEACE—NO RIGHT TO REOPEN A CASE.

July 26, 1932.

Colonel E. Austin Baughman,
Commissioner of Motor Vehicles,
Baltimore, Md.

DEAR COLONEL: Your letter of July 22nd, was duly received. I believe the facts contained therein might be briefly summarized as follows:

The driver of a motor vehicle was found guilty of a violation of the motor vehicle laws of this State, before a Justice of the Peace in Prince George's County. He was taken before a committing Magistrate and deposited a bond for future appearance in the amount of $126.00. On the date of the trial the accused failed to appear and the bond was duly forfeited. The accused now wishes to reopen the case, stand trial, and if found not guilty, have returned to him the amount of bond which was duly posted.

It is well settled in this State that a Justice of the Peace has no power to grant a new trial, and that their judgments when once entered are final unless appealed from.

Thomas, Procedure in Justice Cases, 2nd Edition, paragraph 78.
Off. Op. A. G. Volume 11, page 190.

In the present case, the Justice of the Peace has entered a judgment of forfeiture of bond. This judgment is final and cannot be reopened.

Notwithstanding the forfeiture of bond, the accused may be tried upon the original charge, but his acquittal of the charge would have no effect upon the forfeiture of the bond.

Very truly yours,

WM. PRESTON LANE, JR., *Attorney General.*

JUSTICE OF PEACE—WHEN SENTENCE BEGINS TO RUN.

July 26, 1932.

Mr. Thomas John Hall, 3d,
Justice of the Peace,
Tracy's Landing, Md.

DEAR SIR: Mr. Owen R. E. McGeeney has forwarded to me your letter relative to a recent case which is causing you some difficulty.

I understand that the driver of a motor vehicle was duly tried before you, found guilty of a violation of various sections of the motor vehicle law of this State, and accordingly fined $137.00. I believe the accused informed you that he was going to take an appeal, but to date no such appeal has been entered. I further understand that upon default in payment of the fine, the accused was committed to jail under and by virtue of Article 38, Section 3 of the Code of Public General Laws of Maryland.

On this state of facts I understand you are doubtful whether the beginning of the jail term should date from the time the accused was originally committed, or from the end of the ten day period within which he had to enter an appeal. The accused having been committed to jail by virtue of Article 38, Section 3, the jail sentence should begin to run from the first day of incarceration.

It is therefore my opinion that the sentence should be computed from the day of commitment, and not from the last day on which the accused had the right to enter an appeal.

Very truly yours,

WM. PRESTON LANE, JR., *Attorney General.*

JUSTICES OF THE PEACE—NEED HAVE NO SEAL OF OFFICE—CRIMINAL LAW FORM OF WARRANT IN BALTIMORE CITY APPROVED.

August 4, 1932.

Hon. Charles D. Gaither,
Police Commissioner,
Police Building,
Baltimore, Md.

DEAR GENERAL GAITHER: My attention to your letter of July 20th, has been delayed because of my absence from the City.

You call attention to certain objections which have been raised to the form of warrant which has been in use by the Police Magistrates of Baltimore City for a number of years. I have considered all of these objections, and in my opinion, there is no necessity or occasion for any change in this form. The salutation reading "to any officer or one of the Constables of the City of Baltimore", is all embracive and includes every officer who is authorized by law to make an arrest. Section 42 of Art. 4 of the Maryland Constitution provides that Constables "shall be conservators of the peace". In view of this provision, it is unnecessary to amend the form by eliminating these officers from the salutation.

It is also contended that the form of warrant is improper in that it makes no provision for the affixing of the official seal of the issuing Justice of the Peace. These officials are not required by law to have an official seal, and it is not customary for them to have such seals. It is very clear that an official seal is unnecessary. See *Starr vs. U. S.* 153 U. S. 614.

With kind regards and best wishes, I am,

Yours very sincerely,

WILLIS R. JONES, *Deputy Attorney General.*

JUSTICE OF THE PEACE—NO RIGHT TO GIVE A SENTENCE LESS THAN THAT PROVIDED BY STATUTE.

October 21, 1932.

Hugh M. Fountain, Esq.,
Police Justice,
Cambridge, Md.

DEAR SIR: I beg to acknowledge receipt of your letter of October 8th. I understand that at the present time, you are called upon to impose sentence for a violation of Chapter 539, Section 65, of the Acts of 1931. I appreciate the thought you have given to this matter, and the fact that the imposition of sentence under this Act, or other Acts, may often bear heavily upon the accused. However, the Legislature is the body whose duty it is to determine what penalty shall be inflicted and the extent of the same in any given case. If the legislative policy is wrong and the penalty is seemingly too severe, the responsibility rests upon the Legislature, and not upon the magistrate. It is obviously not encumbent upon a magistrate to disregard the legislative policy as expressed in the clear and unequivocal words of the statute, and to impose a sentence other than that set forth in the Act. Thus, apart from all other considerations the magistrate, as a matter of policy, should not deviate from the express penalty determined by the Legislature.

The exact meaning of Article 52, Section 12, of the Code of Public General Laws of Maryland, Bagby's Edition, 1924, when construed in the light of Art. 27, Sec. 578, of the Code of Public General Laws of Maryland, Bagby's Edition, 1924, is decidedly uncertain. If it was the intent of the Legislature to grant a magistrate the right to suspend sentence, or the right to impose a less penalty than that prescribed by statute, then such right is given only by implication. The character of the right is so unusual and so contrary to the general accepted Maryland practice that it should not depend upon conjecture but should be expressly granted as exemplified in the Acts of 1929, Ch. 69, Sec. 4, codified as Art. 18, Sec. 270, page 4233, Code of Public Local Laws

of Maryland (Flack's Edition, 1930). With the law in such an ambiguous state, it would certainly seem to be the better practice for a magistrate to follow the statute itself rather than to depend upon such uncertain generality as may be found in Art. 52, Sec. 12.

Yours very truly,

WM. PRESTON LANE, JR., *Attorney General.*

JUSTICE OF THE PEACE—WHEN A JURY TRIAL MAY BE HAD.

December 15, 1932.

Hon. Meyer H. Getz,
State's Attorney for Harford County,
Belair, Md.

DEAR MR. GETZ: I beg to acknowledge receipt of your letter of December 7th. I believe the question therein raised might be summarized as follows:

> May a defendant accused of violating Article 99 of the Code of Public General Laws of Maryland, Bagby's Edition, 1929, when taken before a magistrate for trial, demand a jury trial in the first instance, and not submit to trial before the Magistrate?

Summary jurisdiction may be granted a magistrate without the right of an appeal from the ruling of the magistrate, or the right of a jury trial, being granted the accused.

State v. Glenn, 54 Md. 572;
State v. Loden, 117 Md. 373.

The right to an appeal, or the right to a jury trial, in proceedings before a magistrate is given in either one of two ways:

First: The statute creating the offense giving the magistrate jurisdiction may specifically provide for an appeal from the ruling of the magistrate, or for a jury trial by the accused. If such a provision is contained in the statute itself, the right is obviously secured.

Second: The offense may be of such a character that it is embraced within the operation of Art. 52, Sec. 12, Code of Public General Laws of Maryland, Bagby's Edition, 1924, or by a public local law of similar character. If a case is embraced within the operation of this Article the right to a jury trial or an appeal as therein set forth is guaranteed the defendant.

State vs. Beach, 153 Md. 618.

It has recently been decided that the rights granted an accused under and by virtue of Art. 52, Sec. 12 applies to all cases wherein original jurisdiction is given a magistrate, unless a contrary intent is clearly manifest in the statute itself.

State v. Beach, 153 Md. 618;
Crichton v. State, 115 Md. 423.

In the event the right is not given an accused by either of these two methods, then the accused is without the same. An application of these principles to the facts of the present case leads to the following conclusions:

1. Article 99, Code of Public General Laws of Maryland, Bagby's Edition 1929 Supplement, is divided into various sub-sections, each sub-section being a complete unit, and providing its own penalty for a violation of the same. It is unnecessary to set forth all the sections wherein varying penalties are provided for a violation of the various sub-sections, since the provisions with respect to an appeal from a magistrate, or the right to a jury trial is the same in each

instance. Sec. 30 is herewith set forth by way of example. This section provides:

> "Any person convicted before any justice of the peace of this State for violating any of the provisions of this sub-title shall be fined not less than twenty-five dollars ($25.00) nor more than one hundred dollars ($100.00) in the discretion of the justice of the peace and costs for each and every offense."

An examination of this section discloses that the right to a jury trial, or the right of an appeal is not granted by the same. Thus an accused has no right of appeal or right to a jury trial by virtue of Art. 99 itself.

2. Article 52, Section 12 has no application to the facts of this case. This section specifically provides as follows:

> "The several justices of the peace of the State of Maryland (except in the City of Baltimore and in Talbot, Harford, Montgomery and Frederick Counties) are hereby invested with and shall hereafter have jurisdiction * * * *".

Since by the express terms of Article 52, Section 12, Harford County is excluded from its operation, an accused can claim no rights under and by virtue of the same.

3. Chapter 680, Section 410 of the Acts of 1916, codified as Article 13, Section 405, Code of Public Local Laws of Maryland (Flack's Edition, 1930), is a Public Local Law for Harford County of the same general character as Article 52, Section 12, Code of Public General Laws. Section 410 of this Public Local Law, provides:

> "The several Justices of the Peace of Harford County shall have *in addition to the jurisdiction which they now possess* and which may be conferred upon them by or under the laws of this State, jurisdiction concurrent with that exercised

> by the Circuit Court. * * * If any person, when brought before any such justice having jurisdiction of the case, shall, before trial for the alleged offense, pray a jury trial * * * * * *, it shall be the duty of any such justice to commit such alleged offender for the action of the Grand Jury of the Circuit Court for Harford County * * * * * * and the justice before whom the case is tried shall inform the person charged of his right to a jury trial. And if on waiver of jury trial before the justice, and trial before him, either party shall feel aggrieved, there shall be right of appeal to the Circuit Court for Harford County. * * * *"

This section, in so far as this case is concerned, is almost a verbatim copy of the Acts of 1896, Chap. 128, Section 11A. The exact meaning of Section 11A of Chapter 128 was clearly set forth by the Court of Appeals in the case of *Ward v. State,* 95 Md. 118. In this case, the defendant was indicted for the violation of a Public Local Law of Anne Arundel County, regulating the shooting of wild fowl. The penalty providing for a violation of this local law was as follows:

> "If any person shall violate any of the provisions of preceding sections, he shall be deemed guilty of a misdemeanor, and upon conviction thereof before any justice of the peace in Anne Arundel County shall be fined the sum of not less than five nor more than twenty dollars for each offense with the costs of prosecution for the same".

The defendant demanded a jury trial before the magistrate under and by virtue of Section 11A, Chapter 128 of the Acts of 1896. The case ultimately came before the Court of Appeals wherein it was decided that the defendant had no right to a jury trial, and no right of appeal. In considering the scope and operation of Section 11A, the Court held, that this section contained a grant of new jurisdiction to magistrates, and that the provisions of Section

11A, giving the right to a jury trial, and the right to an appeal, were limited solely to the jurisdiction conferred by Section 11A, and had no application to jurisdiction therein before exercised by magistrates, or which might thereafter be conferred upon magistrates. This is conclusive of the present question unless reversed by some subsequent ruling of the Court of Appeals.

Ward v. State, has been carefully reviewed but not reversed by the Court of Appeals in the recent case of *State v. Beach,* 153 Md. 618. In this case the defendant was indicted for a violation of Article 99, Section 103, Code of Public General Laws of Maryland, Bagby's Edition, 1924. The defendant noted an appeal from a conviction of the magistrate, under and by virtue of Article 52, Section 12, which appeal was granted by the lower Court, and the State entered an appeal to the Court of Appeals, relying upon the Ward case. The ruling of the lower Court was affirmed. The Court of Appeals, however, was careful to distinguish this case from the Ward case. The Court explained that the Ward case involved Section 11A of the Acts of 1896, and then emphasized and stressed the fact that this section contained the following phrase *"shall have in addition to the jurisdiction which they now possess"*, which phrase clearly showed an additional grant of jurisdiction to magistrates. Since this is an additional grant of jurisdiction, it followed that the guarantees set forth in the Act were only applicable to the new offenses over which the magistrates were given jurisdiction. The Court then pointed out that this section was modified by Chap. 475 of the Acts of 1906, wherein this phrase was excluded, and in its place a broad grant of jurisdiction was specifically given, without any delimitation of any character. The Court then concluded that because these delimiting words were stricken out of Art. 52, Sec. 12, this Article applied, but affirmed the ruling of the Court in the *Ward* case, where these words were present.

In the present case, Art. 13, Sec. 405 of the Public Local Laws of Harford County contained the exact words which the Court explained is the basis of the ruling in the Beach case; distinguishes the Beach case from the *Ward* case, and

is the *ratio decidendi* of the Ward case. Since the Court has not reversed the Ward case, but has affirmed the ruling of that case, in so far as the present question is concerned, it follows that the *Ward* case is conclusive of the present question.

Therefore, it is my opinion that there is no right to an immediate jury trial in hearings before a magistrate for a violation of Article 99 of the Code of Public General Laws of Maryland, Bagby's Edition, 1929 Supplement.

Yours very truly,

WM. PRESTON LANE, JR., *Attorney General.*

JUSTICES OF THE PEACE—THE JUSTICE OF THE PEACE FOR THE THIRD DISTRICT OF ANNE ARUNDEL COUNTY HAS POWER TO EXERCISE CIVIL AND CRIMINAL JURISDICTION IN ANNAPOLIS.

December 15, 1932.

Mr. Charles W. Mulligan,
Justice of the Peace,
Court House,
Annapolis, Md.

DEAR MR. MULLIGAN: In your letter of December 13th, you request an opinion as to your power to exercise civil and criminal jurisdiction in the City of Annapolis, which constitutes the Sixth Election District of Anne Arundel County.

I understand that you were appointed and qualified as a Justice of the Peace for the Third District of Anne Arundel County and that Justices Hopkins and Anderson were appointed and qualified as Police Justices for the Sixth Election District. You further state that on or about November 1st, you were asked to substitute for Justices Hopkins and Anderson and did so for a few days, after which Jus-

tice Hopkins returned to duty, but Justice Anderson is still unable to perform his duties because of illness and has asked you to take charge of his office until his return; that in several civil suits instituted before you, you have made the same returnable before Justice Anderson, expecting him to return by the time of trial, and you desire particularly to be advised whether you have the power to try these civil cases at this time in the absence of Justice Anderson.

Under Sections 344 and 345 of the Code of Public Local Laws of Maryland, Edition of 1930, it is contemplated that the two Justices for the Sixth District shall exercise all of the criminal jurisdiction over which a Justice of the Peace has jurisdiction, and for the performance of these duties a salary is provided by Section 361 of the same Article. It is not provided that these two Justices shall have exclusive civil or criminal jurisdiction in Annapolis and in my opinion you are authorized to exercise both civil and criminal jurisdiction in Annapolis under Section 5 of Article 52 of the Code of Public General Laws and Section 359 of Article 2 of the Code of Public Local Laws.

By reason of the provisions of Section 345 of Article 2 of the Code of Public Local Laws, I believe Judge Hopkins should now exercise all of the criminal jurisdiction in Annapolis until the return of Justice Anderson and I do not believe you should retain any of the costs for any criminal jurisdiction you may exercise in the City of Annapolis by reason of the provision of Section 344.

In my opinion, you have full authority to try the cases instituted before you and made returnable before Justice Anderson under Sections 5 and 25 of Article 52 of the Code of Public General Laws.

In my hasty examination of this subject, I do not find any code provision applicable in Anne Arundel County which gives the defendant a right to demand trial before a Justice in the district in which he resides and in the absence of such a provision, I think you may exercise civil jurisdiction in the cases against defendants residing outside the City of Annapolis to which you refer.

Since the salaries which are provided for the Police Justices for the City of Annapolis are by way of service in

criminal cases, it would seem to follow that you are within your rights in collecting the costs in the civil cases coming before you.

With kind regards and best wishes, I am,

Very truly yours,

WILLIS R. JONES, *Deputy Attorney General.*

LABOR

LABOR—CHILD LABOR—PERMISSIBLE TO EMPLOY STABLE BOYS BETWEEN AGES OF 14 AND 16, PROVIDED THEY OBTAIN EMPLOYMENT CERTIFICATES FROM THE COMMISSIONER.

May 6, 1932.

Dr. J. Knox Insley,
Commissioner of Labor & Statistics,
16 W. Saratoga Street,
Baltimore, Md.

DEAR DR. INSLEY: I have your letter of May 3rd, inquiring if it is permissible, under the Child Labor Law, for minors between the ages of 14 and 16 to be employed at the Maryland Race Tracks as stable boys, riders or exercise boys.

The pertinent provisions of the Child Labor Law were all adopted by the Acts of 1916, Ch. 222, (Code, Art. 100, Sections 4-53 incl.) and must be construed together.

By Sec. 4 of Art. 100, it is forbidden to employ children under 14 in certain named industries, including "any mill, factory * * * public stable * * *" and so forth.

By Sec. 8 of Art. 100, it is forbidden to employ children under 16 in certain specified manufacturing processes, such as "processes in which dangerous or poisonous acid are used * * * on scaffolding or in heavy work in the building trades * * * or in any other occupation dangerous to the life and limb * * *".

By Sec. 10 of Art. 100 children between the ages of 14 and 16 may be permitted to engage in the employments specified in Sec. 4, after the issuance of an employment certificate by the Commissioner of Labor and Statistics.

It is clear that the legislature did not intend to absolutely forbid the employment of stable boys over 14, since it did not include such employment in Sec. 8, but only in Sec. 4.

Further, the expression "other occupation dangerous to the life and limb", as used in Sec. 8, must be construed in the light of the other sections. Such language cannot be construed as applicable to every dangerous occupation for some of the occupations permitted by Sec. 4 have elements of danger.

It is a general rule of statutory construction, known as *ejusdem generis,* that when general words follow a designation of particular subjects or classes, the meaning of the general words will ordinarily be presumed to be restricted by the particular designation, and to include only things of the same kind, class or nature as those specifically enumerated. Applying this rule, I am of the opinion that work of the character in question is not prohibited by Sec. 8 to boys over 14, merely because such work may have elements of danger.

I am of the opinion, however, that boys under 16 cannot be thus employed without the issuance of employment certificates, and the requirements of the statute as to consent of parents, school records, certificate of physician, etc., must be strictly complied with.

Very truly yours,

WM. PRESTON LANE, JR., *Attorney General.*

LABOR—POWER OF COMMISSIONER TO INVESTIGATE STRIKES —NATURE OF INVESTIGATION—WHETHER TESTIMONY MUST BE PUBLISHED.

December 8, 1932.

Dr. J. Knox Insley,
Commissioner of Labor and Statistics,
16 W. Saratoga Street,
City.

MY DEAR DR. INSLEY: You have asked me for a written opinion covering certain questions raised in connection with

your investigation of the garment strike in Baltimore City, about which I have previously advised you verbally.

1. The first question concerns your authority to arbitrate or investigate in any case after a strike or lockout has actually occurred. The arbitration sections of the law, Art. 89, Sections 1 to 11, deal solely with disputes "which may result in a strike", but by the adoption of Section 12 in the Acts of 1916, somewhat wider powers are conferred. The duty is imposed "to promote the voluntary arbitration, mediation, and conciliation of controversies and disputes between employers and employees, and to avoid resort to lockouts, boycotts, in or arising out of such controversies and disputes and matters of employment". The Commissioner is authorized to appoint a Board of Arbitration, with specified powers, and "shall himself have like power to conduct investigations and hold hearings, summons and enforce the attendance of witnesses, administer oaths, require the production of books, documents and papers, and make and publish reports and findings with respect to any and all matters covered by this section."

In my opinion the power conferred upon you by this section may be exercised at any stage of a controversy, whether before or after a strike has actually occurred.

2. The second question concerns the nature of the investigation. The primary object of the proceeding is, of course, the amicable settlement of disputes between employers and employees, who are the interested parties. Each side is entitled to be represented in the proceedings, and should be given a reasonable opportunity to present testimony to support their respective contentions. Such testimony should, of course, be limited to the questions at issue. I find nothing in the law to require that the hearings be open to the general public. On the contrary, Section 11 expressly provides that "all information of a personal character or pertaining to the private business of any person, firm or corporation, or which might have a tendency to expose the profits or methods of doing business by any person, firm or corporation * * * * * shall be deemed confidential and so treated * * *".

In my opinion this provision clearly negatives the supposition that public hearings were contemplated by the Legislature. The Commissioner is required to "make and publish reports and findings", which is in the nature of a judicial decree, although it is not legally enforceable, but must depend for its effect upon public opinion.

3. The law does not require that any part of the testimony or proceedings be published, except the report and findings. The decision as to what facts should be incorporated in the report must rest in the sound discretion of the Commissioner, with due regard to the circumstances of the particular case.

Yours very truly,

WM. PRESTON LANE, JR., *Attorney General.*

LICENSES

LICENSES—MARRIAGE—A MARRIAGE LICENSE IS GOOD UNTIL USED.

January 21, 1932.

Hon. T. Clayton Horsey,
Denton, Md.

DEAR MR. HORSEY: I have your letter of January 18th, enclosing communication from Mr. G. Victor Johnson. Mr. Johnson states that on August 27th, 1931, he procured a marriage license in your County, but this license has not been used. You request me to advise you whether there is anything in the law to prohibit the marriage of the parties named in this license at this time.

There is nothing in the statutes of this state relating to marriages which prescribes any time within which a marriage ceremony must be performed after the issuance of the license. You are therefore advised that such licenses are good until used.

With kind regards and best wishes, I am,

Very truly yours,

WILLIS R. JONES, *Deputy Attorney General.*

LICENSES—TRADERS—A GROUP PURCHASING CORPORATION WHICH BUYS AND SELLS TO ITS MEMBERS ONLY IS REQUIRED TO OBTAIN A LICENSE.

February 15, 1932.

Frank P. Bratten, Esq.,
Chief License Inspector,
Union Trust Building,
Baltimore, Md.

DEAR MR. BRATTEN: I have your letter of February 11th, enclosing communication from Mr. Harry O. Levin, with respect to the United Food Stores. You desire to be advised whether this concern is required to obtain a trader's license.

From Mr. Levin's letter it appears that the United Food Stores was incorporated in 1929 by certain independent grocers in Baltimore, to act as a purchasing agency for its members; it has no capital stock, and its sole purpose is to buy merchandise in large quantities, and "thereby derive the benefit for its members to whom these goods are sold. Its only customers are its own members in good standing, to whom it sells at cost price, plus the operating expenses."

It is contended that no trader's license is required since the corporation is not operated for profit. This contention is based upon Section 5 of Article 56 of the Code, by which it is provided:

> "Nothing in this Article shall be deemed to apply to persons who do not buy or sell with a view to profit in the prosecution of some regular trade or business."

I am unable to agree with the contention that this corporation falls within the purview of the Section quoted. The object of this corporation is to enable its members to purchase merchandise at a smaller cost than they could purchase the same merchandise in the open market. To this extent the members of the corporation profit by the scheme,

and since it is engaged in the business of selling merchandise to its members in competition with other wholesale dealers who are required to obtain a license, it does not, in my opinion, fall within the exemption provided by Section 5.

Very truly yours,

WILLIS R. JONES, *Deputy Attorney General.*

LICENSES—BILLIARD LICENSES TRANSFERABLE.

February 17, 1932.

James A. Claypoole, Esq.,
Clerk, Court of Common Pleas,
Court House,
Baltimore, Md.

DEAR MR. CLAYPOOLE: Confirming my telephone conversation with Mr. Wolfe of your office yesterday, I am of the opinion that billiard table licenses are transferable.

This question was covered in principle by a ruling of this office on December 12th, 1931, in which it was held that a restaurant license is transferable, although the statute is silent on the point. Subsequently, I also ruled that a soda water license was transferable.

I am aware that these rulings are at variance with an opinion of Attorney General Ritchie, in 4 Opinions of the Attorney General, page 115, but in view of the administrative practice to the contrary, and the fact that such a ruling would result in the collection of a double tax, and in view of the further fact that these licenses must be issued to anyone applying therefor, I was constrained to differ from that opinion.

The effect of the present ruling is to make all licenses transferable, except those that are expressly made non-transferable by statute, or those in which the granting of

a license is made to depend upon the personal qualifications or good conduct of the applicant. In other words, I would distinguish between licenses of a purely revenue producing character and those of a regulatory character.

Yours very truly,

WM. PRESTON LANE, JR., *Attorney General.*

LICENSES—SALE OF BREAD—THE KIND OF LICENSE REQUIRED.

February 17, 1932.

Hon. Fred. R. Owens,
State's Attorney for
Caroline County,
Denton, Md.

DEAR MR. OWENS: In your letter of February 11th, you state that Edward Walls, who resides at Millington, wants to knew whether it is necessary for him to take out a license to retail bread in Caroline County. You state that the bread is baked in Wilmington and shipped to him at Millington for sale at retail.

If Mr. Walls sells the bread from a regular place of business, he is required to obtain a trader's license, as provided by Section 42 of Article 56, as he is not the grower, maker, or manufacturer of the bread which he sells. If he does not have a regular place of business, and engages in the practice of selling the bread from door to door, he is required to obtain a license as a hawker and peddler as provided by Sections 26 to 35 of Art. 56, in each County in which he may do business in this manner.

With kind regards and best wishes, I am,

Yours very truly,

WILLIS R. JONES, *Deputy Attorney General.*

LICENSES—HAWKERS AND PEDDLERS—SALE OF BREAD IS NOT EXEMPT FROM STATUTE RELATING TO HAWKERS AND PEDDLERS.

February 24, 1932.

Hon. Fred. R. Owens,
State's Attorney,
Denton, Md.

DEAR MR. OWENS: I have your letter of February 20th, with further reference to the license matter about which I wrote you some days ago.

If the baking company simply delivers bread in this State for the purpose of fulfilling orders previously taken, then no license is required. On the other hand, if this company engages in the practice of making sales and deliveries from door to door, then it must obtain a hawker's and peddler's license in order to do business in this manner. It may develop that a portion of the business of the baking company would not require a license while another portion of its business would require a license. Under these circumstances, the Company would be obliged to obtain a hawker's and peddler's license for each of its employees engaging in business in this State, and the license should be issued in the name of the employee rather than the Company as will be noted by Section 28 of Article 56.

If I can be of any further assistance to you in this matter, I shall be glad to have you call upon me.

With kind regards and best wishes, I am,

Yours very sincerely,

WILLIS R. JONES, *Deputy Attorney General.*

LICENSES—CONSTRUCTION COMPANIES—WHERE THE TOTAL OF THE ORDERS ACCEPTED AND EXECUTED EXCEEDS $5,000.00 PER ANNUM A LICENSE IS REQUIRED IN EACH COUNTY WHERE BUSINESS IS CARRIED ON.

March 8, 1932.

Mr. Frank P. Bratten,
Chief Inspector, State Licenses,
1002 Union Trust Building,
Baltimore, Md.

DEAR MR. BRATTEN: In your letter of February 29th, you request an opinion as to the proper construction of Section 246 of Article 56 of the Code of Public General Laws, entitled "Licenses". The section in question requires each resident contracting firm to obtain a license "and pay an annual license fee of $10.00 if operating in the City of Baltimore, and a like amount of $10.00 if operating in each county of the State in which said person, firm or domestic corporation shall operate; provided, however, this section shall not apply to persons, firms or corporations doing a construction business the gross amount of whose orders accepted and executed does not exceed five thousand dollars ($5,000) per annum".

You particularly ask to be advised as to whether a firm, whose orders in Baltimore City amount to less than $5,000 per year, but whose aggregate business in and outside of Baltimore exceeds $5,000 per year, should be required to obtain a license in each county in which the firm operates.

The exemption provided by law is, in my opinion, intended to apply to those contracting firms whose total orders accepted and executed in the State do not exceed $5,000 per anuum. The statute does not make the exemption applicable to firms whose gross amount of business does not exceed $5,000 *in any one county* or *in the City of Baltimore.* This is a public general law and the legislature evidently intended that it should apply to every contractor whose

total volume of business exceeds $5,000 per annum within the State.

With kind regards and best wishes, I am,

Yours very truly,

WILLIS R. JONES, *Deputy Attorney General.*

LICENSES—HAWKERS AND PEDDLERS—MANUFACTURERS ARE NOT EXEMPT FROM THE STATUTE REQUIRING A HAWKERS AND PEDDLERS LICENSE.

March 28, 1932.

Hon. Meyer H. Getz,
State's Attorney,
Belair, Md.

DEAR MR. GETZ: Your letter of March 23rd, addressed to the Attorney General, has been referred to me for reply.

There is no provision of law which exempts a manufacturer from the application of the statute relating to hawkers and peddlers, and where a manufacturer peddles his wares from door to door or place to place, making sales and deliveries to consumers at the same time, a hawkers and peddlers license is required (Secs. 26 and 27, Art. 56).

A license must be obtained by each salesman and such a license cannot be issued to a partnership or company (Sec. 28, Art. 56).

Where the goods are delivered upon an order previously taken, a hawkers and peddlers license is not required.

I believe the above will fully answer your inquiry, but if you desire any additional information, I shall be glad to have you write me further.

With kind regards and best wishes, I am,

Yours very sincerely,

WILLIS R. JONES, *Deputy Attorney General.*

LICENSE—CONSTRUCTION CONTRACTOR—NO LICENSE REQUIRED FOR CONSTRUCTION OF FEDERAL POST OFFICE.

May 7, 1932.

Hon. Lloyd L. Shaffer,
Clerk, Circuit Court,
Cumberland, Md.

DEAR MR. SHAFFER: Your letter of May 6th, addressed to the Attorney General, has been referred to me for reply. You state that the United States Government is building a post office at Cumberland, and that the contract has been awarded to a construction company of Cleveland, Ohio. You request an opinion as to whether this company is required to obtain a construction license in the State of Maryland.

As this is an undertaking of the Federal Government, no State license for this particular work is required, regardless of whether the contract be awarded to a resident or non-resident construction company.

Yours very truly,

WILLIS R. JONES, *Deputy Attorney General.*

LICENSES—TRADERS—NO LICENSE REQUIRED FOR SALE OF GOODS BY "GROWER, MAKER OR MANUFACTURER" AND SUCH GOODS SHOULD BE EXCLUDED IN COMPUTING LICENSE FEES.

May 10, 1932.

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

DEAR MR. SHAFFER: Your letter of April 28th addressed to the Attorney General, enclosing correspondence

from the Sun Oil Company, has been referred to me for reply. The law with respect to this subject is correctly set forth in your letter to the Company dated April 16th, 1932.

It is true that the grower, maker or manufacturer of goods is not required to obtain a trader's license, and to the extent that a trader sells such goods, he is not required to obtain a trader's license. Where, however, the grower, maker or manufacturer, in addition to the sale of goods produced by him, sells other goods which are not produced by him, a trader's license is required. In computing the amount of the license fee required to be paid, it is proper to exclude the average amount of goods grown, made or manufactured by the applicant.

I believe the above will fully answer your inquiry, but if you desire any additional information, I shall be glad to have you write me further.

With kind regards, I am,

Very truly yours,

WILLIS R. JONES, *Deputy Attorney General.*

LICENSES—RESTAURANT—NO LICENSE REQUIRED FOR CONDUCT OF CAFETERIA IN U. S. POST OFFICE WHERE ENTERPRISE IS NOT OPERATED FOR PROFIT.

June 1, 1932.

Frank P. Bratten, Esq.,
Chief Inspector State Licenses,
1002 Union Trust Building,
Baltimore, Md.

DEAR SIR: I have your letter of May 26th, enclosing communication from Mr. Ernest Green, acting Postmaster of the City of Baltimore, requesting an opinion as to whether it will be necessary to obtain a State license in order to maintain a cafeteria in the new Post Office Building.

Mr. Green states that the cafeteria will be operated on a non-profit sharing basis by a committee selected from the different Government activities located in the building, and that it is proposed to sell cigars and cigarettes in addition to food products.

Section 5 of Article 56 of the Code of Public General Laws, entitled "Licenses", reads as follows:

> "Nothing in this Article shall be deemed to apply to persons who do not buy or sell with a view to profit in the prosecution of some regular trade or business."

The Code provisions, relating to licenses to operate cafeterias and to sell cigars and cigarettes, are contained in other sections of Article 56. In the light of the language contained in Section 5 of Article 56, above referred to, it is clear that no license is required in order to conduct the business in the manner described in Mr. Green's letter.

Yours very truly,

WILLIS R. JONES, *Deputy Attorney General.*

LICENSES—HAWKERS AND PEDDLERS—ICE DEALERS—NEED NOT OBTAIN LICENSE FOR SALE OF ICE TO REGULAR CUSTOMERS.

June 17, 1932.

Hon. Walter J. Mitchell,
La Plata, Md.

DEAR SENATOR MITCHELL: On behalf of the Attorney General, I am answering your letter of June 15th, in which you request an opinion as to whether Sections 26 and 27 of Article 56 of the Code should be construed so as to prohibit the sale and delivery of ice by dealers who do not sell any other commodity.

While there is no specific exemption in either of these sections in favor of a dealer in ice, it has been the uniform practice in Baltimore to permit ice to be sold and delivered without obtaining the license provided for by those sections. Where ice or any other commodity is delivered in pursuance of a standing order or order previously given, it is the opinion of this Department that such transactions do not constitute hawking and peddling within the meaning of these sections, and that a trader's license is sufficient for such transactions. I am in thorough accord with you that the Legislature never intended to require every operator of an ice or milk wagon to obtain a hawkers and peddlers license.

With kind regards and best wishes, I am,

Very sincerely yours,

WILLIS R. JONES, *Deputy Attorney General.*

LICENSES—MARRIAGE—CONSENT OF BOTH PARENTS REQUIRED FOR ISSUANCE OF MARRIAGE LICENSE TO MINOR.

June 18, 1932.

Hon. Brice Bowie,
Clerk, Circuit Court,
Upper Marlboro, Md.

DEAR MR. BOWIE: Your letter of June 14th, addressed to the Attorney General, has been received. You desire to be advised what course you should follow where the parents of a minor applying for a marriage license are separated, and the consent of but one parent is obtainable.

Section 7 of Article 62 of the Code of Public General Laws 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."

We have been unable to locate any Court decision which deals with the question presented by your letter, but upon inquiry, we find that the Clerk of the Court of Common Pleas of Baltimore City uniformly requires the consent of both parents before issuing a license in such case.

In my judgment this practice should be followed by the Clerk and where one of the parents refuses to consent, a license should not be issued unless a guardian is appointed and assents to the issue.

With kind regards and best wishes, I am,

Yours very truly,

WILLIS R. JONES, *Deputy Attorney General.*

LICENSES—HAWKERS AND PEDDLERS—NO LICENSE REQUIRED FOR THE SALE OF ICE TO REGULAR CUSTOMERS.

June 20, 1932.

Hon. Edward J. Edelen,
LaPlata, Md.

DEAR MR. EDELEN: On behalf of the Attorney General, I am answering your letter of June 16th.

In the opinion of this department, a local manufacturer of ice, who sells the same from a truck to regular customers and collects upon delivery or later, is not required to obtain any license. While there is no exemption in the law relating to hawkers and peddlers (Sections 26 and 27, of Article 56) in favor of dealers or manufacturers of ice, it has been

the uniform practice in Baltimore City not to require such a license to be obtained by persons who sell ice from a wagon, truck or other vehicle. Usually, such sales are made as incidental to the delivery of ice to regular customers, and the persons operating such vehicles are not held to be hawkers and peddlers within the meaning of the statute. The same practice has been followed with reference to milk wagons and trucks. If an ice dealer has no regular customers and his entire business consists of peddling ice, his transactions would probably fall within the letter of the statute, but so far as I am advised, no ice dealers have been required to obtain a license provided by the above mentioned sections of the Code.

Where the ice is bought from some other manufacturer by a dealer and sold at retail to his customers, either from a truck or an etsablished place of business, a trader's license is required by the dealer.

As you know, the law relating to traders' licenses (Sec. 42, Art. 56) expressly exempts the "grower, maker or manufacturer" from obtaining such a license.

As I had occasion to answer a similar communication from Senator Walter J. Mitchell some days ago, I am taking the liberty of sending him a copy of this letter and enclose herewith a copy of my letter to him.

With kind regards and best wishes, I am,

Yours very truly,

WILLIS R. JONES, *Deputy Attorney General.*

LICENSES—HAWKERS AND PEDDLERS—THE SALE AND DELIVERY OF BREAD FROM DOOR TO DOOR REQUIRES A HAWKERS AND PEDDLERS LICENSE—NO DISTINCTION BETWEEN RESIDENTS AND NON-RESIDENTS.

July 19, 1932.

Hon. Oliver S. Mullikin,
State's Attorney,
Easton, Md.

DEAR MR. MULLIKIN: On behalf of the Attorney General, I am answering your letter of July 18th, in which you request an opinion as to whether a hawker's and peddler's license is required to sell bread from door to door in the State of Maryland.

Where the bread is sold from door to door for cash without a previous order having been given, it is the opinion of this Department that a hawker's and peddler's license is required. If, however, the bread is delivered in pursuance of an order previously given, we do not believe that such transactions constitute peddling, within the meaning of the statute. The law upon this subject is of course, equally applicable to both resident and non-resident bakeries.

With kind regards and best wishes, I am,

Very truly yours,

WILLIS R. JONES, *Deputy Attorney General.*

LICENSES—MARRIAGE—BEFORE A MINISTER MAY LAWFULLY PERFORM A MARRIAGE CEREMONY THE PARTIES MUST PRODUCE A LICENSE FROM THE CLERK OF THE COURT OF THE COUNTY WHERE THE CEREMONY IS TO BE PERFORMED.

August 9, 1932.

Hon. S. Ralph Andrews,
Clerk of the Circuit Court,
Elkton, Md.

DEAR MR. ANDREWS: Answering your letter of August 4th, addressed to the Attorney General, you are advised that a marriage license issued by you, as Clerk of the Circuit Court for Cecil County, does not authorize a ceremony to be performed in any other County or State. If a Minister performs a marriage ceremony in this State without a license from the Clerk of the Court for the County in which the ceremony is performed, Section 11 of Article 62 provides that such Minister "shall on conviction thereof be fined not less than $100.00 nor more than $500.00, in the discretion of the Court".

The Court of Appeals has held in the case of Feehley vs. Feehley, 129 Md. 569, that the failure to obtain a marriage license does not render a marriage void where there has been a religious ceremony. Where the ceremony is performed in another State, the validity of the marriage as well as the prosecution of the parties or the person performing the ceremony must depend upon the law of the place at which the ceremony is performed.

Yours very truly,

WILLIS R. JONES, *Deputy Attorney General.*

LICENSES—TOWN OF CENTREVILLE HAS NO POWER TO PASS LICENSE LAWS EXCEPT AS GRANTED BY LEGISLATURE AND MAY NOT DISCRIMINATE AGAINST NON-RESIDENTS.

August 17, 1932.

Hon. William R. Horney,
State's Attorney, .
Centreville, Md.

DEAR MR. HORNEY: Your letter of August 13th, enclosing copy of Ordinance No. 343, enacted by the Town Commissioners of Centreville, and requesting an opinion as to the validity of this Ordinance, has been received.

Section 1 of the Ordinance requires a town license for every person who shall with push cart, wagon, automobile, automobile truck or any vehicle whatsoever use the parking space on Broadway, in the town of Centreville, for the purpose of selling anything whatsoever.

Section 2 of the Ordinance requires every person "other than residents of Queen Annes County, who have raised the produce they offer for sale, or fishermen and oystermen of said county, to obtain a town license in order to make sales from door to door".

Section 91 of Article 18 of the Code of Public Local Laws of 1930, provides that the Town Commissioners of Centreville "shall have charge, control and management of the markethouse in the town, and full power and authority to enact rules and regulations for the sale in the town, of all meats, poultry, fish, fruits, vegetables and other provisions, and to enforce all such rules and regulations by fines, penalties and forfeitures".

I have been unable to locate any other provisions in the local laws relating to Centreville, which would authorize the Town Commissioners to exact a license fee for sales within the Town, and it is believed that the powers of the Town Commissioners in this regard are limited to the articles enumerated in Section 91, and that the Commissioners are without power to exact a license for the sale of anything that does not fall within the purview of this Section.

In the absence of additional information as to what is meant by the words in Section 1 of the Ordinance reading "the parking space on Broadway", it is not possible to determine whether the Town Commissioners are authorized to require a license for sales within this space, while no license is required in other portions of the town. It would seem that any license fee that might be exacted should be uniform throughout the town, unless the space referred to can be treated as something in the nature of a city controlled market, in which event the Town Commissioners would probably be entitled to exact a license for sales within that space while requiring no such license for other portions of the Town.

Section 2 of the Ordinance in question is clearly invalid under the decision of the Court of Appeals in the case of Mercer vs. State, 132 Md. 263, where it was held that there can be no discrimination against non-residents in the issuance of licenses to carry on business.

I am sending a copy of this letter to Mr. B. W. Holland, a Justice of the Peace, of Secretary, who has also made inquiry concerning the right of the Town of Centreville to exact local licenses, and enclose herewith a copy of my letter to him.

With kind regards and best wishes, I am,

Yours very truly,

WILLIS R. JONES, *Deputy Attorney General.*

LICENSES—HAWKERS AND PEDDLERS—WHEN SUCH A LICENSE IS REQUIRED.

October 5, 1932.

Hon. Meyer H. Getz,
State's Attorney,
Belair, Md.

DEAR MR. GETZ: On behalf of the Attorney General, I am answering your letter of October 4th, in which you request an opinion as to whether a hawkers' and peddlers' license is required for the selling of goods and merchandise from a vehicle moving from place to place, direct to the consumer, where payment for the goods is made either at the time of the sale or at the end of the week or month.

The doing of business in the manner indicated by your letter falls within the purview of Sections 26 to 35 of Article 56 of the Code of Public General Laws relating to hawkers and peddlers. You will observe by Section 26 that "oysters and fish in their unpreserved and natural condition", and "fruits and vegetables perishable in their nature that are sold in their natural condition" are exempt from the application of the statute. If a person sells only these articles in the manner indicated, he is not required to obtain a hawkers' and peddlers' license, but is required to obtain a traders' license under the provisions of Section 42 of Article 56, unless he can be said to be the grower, maker or manufacturer of such articles. The sale of any other articles in the manner indicated by your letter is covered by Section 26, and a hawkers' and peddlers' license is required for the doing of business in this manner.

It will be observed that there is no exemption from the requirement to obtain a hawkers' and peddlers' license in favor of manufacturers, and it is immaterial whether the articles are paid for at the time of delivery or thereafter. It is not believed, however, that a person who delivers articles in pursuance of an order previously given, can be said to fall within the purview of the statute relating to hawkers and peddlers. It is the view of this Department that it is

only where the sale and delivery are co-temperaneous that a hawkers' and peddlers' license is required.

With kind regards and best wishes, I am,

Very sincerely yours,

WILLIS R. JONES, *Deputy Attorney General.*

LICENSES—SEPARATE SODA FOUNTAINS IN SAME STORE REQUIRE SEPARATE LICENSES.

October 14, 1932.

Mr. Frank P. Bratten,
Chief License Inspector,
Union Trust Building,
Baltimore, Md.

DEAR MR. BRATTEN: I have before me your correspondence with McCrory Stores Corporation in regard to their liability for the payment of a license upon the operation of soda fountains in their store at 117-121 North Howard Street. It appears that this company operates two fountains upon the same floor of a single store and they contend that it is only necessary for them to procure one license under these circumstances.

Section 237 of Article 56 of the Code provides that a license shall be taken out "for each fountain so operated", and in my opinion this means that a separate license is required for each separate fountain, without regard to their location. I have examined the opinions of the Attorney General for a number of years and have found no ruling upon the subject, but I understand the practice has been uniform in requiring a separate license for each fountain. I can see no reason for departing from the existing practice in view of the clear language of the statute.

I am enclosing a copy of this opinion in order that you may forward the same to the McCrory Stores Corporation as requested.

Very truly yours,

WM. PRESTON LANE, JR., *Attorney General.*

LICENSES—MARRIAGE AND DIVORCE—THE CLERK SHOULD ISSUE A MARRIAGE LICENSE TO AN APPLICANT WHO HAS BEEN DIVORCED IN ANOTHER STATE NOTWITHSTANDING A PROVISION IN THE DECREE ENJOINING REMARRIAGE.

October 22, 1932.

Louis McLane Merryman, Esq.,
Clerk of the Circuit Court,
Towson, Md.

DEAR MR. MERRYMAN: On behalf of the Attorney General I am answering your letter of October 20th, in which you request an opinion as to whether you may properly issue a marriage license to Richard C. Louttit.

In your letter you state that under date of February 30th, 1931, Mr. Louttit's wife Mildred Louttit was granted an absolute divorce from her husband, who is now applying for a marriage license and that the decree was issued by the Circuit Court of Ohio County, West Virginia. You state that at the time of the rendition of the above decree, Mrs. Louttit was a resident of West Virginia but Mr. Louttit was a non-resident of that state and that he was proceeded against by an order of publication, no personal summons having been served on him at any stage of the proceeding. The decree of divorce contains a provision prohibiting the remarriage of the plaintiff for a period of six months from its date and a further provision prohibiting and preventing the defendant's remarriage for a period of three years from that time.

On the assumption that the above facts are true, I believe Mr. Louttit is entitled to a marriage license in this state under the decision of the Court of Appeals in the case of *Garner vs. Garner,* 56 Md. 127. In this case our Court held that a similar provision contained in a decree of divorce granted in this State under Chapter 272 of the Acts of 1872, against a non-resident who was not summoned and who did not personally appear and submit to the jurisdiction of the court, was invalid and of no effect. If, therefore, you are satisfied as to the accuracy of the facts set forth in your letter, I think you may safely issue the license to Mr. Louttit.

We do not undertake to pass upon the question as to whether the ensuing marriage of Mr. Louttit would be valid in West Virginia, or whether his action in violating the decree would constitute contempt in West Virginia.

With kind regards and best wishes, I am,

Very sincerely yours,

WILLIS R. JONES, *Deputy Attorney General.*

MARRIAGE AND DIVORCE—THE LAW DOES NOT REQUIRE THE PRESENCE OF WITNESSES AT THE MARRIAGE CEREMONY BUT THE PRACTICE SHOULD BE FOLLOWED WHEREVER POSSIBLE.

July 22, 1932.

Hon. James Y. Claypoole,
Clerk of the Court of
Common Pleas,
Court House,
Baltimore, Md.

DEAR MR. CLAYPOOLE: Answering your letter of July 21st, you are advised that there is no statute law in this state which requires the presence of two witnesses at the

performance of a marriage ceremony. It is customary for witnesses to be present at the performance of such a ceremony and as this custom tends to protect the parties by enabling them to prove the ceremony in the event of any subsequent contest as to its legality, it should be followed whenever possible.

With kind regards and best wishes, I am,

Very sincerely yours,

WILLIS R. JONES, *Deputy Attorney General.*

MARRIAGE AND DIVORCE—A MEXICAN DIVORCE SHOULD BE REGARDED AS VALID UNTIL SET ASIDE BY A COURT OF COMPETENT JURISDICTION.

August 31, 1932.

S. Ralph Andrews, Esq.,
Clerk of the Circuit Court,
Elkton, Md.

DEAR SIR: In your letter of August 29th, addressed to the Attorney General, you request an opinion as to whether you should recognize divorces procured through the courts of Mexico.

You are advised that such divorces are valid and binding upon the Clerks of the Courts of this State until they are set aside and declared to be ineffective by a court of competent jurisdiction.

Very truly yours,

WILLIS R. JONES, *Deputy Attorney General.*

MARYLAND ESTATE TAX

MARYLAND ESTATE TAX — TAX ON COMMISSIONS OF EXECUTOR OR ADMINISTRATOR ARE NOT DEDUCTIBLE— THE STATE'S SHARE OF THE FEDERAL ESTATE TAX.

July 13, 1932.

Hon. Edwin R. Downes,
Register of Wills,
Court House,
Baltimore, Md.

DEAR DR. DOWNES: Your letter of April 8th, enclosing communication from the Executors of the estate of James C. Gittings, has been received. You desire to be advised concerning the computation of the Maryland Estate Tax, which is imposed by Article 62-A of the Code of Public General Laws.

The first administration account of the Executors shows a gross estate of $608,609.96, and the payment of a tax of $1,377.21 upon the commissions of the Executors, and that the Executors did not claim and were not allowed any commissions over and above the taxes which were paid by them.

In filing their return for the Federal Estate Tax with the Collector of Internal Revenue, the Executors showed a net estate for taxation in the amount of $465,514.35, which did not make allowance for a deduction of the sum of $1377.21, paid to the State of Maryland as a tax upon commissions.

The Executors contend that this sum of $1377.21 should not be deducted from the estate before the computation of the Federal Estate Tax, but that it should be deducted from the proportion of the Federal Estate Tax which is payable to the State of Maryland under Article 62A of the Code of Public General Laws, when considered in connection with Section 1993 of the United States Code Annotated, which reads as follows:

> "Taxes paid States, Territories, or District of Columbia as credits; limitations. The Tax imposed by section 1092 of this title shall be credited with the amount of any estate, inheritance, legacy, or

> succession taxes actually paid to any State or Territory or the District of Columbia, in respect of any property included in the gross estate. The credit allowed by this section shall not exceed 80 per centum of the tax imposed by section 1092 of this title, and shall include only such taxes as were actually paid and credit therefor claimed within three years after the filing of the return required by section 1096 of this title."

I am unable to agree with the contention of the Executors, for the reason that the tax on their commissions is not "an estate, inheritance, legacy, or succession" tax, within the meaning of Section 1093 of the United States Code, Annotated. I am informed that it has been the uniform practice of the Federal authorities to treat both the commissions to Executors and the tax upon those commissions as expenses of administration, deductible from the gross estate upon which the estate tax is to be computed. This construction is in line with the decision of the Court of Appeals in the case of *Williams vs. State,* 144 Md. at page 18, where it was held that the tax on commissions is not an estate tax, but "is in the nature of a tax for the privilege of serving in the office of Executor or Administrator."

You are therefore advised that in the opinion of this Department, the Executors should amend their return to the Collector of Internal Revenue by deducting the sum of $1377.21, so as to show a net estate for taxation of $464,137.14. This will produce an estate tax in the sum of $15,706.86. Of this sum 80%, or $12,565.49, will be payable to the State of Maryland, and this payment will be in addition to the sum of $1377.21 paid by way of a tax on commissions.

Very truly yours,

WILLIS R. JONES, *Deputy Attorney General.*

Note: The above opinion was sustained by the Court of Appeals in the case of Cross vs. Downes. See Daily Record, February 21, 1933.

MILITARY DEPARTMENT

MILITARY DEPARTMENT—NOT REQUIRED TO ADVERTISE FOR BIDS FOR RECONSTRUCTION OF 5TH REGIMENT ARMORY.

September 30, 1932.

General Milton A. Reckord,
Richmond Market Armory,
Baltimore, Md.

DEAR GENERAL RECKORD: In our telephone conversation of yesterday, you inquired whether the Military Department of the State Government has authority to undertake the reconstruction of the damaged portion of the Fifth Regiment Armory without advertising for bids and awarding the contract for this work upon a competitive basis.

As I understand your inquiry, the cost of reconstructing the building will be borne mainly out of the proceeds of insurance which the State has collected as a result of the recent fire at this Armory.

There is nothing in the statute law of the State which requires advertising for bids for the performance of this work, and you are therefore advised that your Department has full authority to undertake the performance of this work upon any basis which you may deem most advantageous to the State.

I believe it has been customary to advertise for bids for the construction of State buildings generally, even though the law does not require such a course of procedure, and if you desire to abandon this course in connection with the reconstruction work at the Fifth Regiment Armory, I would suggest that the method to be employed in the performance of the work be submitted to the Board of Public Works for its approval. While this procedure is not mandatory, I believe it would be a good policy for you to pursue, and that

it would forestall any criticism that might otherwise be made.

With kind regards and best wishes, I am,

Very sincerely yours,

WILLIS R. JONES, *Deputy Attorney General.*

MILITARY DEPARTMENT—STATE HAS FEE SIMPLE TITLE TO CONFEDERATE HOME AT PIKESVILLE AND LEGISLATURE MAY AUTHORIZE SALE.

December 28, 1932.

General Milton A. Reckord,
Richmond Market Armory,
Baltimore, Md.

DEAR GENERAL RECKORD: In your letter of November 25th, you request an opinion as to the power of the State to dispose of the buildings and real estate at Pikesville heretofore occupied by the Confederate Home. This property was acquired by the State under an Act of Congress approved on March 2nd, 1879, a copy of which you sent to me, and by which it was provided:

> "That the Secretary of War is hereby authorized and directed to dispose of the ground, buildings, and appurtenances, known as the Pikesville Arsenal, in the State of Maryland, by public sale to the highest bidder; turning into the Treasury the net proceeds after paying the cost of advertising sale, etc.; Provided, that if the State of Maryland shall, prior to the 1st of March, 1880, accept the same, it is hereby granted and donated to said State, to be used for such Militia or other purposes as the necessities of the State may require; and the Secretary of War is hereby authorized and

> directed to transfer said property to the State of Maryland, to be held by it in trust for the use, benefit and execution of the purposes of this grant."

The property was accepted by the State and the acceptance was duly authorized by the passage of Chapter 5 of the Acts of the General Assembly of Maryland of 1880. Thereafter by the passage of Chapter 46 of the Acts of 1888, the property was "transferred to the Association of the Maryland Line, to be used by it for the benefit of such disabled and destitute Confederate soldiers as it may admit; the said association to have the use of the said property as long as the same is needed by it for the purposes aforesaid."

I understand from your letter that the Maryland Line has no further use for the property and it therefore follows that the purposes of the grant have been fully accomplished and the property now reverts to the State.

In my opinion, the State acquired a fee simple title to this property by virtue of the Act of Congress of March 2nd, 1879, and Chapter 5 of the Acts of the General Assembly of Maryland of 1880. It will be noted that the Act of Congress provided that the property should be "granted and donated to said State, to be used for such militia or other purposes as the necessities of the State may require." I find no such limitation contained in this Act as to warrant the conclusion that the property would ever revert to the Federal Government.

The conclusion which I have reached is somewhat supported by the actual sale of a portion of the property in pursuance of Chapter 359 of the Acts of 1912. I would suggest that a bill be prepared for consideration by the approaching session of the Legislature to authorize the Board of Public Works to sell the property and to provide for the disposition of the proceeds of sale. This bill should include appropriate recitals and probably provide for the repeal of the grant to the Maryland Line, since it has no further use for the property.

If, after your conference with the Governor, you will supply us with the necessary information as to the desired

disposition of the proceeds, we will be glad to prepare the bill for introduction in the Legislature.

With kind regards and best wishes, I am,

Very sincerely yours,

WILLIS R. JONES, *Deputy Attorney General.*

MINES

MINES—INSPECTORS SHOULD NOT BE PERMITTED TO TESTIFY AS EXPERTS IN PRIVATE CASES.

April 26, 1932.

Dr. J. J. Rutledge,
Bureau of Mines,
22 Light Street,
Baltimore, Md.

DEAR DR. RUTLEDGE: I have your letter of April 25th, enclosing letter from Mr. A. Taylor Smith of Cumberland, asking that you allow two of your Inspectors to examine the Tyson seam of the Consolidation Coal Company in Frostburg, in order that they may testify as to the condition of the pillars and roof in a pending suit, brought by the owner of the surface, who is claiming damages for subsidence, due to an alleged negligent mining operation. You inquire whether you should comply with this request.

Under the provisions of the mining law, it is the duty of your inspectors to examine all mines periodically, to determine their condition with respect to safety, and they could, of course, be summoned to testify as to the conditions found in the course of their official inspections. I understand, however, that the inspection requested in this case is outside of their official duties, and preliminary to their testifying as experts. Such testimony could be furnished by any qualified mining engineer. Since your inspectors are full-time State employees, I should think, as a matter of policy, it would be inadvisable to permit them to testify as experts in

private cases, as the time spent in this occupation would oe at the expense of the State, and if permitted to any great extent, might seriously interfere with the performance of their official duties.

Very truly yours,

WM. PRESTON LANE, JR., *Attorney General.*

MINES—COMPANY STORES—OPERATION OR OWNERSHIP BY MINING COMPANY PROHIBITED.

October 26, 1932.

Dr. J. J. Rutledge,
Bureau of Mines,
City.

DEAR DOCTOR RUTLEDGE: In answer to the question you asked me a few days ago regarding Company Stores, the matter is covered by Art. 23, Sec. 248, of the Code (1924 Ed.), reading as follows:

> "No railroad or mining company formed or organized under any of the provisions of this Article, or which has organized under any existing laws, Charter or Act of the General Assembly of this State, shall own, conduct or carry on any store, or have any interest in any store, or receive any portion of the profits thereof; but nothing herein contained shall prevent the employees of any corporation from forming co-operative stores."

This Section should probably be included in your pamphlet of the mining laws.

Yours very truly,

WM. PRESTON LANE, JR., *Attorney General.*

MONTROSE SCHOOL FOR GIRLS

MONTROSE SCHOOL FOR GIRLS—MARRIAGE OF INMATE DOES NOT AFFECT COMMITMENT. TWO PAROLES CONSIDERED.

February 15, 1932.

Miss Elizabeth G. Corbell,
Parole Counsellor,
Montrose School for Girls,
Reisterstown, Md.

MY DEAR MISS CORBELL: At our recent interview you requested me to advise you the proper course to pursue with respect to two girls who were committed to the Montrose School. At that time I was unable to advise you because you did not have with you copies of the commitments or the rules of the School with respect to paroles. You subsequently sent to me under date of January 27th, a copy of the commitment of one of the girls, and also a copy of the rules relating to parole. I regret that it has not been possible for me to advise you sooner.

In the case of Pauline Webster, it appears that she was committed to the School by the Juvenile Court for Baltimore City on June 26th, 1929, when she was sixteen years of age. She was paroled to her mother on September 28th, 1930, and returned to the School on June 19th, 1931, because of her running away from the home where she was working. She escaped from the School on July 2nd, 1931, and the same day was taken to the Baltimore City Jail, where she was held as a State's witness in a murder trial. She was not discharged from the City Jail until November 6th, 1931, when she returned to her own home. She is now above eighteen years of age, and you desire to be advised whether the School may demand her return as its charge until she reaches the age of twenty-one years.

The commitment in this case requires the School "to receive said Pauline Webster to be kept and detained under

your care and custody until discharged by due course of law." There is nothing in the rules which you sent me which prescribes the circumstances and conditions under which a paroled minor shall be returned to the School.

Under the above circumstances, I am of the opinion that the School has lost jurisdiction over this minor, and that it cannot compel her to return to it.

In the case of Virginia Nally, it appears that she was committed by the Juvenile Court for Baltimore City, and subsequently paroled. While on parole she married, with the consent of her father, but later deserted and abandoned her husband and has refused to return to him. She was returned to the School by her father because of improper conduct and his inability to control her behavior. You state that the City has refused to pay for her support at the School, on the ground that she should be supported by her husband.

I am unable to agree with the contentions of the City with respect to this case. Certainly the husband of this girl cannot be compelled to support her if she has deserted and abandoned him. You did not send me a copy of the commitment in this case, and I am unable to advise you definitely whether the School now has the right to retain this child, in the absence of a new commitment. As she is still under eighteen years of age, it would be a simple matter to have her re-committed to the School so as to avoid any possible contention by the City that she is being retained without a proper commitment. I suggest that this course be pursued unless it is made clear by the previous commitment that she may now be retained under that instrument.

Very truly yours,

WILLIS R. JONES, *Deputy Attorney General.*

MONTROSE SCHOOL FOR GIRLS—MAY BY AGREEMENT ACCEPT GIRLS COMMITTED BY FEDERAL COURTS.

March 3rd, 1932.

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

DEAR DR. SMITH: I have your letter of February 26th, enclosing copy of letter dated February 1st, addressed to the Attorney General. We have no record of having received the original letter of February 1st, and this accounts for the failure to answer that communication. You desire to be advised whether the Montrose School for Girls may accept girls committed by the Federal Courts.

Under Section 632 of Article 27 of the Code, the Board of Managers of the School are required to provide accommodations for "at least one hundred girls who may be committed to said School from the various counties of the State and from Baltimore City." There is a further provision contained in Section 633 by which the provisions of Section 621 of the same Article are made applicable to the Montrose School. Under Section 621 the Board of Managers of the Maryland Training School for Boys may accept minors upon a commitment by Justices of the Peace and the several Courts of this State, and may also accept "such white male children as their parents, guardians or friends may desire to place therein for temporary restraint and discipline and where the parents, guardians or friends shall agree and contract with the Managers for their support and maintenance."

While the above provisions are probably not intended to include commitments by the Federal Courts, I believe that the Board of Managers for the Montrose School may enter into an agreement with any person who may have the custody and control of a minor, falling within the class of minors usually admitted to the School, the agreement to provide for the custody, support and maintenance of the minor and the compensation therefor, and there is no valid reason why such an agreement may not be made with the

duly authorized Federal officers. In making such agreement, the Board should reserve the right to cancel upon reasonable notice, so as to be able to take care of all commitments to the School within the limits prescribed by Section 632 of Article 27. The monies derived for the support of minors in pursuance of such an agreement should be treated as other customary receipts.

Yours very truly,

WILLIS R. JONES, *Deputy Attorney General.*

MONTROSE SCHOOL FOR GIRLS—POWER TO PAROLE INMATES AND PAY BOARD.

June 13th, 1932.

Clarence A. Tucker, Esq., Treasurer,
Montrose School for Girls,
1418 Fidelity Building,
Baltimore, Md.

DEAR MR. TUCKER: In your letter of June 10th, you request an opinion as to whether the Montrose School for Girls has authority to make contracts for the payment of board of inmates who are paroled and placed in private homes.

Section 632 of Article 27 of the Code requires the County or City from which a minor is committed to the School to pay the sum of $25.00 per annum for each white female minor, paroled and under the control of the Montrose School for Girls, for supervising said white female minors." It is further provided that "the expense for care, training and supervision of all white female minors in the Montrose School for Girls and on parole and under its control, shall be a charge upon each County and the City of Baltimore committing such white female minor."

The maximum amount which a County or the City may be required to pay for a minor on parole is $25.00 per annum, and as this sum is intended to cover the cost of super-

vision, there is no authority for the payment of board for minors on parole.

I note that the minors who have been placed in private homes are girls who were sent to the Sheppard and Enoch Pratt Hospital for observation and treatment, and that when these girls were discharged from this hospital the Superintendent did not feel that they were in such condition as to make it wise to bring them back to the School, nor could they be put on parole in private homes except upon payment of board.

In my judgment, the law does not authorize a parole in cases of this character. Before an inmate may be paroled the Board must be satisfied that the best interest of the inmate under consideration requires such action. In no case may an inmate be paroled merely for the purpose of weeding out an undesirable. The law governing this institution contemplates that those inmates who have responded to the beneficent treatment accorded to them at the School and who may earn their way without the necessity of paying board, shall be eligible for parole in the discretion of the Board of Managers when the welfare of the inmate will be promoted by such a course.

If an inmate becomes insane and for this reason unfit to be retained at the School, steps can and should be taken for the commitment of such an inmate to one of the State Hospitals for the Insane.

With kind regards and best wishes, I am,

Yours very sincerely,

WILLIS R. JONES, *Deputy Attorney General.*

MONTROSE SCHOOL FOR GIRLS—POWER TO PAY BOARD FOR INMATES PAROLED FURTHER DISCUSSED.

June 18, 1932.

Clarence A. Tucker, Esq., Treasurer,
Montrose School for Girls,
1418 Fidelity Building,
Baltimore, Md.

DEAR MR. TUCKER: I have your letter of June 15th, with further reference to the right of the Montrose School for Girls to pay board for inmates who have been paroled, and asking whether it would have changed my views if I had known that there was a special appropriation in the Budget to meet the cases referred to in your letter.

Before writing you on June 13th, I examined the appropriations for the Montrose School for Girls for the years 1932 and 1933, and I did not find any appropriation expressly dedicated to the payment of board. Item No. 47, which will be found on page 338 of the Laws of 1931, shows an appropriation of $1200.00 for each of the years 1932 and 1933 for "Other Expenses." If these sums were actually inserted in the Budget for the purpose of paying board in the extraordinary and unusual cases referred to in your letter, then I believe that this money may be expended for that purpose, especially if the Board is satisfied that the welfare of the individual minors, as well as of the Institution, will be promoted, and that the public safety will not be endangered by such a course.

I am sure you understand that this Department has no desire to render any opinion that will circumscribe the powers of the Board of Managers for this Institution in the discharge of its duties, but we do believe that the statute should be amended before the Institution undertakes to disburse monies in payment of board for minors on parole in excess of the sums appropriated for the purpose. It is not believed that the Governor would be warranted in amending the Budget so as to authorize the disbursement

of monies for any purpose not expressly authorized by the statutes governing the Institution.

If I can be of any further assistance to you in connection with the problem under consideration, do not hesitate to call upon me.

With kind regards and best wishes, I am,

Very sincerely yours,

WILLIS R. JONES, *Deputy Attorney General.*

MOTION PICTURE EXAMINERS

MOTION PICTURE EXAMINERS—NO FEE CHARGEABLE FOR EACH EXAMINATION.

September 1, 1932.

State Board of Examiners of
Moving Picture Operators,
506 E. Baltimore Street, Room 4,
Baltimore, Md.

GENTLEMEN: At the request of Mr. Miller, Treasurer of the Board, I herewith give you an opinion of this office relative to the following question:

> May the State Board of Examiners of Moving Picture Operators of Baltimore City charge a fee of $10.00 for each and every examination given by the Board?

This question is solely dependent upon Sec. 691E, page 1178, Code of Public Local Laws of Maryland, Flack's Edition, 1930. This Section, among other things, provides:

> "That if any such person desires to engage or continue in said business of moving picture machine operator after the passage of this Act, he shall apply to the Board * * * for a license and submit to an examination as to his qualification before said Board; and if found proficient by said Board, they shall issue a license, otherwise they shall refuse to grant a license; if the said Board shall find, after due examination, that the said applicant for a license possesses a reasonable knowledge of the moving picture machine operator business and electricity, as pertains to the operation and management of moving picture machines, then the

> said Board shall, upon payment of the fee herein provided for, issue to said applicant a license for a term of not more than one year * * * provided that each applicant for the license shall pay to the said Board a license fee of $10.00 * * * ".

This same Section then continues and provides for a fee of $5.00 a year for the yearly renewal of such a license.

Thus it is obvious that the fee is not a charge for the giving of an examination, but a charge levied for a license.

Therefore, it is my opinion that the Board cannot charge an examination fee of $10.00.

Yours very truly,

WM. PRESTON LANE, JR., *Attorney General.*

MOTOR VEHICLES

MOTOR VEHICLES—STATE CAR NOT REQUIRED TO CARRY INSURANCE UNDER FINANCIAL RESPONSIBILITY ACT.

January 13, 1932.

Hon. John M. Dennis,
Treasurer of the State of Maryland,
Annapolis, Md.

DEAR MR. DENNIS: Your letter of January 9th has been duly received. I understand the question therein stated to be as follows:

> Must the State of Maryland carry Automobile Insurance under and by virtue of the Acts of 1931, Chapter 498, known as the Financial Responsibility Act?

The Act itself specifically answers this question. Paragraph 187-M, sub-paragraph B, provides:

> " 'Persons' shall include individuals, partnerships, corporations, receivers, referees, trustees, executors and administrators; and shall also include the owner of any motor vehicle as requisite, but shall not include the State or any political subdivision thereof."

Therefore, it is my opinion that under and by virtue of this Act, it is not necessary for the State to carry liability and property damage insurance.

Yours very truly,

WM. PRESTON LANE, JR., *Attorney General.*

MOTOR VEHICLES—PERSONAL LIABILITY OF DRIVER OF STATE OWNED VEHICLE.

January 19, 1932.

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

DEAR MR. DENNIS: Your letter of January 8th has been duly received.

I understand the question as stated therein to be as follows:

> Is the driver of an automobile owned by the State, while driving the car on business for the State, personally liable in an action of tort if he has an accident?

The driver is merely the agent of the State. The State is immune against suit, but this immunity does not extend to its agent.

Therefore, it is my opinion that the driver is personally responsible.

Yours very truly,

WM. PRESTON LANE, JR., *Attorney General.*

MOTOR VEHICLES—CHARACTER OF DRIVER LICENSE TRANSPORTING SCHOOL CHILDREN GRATIS.

January 25, 1932.

Col. E. Austin Baughman,
Commissioner of Motor Vehicles,
Baltimore, Md.

DEAR COLONEL: Your letter of January 12th was duly received. I understand the facts therein stated to be as follows:

> In Calvert County school children are carried to and from school by "school buses" operating over regular "school bus routes." There are a number of children in the county who are not within these routes. These children are carried to and from school by a member of the family in the family car. If there are two or more families in the same neighborhood, each family alternates in carrying the children of the neighborhood, and in the use of their cars. Under a local law, an allowance is given the driver of such cars in lieu of the free transportation which should be furnished. This allowance is not enough to cover the actual cost of the use of the car, while the drivers' services are furnished gratis. In the light of these facts, there are two questions:
>
> 1. Must the driver of such a car take out a "chauffeur's" license?
>
> 2. Must the owner of such car take out a "hacker's" license?

1. The driver of such a car receives nothing for the services rendered, and there is no "employer-employee" relationship existing between the driver and the owner of the car. Hence, it is obvious that the driver is not a chauffeur and therefore does not have to take out a chauffeur's license.

2. Art. 56, Sec. 182, Par. F. Bagby's Annotated Code, 1929 Supplement, provides that a hacker's license must be taken out in

> "The case of all motor vehicles operating for the purpose of transporting persons for hire upon any of the public highways of this State * * * ".

There is no transportation for hire in the carrying of these children, and therefore a hacker's license need not be obtained by the owner of such a car.

Yours very truly,

WM. PRESTON LANE, JR., *Attorney General.*

MOTOR VEHICLES — TAXICABS — REVOCATION OF TAXICAB LICENSE FOLLOWING REVOCATION OF PERMIT BY PUBLIC SERVICE COMMISSION.

February 10, 1932.

Col. E. Austin Baughman,
Commissioner of Motor Vehicles,
Baltimore, Md.

DEAR COL. BAUGHMAN: Your letter of January 28th was duly received. I understand the question therein stated to be as follows:

> When a "taxicab permit" has been revoked by the Public Service Commission of Maryland, does the Commissioner of Motor Vehicles of Maryland have the right to revoke the taxicab license issued by that office?

Chapter 485 of the Acts of 1931, popularly known as the "Taxicab Bill," granted the Public Service Commission jurisdiction over all taxicabs in this State operating in cities having a population of more than 50,000 persons. Section

361A provides that no taxicab shall be operated without a permit from the Public Service Commission. After such permit has been obtained the Commissioner of Motor Vehicles, as a matter of routine, issues the regular taxicab license.

Section 361A also gives the Public Service Commission the right to revoke a permit for reasonable cause after it has been granted. If the Public Service Commission has exercised this right under Section 361A, and has revoked the permit, the motor vehicle whose permit has been so revoked no longer has the right to operate as a taxicab. Since the motor vehicle no longer has the right to operate as a taxicab, it follows that such a vehicle has no right to a taxicab license. The right to a license is dependent upon the permit. When the permit is revoked, the right is destroyed. Since the vehicle has lost its right to a taxicab license, the Commissioner of Motor Vehicles must have the implied power to revoke the license which is improperly held and can no longer be used.

The Commissioner of Motor Vehicles may also revoke the license under and by virtue of Article 56, Section 189, of the Code of Public General Laws of Maryland, Bagby's Edition, 1929 Supplement. This Section provides that the Commissioner may revoke a license "whenever the owner of any motor vehicle shall make or permit to be made any use of the same without having complied with the licensing provision of this and of every other law of this State."

It is obvious that a taxicab driven without a permit from the Public Service Commission is not complying with the licensing provisions of this State. Since these provisions have not been complied with, the Commissioner has the express authority to revoke the license. Therefore, it is my opinion that when a permit has been withdrawn by the Public Service Commission, the Commissioner of Motor Vehicles has the right to revoke the taxicab license issued in conformity therewith by that office.

Yours very truly,

WM. PRESTON LANE, JR., *Attorney General.*

MOTOR VEHICLES—DEPARTING FROM A LANE OF TRAFFIC.

March 1st, 1932.

Robert H. LaPorte, Esq.,
Justice of the Peace,
4th Election District,
Glendon, Md.

DEAR SIR: I am herewith writing you relative to certain questions which have recently given you some difficulty. I understand that you are uncertain how you should decide a case brought before you wherein the driver of a motor vehicle has pulled out of his line of traffic and over a white line placed in the center of the State highway for the purpose of avoiding slow moving vehicles immediately ahead of him, the road itself being level and the way being clear of other motor vehicles coming in the opposite direction.

This question is answered by Chapter 428 of the Acts of the Maryland General Assembly of 1931. Section 209A of this Act provides:

> "Whenever any street or highway has been divided into clearly marked lanes for traffic, drivers of vehicles shall obey the following regulations:
>
> "b. A vehicle shall be driven as nearly as is practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety."

Therefore, in cases of this character which may be brought before you, the single question is, Does the evidence show that the driver can pull out of the traffic lane with safety? If the evidence shows that this can be done safely, there has been no violation of the statute and the case should be dismissed.

Yours very truly,

WM. PRESTON LANE, JR., *Attorney General.*

MOTOR VEHICLES—WHAT CARS MUST HAVE TAGS. REGISTRATION OF CAR NOT DEPENDENT ON DOMICILE OF OWNER.

March 5th, 1932.

Col. E. Austin Baughman,
Commissioner of Motor Vehicles,
Baltimore, Md.

DEAR COLONEL BAUGHMAN: Your letter of the 26th has been received. From the enclosed correspondence, I understand the matter before you is as follows:

> A member of the Maryland Bar, employed by the United States Fidelity & Guaranty Company, at its home office in Baltimore, owns an automobile. He has a residence at 2415 St. Paul Street, where he and his family have resided for the last twelve years, although at present his wife and child are residing in West Virginia. He pays taxes in Maryland, votes in Maryland, considers himself domiciled in Maryland, and has always taken out Maryland registration tags for his car, including the 1932 tags. He owns a farm in West Virginia, where his family often spend the summer as well as other parts of the year. Since October his family has been in West Virginia, where his car is being used to take his child to and from school. The car will continue to be used for this purpose in West Virginia, unless the owner shall decide to use it for his individual purpose in Maryland. The West Virginia authorities insist that this car should have West Virginia tags, and refuse to allow the car to be used in West Virginia with the 1932 Maryland tags. The owner naturally insists that he is not required to carry tags for both States.

The question before you, therefore, is whether this man is required to have Maryland registration tags for his car.

Under and by virtue of Article 56, Section 179, of the Code of Public General Laws of Maryland, Bagby's Edition,

1929 Supplement, every owner of one or more motor vehicles shall pay to the Commissioner of Motor Vehicles a registration fee and obtain from the Commissioner a certificate of registration along with metal tags and markers before operating any vehicle in this State. Each year the Commissioner issues metal tags or registration markers for that year for which the owner pays a registration fee. The right to require such a certificate of registration and annual registration markers is not dependent upon the domicile or residence of the owner. This right is essentially an exercise of the police power by the State for the general protection of the public. Thus the right is dependent upon the use of the motor vehicle within the physical confines of the State, since it is the use of the vehicle which the State is seeking to regulate for the general welfare of the public. The extent of use within the State and not the residence or domicile of the owner is therefore the controlling factor. It would be perfectly possible and proper for a Maryland domiciliary or resident to own a car which is used solely and exclusively in other States. In this event, it is obvious that the place where the cars are in use, and not the State of Maryland, would have the right to require registration markers to be taken out.

In the present instance, the automobile is used almost exclusively in West Virginia. The use of this car in Maryland is occasional, and purely incidental to its primary use in West Virginia. So long as the status remains intact, the owner is not obliged to take out a Maryland license. If, however, the owner withdraws the car from West Virginia to Maryland to be used here for the owner's business or pleasure, then he would be required to take out a Maryland license.

Thus it is my opinion that at the present time, registration tags should be taken out in West Virginia, but if the situation changes, and the owner of the motor vehicle takes the car for his own use in Maryland, then Maryland tags at that time must be taken out.

Yours very truly,

WM. PRESTON LANE, JR., *Attorney General.*

MOTOR VEHICLES—FOREIGN MINISTER IN TRANSIT NOT SUBJECT TO ARREST.

March 30, 1932.

Col. E. Austin Baughman,
Commissioner of Motor Vehicles,
Baltimore, Md.

DEAR COLONEL: Your letter of March 22nd has been received. I understand the question before you is as follows:

> Is a duly accredited foreign minister, stopping off in the District of Columbia while on his way home, subject to arrest for violation of the motor vehicle laws of Maryland?

It is universally recognized that foreign ministers are not subject to the civil or criminal law of the individual States. This general doctrine of international law has been confirmed by congressional legislation on the subject.

R. S. 4063;
U. S. C. A. Title 22, Par. 252, p. 124.

Congress has further provided a penalty for the infringement of the above section.

R. S. 4064;
U. S. C. A. Title 22, Par. 253, p. 128.

For a full discussion of this question, see Opinions of the Attorney General, Vol. 6, p. 367.

This doctrine has been extended to grant immunity to a foreign minister while in transit through or stopping off in another country. In the case of *Holbrook vs. Henderson,* 6 N. Y. Super. Ct. (4 Sandf.) 619, a foreign minister while in transit through this country was held immune from arrest by State authorities. In *Wilson vs. Blanco,* 4 N. Y. (s) 714, a foreign minister while in transit in this country was held immune from civil suit.

Therefore, it is my opinion that a foreign minister who is stopping off in Washington, on his way home, is not subject to arrest for a violation of the motor vehicle law of Maryland.

Yours very truly,

WM. PRESTON LANE, JR., *Attorney General.*

MOTOR VEHICLES—RESPONSIBILITY OF OWNER IF OPERATOR DOES NOT HAVE LICENSE IN HIS POSSESSION.

June 13, 1932.

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

MY DEAR GOVERNOR RITCHIE: I beg to acknowledge receipt of your letter of the 5th. I understand from this letter that you have recently received applications for refunds in two motor vehicle cases, the facts of which might be summarized as follows:

> Each applicant is the owner of a motor vehicle, the driver of which did not have his driver's license with him while operating the same upon the highways of this State. Both the owners and the drivers were fined under Art. 56, Sec. 186, of the Code of Public General Laws of Maryland, Bagby's Edition, 1924. The evidence fails to show that the owner of each car knew, or ought to have known, that the driver of the same did not have his license with him while operating the vehicle.

Art. 56, Sec. 186, provides as follows:

> "No person shall operate a motor vehicle upon any highway of this State until he first shall have obtained a license for the purpose * * *".

Art. 56, Sec. 198, then provides, among other things, that a violation of this section is a misdemeanor punishable, as follows:

> "Any person violating any provision of this section, or any owner, operator or person in charge of a motor vehicle, who shall cause or permit the operation of such motor vehicle in violation of any provision of this section, shall be deemed guilty of a misdemeanor, and upon conviction, be subject to a fine of not less than ten dollars ($10.00) nor more than one hundred dollars ($100.00) for the first offense * * *".

It is obvious that the entire matter reduces itself to a single question:

Is knowledge by the owner of the driver's violation of the law an essential element of the offense, or is the owner guilty of a misdemeanor irrespective of his intent, no matter how innocent that intent may be.

That part of the above section wherein a violation of the provisions of Section 186 is made a misdemeanor is of a penal character and nature. It is an elementary rule of statutory construction that penal statutes must be strictly construed, and that the essence of the offense is an intentional violation. Thus it follows, that inasmuch as there is no intention to violate the law in the present case, there was no violation of the statute, and hence the conviction and fine was illegal.

Yours very truly,

WM. PRESTON LANE, JR., *Attorney General.*

MOTOR VEHICLES — OPERATOR'S LICENSE — OWNER OF A MOTOR VEHICLE WHO KNOWINGLY PERMITS ANOTHER TO OPERATE HIS AUTO WITHOUT AN OPERATOR'S LICENSE IS SUBJECT TO PROSECUTION.

July 6, 1932.

Col. E. Austin Baughman,
Commissioner of Motor Vehicles,
Baltimore, Md.

DEAR COLONEL BAUGHMAN: I have discussed with Mr. DeGarmedia, Chief Examiner of your office, certain general questions which have recently been brought to your attention as Commissioner of Motor Vehicles of this State. These questions are all dependent upon the following hypothetical set of facts, all of which facts have come before your office in various guises.

(1) *First Set of Facts and Question:* A Maryland owned motor vehicle, while being operated upon the highways of this State by some one other than the owner, but with the owner's permission, was stopped by a State police for good cause. Upon demand by such proper officer, the driver of the car was unable to produce a driver's license. His inability to produce such a license was due to one of two causes:

(a) He has no license from any State authorizing him to drive a car.

(b) He has been given a license but did not have it in his possession.

The question is: Is the owner of the car guilty of any violation of the motor vehicle laws of this State?

(2) *Second Set of Facts and Question:* The facts are exactly the same as above, except that the driver had a license with him but it was a license given by a State with whom Maryland has no reciprocity agreement, and whose driver's license Maryland refuses to recognize.

The question is the same as above: Is the owner of the car guilty of any violation of the motor vehicle laws of this State?

The questions raised by both sets of facts may be considered together. The only possible violation with which the owner might be charged is a violation of Art. 56, Sec. 186. This section, among other things, provides:

> "No person shall operate a motor vehicle upon any highway of this State until he first shall have obtained a license for the purpose * * *.
>
> "Any person violating any provision of this section, or any owner, operator or person in charge of a motor vehicle, who shall cause or permit the operation of such motor vehicle in violation of any provision of this section, shall be deemed guilty of a misdemeanor, and upon conviction, be subject to a fine of not less than ten dollars ($10.00) nor more than one hundred dollars ($100.00) for the first offense * * *".

It is obvious that the question of guilt or innocence of the accused under this section of the Code resolves itself into a single consideration, namely,—Is knowledge by the owner of the driver's violation of the law an essential element of the offense, or is the owner guilty of a misdemeanor irrespective of his intent, no matter how innocent that intent may be.

In considering this same general question, it was stated in a recent opinion of this office, dated June 13th, 1932, as follows:

> "That part of the above section wherein a violation of the provisions of Section 186 is made a misdemeanor is of a penal character and nature. It is an elementary rule of statutory construction that penal statutes must be strictly construed, and that the essence of the offense is an intentional violation. Thus it follows, that inasmuch as there is no intention to violate the law in the present case, there was no violation of the statute, and hence the conviction and fine was illegal."

If the circumstances are such that the owner knew, or as a reasonable prudent person ought to have known, that the driver of his car did not have a driver's license, or did not have his driver's license with him, then, and in that event, there has been an intentional violation and the owner is guilty of a violation of the above section. However, in the absence of any such knowledge, it is the opinion of this office that the owner of the motor vehicle has not violated any of the motor vehicle laws of this State.

Yours very truly,

WM. PRESTON LANE, JR., *Attorney General.*

MOTOR VEHICLES—IMMUNITY OF GOVERNMENT EMPLOYEES.

August 16, 1932.

Hon. Simon E. Sobeloff,
United States Attorney,
District of Maryland,
Baltimore, Md.

DEAR MR. SOBELOFF: Answering your letter of August 15th, you are advised that the views set forth by you are in full accord with the opinion of the Attorney General.

Since the decision of the case of *Johnson vs. the State of Maryland,* decided by the Supreme Court of the United States on November 8th, 1920, it has been definitely settled that the State cannot require an employee of the Federal Government to obtain an operator's or chauffeur's license for the operation of a motor vehicle in the discharge of his official duties. It is equally clear that if the Federal employee operates a motor vehicle, government owned or otherwise, on personal business, and not in pursuance of the discharge of his official duties, such an employee must have a State license and is amenable to State laws regarding chauffeurs and operators.

As you point out in your letter the right of Federal employees to operate motor vehicles in the discharge of governmental duties without a State license, does not have the effect of securing a general immunity from State law to such employees, and if they operate automobiles recklessly, dangerously or at excessive speed, contrary to State law, they are subject to prosecution under that law.

I may add that Section 186 of Art. 56 of the Code of Public General Laws, relating to motor vehicles expressly provides "that no operator of a motor vehicle shall be stopped by any officer of the law for the sole purpose of exhibiting his operator's license", and it is contrary to the practice of the Police Officers to ask for the display of such licenses in the absence of some apparent violation or other suspicious circumstance.

In view of the state of the law as above indicated, it is readily conceivable that cases may arise in which the Police Officer is unable to determine whether the Federal employee is engaged in personal or official business at the time of the inquiry, and for this reason, there may be an occasional charge of failing to have an operator's or chauffeur's license placed against a Federal employee which should not be made.

Please be assured, however, that the State has every desire to respect and abide by the decision of the Supreme Court in the Johnson case, and I am sure the Justices of the Traffic Court will promptly dismiss any charge that warrants such action upon proper proof of the facts.

With kind regards and best wishes, I am

Yours very sincerely,

WILLIS R. JONES, *Deputy Attorney General.*

MOTOR VEHICLES—STATUS OF FOREIGN CONSULS.

September 16, 1932.

Col. E. Austin Baughman,
Commissioner of Motor Vehicles,
Baltimore, Md.

DEAR COLONEL BAUGHMAN: Your letter of September 10th has been received. I understand the question therein presented to be as follows:

> Are foreign consuls entitled to receive "gratis tags" when residing within the State of Maryland?

A foreign consul is in the nature of a commercial representative, and does not enjoy the status of a foreign minister or ambassador with the privileges and immunities which attach to such a status. This is the well recognized and long established doctrine adhered to by the Federal Government. In 7 Ops. Atty. Gen. (U. S.) 18, it is said:

> "Notwithstanding the somewhat vague speculations of Vattel and some other continental authors on the question whether consuls are quasi ministers or not (Vattel) Droit des Hens. 1, iv. chap. 8; De Cussy, Reglements Consulaires, Sec. 6; Moreuil, Agents Consulaires, p. 348; Borel, Des Consuls, (Chap. 3), it is now fully established by judicial decisions on the continent, and by the opinions of the best modern authorities there, that consuls do not enjoy the diplomatic privileges accorded to the ministers of foreign powers; that in their personal affairs they are justiciable by the local tribunals for offenses, and subject to the same recourse of execution as other resident foreigners; and that they cannot pretend to the same personal inviolability and exemption from jurisdiction as foreign ministers enjoy by the law of nations. Foelix, 1, ii, title 2, chap. 2, Sec. 4; Dalloz, Dic. de Jurispr. title Agents Diplomatiques, no. 35; Ch. de Martens, Guide Diplomat, Sec. 83."

It is unnecessary to enter into a protracted discussion of the many cases involving this general doctrine, since, for the purposes of this case, it is well established that:

(1) Foreign consuls do not fall within the immunities from arrest extended to foreign ministers in Revised Statutes 4063, codified in U. S. C. A. Par. 252, page 124.

U. S. vs. Ravara, 2 Dall. 297, 1 L. ed. 388;
1 Ops. Atty. Gen. (U. S.) 406.

(2) Consuls are subject to indictment in State Courts for a violation of State law.

In *State vs. De La Foret,* 2 Nott. and M. C. 217, it was held that a foreign consul was not exempt from indictment for an assault and battery, and it was further held that the Federal Constitution of the United States did not take away from State Courts jurisdiction over offenses against the laws of the State.

In *Hall vs. Coppell,* 7 Wall 542, 19 L. ed. 244, Mr. Justice Swayne, speaking for the Court at page 247 (L. ed.) said, with reference to consuls:

> "In civil and criminal cases, they are subject to the local law in the same manner with other foreign residents owing a temporary allegiance to the State * * *. A trading consul in all that concerns his trade is liable in the same way as a native merchant. * * * The character of consul does not give any protection to that of merchant when they are united in the same person".

See also:

45 L. R. A. page 584-586;
U. S. C. A. Title 28, Par. 371, page 58, note 163.

Hence, it is apparent that there is nothing in the office of a consularship which would exempt a consul from the operation of the motor vehicle laws of this State or entitle him to "gratis tags".

Therefore, it is my opinion that, in the absence of any special treaty to the contrary between the Federal Government and the sovereignty represented by a consul, a consul is not entitled to receive "gratis tags".

Yours very truly,

WM. PRESTON LANE, JR., *Attorney General.*

MOTOR VEHICLES—RIGHT OF APPEAL AFTER PLEA OF GUILTY.

December 22, 1932.

Col. E. Austin Baughman,
Commissioner of Motor Vehicles,
Baltimore, Md.

DEAR COL. BAUGHMAN: I beg to acknowledge receipt of your letter of the 19th. I understand the question therein raised to be as follows:

> May a defendant in a criminal case take an appeal from the sentence of a magistrate after he has entered a plea of guilty before the magistrate and has been duly sentenced thereon?

Where a plea of guilty has been made voluntarily with knowledge of its nature and effect, no appeal can be entered from the same. This question was settled by *Lowe v. State,* 111 Md. 1, wherein Judge Pearce, at page 14, speaking for the Court, said:

> " 'A plea of guilty is a confession of guilt, and is equivalent to a conviction. The Court may pronounce judgment and sentence as upon a verdict of guilty.' 12 Cyc., 353.
>
> " 'Where the defendant pleads guilty, it is the right and duty of the Court to pronounce upon him the sentence of the law without any further pro-

ceedings, and without any independent adjudication of guilt'. 19 Enc. Pl. & Pr. 437.

"'It has been held that a party cannot have a judgment, *properly entered* in a plea of guilty, reviewed either by appeal or writ of error, since *such judgment* is in effect a judgment by confession'." 10 Enc. Pl. & Pr. 505.

Therefore, it is my opinion that where such plea is entered voluntarily, and with knowledge of its nature and effect, no appeal can be entered from the sentence of the magistrate.

Yours very truly,

WM. PRESTON LANE, JR., *Attorney General.*

OFFICERS

OFFICERS—SAME PERSON MAY NOT AT THE SAME TIME HOLD THE OFFICE OF COUNTY TREASURER AND NOTARY PUBLIC.

February 15, 1932.

Paul F. Kuhns, Esq.,
County Treasurer,
Westminster, Md.

DEAR MR. KUHNS: The Secretary of State at Annapolis has sent to this Department for reply, your letter of February 10th, in which you request an opinion as to whether you may at the same time occupy the office of County Treasurer and also hold a commission as a Notary Public.

Article 35 of the 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." By a reference to Section 46 of Article VII of the Code of Public Local Laws entitled "Carroll County," I note that the Treasurer and Clerk to the County Commissioners for Carroll County is elected by the people; that he is required to take an oath and to execute a bond. It is further provided that if he "shall fail to execute said bond within sixty days after he shall have been appointed or elected, he shall forfeit his office, and the County Commissioners shall declare said office vacant."

In view of the above provision, it seems clear that the County Treasurer and the Clerk to the County Commissioners for Carroll County is an officer within the meaning of Article 35 of the Declaration of Rights. A Notary Public is also an officer within the meaning of this section, and in the opinion of this Department it is not permissible for the same person to hold both of these offices at the same time.

With kind regards and best wishes, I am,

Very sincerely yours,

WILLIS R. JONES, *Deputy Attorney General.*

OFFICERS—A POSTMASTER IN THE EMPLOY OF THE U. S. IS INELIGIBLE FOR APPOINTMENT AS A JUSTICE OF THE PEACE.

February 24, 1932.

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

DEAR MR. WINEBRENNER: I have your letter of February 23rd, in which you request an opinion as to whether a Postmaster may be appointed as a Justice of the Peace of this State.

Section 3 of Article 52 of the Code of Public General Laws reads as follows:

> "If any Justice of the Peace, having qualified as such, shall accept any office under the government of the United States and shall still act as a Justice of the Peace, he shall forfeit and pay for every such offense the sum of forty dollars ($40.00)".

By virtue of the above statutory provision, it is very clear that a Postmaster duly appointed and commissioned by the United States Government is ineligible for appointment as a Justice of the Peace of this State.

Yours very truly,

WILLIS R. JONES, *Deputy Attorney General.*

OFFICERS—THE SAME PERSON MAY NOT AT THE SAME TIME BE A NOTARY PUBLIC AND A MEMBER OF THE HOUSE OF DELEGATES.

February 27, 1932.

Murray G. Hooper,
Executive Offices,
Annapolis, Md.

DEAR MR. HOOPER: In your letter of February 26th, you request an opinion as to whether a member of the General Assembly may be appointed as a Notary Public.

Section 11 of Article 3 of the Maryland Constitution provides that "no person holding any civil office of profit or trust under this State, except Justices of the Peace, shall be eligible as a Senator or Delegate."

In view of the above provision, it is very clear that a member of the Legislature may not, at the same time, be a Notary Public.

Under the decision of the Court of Appeals, in the case of *Truitt vs. Collins*, 122 Md. 527, the acceptance of a second office operates to vacate the first office and a subsequent resignation from the second office does not restore the person to the first office.

Yours very truly,

WILLIS R. JONES, *Deputy Attorney General.*

OFFICERS—DUTY OF STATE'S ATTORNEYS AND SHERIFFS TO FILE ANNUAL REPORTS WITH COMPTROLLER AND SUBMIT TO AUDIT BY STATE AUDITOR.

November 23, 1932.

Hon. Wm. S. Gordy, Jr.,
Comptroller,
Annapolis, Md.

DEAR SIR: I have your letter of November 21st, in which you inquire whether the various State's Attorneys and Sheriffs must file annual reports covering the finances of their offices.

Art. 15, Sec. 1, of the Maryland Constitution provides that "every person holding any office created by, or existing under the Constitution, or laws of the State (except Justices of the Peace, Constables and Coroners) * * * whose pay or compensation is derived from fees or moneys coming into his hands for the discharge of his official duties, or in any way growing out of or connected with his office, shall keep a book in which shall be entered every sum or sums of money received by him, or on his account, as a payment or compensation for his performance of official duties, a copy of which entries in said book, verified by the oath of the officer by whom it is directed to be kept, shall be returned yearly to the Comptroller of the State for his inspection * * * ".

Art. 19, Sec. 47, of the Code requires the State Auditor to "make an examination of the books, accounts and reports of all * * * Sheriffs, State's Attorneys * * *. The Comptroller is authorized and directed * * * to order and direct such officers * * * to make such form of reports * * * as the said Comptroller may deem proper and advisable * * * ".

In most of the counties the State's Attorneys and Sheriffs are still constitutional officers required to pay over to the State Treasurer all fees in excess of $3000.00, which is the maximum compensation allowed by the Constitution; in some counties, it is provided by local law that any excess shall be paid to the State, after the county is reimbursed for the expense and salary of the office. However, in one or

two counties, by express provision of local law, all fees are payable to the county, which is required to pay all expenses and salaries, and in these cases the Legislature has, in effect, converted the office from a fee to a salary basis. In an opinion rendered to you on August 8th, 1932, I ruled that such legislation was not unconstitutional.

Even in these cases, however, the Legislature has not seen fit to obviate the necessity of reports and State's supervision, as may be seen from the unqualified language of Art. 19, Sec. 47, quoted above. I conclude that it is still the duty of these State officers to report and submit to audit by the proper State authorities, even in cases where the local law requires an accounting between such officers and the Board of County Commissioners.

Very truly yours,

WM. PRESTON LANE, JR., *Attorney General.*

OPTOMETRY

OPTOMETRY—POWERS OF BOARD TO REVOKE LICENSES FOR UNPROFESSIONAL CONDUCT—WHETHER ATTORNEY GENERAL SHOULD ATTEND HEARING.

April 29th, 1932.

Board of Examiners in Optometry,
Lexington Building,
Baltimore, Md.

Attention: J. Fred. Andreae, Sec.

GENTLEMEN: I have your letter of April 29th, in which you refer to recent advertisements in the Baltimore Sun by Dr. J. W. Barenburg and his associates, offering to supply lenses at fixed prices, and specifying locations at 1201 Lexington Building, 532 N. Gay Street, and 3316 Eastern Avenue. I understand that your Board adopted a rule several years ago defining such offering for sale as unprofessional conduct within the meaning of Art. 43, Sec. 323, of the Code, which rule was brought to the attention of all practicing optometrists. I further understand that you have cited the optometrists violating this rule to appear before your Board on May 5th, to show cause why they should not have their licenses revoked or suspended. You state that it has now been brought to your attention that the optometrists in question also furnish lenses at fixed prices through an optical department at Gutman's Department Store, although this location was not mentioned in the advertisements above referred to. You inquire whether your Board can entertain charges against the optometrists employed at Gutman's.

As I understand it, the substance of the offense is the offering for sale at fixed prices, and it would appear to be immaterial whether such offering were through the medium of advertisement or otherwise. In every case, of course,

the offender must have notice of the precise charge preferred, and an opportunity to appear and contest the matter, as provided in Sec. 323.

Whether the particular offense is unprofessional conduct within the meaning of Sec. 323, or whether the Board, in the exercise of its discretion, may make it so by the adoption of a rule of this character, are questions upon which I express no opinion at this time.

I have received, through Dr. Whitney, a request from your Board that I be present at the hearing on May 5th to represent the Board. I do not believe that the provisions of Art. 43 imposes this duty upon the Attorney General. A somewhat analogous situation exists in connection with the motor vehicle department. It has never been the practice for this office to represent the Commissioner in hearings for revocation of licenses, although we advise him concerning legal matters generally. In your case, the question is peculiarly a professional matter, from which a final appeal is allowed to a Board of three disinterested optometrists, and I see no occasion for the Board to be represented by counsel, as they have only to follow the exact procedure specified in Sec. 323.

Yours very truly,

WM. PRESTON LANE, JR., *Attorney General.*

ORPHANS' COURTS

ORPHANS' COURTS—REAL ESTATE NOT SUBJECT TO ADMINISTRATION IN ORPHANS' COURT EXCEPT WHEN NECESSARY TO PAY DEBTS.

February 13, 1932.

Hon. M. N. Nelson,
Salisbury, Md.

DEAR MR. NELSON: In your letter of February 12th, you request an opinion as to whether an item of $4,000, representing the proceeds of sale of real estate belonging to a decedent, should be included in the administration account of the administrator, and subject to the tax on commissions.

Real estate passes by inheritance directly to the heirs of a decedent and the executors or administrators do not administer the same unless required for the payment of debts or unless the real estate is sold in pursuance of the provisions of the will of the decedent. Where a testator directs real estate to be sold and the proceeds to be divided, the law regards the real estate as converted into personal property.

From the account which accompanied your inquiry, it is apparent that it was not necessary to sell the real estate in order to pay any debts of the decedent, and it therefore follows that if there was no will directing the sale of the real estate, the item of $4,000 should be omitted from the administration account.

Yours very truly,

WILLIS R. JONES, *Deputy Attorney General.*

ORPHANS' COURTS—ADMINISTRATION OF ESTATES—WILL OF DECEASED RESIDENT OF WASHINGTON, D. C., PROPERLY ADMITTED TO PROBATE THERE. NO RIGHT TO INSIST UPON PROBATE HERE MERELY BECAUSE DECEDENT HAD PROPERTY HERE.

March 28, 1932.

Hon. Hanson G. Cashell,
Register of Wills,
Rockville, Md.

DEAR MR. CASHELL: Your letter of March 18th, addressed to the Attorney General, with reference to the estate of Dr. Reginald R. Walker, has been referred to me for reply.

I have carefully considered all of the facts set forth in your letter, including the actual probate of the will of Dr. Walker, in Washington, and I do not believe that this State should undertake to compel the administration of the entire estate in Maryland. Residence is largely a question of intention, and it is quite apparent that Dr. Walker did not intend to abandon his residence in Washington. Of course the real estate and tangible personal property belonging to this estate and situate in the State of Maryland is subject to taxation here, and I assume that ancillary administration will take place in your county for the purpose of having this property appraised and the tax determined and paid. I suggest that you notify the executor of the estate that this property is subject to taxation in Maryland, and request that proper action be taken for the determination and payment of the tax.

Yours very truly,

WILLIS R. JONES, *Deputy Attorney General.*

ORPHANS' COURTS—INVENTORY—THE VALUE OF FREE RENT GIVEN BY WILL AND OF GOOD WILL TO A GOING BUSINESS SHOULD NOT BE INCLUDED IN THE INVENTORY OF THE PERSONAL ESTATE.

April 14, 1932.

Mr. Frank M. Bond,
Deputy Register of Wills,
Annapolis, Md.

DEAR MR. BOND: I have your letter of April 11th, with reference to the Estate of Robert L. Werntz.

In my previous correspondence with the Office of the Comptroller relative to this Estate, it was my understanding that you wanted to be advised as to the computation of the collateral inheritance tax, and as the terms of the will were somewhat involved, it occurred to me that these matters should be deferred until the estate was ready for distribution, or at least until the tax becomes due and payable. I did not know that you desired any advice with respect to the contents of the inventory, until the receipt of your letter of April 11th.

Item 1 of the will of the testator reads as follows:

> "I give, devise and bequeath to my niece, Amy W. Ogle, my home No. 248 King George Street, Annapolis, Maryland, and the contents thereof; also my school business and the good-will thereof and any portion of the property and buildings now occupied by my school which may be necessary for the work and conduct of the school, including class rooms and offices, shall be occupied and used by said Amy W. Ogle without charge for rent and I desire my Trustees hereinafter named to permit the occupancy of said premises in this manner; and also the property owned by me known as the 'Gardiner Farm', situated on the Magothy River between Dividing Creek and Mill Creek, with the provision, however, that the occupancy by the

parties now residing on said farm is not to be interfered with in their present tenancy and rights."

The inventory of the estate should include all of the contents of the home of the testator at 248 King George Street, and also all of the personal property in the buildings occupied by the school, and also any personal property belonging to the testator that was situated on the farm on the Magothy River.

There is no provision in this clause of the will which limits the right of free rent to a period of twenty years, as stated in your letter, but whether this right be limited for such a period by other provisions of the will, or whether it be forever, is immaterial for the purpose of filing an inventory, for the reason that the Orphans' Court has no jurisdiction over the real estate. The right to occupy premises free of rent constitutes a devise of an interest in real estate, and is not, in my opinion, subject to administration in the Orphans' Court. Obviously, the executors and trustees will not, and cannot collect the rent under the terms of the will, and in my judgment, the Orphans' Court cannot require them to account for the value of the rent in the inventory.

The second clause of the will reads as follows:

"I give, devise and bequeath to my nephew William Werntz, the gasoline business with which he is now connected, but not including the real estate occupied by this business, title to which is to pass to my Trustees hereinafter named, with the provision, however, that the said William Werntz shall be allowed to occupy the said real estate for the period of twenty (20) years, without payment of rent, unless he shall discontinue the said gasoline business before the expiration of said period, the profits of said business to be the individual property of the said William Werntz.

"I also give, devise and bequeath to my nephew, William Werntz, the property now owned by me at the corner of Prince George and Randall Streets,

Annapolis, Maryland, known as No. 142 Prince George Street."

What I have said with respect to the first item of the will is equally applicable to Item II. The provision for free rent for a period of twenty years unless the business is sooner discontinued, represents an interest in realty, and should not be included in the inventory.

The good will of a business is usually held to be too uncertain and contingent to constitute assets to be included in the inventory. *Seabrook vs. Grimes*, 107 Md. 416.

I believe the above will fully answer the questions presented by your letter, but if you desire any additional information in connection with the matter, I shall be glad to have you communicate with me further.

With kind regards, I am,

Very truly yours,

WILLIS R. JONES, *Deputy Attorney General.*

ORPHANS' COURTS—GUARDIANS—FIRST NATIONAL BANK OF BALTIMORE CITY AUTHORIZED TO ACT AS GUARDIAN AND NEED NOT GIVE BOND.

May 11, 1932.

Hon. Raymond L. Pickett,
Register of Wills,
Ellicott City, Md.

DEAR MR. PICKETT: Your letter of April 28th, addressed to the Attorney General, has been referred to me for reply. You desire to be advised whether the First National Bank of Baltimore City is authorized to act as guardian of an estate under the jurisdiction of the Orphans' Court for Howard County, and if so, whether the Bank is required to give a bond for the faithful execution of the trust.

Section 248 of the Federal Reserve Act, Sub-section K, authorizes the Federal Reserve Board to permit National Banks applying therefor, when not in contravention of State or local law, to act as trustee, administrator, guardian, assignee, receiver, committee or in any other fiduciary capacity in which State banks, trust companies or other corporations which come into competition with National Banks, are permitted to act under State laws. After setting forth the conditions and requirements under which National Banks may act in the above capacities, the above section of the Federal Reserve Act contains the following provision:

> "National Banks in such cases shall not be required to execute the bond usually required of individuals if State corporations under similar circumstances are exempt from this requirement."

In view of the above provisions, it became necessary for us to ascertain whether the First National Bank of Baltimore had qualified to act in the capacities enumerated. Today the attorney for the First National Bank exhibited to us the permit which was issued to this Bank by the Federal Reserve Board on July 17th, 1928, from which it appears that the Bank is fully authorized to act as guardian of estates.

In view of the above, you are advised that the First National Bank of Baltimore is fully authorized to act as guardian of an estate under administration in the Orphans' Court for Howard County, and that the said Bank is not required to execute a bond as a condition precedent to this right to act in that capacity.

Very truly yours,

WILLIS R. JONES, *Deputy Attorney General.*

ORPHANS' COURTS—EXECUTORS AND ADMINISTRATORS ARE LIABLE FOR LOSS TO ESTATE SUSTAINED BY FAILURE OF BANK IN WHICH FUNDS ARE DEPOSITED UNLESS SUCH BANK IS DESIGNATED AS DEPOSITORY BY ORPHANS' COURT.

July 11, 1932.

Hon. Harry Newcomer,
Register of Wills,
Hagerstown, Md.

DEAR MR. NEWCOMER: In your letter of June 30th, addressed to the Attorney General, you state that an intestate died on August 1st, 1931, leaving a certain sum of money on deposit in a local bank; that this sum of money was included in the inventory which was filed by the administrator, and thereafter the bank closed its doors and a receiver was appointed for the administration of its affairs. You request an opinion as to whether the administrator must account for the full sum of money which was included in the inventory, or the amount which he receives by way of distribution from the Receiver for the Bank.

The law upon this subject in this State is well settled by the case of *Bacon vs. Howard,* 20 Md. 191, where it was decided that the failure of a bank in which monies belonging to the estate were on deposit, would not excuse the administrator from liability for the full amount of a deposit, in the absence of an order of court by which the particular bank was designated as depository for the funds of the estate.

You are therefore advised that the administrator of the estate to which you refer, will be obliged to account for the full amount of cash on deposit as shown by the inventory, unless the Orphans' Court, prior to the failure of the bank, passed an order by which that bank was designated as depository for the funds of the estate.

With kind regards and best wishes, I am,

Very sincerely yours,

WILLIS R. JONES, *Deputy Attorney General.*

ORPHANS' COURTS—EXECUTORS AND ADMINISTRATORS—A RESIDENT OF PENNSYLVANIA MAY QUALIFY AS EXECUTOR OR ADMINISTRATOR IN MARYLAND.

July 11, 1932.

Hon. Harry Newcomer,
Register of Wills,
Hagerstown, Md.

DEAR MR. NEWCOMER: Further answering your inquiry of June 7th, you are advised that I have carefully examined the statutes of Pennsylvania relating to the appointment of executors and administrators.

Section 991 of Title XX of the Annotated Statutes of that State, authorizes the Court in its discretion, to appoint or refuse to appoint a non-resident as executor or administrator. It is further provided that where such non-residents are appointed, the appointee must give a bond for the faithful performance of his duties and appoint an attorney in fact for the acceptance of service of process and notices. In practice, I understand that non-residents are appointed upon the conditions above mentioned.

Since, therefore, the State of Pennsylvania does not deny to residents of Maryland the right to act or to qualify as executors or administrators of deceased residents of that State, you are advised that a resident of Pennsylvania is eligible for appointment as executor or administrator by the Orphans' Court for your County.

With kind regards and best wishes, I am,

Very sincerely yours,

WILLIS R. JONES, *Deputy Attorney General.*

PETTY LOAN BROKERS

PETTY LOAN BROKERS—MAY NOT REQUIRE BORROWERS TO PAY ATTORNEYS' FEES FOR COLLECTION IN ADDITION TO HIGH RATES OF INTEREST PERMITTED.

October 29, 1932.

George E. Kieffner, Esq.,
1061 Calvert Building,
Baltimore, Md.

DEAR MR. KIEFFNER: I have your letter of October 28th, requesting my opinion as to whether a licensed Small Loan Company may, in the conduct of its business, take from borrowers a promissory note in which the maker agrees that "upon any default thereunder to pay all costs of collection, including an attorney's fee of 10% do waive all exemptions allowed by law."

In my judgment, the above clause is prohibited by Section 12 of Article 58A of the Code of Public General Laws. The first three paragraphs of this Section read as follows:

> "Every person, co-partnership and corporation licensed hereunder may loan any sum of money, goods or things in action, not exceeding in amount or value the sum of three hundred dollars ($300) and may charge, contract for and receive thereon interest at a rate not to exceed three and one-half (3½) per centum per month.
>
> "(a) Interest shall not be payable in advance or compounded and shall be computed on unpaid balances. In addition to the interest herein provided for, no further or other charge, or amount whatsoever for any examination, service, brokerage, commission or other thing, or otherwise, shall be directly or indirectly charged, contracted for or received, except the lawful fees, if any, actually

and necessarily paid out by the licensee to any public officer, for filing, or recording in any public office, any instrument securing the loan, which fees may be collected when the loan is made, or at any time thereafter.

"(b) If interest, or charges in excess of those permitted by this Article shall be charged, contracted for, or received, the contract of loan shall be void and the licensee shall have no right to collect, or receive any principal, interest or charges whatsoever."

The high rate of interest which these companies are permitted to charge has been fixed with due regard to the doubtful character of the risks which the companies assume. This rate of interest is intended to include all costs of collection, including attorneys' fees. If a Court proceeding should be instituted, the defendant, if unsuccessful, would, as a matter of law, be required to pay the Court costs, and there is, therefore, no necessity for any agreement to this effect.

I know of no provision which prohibits the waiver of all exemptions allowed by law, but as you will observe, this is a very broad term, but I think the companies should set forth the specific exemptions which are to be waived.

With kind regards and best wishes, I am,

Yours very truly,

WILLIS R. JONES, *Deputy Attorney General.*

PETTY LOAN BROKERS—THE WORD "MONTH" AS USED IN STATUTE MEANS CALENDAR MONTH AND DOES NOT MEAN 30 DAYS.

December 1st, 1932.

John D. Hospelhorn, Esq.,
Deputy Bank Commissioner,
Union Trust Building,
Baltimore, Md.

DEAR MR. HOSPELHORN: In your letter of November 29th, you refer to Section 58-A of Article 11 of the Code of Public General Laws relating to petty loan brokers, by which these brokers are authorized to charge interest "at a rate not to exceed 3½% per month." You desire to be advised what constitutes a month, within the meaning of the above section.

I am satisfied that the word "month" as used in this statute means a calendar month instead of a thirty day period. Interest for a fractional part of a month should be computed on a pro-rata basis; for example, ten days in November would entitle the broker to charge 10/30ths of 3½%, whereas ten days in December would authorize a charge of 10/31sts of 3½%. If the contention for a thirty day month should be adopted, it would permit the brokers to charge more than 3½% per month in any month having thirty-one days, and it seems clear that there is no authority for this construction.

With kind regards and best wishes, I am,

Very sincerely yours,

WILLIS R. JONES, *Deputy Attorney General.*

PETTY LOAN BROKERS—MAY REQUIRE AUTOMOBILE PLEDGED AS SECURITY TO BE INSURED FOR THE PROTECTION OF LENDER.

December 28, 1932.

John D. Hospelhorn, Esq.,
Deputy Bank Commissioner,
Union Trust Building,
Baltimore, Md.

DEAR MR. HOSPELHORN: In your letter of December 13th, you request an opinion as to whether a small loan company may require a borrower to insure his automobile or other property which is pledged to the company as security for a loan.

Section 14 of Article 58-A provides that these companies may charge and receive interest at a rate not to exceed three and one-half percent per month and that "no further or other charge, or amount whatsoever for any examination, service, brokerage, commission or other thing, or otherwise, shall be directly or indirectly charged, contracted for or received, except the lawful fees, if any, actually and necessarily paid out by the licensee to any public officer for filing or recording," etc.

In my opinion the above section prohibits any small loan company, and also all of its officers, agents or employees, from acting as broker or receiving any commission on any insurance that may be required upon any property pledged as security for a loan. So long as all of the premium and commissions are paid to persons who are not in any manner connected with the company as an officer, agent or employee, I do not believe that the requiring of insurance upon property pledged can be regarded as an additional charge by the company. Such action simply increases the character of the security offered for the loan, and is not prohibited.

With kind regards and best wishes, I am,

Very sincerely yours,

WILLIS R. JONES, *Deputy Attorney General.*

POLICE DEPARTMENT

POLICE EXAMINERS — MILITARY SERVICE—BOARD MAY ADOPT UNIFORM RULES SO AS TO GIVE CREDIT TO APPLICANTS WHO HAVE RENDERED MILITARY SERVICE TO THE NATION.

February 1st, 1932.

Wilmer Brinton, Jr., Esq.,
Board of Police Examiners,
Police Building,
Baltimore, Md.

DEAR MR. BRINTON: I have your letter of January 25th, requesting me to send you a copy of Article 64-A of the Laws of 1920.

Article 64-A of the Code of Public General Laws was enacted at the 1920 Session of the Legislature and created the merit system for state employees. Section 9 of this law contains the following provision with respect to persons previously engaged in the military service.

> "Honorably discharged soldiers, sailors, marines and regularly enlisted Army and Navy nurses engaged in the service of the United States for a period of not less than sixty days who were residents of this state at the time of their entry into said service, shall be given special credit for such service in the experience marks of examinations in which they may compete, which shall be equivalent to not less than twenty points on a basis of one hundred."

While this section of the law relates to examinations held by the Employment Commissioner and does not apply to examinations by the Board of Police Examiners, the latter Board has ample authority, under Section 745-L of the City Charter, to prescribe and enforce definite and uniform

rules to ascertain the qualifications of candidates for appointment to the Police Force of Baltimore City, and under the authority thus conferred, I believe the Board would be justified in adopting a rule giving effect to the above provision contained in the Merit System Law.

Very truly yours,

WILLIS R. JONES, *Deputy Attorney General.*

POLICE COMMISSIONER—HAS NO POWER TO ERECT STOP SIGNS AT STREET INTERSECTIONS OTHER THAN AT A "MAIN TRAVELED OR THROUGH HIGHWAY".

May 14, 1932.

Hon. Charles D. Gaither,
Police Commissioner
Baltimore, Md.

DEAR GENERAL GAITHER: In your letter of April 27th you request an opinion as to whether the Police Commissioner of Baltimore City has authority under the Ordinances of the Mayor and City Council, to install and maintain luminous stop signs at street intersections for the purpose of compelling vehicles to stop before proceeding past the intersection.

I have examined all of the Ordinances of the Mayor and City Council of Baltimore relating to traffic and traffic regulations, and the particular sections of the City Code which are applicable to your inquiry are Sections 60, 84 and 87 of Article 4.

Under Section 60 the Commissioner is "authorized and empowered to make and enforce special regulations with regard to traffic, at certain hours, when the safety and convenience of the public will be best subserved thereby."

Under Section 84, the Commissioner is empowered to cause "no parking" signs to be erected upon application of

persons desiring such signs, provided they comply with the requirements of this section of the law. The section concludes with the following provision: "And the Commissioner is authorized to establish signal devices between certain hours for the control of traffic in order to protect pedestrians and control vehicular traffic."

Other sections of this Article authorize the erection of signs or markers briefly indicating the parking regulations on certain streets.

Section 87 reads as follows:

> "It shall be unlawful for any person to fail, neglect or refuse to comply with any instruction or direction on any post, standard, sign or other device created by authority of the Police Commissioner, or with any directing lines or marks painted in the roadway, or upon any curb or pavement, by authority of the said Commissioner, for the regulation of traffic and parking on the public highways."

In no City Ordinance is there any express authority for the erection of "stop" signs by the Police Commissioner, and inasmuch as such signs operate to control traffic at all hours of the day, I do not believe they are authorized by the Ordinances above referred to. A sign of this type might deprive a person who fails to comply with its instructions, of the right-of-way, and therefore affect the civil rights of any person who may be in an accident as a result of failure to observe the instructions on the sign. There could also be no conviction for failure to observe such a sign unless it was erected and maintained in accordance with law.

In my judgment, the Police Commissioner should not undertake by regulation or the erection of signs, to affect the civil rights of individuals or to impose any penalty for the violation of a regulation or sign, in the absence of express authority from the legislative branch of the government.

While I am of the opinion that, under existing Ordinances, there is no authority for the erection of "stop"

signs, the Police Commissioner has power to erect such signs on "main traveled or through highways" of Baltimore City under the provisions of Section 209 of Article 56 of the Code of Public General Laws of Maryland. The pertinent provisions of this Section read as follows:

> "The State Roads Commission is hereby authorized and directed to designate main traveled or through highways by erecting at the entrances thereto from intersecting highways signs notifying drivers of vehicles to come to a full stop before entering or crossing such designated highway, and whenever any such signs have been so erected, it shall be unlawful for the operator of any vehicle to fail to stop in obedience thereto, except when traffic at such marked intersection is controlled by traffic signals or officers.
>
> "All such signs shall be illuminated at night or so placed as to be illuminated by the head-lights of an approaching vehicle or by street lights.
>
> "Right of way of vehicles on through highways. The operator of a vehicle entering a highway so designated shall yield the right of way to all vehicles approaching on such highway, provided that at the intersection of two highways so designated, all vehicles shall have the right of way over other vehicles approaching on the intersecting highway from the left and shall give right of way to those approaching from the right; provided, however, that within the limits of Baltimore City, the designation and marking of such main traveled or through highways shall be made by the Police Commissioner of Baltimore City."

If you deem it necessary or desirable for the promotion of the public safety to erect stop signs at intersections other than those involving a "main traveled or through highway" as provided in the State law, I would suggest that the Mayor and City Council be requested to pass an

ordinance conferring such authority upon the Police Commissioner.

With kind regards and best wishes, I am,

Very sincerely yours,

WILLIS R. JONES, *Deputy Attorney General.*

RACING

RACING—INTERPRETATION OF CONDITION OF RACE READING "FOR ALL AGES FOALED IN MARYLAND AND THE PRODUCE OF MARES SERVED IN MARYLAND."

November 29, 1932.

Jervis Spencer, Esq.,
Chairman, State Racing Commission,
Baltimore, Md.

DEAR MR. SPENCER: You have requested me to give you the proper legal interpretation of the condition of a race reading as follows: "For all ages foaled in Maryland and the produce of mares served in Maryland non-winners at the meeting." From our conversation of yesterday, I understand that your inquiry relates to a horse foaled in Maryland whose dam was served in another State, and the question arises as to whether this horse meets the eligibility requirements of the above condition.

The condition is subject to two possible interpretations. It may be construed to refer to two separate classes of horses, namely, those foaled in Maryland, and those who are the produce of mares served in Maryland. On the other hand, it may be construed to mean that in order to be eligible all entries must be foaled in Maryland, and must also be the produce of mares served in Maryland.

Under the former interpretation the word "and" would be construed to mean "or", and Courts have frequently sanctioned such an interpretation in order to carry out the intention of the parties. An illustration of such a construction is to be found in the case of *Litchfield vs. Cudworth*, 32 Mass. 23. In this case a deed conveyed all of the right, title and interest of the grantor in and to all of the real estate of which A "and" B died seized or possessed. In holding that the word "and" should be construed as "or", the Court said:

> "It is not uncommon to construe 'and' to mean 'or' and 'or' to mean 'and' when necessary to carry into effect the intention of the parties".

Another illustration is found in the case of *Snow vs. Bressey,* 85 Me. 408, where a mortgage was executed to secure all legal "claims due said C. and P." The Court, after pointing out that the above phrase might be construed to mean claims due to the parties jointly or claims due to them individually, held that it was capable of being construed to include the individual claims of C. Many other cases of simillar import are collected in Vol. 1, of Words and Phrases, beginning at page 385.

From our conversation of yesterday, I understand that the horse concerning which you make inquiry was entered in the seventh race on Friday, November 25th, and that this horse won the race. No objection to the eligibility of the horse was made until after the race when the owner of the horse which ran second filed a protest contending that the winning horse did not meet the requirements of the above mentioned condition .

Under the above circumstances, it is fair to assume that at the time of the running of the race, all parties interested therein intended that the owner of the winner would be entitled to receive the purse. Obviously, the owner of the winning horse was of the opinion that his horse was eligible, otherwise there would have been no justification for the expense incurred by him incident to the entry and running of his horse. After a race has been concluded, the result should not be altered by any narrow technical construction of the conditions, especially where to do so would frustrate the apparent intention of the parties.

In the light of the decisions referred to, and for the reasons indicated, I am of the opinion that the Maryland Racing Commission should treat the horse concerning which you make inquiry as eligible for the race in question.

Yours very truly,

WILLIS R. JONES, *Deputy Attorney General.*

REGISTER OF WILLS

REGISTER OF WILLS—TAXATION—TAX ON COMMISSIONS—EXECUTOR OR ADMINISTRATOR MUST PAY TAXES AND CHARGES OF REGISTER BEFORE DISTRIBUTING ASSETS TO TRUSTEE IN BANKRUPTCY OF BENEFICIARY.

June 6, 1932.

Paul Jones, Esq.,
Register of Wills for Worcester County,
Snow Hill, Md.

DEAR MR. JONES: I have your letter of May 21st, in which you ask for an opinion in the following matter:

On December 12th, 1930, a certain George L. Barnes, residing in Worcester County, died leaving all of his estate to his son, George L. Barnes, Jr., who was also named as executor and qualified as such. On December 22nd, 1930, the executor filed an inventory showing personal property to the extent of $60,217.00, but took no further steps towards closing the estate. In September, 1931, said executor executed a deed of trust for the benefit of his creditors, and in November of the same year, he was declared an involuntary bankrupt. He thereupon resigned as executor, and Edward H. Johnson was appointed administrator de bonis non cum testamento annexo. Said administrator filed an additional inventory in the amount of $11,202.83, but without closing out the estate, turned the assets over to the trustee in bankruptcy of George L. Barnes, Jr. You inquire whether the administrator has the right to summarily close out the estate, so as to cut off the claim of the State of Maryland for taxes, as well as your fees as Register of Wills.

I think there can be no question that both the executor and the administrator must fully account for all taxes and charges before their bonds can be relieved. The trustee in bankruptcy clearly has no better claim to the assets of the

estate than the bankrupt, and until there is an accounting and a distribution to the bankrupt, no title to these assets can pass to his trustee in bankruptcy. It seems entirely clear that the executor should pay the State tax on commissions, and the other charges of the Register of Wills before distributing to the administrator who succeeded him, and that the administrator should in turn account and disburse to George L. Barnes, Jr., or his trustee in bankruptcy before the estate can be closed.

Yours very truly,

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

REGISTER OF WILLS—COUNTY COMMISSIONERS HAVE POWER TO LEVY TAXES TO PAY SALARIES OF DEPUTY REGISTERS WHEN FEES OF OFFICE ARE INSUFFICIENT.

November 4, 1932.

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

DEAR MR. GORDY: In your letter of November 2nd, you request an opinion as to whether the County Commissioners of the several counties are required to pay the salaries of deputies employed by the Registers of Wills in those counties where the fees of the Registers are insufficient to pay such salaries in addition to the constitutional salary of $3,000.00.

The answer to your inquiry is found in the provisions of Chapter 426 of the Acts of 1931, to which you refer. This Act is now codified as Section 286 of Article 93, and reads as follows:

> "Every register shall annually return to the comptroller a full and accurate account of all his fees, emoluments and receipts, and of all the ex-

penses incident to his office, and such account shall be rendered under oath, and in such form, and shall be supported by such proofs as shall be prescribed by the comptroller; and every register shall render with his accounts of the expenses incident to his office a list of the clerks employed by him, stating the rate of compensation allowed to each, and the duties which they severally perform, and also an account of the sums paid for stationery, official or contingent expenses, fuel and other things, and stating the purposes for which said expenses are applied; and in the account of fees there shall be a separate statement of all those fees charged during the year included in said account which at the date of said account remain uncollected; and every such Register of Wills, the emoluments of whose office shall not amount to the sum of three thousand dollars in any one year, as aforesaid, may present a statement to the County Commissioners of his county, under oath, showing the net proceeds of his office, together with a statement of the cost of the necessary record books, stationery, contingent and office expenses and fuel used in his office up to the first Monday in June in each year; and the said County Commissioners are hereby authorized and empowered to pay or levy for the use of said Register of Wills the amount of said books, stationery, contingent and office expenses and fuel, as aforesaid; provided that the amount so paid or levied shall not, when added to the net proceeds of his office, exceed the sum of three thousand dollars."

While the language employed in the statute is somewhat ambiguous, it is believed that the authority of the County Commissioners "to pay or levy for the use of said Registers of Wills the amount of said books, stationery, contingent and office expenses and fuel" includes the power to pay or levy for salaries paid to deputies or clerks employed by the Register.

It is not clear, however, that the provisions of this statute are mandatory upon the County Commissioners. Apparently the statute was enacted for the purpose of conferring authority upon the Commissioners, in their discretion, to levy for these expenses, a power which they might not possess in the absence of this statute.

As your inquiry involves controverted claims between the Registers of Wills on the one hand and the County Commissioners on the other, and does not involve the revenues of the State, I think it would be improper for us to undertake to give you any more definite advice on the subject.

With kind regards and best wishes, I am,

Yours very truly,

WILLIS R. JONES, *Deputy Attorney General.*

SHERIFF

SHERIFF—ALLOWANCE FOR CARE OF PRISONERS IN ST. MARY'S COUNTY.

January 13, 1932.

Hon. John H. T. Briscoe,
Attorney at Law,
Leonardtown, Md.

DEAR MR. BRISCOE: In your letter of January 12th, you request an opinion as to the meaning of Section 203 of Article 19 of the Code of Public Local Laws, relating to the Sheriff of St. Mary's County.

The Section under consideration reads in part as follows:

> "The Sheriff of St. Mary's County shall receive for keeping each prisoner committed to his custody, and for providing victuals and fire for each prisoner, the sum of $.75 per day."

You desire to be advised whether the word "fire" as used in this statute includes fuel. Obviously, fire cannot be maintained in the absence of fuel of some kind, and the Attorney General is in full accord with the view expressed in your letter that the statute under consideration requires the Sheriff to furnish such food and fuel as may be necessary for the maintenance of prisoners committed to his care, upon payment of the compensation specified.

With kind regards and best wishes, I am,

Very sincerely yours,

WILLIS R. JONES, *Deputy Attorney General.*

SHERIFF—UNLAWFUL TO USE BADGE OF DEPUTY SHERIFF WITHOUT AUTHORITY.

January 25, 1932.

Hon. Joseph C. Deegan,
Sheriff of Baltimore City,
Baltimore, Md.

MY DEAR SHERIFF: In your letter of January 21st, you call attention to the case of a man who has in his possession a Deputy Sheriff's badge of Baltimore City. You state that this man is not a Deputy Sheriff and has no authority to use said badge. You desire to be advised what, if any, right this man has to retain this badge, and also whether you may make demand that he surrender the badge to your office.

The party in question has no right to retain the badge in view of Chapter 319 of the Acts of the General Assembly of 1902, which provides as follows:

> "That it shall be a misdemeanor, punishable by imprisonment in the jail of Baltimore city for not more than one year, or by fine of not less than five dollars, for any person not a member of the police force of Baltimore city, sheriff or deputy sheriff of Baltimore city, to falsely represent himself as being such member, sheriff or deputy sheriff with fraudulent design upon person or property, or upon any day or at any time to have, use, wear or display, without the authority of the Board of Police Commissioners or sheriff of Baltimore, any shield, button, wreath, number or any other insignia or emblem of office such as are worn by the police force, sheriff or deputy sheriff of said city."

There is no statutory provision which authorizes you to demand that the badge in question be returned to your office, but any person who retains or makes use of any such

badge in Baltimore City is clearly subject to prosecution under the above Act of Assembly.

Very truly yours,

WILLIS R. JONES, *Deputy Attorney General.*

SHERIFF—ATTACHMENT OF CORPORATE STOCK—THE CERTIFICATES THEMSELVES MUST BE SEIZED UNDER THE PROVISIONS OF SECTION 63, ART. 23.

February 18, 1932.

Hon. Joseph C. Deegan,
Sheriff of Baltimore City,
Court House,
Baltimore, Md.

Attention: Mr. Tormollan

DEAR SIR: You have asked for an opinion as to the proper procedure in cases where an attachment is sought to be made of shares of corporate stock. This is a matter which we have previously discussed on several occasions.

Section 18 of Article 9 of the Code provides:

> "An attachment may be laid on any interest which the defendant has or may be entitled to in the stock of any corporation, or in the debt of any corporation, transferable upon the books of such corporation; and it shall be the duty of the sheriff or other officer, in laying said attachment, to comply with the requirements contained in article 23, title 'Corporations', of this code, in relation thereto."

Section 80 of Article 23, reads as follows:

> "The interest which any defendant in a judgment or decree rendered by a court of law or equi-

ty, or in any proceeding by attachment, has on the books thereof in the capital stock of a corporation of this State, or of any national bank located therein, shall be liable to execution or attachment, and the proceedings thereon shall be as follows: the sheriff or other execution officer charged with the execution of the writ shall leave at the principal office of the corporation a notice in writing that he has seized the stock of the defendant (naming him and the purpose for which he has seized the same), and shall retain a copy of such notice and return it with the writ, the precise time of service being endorsed thereon. Upon receipt of such notice, the president or officer of the corporation to whom the same shall have been delivered, shall state in writing to the sheriff or other execution officer, the number of shares of stock standing in the name of the defendant at the time of such notice; and if the president or other corporate officer shall refuse or neglect for twenty-four hours to deliver such statement, the sheriff or other execution officer shall certify the fact to the court to which the writ is returnable, or to any judge thereof; and the said judge or court may order an attachment for contempt against such president or other corporate officer, and may conpel him to answer under oath on oral examination, as to the number of shares of stock in the name of such defendant at the time of service of such notice, and may compel the production of the books of the corporation, and also fine the president or other officer for not giving the required statement. When the sheriff or other execution officer has ascertained the number of shares of stock standing in the name of the defendant, he shall make a schedule thereof, or of so much thereof as will be amply sufficient to secure the debt and costs, and shall give notice to the corporation that the shares not included in this schedule are released. Thereupon such proceedings shall be had

> under the writ of execution or attachment as if the shares so seized were real estate; and they shall be transferred to the purchaser on the books of the corporation by such sheriff or other execution officer, or by such person as shall be named by the court to which said writ is returnable. It shall be the duty of the corporation to issue to the purchaser at the sale made by the sheriff or other execution officer a certificate for such shares, but such certificate and all renewals and substitutions therefor shall have stamped thereon the statement that they are issued under and subject to the provisions of this article, and if such be the fact, that the original certificate is outstanding."

These two sections were last enacted in 1904, and undoubtedly enabled an attaching creditor to acquire a lien upon the stock sought to be attached, although under the provisions of Section 83 of Article 23, it was expressly provided that no such procedure should affect the interest of any bona fide purchaser or pledgee of the stock certificate without actual notice of such attachment.

By the Acts of 1910, Chapter 73, however, the Legislature adopted what is known as the Uniform Stock Transfer Act. The provisions of this Act are set out in the Code, Article 23, Sections 51 to 73 inclusive. Section 63, reads as follows:

> "No attachment or levy upon shares of stock for which a certificate is outstanding shall be valid until such certificate be actually seized by the officer making the attachment or levy, or be surrendered to the corporation which issued it, or its transfer by the holder be enjoined. Except where a certificate is lost or destroyed, such corporation shall not be compelled to issue a new certificate for the stock until the old certificate is surrendered to it."

It is obvious that the provisions of the Uniform Act are totally inconsistent with the provisions of the sections above

cited, although those sections were not expressly repealed and still have a place in the Code.

In my opinion the provisions of Section 63 must prevail over the other provisions both for the reason that it is a later enactment, and for the further reason that the Legislature expressly provided in Sec. 68 that the Act should be so interpreted and construed as to effectuate a general purpose to make uniform the law of those States adopting the Act.

I am therefore of the opinion that no attachment is now valid in Maryland unless the stock certificates in question are actually seized by the Sheriff or other officer making the attachment, or unless the other conditions of Sec. 63 are fully complied with.

Yours very truly,

WM. PRESTON LANE, JR., *Attorney General.*

SHERIFF—NOT REQUIRED TO SERVE SUMMONS ISSUED BY A JUSTICE OF THE PEACE OF ANOTHER COUNTY, FOR A WITNESS TO TESTIFY IN A CIVIL CASE.

March 3rd, 1932.

Hon. Joseph C. Deegan,
Sheriff of Baltimore City,
Court House,
Baltimore, Md.

DEAR SIR: I have your letter of March 2nd, inquiring whether you are authorized or required by law to serve a summons issued by a Justice of the Peace for Baltimore County, directing two witnesses residing in Baltimore City to appear before said Justice of the Peace in Baltimore County to testify in a civil case.

I am of the opinion that the law does not authorize or require you to serve this summons. There is nothing in the general law requiring a Sheriff to serve process issued by a

Justice of the Peace in his own jurisdiction; such process is usually served by Constables. 10 Op. A.G. page 146. This office has previously ruled that a party defendant could not be validly summoned by a Justice of the Peace outside of the County of his residence, and the same rule would seem to apply to witnesses. 11 Op. A. G. 260.

Article 52, Section 28 of the Code authorizing Justices of the Peace to summons witnesses applies only to witnesses within the County and does not provide for summoning witnesses in other counties as does Article 75, Section 153 of the Code, with reference to process from the various Circuit Courts.

Yours very truly,

WM. PRESTON LANE, JR., *Attorney General.*

SHERIFF—WHETHER SHERIFF MAY OPERATE A MOTOR VEHICLE SEIZED UNDER WRIT OF REPLEVIN WITHOUT LICENSE TAGS.

April 15, 1932.

Hon. Joseph C. Deegan,
Sheriff of Baltimore City,
Baltimore, Md.

DEAR SIR: I have your letter of April 14th, in which you state that a Deputy Sheriff from your office seizing an automobile on a writ of replevin, found that the license tags for the year 1932 had been removed and secreted by the owner. The Deputy drove the machine to the garage where he intended to store it without tags, and in so doing, was stopped by a policeman who questioned his authority to drive under these conditions. You inquire what legal authority you would have to operate an automobile in the performance of your duty under such circumstances.

The provisions of Section 192 of Article 56 of the Code provides without qualification that "every motor vehicle

* * * * * shall at all times while being used or operated in this State have displayed * * * * * the number plates or markers issued by the Commissioner of Motor Vehicles for such motor vehicles".

Without deciding at this time whether this prohibition would apply under all circumstances to State officials in the discharge of their official duties, I think, as a matter of policy, it is clearly desirable to comply with this provision. I can see no reason why it would not be advisable, under the circumstances you mention, to arrange for the seized automobile to be towed to the garage, or if it is necessary to drive it under its own power, it should be possible to make arrangements with the Commissioner of Motor Vehicles to have a special tag or marker issued for the purpose.

Yours very truly,

WM. PRESTON LANE, JR., *Attorney General.*

SHERIFF—RIGHT TO COLLECT FEES AFTER EXPIRATION OF TERM OF OFFICE.

April 19, 1932.

Hon. Wm. S. Gordy, Jr.,
State Comptroller,
Annapolis, Md.

DEAR SIR: Referring to the letter of the State Auditor, dated April 4th, 1932, the question is raised whether a sheriff, collecting fees after the expiration of his term of office, which had been earned during his term, is entitled to compensation therefor.

Under Art. 87, Sec. 35 of the Code, a sheriff is entitled to collect fees for one year after his term has expired. There does not appear to be any express provision of law covering the disposition of such fees. It is clear, however, that the sheriff cannot retain them, and if his constitutional salary was fully earned for the last accounting period during his

term of office, I am of the opinion that the balance should be accounted for to the Comptroller.

This seems to have been the opinion of Attorney General Robinson, as reported in 14 Op. A. G. 112.

The Legislative intent in adopting Art. 87, Sec. 35, was to afford to sheriffs who had failed to earn their constitutional salary, a chance to make it up by collections after the expiration of their term. A similar provision is found in the law relating to Registers of Wills, who are also fee officers, limited to an annual salary of $3000.00.

For a construction of the statutes applicable to Registers of Wills, see an opinion of this office dated July 16, 1931, addressed to the State Auditor.

Yours very truly,

WM. PRESTON LANE, JR., *Attorney General.*

SHERIFF—FEES COLLECTED FOR BOARD OF PRISONERS—DUTY TO ACCOUNT FOR EXCESS OVER COST.

April 19, 1932.

Hon. Wm. S. Gordy, Jr.,
State Comptroller,
Annapolis, Md.

DEAR SIR: Referring to the letter to you from the State Auditor, dated April 4th, 1932, which I discussed with Mr. McCusker a few days ago, the following question is presented:

A sheriff, who has been boarding prisoners committed to his custody from the State courts, received therefor an allowance of 65c per day from the County Commissioners, and for prisoners committed from the Federal Courts, 75c per day from the Federal government. An audit of his accounts discloses that he has been able to feed his prisoners at a cost not exceeding 50% of the amounts received. The

question is whether this profit may be retained by the sheriff, or whether it is a part of the fees of his office, and, as such, payable to the State Treasurer, since the total fees collected in this case exceed his constitutional salary of $3000.

It is the duty of the sheriff to receive and hold in custody Federal prisoners, as well as State prisoners, under the express provisions of Art. 87, Sec. 46 of the Code. It is, of course, entirely clear that the County, as well as the Federal government, in making their allowance, (the latter far in excess of the statutory requirement) are concerned with the welfare of the prisoners, and not with emoluments to the sheriff. Under no circumstances can the sheriff lawfully retain such excess, since he is a fee officer, limited as to his compensation, and if allowances made by law for his expenses exceed his actual expenses, he is required to account to the Comptroller for the amount of such excess.

Cecil County vs. Beasley, 121 Md. 696,
(Full report in 87 Atl. 1106)
15 Op. A. G. 276.

The result is that the State profits at the expense of its prisoners, but by taking this stand, sheriffs may be pursuaded to feed their prisoners to the limit of their allowances. The allowances in each case appear to be not excessive, and would lead me to seriously question whether a 50% profit was in fact made if proper allowances for overhead, labor, etc. were included. That, of course, is a problem in cost accounting, and I must accept the facts to be as set forth above.

Very truly yours,

WM. PRESTON LANE, JR., *Attorney General.*

SHERRIFF—FEES OF SHERIFF IN MOTOR VEHICLE CASES.

April 30, 1932.

Hon. Edward J. Edelen,
State's Attorney for Charles County,
LaPlata, Md.

DEAR SIR: Your letter of the 21st has been received. I understand the questions therein stated to be as follows:

> What are the proper fees to be charged by the Sheriff of a county or one of his deputies under the Motor Vehicles Laws of this State. [Art. 56, Sec. 208 of the Code of Public General Laws of Maryland, Bagby's Edition, 1924,] for the following:
>
> An arrest with a warrant?
> An arrest without a warrant?
> For serving a writ and a return?
> For serving a subpoena and a return?.

This question is explicitly answered by Art. 36, Sec. 30 of the Code of Public General Laws of Maryland, Bagby's Edition 1924, as modified by the Code of Public General Laws, Bagby's Edition 1929 Suppl. wherein specific provision is made for charges and fees allowed a Sheriff. This section, among other things, provides:

> "Sheriffs shall be entitled to charge and receive the following fee, to wit:
>
> For serving writ and return.....$ .75
> For serving subpoena and return.. .75
> For an arrest on a warrant and return in criminal cases..... 1.00"

No provision is made for an arrest without a warrant. However, Section 6 of Art. 36, Code of Public General Laws of Maryland, Bagby's Edition, 1924, provides as follows:

> "For any service not mentioned in this article which any officer may render, he shall be allowed

> the same fees herein allowable for similar services."

It is apparent that the service rendered by the Sheriff in the case of an arrest with a warrant is practically the same as an arrest without a warrant. Thus the charge in such a case should be the same as the charge allowed in the case of an arrest with a warrant, or $1.00.

Art. 36, Sec. 30, must not be confused with Art. 56, Sec. 208. Art. 56, Sec. 208 determines the fees of Constables and Justices of the Peace, but has no application to Sheriffs. This section after carefully limiting its application to constables and justices of the peace then provides with respect to Sheriffs as follows:

> "No Sheriff in this State shall be entitled to any fee for his services in connection with any prosecution under the Motor Vehicle Law of this State in excess of the fees prescribed for Sheriffs by Art. 36 of the Public General Law, all or any local laws to the contrary notwithstanding."

Thus it is expressly recognized in the section itself that Art. 36 shall govern charges and fees of Sheriffs.

Yours very truly,

WM. PRESTON LANE, JR., *Attorney General.*

SHERIFF—CAN THE SHERIFF DEMAND PAYMENT OF COSTS IN ADVANCE BEFORE EXECUTING A FI. FA. ISSUED BY A JUSTICE OF THE PEACE, UNDER THE LOCAL LAW OF FREDERICK COUNTY?

May 27, 1932.

C. W. Crum, Esq.,
Sheriff of Frederick County,
Frederick, Md.

DEAR MR. CRUM: I have your letter of May 26th, in which you refer to a controversy between your office and

Mr. Clemson of Westminster, Maryland. You state that Mr. Clemson, representing a client, made application to a Justice of the Peace in Frederick County for judgment in a civil case, but refused to pay in advance the costs of $2.50 fixed by the Justice. Mr. Clemson refused to advance these costs, but nevertheless the Justice entered the judgment, which was forwarded to your office with an order of Mr. Clemson for fi. fa. You state that you have declined to make the levy until $2.24 Sheriff's costs are paid, and that Mr. Clemson refuses to pay, on the ground that the Sheriff has no authority to insist on the payment of costs in advance. You request my opinion in the matter.

The case appears to be covered by statutory provisions. Sec. 488 of Art. 11 of the Public Local Laws of Frederick County (Acts 1929, Ch. 184, Flack's Code, 1930, p. 2573), provides:

> "Whenever any civil action * * * is instituted * * * before a Justice of the Peace in Frederick County * * * said plaintiff * * * shall at the time of the bringing of his * * * suit, pay to the said Justice of the Peace, in advance, all the costs covering the institution of suit, service of process, including all Sheriff's or Constable's fees, and all other costs which may be involved as far as can be determined by the Justice of the Peace in carrying the proceedings to a conclusion * * * said costs so paid in advance to be apportioned and paid by the said Justice to the Constable in or Sheriff of Frederick County, as they either may be entitled and to said Justice himself, said costs or fees to be the legal fees authorized by the Code of Public General Laws of Maryland."

I am of the opinion that this provision contemplates the payment in advance of your costs as well as the Justice's costs, in such cases.

The amount of costs collectible is definitely fixed as to Justices by Art. 36, Sec. 20, of Bagby's Code of Public General Laws (1929 Supplement), and by Art. 36, Sec. 30,

as to Sheriffs. I know of no authority for collecting any other or further charges than those enumerated in said Sections, except in so far as poundage fees may be charged upon the authority of the early Maryland decisions, or in so far as long established local custom may prevail, in a case not covered by the statute. Your letter does not indicate whether there is any dispute concerning the calculation of costs, nor does it supply sufficient information for me to pass upon this question.

Yours very truly,

WM. PRESTON LANE, JR., *Attorney General.*

SHERIFF—DUTY TO ACCOUNT FOR FEES OF OFFICE—UNDER LOCAL LAW OF HOWARD COUNTY.

August 8, 1932.

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

DEAR SIR: I have delayed answering your letter of July 13th, requesting an opinion relative to the proper accounting by the Sheriff of Howard County for sums received for the board of prisoners committed to his care, fees of his office, and so forth, together with copies of the Sheriff's letter to you dated July 7th and copy of a letter from Mr. Loughran to the Sheriff, discussing this question.

The Sheriff's status in Howard County as regards compensation is fixed by the terms of a local statute, re-enacted by Ch. 4, Acts 1927, now appearing as Sec. 293, Art. 14, Flack's Code of Public Local Laws. This statute purports to require the Sheriff to account to the County Commissioners for all fees of his office and he in turn is paid a fixed salary of $1500 by the County, and is also paid for his expenses upon the presentation of vouchers. He is authorized to appoint a warden of the jail, who is allowed a salary and re-

quired to account to the County Commissioners for the expense of boarding prisoners, out of an allowance "not exceeding 60 cents per day."

It is clear that this local law must be given effect, unless it is unconstitutional.

I have carefully examined the provisions of Sec. 1, Art. 15, of the Maryland Constitution, and also the following cases and opinions, which are germane to the point under discussion.

Beasley v. Commissioner of Anne Arundel Co., 121 Md. 693; (Full report in 87 Atl. 1106); 13 Opinions, Att. Gen. 134; 15 Opinions, Att. Gen. 276.

Goldsborough v. Lloyd, 86 Md. 374.
State v. Green, 122 Md. 288.
Green v. State, 120 Md. 690-691.
Sanner v. State, 83 Md. 648.
Tull v. Sterling, 133 Md. 164.
Thrift v. Laird, 125 Md. 55.
Balto. v. O'Connor, 147 Md. 639.

It is exceedingly difficult to reconcile the language of the foregoing decisions, but certain definite principles may be stated.

1. Under the Constitution, no Sheriff may receive in excess of $3,000 by way of compensation, whether from fees or salary.

2. Where local Acts exist, requiring the Sheriff to account to the County for fees or allowances, they must be given effect.

3. Where the allowance is a flat amount, or where funds come into the Sheriff's hands from any source by virtue of his office, he must account to the State for the excess over and above his salary, unless required by local law to account therefor to the County.

4. Where sums are illegally collected and retained by the Sheriff, the State has no right to require him to account, but he holds such funds in trust for the persons from whom he has made such illegal collection.

It would appear that the Sheriff of Howard County has not received any fixed allowances, but has merely been paid actual expenses and fixed salary. Under such circumstances, there are no excess fees payable to the State.

In my letter to you of April 19th, 1932, I was dealing with a situation where no local statute was involved, and in the absence of such statute, that opinion still holds good. Since there are a number of Counties in which different types of local statutes exist, this opinion applies solely to Howard County.

Very truly yours,

WM. PRESTON LANE, JR., *Attorney General.*

SHERIFF—FEES IN PRINCE GEORGE'S COUNTY—MUST ACCOUNT TO COUNTY AUTHORITIES UNDER LOCAL LAW.

August 8, 1932.

Edmund R. Stewart, Esq.,
State Auditor,
Union Trust Building,
Baltimore, Md.

DEAR MR. STEWART: I am now in a position to reply to your letter of May 31st, which I previously acknowledged, relative to Sheriff's fees in Prince George's County. The answer to your question is indicated by an opinion of this date, addressed to the Comptroller, relative to Sheriff's fees in Howard County.

There is a local Act in Prince George's County, codified as Art. 17, Secs. 929-933, inclusive (Flack's Code, Public Local Laws, 1930), which fixes the Sheriff's salary at $2400.00 per year, and requires him to account to the County for all fees collected, also to obtain reimbursement from the County for the cost of transporting prisoners. It seems clear that if, as you state, the County allows him a flat sum

for this latter expense, it is in disregard of the statute; the County is legally entitled to an accounting from the Sheriff, but the State is not interested in any excess.

The same thing would appear to be true as to the allowance for boarding prisoners. The County pays "not more than 50 cents a day * * * for each prisoner," and the Sheriff is to make annual settlements with the County, consequently, the accounting lies between the county and the Sheriff, who should not be permitted to retain more than his actual expense.

As to the sum of $550.00 received by the Sheriff from the Bowie Race Track, it seems clear that the money is paid to the Sheriff by virtue of his office, and that he should account for it to the County as a part of his fees.

Yours very truly,

WM. PRESTON LANE, JR., *Attorney General.*

SHERIFF—SALARY IN CARROLL COUNTY—DUTY TO ACCOUNT TO COMPTROLLER FOR FEES COLLECTED.

September 9, 1932.

Edmund R. Stewart, Esq.,
State Auditor,
Union Trust Building,
Baltimore, Md.

DEAR MR. STEWART: I have your letter of August 23rd, requesting an opinion as to the status of the Sheriff of Carroll County, with reference to fees and accounting.

In my letter to the Comptroller, dated August 8th, referring to the Sheriff of Howard County, I pointed out that the matter is largely controlled by local statutes. Art. 7, Secs. 342 to 344, inclusive, of the Public Local Laws of Maryland (Flack's Code, 1930), provides that the Sheriff of Carroll County is to be paid a salary of $2500.00 a year by the

County Commissioners, $300.00 for each execution and $300.00 for traveling expenses. He is also allowed the actual expense of transporting prisoners and all supplies and provisions necessary to keep prisoners. The statute does not, however, deal in any way with the fees of his office, or provide for an accounting therefor to the County Commissioners.

Under these circumstances, the Sheriff must account for his fees to the State; this exact proposition was decided by the Court of Appeals in the case of *Beasley vs. Commissioners of Anne Arundel County*, 121 Md. 693; 87 Atl. 1106. The Sheriff is prohibited by the Constitution, Article 15, Section 1, from receiving compensation or salary in excess of $3,000.00 a year, and the Legislature is without power to provide compensation in excess of that sum. The Legislature has power, however, to provide a lesser amount, and in the instant case the Sheriff is precluded from receiving more than the amounts mentioned in the local statute, and cannot retain even these if they exceed $3,000.00 in any one year.

The status of the Sheriff of Carroll County was covered by an opinion of Attorney General Robinson, reported in 13 Opinions, Attorney General, 134, in which I fully concur.

Yours very truly,

WM. PRESTON LANE, JR., *Attorney General.*

SHERIFF—POUNDAGE FEES—METHOD OF COMPUTATION.

September 28, 1932.

Hon. Joseph C. Deegan,
Sheriff of Baltimore City,
Baltimore, Md.

DEAR SIR: I have your letter of September 22nd, requesting me to advise you in writing concerning the computation of poundage fees which the Sheriff is entitled to charge.

The only statutory provision relating to this subject is found in Section 31 of Article 36 of the Code, which reads as follows:

> "The Sheriff shall have as poundage fees for levying and execution at the rate of seven and one-half percent on the first twenty-six dollars and sixty-seven cents and at the rate of three percent on the residue, but if execution be laid on any interest in lands only one-half of the poundage fees shall be charged, and if laid upon lands and the lands be not sold by the Sheriff he shall charge only one-fourth of the poundage fees aforesaid."

Since the statute is silent as to whether the poundage fee should be computed upon the amount of the judgment or the sale price of the property sold, the rule of reason must be applied in the determination of this question.

"Poundage" is defined by Corpus Juris, Volume 49, at page 1249, as "the amount allowed to the Sheriff or other officer for commissions on the money made by virtue of an execution." The same definition is found in Bouvier's Law Dictionary at page 2646.

In a case which you recently submitted to me, the amount of the judgment was $37,000 and the property which you seized was sold for $900.00. In that case you were orally advised that the poundage fees should be computed upon the sale price of the property in question and the advice which I gave you in connection with this case is hereby confirmed.

In cases where the property seized sells for more than the amount of the judgment, the money made on execution is represented by the sale price rather than the amount of the judgment and the poundage fees should be computed upon the sum realized by the sale. In such cases the Sheriff is chargeable for the property sold and after the payment of the plaintiff's judgment and costs the defendant is entitled to receive the balance. Since the Sheriff must account for the entire amount realized by the sale, it is reasonable and proper that his poundage fees should be computed upon this amount.

The object of the law is to subject the property of the defendant to execution for the satisfaction of judgments that are not otherwise paid to the extent that such action may be necessary to enforce the payment of debts, and care should be exercised by the Sheriff to avoid the seizure and sale of more property than is reasonably anticipated to be necessary to satisfy the judgment and costs so as to avoid any burdensome charges upon judgment debtors.

In cases where property is seized and the judgment is satisfied before sale, the poundage fees should be computed upon the amount of the judgment where it is paid in full, or upon the reasonable value of the goods seized where it is settled for a lesser sum.

I believe the above will answer the questions which you have in mind, but if you desire any additional advice on this subject, I will be glad to have you communicate with me.

Very truly yours,

WM. PRESTON LANE, JR., *Attorney General.*

SHERIFF—DUTY TO ACCOUNT IN ALLEGANY COUNTY TO THE STATE COMPTROLLER.

November 1, 1932.

Edmund R. Stewart, Esq.,
State Auditor,
Union Trust Building,
City.

DEAR MR. STEWART: You asked me for an opinion today, as to the liability of the Sheriff of Allegany County to account to the State. The matter is controlled by Art. 1, Sections 622, 623, of the Public Local Laws of Allegany County (Flack's Code, 1930). While these Sections are not free from ambiguity, I construe them as follows:

The Sheriff is allowed certain specified expenses by the County Commissioners upon the presentation of a

monthly report under oath. He is required to account in the same way, for fines and costs collected. If there is any deficiency, it must be paid by the County Commissioners out of their levy.

The Sheriff is not required to account to the County Commissioners for his fees, but must report these annually to the State Comptroller, and file a copy with the County Commissioners. If the fees amount to more than $3000.00 in any one year, the excess should be paid to the County Commissioners to make up the deficiency, if any, caused by the collection of insufficient fines and costs to pay his expense account; the balance, if any, to be paid the State. In the same way, if the fees amount to less than $3000.00, the County Commissioners must make up the difference. Any fees collected for a given year after the filing of the annual report must be paid to the County Commissioners to reimburse them for the amounts levied for such deficiency in salary and the deficiency in the expense account, if any, the balance to be paid to the State.

The amount due to the State, if any, can therefore be determined only by an audit of the yearly report of fees and the monthly reports of expenses, fines and costs. Each year stands on its own footing, except for the qualification that fees earned in one year but collected in the next, must be charged back against the preceding year. While this is a cumbersome provision, I see no way to escape this conclusion.

Very truly yours,

WM. PRESTON LANE, JR., *Attorney General.*

SPRINGFIELD STATE HOSPITAL

SPRINGFIELD STATE HOSPITAL—OFFICERS IN CHARGE ARE NOT RESPONSIBLE FOR THE LOSS OF MONEY BELONGING TO PATIENTS, WHICH IS LEFT WITH THE OFFICERS FOR SAFE KEEPING AND BY THEM DEPOSITED IN A BANK WHICH LATER BECOMES INSOLVENT, IN THE ABSENCE OF NEGLIGENCE.

November 21, 1932.

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

DEAR MR. GORDY: In your letter of November 19th, you state that it has been the practice at the Springfield State Hospital for the Hospital authorities to take charge of any money found on the person of patients admitted to the institution, and to receive monies made available by the family or friends of the patients for the personal use of the patients. You further state that monies received by the Hospital authorities under the above practice were deposited in the Central Trust Company, and request an opinion from this department as to the status of these funds in view of the closing of the Central Trust Company.

Since there is no statute which authorizes or requires the Hospital authorities to receive and account for monies paid to it under the circumstances set forth in your letter, there can, of course, be no State responsibility for the repayment of these monies. In my opinion, the Hospital authorities hold such monies merely as agent for the parties in interest and as such they are liable to the parties in interest only for the failure to exercise reasonable or ordinary care and prudence. As the Central Trust Company was authorized to receive deposits until the time of its closing and the Hospital authorities were without knowledge as to its condition, it would seem that they exercised the required

degree of care and caution by depositing the money with this Trust Company.

I am of the opinion, therefore, that the parties interested in these funds are entitled to share pro rata in any distribution that may be made by the Receiver of the Central Trust Company, and neither the Hospital authorities nor the State of Maryland are liable to any greater extent.

With kind regards and best wishes, I am,

Very sincerely yours,

WILLIS R. JONES, *Deputy Attorney General.*

STATE ATHLETIC COMMISSION

STATE ATHLETIC COMMISSION—BOXING AND WRESTLING—TOWN OF KENSINGTON HAS NO AUTHORITY TO REQUIRE A PERMIT.

February 13, 1932.

Hon. Milton A. Reckord,
Brigadier General,
Maryland National Guard,
Richmond Market Armory,
Baltimore, Md.

MY DEAR GENERAL RECKORD: A few days ago you left with me a communication addressed to you by the Mayor of the Town of Kensington, Montgomery County, Maryland, with reference to a proposed amateur boxing match to be held in the Kensington Armory. Attached to the Mayor's communication is a copy of an Ordinance of the Town of Kensington, the effect of which, if valid, is to prohibit boxing matches within the Town, in the absence of a permit issued by the Mayor and the payment of a license fee as provided by the Ordinance. You have requested me to advise you whether the officer in charge of the Armory at Kensington, and who is arranging for an amateur boxing match, is required to comply with the terms of this Ordinance.

The Ordinance in question is clearly invalid, for the reason that by the Public General Law of the State, the State Athletic Commission has been created and by this law (Sec. 140 of Article 56 of the Code of Public General Laws) it is provided that "the commission shall have, and is hereby vested with, the *sole* direction, management, control of and jurisdiction over all boxing and sparring and wrestling matches and exhibitions to be conducted, held or given within the State, by any person, club, corporation or association." There is a further provision in this same section to the effect that before the Commission shall issue a license for

any boxing, sparring or wrestling match in Montgomery County, a permit must be obtained from the County Commissioners for that County.

By virtue of the above statutory provisions, it is clear that the Legislature has conferred jurisdiction to regulate exhibitions of this kind within the town of Kensington upon the State Athletic Commission, subject to the approval of the County Commissioners for Montgomery County. By the use of the word "sole" in conferring this jurisdiction upon the Commission, the Legislature clearly indicated that the Towns and Municipalities of the State would not be permitted to impose license fees and regulations such as are sought to be imposed by the Ordinance for the Town of Kensington.

You are therefore advised that the Ordinance in question is invalid, and compliance with the Public General Law upon the subject is all that is required in order to conduct these exhibitions within the Town of Kensington.

Yours very truly,

WILLIS R. JONES, *Deputy Attorney General.*

STATE ATHLETIC COMMISSION—HAS NO JURISDICTION OVER ATHLETIC EVENTS WHERE CONTESTANTS ARE PAID NO FEE OR REWARD AND NO ADMISSION CHARGE IS MADE.

March 21, 1932.

H. C. Byrd, Esq.,
Director of Athletics,
University of Maryland,
College Park, Md.

DEAR MR. BYRD: Your letter of March 12th, addressed to the Attorney General, has been referred to me for reply.

Section 140 of Article 56 provides that the State Athletic Commission shall have jurisdiction "over all boxing, spar-

ring and wrestling matches and exhibitions to be conducted, held or given within the State, by any person, club, corporation or association; and no boxing or sparring or wrestling match or exhibition shall be conducted, held or given within the State except pursuant to its authority and in accordance with the provisions of this sub-title." It is further provided that "before said Commission shall issue a license for a boxing, sparring or wrestling match in Montgomery or Prince George's County, it must first secure the permission of the County Commissioners in the County in which said match is to be held."

There is no exception in the law in favor of amateur boxing or wrestling matches, and it therefore follows that no amateur boxing tournament may lawfully be held in Prince George's County unless the persons holding the bout have obtained a license from the State Athletic Commission after having first obtained the permission of the County Commissioners of that County.

The object of this law is to regulate the business of conducting boxing, sparring and wrestling matches. The license fee is calculated upon the "total gross receipts from the sale of tickets of admission to such boxing or sparring or wrestling match," and it therefore has no application to cases where the contestants receive no fee or reward, and where no charge is made for admission.

With kind regards and best wishes, I am,

Very truly yours,

WILLIS R. JONES, *Deputy Attorney General.*

STATE BOARD OF BARBER EXAMINERS

STATE BOARD OF BARBER EXAMINERS—HAS NO POWER TO INSPECT BARBER SHOPS—SUB-BOARD HAS NO POWER TO REVOKE LICENSES.

June 17, 1932.

Mr. Fred B. Driscoll,
Cumberland Sub-Board,
State Board of Barber Examiners,
107 S. Johnson St.,
Cumberland, Md.

DEAR SIR: Answering your letter of June 13th, you are advised that a sub-board of the State Board of Barber Examiners has no power to revoke a license under the provisions of Chapter 226 of the Acts of 1904.

This Act contemplates that the sub-board shall act as an examining Board, and there is no express provision in the statute which authorizes either the members of the State Board of Examiners or of the sub-boards to inspect barber shops. In my judgment, the members of the sub-boards should confine their activities to the discharge of the duties expressly conferred by law and should not undertake to make inspections.

Very truly yours,

WILLIS R. JONES, *Deputy Attorney General.*

STATE BOARD OF EDUCATION

STATE BOARD OF EDUCATION—AUTHORITY TO CARRY LIABILITY AND COMPENSATION INSURANCE.

March 31, 1932.

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

DEAR DOCTOR COOK: Your letter of March 23rd has been received. I understand the State Board of Education for Baltimore County has submitted for your consideration certain questions upon which you have requested our advice. I understand these questions to be as follows:

> 1. Has the Board of Education of Baltimore County authority to take out insurance against loss by reason of liability for bodily injuries or death accidently suffered by the operation of school coaches?
>
> 2. Has the Board of Education of Baltimore County authority to carry compensation insurance on the following employees: janitors, drivers of school coaches, clerks, supervisors and superintendents?

Article 77, Section 44, of the Code of Public General Laws of Maryland, Bagby's Edition, 1924, provides, among other things, as follows:

> "The County Board of Education * * * shall seek in every way to promote the interests of the schools under their jurisdiction."

Liability insurance on buses owned and operated by the Board is undoubtedly for the general protection of pupils

in County Schools, and as such, clearly promotes the interests of the schools. Therefore, it is my opinion that the Board has authority to take out such insurance.

Compensation insurance for the employees of the School would also seem to be advantageous for the Schools, and hence, would be within the general powers of the Board. Therefore, it is my opinion that such insurance may also be taken out by the Board.

Yours very truly,

WM. PRESTON LANE, JR., *Attorney General.*

STATE BOARD OF ELECTRICAL EXAMINERS AND SUPERVISORS

STATE BOARD OF ELECTRICAL EXAMINERS AND SUPERVISORS—HAS NO POWER TO WITHHOLD LICENSE FROM PERSONS FOUND QUALIFIED SIMPLY BECAUSE SUCH PERSONS HAVE NOT OBTAINED CONSTRUCTION LICENSE.

April 16, 1932.

Mr. Joseph A. O'Brien,
State Board of Electrical Examiners
and Supervisors,
22 Light Street,
Baltimore, Md.

MY DEAR MR. O'BRIEN: I have your letter of April 15th, requesting an opinion as to whether the State Board of Electrical Examiners and Supervisors may decline to issue a license where the applicant has not obtained a construction license in accordance with the provisions of Section 246 of Article 56, of the Code of Public General Laws.

The State Board of Electrical Examiners and Supervisors must discharge its duties as prescribed by Chapter 244 of the Acts of 1906. If the applicant meets the requirements prescribed by this law, he is entitled to a license regardless of whether he has or has not obtained a construction license.

It will be noted that the construction license is not applicable to all contractors, there being a provision to the effect that this license is not required by a firm that does not do a gross business in excess of $5,000 per annum. Obviously, the Board of Electrical Examiners and Supervisors could not decline to issue a Master Electrician's license to an applicant who is not required to obtain a construction license, but aside from this, the two licenses are entirely separate and distinct, and each must be applied for and issued independently of the other.

As a matter of co-operation between the State Board of Electrical Examiners and Supervisors and the State License Bureau, I think the Board may properly ask its applicants whether they have obtained a construction license, and the answer of the applicant, or failure to answer, can be referred to the License Bureau for investigation. This will be of some assistance to the License Bureau, and I see no valid objection to the practice which you are following in this connection.

With kind regards and best wishes, I am,

Very truly yours,

WILLIS R. JONES, *Deputy Attorney General.*

STATE BOARD OF ELECTRICAL EXAMINERS AND SUPERVISORS—HAS NO POWER TO SUSPEND LICENSE PENDING HEARING.

June 20, 1932.

Mr. John S. Dobler, President,
State Board of Electrical Examiners
and Supervisors,
22 Light Street,
Baltimore, Md.

DEAR MR. DOBLER: In your letter of June 14th, you request an opinion as to whether the State Board of Electrical Examiners has power to declare a license issued to a Master Electrician to be temporarily null and void, pending a formal hearing and decision of complaints or charges.

The only power which the Board possesses to revoke a license is contained in Section 9 of Chapter 244 of the Acts of 1906, which reads as follows:

> "Said Board shall have full power to revoke for proper cause any license or renewal of same after a full hearing of all parties in interest."

In view of the above provision of the law, I am satisfied that the Board has no power to revoke a license until after a hearing.

Before the Board should proceed with such a hearing, it should be a matter of record that the license holder has had actual notice of the time and place of hearing, and also a written statement of the complaint or charge against him. I do not believe that the mailing of an ordinary letter which is not returned constitutes sufficient notice and where the license holder refuses to accept a sealed registered letter from the Board containing the notice above indicated, I believe that the notice should be placed in the hands of the license holder personally a reasonable length of time before the date fixed for the hearing.

With kind regards and best wishes, I am,

Yours very truly,

WILLIS R. JONES, *Deputy Attorney General.*

STATE BOARD OF ELECTRICAL EXAMINERS AND SUPERVISORS—POWER TO REVOKE LICENSES.

August 18, 1932.

Mr. John S. Dobler, President,
State Board of Electrical Examiners,
506 E. Baltimore Street,
Baltimore, Md.

DEAR MR. DOBLER: I have your letter of August 17th, requesting me to write you the substance of what I said to Mr. J. Roland Stolzenbach of your Board, and Mr. W. C. Lord of a similar Board for Anne Arundel County, at our interview on August 9th.

As I recall the interview, Messrs. Stolzenbach and Lord wanted to know whether your Board would have the power to revoke a license issued by your Board where the holder had, upon hearing, been found to be responsible for dangerously defective work in Anne Arundel County. I called their attention to the provisions of Section 9 of Chap-

ter 244, by which the powers of your Board to revoke licenses are set forth in the following language:

> "Said Board shall have full power to revoke for proper cause any license or renewal of same after a full hearing of all parties in interest."

In my judgment, the holder of a master electrician's license issued by your Board is required to execute all electrical work which he undertakes in a manner that will not endanger the public safety, and if he performs work in such a dangerous manner as to warrant the revocation of his license, it makes no difference whether this work is performed in Baltimore City, Anne Arundel County or in any other County of the State.

I think I should add, as I told Messrs. Stolzenbach and Lord, that neither the law under which your Board operates nor the law defining the powers and duties of the Board for Anne Arundel County imposes any duty upon either of the Boards to inspect the work performed by the holder of master electrician's licenses for the purpose of laying the foundation for criminal prosecutions, and in my judgment, it would be better practice to leave the discharge of these duties to other officials, who are authorized by law to perform them.

As to charges upon which licenses may be revoked, it seems to me that all such charges should be preferred by persons who are not members of the Board that will determine whether the license should or should not be revoked. As Judge Dennis commented in one of the recent cases heard before him, he regarded it as bad practice for the same individual to act as investigator, prosecutor and Judge of the same matter.

The above fully covers our interview, as I recall it, but if there are any additional questions upon which you desire my views, I will be glad to have you write me further.

Yours very truly,

WILLIS R. JONES, *Deputy Attorney General.*

STATE BOARD OF ELECTRICAL EXAMINERS AND SUPERVISORS—HAS NO POWER TO REQUIRE NEW EXAMINATION WHERE APPLICANT FOR RENEWAL PAYS FEES AFTER LICENSE HAS LAPSED.

August 18, 1932.

Mr. John S. Dobler, President,
State Board of Electrical Examiners,
22 Light Street,
Baltimore, Md.

DEAR MR. DOBLER: In your letter of June 14th, 1932, you requested an opinion as to whether the State Board of Electrical Examiners and Supervisors could require a new examination as a condition precedent to the issuance of a master electrician's license to a person who previously held such a license, but did not renew the same within three months preceding its expiration as provided by Section 8 of Chapter 244 of the Acts of 1906.

As I wrote you a few days after the receipt of your letter, a case was then pending in the Court of Appeals involving a similar question with respect to the State Board of Examiners in Optometry. This case has since been decided and the Court held that simply because the applicant failed to pay his license fee to practice, the State Board had no right to demand that he should pass a satisfactory examination before issuing a new license and the Board should have issued a license when the applicant tendered all of the license fees. In the course of its opinion, the Court said:

> "It would be unreasonable to suppose that the Legislature meant that one desiring to suspend practice for a year or two could not resume on paying the fixed license fee except at the discretion of the Board."

The case referred to is that of *Aaron J. Kahn vs. State Board of Examiners in Optometry,* and the opinion of the Court is reported in the Daily Record of June 28th, 1932.

In my opinion, the above decision controls the question presented by your letter, and the State Board of Electrical

Examiners and Supervisors has no power to demand a new examination in cases where the applicant previously held a license which expired simply because he did not pay the renewal fee prior to the expiration of the license.

Yours very truly,

WILLIS R. JONES, *Deputy Attorney General.*

STATE BOARD OF ELECTRICAL EXAMINERS AND SUPERVISORS—HAS NO POWER TO REQUIRE FEE TO BE PAID BEFORE EXAMINATION.

November 30, 1932.

Mr. John S. Dobler,
State Board of Electrical Examiners
and Supervisors,
506 E. Baltimore St.,
Baltimore, Md.

DEAR MR. DOBLER: In your letter of November 26th, you state that the State Board of Electrical Examiners and Supervisors, at its meeting on March 16th, 1932, adopted a rule reading as follows:

> "RESOLVED, That all applications received on or after March 16th will be required to have a fee of $25.00 attached to the same, and this fee will revert to the State Treasury whether the applicant passes the examination or not, inasmuch as the actual routine work of the Board is just as expensive on an applicant failing as on one qualifying."

You desire to be advised whether the adoption of the above rule falls within the powers of the Board under the statute as it now stands.

The answer to your inquiry is found in the provisions of Section 663-F of the Baltimore City Charter, or Section 6 of Chapter 244 of the Acts of the General Assembly of 1906.

Without undertaking to set forth all of the provisions of this Section, it will be noted that the Section expressly provides that "each applicant shall pay to the Treasurer of said Board of Electrical Examiners the sum of $25.00 for such license." It is further provided that in cases where the application for a license shall be rejected by the Board, the applicant has the right to appeal to a Board of Arbitration, in which event he is expressly required to deposit $15.00 to cover the services of the arbitrators in event the decision of the Board is affirmed by the arbitrators.

I have discussed this matter with the Attorney General, and he is of the opinion that the conclusion is inescapable that the Board has no power to demand the payment of $25.00 from an applicant, except in those cases in which a license is issued, and that no deposit may be required except from a person whose application for a license has been rejected, who may be required to make a deposit of $15.00 as a condition precedent to the consideration of his appeal by a Board of Arbitration.

From the above it clearly follows that the rule adopted on March 16th, 1932, concerning which you make inquiry, is invalid and of no effect, and the Board has no authority to demand a deposit from an applicant prior to his examination.

Very truly yours,

WILLIS R. JONES, *Deputy Attorney General.*

STATE BONDS

STATE BONDS—INTEREST AND PRINCIPAL ARE PAID OUT OF TAX LEVIES WHICH ARE MADE IN ACCORDANCE WITH LEGISLATIVE ENACTMENTS.

September 10, 1932.

Mr. Charles W. Johnson,
Manager, Bond Department,
Mercantile Trust Company,
Baltimore, Md.

DEAR MR. JOHNSON: Your letter of September 8th, addressed to Mr. Anderson, has been referred to the writer for reply.

The only provision which is made for the payment of interest and principal of State bonds is usually contained in the Acts of the General Assembly authorizing the issue of such bonds. The Treasury officials of this State are usually very conservative in estimating the amount of money to be derived from the levy provided in each case, and no deficit such as that mentioned in your letter is anticipated by these officials.

As you no doubt know, each session of the Legislature passes a tax rate bill requiring the County Commissioners of the several counties and the City of Baltimore to levy sufficient taxes to meet the demands upon the government during the ensuing two years. If the assessments should be so materially reduced as to make the amount derived from the tax at the rate provided in the original bill insufficient, the Legislature could at any session make provision for this deficit in its bill fixing the rate for the ensuing two years.

Very truly yours,

WILLIS R. JONES, *Deputy Attorney General.*

STATE DEPARTMENT OF HEALTH

STATE DEPARTMENT OF HEALTH—CONFLICT IN TAX RATE BETWEEN WATER SYSTEM ACT AND MUNICIPAL CHARTER.

February 17, 1932.

Department of Health,
2411 N. Charles Street,
Baltimore, Md. Attention: Mr. Wolman.

DEAR MR. WOLMAN: Your letter of February 9th has been received. I understand the facts and questions as therein stated to be as follows:

> Chapter 76 of the Acts of the Maryland General Assembly of 1924 authorizes the Town of Northeast, in Cecil County, to issue bonds in the amount of $125,000, for the construction of a public water system. Do the provisions of this Act legalize a tax rate in excess of the tax rate limit named in the town's municipal charter, provided the increased tax rate is used solely for the purpose of financing the construction of the water system contemplated in the Act?

The answer to this question is to be found in the Act itself. The preamble of the Act, among other things, states that bonds shall be issued to provide for the maintenance, operation and construction of a water supply system, and that taxes shall be levied to pay for these bonds. Section 1 of the Act provides that bonds for this purpose may be issued in an amount not to exceed $125,000. Section 3 provides that the bonds shall bear interest "at a rate not to exceed 5 per cent per annum." Thus, in Sections 1 and 3 the right to issue bonds is specifically given. In Section 5

provision is made for the payment of interest, and the final retirement of these bonds. This section provides:

> "That for the purpose of retiring the said bonds authorized to be issued by this Act, and the payment of the interest thereon, there shall be levied against all the assessable property within the corporate limits * * * a tax sufficient to meet the interest or any part of said interest on said bonds as it becomes due, and to pay the principal thereon as they mature * * *".

It is further provided in this same section that

> "Should the receipts from said taxes or other sources be inadequate to make the principal payment on said bond by reason of defaults or otherwise, such deficiency shall be added to and collected in the next year's tax, if sinking fund bonds are used, or such deficiency shall be made up by a special tax on all of the property tax as aforesaid, if serial bonds are used * * *".

Thus it is immediately apparent that a taxing power is specifically given co-extensive with the necessity of paying the principal and interest on the bonds. Sections 1 and 3 granted the right to issue the bonds for the purposes enumerated in the Act. This right is valueless without a corresponding power to see that the right may be duly carried into operation. This power is a grant of a taxing power. This taxing power is limited by its correlative right, namely, the accumulation of funds sufficient to pay the regular interest and retirement of the bonds, and hence is not limited by the corporate charter.

The fact that the tax rate is not limited by the corporate charter is further seen in Section 17 of the Act, which is as follows:

> "AND BE IT FURTHER ENACTED, That all Acts and parts of Acts inconsistent with the provisions of this Act be and the same are hereby repealed to the extent of their inconsistency."

Therefore, it is my opinion that the town of Northeast, in Cecil County, may levy a tax rate in excess of the rate named in the municipal charter, provided the increased taxes go solely to the payment of the interest and retirement of the bonds issued in accordance with Chapter 76 of the Acts of the Maryland General Assembly of 1924.

Yours very truly,

WM. PRESTON LANE, JR., *Attorney General.*

STATE ROADS COMMISSION

STATE ROADS COMMISSION—IS ENTITLED TO STATE'S IMMUNITY FROM SUIT FOR DAMAGES.

April 8, 1932.

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

DEAR MR. BRISCOE: Your letter of April 6th, addressed to the Attorney General, has been referred to me for reply. You request an opinion as to whether the State Roads Commission may be sued for personal injuries under certain facts set forth in your letter.

The case of *State vs. Rich*, 126 Md. 643, establishes the principle that the State Roads Commission is immune from suit for damages arising in tort. The opinion in this case was written by Judge Urner who said:

> "In view of the relation which the Commission thus bears to the State, it is entitled, in a case like the present, to the benefit of the State's immunity from suit, unless it has been made liable to be sued for negligence by legislative enactment."

It was further stated in the same opinion:

> "It cannot be successfully contended that the State Roads Commission can rightfully apply any of the funds in its hands to the payment of damages for personal injury, or that it is vested with any authority to raise money for that purpose. The plain and explicit provisions of the law defining the powers of the Commission and directing the application of its funds effectually prevent such a conclusion."

The principle followed in the above case was in line with the earlier decision of the Court of Appeals in the case of *Weddle vs. School Commissioners*, 94 Md. 334, and was followed in the case of *Fisher & Carozza Bros. Co. vs. State Roads Commission*, 138 Md. 586.

In the light of these decisions it is clear that the party referred to in your letter may not recover damages from the State Roads Commission.

With kind regards and best wishes, I am,

Very truly yours,

WILLIS R. JONES, *Deputy Attorney General.*

STATE SANATORIUM

STATE SANATORIUM—DUTY OF CARE TO BE EXERCISED BY THE BOARD.

February 11, 1932.

Dr. Victor F. Cullen,
Maryland Tuberculosis Sanatorium,
State Sanatorium, Md.

DEAR DR. CULLEN: I beg to acknowledge receipt of your letter of February 8th. I understand the State Sanatorium often has, within its care, incorrigible children, who slip out at night and run away, and that the Board is desirous of knowing just what their responsibility is in the event one of these children should be injured.

This question is no longer open to doubt in this State. The Court of Appeals of this State in passing on questions of this character, involving State Institutions, has stated that there is no liability on the Board of Directors. The Board of Directors is called upon to exercise due care and caution in the selection of its agents. If this responsibility has been properly exercised, there is no further liability on the Board. The cases of *Perry vs. House of Refuge,* 63 Md. 20, and *Loeffler vs. Sheppard-Pratt Hospital,* 130 Md. 265, are directly on the point and in each case, liability was denied. The great weight of authority is clearly in accord with the Maryland doctrine, as shown by cases collected in 9 A. L. R. 91.

With kind regards, I am,

Yours very sincerely,

WM. PRESTON LANE, JR., *Attorney General.*

TAXATION

TAXATION—COLLATERAL INHERITANCE TAX NOT PAYABLE UPON INCREASE IN VALUE OF REAL ESTATE ACCRUING AFTER JUNE 1, 1927, AND AFTER DEATH OF DECEDENT.

January 21, 1932.

Hon. Harry G. Berwager,
Register of Wills,
Westminster, Md.

DEAR SIR: In your letter of January 20th, you request an opinion as to the proper interpretation of Chapter 43 of the Acts of the General Assembly of 1927.

The above Act was construed by the Court of Appeals in the case of *Dryden vs. Baltimore Trust Company*, 157 Md. 559, where it was held that it did not relieve from the tax any increase in value or income accrued prior to June 1st, 1927, but it did relieve from the tax any increase in value or income accrued subsequent to June 1st, 1927.

By virtue of the above decision, no tax is payable upon the increased value of the real estate referred to in your letter, arising subsequent to the date of death of the testator, and subsequent to June 1st, 1927, when Chapter 43 became effective.

Very truly yours,

WILLIS R. JONES, *Deputy Attorney General.*

TAXATION—NOTICE TO DELINQUENT TAXPAYER—NEED NOT BE SERVED IN PERSON.

January 23, 1932.

Mr. John J. Stump,
State and City Tax Collector,
Court House,
Cumberland, Md.

DEAR SIR: I have your letter of January 13th, asking for an opinion as to whether or not a notice to a delinquent taxpayer can be left at the residence of such taxpayer, or whether he must be served in person in order for the notice to be legal.

Section 43-BB, Chapter 433, Acts of 1927 (Codified as Art. 1, Sec. 122, Flack's Code Public Local Laws) provides that a copy of each bill shall be left with the party by whom the taxes are to be paid "*or* at his or their usual place of abode". This provision is substantially identical with the provisions of the Public General Law, Section 189 of Article 81, Bagby's Code, 1929 Supplement.

I am of the opinion that the language of the Act permits service to be made in either of the ways specified, and that the mere leaving of a notice on the premises is sufficient, if the owner does not in fact reside there at the time the notice is left. However, the substantial compliance with the law has been held to be a jurisdictional matter, and in the case of *Benzinger vs. Geis,* 87 Md. 704, it was held that a tax sale was invalid because the taxpayer was dead at the time notice was left. As a practical matter, I believe it would be wise to require personal service wherever this can be made without great inconvenience.

Yours very truly,

WM. PRESTON LANE, JR., *Attorney General.*

TAXATION—COLLATERAL INHERITANCE TAX—REGISTER OF WILLS MAY GIVE FORMAL RELEASE UPON PAYMENT.

February 6, 1932.

Hon. A. James Gross,
Register of Wills,
Belair, Md.

DEAR MR. GROSS: I have your letter of February 4th, enclosing your correspondence with Mr. Wm. H. Harlan of Belair, with reference to certain collateral inheritance tax which has been allowed to you as Register of Wills, by an Auditor's account filed in the Circuit Court for your County. You ask to be advised whether you should execute the formal release which has been sent to you by Mr. Harlan, or whether it will be sufficient for you to give the customary receipt for the payment of taxes of this kind.

The release which Mr. Harlan has sent to you amounts to nothing more than a receipt for the taxes, and if Mr. Harlan insists upon its execution, I see no objection to such a course. As you are required to collect the taxes in full and there is no authority for the deduction of Notary fees, I think Mr. Harlan should have his clients pay these fees. This he is apparently willing to do, as indicated by the last paragraph of his letter of January 20th.

Under all of the circumstances, I can see no objection to the execution of the release submitted, and you are advised that that is the proper course to pursue when requested.

I am returning herewith the papers which you enclosed in your letter.

With kind regards and best wishes, I am,

Very sincerely yours,

WILLIS R. JONES, *Deputy Attorney General.*

TAXATION—COLLATERAL INHERITANCE TAX—IS NOT PAYABLE UPON BEQUEST TO A TOWN, BUT IS PAYABLE UPON BEQUEST TO A CHURCH.

February 8, 1932.

Hon. Norman S. Dudley,
Register of Wills,
Centreville, Md.

DEAR MR. DUDLEY: In your letter of February 3rd, you request an opinion as to whether a legacy of $500.00 to the Town Commissioners for the upkeep of a cemetery lot is subject to the payment of a collateral inheritance tax.

Section 105 of Article 81 of the Code of Public General Laws (1929 Supplement) specifically exempts legacies passing "to any County or City of this State."

In view of this provision, you are advised that no tax is payable upon the legacy in question.

You further ask whether a collateral inheritance tax is payable upon legacies bequeathed to the Trustees of a church.

There is no exemption as to such legacies, and it is the duty of the executor to collect and pay to you as Register of Wills, the usual tax upon all such legacies.

Very truly yours,

WILLIS R. JONES, *Deputy Attorney General.*

TAXATION—COLLATERAL INHERITANCE TAX—RATE IN EFFECT AT DEATH OF TESTATOR CONTROLLING. VALUATION OF LIFE ESTATE.

February 13, 1932.

John B. Deming, Esq.,
Maryland Trust Building,
Baltimore, Md.

Re: Estate of John Q. A. Holloway.

DEAR MR. DEMING: I have your letter of February 10th, requesting the views of this Department concerning the amount of collateral inheritance tax now payable upon a certain interest in a trust estate which passes to the widow of Clarence J. Holloway, under the will of John Q. A. Holloway.

From the copy of the petition which accompanied your letter, it is apparent that John Q. A. Holloway died in January, 1904, and that his will was shortly thereafter admitted to probate in the Orphans' Court of Baltimore City. A portion of his estate was devised and bequeathed to the Safe Deposit and Trust Company, in trust, for the benefit of his son, Clarence J. Holloway, for life, with the proviso that upon the death of the said Clarence J. Holloway, the trustee was to retain the sum of $50,000 for the benefit of the widow of the said Clarence J. Holloway, and to pay the income therefrom to the said widow until her death or remarriage.

It further appears that Clarence J. Holloway died on the 16th of December, 1931, and the trustee now proposes to administer the trust for the benefit of his widow as provided by the will of John Q. A. Holloway. You state that the widow of Clarence J. Holloway was born on August 26th, 1881, so she was a little over fifty-one years of age at the time of the death of her husband.

The rate of taxation in effect at the death of John Q. A. Holloway was 2½%, and under the decision of the Court of Appeals in the case of *State vs. Safe Deposit and Trust Company,* 132 Md. 254, the value of the interest which passes to the widow of Clarence J. Holloway is taxable at this rate.

The widow of Clarence J. Holloway acquires a life estate in the sum of $50,000 unless she voluntarily abandons her interest in the fund by remarriage. Under these circumstances, I think it is proper that she should pay a collateral inheritance tax upon the basis of having acquired a full life interest in the fund. By giving effect to the equity rules relating to the valuation of life estates, her interest is worth three-eighths of the total value of the fund, or $18,750.00, yielding a net tax of $468.75.

You may inform the Auditor that a statement of the account upon this basis will be acceptable to the State.

With kind regards and best wishes, I am,

Very sincerely yours,

WILLIS R. JONES, *Deputy Attorney General.*

TAXATION—INTEREST AND PENALTY ON STATE TAXES DUE BY ORDINARY BUSINESS CORPORATIONS.

February 18, 1932.

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

DEAR MR. MCCUSKER: I have your letter of February 11th, in which you inquire as to the law governing the payment of penalty and interest on State taxes, payable directly to the State Treasury by ordinary business corporations, as required by Article 81, Section 19 of the Code.

As to the tax upon the tangible personal property of such corporations, Section 10 (b) (5) provides that the same be valued and assessed by the State Tax Commission. Section 48 (c) as amended by Chapter 500 of the Acts of 1931 provides that all ordinary State taxes levied upon assessments made by the State Tax Commission shall be due and payable without interest on or before August 1st of such year, pro-

vided the account is mailed on or before July 1st; and if the account shall not be mailed until after July 1st, the same shall be payable without interest at any time within thirty days after the mailing of the account. All taxes not paid on or before August 1st or within thirty days after the mailing of the account shall bear interest at the rate of one-half of one per cent for each month or fraction thereof. There is no provision for penalty on this tax.

In regard to the francise tax assessed against ordinary business corporations, you correctly state in your letter under acknowledgment that this is payable at any time up to August 1st of the year for which the tax is assessed without interest, provided the bill shall have been rendered to the corporation thirty days prior thereto, and that interest begins to accrue on August 1st at the rate of one-half of one per cent per month or fraction of a month, and that in the event of non-payment of the tax by December 1st, a penalty of five per cent is to be added. The provisions to this effect are to be found in Sections 136 and 138 of Article 81 as amended by the Acts of 1931, Chapter 262. A similar provision with reference to foreign corporations is found in Section 141 of Article 81 as amended by the Acts of 1931, Chapter 260.

With kind regards and best wishes, I am

Yours very sincerely,

WM. PRESTON LANE, JR., *Attorney General.*

TAXATION—TAXES ON AUTOMOBILE SOLD AT SHERIFF'S SALE MUST BE PAID OUT OF PROCEEDS OF SALE.

February 24, 1932.

Hon. Joseph C. Deegan,
Sheriff of Baltimore City,
Baltimore, Md. Att. Mr. Tormollan.

DEAR SHERIFF: Answering your inquiry of even date, with respect to the question as to whether the purchaser of an automobile at a Sheriff's sale is required to pay the taxes upon the automobile before he can obtain a license to operate the same, you are advised as follows:

Section 142 of Article 81 of the 1929 Supplement to the Code of Public General Laws contains the following provision:

> "(a) Whenever a sale of either real or personal property upon which taxes are due and payable shall be made by any ministerial officer, under judicial process or otherwise, all sums due and in arrears for taxes, upon such property, from the party whose property is sold shall be first paid and satisfied; and the officer or person selling shall pay the same to the collector of the county and/or city."

By virtue of the above provision, it is clear that the taxes due and in arrears upon the automobile are payable out of the proceeds of sale, and the purchaser is accordingly entitled to have the purchase price so applied by the Sheriff as to enable him to obtain the license to operate the automobile.

Yours very truly,

WILLIS R. JONES, *Deputy Attorney General.*

TAXATION—COLLATERAL INHERITANCE TAX—REMAINDERMEN MUST PAY TAX UPON VALUE OF ESTATE DISTRIBUTED TO THEM AND CANNOT CLAIM CREDIT FOR INCREASE WHICH WAS PAID TO LIFE TENANT.

March 5th, 1932.

Hon. Edwin R. Downes,
Register of Wills,
Court House,
Baltimore, Md.

DEAR DR. DOWNES: You have requested me to advise you concerning the computation of the collateral inheritance tax now payable by the Estate of E. Griswold Thelin.

As I understand the facts relative to this estate, Mr. Thelin died on April 5th, 1924, leaving a last will and testament by which the major portion of his estate was devised and bequeathed unto the Mercantile Trust & Deposit Company of Baltimore, as Trustee, to "pay out of the net income from said trust estate, or out of the principal thereof, in the event that such net income shall at any time be insufficient, the sum of $350.00 per month, to my wife, Marion G. Thelin, for and during her life." Upon the death of Mrs. Thelin, the Trustee was directed to distribute the trust estate and property to certain named collaterals. Mrs. Thelin died on October 5th, 1931, and the Trustee is now about to distribute the balance of the trust estate in accordance with the will of the testator.

From the inventory which was filed by the Executors of the estate on January 20th, 1924, it is apparent that the personal estate was appraised at $25,574.81. This inventory did not include the approximate value of the interest of the decedent in certain renewal premiums which the Prudential Insurance Company of America would collect for the next several years on insurance business produced by him. The collections on account of renewal premiums up to October 4th, 1931, actually amounted to $51,456.83, and upon the death of Mrs. Thelin, the stocks, bonds, real estate and cash held by the Trustee under the will of Mr. Thelin were duly appraised by your office as being worth $43,760.37.

The Trustee contends that a fair valuation of the interest of Mr. Thelin in the renewal premiums at the time of his death was $40,100.00, and that the difference between this amount and the actual amount collected, or the sum of $11,-356.83, represents an increase in the value of the estate subsequent to the death of Mr. Thelin, and that this increase is exempt from taxation under the provisions of the Acts of 1927, which became effective on June 1st of that year, providing that no collateral inheritance tax "shall be paid or collected upon any increase in value of the estate or any income thereon accrued subsequent to the date of the death of the decedent." In support of this contention, it is pointed out that the actual collections for the estate on account of renewal premiums subsequent to June 1st, 1927, aggregated the sum of $13,404.78, or a sum in excess of the amount which is claimed to represent an increase in value subsequent to June 1st, 1927, when the Act of that year became effective.

After very careful consideration, I am unable to accept the contentions of the Trustee. All monies which were paid to Mrs. Thelin as the widow of the decedent were exempt from taxation under the provisions of Section 106 of Article 81. If the persons entitled to a remainder interest in this estate desired to obtain a deduction in the amount of taxes payable by them, they should have proceeded in the manner provided by Section 119 of Article 81, in which event they would have been given credit for an exemption upon the value of the life interest of Mrs. Thelin in the estate. By this section of the law, it is expressly provided:

> "but if such person or object shall fail to pay said taxes as above provided, then such person or object shall at the time when he, she or it comes into possession of such estate, pay a tax on the whole value thereof."

It will be noted that under the terms of the will, Mrs. Thelin was entitled to receive, and I assume did receive, between June 1st, 1927, and October 5th, 1931, the date of her

death, the sum of $18,550.00, or a sum far in excess of the alleged increase in value during this period of time.

For the above reasons, I am satisfied that the persons who now take the remainder of the estate of Mr. Thelin are not entitled to any deduction from the value of the estate which they receive, and that they are required to pay a tax on the whole value of the estate which passes to them.

With kind regards and best wishes, I am,

Very truly yours,

WILLIS R. JONES, *Deputy Attorney General.*

TAXATION—GASOLINE TAX—MOTOR VEHICLES—VEHICLES OPERATED BY THE COUNTY NOT ENTITLED TO A REFUND.

March 8, 1932.

County Commissioners of Kent County,
Chestertown, Md.

GENTLEMEN: Your letter of March 5th has been received. I understand the question therein stated to be as follows:

> Is the County entitled to a rebate of the gasoline tax paid on the gasoline consumed in a gasoline tractor owned by the County and used for the County in building and maintaining County roads?

A gasoline tax was originally levied in this State by the Acts of the General Assembly of 1922, Chapter 522, as codified in the Code of Public General Laws of Maryland, Art. 56, Sections 211 to 222, inclusive, Bagby's Edition, 1924. Section 211 of Article 56 defines the motor vehicle and motor fuel within the Act. This section provides as follows:

> "(a) 'Motor Vehicles' shall include all vehicles, engines or machines, movable or immovable, which

are operated or propelled by internal combustion of gasoline, distillate or other volatile and inflammable liquid fuels.

"(b) 'Motor vehicle fuels' are such fuels known as gasoline and such other volatile and inflammable liquids produced or compounded for the purpose of operating or propelling motor vehicles, except the product commonly known as kerosene oil."

The motor vehicles which are exempt from the operation of the Act are defined by Art. 56, Section 219 of the Code of Public General Laws of Maryland, Bagby's Edition, 1929 Suppl. The tractor in this case is directly within Sec. 211 and is not within any of the exemptions enumerated in Section 219.

Therefore the county is not entitled to a rebate for the taxes paid on the gasoline consumed by the tractor, unless there is some exemption in favor of the County itself. The only entity entitled to any such exemption is the Federal Government as provided by Section 219A of the Code of Public General Laws of Maryland, Bagby's Edition, 1929 Suppl. The County is obviously not within this exemption.

Therefore, it is my opinion that no rebate is allowable in this case.

Yours very truly,

WM. PRESTON LANE, JR., *Attorney General.*

TAXATION—DECISION OF THE BOARD OF TAX APPEALS FINAL, ON QUESTIONS ARISING PRIOR TO 1929.

March 12, 1932.

Hon. R. E. Lee Marshall,
City Solicitor,
Court House,
Baltimore, Md.

DEAR MR. MARSHALL: I understand that the Board of Tax Appeals, consisting of the Comptroller of the Treasury and the State Treasurer, under the provisions of Article 81 of the Code as it stood prior to the codification of 1929, has decided to reduce the assessment made by the State Tax Commission in the case of the United States Fidelity & Guaranty Company for the year 1929. As a result of this ruling, the City of Baltimore will be required to repay a considerable sum to this Company, the tax having been paid under protest. You have asked for an official ruling from the Attorney General as to whether the decision of this Tax Board is final.

The appeal to the Board appears to have been duly taken by the United States Fidelity & Guaranty Company under the provisions of Section 170 of Article 81 of the Code of 1924. This Section expressly provides that if the Comptroller and Treasurer shall both be of the opinion that the valuation and assessment made by the State Tax Commission is erroneous, they shall change the same accordingly "and the valuation and assessment so agreed upon by the Comptroller and Treasurer shall be final."

It is apparent that the question of valuation and assessment is purely a question of fact. There can be no doubt that the Legislature can limit the right of appeal on questions of fact, and I am of the opinion that it has done so in the case under consideration.

I find by reference to the file, that after the passage of the Act of 1929, the United States Fidelity & Guaranty Company undertook to appeal the assessment for the year 1929, to the Circuit Court No. 2 of Baltimore City, upon the

theory that the new law which did away with appeals to the Comptroller and Treasurer, and permitted appeals to the equity courts, was controlling as regards the 1929 assessment, and a demurrer to this proceeding was interposed by this office on behalf of the State Tax Commission, which demurrer was sustained by the Court upon the theory that by Section 14 of Chapter 226 of the Acts of 1929 it was provided that said statutes should not apply to taxes levied or which ought to have been levied prior to June 1st, 1929, the effective date of the Act.

Yours very truly,

WM. PRESTON LANE, JR., *Attorney General.*

TAXATION—COLLATERAL INHERITANCE TAX—DIRECTION IN WILL TO SELL REAL ESTATE IN MARYLAND OPERATES AS CONVERSION AND THE PROCEEDS OF SALE SHOULD BE TREATED AS PERSONAL PROPERTY FOR TAXATION PURPOSES.

March 16, 1932.

Hon. M. N. Nelson,
Register of Wills,
Salisbury, Md.

DEAR MR. NELSON: In your letter of February 19th, you request an opinion as to whether any state tax is payable on the real estate mentioned in Items 3 and 5 of the will of Daniel J. Elliott.

The provisions of the will referred to, direct the executors to sell the real estate, and these provisions operate to convert the real estate into personal property for distribution purposes. The proceeds of the real estate should, therefore, be treated as personal property in the distribution of the estate.

Very truly yours,

WILLIS R. JONES, *Deputy Attorney General.*

TAXATION—ORPHANS' COURTS—CALCULATION OF TAX ON COMMISSIONS. (*See Note)

March 18, 1932.

Edmund R. Stewart, Esq.,
State Auditor,
Union Trust Building,
Baltimore, Md.

DEAR MR. STEWART: I have your letter of March 16th, in which you refer to an alleged practice in the Orphans' Court of one of the Counties, permitting certain deductions to be made from the corpus of estates, before calculating the State tax on Commissions. You state that these deductions fall into three categories, (1) where there is a loss due to the sale of assets below the appraisal for inventory purposes, (2) where there is an allowance for feeding live stock (3) where securities remain in the estate, and have not been distributed by the executors at the time of the stating of the account in question. You inquire whether such deductions are proper in computing taxes due to the State.

There can be no question that under the express provisions of Art. 81, Sec. 101 et seq. of the Code, the so-called State tax on commissions is based upon the value of the estate, irrespective of the allowance of commissions, and even in cases where all commissions are waived.

In the case of *York v. Maryland Tr. Co.* 150 Md. 354, the Court of Appeals held that commissions were properly allowed based on the inventory value of securities, together with income collected after the date of death, and a profit realized by sale over the inventory figure, without deduction for any claims or expenses against the estate, or liens against particular securities, which had been pledged by the decedent. While the Court did not have before it any question as to taxes, it clearly announced the proposition that the executor's commissions are to be computed "on the amount of the estate which comes into his hands in the course of administration and with which he is properly chargeable", and it would seem to follow that the tax is to

be computed in the same way upon the asset side of the executor's account, without regard to disbursements. Since all of the items in the present case would appear as credits to the executor on the disbursement side of the account, I am of the opinion that they cannot be considered as proper deductions for the purpose of calculating the tax in question.

As to the third item mentioned above, Sec. 103 of Art. 81, provides in effect that commissions must be fixed within twelve months from the grant of letters, based upon the assets wherewith the executors charge themselves. It would seem to follow that the tax in question becomes payable as soon as an account is stated, and therefore, it is improper for executors to withhold payment until final distribution is accomplished.

Yours very truly,

WM. PRESTON LANE, JR., *Attorney General.*

*The above opinion was modified by opinion of Court of Appeals in *Downes v. Safe Dep. & Tr. Co.*, 164 Md. 293.

TAXES—COLLATERAL INHERITANCE TAX—WAR RISK INSURANCE POLICY.

March 18, 1932.

Edmund R. Stewart, Esq.,
State Auditor,
Union Trust Building,
Baltimore, Md.

DEAR MR. STEWART: I have your letter of March 16th, in which you ask my opinion as to a collateral inheritance tax matter. You state that the Nicodemus National Bank of Hagerstown is administrator of the estate of Carter C. Racey, deceased; that Racey was killed in France, leaving

a War Risk Insurance Policy in the amount of $10,000, payable to his mother, as beneficiary, in monthly installments; that the beneficiary died during 1930, leaving unpaid installments amounting to $5400.00, which the administrator contends is payable to a brother of the decedent, Carter C. Racey, as surviving heir. The administrator contends that no collateral inheritance tax is payable on this sum, upon the theory that the surviving heir inherits from his mother, rather than from his brother.

This Department has ruled that the proceeds of a war risk policy, as such, are not exempt from collateral inheritance tax. 10 Op. A.G. 280. In that case, however, the insurance was payable to the decedent's estate, and was paid over by the administrator to a collateral relative of the assured, who took as his next of kin.

In the present case, where the mother was named as beneficiary, there would, of course, be no tax on the amount actually paid to her, since she was not a collateral. As to the balance, the case of *Woodworth v. Tepper*, 152 Md. 332, would appear to be in point. In that case, a veteran died in 1920, leaving a policy payable to his mother in monthly installments, which were paid to her until her death on August 31st, 1924. The Veterans' Bureau paid the unpaid balance to the administrators of his estate, and this balance was claimed by legatees under the will of the mother. This claim was opposed by a brother of the deceased veteran, who claimed a right to share in the fund as next of kin of the deceased veteran. The Court held that under the Federal law, the balance was payable to the estate of the deceased veteran, but that since the mother was the next of kin of the decedent at the time of his death, she acquired a vested right to his estate, which was not affected by the fact that she died before the estate was administered, or that she was the recipient, during her life, of payments under the policy. The fund therefore passed to the legatees under the mother's will.

In view of this decision, I am of the opinion that the administrator of the deceased veteran, in the present case, should pay the fund in question, to the administrators or executors of the mother. If she left no will, and the brother

of the deceased veteran is in fact the sole next of kin of the mother, as determined by the law of Maryland at the time of her death, then there is no tax payable by her administrators since he is not a collateral.

Yours very truly,

WM. PRESTON LANE, JR., *Attorney General.*

TAXATION—COLLATERAL INHERITANCE TAX PAYABLE WHEN ESTATE OF NON-RESIDENT DECEDENT IS ENTITLED TO DISTRIBUTIVE SHARE OF ESTATE OF MARYLAND DECEDENT.

April 9, 1932.

Hon. Edwin R. Downes,
Register of Wills,
Court House,
Baltimore, Md.

DEAR DR. DOWNES: Your letter of April 8th, enclosing correspondence with reference to the estate of Mary Davaney has been referred to me for reply.

It appears that Annie C. O'Ferrall, a resident of Baltimore City died during the year 1930, and that Mary Davaney, a non-resident of the State of Maryland, was entitled to a distributive share of the O'Ferrall estate. A short time after the death of Annie C. O'Ferrall, Miss Davaney died, and her share of the O'Ferrall estate has been distributed to Alfred J. O'Ferrall, administrator c.t.a. of the estate of Mary Davaney, who proposes to re-distribute the same to the Executors of the estate of Mary Davaney, in New York, who will disburse the same in accordance with the terms of her will. The question arises as to whether the estate of Miss Davaney must pay a collateral inheritance tax under the provisions of Section 105 of Article 81 of the Code of Public General Laws of Maryland.

As I understand the facts of this case, the decision appears to be controlled by the ruling of the Court of Appeals

in the case of *State vs. Dalrymple,* 70 Md. 294. In that case, William H. Dalrymple, a resident of California, died there, leaving a last will and testament by which he bequeathed all of his personal property to Marie E. Gamble. The will was duly probated in California, and thereafter letters of administration with the will annexed, were issued by the Orphans' Court of Baltimore City. At the time of the death of William H. Dalrymple, he was entitled to a one-fourth undivided part of the personal estate of his brother, Edward A. Dalrymple, a resident of the State of Maryland, who died in Maryland some three weeks prior to the death of William H. Dalrymple. Upon the settlement of Edwin's estate, the administrators c.t.a. received the share to which William was entitled from Edwin's estate, which they proposed to distribute to Mrs. Gamble, the legatee named in William's will.

In this case it was held that the property was within the State of Maryland, within the meaning of the statute, and that this State was entitled to a collateral inheritance tax upon the sum held for distribution to Mrs. Gamble. At page 299 of the Report, the Court said:

> "The Act we are now considering plainly intended to require that a person taking the benefit of a civil right secured to him under our laws should pay a certain premium for its enjoyment. In other words, one of the conditions upon which strangers and collateral kindred may acquire a decedent's property, which is subject to the dominion of our laws, is that there shall be paid out of such property, a tax * * * into the treasury of the State. This, therefore, is not a tax upon the property itself, but is merely the price exacted by the State for the privilege accorded in permitting property so situated to be transmitted by will, or by descent or distribution."

Continuing to page 301, the Court said:

> "If we adopt the view insisted on by the appellees it would result in a discrimination in favor of

> the non-resident and against our own citizens, a discrimination, too, which the Legislature certainly never intended to make, and for which no warrant whatever can be found in the plain letter of the statute."

In the light of the above decision, you are advised that the administrator c.t.a. of the estate of Mary Davaney is required to pay a collateral inheritance tax upon the share which he holds for distribution to the executors of her estate in New York.

With kind regards and best wishes, I am,

Yours very truly,

WILLIS R. JONES, *Deputy Attorney General.*

TAXATION—GASOLINE TAX—WHO ARE DEALERS WITHIN THE GASOLINE TAX LAW.

April 21, 1932.

Hon. Wm. S. Gordy, Jr.,
State Comptroller,
Annapolis, Md.

DEAR MR. GORDY: Your letter of April 2nd has been received. I understand the question before you to be as follows: Are Sunny Service Stations of Detroit required to register in this State as dealers in motor vehicle fuel in accordance with the Gasoline Tax Law of this State? I believe the facts relative to these stations might be summarized as follows:

> The stations purchase gasoline in Europe, bringing it to America in tankers. The tankers are unloaded at Curtis Bay, where some of the gasoline is immediately pumped into railroad tank cars and shipped to Detroit, while the balance is pumped into storage tanks in Baltimore and later trans-

> shipped to Detroit. I understand that none of the gasoline is sold in Maryland, and that during the summer months the gasoline is routed directly through the Great Lakes to Detroit. It is only due to freezing weather during the winter that shipments are routed by way of Baltimore.

Art. 56, Sec. 212, of the Code of Public General Laws of Maryland (Bagby's Edition, 1924) requires all dealers in gasoline as defined in the Act to file a regular monthly statement. The term "dealer" is defined in the Act, Art. 56, Sec. 211, of the Code of Public General Laws of Maryland, Bagby's Edition, 1924. Paragraph C of this Article provides:

> The term "Dealer" is hereby defined as any person, firm or corporation who imports or causes to be imported gasoline and such other volatile and inflammable liquids produced or compounded for operating or propelling motor vehicles, as herein defined, for use, distribution or sale and delivery in, and after the same reaches, the State of Maryland; and also any person, firm or corporation who produces, refines, manufactures or compounds such fuel in the State of Maryland for use, distribution or sale and delivery in this State."

Under this Section it is clear that a dealer is a person, firm or corporation who imports gasoline for at least some use, sale or distribution in this State. The Section does not attempt to cover dealers who conduct a purely interstate business. This interpretation is further confirmed by Sec. 218 of Art. 56, Code of Public General Laws of Maryland, Bagby's Edition 1929 Supplement, wherein fuel in interstate commerce is specifically exempt from taxation. Therefore, it is my opinion that such a dealer as outlined above is not required to register in this State.

Yours very truly,

WM. PRESTON LANE, JR., *Attorney General.*

TAXATION—COLLATERAL INHERITANCE TAX—NOT PAYABLE UPON BANK DEPOSIT IN MARYLAND BELONGING TO ESTATE OF A DECEASED NON-RESIDENT.

April 28, 1932.

Hon. A. James Gross,
Register of Wills,
Belair, Md.

DEAR MR. GROSS: Your letter of April 22nd, addressed to the Attorney General, has been referred to me for reply. You state that a resident of Pennsylvania died intestate, and that letters of administration upon the estate were granted in Pennsylvania. The decedent had a considerable sum of money on deposit in a savings bank in Harford County, and ancillary letters were granted by the Orphans' Court for that County. The administrator in Harford County, after deducting certain resident claims and expenses, is about to distribute the sum of money which was on deposit in the Harford County bank to the administrator in Pennsylvania for distribution to the heirs and next of kin of that State. You desire to be advised whether this sum of money is subject to the payment of any collateral inheritance tax, or tax on commissions of the administrator in the State of Maryland.

A bank deposit for taxation purposes represents intangible personal property of the decedent, and is subject to inheritance and estate taxation at the place where the decedent had his residence at the time of death. Under the recent decision of the Supreme Court of the United States in the case of *First National Bank of Boston, Executor, etc. vs. State of Maine,* decided on January 4th, 1932, the State of Maryland is not entitled to collect any tax upon the sum of money referred to in your letter.

With kind regards and best wishes, I am,

Very truly yours,

WILLIS R. JONES, *Deputy Attorney General.*

TAXATION—FOREIGN CORPORATION MAINTAINING BRANCH OFFICE IN MARYLAND SUBJECT TO PAYMENT OF FRANCHISE TAX.

April 29, 1932.

Jesse D. Price, Esq.,
Chairman, State Tax Commission,
Union Trust Building,
Baltimore, Md.

DEAR SIR: I have your letter of April 27th, enclosing a communication from the Safe Harbor Water Power Corporation, a Pennsylvania Corporation, inquiring whether this Company must continue to file annual reports to the State Tax Commission under the provisions of Art. 23, Sec. 119, of the Code. You state that this Company duly qualified to do business in this State on February 10th, 1930, naming a resident agent for the service of process, and thereafter filed reports for 1930 and 1931, but does not desire to file a report for 1932, unless required by law. The Company states that it does not exercise any franchises and is not engaged in any business within this State, its sole business being the sale of electric current to the Consolidated Gas & Electric Company of Baltimore, which current is generated in Pennsylvania, and delivered in Pennsylvania to a third party whose name is not disclosed, for transmission to Baltimore, over a line owned by the said third party. The Gas Company is said to pay the owner of the transmission line the entire cost of transmitting the current. The Safe Harbor Company, however, maintains a branch office in the Lexington Building, Baltimore, uses the Company's name upon its letterhead, and is listed in the Telephone Directory.

I think it is entirely clear that if the Company desires to keep alive its right to do business in the State, it must comply with all the conditions imposed by law, and cannot omit the filing of an annual report. Such right may be kept alive by the filing of the report, accompanied by a fee of $1.00, whereas, if it allowed the right to lapse, and should later desire to requalify, it would have to again file the original

papers and pay the original fee of $25.00. In this connection see 7 Op. A. G. 83. There are also certain incidental advantages to the Company in maintaining its qualifications, in that it thereby forestalls the possibility of the penalties provided by Art. 23, Sec. 121, if it should later be held to be doing business here, and provides a more certain method of obtaining notice of possible suits under Art. 23, Sec. 118.

If the Company desires, however, to forfeit its right to do business, it may do so, since under the facts stated with reference to sales wholly consummated without the State, it is clearly not doing business here. While Sec. 119, above referred to, applies to "every foreign corporation * * * which has an office or place of business in this State," such corporation is only required to qualify "before doing business therein." 6 Op. A. G. 114, 116.

Aside from the question of qualification, however, there remains for consideration the question whether the provisions of Art. 81 apply.

Sec. 140 of Art. 81 provides that "every foreign corporation * * * which does business *or* exercises its franchises *or* maintains an office in this State shall pay * * * an annual franchise tax upon the amount of capital employed by it in this State on the preceding first day of January * * *". This section was adopted in its present form in 1929; prior thereto, it appeared as Sec. 122, Art. 23, and applied to every foreign corporation "which maintains an office or place of business *and* exercises its franchises in this State". While it might have been contended prior to 1929 that a corporation not actually doing business here was exempt from this tax, the mere maintenance of an office here, under the present section, renders it liable to the minimum tax of $25.00.

Sec. 180, Art, 81, a new section in 1929, provides that every foreign corporation "doing business in this State *or* owning property therein", shall annually file a list of local stockholders, and see also Sec. 178 of Art. 81, authorizing the State Tax Commission to require reports and lists of stockholders from "any corporation * * * against whom any tax is to be calculated." This section would appear to be

broad enough to include both foreign and domestic corporations.

Upon the facts stated, it would appear that the maintenance of an office in this State is sufficient to subject the Safe Harbor Company to the provisions of Art. 81, independently of the provisions of Art. 23, Sec. 119.

Yours very truly,

WM. PRESTON LANE, JR., *Attorney General.*

TAXATION—COLLATERAL INHERITANCE TAX—NOT PAYABLE UPON INTANGIBLE PERSONAL PROPERTY BELONGING TO NON-RESIDENT DECEDENT — QUESTION OF RESIDENCE CONSIDERED.

May 10, 1932.

Hon. Edwin R. Downes,
Register of Wills,
Court House,
Baltimore, Md.

DEAR DR. DOWNES: On December 21st, 1931, you sent to me a letter from the Safe Deposit and Trust Company, requesting an opinion as to whether a collateral inheritance tax is collectible from the estate of Carl Ruhstrat, who died in Oldenburg, Germany, on April 3rd, 1931. Since the receipt of your letter, I have had considerable correspondence with the Safe Deposit and Trust Company relative to this estate, and this Company has in turn obtained additional information from Germany relative to the actual residence of the decedent at the time of his death.

As I understand the facts, Mr. Ruhstrat was living in Germany when this country entered the World War in 1917, and because of ill health he never returned to the United States. His will was executed on July 20th, 1925, in which he described himself as being "of Baltimore City, State of Maryland, now residing in Oldenburg, O., Germany."

Notwithstanding his actual residence in Germany, for this long period of time prior to his death, the testator owned at the time of his death a considerable estate in Maryland consisting of intangible personal property aggregating approximately $124,000, which by his will is bequeathed to collaterals. From subsequent correspondence in connection with this matter, it has been developed that the decedent actually paid taxes in Germany for a number of years upon this intangible personal property.

In view of the above facts, I am of the opinion that the decedent was an actual legal resident of Germany at the time of his death, and that no collateral inheritance tax is payable upon his estate in Maryland.

With kind regards and best wishes, I am,

Very sincerely yours,

WILLIS R. JONES, *Deputy Attorney General.*

TAXATION—ORPHANS' COURT—RIGHT TO REAPPRAISE SECURITIES FOR TAXATION PURPOSES—SECURITIES TO BE APPRAISED AS OF DATE OF DEATH OF DECEDENT.

* See Note.

May 11, 1932.

Edmund R. Stewart, Esq.,
State Auditor,
Union Trust Building,
Baltimore, Md.

DEAR MR. STEWART: I have your letter of May 5th, in which you refer to a practice existing in many of the Orphans' Courts throughout the State whereby, in appraising estates of deceased persons, the value of securities or other personal property is fixed as of the date when the appraisal is made. You inquire whether this is in accordance with the law.

This is a question of considerable importance, and one which has not heretofore been definitely passed upon by this office.

The provisions of the Code, Art. 93, Sec. 211 et seq., dealing with inventories and appraisals, are silent upon the point.

Attorney General Robinson, in an opinion rendered in 1930, dealing with the question as to whether a reappraisement might be made to take into account a decline in the market value of securities since the date of their appraisement, used the following language:

> "In view of the above provisions of the statute (Sections 106 and 107 of Art. 81), 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."

This ruling has been adopted by this office as a correct statement of the law relative to reappraisements, which are only permissible for the purpose of correcting errors. That such was the intention of the Legislature is demonstrated by the statement of the draftsmen of Section 107 (see Report of the Maryland Tax Revision Commission, December 1st, 1928, p. 78), which Section was adopted by the Legislature, without change, in 1929.

In the language quoted above, Mr. Robinson appears to have assumed the date as of which appraisement was made to be the date of death.

Certainly it is desirable that a definite date of finality be established, as otherwise there might be a disposition for executors, in a period of falling prices, to delay filing inventories. It should also be noted that the date of finality for purposes of Federal Estate Tax (and also for the Maryland Estate Tax) is fixed by the Federal law as the date of death.

(U. S. C. A. Title 26, Sec. 1094).

The date of death is, of course, the time when the title to both real and personal estate passes, although in the latter case the devolution is through the intermediary of the Orphans' Court.

In vetoing Ch. 421 of the Acts of 1931, which sought to amend Section 106 of Art. 81, Governor Ritchie used the following language (Acts 1931, page 1457):

> "I am advised that under not only the Federal laws, but those of all the States, it is the uniform practice to use the value of an estate determined as of the date of death as the basis for tax calculation. The aforegoing Section of Art. 81 was passed by the Legislature in 1927 for the purpose of bringing the law of Maryland into uniformity in this respect with the Federal laws and the laws of the other States and I see no good reason for now destroying that uniformity that was then created.
>
> "After all, it does not make so much difference what date is used for determining a value for such purposes, whether the date of death or a subsequent date, because some estate might increase in value while others might decrease, and I think that it is highly desirable that our law should, if practicable, be uniform with the laws of the other States upon this subject * * * ".

Ch. 43, Acts 1927, referred to by the Governor, amended Sec. 125, Art. 81 (Code 1924) by adding the words: "Such 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, testator, grantor, bargainor or donor."

While the question is not free from difficulty, I am of the opinion that such language can be considered a legislative adoption of the date of death as a date of finality, for an appraisal as of a later date would naturally include increases if any existed. It follows that appraisements as of any later date are improper.

I would suggest that you supply copies of this ruling to the various Orphans' Courts throughout the State, in order that appraisements may be made upon this basis, if a contrary practice exists.

Very truly yours,

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

* Note: The above Opinion was reversed by decision of the Court of Appeals in *Downes vs. Safe Deposit & Trust Co.*, 164 Md. 293.

TAXATION—EXEMPTION TO EMMITSBURG RAILROAD COMPANY.

May 17, 1932.

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

GENTLEMEN: I have your letter of May 6th, requesting an opinion as to the validity of Chapter 359 of the Acts of 1931, which Act purports to exempt The Emmitsburg Railroad Company from "all State Taxes and from all County Taxes in the County of Frederick for a period of two years."

So far as I am aware, our Court of Appeals has never squarely passed upon the question as to the power of the Legislature to exempt a corporation of this character or defined the limits of such power if it exists.

In the case of *Baltimore City vs. Starr Church*, 106 Md. 281, it was held that an exemption to one member of a class is improper, but on the other hand in *Baltimore vs. United Railways*, 126 Md. 39, and *B. C. & A. vs. Wicomico Co.*, 103 Md. 277, there are intimations that a different rule may apply in the case of public transportation companies, particularly if there be a showing of public necessity or other special circumstances.

With reference to the exemption act (Chapter 497) passed by the 1931 Legislature, applicable to the W. B. & A. Co., which the District Court of the United States for the District of Maryland decided yesterday was constitutional, I am advised that the City Solicitor of Baltimore intends to appeal the case to the Circuit Court of Appeals, and thence to the Supreme Court, but it is clear that nothing short of a decision by the Supreme Court would be binding upon the Maryland Courts. *B. C. & A. v. Wicomico,* 103 Md. at p. 293. It is also possible to distinguish Ch. 497 from Ch. 359, on the basis of a different showing of public necessity.

In order to preserve any rights of the State in the premises, I suggest that the application of the Emmitsburg Railroad Company be refused. In this way, the question of the Act's validity can be promptly tested by litigation, if the Company so desires, whereas a contrary ruling by this department would have the effect of an adjudication, so far as the State Tax Commission is concerned. Under the circumstances, I feel that a question of such doubt should be resolved in favor of taxability.

Yours very truly,

WM. PRESTON LANE, JR., *Attorney General.*

TAXATION—A DECISION OF THE SUPREME COURT OF THE U. S. REVERSING PREVIOUS RULINGS BY WHICH THE STATE WAS PERMITTED TO COLLECT A TAX SHOULD NOT BE APPLIED RETROACTIVELY AND APPLICATIONS FOR REFUNDS SHOULD BE REJECTED.

May 17, 1932.

J. O. McCusker, Esq.,
Chief Deputy Comptroller,
Annapolis, Md.

DEAR MR. MCCUSKER: In your letter of May 16th, you request a further expression of the views of this Depart-

ment as to whether taxes collected upon the commissions of executors and administrators of the estates of non-resident decedents involving intangible personal property, should be refunded in view of the decision of the Supreme Court of the United States rendered on January 4th, 1932, in the case of *First National Bank of Boston, executor, vs. State of Maine.*

This decision overrules prior decisions of the Supreme Court of the United States under which State statutes imposing taxes of this character had been sustained. It is axiomatic that tax laws should be uniform in their application, and it would be contrary to sound public policy for the State to undertake to make refunds in isolated cases of this character. If any such taxes are to be refunded, then all should be refunded.

In my judgment, the decision of the Supreme Court should not be given a retroactive application, and the Treasury Department of the State should disapprove any legislation or appropriation having for its purpose the refund of taxes of this character that were collected prior to January 4th, 1932.

This State abandoned the practice of collecting these taxes on estates of non-residents involving intangible personal property, several years ago, and no claim should therefore arise in which the application for a refund should be granted.

With kind regards and best wishes, I am,

Very sincerely yours,

WILLIS R. JONES, *Deputy Attorney General.*

TAXATION—COLLATERAL INHERITANCE TAX—DEVISE CONDITIONED ON THE PAYMENT OF LEGACIES TO COLLATERALS—DEVISEE MAY DEDUCT TOTAL LEGACIES IN CALCULATING HER TAX, BUT SHOULD DEDUCT 5% FROM EACH LEGACY, AND PAY SAME TO REGISTER OF WILLS.

May 23, 1932.

Dr. Edwin R. Downes,
Register of Wills,
Baltimore, Md.

DEAR DOCTOR DOWNES: I understand that Mr. Charles G. Baldwin, representing certain beneficiaries under the will of Thomas E. Smith, has requested a ruling in the following matter:

One article of the will contains the devise of a house and its contents to Mrs. Benn, with the understanding that she is to pay within thirteen months after the probate of the will, the sum of $900 to Sidney P. Smith; $400 to Charles L. Smith and $200 to Susie Scott. All of these beneficiaries are collaterals, and Mr. Baldwin inquires as to the proper calculation of the collateral inheritance tax.

I am of the opinion that the above payments should, for taxation purposes, be treated as bequests to these parties, chargeable against the real estate, and for this reason, I think the total sum of $1500 should be deducted from the appraised value of the house in calculating the tax payable by Mrs. Benn upon the devise to her. Mrs. Benn should also deduct 5% from each of the other bequests, and pay this amount to the Register of Wills for collateral inheritance tax.

This solution of the problem would appear to be an equitable one, since each beneficiary pays the tax upon what they actually receive; it is also in accordance with a ruling of Attorney General Robinson, reported in 13 Opinions of the Attorney General, page 241.

Mr. Baldwin contends that no tax is due upon the two bequests of less than $500.00, but this department has repeatedly ruled otherwise.

See 1 Opinions, Attorney General, 258; 11 Opinions, Attorney General, 276; 15 Opinions, Attorney General, 316.

Yours very truly,

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

TAXATION—FOREIGN CORPORATION MAINTAINING OFFICE IN MARYLAND BUT TRANSACTING ONLY INTERSTATE BUSINESS NOT LIABLE TO PAYMENT OF FRANCHISE TAX.

June 2, 1932.

Jesse D. Price, Esq.,
Chairman, State Tax Commission,
Union Trust Building,
Baltimore, Md.

DEAR SIR: In the opinion rendered you by this office on April 29th, 1932, relating to the qualification in Maryland of the Safe Harbor Water Power Corporation as a foreign corporation, I ruled that this Company, being engaged in interstate commerce, was not required to comply with the provisions of Art. 23, Sec. 119, through the mere circumstance of maintaining an office here. This conclusion was based upon the language of the statute requiring qualification only "before doing business" in the State. It was further held, however, that since the provisions of Art. 81, Sec. 140, as amended by the Acts of 1929, Ch. 226, impose a tax on every foreign corporation maintaining an office in the State, irrespective of whether it actually does business here, the corporation is liable for the payment of the minimum franchise tax.

This conclusion was reached solely upon a construction of the statute, and the company now contends that such construction, as applied to the particular circumstances of its case, would render the Act unconstitutional as in violation of the commerce clause of the Federal Constitution.

The Company submits additional information, tending to prove that the branch office is maintained here by the Company because of the necessities of the interstate business of the company, and for no other purpose. It relied upon such cases as

Norfolk & Western R. R. Co. vs. Pa., 136 U. S. 114.
Cheney Bros. vs. Mass., 246 U. S. 147.

to sustain its contention. A case which appears to be more nearly in point, however, is found in the recent decision of *Ozark Pipe Line Co. vs. Monier*, 266 U. S. 553, 69 L. ed. 439.

Frankly, I do not agree with the conclusion reached by the majority in that case, and feel that the dissenting opinion of Mr. Justice Brandeis is the sounder view; nevertheless, I feel obliged to follow the majority decision, rather than to attempt to distinguish the case. The case can, perhaps be distinguished on the ground that the tax there was payable on the proportion of property in the State, which included property used in interstate business, while in the case at bar the tax is merely a minimum tax upon the privilege of doing business or exercise of the corporate franchise, not measured by the interstate business of the Company. But the decision of the Supreme Court was based upon far broader grounds.

Assuming the facts to be as stated by the Company, therefore, I think its contention is sound, although I adhere to the former ruling insofar as the question is one of statutory construction. In other words, I am still of the opinion that the mere maintenance of an office in this State by a foreign corporation subjects it to the provisions of Sec. 140, Art. 81; if, however, the corporation can establish that such office is used solely in connection with interstate commerce, it can shelter itself behind the Commerce Clause of the Federal Constitution. The burden of establishing such exemption must rest upon the Company claiming it in each case.

Yours very truly,

WM. PRESTON LANE, JR., *Attorney General.*

TAXATION—COLLATERAL INHERITANCE TAX—A BEQUEST TO THE ASSOCIATED PROFESSORS OF LOYOLA COLLEGE IS TAXABLE.

June 17, 1932.

Hon. Edwin R. Downes,
Register of Wills,
Court House,
Baltimore, Md.

DEAR DR. DOWNES: I have your letter of June 16th, enclosing communication from Charles J. Bouchet, Esquire, requesting an opinion as to whether a collateral inheritance tax is payable upon the residue of the estate of Catherine Callahan, deceased, which was disposed of by her will in the following language:

> "All the rest and residue of my estate real, personal and mixed and wheresoever situate I give, devise and bequeath to the Associated Professors of Loyola College, in the City of Baltimore and request that they use the same for masses for me and my whole family."

As this property passes to persons or an institution not exempt from the payment of the collateral inheritance tax, the tax is clearly payable. This is in accord with previous rulings of this Department, with which you are familiar. It has been uniformly held that a bequest or devise to a Church is subject to the payment of a collateral inheritance tax for the privilege of acquiring the property by will.

I am sending a copy of this letter to Mr. Bouchet.

Yours very truly,

WILLIS R. JONES, *Deputy Attorney General.*

TAXATION—STATE TAXES DUE FROM INSOLVENT CORPORATION ENTITLED TO PRIORITY OF PAYMENT OVER CITY TAXES.

June 18, 1932.

I. William Schimmel, Esq.,
1101 Hearst Tower Building,
Baltimore, Md.

Re: Sterling Lighting, Inc.

DEAR SIR: I have your letter of June 14th, in which you state that you and Mr. Joseph Bernstein were appointed Receivers of the Sterling Lighting, Inc., by a decree of the Circuit Court for Baltimore City, and have in hand for distribution a balance of $376.43. You state that there is due to the State of Maryland for 1929, 1930 and 1931 franchise taxes and personal property taxes, the sum of $128.07, as of March 19th, 1932. You state that there is also due to the State of Maryland and the City of Baltimore 1930, 1931 and 1932 taxes of personal property amounting to about $700.00. You inquire as to the proper distribution of the fund on hand as between the State and City, there being insufficient funds on hand to pay all taxes in full.

While I have found no decision upon the point, I am of the opinion that under the express provisions of Article 81, Section 142(b), of the Code, the State is entitled to a priority in the payment of its taxes in the case of an insolvent corporation, although in the case of an individual, it would appear that the State and City are entitled to share alike. In the absence of a statute, State and City taxes would probably stand on the same footing. If a statutory priority is created, it must be given effect.

Cooley on Taxation, 4th Edition, Sec. 1241.

I am sending a copy of this letter to the City Solicitor, and unless he objects, I would suggest that distribution be made as above indicated.

Yours very truly,

WM. PRESTON LANE, JR., *Attorney General.*

TAXATION—FEDERAL GASOLINE TAX—STATE AGENCIES NOT EXEMPTED UNLESS THEY PURCHASE DIRECT FROM PRODUCERS.

July 6, 1932.

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

DEAR MR. EARLE: I have your letter of July 1st, stating that the Conservation Department has been called upon to pay the tax of one cent per gallon on gasoline used by its automobiles and motor boats. You inquire if the tax bill recently passed by Congress applies to the gasoline purchased by the State of Maryland.

Under the rulings issued by the Commissioner of Internal Revenue a few days ago, a distinction was drawn between wholesale and retail sales. The Government concedes that there is no tax on sales made direct from the manufacturer or producer to a State or State agency; if, however, the sale is made through an intermediary such as a retailer, the Government contends that no immunity can be claimed, upon the theory that the tax liability attaches to the initial sale from manufacturer to retailer.

I would suggest that you try to arrange for the purchase of gasoline direct so that the exemption may be claimed. If this is impractical, it will doubtless be necessary for you to pay the tax, since otherwise the retailer will decline to make the sale. However, the matter will certainly be pressed in Court and eventually the Supreme Court will decide this question. I think it is advisable, therefore, to keep an accurate record of all retail purchases so as to be in a position to claim a refund if the Supreme Court should hold that the immunity from tax extends to retail sales.

Very truly yours,

WM. PRESTON LANE, JR., *Attorney General.*

TAXATION—COLLATERAL INHERITANCE TAX—A MORTGAGE INDEBTEDNESS RELEASED BY WILL IS SUBJECT TO THE PAYMENT OF A COLLATERAL INHERITANCE TAX.

July 11, 1932.

Hon. Norman S. Dudley,
Register of Wills,
Centreville, Md.

DEAR SIR: Your letter of July 7th, addressed to the Attorney General, has been referred to the writer for reply.

You state that a testator by his last will and testament, cancelled a certain mortgage and indebtedness in the amount of $6,000, which the testator held against his nephew, and request an opinion as to the computation of the collateral inheritance tax.

The bequest in question is equivalent to a gift in cash to the nephew in the amount of the mortgage indebtedness, and since this gift passes by the will of the testator to a beneficiary who is not exempt from the payment of the collateral inheritance tax, it is clear that the tax should be paid at the rate of 5% upon the full sum of $6,000.00.

Very truly yours,

WILLIS R. JONES, *Deputy Attorney General.*

TAXATION—CITY OF FREDERICK NOT EXEMPT FROM PAYING GASOLINE TAX.

August 10, 1932.

E. Austin James, Esq.,
City Attorney for Corporation of Frederick,
Frederick, Maryland.

DEAR SIR: I have your letter of August 4th, inquiring whether the City of Frederick is exempt from paying the

Maryland State Gasoline Tax on gasoline purchased by it from one of the oil companies. I assume that the gasoline in question is used by the municipality upon the public roads, in motor vehicles owned by the City.

This office has uniformly held that the only governmental agency entitled to exemption is the Federal Government, as provided in Sec. 219A of the Code, 1929 Supplement. In a letter dated March 8th, 1932, addressed to the County Commissioners of Kent County, the Attorney General ruled that gasoline purchased by the County Commissioners was not exempt from the tax, and the same principle would apply to a municipal corporation such as the corporation of Frederick.

Very truly yours,

WM. PRESTON LANE, JR., *Attorney General.*

TAXATION—TAXES COLLECTIBLE FOR FRACTIONAL PART OF YEAR UNDER CH. 280, ACTS 1931, APPLICABLE TO ANNE ARUNDEL COUNTY.

August 12, 1932.

C. Albert Hodges, Esq.,
Treasurer of Anne Arundel County,
Annapolis, Maryland.

DEAR SIR: I have your letter of August 11th, inquiring as to the proper procedure for collection of 1931 State Taxes in your County.

Ch. 280, Acts 1931, was adopted as a local law for Anne Arundel County for the purpose, among others, of changing from a fiscal year ending July 1, to a calendar year basis, and must be given effect, even though it may be inconsistent with the provisions of the general law found in Art. 81 of the Code. In my opinion, taxes for the fractional part of the year beginning July 1, 1931, and ending January 1, 1932, must be collected in view of Sec. 490 of the local law

as a part of the 1932 levy, even though the Act contemplates a separate levy, and interest to accrue from October 1, 1931. Succeeding levies, of course, will be governed by the provisions of the general law.

Very truly yours,

WM. PRESTON LANE, JR., *Attorney General.*

TAXATION—STATE TAX COMMISSION SHOULD ASSESS B. & O. R. R. CO. UPON ITS ROLLING STOCK FOR PURPOSES OF CITY AND COUNTY TAXATION.

September 2, 1932.

Jesse D. Price, Esq.,
Chairman, State Tax Commission,
Union Trust Building,
Baltimore, Md.

DEAR SIR: I have your letter of August 30th, in which you inquire whether the Baltimore and Ohio Railroad Company is subject to the provisions of Chapter 293 of the Acts of 1924, providing for the valuation and assessment by the State Tax Commission of the rolling stock of steam railroads for County or City taxation. This Act was repealed and re-enacted by Chapter 226, Acts of 1929, and its provisions are now covered generally by Art. 81, Sec. 8(d), 10(e), 19 and 178 of the 1929 codification. Sec. 14 of Ch. 226, Acts 1929, provides, however, "that nothing herein contained shall affect any contract by way of exemption from taxation or otherwise the obligation of which the State is precluded from impairing by the Constitution of the United States."

In an opinion rendered March 26th, 1925, reported in 10 Opinions of Attorney General, 209, Attorney General Robinson ruled that the Baltimore and Ohio Railroad must file an annual report of its rolling stock. After referring to *State v. B. & O.*, 127 Md. 434, where our Court of Appeals

held that the charter of the Baltimore and Ohio granted in 1826 constituted a contract between the B. & O. and the State, he cited *State v. B. & O.*, 48 Md. 49, for the proposition that the tax exemption was not applicable to properties acquired under franchises granted subsequent to the Act of 1826. The Attorney General concluded that the Company should report in order that the Commission might determine whether all or any part of the rolling stock of the Company was subject to assessment and valuation, and in this conclusion I fully concur.

Under the express provisions of Art. 81, Sec. 7(16), the personal property of railroads is exempt from State taxation, therefore the question is essentially one of local taxation; however, the duty of making the assessment is imposed upon the State Tax Commission. In order to comply with the statute, the State Tax Commission must determine what proportion of the rolling stock of the road is used chiefly in connection with the exercise of its original franchise granted by the Acts of 1826, and what proportion is used chiefly in connection with the exercise of franchises granted under subsequent Acts or acquired by purchase, consolidation or otherwise. The latter proportion is, in my opinion, subject to taxation for local purposes, and should be apportioned in the manner specified by Sec. 8(d), Art. 81.

Yours very truly,

WM. PRESTON LANE, JR., *Attorney General.*

TAXATION—MARYLAND ESTATE TAX—WHERE AN ESTATE TAX UPON INTANGIBLE PERSONAL PROPERTY BELONGING TO THE ESTATE OF A MARYLAND DECEDENT WAS ERRONEOUSLY PAID TO ANOTHER STATE, THE TAX SHOULD BE PAID TO THE STATE OF MARYLAND.

September 10, 1932.

Mr. R. Archie Phoebus,
Mercantile Trust Company,
Baltimore, Md.

DEAR MR. PHOEBUS: I have your letter of August 30th, with reference to the estate tax paid by the Mercantile Trust Company as Administrator of the Estate of Jeannette Fuechsl Frankel to the State of Minnesota, in the amount of $160.28.

I understand that this tax was imposed upon a transfer of shares of stock in a Minnesota corporation owned by the estate of the decedent, who was a resident of Maryland, and that it was paid before the decision of the Supreme Court in the case of *First National Bank of Boston vs. State of Maine,* holding that the State in which a corporation is organized cannot impose a death tax upon the transfer of shares of stock owned by the estate of a deceased non-resident. You desire to be advised whether the sum paid to Minnesota, if recovered from that State, would be payable to the State of Maryland.

Article 62-A of the Code of Public General Laws of this State, entitled "Maryland Estate Tax", which is a codification of Chapter 275 of the Acts of the General Assembly of 1929, and which became effective on April 2nd, 1929, imposes an estate tax equal to the maximum 80% credit allowable under the Federal Estate Tax Law, and under this legislation the State of Maryland is clearly entitled to the tax which was paid to the State of Minnesota.

Very truly yours,

WILLIS R. JONES, *Deputy Attorney General.*

TAXATION—COLLATERAL INHERITANCE TAX—WHERE THE SAME PARTY RECEIVES THE INCOME FROM AN ESTATE FOR A TERM OF YEARS AND THEN THE ESTATE IN ITS ENTIRETY, A TAX AT THE RATE OF 5% IS PAYABLE UPON THE VALUE OF THE ESTATE AT THE TIME OF THE ORIGINAL DISTRIBUTION TO THE TRUSTEE.

September 10, 1932.

Edwin R. Downes, Esq.,
Register of Wills,
Court House,
Baltimore, Md.

DEAR DR. DOWNES: Your letter of September 9th, enclosing communication from the Safe Deposit and Trust Company, with reference to the Estate of Sarah Riefle, has been received.

As I understand the facts in this matter, the decedent gave the net income of the sum of $2500.00 to a person not exempt from the collateral inheritance tax until she should reach the age of thirty years, at which time she was to receive the sum of $2500.00, free of the trust. Upon the death of the decedent and at the time the estate was distributed to the Trustee, a tax of 5% upon 3/7ths of the $2500.00 trust fund was paid, this tax being intended to cover the value of the interest in the estate which she was to receive until she reached thirty years of age. The legatee has now arrived at the age of thirty years and the Trustee is about to distribute the corpus to her. This corpus, however, has depreciated in value and is now appraised at $781.33. The question arises as to how much additional tax should be paid upon the sum now passing to the legatee.

The case of *Fisher vs. State,* 106 Md. 117, established the proposition that the collateral inheritance tax is upon the value of property at the time it is transferred to the beneficiary. This rule has been somewhat modified by statute providing that no tax shall be payable upon income and increases accruing subsequent to the date of death of the decedent.

Section 118 of Article 81 of the Code authorizes the Orphans' Court to fix the proportion of the tax payable by the respective parties where part of the estate is left to one person for a term of years or for life with remainder to another person. This section expressly provides that "said Court shall from time to time after the determination of the preceding estate and as the remainder of said estate shall vest in the party or parties entitled in remainder or reversion, determine what proportion of the residue of said tax shall be paid by the party or parties in whom the estate shall so vest."

In the case under consideration, neither the decision in the Fisher case nor Section 118 has any application, for the reason that the estate for years, and the remainder of the property passes to the same person. Since this legatee has obtained the full use and benefit of the entire trust fund of $2500.00, it is proper that she be required to pay the tax at the rate of 5% on this sum. Having previously paid 3/7ths of the tax, it follows that 4/7ths of the tax upon this sum is now due and payable.

Very sincerely yours,

WILLIS R. JONES, *Deputy Attorney General.*

TAXATION—NOT SATISFIED BY ACCEPTANCE OF CHECK WHICH IS UNCOLLECTED BY REASON OF FAILURE TO PRESENT WITHIN REASONABLE TIME—EFFECT OF SUBSEQUENT RECEIVERSHIP OF DRAWEE BANK.

September 22, 1932.

Hon. Wm. S. Gordy, Jr.,
State Comptroller,
Annapolis, Md.

DEAR MR. GORDY: I have your letter of September 21st, enclosing correspondence with the Home Building Company. It appears that this Company on August 2nd, 1932, mailed

to your office a check, dated July 30th, 1932, drawn upon the Park Bank for $31.00, payable to the State of Maryland, with an accompanying letter reading in part as follows:

> "Enclosed please find check for $31.00 covering taxes for the fiscal year 1932 due on the Home Building Company, Baltimore, Maryland. * * * I might mention incidentally, that I have never received a bill on this item".

It does not appear from the file that this check was ever acknowledged by you, but the check was held in your office and not immediately deposited or presented, for the reason that the tax bill and assessment against the Company had not yet been received by your office from the State Tax Commission. The Park Bank closed on August 11th, and on the following day you returned the check to the Home Building Company, which Company declined to accept the check, claiming that by reason of your failure to present the same, it was discharged of further liability for the taxes in question. You have asked my opinion as to the soundness of this contention.

It is undoubtedly true, as stated by counsel for the Company, that the ordinary holder of a check is obliged to present it for payment within a reasonable time, and that failure to present discharges the drawer, if such failure results in loss to the drawer.

Anderson vs. Gill, 79 Md. 312.
First Nat. Bank vs. Buckhannon, 80 Md. 475.

However, the authorities uniformly hold that a distinction exists between the ordinary holder of a check and the State. The distinction is not based wholly upon State sovereignty, but upon the fact that a claim for taxes cannot be satisfied by anything short of payment in legal tender. Hence, the usual presumption that a check is prima facie payment cannot be applied to a claim for taxes, nor have you, as a public officer, the power to cut off the State's claim by accepting a check in payment. For a case exactly in point, see

Vial vs. Paradis, 255 Pac. 643, reported in 53 A. L. R. 191.

And an exhaustive note in

44 A. L. R. 1234.

See also

3 Cooley, Taxation, 4th Ed., Sec. 1252.

And

26 R. C. L. Sec. 335, page 376.

While I have found no Maryland decision on the point, I have no hesitation in ruling that the Home Building Company is still liable for 1932 taxes.

I am returning your file herewith.

Very truly yours,

WM. PRESTON LANE, JR., *Attorney General.*

TAXATION—COLLATERAL INHERITANCE TAX—NO TAX PAYABLE WHEN DONEE OF A POWER OF APPOINTMENT DEVISES PROPERTY TO A DIRECT DESCENDANT OF THE DONOR OF THE POWER.

September 22, 1932.

Hon. Edwin R. Downes,
Register of Wills,
Baltimore, Md.

DEAR DR. DOWNES: I have your letter of September 21st, enclosing communication from Hiram G. Griffin, Esq., requesting an opinion as to whether a collateral inheritance tax is payable upon a distribution in the amount of $15,028.00, to Francis Allen Lazenby, which appears in the first administration account in the Estate of Ella Hooper Black.

From Mr. Griffin's letter it appears that William E.

Hooper devised and bequeathed certain property to his daughter, Ella Hooper Black, for life, with power to dispose of said property by her last will and testament if she died leaving no children or descendants. The daughter died without issue and exercised the power of appointment by giving the property to her nephew, Francis Allen Lazenby, who was a grandson of William E. Hooper. The distribution concerning which you make inquiry represents the property which was so devised and bequeathed to Ella Hooper Black.

Under the law of this State, where a power of appointment created by will is exercised by the donee of the power, the person taking by the execution of the power takes, in contemplation of law, from the person creating the power. In such cases the donee by exercising the power simply acts as the agent of the donor.

Conner vs. Waring, 52 Md. 732;
Price vs. Cherbonnier, 103 Md. 111;
Prince de Bearn vs. Winans, 111 Md. 470.

Under the rule established by the above cases, the provisions of the will of Ella Hooper Black by which she exercised the power of appointment conferred upon her by her father, are to be treated as if they were incorporated in the will of William E. Hooper. Since Francis Allen Lazenby is a grandson of William E. Hooper, he is clearly exempt from the payment of any collateral inheritance tax.

I am sending copies of this letter to Messrs. Hiram C. Griffin and Samuel K. Smith.

With kind regards and best wishes, I am,

Very sincerely yours,

WILLIS R. JONES, *Deputy Attorney General.*

TAXATION—COLLATERAL INHERITANCE TAX—WHEN THE WILL DIRECTS REAL ESTATE TO BE SOLD AND THE PROCEEDS TO BE DISTRIBUTED TO COLLATERALS THE TAX IS TO BE COMPUTED UPON THE NET PROCEEDS OF SALE AS DISTRIBUTED AND NOT UPON THE APPRAISED VALUE.

October 5, 1932.

Mr. Norman S. Dudley,
Register of Wills,
Centreville, Md.

DEAR MR. DUDLEY: In your letter of October 3rd, you request an opinion as to the computation of the collateral inheritance tax payable by the executors of the Estate of Lucy B. Batte.

It appears that the decedent owned certain real estate at the time of her death. By her last will and testament her executor was directed to sell this real estate and to distribute the proceeds to persons not exempt from the payment of the collateral inheritance tax. The property was appraised at $6500.00 and sold for $7250.00. The question arises as to whether the tax should be computed upon the appraised value or the sale price of this property.

The provision of the will by which the executor was directed to sell the property and distribute the proceeds operated to convert the same into personal property in contemplation of law, and the tax should therefore be computed upon the sale price rather than the appraised value. The real estate did not pass in kind to the beneficiaries, and this is not a case in which the appraised value is to be considered in arriving at the amount of the tax. Interest which accrued subsequent to the death of the testatrix is not subject to the collateral inheritance tax, under the provisions of Section 106 of Article 81 of the 1929 Supplement to the Code, by which it is provided:

> "That such tax shall not be paid or collected upon any increase in value of the estate or any income thereon accrued subsequent to the date of death of the decedent."

If the interest mentioned in your letter was calculated upon the deferred payment of the purchase price, it is not subject to the tax and should therefore be deducted from the net amount of the estate for distribution, in the computation of the tax.

With kind regards and best wishes, I am,

Very sincerely yours,

WILLIS R. JONES, *Deputy Attorney General.*

TAXATION—DATE OF FINALITY JANUARY 1ST IN ALLEGANY COUNTY.

October 10, 1932.

Mr. M. J. Lindsay,
Chief Supervisor of Assessments,
State Tax Commission,
Union Trust Building,
City.

DEAR SIR: I find among the pending cases in this office, the appeal to the State Tax Commission of Somerville Nicholson, Supervisor of Assessments for Allegany County, from an assessment by the County Commissioners of Allegany County for the year 1930, against the property of the Potomac Transmission Company. The ground of appeal was that the Commissioners failed to include in the property assessed to this County, a sub-station for transforming electric current, which was under construction during 1929, but was not substantially completed until March 1st, 1930, at which time it was first put in operation. The case has been continued several times, for various reasons, and has never been heard by the State Tax Commission. I have carefully reviewed the file in this case, and recommend that the appeal be dismissed, as I am of the opinion that the assessment of the County Commissioners in this case was correct.

The question at issue hinges upon a determination of the legal date of finality for assessment purposes in Allegany County, the County Commissioners contending that it is January 1st, whereas the local supervisor contends that it is the third Tuesday in April. To support his contention he refers to the Public Local Law of Allegany County (Art. 1, Sec. 119, Flack's Code, 1930), fixing the annual *levy* date for the third Tuesday in April, and to the fact that in some cases the County Commissioners have allowed abatements in assessments after January 1st, and, indeed, even after the third Tuesday in April. I cannot, however, regard these arguments as controlling.

Art. 81, Sec. 2 (22) of the Code of Public General Laws defines the "date of finality" as "the date as of which taxes are to be levied for the taxable year in question, and upon which assessments become final for such year, subject only to correction as herein authorized." Clearly the date "as of which taxes are to be levied" is not the same thing as the date when levy is actually made. The levy merely fixes the rate, and is made after assessments have become final, and a reasonable time has been allowed for corrections, not more than three months from the date of finality. (Article 81, Section 29.)

Art. 81, Sec. 28(b) provides that County taxes "shall be levied for the same period as now prescribed by local law * * * and as of the same date of finality as now prescribed by local law; provided (1) that any County * * * which under existing law levies taxes for a taxable year other than the calendar year may by resolution of the County Commissioners * * * elect to adopt the calendar year as its taxable year, and thereafter all State and County taxes in each County so electing * * * shall be levied for the calendar year and as of the 1st day of January of such year as the date of finality * * * and (3) that any County * * * which under existing law levies its taxes for the calendar year, but as of a date of finality other than the 1st day of January of such year, may by resolution of its County Commissioners * * * elect to adopt the 1st day of January of such a calendar year as the date of finality."

There is nothing in the local law of Allegany County which provides expressly for any date of finality, or defines the taxable year. It appears from the minutes of the County Commissioners that the practice has been to allow abatements, without regard to any date of finality whatever, but even these abatements have been for fractional parts of the calendar year.

Art. 81, Sec. 5, provides: "All ordinary State, County and City taxes shall be levied upon assessments made in conformity with this Article, or upon existing assessments until changed in conformity with this Article."

In favor of January 1st, as the date of finality, therefore, we have the rule set up by Art. 81, intended to become uniform throughout the State, the absence of any fixed date in the local statute, and the recognition of the calendar year basis by the existing practice. Further, the County Commissioners contend that January 1st is their local date of finality, and certainly it was within their power to adopt such date by election and resolution. In favor of the third Tuesday in April, we have only the fact that this was the local levy date prior to the adoption of Art. 81, and the fact that the County Commissioners have in some cases improperly abated assessments without regard to any date of finality. As stated above, neither of these facts appear to be relevant.

Under the circumstances, rather than contest this matter with the County Commissioners, I believe you should accept their view and endeavor to require, in so far as you may properly do so, that they adhere strictly to this date in future assessments.

Yours very truly,

WM. PRESTON LANE, JR., *Attorney General.*

TAXATION—COLLATERAL INHERITANCE TAX—REMAINDERMEN REQUIRED TO PAY TAX IN FULL WHERE LIFE TENANT IS EXEMPT AND NO TAX WAS PAID UNTIL DEATH OF LIFE TENANT.

October 18, 1932.

Hon. William R. Horney,
Centreville, Md.

DEAR MR. HORNEY: In your letter of October 7th, you request an opinion as to the computation of the collateral inheritance tax upon certain property passing under the will of C. Sydney Jump. The property in question was devised to the widow of the decedent for life, with remainder to the Trustees of the Methodist Protestant Church.

Your inquiry is controlled by the provisions of Section 119 of Article 81 of the 1929 Supplement to the Code of Public General Laws, from which you will observe that the Trustees of the church are now required to pay the tax upon the whole value of the property which passes to them in remainder. I agree with you that the rents from the property which were payable to the wife are not subject to the tax.

With kind regards and best wishes, I am,

Very sincerely yours,

WILLIS R. JONES, *Deputy Attorney General.*

TAXATION—RIGHT OF COMPTROLLER TO DESIGNATE EMPLOYEES OF CONSERVATION DEPARTMENT HIS AGENTS FOR COLLECTION OF OYSTER INSPECTION TAX.

November 19, 1932.

Hon. Wm. S. Gordy, Jr.,
State Comptroller,
Annapolis, Md.

DEAR MR. GORDY: I have your letter of Nov. 15th, enclosing a letter from the Conservation Department in rela-

tion to the collection of the oyster inspection tax from Chas. W. Howeth & Bro. of Crisfield, Maryland. I see no objection to the tax being collected by the Conservation Department employees, acting as the agent for the Comptroller, and I think the same thing applies to the enforcement of the tax. Sec. 81 of Art. 72 provides:

> "In case the amounts of money shown to be due be not paid in one week thereafter to the Comptroller or his agent, which is hereby required to be done the properties of the parties so indicted may be levied on and sold by the Comptroller or his agent in cases of taxes in default without other process of law."

Yours very truly,

WM. PRESTON LANE, JR., *Attorney General.*

TAXATION—COLLATERAL INHERITANCE TAX—THE FOUR YEAR PERIOD OF LIMITATIONS FOR THE COLLECTION OF SUCH TAXES HAS NO APPLICATION TO ESTATES OF PERSONS DYING BEFORE JUNE 1, 1929.

December 3, 1932.

Hon. Hanson G. Cashell,
Register of Wills,
Rockville, Md.

DEAR SIR: Answering your letter of November 22nd, you are advised that all collateral inheritance taxes in respect to any part of the estate of any decedent dying before June 1st, 1929, are not barred after the lapse of four years. The period of limitation for the collection of these taxes was first established by Chapter 226 of the Acts of 1929, and Section 14 of this Act expressly provided that its provisions

should not affect the taxes on estates of decedents dying prior to June 1st, 1929, the effective day of this enactment.

Yours very truly,

WILLIS R. JONES, *Deputy Attorney General.*

TAXATION—FRANCHISE TAX ACCRUING PRIOR TO SALE OF ASSETS BY ONE CORPORATION TO ANOTHER IS A LIABILITY OF THE PURCHASING COMPANY.

December 3, 1932.

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

DEAR MR. GORDY: I have your letter of November 30th, in which you state that the Continental Oil Company has paid a bill for tangible personal property assessed against the Island Export Company for 1932, but has failed to pay a bill for franchise tax assessed against that Company for 1932. You inquire whether the Continental Oil Company is liable for the payment of this franchise tax.

It appears that the Continental Oil Company purchased all of the assets of the Island Export Company by sale consummated on January 29th, 1932, but that the purchaser did not take over the charter of the Island Export Company.

I am of the opinion that the claim for franchise tax assessed against the Island Export Company for 1932 became final as of January 1st, 1932, in accordance with the provisions of Section 136 of Article 81. This office has heretofore ruled that the tax cannot be prorated. 16 Opinions Attorney General, page 363. The claim for franchise tax therefore must be considered a liability of the Island Export Company at the time its assets were purchased, and the State has a preferred claim against the purchasing company which necessarily assumed the liabilities of the company purchased. Of course, the Continental Oil Company will

not be liable for taxes assessed against the Island Export Company in succeeding years, in view of the fact that it took over the assets and not the charter of the company purchased.

Yours very truly,

WM. PRESTON LANE, JR., *Attorney General.*

TAXATION—STATE TAXES DUE FROM INSOLVENT CORPORATION ENTITLED TO PRIORITY, WHERE THEY ACCRUED PRIOR TO APPOINTMENT OF TRUSTEES.

December 12, 1932.

James Fluegel, Esq.,
107 E. Pleasant Street,
City.

DEAR SIR: I have your letter of December 9th, with which you enclosed a bill for taxes due the State of Maryland assessed against H. Gamse and Brother, Inc., covering franchise tax for the year 1932 based upon capital stock of this Company as of January 1st, 1932. You suggest that this bill should be abated in view of the fact that the company was, as you state, hopelessly insolvent and bankrupt in 1931.

The facts are not clearly stated in your letter, but I understand that certain creditors of the company, which is a Maryland corporation, filed a bill in equity in the Circuit Court of Baltimore City in December, 1931. In January, 1932, the company made a deed of trust for the benefit of creditors to the three trustees, and thereupon the Circuit Court assumed jurisdiction over the trust, confirmed their appointment and appointed you as counsel for said trustees.

I am of the opinion that the State is entitled to collect, as a preferred claim, all taxes that had accrued at the time said trustees were appointed, and since the liability for

taxes for the year 1932 became final as of January 1st, for the ensuing year, the claim for franchise tax is a proper one in the present case.

This matter has been covered in principle by previous rulings of the Attorney General.

See 15 Opinions of Attorney General, 334; 16 Opinions of Attorney General, 363.

I am returning herewith the bill and letter from the trustees as requested.

Yours very truly,

WM. PRESTON LANE, JR., *Attorney General.*

TREASURER OF MARYLAND

TREASURER OF MARYLAND—MAY ACCEPT BONDS OF TOWN OF OXFORD AS SECURITY FOR STATE DEPOSITS—TOWN MAY BY ORDINANCE PROVIDE FOR REGISTRATION.

February 18, 1932.

T. Hughlett Henry, Esq.,
Attorney at Law,
Easton, Md.

DEAR MR. HENRY: I have your letter of February 15th, stating that the Oxford Bank desires to pledge certain bonds issued by the Town of Oxford, to the State Treasurer, as collateral security for a deposit of State funds. The bonds in question were issued in pursuance of Chapter 278 of the Acts of the General Assembly of 1931, and there is no provision in this Act for the registration of these bonds. You desire to be advised whether the Town of Oxford may, by an Ordinance, authorize the bonds in question to be registered by the Town Clerk in the name of the Treasurer in accordance with the provisions of Section 9 of Article 90 of the Code of Public General Laws.

In my opinion, the Town of Oxford may properly pass such an Ordinance, and if the bonds in question are registered in accordance with its provisions, and in conformity with Section 9 of Article 90, they may be accepted by the Treasurer as security for a deposit of State funds to the extent of the actual value of the bonds. If this course is pursued, the bonds should be registered in the following manner:

> "This bond has been registered in the name of John M. Dennis, Treasurer of Maryland, in trust, to secure the performance of the conditions of a certain depository bond executed by the Oxford Bank to the Treasurer of Maryland, under and pur-

suant to Section 9 of Article 90 of the Code of Public General Laws of Maryland.

.....

Town Clerk."

A registration of the bonds as above indicated would satisfy all of the requirements of Section 9 of Article 90, and I can see no valid objection to such a course.

Very truly yours,

WILLIS R. JONES, *Deputy Attorney General.*

TREASURER OF MARYLAND—MAY ACCEPT CERTIFICATES OF INDEBTEDNESS OF DORCHESTER COUNTY AS SECURITY FOR DEPOSIT OF STATE FUNDS.

February 27, 1932.

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

DEAR MR. DENNIS: I have your letter of February 25th, enclosing copy of Certificate of Indebtedness issued by the County Commissioners for Dorchester County, and requesting an opinion as to whether the original certificate may be accepted by you as collateral security for a deposit of State funds.

The certificate in question appears to have been issued under the provisions of Section 154 of Article 10 of the Code of Public Local Laws for Dorchester County. It is dated December 29th, 1931, and matures on June 30th, 1932. It states upon its face that it "is a lien upon all of the assessable property, liable for taxation in said county and will be paid from the revenue and taxes of the said county, arising under and on account of the budget and levy of the fiscal year of 1931 and 1932."

By the provisions of Section 154 the County Commissioners are required to "levy on the assessable property of the

county liable to taxation for the payment of said interest-bearing certificates in like manner as by law other claims have been heretofore levied for."

In view of the above, I believe you are justified in treating these certificates as valid and binding obligations of Dorchester County to the same extent that the bonds of said county are so treated, and that you may properly accept these certificates when duly executed, authenticated and registered as collateral security for a deposit of State funds, under the provisions of Section 9 of Article 90 of the Code of Public General Laws.

With kind regards and best wishes, I am,

Yours very sincerely,

WILLIS R. JONES, *Deputy Attorney General.*

TREASURER OF MARYLAND—MAY ACCEPT CERTIFICATES OF INDEBTEDNESS ISSUED BY ANNE ARUNDEL COUNTY AS SECURITY FOR STATE DEPOSITS.

April 6, 1932.

Hon. John M. Dennis,
Treasurer of Maryland,
Annapolis, Md.

DEAR MR. DENNIS: With further reference to your inquiry of March 10th, asking whether certain 6% Coupon Notes, aggregating $400,000, to be issued by Anne Arundel County under date of April 1st, 1932, and maturing on April 1st, 1933, would be eligible as collateral security for State deposits under the provisions of Section 9 of Article 90 of the Code of Public General Laws, I have to advise you as follows:

Since the receipt of your inquiry, I have obtained copies of a number of documents from the County Commissioners for Anne Arundel County, relating to the issue of these Notes, and after a careful examination of these documents,

I am of the opinion that these Notes are valid and binding obligations of the County Commissioners for Anne Arundel County, issued upon the full faith and credit of said County in accordance with Chapter 80 of the Acts of 1922, and that they may properly be treated by you as County bonds within the meaning of Section 9 of Article 90, and accepted as collateral security for State deposits.

With kind regards and best wishes, I am,

Very sincerely yours,

WILLIS R. JONES, *Deputy Attorney General.*

TREASURER OF MARYLAND—MAY ACCEPT CERTAIN COUPON NOTES AS SECURITY FOR DEPOSITS OF STATE FUNDS.

May 9, 1932.

Hon. John M. Dennis,
Treasurer of Maryland,
Annapolis, Md.

DEAR MR. DENNIS: With further reference to your letter of April 26th, asking whether the Coupon Notes of Anne Arundel County, aggregating $200,000, rated May 9th, 1932, and maturing May 9th, 1933, will be eligible for acceptance by the Treasurer as collateral security for State deposits, you are advised as follows:

That after a careful examination of the various documents authorizing this issue, I am of the opinion that these Notes are properly issued by the County Commissioners under the authority of Chapter 80 of the Acts of 1922; that they are valid, binding and enforceable obligations of the County Commissioners of Anne Arundel County, and that the full faith and credit of said County has been pledged for the payment thereof; that these Notes may properly be treated as Bonds of Anne Arundel County, within the meaning of Section 9 of Article 90 of the Code of Public General

Laws, and are therefore eligible as collateral security for State deposits.

With kind regards and best wishes, I am,

Very truly yours,

WILLIS R. JONES, *Deputy Attorney General.*

TREASURER OF MARYLAND—MAY ACCEPT NOTE ISSUED BY CAROLINE COUNTY AS SECURITY FOR STATE DEPOSIT.

June 22, 1932.

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

DEAR MR. DENNIS: On behalf of the Attorney General, I am answering your letter of June 20th, in which you request an opinion as to whether it is proper for the State Treasurer to accept as collateral security for a State deposit, a certain Note dated June 14th, 1932, and maturing October 30, 1932, which has been executed by the County Commissioners of Caroline County to the Denton National Bank in the amount of $20,000.00.

Under Chapter 321 of the Acts of 1931, the County Commissioners of this County are authorized to borrow for emergency purposes during the fiscal year ending June 30th, 1932, up to $75,000, and provides that the sum so borrowed shall be repaid on or before November 1st, 1932. I have obtained a sworn statement from the Clerk of the County Commissioners stating that the total amount borrowed during the fiscal year, including this Note, is $62,000. It is therefore apparent that the County Commissioners were authorized to borrow the sum mentioned in this Note. While the provisions of the Note which authorize a confession of judgment in event of non-payment, and also a commission for the collection of same, are probably beyond the

power of the County Commissioners, the form and execution of the Note is otherwise regular, and I am satisfied that it constitutes a valid and binding obligation of the County to the extent of the principal and interest. You are therefore advised, in conformity with the previous rulings of this Department, that this Note may be accepted as collateral security for a State deposit.

In accordance with your request, the Note and correspondence are herewith returned.

With kind regards and best wishes, I am,

Very sincerely yours,

WILLIS R. JONES, *Deputy Attorney General.*

TREASURER OF MARYLAND—MAY ACCEPT GENERAL CONSTRUCTION BONDS ISSUED BY MONTGOMERY COUNTY AS SECURITY FOR STATE DEPOSITS.

July 16, 1932.

Hon. John M. Dennis,
Treasurer of Maryland,
Annapolis, Md.

DEAR MR. DENNIS: I am requested to advise you whether the Montgomery County General Construction bonds of 1931, issued in pursuance of Chapter 108 of the Acts of 1931, are eligible as security for the deposit of state funds.

The Act in question authorizes a total issue of $2,144,000.00, of which bonds aggregating $1,055,000 were authorized to be issued in 1931, $1,000,000.00 in 1932, and $89,000.00 in 1933. The Act further provides, that in the event any of the bonds, "shall not be sold within the year herein authorized, then the said Board of County Commissioners is authorized and empowered to issue and sell such bonds at such time and in such amounts as it may in its discretion deem necessary and proper."

The County Commissioners are further authorized to advertise for bids and to sell the bonds to the highest responsible bidder or bidders therefor for cash, if the prices bid are adequate in the judgment of the County Commissioners. If the bonds are not sold in this manner, the County Commissioners are authorized to sell the same at private sale "upon the best terms they can obtain for the same; provided, however, that said bonds shall not be sold at private sale for less than one percent below par and accrued interest."

I understand that the issue of $1,000,000 authorized to be sold during the year 1932 was not sold at public sale, for the reason that the County Commissioners regarded all bids as inadequate, and the Board has now authorized the bonds to be sold at private sale for not less than one percent below par and accrued interest. It is expected that a large number of these bonds will be purchased at private sale, and the question arises as to whether these bonds sold at private sale will be eligible as security for State deposits.

I have carefully examined the Act, and I am satisfied that the bonds authorized to be issued are acceptable as security for State deposits. I believe, however, that where the bonds are sold at private sale and tendered to you, there should be a certificate by the Clerk of the County Commissioners that the particular bonds were issued and sold in conformity with the Act, at private sale, and that the price obtained therefor by the County Commissioners was not less than one percent below par and accrued interest. The Clerk for the County Commissioners will furnish these certificates to the purchasers upon request, and they will be tendered to you with the bonds.

With kind regards and best wishes, I am,

Very sincerely yours,

WILLIS R. JONES, *Deputy Attorney General.*

TREASURY DEPARTMENT

TREASURY DEPARTMENT — STATE DEPOSITS — TEMPORARY CERTIFICATES OF INDEBTEDNESS OF MONTGOMERY CO. ELIGIBLE AS SECURITY FOR.

October 21, 1932.

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

DEAR MR. DENNIS: Answering further your letter of October 6th, requesting an opinion as to whether it would be proper for you to accept as security for a State deposit, a temporary certificate of indebtedness issued by the County Commissioners for Montgomery County, under the authority of Chapter 459, Acts of 1931, dated September 30th, 1932, to the Prince George's Bank & Trust Company, for the sum of $5,000, I am of the opinion that you may.

I am returning herewith the certificate and certified copy of the resolution authorizing the issuance thereof.

Yours very truly,

WM. PRESTON LANE, JR., *Attorney General.*

TREASURER OF MARYLAND—BOND FOR THE FAITHFUL PERFORMANCE OF OFFICIAL DUTIES COVERS DUTIES AS CUSTODIAN OF FUNDS OF TEACHERS' RETIREMENT SYSTEM —DEPUTY TREASURER HAS NO POWER OVER FUNDS OF LATTER SYSTEM.

November 15, 1932.

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

DEAR MR. DENNIS: In your letter of November 4th, you request an opinion as to whether your bond to the State, as State Treasurer, covers the performance of your duties as Treasurer of the Teachers' Retirement System, and also whether Deputy Treasurers may be authorized to sign checks, drawn upon the funds of the Teachers' Retirement System, and if so, whether the bonds of such Deputies would cover these transactions.

The management of the funds of the Teachers' Retirement System is controlled by the provisions of Section 98 of Article 77, of the Code of Public General Laws. Paragraph 3 of this section provides:

> "The Treasurer of the State of Maryland shall be the custodian of the several funds. All payments from said funds shall be made by him only upon vouchers signed by two persons designated by the Board of Trustees."

This statutory provision clearly imposes an official duty upon the Treasurer to disburse the funds of the Teachers' Retirement System. Section 2 of Article 95 of the Code of Public General Laws, relating to the office of Treasurer requires his bond to be "with condition that he will truly and faithfully discharge, execute and perform all and singular the duties required and which may be required of him by the Constitution and laws."

In view of the above statutory provisions, I am satisfied that your bond, as State Treasurer, covers the perform-

ance of your duties as Treasurer of the Teachers' Retirement System.

The powers and duties of Deputy Treasurers are defined by Chapter 245 of the Acts of the General Assembly of 1931. This Act reads, in part, as follows:

> "The Chief Deputy Treasurer and each Deputy Treasurer upon his designation and qualification, as above provided, shall have power to disburse the monies of the State for the purposes of the State, according to law, including the power to sign or countersign checks upon warrants drawn by the Comptroller or his duly authorized deputy, and on checks countersigned by the Comptroller or his duly authorized deputy".

It is apparent from this statutory provision that the Deputy Treasurers have no power to sign checks except upon warrant drawn by the Comptroller. Since the payments from the Teachers' Retirement System can be made by the Treasurer "only upon vouchers signed by two persons designated by the Board of Trustees", I am of the opinion that Deputy Treasurers have no power to sign checks drawn upon these funds, and that the duties of the State Treasurer with respect to the custody and payment of these funds cannot be delegated to any of his deputies.

With kind regards and best wishes, I am,

Yours very truly,

WILLIS R. JONES, *Deputy Attorney General.*

UNDERTAKERS AND EMBALMERS

UNDERTAKERS AND EMBALMERS—NO LICENSE REQUIRED WHERE PERSON MERELY FURNISHES LIMOUSINES FOR FUNERALS.

February 11, 1932.

H. H. Housman, Esq.,
State Bd. of Undertakers,
308 Old Town Bank Bldg.,
Baltimore, Md.

DEAR MR. HOUSMAN: I have your letter of February 2nd, calling attention to a sign being displayed at 3714 Claremont Street, in the City of Baltimore, reading as follows:

"FRANK DELLA NOCE
FUNERALS AND WEDDINGS SERVED
LIMOUSINES FOR ALL OCCASIONS
TEL: BRO. 1268-J".

You request an opinion as to whether this sign constitutes a violation of Section 304 of Article 43 of the Code of Public General Laws, which prohibits any person from holding himself out "as engaging in the business of undertaking", who has not obtained a license from the Board of Undertakers.

There is nothing in the sign which actually represents that the advertiser is holding himself out as engaging in the business of undertaking. The words "funerals and weddings served" cannot be separated from the rest of the sign, and the sign as a whole indicates that the advertiser is engaged in the business of furnishing limousines for weddings and funerals and for all occasions.

I realize that the sign might possibly be construed to mean that the advertiser is in the business of serving funerals, from which the inference might be drawn that he

engages in the undertaking business, but the statute, being penal in its nature, must be strictly construed, and before any person can be convicted of a violation he must be shown to have committed some particular act which infringes the statute. Inferences will not suffice.

If this party actually engages in the undertaking business without obtaining a license, he will, of course, be subject to prosecution, but if he merely solicits for another there would be no violation, as there is nothing in the law which requires a solicitor for an undertaker to be licensed.

With kind regards and best wishes, I am,

Very truly yours,

WILLIS R. JONES, *Deputy Attorney General.*

UNDERTAKERS AND EMBALMERS—LICENSE REQUIRED WHERE PERSON HOLDS HIMSELF OUT AS ENGAGED IN BUSINESS.

May 21, 1932.

H. H. Housman, Jr., Esq.,
Secretary, State Board of Undertakers,
308 Old Town Bank Building,
Baltimore, Md.

DEAR MR. HOUSMAN: I have your letter of May 17th, enclosing copy of advertisement of Joseph Fulco, Jr., and requesting an opinion as to whether the same constitutes a violation of Section 304 of Article 43 of the Code of Public General Laws, prohibiting any person who is not a licensed undertaker from holding himself out as engaging in the business of undertaking. The sign in question contains a picture of a limousine, which is in the middle, and otherwise reads as follows:

"PREFERITE SEMPRE LE PIU' VECCHIA DITTA
Conosciutissin a per ivostri Bisogni
de Chiamara
JOSEPH FULCO, JR.
FUNERAL & WEDDING SERVICES
Branch Phones:
Hamilton 3773
Broadway 0952-J
Office Phone:
South 0083
Residence 10349
24 Hour Prompt Service
Res: 1002 N. CENTRAL AVE.
Funerals Complete from $75.00 and up
Limousines for Funerals $10.00, Weddings $8.00
Limousines per use Societa: o Leggia per Funerale $8.00"

It is very clear that the advertiser offers to furnish funerals complete for $75.00 and upwards, and in addition thereto, he offers to furnish limousines for funerals at $10.00 per limousine.

In my judgment, the advertisement constitutes a violation of Section 304 in so far as the advertiser offers to furnish funerals complete.

With kind regards and best wishes, I am,

Yours very truly,

WILLIS R. JONES, *Deputy Attorney General.*

UNDERTAKERS AND EMBALMERS—A CORPORATION MAY NOT OBTAIN AN EMBALMER'S LICENSE.

October 26, 1932.

H. H. Housman, Jr., Esq.,
State Board of Undertakers,
308 Old Town Bank Building,
Baltimore, Md.

DEAR MR. HOUSMAN: I have your letter of October 17th, enclosing a certified copy of the certificate of incor-

poration of "Coster & Singleton, Incorporated", and requesting an opinion as to whether this corporation may hold itself out to the public as being engaged in the embalming business.

Section 297 of Article 43 of the Code of Public General Laws authorizes the issuance of an undertaker's license to a corporation, but there is no authority for the issuance of an embalmer's license to a corporation. On the other hand, no penalty is provided in cases where a corporation holds itself out as being engaged in the profession of embalming.

In my judgment, so long as the actual embalming is done by a duly licensed embalmer, no offense is committed by a corporation which holds itself out as being engaged in the undertaking and embalming business, provided the corporation holds an undertaker's license.

With kind regards and best wishes, I am,

Very sincerely yours,

WILLIS R. JONES, *Deputy Attorney General.*

UNDERTAKERS AND EMBALMERS—UNDERTAKER'S LICENSE MAY BE ISSUED TO NON-RESIDENT CORPORATION.

October 26, 1932.

H. H. Housman, Jr., Esq.,
State Board of Undertakers,
308 Old Town Bank Building,
Baltimore, Md.

DEAR MR. HOUSMAN: I have your letter of October 17th requesting an opinion as to whether a corporation duly incorporated under the laws of the District of Columbia may obtain an undertaker's license in the State of Maryland.

Section 297 of Article 43 of the Code of Public General Laws authorizes the issuance of a license to a corporation,

and there is no provision which prohibits such a license being issued to a corporation of some other state. Of course the officers or employees of the corporation whose duties in Maryland actually engage them in the "care, preparation for burial, burial or shipment of dead human bodies and the disinfection of the clothing and bedding" of deceased persons, must demonstrate their qualifications by examination, unless they already hold a license, before a license can be issued to the corporation.

With kind regards and best wishes, I am,

Very sincerely yours,

WILLIS R. JONES, *Deputy Attorney General.*

UNDERTAKERS AND EMBALMERS—NO LICENSE REQUIRED BY EMPLOYEES OF CITY HOSPITAL UNDER FACTS DISCLOSED.

October 28, 1932.

H. H. Housman, Esq.,
State Board of Undertakers,
308 Old Town Bank Building,
Baltimore, Md.

DEAR MR. HOUSMAN: In accordance with your request of October 17th, I have reviewed the correspondence passing between you, the Maryland State Funeral Directors Association and Brig. General R. E. Longan, Superintendent of the Baltimore City Hospitals.

There is nothing in Sections 299 and 300 of Article 43 of the Code of Public General Laws relating to the licensing of embalmers which exempts hospital employees from the operation of these sections. It will be noted, however, that before a person may be required to obtain a license he must "engage in the profession of embalming".

In my opinion the facts disclosed by the correspondence do not indicate that the employees of the City Hospitals

are engaged in the profession of embalming within the meaning of these sections of the law.

Very truly yours,

WILLIS R. JONES, *Deputy Attorney General.*

UNIVERSITY OF MARYLAND

UNIVERSITY OF MARYLAND—STATE TOBACCO WAREHOUSE—WHEN AN OUTAGE CHARGE MAY BE LEVIED.

March 24, 1932.

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

DEAR MR. SHOEMAKER: I understand, that at the present time, there are some 11,000 hogsheads of tobacco stored in the State Tobacco Warehouse. Under present market conditions, this tobacco is practically worthless, or, possibly worth a cent to a cent and a half a pound. It has been suggested that the same be withdrawn by the respective owners and used for fertilizer. I understand this would be more advantageous to the tobacco grower than a sale, or continued storage. In the light of these facts, there are two questions before the Board:

First: If the tobacco is withdrawn for use as fertilizer, should an "outage" charge be made.

Second: If the tobacco is sold at a cent or cent and a half a pound, should an "outage" charge be made.

First Question: The power of the State Board of Agriculture with respect to an "outage" charge is defined by Article 48, Section 33 of the Code of Public General Laws of Maryland, Bagby's Edition 1924. This section provides in part as follows:

> "And for all outage the charge shall be as fixed from time to time by the State Board of Agriculture, and shall be paid by the shipper of the tobacco or his agents."

In Maryland the phrase "outage" charge has a well defined meaning. This meaning is so well established that in

Funk & Wagnalls New Standard Dictionary the phrase is defined as follows:

> "(In Maryland)—An official charge levied upon tobacco examined for export."

The tobacco under this first hypothesis is to be withdrawn for use as fertilizer and not for exportation. Since this is true, it is the opinion of this office that such tobacco may be withdrawn without the payment of an outage charge.

Second Question: If the tobacco is examined and sold for export, such tobacco is directly subject to an "outage" charge as defined above. The power of the Board with respect to this charge is to vary the same within its discretion, but the Board does not have authority to completely abolish such a charge. Article 48, Section 33, supra, undoubtedly presupposes the existence of some charge in all cases falling within this provision.

If the tobacco is not examined and not sold for exportation, then it is not within the definition of tobacco, subject to an "outage" charge, and such tobacco may be withdrawn without the payment of such charge.

Thus, to summarize, if the tobacco is sold and examined for export an "outage" charge must be levied, the amount of this charge to depend upon the discretion of the Board. If the tobacco is not examined for export, it may be withdrawn without an "outage" charge.

Yours very truly,

WM. PRESTON LANE, JR., *Attorney General.*

UNIVERSITY OF MARYLAND—WEIGHTS AND MEASURES—NO STANDARD WEIGHT FOR CUCUMBERS.

July 25, 1932.

Maryland State Dept. of Markets,
College Park, Md.

Att. Mr. S. B. Shaw.

DEAR MR. SHAW: I beg to acknowledge receipt of your letter of the 22nd, relative to the question as to whether or not there is a standard legal weight provided by statute for cucumbers in the State of Maryland.

An examination of the statutes discloses that there is no such standard legal weight in Maryland.

I call your attention to Article 97, Section 17, Code of Public General Laws of Maryland, Bagby's Edition of 1924, and Article 97, Section 26, Code of Public General Laws, 1929 Supplement, wherein standard weights and measures are provided for various commodities and articles of commerce, but unfortunately cucumbers are not included. Inasmuch as there is no standard weight provided by statute, farmers upon making their contracts with the manufacturer would be deemed to know the general custom and usage of the trade with respect to the weight per bushel. Under such circumstances, the weight as determined by the regular custom and usage of the trade would be incorporated into the contract and hence would seem to determine the weight under the contract.

Very truly yours,

WM. PRESTON LANE, JR., *Attorney General.*

UNIVERSITY OF MARYLAND—DOES NOT HAVE TO PAY STAMP TAX ON CONVEYANCES.

August 29, 1932.

Samuel N. Shoemaker, Esq.,
Chairman, Board of Regents,
University of Maryland,
Fidelity Building,
Baltimore, Md.

DEAR MR. SHOEMAKER: In the purchase of land by the University of Maryland for the new University Hospital the following question has arisen:

> Must the University of Maryland pay the Stamp tax on conveyances provided by Section 725 of the Revenue Act of 1930 (U. S. C. A. Page 90) of land purchased by the University.

It is well settled that the University of Maryland is a State agency.

> See, recent compilation of law by Dr. Horace E. Flack, entitled "Laws Relating to Board of Regents and State Board of Agriculture."

The Federal Government itself has recognized this fact in the recent case of *G. Ridgely Sappington vs. David H. Blair, Commissioner of Internal Revenue, U. S. Board of Tax Appeals, Docket No. 51944.*

Since the University is a State institution, it follows that the Federal Government cannot hinder or clog this institution from the efficient performance of a State or governmental function.

> *Panhandle Oil Co. vs. Miss. Ex Rel Knox,*
> 275 U. S. 218, 75 L. Ed. 857, 56 A. L. R. 583;
> *Indian Motorcycle Co. vs. U. S.* 283 U. S. 570, 75 L. Ed. 1277.

The levy of this tax would obviously hinder the University in the performance of a vitally important governmental function. Exactly the same question in a converse form is to be found in the case of *Federal Land Bank of New Orleans vs. Crossland,* 261 U. S. 374, 67 L. Ed. 703, 29 A. L. R. 1. In this case the State attempted to tax the recordation of land bank mortgages. The Supreme Court held these banks were performing a governmental function and hence the attempt to tax such mortgages was void.

The exemption of State institutions under the Revenue Act of 1932 is well recognized by the Bureau of Internal Revenue. In a number of recent opinions and regulations of this Bureau, the general exemption of a State institution is specifically recognized.

Regulations 44, Page 7, Art. 9;
Opinions of L. R. B. U. S. Daily, July 25, 1932.

Therefore, it is the opinion of this office that the University of Maryland is not subject to the stamp tax on conveyances as provided in the Revenue Act of 1932.

Yours very truly,

WM. PRESTON LANE, JR., *Attorney General.*

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