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COMPLIMENTS OF

EDWARD D. E. ROLLINS

ATTORNEY GENERAL

ANNUAL REPORT
AND
OFFICIAL OPINIONS
OF THE
ATTORNEY GENERAL
OF
MARYLAND

1953

EDWARD D. E. ROLLINS
ATTORNEY GENERAL

20th Century Printing Co., Inc.
Baltimore, Md.

ATTORNEYS GENERAL OF MARYLAND

This office was permanently separated from that of Secretary in 1657. Under royal government (1690-1715) there were two Attorneys General, one for the Proprietary and one for the King. The office was continued under the Constitution of 1776. Other places held by any Attorney General during his incumbency are indicated in each case.

Lt. Richard Smith, Sr., of Calvert County (Prot.), appointed by the Provincial Court, 28 Sept. 1657.

Capt. Thomas Manning of Calvert County (Prot.), com. by the Lt. Gen., 20 Feb. 1660/1.

*Col. William Calvert of St. Mary's City (Cath.), sworn 12 June 1666.

*Col. Vincent Lowe of Talbot County (Cath.), sworn 13 Dec. 1670. Resigned after appointed Sheriff of Talbot County.

Kenelm Cheseldyne of St. Mary's City (Prot.), sworn 6 April 1676.

Thomas Burford of Charles County (Prot.), appointed by His Lordship and sworn 4 Oct. 1681; died in office in March, 1686/7.

Robert Carville of St. Mary's City (Cath.), com. by Chancellor Henry Darnall, pursuant to Lord Baltimore's instructions, 3 April 1688. Superseded by Carroll.

*Charles Carroll of St. Mary's City and of Anne Arundel County (Cath.), formerly of the Inner Temple, London; com. by the Proprietary, to hold office during good behavior, 18 July 1688; arrived in Maryland 1 Oct. and was confirmed in office by the Deputy Governors, 13 Oct. 1688. After 1 Aug. 1689 he continued as Lord Baltimore's Attorney General until the restoration of Proprietary government. On the death 17 June 1711, of Col. Henry Darnall I, his father-in-law, he succeeded to the offices of Agent and Receiver General and Keeper of His Lordship's Great Seal.

Col. George Plater I of St. Mary's County (Prot.) appears as acting Attorney General, for the crown, as early as 23 April 1691; superseded by Wynne.

Edward Wynne of St. Mary's County (Prot.), sworn crown Attorney General, 5 April 1692; died in office shortly before 8 Sept. 1692.

Col. George Plater I, sworn 8 Sept. 1692; resigned to be Naval Officer of Patuxent shortly before 21 Oct. 1698. He was Receiver of Patuxent and, until Nov. 1696, Collector of the same. He married, about 1694, Anne, dau. of Thomas Burford above.

Maj. William Dent of Charles County (Prot.), com. by Gov. Nicholson, 22 Oct. 1698, resigned 8 May 1702. He was again commissioned by Gov. Seymour, 16 May 1704, and continued to serve until his death in Nov. 1704. He was also Naval Officer of North Potomac, and in May, 1704, he became joint Commissary General.

Col. William Bladen of Annapolis (Prot. wife Cath.), com. by Gov. Seymour as Her Majesty's Attorney General, succeeding Dent, 4 Dec. 1704; sworn His Lordship's Attorney General, succeeding Carroll, 1 May 1716; died in office, 1 Aug. 1718. He was Naval Officer of Annapolis, and in Aug., 1708, he became sole Commissary General.

Thomas Bordley of Annapolis (Prot.), sworn 6 Sept. 1718; dismissed in September, 1721. He was sole Commissary General. He died 11 Oct. 1726.

Daniel Dulany, Sr., of Annapolis (Prot., protege and former clerk of George Plater above), succeeded Bordley, 10 Oct. 1721. Until July, 1724, he was joint Commissary General. He resigned in 1725.

Michael Howard of Talbot County (Prot.), sworn 19 Oct. 1725. He was appointed Surveyor General of the Eastern Shore in June, 1726, and Naval Officer of Oxford about 1727. He resigned in 1734.

Daniel Dulany, Sr., succeeded Howard in Oct., 1734, and was also sole Commissary General; resigned in 1744.

*Henry Darnall III of Prince George's County (Prot. convert, wife and children Cath.), com. and sworn 19 April 1744; appointed Naval Officer of Patuxent, 24 May 1755; persuaded to resign early in 1756.

Stephen Bordley of Annapolis (Prot. son of Thomas Bordley above), com. 26 March and sworn 26 May 1756; suffered a paralytic stroke and resigned in Dec., 1763; died 6 Dec. 1764. He was Naval Officer of Annapolis until March, 1762, when he became sole Commissary General.

Edmund Key of Annapolis (Prot., mother Cath.), com. 26 Dec. 1763 and sworn 10 April 1764; resigned shortly before his death on 4 May 1766.

Robert Goldsborough II of Dorchester County (Prot.), sworn 8 April and com. 4 June 1766. Resigned in 1768; died 30 April 1777.

Thomas Jennings of Annapolis (Prot.), sworn 18 Oct. and com. 27 Oct. 1768; recom. 29 April 1773. He was appointed State Attorney General in April, 1777, but was succeeded, on 6 Jan. 1778, by Benjamin Galloway. He was a relative of former Deputy Secretary Edmund Jennings.

Luther Martin	1778
William Pinkney	1805
John Thomas Mason	1806
John Johnson.....	1806
John Montgomery	1811
¹ 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
² Alexander Randall	1864
Isaac D. Jones.....	1867
Andrew K. Syester.....	1871
Charles J. M. Gwynn.....	1875
Charles B. Roberts.....	1883
William Pinkney Whyte.....	1887
John P. Poe.....	1891
Harry M. Clabaugh.....	1896
George R. Gaither, Jr.....	1899
Isidor Rayner	1900
William S. Bryan, Jr.....	1904
Isaac Lobe Straus.....	1908
Edgar Allan Poe.....	1912
Albert C. Ritchie.....	1916
³ Ogle Marbury	1918
Alexander Armstrong	1920
Thomas H. Robinson.....	1924
William Preston Lane, Jr.....	1930
Herbert R. O'Connor.....	1934
William C. Walsh.....	1938
William Curran	1945
⁴ Hall Hammond	1946
⁵ J. Edgar Harvey.....	1952
⁶ Edward D. E. Rollins.....	1952

¹During the physical incapacity of Luther Martin, 1820-1822, the Governor appointed Nathaniel Williams, Assistant Attorney General, to act as Attorney General.

²The office of Attorney General was abolished by the Constitution of 1851, but was re-established by the Constitution of 1864 (Art. V, Sec. 1).

³During Mr. Ritchie's absence, June 1918-January 1919, while serving as General Counsel of the United States War Industries Board, Mr. Ogle Marbury became Acting Attorney General.

⁴On September 30, 1952, Mr. Hammond resigned as Attorney General to accept an appointment on the Court of Appeals of Maryland. Mr. Harvey was designated by Governor McKeldin to be Acting Attorney General until the new Attorney General qualified.

⁵Mr. Edward D. E. Rollins qualified as Attorney General on the 14th of November, 1952.

STATE LAW DEPARTMENT

Edward D. E. Rollins.....	Attorney General
J. Edgar Harvey.....	Deputy Attorney General
¹ Robert M. Thomas.....	Assistant Attorney General
Ambrose T. Hartman.....	Assistant Attorney General
² W. Giles Parker.....	Assistant Attorney General
³ Kenneth C. Proctor.....	Assistant Attorney General
⁴ Charles McC. Mathias, Jr.....	Assistant Attorney General
⁵ H. Clifton Owens.....	Assistant Attorney General
Francis D. Murnaghan, Jr.....	Special Assistant Attorney General for the Comptrol- ler of the Treasury
Joseph D. Buscher.....	Special Assistant Attorney General for the State Roads Commission
⁶ Aaron A. Baer.....	Special Assistant Attorney General for the Employ- ment Security Board
⁷ Herbert L. Cohen.....	Special Assistant Attorney General for the Employ- ment Security Board
⁸ O. Bowie Duckett.....	Special Assistant Attorney General in Charge of Sub- versive Activities Control
⁹ Marvin H. Smith.....	Special Assistant Attorney General in Charge of Sub- versive Activities Control
¹⁰ Noah A. Hillman.....	Special Assistant Attorney General for the Depart- ment of Tidewater Fish- eries
Philip T. McCusker.....	Special Attorney for the State Accident Fund
Mrs. Anne Davis Greer.....	Chief Clerk
Miss L. Erma Leonard.....	Stenographer-Secretary
Miss Margaret E. Holliday.....	Stenographer-Secretary
Miss Agnes T. Conroy.....	Senior Stenographer

¹Resigned April 15, 1953

²Appointed May 18, 1953

³Resigned June 30, 1953

⁴Appointed August 1, 1953

⁵Appointed August 14, 1953

⁶Leave of absence without pay October 22, 1953

⁷Appointed December 7, 1953

⁸Resigned January 31, 1953

⁹Appointed February 1, 1953

¹⁰Appointed August 1, 1953

Offices: 1201 Mathieson Building,
Baltimore 2, Md.

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Annual Report For 1953

January 1, 1954.

*Hon. Theodore R. McKeldin,
Governor of Maryland,
Annapolis, Md.*

DEAR GOVERNOR MCKELDIN :

After having been appointed by you to fill out the unexpired term of office of former Attorney General Hammond, I took office on November 14, 1952. At this time, in accordance with the provisions of Section 10 of Article 32A of the Annotated Code of Maryland (1951 Edition) it gives me great pleasure to submit herewith, my first annual report of the business and proceedings of the State Law Department for the year beginning January 1, 1953 and ending December 31, 1953. The official opinions rendered by the Department during the year follow this report.

There were two hundred and twenty-one (221) cases disposed of during the year, and eighty-three (83) are still pending, some of which are partially tried. This number does not include the cases tried by the Assistants assigned to the State Roads Commission, the Employment Security Board, the State Accident Fund and the Department of Tidewater Fisheries. Each of these Assistants has submitted a detailed report covering the activities of the Department to which he is assigned, and the same are included herein. There is also included, a report of the Assistant in Charge of Subversive Activities Control, which is not in detail, because of the nature of the work performed in the office of that Assistant.

There were thirty-nine (39) criminal cases tried in the Court of Appeals and ten (10) civil cases, in which we represented the State. We appeared on behalf of the State in cases tried in the Supreme Court of the United States, the Court of Appeals of the United States for the Fourth Circuit, the United States District Court for the District of Maryland, the Circuit Courts for the various counties and Baltimore City, and the People's Court of Baltimore City. Some of the cases involved the following subjects: Murder, rape, lotteries, possession of instruments for use of habit forming drugs, assault and battery, larceny, receiving stolen goods, assault with intent to kill, common assault, assault with intent to rob, conspiracy to perform an abortion, wilful neglect to provide for minor children, book-making, wilful neglect to file an income tax return, attempted bribery, petit larceny, disturbing the peace, possession of alcoholic beverages for sale without having a license and manslaughter. We represented the State in cases involving petitions for writs of certiorari, mandamus, replevins, attachments, injunctions, habeas corpus, declaratory judgments and cases involving income, sales and use, admissions, inheritance, recordation, titling, real estate, gasoline and alcoholic beverages taxes; constitutional law, testamentary law, motor vehicle suspensions and revocations, election laws and suits for damages to State property.

We have continued to approve as to form and legal sufficiency all bonds submitted to the Departments by employees who handle State revenues, as well as all public officials required by law to be bonded. This number reaches well over a thousand a year. All leases, contracts, contract bonds submitted by the Department of Public Improvements and the Department of Budget and Procurement for work and materials, are approved by this office as to form and legal sufficiency, as well as all other similar documents in which the State is interested, before they are accepted by the State. We have continued to examine as to legality, all rules and regulations proposed by the Departments or officials authorized to promulgate any rules and regulations, as required by law.

The Patapsco Valley Park project is still in development and this office has continued to advise the Patapsco Valley Park Advisory Committee on numerous matters, as well as examine and approve the detailed reports submitted to us by the attorneys examining the many parcels of land to be acquired. Condemnation cases in connection with this project are tried by this office and all deeds and contracts pertaining to the matter are approved by us.

The General Assembly met on January 7, and ended on April 7, 1953; as has been the custom for some years, we maintained an office in the State House to advise and consult with the various members and committees of the Legislature regarding legislation, and the State Departments and officials interested in bills to be introduced. The office was in charge of Mr. Buscher, assisted by Mr. Hartman and Mr. Weinberg.

Activity in the Blue Sky Law Enforcement has continued during the year, resulting in an increase in the number of inquiries and registrations.

As Chairman of the Southern Regional Group of the National Association of Attorneys General, I invited the other members of the Group to attend a meeting which was held at Carvel Hall, Annapolis, on June 22nd and 23rd. This was the first meeting of the Association or of one of its Regional Groups ever to hold a meeting in Maryland, and I am very proud to be able to tell you that the Conference, working under a program prepared by the secretariat, was most interesting, and that representatives from States as far away as Texas were in attendance. Discussions on the subject involving writs of Habeas Corpus issued by Federal Courts to review criminal proceedings in State cases, and the procedure under, and the general operation of the Uniform Reciprocal Support Act were conducted by very able and well informed leaders.

On August 9 to August 12, accompanied by Deputy Attorney General Harvey and Assistant Attorney General

Buscher, I attended the Annual meeting of the National Association of Attorneys General held at the Sylvan Lake Hotel in the Black Hills of South Dakota. As a result of the panel discussions on Habeas Corpus and the Uniform Reciprocal Support Act at Annapolis in June, these topics had prominent places on the agenda of the meeting at Sylvan Lake. In addition to these, there were sessions devoted to the Tidelands question, Federal Grants-in-Aid, and many other topics which are of vital interest throughout the length and breadth of the land.

At the invitation of Judge John J. Parker, I attended the Twenty-third Judicial Conference of the Fourth Circuit, held at White Sulphur Springs, W. Va. on June 26, and 27, 1953.

The following changes in personnel were made by me during the year; on January 6, I appointed Mr. Robert H. Weinberg as a Special Assistant, and assigned him to the Annapolis office in the State House to assist Mr. Buscher during the Legislature; after the examination and approval of bills Mr. Weinberg's employment terminated on May 15, 1953. Mr. O. Bowie Duckett resigned on January 31, 1953, as Special Assistant Attorney General in Charge of Subversive Activities Control, and on February 1, 1953, I appointed Mr. Marvin H. Smith of Denton in his place; on April 15, 1953, Mr. Robert M. Thomas resigned, and on May 18, 1953, I appointed Mr. W. Giles Parker of Lutherville to succeed him; on June 30, 1953, Mr. Kenneth C. Proctor resigned, and on August 1, 1953, I appointed Mr. Charles McC. Mathias, Jr. of Frederick, in his place; on August 14, 1953, I appointed Mr. H. Clifton Owens of Baltimore as an Assistant Attorney General.

The 1953 Legislature authorized the employment of another attorney for the State Accident Fund, and on May 18, 1953, I appointed Mr. Harry A. Cole as Assistant Special Attorney to assist the Special Attorney for the State Accident Fund.

In July 1953, the Department of Tidewater Fisheries requested the assignment of an Assistant to that Department, but owing to the volume of work in this office it was impossible to grant their request, so that with your approval, Mr. Noah A. Hillman of Annapolis, was designated Special Assistant Attorney General for the Department of Tidewater Fisheries, his employment to be effective on August 1, 1953.

Under date of October 22, 1953, Mr. Aaron A. Baer requested leave of absence without pay from his assignment as Special Assistant Attorney General for the Employment Security Board, and on December 7, 1953 I appointed Mr. Herbert L. Cohen as Special Assistant Attorney General to fill this assignment.

We are continuing the policy of conferring frequently with State officials and heads of Departments, thus assisting in the solution of the many problems which are daily presented. We have attended hearings, conferences and meetings, endeavoring at all times to reach conclusions which would be most beneficial to the interests of the State. The cooperation given to us by the members of your official family has been most helpful and courteous at all times.

With kind regards, I am

Sincerely yours,

EDWARD D. E. ROLLINS,

Attorney General.

SUMMARY OF LITIGATION FOR 1953

CASES DISPOSED OF IN THE SUPREME COURT
OF THE UNITED STATES

Martin Duane McGuire vs. State of Maryland. No. 493, October Term, 1952. This was a petition for a Writ of Certiorari to the Court of Appeals of Maryland. Petitioner, along with one Morton J. Hess and several other persons, was indicted by the grand jury of Baltimore City under a charge of unlawful conspiracy to violate the laws of the State of Maryland relating to lottery. Petitioner was tried on one of three counts, the State having abandoned two counts. Petitioner filed a number of preliminary motions, including a motion to dismiss the indictment and each and every count thereof, and a motion to suppress and exclude from evidence at the trial the content of certain telephone conversations. Those motions were overruled by the Trial Court. The case was tried before Judge Joseph Sherbow and a jury. Upon the conclusion of the case, a motion was filed on behalf of the petitioner, in which he requested the Court to instruct the jury to render a verdict of not guilty. This motion was overruled by the Trial Court. The jury rendered a verdict of guilty. Motion for a new trial was overruled and the petitioner was sentenced to serve eighteen months in the Maryland House of Correction and to pay a fine of \$2,000 and court costs. An appeal was taken from this judgment to the Court of Appeals of Maryland. The judgment was affirmed by unanimous decision of that Court. On February 2, 1953, the petition was dismissed. Mr. Proctor represented the State.

Richard Griffin vs. State of Maryland. No. 543, October Term, 1952. This was a petition for a Writ of Certiorari to the Court of Appeals of Maryland. Petitioner was convicted in the Criminal Court of Baltimore upon an indictment which charged him with violation of the Gaming Laws of the State of Maryland. He received a sentence of nine months in the Maryland House of Correction and was fined

\$3,000. Petitioner appealed his conviction to the Court of Appeals of Maryland, contending that the evidence introduced against him was improperly admitted by the trial court because received by an illegal search and seizure. The judgment was affirmed by the Court of Appeals. Thereafter, petitioner filed a Motion for Reargument with the Court of Appeals of Maryland, which was denied. On March 9, 1953, the petition for certiorari was denied. Mr. Hartman represented the State.

Austin Scarlett vs. State of Maryland. No. 643, October Term, 1952. This was a petition for a writ of certiorari to the Court of Appeals of Maryland. Petitioner was indicted by the grand jury of Baltimore City under a charge of unlawful conspiracy with certain other persons, to violate the laws of the State of Maryland relating to lottery. Petitioner was tried and the jury returned a verdict of guilty. Motion for a new trial was filed and overruled by the Supreme Bench of Baltimore, and the petitioner was sentenced to serve a term of seven years in the Maryland Penitentiary and to pay a fine of \$2,000 and court costs. Petitioner appealed from that judgment to the Court of Appeals of Maryland. The judgment below was affirmed by the Court of Appeals. On May 18, 1953, the petition for certiorari was denied. Mr. Proctor represented the State.

State of Maryland, Ex Rel. Harold H. Channel vs. George J. Murphy, Captain of Detectives, Baltimore City Police Department, etc. No. 171, October Term, 1953. This was a petition for a writ of certiorari from a denial of a habeas corpus by the Court of Appeals of Maryland. Briefs were filed, and thereafter the petition was denied. Mr. Hartman represented the Police Department.

Walter Rouse, otherwise called John Roush vs. State of Maryland. No. 270, October Term, 1953. This was a petition for a writ of certiorari, which was denied on October 26, 1953. Mr. Parker represented the State.

Louis Comi vs. State of Maryland. No. 400, October Term, 1953. This was a petition for a writ of certiorari to the Court of Appeals of Maryland. Petitioner was charged, with other persons, of conspiracy to violate the lottery laws of the State of Maryland. Petitioner's first trial resulted in a hung jury. He was then tried before Judge E. Paul Mason and a jury and was found guilty. A motion for a new trial was overruled and petitioner was sentenced to serve seven years in the Maryland Penitentiary and to pay a fine of \$2,000 and court costs. Petitioner then appealed to the Court of Appeals and the judgment of the lower court was affirmed. On November 30, 1953, the petition for certiorari was denied. Mr. Hartman represented the State.

Julius Salsburg vs. State of Maryland. No. 38, October Term, 1953. These proceedings originated in the Circuit Court for Anne Arundel County, where the appellant and two other persons were convicted of bookmaking, which is a misdemeanor by statute. Certain bookmaking paraphernalia was introduced at the time of the trial over objection that it was secured by an illegal search and seizure. No question of a denial of the equal protection of the laws or the denial of any other constitutional right was directly raised at that time. Appellant and the two persons convicted with him appealed to the Court of Appeals of Maryland where they contended: (1) That their convictions were based upon evidence secured by an illegal search and seizure; and (2) that the statute under which the evidence was held admissible was unconstitutional and was violative of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States. The Court of Appeals held that, inasmuch as the two persons convicted with appellant had demonstrated no interest in the premises searched they could not, under previous decisions of the Court, complain of the illegal search and seizure. The Court of Appeals found that the appellant Salsburg had demonstrated an interest in the premises as lessee and ordered reargument as to him on the constitutional question. Appellant in his brief on reargument before the Court of Appeals

raised only the question of the denial of equal protection of the laws. In his argument before that Court he also raised the question of a denial of due process of law, and the Court of Appeals in its opinion considered both of these contentions. Thus, the Court of Appeals not only held that equal protection had not been denied but it also found no reason "to hold that the 1951 statute making illegally procured evidence admissible in certain trials in Anne Arundel County, is in conflict with the due process clause of the 14th Amendment." The judgment of the lower court was affirmed. Mr. Hartman represented the State.

CASES PENDING IN THE SUPREME COURT
OF THE UNITED STATES

William Adams vs. State of Maryland. No. 271, October Term, 1953.

Miller Brothers Company vs. State of Maryland. No. 160, October Term, 1953.

CASE PENDING IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

State of Maryland, Ex Rel. Harold H. Channel vs. George J. Murphy, Captain of Detectives, Baltimore City Police Department, etc. No. 6733, October Term, 1953.

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

Milton Lonesome, et al. vs. Sidney D. Peverley, et al. Constituting the Commission of Forests and Parks, et al. Civil Action No. 5965. This was an action brought by various negroes against the Commission of Forestry and Parks, the Director of the Department of Forests and Parks of the State, and the Superintendent of Sandy Point State Park, alleging that the said defendants segregated negroes in the use of said park, and that such segregation was unconstitutional. The plaintiffs further alleged that the facilities provided for negroes was not equal to those provided for white persons, and that this alleged inequality of facilities was unconstitutional. The plaintiffs sought a restraining order, a preliminary injunction, a permanent injunction and a declaratory judgment against the defendants. The restraining order was denied, but the defendants were ordered to show cause why a preliminary injunction should not issue. An answer to the plaintiffs' motion for a permanent injunction and show cause order thereon were filed, and an answer to the bill of complaint was filed. A

hearing was had in May, at which time it became evident that the facilities, particularly with respect to the bathing beaches, were not equal and the Court granted a temporary and preliminary injunction. The State thereupon made every effort to bring the facilities into equality and was able to do so by the 1st of July. However, the plaintiffs contested the State's petition to vacate the preliminary injunction most strenuously and forced a hearing which lasted for over one week during July, Judge Chesnut sitting during his ordinary summer recess period to hear the case, with the result that the injunction was vacated and the relief prayed in the bill denied, insofar as any claims of inequality of facilities were concerned. The case is still pending on the basis of alleged unconstitutionality of segregation, Judge Chesnut having stated that he would defer any decision on that subject pending decision of the Supreme Court in the public school segregation cases now pending before it. In October 1953, the plaintiffs filed a Motion to consolidate this case with two other cases brought by the same or similar plaintiffs against the City of Baltimore. This was contested by the State and the plaintiffs' motion was denied in so far as the State of Maryland was concerned. Mr. Parker represented the State.

Walter J. Slowe vs. Charles J. Price, Warden, Baltimore City Jail. No. 6990, Civil Action.

Robert I. Mason vs. Charles J. Price, Warden, Baltimore City Jail. No. 6997, Civil Action.

These were petitions for writs of Habeas Corpus by the two petitioners who thereby questioned the validity of warrants of rendition signed by the Governor of Maryland for their return to the State of North Carolina. The Court, after considering the transcript of testimony made in the Baltimore City Court in previous habeas corpus proceedings, declined to issue the writ and remanded the petitioners to the custody of the Warden of the Baltimore City Jail for rendition to the State of North Carolina. Mr. Hartman represented the Warden.

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

In the Matter of the Carter Trucking Company. In Bankruptcy.

United States of America vs. John A. Ridenour, Uncle John's Cabin, Inc. et al. and State of Maryland, D. J. Gosser. No. 6646, Civil Action.

CRIMINAL CASES TRIED IN THE COURT OF APPEALS

Joseph J. Rizzo, Wm. Raynard Nicholson, Julius Salsburg, vs. State of Maryland. No. 49, October Term, 1951. See case on page 27, Volume 37 of the Report and Official Opinions of the Attorney General. In the original argument of this case, the three appellants contended that their convictions should be reversed for the reason that evidence secured through an unreasonable search and seizure had been introduced against them. Subsequent to that argument, this Court held that appellants Rizzo and Nicholson had demonstrated no interest in the premises, so that they could not complain of the illegal search and seizure. Re-argument was ordered as to appellant Salsburg on the question whether the statute (Chapter 704 of the Acts of 1951) under which the evidence was admissible, is constitutional. The judgment of the lower Court was affirmed. Mr. Hartman represented the State.

Leroy White vs. State of Maryland. No. 85, October Term, 1952. This was an appeal from a judgment of the Criminal Court of Baltimore (Moser, J.) by which appellant was convicted of the crime of rape, and received the death penalty. The case was heard by the court sitting as a jury upon a plea of not guilty to the three counts of the indictment. The judgment of the lower Court was affirmed with costs. Mr. Hartman represented the State.

Edward Wanzer vs. State of Maryland. No. 99, October Term, 1952. Appellant was tried upon an indictment which

contained eight counts, the sixth of which was abandoned by the State. The first five counts charged various violations of the gaming laws. Sections 303 through 330 of Article 27 of the Annotated Code (1951 Edition). The seventh and eighth counts charged the sale of alcoholic beverages without a license. Section 3 of Article 2B of the Annotated Code (1951 Edition). Prior to trial, appellant filed a petition for change of venue, which was denied. The case was tried before Judge James Clark, Associate Judge of the Circuit Court for Howard County, and resulted in a verdict of guilty on each of the seven counts. Appellant was sentenced to pay a fine of \$500 and to serve a sentence of eleven and one-half months in the Maryland House of Correction. This appeal was from that judgment. The judgment of the lower Court was reversed and a new trial awarded. Mr. Hartman represented the State.

Jacob A. Berry vs. State of Maryland. No. 102, October Term, 1952. This was an appeal from a judgment of the Criminal Court of Baltimore (Mason, J.) under which appellant was convicted on two counts of an indictment, one charging him with the keeping of a room for the purpose of selling lottery tickets and the other charging him with the unlawful possession of lottery paraphernalia. Appellant was tried by the Court sitting as a jury and received a sentence of ten months in the Maryland House of Correction and was fined \$1,000 and costs. The judgment of the lower Court was affirmed with costs. Mr. Hartman represented the State.

John William Chisley vs. State of Maryland. No. 106, October Term, 1952. This was an appeal from a judgment of the Circuit Court for Anne Arundel County (Michaelson, J.) under which appellant was convicted of the crime of murder in the first degree, and received the death penalty. The case was heard by the court and jury upon pleas of not guilty and insanity. The judgment of the lower Court was affirmed. Mr. Hartman represented the State.

Clyde N. Stevens vs. State of Maryland. No. 107, October Term, 1952. Appellant was indicted by the grand jury of Baltimore City, charged with unlawful possession of a certain hypodermic syringe and a certain instrument and implement adapted for the use of habit forming drugs by hypodermic injections. The case was tried before Judge Paul Mason, Associate Judge of the Supreme Bench of Baltimore City, without a jury. Appellant was found guilty as charged and was sentenced to serve two years in the Maryland House of Correction from August 12, 1952. This appeal was from that judgment. The judgment of the lower Court was affirmed. Mr. Proctor represented the State.

Byron E. Heslop vs. State of Maryland. No. 109, October Term, 1952. On October 10, 1952, appellant was indicted for robbery, assault with intent to rob, assault and battery, larceny, and receiving stolen goods. On October 14, 1952, he was arraigned and plead "Not Guilty". On October 20, 1952, appellant filed a written motion, under oath, requesting a removal of the proceedings to one of the adjoining Counties for trial. On the same date, after oral argument on the motion, it was denied by the Trial Court, on the ground that Chapter 69 of the Laws of 1952, which purports to extend the absolute right of removal to cases punishable "by imprisonment in the Maryland penitentiary" is unconstitutional. Thereupon, counsel for appellant advised the Court that he wished to note an immediate appeal to the Court of Appeals from the ruling of the Trial Court on the motion. The Trial Court determined that the appellant did not have a right of immediate appeal and refused to suspend the trial of the case pending an appeal. On October 22, 1952, appellant was tried before a jury, Judge John B. Gray, Jr., presiding. He was found not guilty under the first, fourth and fifth counts of the indictment but was found guilty under the second and third counts of the indictment. On October 29, 1952, appellant was sentenced to serve three years in the Maryland House of Correction. This appeal was from that judgment. The judgment of the lower Court was affirmed with costs. Mr. Proctor represented the State.

Maurice Davis, Jr. vs. State of Maryland. No. 110, October Term, 1952. Appellant was tried in the Circuit Court for Prince George's County on two indictments, one of which charged assault with intent to kill and assault and battery, and the other of which charged carrying a concealed weapon. He was tried by the Court sitting as a jury and found not guilty of assault with intent to kill, guilty of assault and battery and carrying a concealed weapon. He was sentenced to serve twelve months in the Maryland House of Correction on his conviction of assault and battery, and to serve a sentence of six months on his conviction of carrying a concealed weapon, the sentences to run consecutively. The judgment of the lower Court was affirmed with costs. Mr. Hartman represented the State.

George Grant Stokes vs. State of Maryland. No. 112, October Term, 1952. Appellant was indicted by the grand jury of Baltimore City charged, among other things, with common assault upon one Verletha Johnson. He was tried before Judge E. Paul Mason, Associate Judge of the Supreme Bench of Baltimore City, without a jury, and was found guilty under the common assault count. He was sentenced to serve two years in the Maryland House of Correction. This appeal was from that judgment. The judgment of the lower Court was affirmed with costs. Mr. Proctor represented the State.

Daniel Linkins, Jr. vs. State of Maryland. No. 119, October Term, 1952. Appellant and three others were indicted by the grand jury for Washington County charged with robbery, assault with intent to rob, larceny and assault. Appellant was granted a severance. He filed a motion to dismiss the indictment on the ground that it did not sufficiently describe the goods or chattels which he was charged with robbing or attempting to rob, and that the indictment did not sufficiently inform him of the charge so that he could prepare for his defense. This motion was overruled. Appellant was tried before Judge Joseph D. Mish, Chief Judge of the Circuit Court for Washington County, and a jury. Appellant was found not guilty under the first count

of the indictment (robbery) and was found guilty under the remaining counts. Appellant filed a motion for a new trial which was overruled. He was sentenced to be confined in the Maryland State Reformatory for Males for an indeterminate period, not to exceed eighteen months. This appeal was from that judgment. The judgment of the lower Court was reversed and a new trial ordered. Mr. Proctor represented the State.

Jean Noel vs. State of Maryland. No. 123, October Term, 1952. Appellant was indicted by the grand jury of Baltimore City, charged with violation of the lottery laws. Trial was held before Hon. E. Paul Mason, Associate Judge of the Supreme Bench of Baltimore City, and a jury. Appellant was found guilty under the fourth and fifth counts of the indictment, viz. unlawful possession of lottery tickets and unlawful possession of books, lists, slips and records of numbers drawn in a lottery. She was sentenced to serve not more than ten months in the Maryland State Reformatory for Women and to pay a fine of \$1,000 and court costs. This appeal was from that judgment. The judgment of the lower Court was reversed and a new trial awarded. Mr. Proctor represented the State.

Louis Comi vs. State of Maryland. No. 128, October Term, 1952. Appellant was charged by the grand jury of Baltimore City with having conspired, between January 1, 1950, and January 17, 1952, with other named persons, and certain other persons unknown to the Grand Jurors, to violate the lottery laws. The first trial resulted in a hung jury. Appellant was then tried before Judge E. Paul Mason, Associate Judge of the Supreme Bench of Baltimore City, and a jury and was found guilty. In the course of the trial, appellant raised questions concerning (a) the State's cross examination of character witnesses, (b) the extent of the cross examination of one of the defense witnesses, (c) the admission of the testimony of one of the State's witnesses and the refusal of the Trial Court to strike out his testimony, (d) the time limitation imposed by the Trial Court on argument to the jury, (e) the action of the Trial Court

in permitting another State's witness to testify even though his testimony was later stricken out, (f) a statement by the State's Attorney in the presence of the jury that the "State's star witness has disappeared", and (g) the publication of a newspaper story during the trial which allegedly contained data prejudicial to appellant and not in the record. The Trial Court ruled adversely to the appellant on each of these questions. Motion for a new trial was filed and overruled. Appellant was sentenced to serve seven years in the Maryland Penitentiary and to pay a fine of \$2,000 and court costs. This appeal was from that judgment. The judgment of the lower Court was affirmed. On July 11, 1953 a petition and order were filed Staying the Mandate until the outcome of a writ of certiorari to the United States Supreme Court. Mr. Proctor represented the State.

Charles Crosby Lowery vs. State of Maryland. No. 199, October Term, 1952. This was an appeal from a conviction by the Criminal Court of Baltimore (Moser, J.). Appellant was tried under an indictment which charged him with forcible rape. He entered a plea of not guilty and elected to be tried by the Court without a jury. A motion for a new trial was denied, and the death penalty was imposed. The judgment of the lower Court was affirmed. Mr. Hartman represented the State.

Ruth Hutson, Thomas Hutson and Dorothy E. Alstedt vs. State of Maryland. No. 131, October Term, 1952. Appellants were jointly indicted by the Grand Jury of Anne Arundel County, charged with the performance of an abortion and conspiracy to illegally perform an abortion. They were tried before Judge Benjamin Michaelson and a jury. Appellant Ruth Hutson was found guilty under the third and eighth counts of the indictment, viz; causing an abortion and conspiracy to illegally perform an abortion. She was fined \$1,000 and received a sentence of three years in the Maryland State Reformatory for Females for the conviction of abortion. She was fined \$500 and received a sentence of three years for the conspiracy conviction, said

sentence to run concurrently with the sentence for abortion. Appellants Thomas J. Hutson and Dorothy E. Alstedt were found guilty under the eighth count of the indictment, viz, conspiracy to illegally perform an abortion. Thomas J. Hutson was fined \$1,000 and sentenced to serve three years in the Maryland House of Correction. Dorothy Alstedt was fined \$1,000 and received a suspended sentence of two years. The judgments of the lower Court were affirmed. On May 29, 1953, a motion for re-argument was filed, and on June 9, 1953, the motion was denied. Mr. Hartman represented the State.

Alvin Thomas Clark and Charles J. Ahern vs. State of Maryland. No. 144, October Term, 1952. Appellants were indicted by the grand jury of Baltimore City, charged with unlawful possession of three hypodermic syringes and three needles and a certain instrument and implement adapted for the use of habit forming drugs by hypodermic injection. The case was tried before Judge E. Paul Mason, Associate Judge of the Supreme Bench of Baltimore, without a jury. Appellants were found guilty as charged and each was sentenced to serve two years in the Maryland House of Correction, dating from July 25, 1952. These appeals were from those judgments. The judgments of the lower Court were affirmed. Mr. Proctor represented the State.

Henry Bradley vs. State of Maryland. No. 145, October Term, 1952. Appellant was indicted by the grand jury of Baltimore City for violation of the lottery laws. He was tried before Judge E. Paul Mason, Associate Judge of the Supreme Bench of Baltimore City, without a jury. Motion for new trial was overruled by the Supreme Bench of Baltimore City. Thereupon, appellant was sentenced to serve ten months in the Maryland House of Correction and to pay a fine of \$1,000 and court costs. This appeal was from that judgment. The judgment of the lower Court was affirmed. Mr. Proctor represented the State.

William Adams vs. State of Maryland. No. 147, October Term, 1952. Appellant was tried upon an indictment which charged that he and Walter Rouse from August 1, 1947 until August 15, 1951, continuously conspired with certain other persons, unknown to the Grand Jury, to violate the lottery laws of this State. Rouse filed a motion for severance which was granted. Appellant was tried by the Court sitting as a jury, found guilty, and sentenced to serve seven years in the Maryland Penitentiary, and to pay a fine of \$2,000. The judgment of the lower Court was affirmed. A petition and order for Stay of Mandate was filed pending a decision of the Supreme Court of the United States on a Writ of Certiorari. Mr. Hartman represented the State.

Walter Rouse, otherwise called John Roush vs. State of Maryland. No. 148, October Term, 1952. This was an appeal from the Criminal Court of Baltimore City (Mason, J.) from a judgment and sentence of three (3) years in the Maryland Penitentiary, imposed by the Court, after a verdict of guilty by the Jury, on an indictment charging him with Conspiracy to Violate the Lottery Laws of the State of Maryland. The judgment of the lower Court was affirmed. On June 19, 1953, a petition and order for Stay of Mandate was filed pending a decision of the United States Supreme Court on a Writ of Certiorari. Mr. Hartman represented the State.

Homer A. Allison vs. State of Maryland. No. 164, October Term, 1952. The appellant, Homer A. Allison, was indicted by a Charles County Grand Jury for the murder of his wife, Rosie Ann Allison, on September 7, 1952. After he pleaded not guilty, the case was removed to Anne Arundel County. He was tried on the 12th and 13th of January, 1953, before the Court and a Jury, (Clark and Michaelson, J.J.) presiding. The jury brought in a verdict of not guilty of murder, guilty of manslaughter. A motion for a new trial was overruled and appellant was sentenced to two years in the Maryland House of Correction. From this

sentence the appellant took this appeal. The judgment of the lower Court was affirmed. Mr. Hartman represented the State.

Lott Glover vs. State of Maryland. No. 165, October Term, 1952. Appellant was indicted by the Grand Jury of Prince George's County, charged with murder of one James Alfred Beacraft. At the same time, by separate indictment, he was charged with seven other crimes, including robbery with a deadly weapon and larceny. The acts which formed the basis for the various charges all took place early in the morning on January 29, 1952. Appellant filed pleas of not guilty and of not guilty by reason of insanity. He was tried before Judge John B. Gray, Chief Judge and Judges Charles C. Marbury and J. Dudley Digges, Associate Judges of the Circuit Court of Prince George's County, without a jury. During the course of the trial, appellant objected to the admission of an alleged confession made by him to the police on the morning of January 30, 1952. The Court ruled that the confession was admissible. The Court, sitting as a jury, rendered a verdict of guilty of murder in the first degree. Thereupon, appellant was sentenced to death. This appeal is from that judgment. Appellant was also found guilty under the third count (robbery) of the second indictment and was sentenced to serve ten years in the Maryland Penitentiary. From that conviction and sentence no appeal was taken. The judgment of the lower Court was affirmed. Mr. Proctor represented the State.

Raymond Martin vs. State of Maryland. No. 4, October Term, 1953. Appellant was tried upon four indictments, three of which charged him with burglary and the fourth of which charged that he was a rogue and vagabond, in violation of Article 27, Section 576 of the Annotated Code. One of the burglary indictments was abandoned by the State during the course of trial. Appellant was tried in the Criminal Court of Baltimore and entered a plea of not guilty. He was found guilty on each of the indictments. Sentence was withheld pending a motion for a new trial. Motion for a new trial was granted on the two indictments

for burglary but was denied on the indictment charging rogue and vagabond. Appellant was sentenced to serve not more than two years in the Maryland State Reformatory for Males. This appeal was from that judgment. The case was advanced and tried before adjournment of the Court for the summer. The judgment of the lower Court was affirmed with costs. Mr. Hartman represented the State.

State of Maryland vs. Chester Nathaniel James. No. 7, October Term, 1953. An indictment was found against the appellee which charged him with wilfully neglecting to provide for the support and maintenance of his two minor children. The appellee filed a motion to dismiss the indictment, which, after argument, was granted. This appeal was from that ruling. The judgment of the lower Court was reversed and the case remanded. Mr. Hartman represented the State.

Morris Chernock vs. State of Maryland. No. 9, October Term, 1953. This was an appeal from a judgment and sentence of the Criminal Court of Baltimore City, entered upon a verdict of "Guilty" on counts two and five of an eleven count indictment, which charged respectively the keeping of a room for the sale of lottery tickets and the possession of divers books, lists, slips and records of numbers drawn in a lottery and money received thereon. The sentence was eleven months in the Maryland House of Correction and a fine of \$1,000 and costs, consecutive. The judgment of the lower Court was affirmed. Mr. Hartman represented the State.

Salvatore Giordano vs. State of Maryland. No. 10, October Term, 1953. This was an appeal from a judgment upon a verdict of guilty rendered by Judge Mason, sitting without a jury, in the Criminal Court of Baltimore City, on three counts of an indictment charging the appellant with bookmaking activities on July 19, 1952. The appellant was sentenced to serve eight months in the Maryland House of Correction and to pay a fine of One Thousand Dollars. The

Montgomery County (Prescott, J.) upon an indictment which contained two counts. The first of these charged a wilful refusal to file an income tax return with the Comptroller of the Treasury of Maryland for the taxable year of 1951; the second charged a wilful failure to pay income taxes due for the same year. Appellant was tried by the Court sitting with a jury, found guilty under the first count, not guilty under the second, and was sentenced to pay a fine of \$150. The judgment of the lower Court was affirmed. Mr. Hartman represented the State.

Richard L. Beall vs. State of Maryland. No. 45, October Term, 1953. Appellant and one Thomas Parke were jointly tried upon two indictments which charged them with assault with intent to kill and assault and battery upon one Roy V. Lilly and his wife Joyce Lilly. Each defendant was found guilty of assault with intent to kill upon the two named persons. Appellant received an indeterminate sentence of three years in the Maryland State Reformatory for Males. This appeal was from that conviction. The judgments of the lower Court were affirmed. Mr. Hartman represented the State.

Louis Glickfield vs. State of Maryland. No. 46, October Term, 1953. Louis Glickfield, defendant was indicted for attempted bribery on the 6th of February 1953. On the 12th of May 1953, the defendant filed a motion to dismiss the indictment which was argued the same day before Judge Charles C. Marbury sitting without a jury, and at the close of the State's case defendant moved for a directed verdict of not guilty. The motion was overruled and at the end of the trial a verdict of guilty was rendered by the Court. On the 18th of May, 1953, Glickfield was sentenced by the Court to pay a fine of \$1,000 and costs and that he serve an indeterminate sentence in the Maryland State Reformatory for Males of not to exceed eighteen months. On the 18th day of May 1953, defendant took this appeal. The judgment of the lower Court was affirmed with costs. Mr. Hartman represented the State.

Harrison Banks vs. State of Maryland. No. 53, October Term, 1953. This was an appeal from the Circuit Court for Wicomico County, where the appellant was convicted of the crime of petit larceny. Article 27, Section 406 of the Annotated Code of Maryland (1951) as amended by Chapter 18 of the Acts of the General Assembly of Maryland of 1952. Appellant was tried before the Court sitting as a jury, was found guilty on the third count of the first information and plead guilty to the third count of the second information, and was sentenced to eighteen months in the Maryland House of Correction on each count, to run consecutively. The judgment of the lower Court was affirmed. Mr. Owens represented the State.

Thomas W. Davis vs. State of Maryland. No. 58, October Term, 1953. This was an appeal from a conviction for assault with intent to kill and murder in the Criminal Court of Baltimore. The case was tried before the court and a jury (Smith, C. J.). Jurisdiction over the defendant, age 15, had been waived by the Juvenile Court of Baltimore City. Judgments in Numbers 994 and 996 affirmed by the Court of Appeals, and judgment in Number 995 reversed and case remanded for new trial. Mr. Parker represented the State.

Board of Medical Examiners for the State of Maryland vs. Napoleon B. Steward. No. 64, October Term, 1953. The Board of Medical Examiners for the State of Maryland had appealed from an Order of the Circuit Court for Prince George's County, reversing appellant's Order revoking appellee's license to practice medicine in the State of Maryland. Appellee had made a Motion to Dismiss the appeal and this Court ordered that the Motion be disposed of before proceeding further with the case. The appeal was dismissed and the case remanded with costs. Mr. Harvey represented the Board of Medical Examiners.

Ellen Williams vs. State of Maryland. No. 65, October Term, 1953.

Elizabeth V. Jones vs. State of Maryland. No. 82, October Term, 1953. Ellen Williams and Elizabeth V. Jones were tried separately, and this Court had permitted consolidation on appeal since the convictions were based upon facts which were practically identical. The appellant Jones was tried first in the Criminal Court of Baltimore (Cullen, J.) before the Court sitting as a jury. She was charged with disturbing the peace, and with assault and battery upon Police Officer Christian Schneblein and assault and battery upon Alma Poole. Verdict was withheld pending disposition of the Williams case. The appellant Williams was tried before a Jury, was found guilty of disturbing the peace and of assault and battery upon Police Officer Francis Cordwell. Motion for a new trial was granted the appellant Williams on the conviction of disturbing the peace and that charge was subsequently steted by the State. The verdict as to the appellant Jones was then found to be guilty of assault and battery upon Police Officer Christian Schneblein and Alma Poole and not guilty of disturbing the peace. Appellant Jones was fined \$25.00 in each of the two cases of assault and appellant Williams was fined \$25.00 in one case of assault. The judgments of the lower Court were affirmed with costs. Mr. Hartman represented the State in both cases.

Leon Lyles vs. State of Maryland. No. 67, October Term, 1953. Appellant was convicted on a criminal information which charged that on February 7, 1953, he had in his possession alcoholic beverages for purposes of sale without first taking out a license therefor (Article 2B, Section 3(a), 1951 Code). He was tried before the Court sitting as a jury and received a sentence of one year. The judgment of the lower Court was reversed and the case remanded for a new trial. Mr. Hartman represented the State.

John Pegram vs. State of Maryland. No. 68, October Term, 1953. This was an appeal by John Pegram from the verdict and judgment of the Criminal Court of Baltimore (Carter, J.) sitting without a Jury, in finding him guilty on

the fourth and fifth counts of an indictment—possession of lottery books, tickets, paraphernalia, etc.—and in sentencing him to be confined for a term of one year in the Maryland House of Correction, and to pay a fine of \$1,000 together with costs. The judgment of the lower Court was affirmed with costs. Mr. Mathias represented the State.

Levy Duren vs. State of Maryland. No. 69, October Term, 1953. This was an appeal from a verdict and judgment of the Criminal Court of Baltimore City (Cullen, J.) sitting as a jury, in which the appellant was found guilty of a violation of Section 455 of Article 27 of the Annotated Code of Maryland (1951 Ed.) commonly known as manslaughter by automobile. The judgment of the lower Court was affirmed with costs. Judge Henderson filed a dissenting opinion. Mr. Parker represented the State.

CIVIL CASES TRIED IN THE COURT OF APPEALS

George J. Koch, et al. t/a Randall Motors vs. Mack International Motor Truck Corp. etc. et al. No. 75, October Term, 1952. Mack International Motor Truck Corporation instituted an action of replevin in the lower Court against the appellants and the Police Commissioner and Commissioner of Motor Vehicles. Neither of these officials had or claimed title to or possession of the chattel. The verdict was in their favor and against the appellants who had actual possession of and asserted title to the property. The appeal was from the judgment entered on that verdict. The judgment of the lower court was affirmed with costs. However, on April 9, 1953, a Motion for Reargument or Modification was filed, and on April 21, 1953, was overruled by the Court. Mr. Harvey represented the State officials.

Herman T. Reiling vs. J. Millard Tawes, Comptroller of the Treasury of the State of Maryland. No. 84, October Term, 1952. The essential question presented is the constitutionality of the Maryland income tax as applied to an individual, a resident of the State but a domiciliary of Illi-

nois, with respect to remuneration from the Federal Government, paid by District of Columbia for activities performed within the District of Columbia. The question was raised below by demurrer to appellant's bill seeking an injunction against collection of income taxes on appellant's federal salary for 1944 and 1945. The Circuit Court for Anne Arundel County held the Act constitutional as applied to appellant and sustained the demurrer. The Decree of the lower Court was affirmed with costs. A motion for re-argument was filed but was denied on March 19, 1953. Mr. Murnaghan represented the Comptroller.

Department of Tidewater Fisheries, et al. vs. Allan A. Sollers, et al. etc. No. 87, October Term, 1952. This is an appeal from an Order of the Circuit Court for Calvert County, making permanent a prior temporary injunction issued by said court restraining the appellants from enforcing Section 652 of Article 66C of the Annotated Code of Maryland (1951 Ed.), commonly known as the cull law, against appellees while said appellees are engaged in harvesting oysters upon ground leased from the State of Maryland under Section 661 of said Article 66C. The case originally arose on appellee's Bill of Complaint for Injunction which, among other things, alleged that one of appellees' employees had been arrested by the appellants for failure to cull oysters harvested from appellees' leased bottoms in the Patuxent River, and which further alleged that the appellants had advised appellees that the cull law would be enforced against appellees and that additional arrests would ensue unless appellees complied with the cull law in their harvesting operations. The said Bill of Complaint prayed for an Order temporarily restraining the appellants from arresting appellees' employees or otherwise interfering with appellees' harvesting operations on the theory; (a) that the cull law, properly construed, was inapplicable to the oyster harvesting operations of persons who had leased bottoms from the State of Maryland pursuant to Section 661 of Article 66C of the Annotated Code of Maryland; and (b) that if the cull law were held appli-

cable to appellees, it would be unconstitutional. After consideration of the Bill of Complaint and affidavit attached thereto, the Court, ex parte, issued an order temporarily restraining the appellants as prayed.

Thereafter, the appellants filed a Demurrer to the said Bill of Complaint. After a hearing on the Demurrer, the court ordered that a temporary injunction would issue pending a hearing of the case on the Bill of Complaint and Answer thereto. In its opinion on Demurrer, the Court held (a) that the application of the cull law to appellees would be constitutional, but (b) that the cull law, properly construed, was inapplicable to persons leasing oyster bottoms from the State. A temporary injunction was issued pursuant to the aforementioned Order. The appellants then filed an Answer to the Bill of Complaint for Injunction. Testimony was taken and exhibits were introduced in open court. After this hearing, the court wrote a second opinion re-affirming the reasoning and holding of its first opinion, and signed an order making the Temporary Injunction permanent. It is from that Order that this appeal was taken. The decree of the lower Court was affirmed with costs. A Motion for Re-argument or Modification was filed, but was overruled by the Court on April 22, 1953. Mr. Thomas represented the State.

Miller Brothers Company, etc. vs. State of Maryland. No. 93, October Term, 1952. These are two appeals in one case. One of these appeals was from an order of the Superior Court of Baltimore City denying the petition of the appellant, Miller Brothers Company, a Delaware corporation, to quash and set aside a writ of attachment. The other appeal was from a judgment for the appellee, in the short note case in connection with the attachment case. Pursuant to the writ of attachment issued at the instance of the State the Sheriff of Baltimore City seized a motor vehicle owned by the company. The basis for the attachment was a claim asserted by the State against the company that the company was indebted to the State for certain Use Taxes (including interest and penalties). The company

filed a petition to quash the writ of attachment and the State filed an answer to that petition. A stipulation was entered into between the parties, which provided that in the event that the company's petition was overruled, it should be taken as a plea in bar to the short note case. Thus the matter came before the Superior Court of Baltimore City on the merits of the State's claim to collect the tax. The claim of the State for use taxes is based not on a theory of primary liability of appellant therefor, but upon the neglect by the appellant of its duty to collect the tax from its customers. The judgment of the lower Court was affirmed. Mr. Murnaghan represented the State.

Ex Parte Matter of the Appeal of Frank L. Garey, Exec. Estate of John J. Raskob, Deceased. No. 95, October Term, 1952. This was an appeal from an order of the Orphans' Court of Queen Anne's County, denying a petition of the appellant, Executor of the Estate of John J. Raskob, deceased, praying to be allowed to correct his First Administration Account by reducing the State tax of \$23,447.58 on executor's commission allowed in said account. It is contended the tax should be fixed at \$17,244.22. The difference of \$6,203.36 is the tax rate of one-fifth of 1% on indebtedness of \$3,100,000 plus interest of \$1,682.49 owed by decedent to a family holding company of which decedent owned 83.5% of the stock. The order of the lower Court was affirmed with costs to amicus curiae. Mr. Murnaghan represented the State.

Meade Heights, Inc. et al. vs. Deeley K. Nice, et al. Constituting the State Tax Commission of Maryland. No. 96, October Term, 1952. Appellants are three domestic corporations of the State of Maryland which leased five parcels of land from the United States Government and constructed apartment projects thereon, the said land being located within military reservations over which the Federal government holds exclusive jurisdiction. The County Commissioners of Anne Arundel County and Harford County assessed appellants for ordinary taxation both as to the

land and the buildings. The appellants then took an appeal to the State Tax Commission in each of the five cases. Without denying its power to tax the leasehold interest in the land, the State Tax Commission determined that there was no evidence before it which would enable it to segregate the lessees' interest in the land from the Government's reversionary interest therein, and that, in the absence of such evidence, the land must be exempt from taxation in its entirety. The Commission determined, however, that the lessees held the complete interest in the buildings. It, therefore, reversed the assessment of the County Commissioners in each of the five cases and fixed a new assessment in each case which exempted the land from taxation, but which assessed the buildings at their full value in the same amount at which they had been assessed by the County Commissioners. The appellants then took an appeal from the decision of the State Tax Commission to the Baltimore City Court, challenging the assessments on the buildings alone, there being no cross-appeal taken from the decision of the Commission exempting the land. By Order of the Baltimore City Court, the decision of the State Tax Commission as to the buildings was affirmed, and this appeal was then taken from the said Order of the Baltimore City Court. Inasmuch as the principles involved in all five cases were identical, the brief confined itself to the facts relating to the appeal of Meade Heights, Inc. The order of the lower Court was affirmed with costs. Mr. Thomas represented the State Tax Commission.

John McShain, Inc. vs. J. Millard Tawes, Comptroller of the Treasury. No. 103, October Term, 1952. This appeal was from an order of the Circuit Court for Montgomery County affirming the Comptroller's denial of a request for a refund. The refund claim concerned sales and use taxes of \$20,447, less 3% paid by the appellant John McShain, Inc., with respect to personal property bought for use on, or incorporated into, a building erected by the appellant for the Government of the United States Public Buildings Administration. By stipulation, the final determination of

this appeal disposed of refund claims filed by several subcontractors of appellant working on the same building. The order of the lower Court was reversed with costs. A Motion for Modification of Opinion was filed but overruled on April 22, 1953. Mr. Murnaghan represented the State Comptroller.

State Tax Commission of Maryland, et al. vs. Brandt Cabinet Works, Inc., et al. No. 166, October Term, 1952. This appeal was from an Order of the Circuit Court for Washington County reversing an assessment by the State Tax Commission on improvements to real estate. The original proposed assessment of the Supervisor of Assessments for Washington County on the property involved had been reduced by the County Commissioners. The Supervisor appealed the decision of the County Commissioners to the State Tax Commission, which adopted the assessing techniques employed by the Supervisor and made an assessment equal in amount to the original proposed assessment. The order of the lower Court was reversed and the cause remanded for the passage of an Order affirming the assessment of the State Tax Commission. Mr. Murnaghan represented the State Tax Commission.

Herbert G. Tanner, et al. vs. Governor of Maryland, et al. No. 171, October Term, 1952. Four residents of the Federal Reservation at Camp Detrick in Frederick County, Maryland, brought suit for a Declaratory Judgment as to their residence status for many purposes under Maryland law. They wished, inter alia, to know if they are residents for voting purposes, sales, use, and income tax purposes, inheritance and estate tax purposes, probate law purposes, motor vehicle registration and titling tax purposes, and for purposes of eligibility to serve as notaries public. Demurrers were interposed on behalf of the State officers named as appellees, Theodore R. McKeldin, Governor of Maryland; J. Millard Tawes, Comptroller of the Treasury; Thomas B. R. Mudd, Commissioner of Motor Vehicles and Harry D. Radcliff, Register of Wills for Frederick County.

The Court below sustained the demurrers. The order of the lower Court was affirmed with costs. Mr. Murnaghan represented the State officials.

Theodore R. McKeldin, etc., et al. vs. Edna M. Steedman. No. 35, October Term, 1953 (Advanced). This was an appeal from a decision of the Circuit Court No. 2 of Baltimore City, in which it was held that Section 9 of the General Construction Loan of 1953 was unconstitutional, as violative of Sections 34 and 52(8) of Article 3 of the Maryland Constitution. Because of the urgency of the matter, the Court of Appeals waived the requirement that printed briefs be filed, and considered the case on type-written briefs. The judgment of the lower Court was affirmed. Mr. Harvey and Mr. Hartman represented the State.

Superintendent of the Maryland State Reformatory for Males vs. Wallace Calman. No. 49, October Term, 1953. This was an appeal from an order of the Baltimore City Court (Carter and Moylan, J.J.) by which the appellee was discharged from the custody of the appellant on a writ of habeas corpus. The order of the lower Court was reversed and Calman remanded to the custody of the Superintendent of the Reformatory. Mr. Hartman represented the State.

CASES PENDING IN THE COURT OF APPEALS

Walter C. Clarke, Register of Wills, etc. vs. Elise Jones Welden, etx. and indiv. No. 80, October Term, 1953.

Hyman A. Pressman vs. State Tax Commission, et al. No. 84, October Term, 1953.

Mayor and City Council of Baltimore, etc. vs. State Tax Commission. No. 85, October Term, 1953.

Herbert R. Eck, et al. vs. State Tax Commission of Maryland, et al. No. 105, October Term, 1953.

Merrill George Gibson vs. State of Maryland. No. 108, October Term, 1953.

Martin J. Yamin vs. State of Maryland. No. 109, October Term, 1953.

State of Maryland vs. Marvin R. Fisher. No. 110, October Term, 1953.

William Albert Strine vs. State of Maryland. No. 115, October Term, 1953.

In the year 1953, at the request of the Court of Appeals of Maryland, this office prepared memoranda for that Court in each case where a petition for leave to file an appeal in a Habeas Corpus case had been filed with that Court. During the year memoranda were prepared and filed by Mr. Hartman in the following cases:

OCTOBER TERM, 1952

Morris E. Anglin, Jr., vs. Warden, Maryland House of Correction. No. 27.

Elwood Willin vs. Sheriff of Wicomico County. (2 cases—No. 28 and No. 29).

Jerome Barr vs. Warden, Maryland House of Correction. No. 31.

Aldine T. Carroll vs. Warden, Maryland Penitentiary. No. 32.

Albert E. Bowen vs. Warden, Maryland House of Correction. No. 33.

Michael P. Martucci vs. Warden, Maryland House of Correction. No. 34.

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Joseph Frank Kohnen, Jr. vs. Warden of the Maryland Penitentiary. No. 2 and No. 5.

Nathan Strahl vs. Warden of The Maryland Penitentiary. No. 3.

Thomas E. Sears vs. Warden of The Maryland State Reformatory For Males. No. 4.

State of Maryland ex rel. James DeLisle vs. Warden of The Maryland Penitentiary. No. 6.

State of Maryland, ex rel. Woodrow W. Justice vs. Warden of The Maryland Penitentiary. No. 7.

Emanuel Daisey vs. Superintendent, Maryland House of Correction. No. 8.

State Ex rel. Lloyd Meekins vs. Superintendent Maryland House of Correction. No. 10.

Charles Lockman vs. Warden, Maryland House of Correction. No. 11.

Patrick J. Hirons vs. Warden of The Maryland Penitentiary. No. 12.

Joseph Lombardi vs. Warden, Maryland Penitentiary. No. 15.

Billy S. Agner vs. Warden, Maryland House of Correction. No. 16.

John Peter Hickman vs. Warden, Maryland House of Correction. No. 17.

Michael Bonsuk vs. Warden of The Maryland House of Correction. No. 18.

Charles J. Ahern vs. Warden of The Maryland House of Correction. No. 19.

Ernest Edward Lewis vs. Warden of The Maryland Penitentiary. No. 20.

George S. Miller vs. Superintendent of Spring Grove State Hospital. No. 21.

Sheldon Louis Lutz vs. Superintendent of Spring Grove State Hospital. No. 22.

CASES FINALLY DISPOSED OF IN LOWER COURTS

Dr. Napoleon B. Steward vs. Board of Medical Examiners of the State of Maryland. In the Circuit Court for Prince George's County. Dr. Steward pleaded guilty to evasion of Federal income taxes and was sentenced to imprisonment by the United States District Court. Following this, he was required to appear before the Board of Medical Examiners of the State to show cause why his license to practice medicine and surgery should not be revoked. He appeared before the Board and a hearing was held, following which the Board passed an order revoking his license. From this order he appealed to the Circuit Court for Prince George's County, which in turn reversed the Board of Medical Examiners. From the order of the Circuit Court, the Board of Medical Examiners appealed to the Court of Appeals. Mr. Harvey represented the Board.

Consolidated Gas Electric Light & Power Company of Baltimore vs. Lester A. Helfrich, et al. In the Circuit Court for Anne Arundel County. No. 4612, At Law. This was a petition for condemnation of certain land lying in Anne Arundel County. The State had no interest in the proceeding, and an answer to that effect was filed in its behalf. The case may therefore be considered closed. Mr. Harvey represented the State.

William H. Kane vs. The Security Title Guarantee Corporation of Baltimore City and Joseph C. Deegan, Sheriff of Baltimore City. In the Circuit Court of Baltimore City. The bill of complaint in this case had for its purpose the enjoining of the Sheriff of Baltimore City from collecting certain money from the plaintiff. The Sheriff had no interest in the proceeding, other than to obey the order of the Court, and an answer to that effect was filed. The matter may therefore be considered closed. Mr. Harvey represented the Sheriff.

Kitchen Paint & Hardware Co., Inc. vs. Joseph F. Butler. In the Superior Court of Baltimore City. The finance cor-

poration filed a petition to require the Sheriff of Baltimore City to pay over to it the gross proceeds of the sale of certain chattels upon the ground that their lien was entitled to priority even over the expenses incurred in making the sale. An answer was filed in behalf of the Sheriff, detailing the costs which he had incurred and reciting that he had a balance of \$641.29 in his hands which he would pay in accordance with the directions of the Court. The Court passed an order directing that this balance, after the payment of costs, be paid to the finance company. Mr. Harvey represented the Sheriff.

Samuel Zanutech vs. Clarence M. Plitt, et al. and Joseph C. Deegan, Sheriff of Baltimore City. In the Circuit Court of Baltimore City. This was a suit for a declaratory decree against the Sheriff of Baltimore City and others, the relief sought against that official being to restrain him from proceeding with a judicial sale of certain property mentioned in the bill of complaint. An answer was filed on behalf of the Sheriff asserting his lack of interest and consenting to abide by any orders which may be passed in the premises. Mr. Harvey represented the Sheriff.

Arthur Stergio vs. Nicholas K. Brown, et al. In the Superior Court of Baltimore City. The defendant Brown filed a motion to strike out a judgment of fiat and an order was passed requiring the plaintiff and the Sheriff to show cause why the motion should not be granted, and at the same time an order was passed requiring the postponement of a sale under a writ of fi. fa., until a determination was had of the previous question. An answer was filed in behalf of the Sheriff stating that he had no interest in the matter other than to carry out with diligence the orders of the Court, and that he consented to the passage of such orders as may be appropriate. Mr. Harvey represented the Sheriff.

P. Leo Flynn vs. Raymond C. Beck, et al. Board of Electrical Examiners. In the Court of Common Pleas. The Board of Electrical Examiners and Supervisors revoked

the license of the plaintiff to act as a Master Electrician, and for the purpose of reviewing that action a petition for a writ of mandamus was filed. The demurrer of the defendants was sustained as to certain paragraphs of the petition with leave to amend, after which an amended petition was filed. The defendants answered the amended petition denying the material allegations thereof. The last proceedings in the case were conducted in the summer of 1949, and because of the lapse of that period of time it may be concluded that the plaintiff is no longer interested in the proceedings and it may therefore be considered closed. Mr. Harvey represented the State Board.

Willie Lee Terry vs. Pacific Employers Insurance Company and The Motor Vehicle Commissioner. In the Circuit Court of Baltimore City. The plaintiff filed a bill of complaint to require the Pacific Employers Insurance Company to file with the Commissioner of Motor Vehicles, who was likewise a defendant in the case, a form required by the Financial Responsibility Law, showing that the plaintiff carried a policy of insurance against public liability and property damage and hence met the requirements of that law. The Commissioner of Motor Vehicles was joined as a defendant in order to restrain him from suspending the plaintiff's license while the case was pending. A demurrer was filed in behalf of the defendant Mudd. As nearly two years have elapsed since the demurrer was filed, it may be assumed that the plaintiff has concluded not to prosecute his case and the matter is therefore considered closed. Mr. Harvey represented the Commissioner.

General Acceptance Corporation, etc. vs. Harry Baer, indiv. and td. Maryland Auto Sales, et al. and Thomas B. R. Mudd, Commissioner of Motor Vehicles. In the Circuit Court No. 2 of Baltimore City. This was a petition filed for the purpose, among other things, of preventing the Commissioner of Motor Vehicles from transferring title to a certain Cadillac automobile. An answer was filed on behalf of the Commissioner setting forth that he had

no interest in the proceeding other than to abide by any decree that may be passed by the Court. Mr. Harvey represented the Commissioner.

Vanis Osborne Brown and Charles Lindbergh Johnson vs. Motor Vehicle Commissioner. In the Circuit Court for Baltimore County. The petitioners had been involved in a motor vehicle accident and failing to comply with the Financial Responsibility Law, the Commissioner of Motor Vehicles ordered their licenses and registration suspended. They applied for a writ of mandamus to prevent the suspension of their licenses and registrations. The case has been pending for nearly two years and it may be assumed that the plaintiffs do not intend to prosecute it to a conclusion. We therefore consider the case closed. Mr. Harvey represented the Commissioner.

Martin J. Schaeck, Jr. vs. Charles Rhodes and Frank J. Rhodes, et al. and Motor Vehicle Commissioner. In the Circuit Court No. 2 of Baltimore City. This was a petition for an injunction to prevent the Commissioner of Motor Vehicles from transferring title to a certain automobile. As the Commissioner had no interest in the matter other than to abide by any orders which may be passed in the premises, an answer was filed in his behalf setting forth that fact. Mr. Harvey represented the Commissioner.

Frank G. Bartlett, Jr. vs. Motor Vehicle Commissioner. In the Circuit Court for Talbot County.

Ray F. Biddinger vs. Motor Vehicle Commissioner. In the Circuit Court for Frederick County.

George William Chandler vs. Motor Vehicle Commissioner. In the Baltimore City Court.

Joseph P. Daley vs. Motor Vehicle Commissioner. In the Circuit Court for Carroll County.

Avery Benjamin Dille, Jr. vs. Motor Vehicle Commissioner. In the Circuit Court for Prince George's County.

Robert Taylor Dryden vs. Motor Vehicle Commissioner. In the Circuit Court for Talbot County.

William M. Fadeley vs. Motor Vehicle Commissioner. In the Circuit Court for Harford County.

Elmer Leroy Grimes vs. Motor Vehicle Commissioner. In the Baltimore City Court.

William Leroy Malin vs. Motor Vehicle Commissioner. In the Circuit Court for Talbot County.

Vernon Mitter vs. Motor Vehicle Commissioner. In the Circuit Court of Baltimore City.

John Henry Reese vs. Motor Vehicle Commissioner. In the Circuit Court for Baltimore County.

Robert Sachs Rosenbaum vs. Motor Vehicle Commissioner. In the Circuit Court for Talbot County.

Jennie B. Shellard vs. Motor Vehicle Commissioner. In the Circuit Court for Talbot County.

John William Skelton vs. Motor Vehicle Commissioner. In the Circuit Court for Worcester County.

James Howard Timmons vs. Motor Vehicle Commissioner. In the Circuit Court for Montgomery County.

The above cases against the Commissioner of Motor Vehicles were appeals from revocations and suspensions of the appellants' licenses to operate a motor vehicle, and the Commissioner was represented by Mr. Harvey.

Helen E. Davis vs. Benjamin Franklin Tolsky, etc. and Motor Vehicle Commissioner. In the Circuit Court No. 2 of Baltimore City. This was a petition for an injunction to prevent the Commissioner of Motor Vehicles from transferring title to a certain automobile. An answer was filed on behalf of the Commissioner setting forth that he had no interest in the matter other than to abide by whatever orders or decrees that may be passed in the premises. Mr. Harvey represented the Commissioner.

In Re: Western Maryland Chronic Disease Hospital.

This case involved the amount of compensation to be paid to the architect who was employed to prepare plans and specifications for the Western Maryland Chronic Disease Hospital. The plans prepared by the architect called for the construction of a building, the cost of which was considerably in excess of the amount provided by a bond issue law enacted by the General Assembly, although there appeared to be some evidence that the plans were in keeping with the instructions given by the State Department of Health to the architect. The plans were far from complete when other considerations indicated the advisability of a completely new approach. Hence the question of determining a fair and reasonable settlement with the architect for the work which he had actually performed was presented. Numerous conferences were had at which representatives of the State Department of Health, the Department of Public Improvements, the State Planning Commission, the State Comptroller's Office and others were present. Ultimately the matter was presented to the Board of Public Works at a special meeting and eventually the matter was concluded. Mr. Harvey represented the State in the matter.

Allan Glenn Browning vs. Carlton Brandenburg & Motor Vehicle Commissioner. In the Superior Court of Baltimore City. The plaintiff procured a judgment against Brandenburg for damages arising out of an automobile accident. An attachment was then issued on the judgment and placed in the hands of the Commissioner of Motor Vehicles and the State Treasurer for the purpose of attaching funds deposited with the State under the provisions of the Financial Responsibility Law. Settlement with the State was made by the surety company under the provisions of its bond, thereby enabling the Commissioner to make payment to the plaintiff in the full amount of the original deposit. Mr. Harvey represented the Commissioner of Motor Vehicles.

Re: Purchase of Sydenham Hospital by the State. The Board of Public Works of the State concluded arrangements with the Mayor and City Council of Baltimore to purchase the property known as Sydenham Hospital for \$500,000. After extensive alterations are completed the Hospital will be used as a Chronic Disease Hospital. The State Law Department handled all of the legal matters incident to the acquisition of the property except the actual examination of the title which was done by local counsel. The abstract of the title, however, was examined and approved, as were the deeds by which the property was conveyed to the State. The settlement was like-wise conducted by this Department. Mr. Harvey represented the Department in the transaction.

Sheldon Lutz vs. Superintendent, Spring Grove State Hospital. In the Circuit Court for Baltimore County. This was a petition by which the petitioner, a patient at Spring Grove State Hospital, sought release from the Hospital under the provisions of Article 59, Section 20 of the Code. The issue was the sanity of the petitioner, who was represented by court appointed counsel. The petitioner testified in his own behalf and Dr. Curlan testified on behalf of the Hospital. The verdict was that the petitioner should remain at the Hospital for sixty days and if circumstances warranted, he was to be placed on probation to engage in farm work. Mr. Hartman represented the Hospital.

Sheldon Lutz vs. Superintendent, Spring Grove State Hospital. In the Circuit Court for Carroll County. The petitioner sought release from the Spring Grove State Hospital under the provisions of Article 59, Section 20 of the Code, requesting a jury trial. The petitioner testified in his own behalf and a psychiatrist from Spring Grove testified on behalf of the Hospital. The jury returned a verdict of insanity and the petitioner was remanded to the custody of the Hospital. Mr. Hartman represented the Hospital.

William H. Stiller, alias Elvit M. Ellicott vs. Superintendent Spring Grove State Hospital. In the Baltimore City Court. This was a petition for a writ of habeas corpus to the Baltimore City Court. The petitioner prayed a jury trial, and after a verdict unfavorable to him, was remanded to the custody of the Superintendent of Spring Grove State Hospital. Mr. Hartman represented the Superintendent.

Francis Dilworth vs. Spring Grove State Hospital. In the Circuit Court for Baltimore County. This was a sanity hearing under the provisions of Section 20 of Article 59 of the Code, at the request of an inmate of Spring Grove State Hospital. The issue was the sanity of the petitioner. The petitioner testified in his own behalf and Dr. Curlan testified on behalf of the Hospital. The verdict was that the petitioner had sufficiently recovered so that he could no longer be classed as insane, and his release was ordered. Mr. Hartman represented the Hospital.

Michael T. Dorsey vs. Superintendent of Spring Grove State Hospital. In the Circuit Court for Baltimore County. This was an application for a writ of habeas corpus by which the petitioner, a patient at the Spring Grove State Hospital, sought his release. The issue was the petitioner's sanity. He refused to accept court appointed counsel and represented himself. He requested a jury trial, and after a prolonged hearing, the jury found him insane. He was remanded to Spring Grove State Hospital. Mr. Hartman represented the Superintendent.

State of Maryland, State Department of Health vs. The Truck Rental Company, Inc., and Muntz Television Company. In the Baltimore City Court. This office filed an action in tort on behalf of the State Board of Health for damages suffered by the State as a result of an accident between a State car and a truck owned by The Truck Rental Company and operated by an employee of the Muntz Television Company. Judgment in favor of the State was had in People's Court for damages in the amount of \$249.43.

An appeal was taken by the defendants to this Court where, after a hearing, the action of the People's Court was affirmed. Mr. Hartman represented the State.

Floyd Lewis Attractions vs. Sydney R. Traub, et al. State Board of Motion Picture Censors. In the Baltimore City Court. To the Maryland State Board of Motion Picture Censors was presented for its approval, a film entitled "Street Corner" which was accompanied by certain medical reels bearing titles "Miracle of Birth," "Birth by Caesarian Section" and "Human Wreckage." The Board ordered certain deletions in "Street Corner" and rejected the medical reels in toto. The distributor appealed to this Court and the Court (Moser, J.) after viewing the films and considering the law memoranda filed by both parties, reversed the action of the Board. The basis for the Court's action was a finding that the films were scientific and educational and that the Board was therefore arbitrary and capricious in banning them. Thereafter, this office filed a petition for rehearing, alleging that we could prove through the use of expert testimony that the so-called "medical reels" have no scientific or educational value. This motion was granted, and the D. J. McCarthy Enterprises, Capitol Enterprises, Inc., and Lighthouse Enterprises, Inc., desiring to show similar films which had been banned by the Board, joined in the appeal. The Court, after hearing the testimony of leaders in the fields of health and education in the State, determined that the so-called "medical reels" were not scientific or educational, and sustained the Board with respect to them. Mr. Hartman represented the Board.

United Artists Corporation and Holmby Productions, Inc. vs. Sydney R. Traub, et al. Maryland State Board of Censors. In the Baltimore City Court. This was an appeal from an order of the State Board of Censors under which a film entitled "The Moon is Blue" was banned from showing in the State. The Court (Moser, J.) after viewing the film and considering law memoranda filed by both parties,

reversed the action of the Board on the ground that it was arbitrary and capricious. Mr. Hartman represented the Board.

John Rose vs. Sydney R. Traub, et al. Constituting the Maryland State Board of Censors. In the Baltimore City Court. This was an appeal from an order of the State Board of Censors, ordering certain deletions in the film entitled "Love Moods." The Court, after viewing the film and hearing argument thereon, overruled the Board. Mr. Hartman represented the Board.

John Rose vs. Sydney R. Traub, et al. Board of Motion Picture Censors. In the Baltimore City Court. This was an appeal from an order of the State Board of Motion Picture Censors requiring certain deletions in a film entitled "Love Moods." This office filed a motion to dismiss the appeal for the reason that the film as submitted to the Court for consideration had been altered and was substantially different from the film viewed by the Board. This motion was granted after argument. Mr. Hartman represented the Board.

Edna M. Steedman vs. Theodore R. McKeldin, et al. Board of Public Works of Maryland. In the Circuit Court No. 2 of Baltimore City. Edna M. Steedman filed a bill of complaint requesting that Chapter 780 of the Acts of 1953, the Act providing for the General Construction Loan of 1953, be declared unconstitutional and that the defendants, constituting the Board of Public Works, be enjoined from taking any action under the authority of the Act. This office filed a demurrer to the bill of complaint and the trial Court, after argument, decreed that one Section of Chapter 780 was unconstitutional and upheld the remainder of the Act. The section declared unconstitutional would require the Governor to include in his Budget an item covering the required payments for the following fiscal year of the principal and interest due on the Certificates of Indebtedness issued under the Act. An appeal was noted to the

Court of Appeals. Mr. Harvey and Mr. Hartman represented the State.

John Kirchner vs. Allied Contractors, Inc., Pennsylvania Threshermen & Farmers Mutual Casualty Ins. Co. and Motor Vehicle Commissioner, et al. In the Circuit Court No. 2 of Baltimore City. This was a bill for a declaratory judgment, the purpose being to require the defendants to post proof of financial responsibility with the Commissioner of Motor Vehicles for the return of cash bond to the plaintiff which he had previously posted with the Commissioner. This office filed an answer alleging no interest in the subject matter of the proceeding and stating a willingness to abide by such order or decree as the Court may pass in the premises. Mr. Hartman represented the Commissioner.

Agnes May Granger vs. Herbert E. Granger, Jr., and Motor Vehicle Commissioner. In the Circuit Court of Baltimore City. This was a bill of complaint brought by Agnes May Granger against her husband, claiming that the husband had secured a transfer of the title to an automobile from the wife to himself by the use of fraud and requesting that the title be retransferred to the wife. An answer was filed on behalf of the Commissioner stating that he had no interest in the subject matter of the proceeding and would abide by such decree as the Court may pass in the premises. Mr. Hartman represented the Commissioner.

William Rupert vs. Employees' Retirement System of Maryland. In the Baltimore City Court. This was an action of mandamus against the Employees' Retirement System of Maryland, to require the said System to reconsider its computation of the contributions payable to the petitioner under the Employees' Retirement law of Maryland, so as to allow the petitioner credit for the value of the maintenance received by said petitioner as an employee at the Maryland House of Correction. Before the case was reached for trial the petition was voluntarily dismissed by the plaintiff. Mr. Thomas represented the State.

In the matter of the appeal of Atlas Loan Service, Inc., etc. vs. State Tax Commission. In the Circuit Court No. 2 of Baltimore City. This was an appeal from an assessment made by the State Tax Commission on the capital stock of the Atlas Loan Service, Inc. The appeal was "Dismissed with Prejudice" upon payment of costs by the Loan Company. Mr. Thomas represented the Commission.

Consolidated Gas Electric Light & Power Co. of Baltimore vs. The Hammerlee Realty Company, The County Commissioners of Anne Arundel County and The State of Maryland. In the Circuit Court for Anne Arundel County. This was a case brought by the Consolidated Gas Company for the condemnation of a right-of-way for electric light and power lines. The County Commissioners of Anne Arundel County and the State of Maryland were made party defendants as required by statute in order that their rights of taxation might be protected. The State filed an answer submitting its rights and interests to the protection of the Court. Mr. Thomas represented the State.

Hyman A. Pressman vs. Dr. H. C. Byrd, President and Executive Officer of the University of Maryland. In the Circuit Court No. 2 of Baltimore City. This was an action to enjoin the President and Executive Officer of the University of Maryland from using or permitting the use of State employees and State owned buildings, equipment and facilities to address and distribute partisan political literature. The defendant filed a demurrer to the bill of complaint. The plaintiff submitted interrogatories which the defendant answered under oath. As more than a year has passed since the demurrer was filed, it may be concluded that the plaintiff does not wish to prosecute his case and it is therefore considered closed. Mr. Thomas represented the University of Maryland.

Herbert G. Tanner, et al. vs. Theodore R. McKeldin, Governor, et al. In the Circuit Court for Frederick County. This was a Declaratory Judgment action brought by a

resident of a Federal Reservation seeking a clarification of his rights under various statutes such as the ones creating voting rights, income and sales tax laws, etc. where residence was an important criterion. Demurrers were filed on behalf of the Governor, the Comptroller of the Treasury, the Register of Wills for Frederick County and the Motor Vehicle Commissioner, and argument was held on the demurrers. The Court handed down an opinion and order sustaining the demurrers as to all of the State officials. Mr. Murnaghan represented the State officials.

State of Maryland vs. Charles K. Davies, Jr. Ind. and td. Center Market. In the Circuit Court for Montgomery County. This was an action taken by the Comptroller by way of attachment to satisfy a claim for sales taxes. Attachment for liability of a partnership was made against the bank account of one partner who claimed to be only a limited partner. The sales tax liability of the partnership was ultimately paid, but the limited partner filed a counter claim for \$100,000 damages for injury to his reputation. A demurrer setting up the immunity of the State from suit was filed on behalf of the Comptroller. The day before the demurrer was scheduled to be heard, the defendant dismissed the counterclaim. Mr. Murnaghan represented the Comptroller.

The Princess Shops, Inc. vs. State Tax Commission. In the Circuit Court No. 2 of Baltimore City. This was an appeal from a personal property assessment for the year 1952, made by the State Tax Commission. A satisfactory settlement was reached between the Commission and the taxpayer based on a re-assessment of the property involved and the appeal was dismissed. Mr. Murnaghan represented the Commission.

Baltimore Transit Company vs. James J. Lacy, State Comptroller. In the Baltimore City Court. This was an appeal from a ruling by the Comptroller that the electricity used to propel transit vehicles was subject to the Maryland

retail sales tax. Following argument and the submission of memoranda, Judge Moser ruled that the electricity was subject to the sales tax and affirmed the decision of the Comptroller. Mr. Murnaghan represented the Comptroller.

Washington Shopping News Corporation, etc. vs. J. Mil-lard Tawes, Comptroller of the Treasury. In the Baltimore City Court. See Volume 37 of the Report and Official Opinions of the Attorney General, page 52. An appeal was taken to the Court of Appeals, but following the decision of that Court in the case of *Miller Brothers Company vs. State of Maryland*, 95 Atl. (2d) 286, the appellant dismissed the appeal. Mr. Murnaghan represented the Comptroller.

In the Matter of Robinson Brothers, Inc. Bankrupt. In the United States District Court for the District of Colum-bia. The bankrupt was a vendor engaged in the business of selling building materials in the State of Maryland. A spe-cial assessment for sales and use taxes had been made against the bankrupt by the Comptroller; the assessment had become final and was acknowledged by the bankrupt, small payments having been made upon it. Claim based on the assessment was filed in the bankruptcy hearing and was protested by the Trustee. Following a hearing on February 17, at which the basis of the assessment was explained, the Referee in Bankruptcy overruled objections to the claim and allowed it stated. Mr. Murnaghan repre-sented the Comptroller.

Herbert R. and Nancy H. Eck and Helen O. Vierling vs. Deeley K. Nice, et al. Constituting the State Tax Commis-sion. In the Circuit Court for Montgomery County. This was a petition for a writ of mandamus filed against the State Tax Commission, the Supervisor of Assessments for Montgomery County and the Appeal Tax Court for Mont-gomery County. The petitioners sought to compel the defendants to perform certain statutory duties which they allegedly were not performing. The State Tax Commission appeared specially to challenge the jurisdiction, claiming

that its residence is Baltimore City and that it may be sued only there. Following argument and submission of memoranda, the Court granted the motion to dismiss on behalf of the Commission and entered a judgment of non pros. An appeal was noted to the Court of Appeals. Mr. Murnaghan represented the State Tax Commission.

Mayor and City Council of Baltimore vs. Deeley K. Nice, et al. State Tax Commission. In the Circuit Court of Baltimore City.

Hyman A. Pressman vs. Deeley K. Nice, et al. State Tax Commission. In the Circuit Court of Baltimore City. These were proceedings by way of declaratory judgment seeking a determination of the constitutional validity of Chapter 783 of the Acts of 1953, which called for a gradual reduction of the gross receipts tax on deposits in savings banks. They were combined for hearing. Besides the savings banks various State officials were joined as defendants; the State Tax Commission, the Comptroller of the Treasury, the Treasurer and the Attorney General. Demurrers were filed on behalf of the State officials on the grounds that: (1) some were not proper parties to the suit; (2) the question sought to be raised could not be adjudicated through an appeal of the determination by the State Tax Commission, and (3) that the statute's validity was clear. Following hearing and submission of memoranda, the Court determined that the statute was valid and sustained the demurrers filed on behalf of the State officials. An appeal was noted to the Court of Appeals. Mr. Murnaghan represented the State officials.

Walter C. Clarke, Register of Wills for Montgomery County, for the use of the State of Maryland vs. Elise Jones Welden, Surviving Executrix of the Last Will and Testament of Wallace E. Gregg, and Elise Jones Welden, ind. In the Circuit Court for Montgomery County. This was an action brought by the Register of Wills for Montgomery County to recover inheritance taxes claimed by the State

in connection with the Estate of Wallace E. Gregg. The Executrix in stating her account in the Orphans' Court, and paying inheritance taxes, claimed as a deduction the entire Federal Estate tax, including the portion thereof attributable to real estate situated in the District of Columbia, and therefore not subject to Maryland inheritance taxes. The action was instituted against the Executrix and sole legatee, to recover the taxes on that proportionate amount of the Federal Estate tax attributable to the foreign real estate. The defendants pleaded the general issue and filed a motion for a summary judgment. The plaintiff filed a cross motion for a summary judgment. Following argument and the submission of memoranda, the Court entered a judgment for the defendant. An appeal was noted to the Court of Appeals. Mr. Murnaghan represented the Register of Wills.

Lucy W. Williams, et al. vs. William Henry Greenway, et al. In the Circuit Court for Harford County. This was a proceeding for construction of a will to which the Register of Wills for Harford County was joined in order that any inheritance taxes due might be paid. A decree was passed determining distribution and referring the matter to an Auditor for settlement of the account. The view of the State as to the manner in which the inheritance taxes should be assessed were stated to the Auditor, and all other parties to the proceedings were satisfied with the view expressed to the Auditor. We are advised that the taxes have been paid and the case is therefore closed. Mr. Murnaghan represented the Register of Wills.

Consolidated Gas Electric Light & Power Company of Baltimore vs. George J. Clauss, et al. and State of Maryland. In the Circuit Court for Anne Arundel County. No. 4439. This was a petition for the condemnation of certain land lying in Anne Arundel County. The State had no interest in the matter other than the payment of State taxes for the year 1953 amounting to \$2.67. An answer was filed to that effect and the case may be considered closed. Mr. Murnaghan represented the State.

Consolidated Gas Electric Light and Power Company of Baltimore vs. Howard M. Pumphrey, et al. County Commissioners of Anne Arundel County and State of Maryland. In the Circuit Court for Anne Arundel County. No. 4440. This was a petition for condemnation of certain land in Anne Arundel County. An answer was filed asserting that the State had no interest in the matter so that the case may therefore be considered closed. Mr. Murnaghan represented the State.

Consolidated Gas Electric Light & Power Company of Baltimore vs. Ruth Pumphrey Bishop, et al. and State of Maryland. In the Circuit Court for Anne Arundel County. No. 4541. This was a petition for condemnation of certain land lying in Anne Arundel County, and as the State had no interest in the matter it was forwarded to the Attorney for the County Commissioners for Anne Arundel County, also a defendant, for the filing of a joint answer. The matter may therefore be considered closed. Mr. Murnaghan represented the State.

H. Street Baldwin, et al. County Commissioners of Baltimore County vs. State Tax Commission of Maryland. In the Circuit Court for Baltimore County. Nos. 713 to 746, inc. 1153-1164-1165-1175-1194. These were thirty-eight cases in which appeals were taken by the County Commissioners of Baltimore County from modifications by the State Tax Commission of assessments made by the Baltimore County Appeal Tax Court for the year 1952. Before the appeals could be heard by the Circuit Court for Baltimore County, motions to dismiss were filed and granted by the Court. Mr. Murnaghan represented the State Tax Commission.

Isaac Cohen and Morris Cohen vs. State Tax Commission and Mayor and City Council of Baltimore. In the Baltimore City Court. This was an appeal from the decision of the State Tax Commission refusing to abate an inventory assessment for the year 1944. Since the matter primarily

concerned the City of Baltimore it was turned over for handling by the City Solicitor's Office. Because the appeal had not been heard, although approximately eight years had elapsed since the time of its filing, the Attorney General's Office made an investigation which disclosed that the statute of limitations had run upon the tax based on the assessment so that in fact the appeal had become moot. The City Solicitor's Office was advised of this fact and they arranged with the taxpayers to dismiss their appeal, which was done on February 4, 1953. Mr. Murnaghan represented the State Tax Commission.

State of Maryland vs. Milton B. Delcher, Jr. et al. et c. td. W. H. McGee & Company. In the Superior Court of Baltimore City. W. H. McGee & Company, a partnership engaged in oyster packing, owed the State license fee and oyster taxes for the years 1950 and 1951. Repeated attempts by the Department of Tidewater Fisheries to obtain payment by the partnership having failed, suit was brought against them, first in Baltimore City, and when service could not be obtained, in Baltimore County. A judgment by default was obtained in that County but before it could be executed, full and complete payment of the claims was made. The judgment in Baltimore County will remain open until the costs have been paid by the company. Mr. Murnaghan represented the Tidewater Fisheries Department.

Walter H. Allen vs. Arthur Brice, et al. Department of Tidewater Fisheries. In the Circuit Court for St. Mary's County. No. 541.

Georgia Palmer Daiger vs. Arthur Brice, et al. Department of Tidewater Fisheries. In the Circuit Court for St. Mary's County. No. 542. These petitions for mandamus were filed on behalf of former owners of boats convicted before the Trial Magistrate for St. Mary's County for illegal dredging operations in the Potomac River. The petitions sought the return of the boats on the ground that the confiscations were improper. Demurrers were filed on behalf

of the Department of Tidewater Fisheries, and at a hearing on February 18, the demurrers were sustained without leave to amend, on the grounds that mandamus was not the proper remedy, other remedies existing by way of libel or replevin. Mr. Murnaghan represented the Commission.

Madison Square Permanent Building Association of Baltimore City, etc. vs. Martin Tragesser, etc. and Hooper S. Miles, Treasurer of Maryland. In the Circuit Court No. 2 of Baltimore City. This was a bill of interpleader brought by a building association with respect to a dormant account. The party claiming the dormant account and the Treasurer of the State of Maryland were joined as defendants. Upon investigation it was ascertained that the claimant was in fact entitled to the account and the Treasurer therefore filed an answer acknowledging that fact. Mr. Murnaghan represented the State Treasurer.

Marie Carls, formerly Marie Johnson, etc. vs. James E. Jones, Administrator, etc. In the Circuit Court of Baltimore City. This was a suit to impress funds in the hands of an Executor with a trust. In addition to this claim the Federal Government had filed claims for income taxes of \$3,701.89, and the State of Maryland had filed claim for income taxes in the amount of \$283.38. The assets in the Executor's hands were not sufficient to meet even the claims of the Federal Government. The claimant seeking to impress a trust produced evidence satisfactory to the Government to permit the imprisonment of some of the funds in the Executor's hands with a trust. Since the United States consented to the granting of the relief prayed with respect to such funds, the State of Maryland did so too, there being no prospect of additional assets coming into the hands of the Executor. Mr. Murnaghan represented the State of Maryland.

Richard S. Lewis, Jr., et al. vs. David H. Wallace, Department of Tidewater Fisheries. In the Circuit Court for Dorchester County. Nos. 113, 114. These were applications

for oyster leases, as to which protests were filed on July 20, 1950. Since the cases were not tried, for some time they were placed by the Clerk of the Court on the stet docket. The applicants were informed of this fact and replied that they agreed that the cases should remain on the stet docket as they had no longer any interest in the leases and did not want the cases tried. This in effect terminated the cases. Mr. Murnaghan represented the Department of Tidewater Fisheries.

Milton M. Shenton, et al. vs. Arthur H. Brice, et al. Department of Tidewater Fisheries. In the Circuit Court for Dorchester County. No. 198 - No. 199. These were oyster lease protests and were placed on the stet docket, thus terminating the cases. Mr. Murnaghan represented the Department of Tidewater Fisheries.

Wilson Ward, et al. vs. Department of Tidewater Fisheries. In the Circuit Court for Queen Anne's County. Nos. 407-408. These were oyster lease protests filed on September 6, 1951. Subsequent to that time the applicants withdrew their requests for leases and we filed motions to dismiss without prejudice, which motions were granted. Mr. Murnaghan represented the Department of Tidewater Fisheries.

Andrew F. Scheible, et al. vs. David Wallace, et al. Department of Tidewater Fisheries. In the Circuit Court for St. Mary's County. No. 107. This was a protest against an oyster lease, and in view of the long delay a letter was addressed to the applicant for the lease to know whether he was still interested in the case. No reply having been received, a second letter was addressed to the applicant notifying him that a motion to dismiss would be filed unless interest was expressed by him. Again no answer having been obtained a motion to dismiss was filed on behalf of the Department. Mr. Murnaghan represented the Department of Tidewater Fisheries.

Leroy Thompson, et al. vs. David Wallace, et al. Department of Tidewater Fisheries. In the Circuit Court for St. Mary's County. No. 121.

Thomas Spencer Wilkinson, et al. vs. David Wallace, et al. In the Circuit Court for St. Mary's County. Nos. 131-132.

Irvin Foster Morris, et al. vs. Arthur Brice, et al. Department of Tidewater Fisheries. In the Circuit Court for St. Mary's County. No. 238.

Garner Gibson vs. John E. Clark, et al. Department of Tidewater Fisheries. In the Circuit Court for St. Mary's County. No. 588.

Swope A. Ball, et al. vs. John E. Clarke, Department of Tidewater Fisheries. In the Circuit Court for St. Mary's County. No. 589.

These six cases were oyster protest cases and were handled in the same manner as the *Scheible* case above.

John Francis Bailey, et al. vs. W. Mason Shehan, et al. Department of Tidewater Fisheries. In the Circuit Court for St. Mary's County. No. 120.

Hayden B. Bond, et al. vs. David Wallace, et al. Department of Tidewater Fisheries. In the Circuit Court for St. Mary's County. No. 122.

Latelle Thompson, et al. vs. David H. Wallace, et al. Department of Tidewater Fisheries. In the Circuit Court for St. Mary's County. No. 127.

James C. Simpkins, et al. vs. David Wallace, et al. Department of Tidewater Fisheries. In the Circuit Court for St. Mary's County. No. 611.

These were oyster lease protests filed in 1950. In view of the long delay letters were addressed to the applicants for the leases to know whether they were still interested

in the cases. Negative replies were secured and motions to dismiss the cases without prejudice to the Department of Tidewater Fisheries were filed on behalf of the Department. Mr. Murnaghan represented the State.

Richard A. Clarke, et al. vs. Arthur Brice, et al. Department of Tidewater Fisheries. In the Circuit Court for St. Mary's County. No. 254. This was an oyster lease protest in which the protest was withdrawn shortly before coming to trial so that the lease might be granted. Mr. Murnaghan represented the Department of Tidewater Fisheries.

Joseph Howard Forrest vs. Arthur Brice, et al. Department of Tidewater Fisheries. In the Circuit Court for St. Mary's County. No. 309. This was an oyster protest case. The matter came on for trial and resulted in a verdict for the protestants. Mr. Murnaghan represented the Department of Tidewater Fisheries.

Parran Tippett, et al. vs. John E. Clark, et al. Department of Tidewater Fisheries. In the Circuit Court for St. Mary's County. Nos. 572-594. These were oyster lease protests, but inasmuch as the applicants were no longer interested in the leases, this Department filed motions to dismiss the petitions and protests. Mr. Murnaghan represented the Department of Tidewater Fisheries.

George Woodall, et al. vs. David Wallace, et al. Department of Tidewater Fisheries. In the Circuit Court for St. Mary's County. No. 610. This was an oyster lease protest filed in 1949. On March 30, 1953, the protestants appeared through counsel and dismissed the protest. Mr. Murnaghan represented the Department of Tidewater Fisheries.

Melvin Marshall, et al. vs. Department of Tidewater Fisheries. In the Circuit Court for Talbot County. No. 547. This was an oyster lease protest filed on May 18, 1951. Subsequently the applicant withdrew his request for a lease

and as a result the Department filed a motion to dismiss without prejudice. Mr. Murnaghan represented the Department of Tidewater Fisheries.

Clayton A. Dukes, et al. vs. Arthur Brice, et al. Department of Tidewater Fisheries. In the Circuit Court for Worcester County. Nos. 558 to and including 563. These were oyster lease protest cases, in which we pressed for hearings as early as possible. Hearings were delayed by the withdrawal of attorneys for the protestants, and under the rule, new counsel had to be appointed. This was done, but before the cases came to trial he dismissed the protests on behalf of his clients. As a result the lease applications could be granted. Mr. Murnaghan represented the Department of Tidewater Fisheries.

James Albert Eason vs. Arthur Dobson and Donald Wier, Members of the State Police. In the Circuit Court for Talbot County. This was a suit for false arrest filed against two members of the Maryland State Police Force. A general issue plea was filed to the declaration. Subsequently the case was placed on the stet docket and for all practical purposes the proceeding may be considered as being concluded. Mr. Proctor represented the State Police.

Dorothy Gertrude Jones vs. Beverly Ober, Commissioner of Police for Baltimore City. In the Superior Court of Baltimore City. This was a replevin case involving a valuable ring. It came into the possession of the Police Department and the Commissioner declined to surrender it to the plaintiff except upon order of Court. Therefore, in order to protect the Police Commissioner this action was instituted and the verdict was for the plaintiff. Mr. Proctor represented the Police Commissioner.

Hyman A. Pressman vs. Maryland Jockey Club, etc. Maryland Racing Commission and the Comptroller of the Treasury. In the Circuit Court of Baltimore City. This was a bill in equity to require the Maryland Jockey Club

to return to the Maryland Racing Commission a certain sum of money, and to require the said Commission to turn over this sum of money to the Comptroller of the Treasury on the ground that Section 12 or Article 78B of the Annotated Code of Maryland had not been complied with. Demurrers to the bill of complaint were filed by this office on behalf of the Racing Commission and the Comptroller of the Treasury. Demurrers were also filed by the other defendants. The hearing on said demurrers was held before Judge Manley and were overruled by him, and the matter set for trial on the bill and answer. Subsequently the bill of complaint was dismissed. Mr. Proctor represented the State officials.

Joseph R. Bucher vs. Colonel Beverly Ober, Police Commissioner of Baltimore City. In the Court of Common Pleas of Baltimore City. This was a petition for mandamus against the Police Commissioner of Baltimore City to require him to restore the pension of a former police officer who was convicted after retirement, of criminal offenses committed before retirement. A demurrer was filed which was sustained by the Court without leave to amend. Mr. Mathias represented the Commissioner.

Suburban Propane Gas Corporation, a body corporate, vs. J. Millard Tawes, Comptroller of the Treasury. In the Circuit Court for Montgomery County. This was an appeal from a ruling of the Comptroller assessing a use tax on certain equipment purchased by the appellant outside of Maryland, which the appellant declined to pay, on the ground that equipment was used in its business of manufacturing or compounding. After a hearing the Comptroller's ruling was sustained. An appeal was noted to the Court of Appeals. Mr. Mathias represented the Comptroller.

National 4H Club Foundation of America vs. State Tax Commission. In the Circuit Court for Montgomery County. This was an appeal from a ruling of the State Tax Commission involving liability of the National 4H Club Founda-

tion to real estate tax on property which had been leased under duress to the United States. After a hearing the ruling of the Commission was reversed and the case remanded to the Commission for further proceedings in accordance with the opinion of the Court. Mr. Mathias represented the Commission.

Ernest Seitz vs. Henry Hoffman, et al. and the State of Maryland. In the Circuit Court for Howard County. This was a suit to foreclose all rights of redemption in certain property which the plaintiff had purchased at a tax sale. An answer was filed by this office setting forth the taxes due, and submitting its rights to the protection of the Court. Mr. Mathias represented the State.

Belle B. Harris, formerly Belle Bingle vs. Beverly Ober, Police Commissioner of Baltimore City. In the Baltimore City Court. This was an action of replevin for the return of certain jewelry alleged to have been found by the plaintiff and which had been taken into custody by the police. The jewelry had an estimated value of \$800.00. The actual owner never appeared and judgment was entered in favor of the plaintiff for the return of the goods and the costs to be paid by the plaintiff. Mr. Marvin H. Smith represented the Commissioner.

Margie Mason vs. Beverly Ober, Police Commissioner of Baltimore City. In the Superior Court of Baltimore City. This was an action in detinue for the return of a diamond ring which came into the possession of the Police Department in the usual course of business. A hearing was had and the judgment of the Court was that the ring or the value thereof be turned over the plaintiff. Mr. Marvin H. Smith represented the Commissioner.

Ethel Stevens vs. Charles A. Dorsey, et al. Board of Supervisors of Elections of Baltimore City. In the Superior Court of Baltimore City. This was a petition filed by Ethel Stevens, alleging that she was born in Nova Scotia, and

that although she had never achieved citizenship in the United States, on the advice of a Judge of Elections in Baltimore City she had registered and been voting in city, state and national elections from 1936 until 1953. At this time she applied for American citizenship and discovered that she had been voting illegally all the years and filed a petition to have her registration stricken out. The State filed an answer on behalf of the Supervisors, neither admitting nor denying any facts in the case and submitting to the order or decree that might be passed in the premises. An order was passed granting the petitioner the relief prayed and ordering her to pay the costs of the proceeding. Mr. Parker represented the Board of Supervisors.

George A. Peters, Adm. of the Estate of Lillian Elizabeth Peters, etc. vs. Stewart O. Peters and Frank J. Hanson, et al. Board of Liquor License Commissioners of Baltimore City. In the Circuit Court No. 2 of Baltimore City. This was a bill of complaint involving a dispute between two members of the Peters family as to the ownership of a liquor business, and specifically in connection with the issuance of a license thereto by the Board of Liquor License Commissioners. The State was made a party to the said bill and other parties intervened. A demurrer was filed on behalf of the Board, and when reached for hearing the complainant appeared and moved that the Court strike out the Board of Liquor License Commissioners as a party in the case, which was ordered by the Court, and the State thereupon had no further interest in the proceedings. Mr. Parker represented the State.

Rosewood State Training School vs. Nallie A. Austin and Orville D. Joy. Before the State Commissioner of Personnel. The case of Nallie A. Austin and Orville D. Joy represents a hearing before the Commissioner upon charges made against the employees by the staff of Rosewood State Training School. A hearing was held on October 14, 1953, lasting the entire day. The Commissioner ruled against the discharge of the employees, but one of them was trans-

ferred to another institution. We are advised by the Department of Mental Hygiene that the case has had a salutary effect upon the efficiency and morale of the employees at Rosewood. Mr. Parker conducted the hearing on behalf of the Commissioner of Personnel.

Morgan State College vs. Lillian M. Nealy. Before the State Commissioner of Personnel. On December 22, 1953, a hearing was held on charges of inefficiency against a Merit System employee by the authorized officials of Morgan State College. As a result, the employee was separated as a Senior Account Clerk and an opinion written by the Commissioner was widely published and referred to by the press. The opinion will be found in the Daily Record of January 4, 1954, and is of general interest because the Commissioner of Personnel stated at length the State's position in connection with job tenure as applied to Merit System employees. Mr. Parker conducted the hearing for the Commissioner of Personnel.

Water Pollution Control Commission vs. Rockland Bleach & Dye Works. This involved a claim that the Dye Works were, by their industrial operations, polluting the waters in Baltimore County north of Lake Roland. Counsel for the Dye Works attacked the reasonableness and validity of the entire Regulation 4 as promulgated by the Commission, and a general public hearing was held on November 23, 1952. Those attending were the entire Water Pollution Control Commission, numerous State officials and representatives of the University of Maryland, Johns Hopkins University and approximately forty other persons, chemists and experts of various industrial establishments, governmental agencies and sportsmen's organizations. The hearing lasted all day and resulted in almost 100 pages of type-written transcript of testimony which is now under study by the Commission and the Attorney General's Office, with a view to determining whether Regulation 4 should be radically revised or continued in substantially its present form. Mr. Parker represented the Commission.

Leroy Thomas Russell vs. George Winters, et al. State Board of Electrical Examiners and Supervisors. In the Superior Court of Baltimore City. This was a petition for a writ of mandamus to compel the Board of Electrical Examiners and Supervisors to permit the petitioner to take the examination for Master Electrician held on October 9, 1953, or at any adjournment of the time. An answer was filed on behalf of the Board, but before the case came to trial the petitioner dismissed his petition. Mr. Owens represented the Board.

Robert Edward Smith vs. Motor Vehicle Commissioner. In the Circuit Court for Baltimore County. This was a revocation of a license under the mandatory statute. The case was heard before Judge Hammond on a demurrer. It was ordered that the pleas be entered up short on the docket and the Court then ordered that mandamus be issued and that the license be restored to the defendant. Mr. Owens represented the Commissioner.

Edith L. Blake vs. Frank E. Blake, et al. and Motor Vehicle Commissioner. In the Circuit Court No. 2 of Baltimore City. This was a petition for an injunction to prevent the Commissioner of Motor Vehicles from transferring title to a certain motor vehicle. An answer was filed on behalf of the Commissioner setting forth that he had no interest in the matter other than to abide by and perform whatever orders may be passed by the Court. Mr. Owens represented the Commissioner.

Amos Cornelius Lucas vs. Motor Vehicle Commissioner. In the Baltimore City Court. This was an appeal from a revocation of Lucas' chauffeur's license, growing out of an accident on March 31, 1953. After a hearing the Court ordered that the license be suspended for a period of sixty days, and that said suspension should be retroactive to March 31, 1953, the petitioner to pay the court costs in the case. Mr. Owens represented the Commissioner.

State of Maryland vs. Benco Credit Union, A body corporate. In the Circuit Court of Baltimore City. This was a bill filed by the Bank Commissioner of Maryland alleging that Benco Credit Union was insolvent, and asking that the Commissioner be named to act as Receiver, and that the property, business and affairs be administered under the jurisdiction of the Court. At the same time the Commissioner petitioned the Court to authorize him to employ counsel. The Court signed appropriate orders granting the petitions as prayed. Mr. Owens represented the Bank Commissioner.

CASES PENDING IN LOWER COURTS

Thomas Wilmer Dale vs. Motor Vehicle Commissioner.
In the Circuit Court for Worcester County.

Boyd L. Harper vs. Walter R. Rudy, Commissioner of Motor Vehicles. In the Circuit Court for Allegany County.

George Householder vs. Motor Vehicle Commissioner.
In the Circuit Court for Baltimore County.

Oscar Leroy Isennock vs. Motor Vehicle Commissioner.
In the Circuit Court for Baltimore County.

Robert Lee Kenney vs. Motor Vehicle Commissioner.
In the Circuit Court for Frederick County.

John Reuben Leftwich vs. Motor Vehicle Commissioner.
In the Circuit Court for Harford County.

Handley Lewis vs. Motor Vehicle Commissioner. In the Circuit Court for Dorchester County.

Howard Frederick Lutz vs. Motor Vehicle Commissioner.
In the Circuit Court for Montgomery County.

Ervin C. Marsh vs. Motor Vehicle Commissioner. In the Circuit Court for Somerset County.

Wilbert Lee Morris vs. Motor Vehicle Commissioner. In the Circuit Court for Montgomery County.

Larry R. Niblett vs. Motor Vehicle Commissioner. In the Circuit Court for Wicomico County.

Thomas Hamilton Pusey, Jr. vs. Motor Vehicle Commissioner. In the Circuit Court for Wicomico County.

David Walter Rice vs. Motor Vehicle Commissioner. In the Circuit Court for Somerset County.

William S. Stanley, Jr. vs. Motor Vehicle Commissioner. In the Circuit Court for Montgomery County.

Joseph Weatherly vs. Motor Vehicle Commissioner. In the Circuit Court for Somerset County.

Gerald Anthony Wehrle vs. Motor Vehicle Commissioner. In the Circuit Court for Montgomery County.

Marion Linwood Wheatley vs. Motor Vehicle Commissioner. In the Circuit Court for Dorchester County.

Haywood E. Whittington vs. Motor Vehicle Commissioner. In the Circuit Court for Anne Arundel County.

Dryden Brothers Seafood Company, Inc., et al. vs. Arthur Brice, et al. Department of Tidewater Fisheries. In the Circuit Court for Somerset County.

Bessye H. Braverman vs. Michael J. Grossfeld. In the Superior Court of Baltimore City.

Sol Perolman vs. Dr. Kermit F. Smith, et al. State Board of Chiropractic Examiners. In the Superior Court of Baltimore City.

Harry R. Skull, t/d Peerless Distributing Company vs. Sydney R. Traub, et al. State Board of Motion Picture Censors. In the Circuit Court of Baltimore City.

Mayor & City Council of Cumberland vs. Thomas S. Cullen, et al. State Board of Health. In the Circuit Court for Allegany County.

Carpel, Inc. vs. Robert H. Riley, M. D. et al. State Board of Health and Anselm Sodaro, State's Attorney of Baltimore City. In the Superior Court of Baltimore City.

Burgess and Commissioners of Middletown vs. Robert H. Riley, M. D. Chairman, et al. Constituting the State Board of Health of Maryland. In the Circuit Court for Frederick County.

Washington Suburban Sanitary Commission vs. State Board of Health. In the Circuit Court for Prince George's County.

A. Austin Pearre, et al. State Board of Health of the State of Maryland, vs. The President and Commissioners of Princess Anne. In the Circuit Court for Somerset County.

Leroy C. Shaughnessy, Register of Wills of Baltimore City, vs. Dorothy Bastian Thayer, et al. Ex. Leon P. Thayer and New Amsterdam Casualty Company. In the Superior Court of Baltimore City.

Leroy C. Shaughnessy, Register of Wills, etc. vs. Philip Kahn, Administrator of the Estate of Moses Rose, etc. and Fanny Kahn Jordan. In the Superior Court of Baltimore City.

State of Maryland vs. Fidelity and Deposit Company, etc. In the Superior Court of Baltimore City.

Alexander Randall, et al. vs. M. Louisa Robinson, et al. In the Circuit Court of Baltimore City.

Stephen S. Mann, et al. vs. Dr. Thomas S. Eader, et al. In the matter of the trust estates U/W of Ann M. Mann, Deceased. In the Circuit Court of Baltimore City.

State of Maryland vs. Mary Anne Scott and Ernest C. Clark, Ind. and as Executors of the Will of John W. West. In the Circuit Court for Wicomico County.

James P. and Jean W. Parker vs. State Tax Commission of Maryland and the Appeal Tax Court of Montgomery County. In the Circuit Court for Montgomery County.

Albert J. Carry vs. Deeley K. Nice, et al. State Tax Commission. In the Circuit Court for Montgomery County.

Charles B. Kelly, Jr. et al. vs. Deeley K. Nice, et al. and State Tax Commission of Maryland. In the Circuit Court for Baltimore County.

In the matter of the Appeal of the Pennsylvania Railroad Company. Before the State Tax Commission of Maryland.

Montgomery County, Maryland vs. State Tax Commission and Bullis School, Inc. In the Circuit Court for Montgomery County.

Wayne Apartments, Secs. A, B, C, Inc. vs. Montgomery County Appeal Tax Court and State Tax Commission of Maryland. In the Circuit Court for Montgomery County.

The Partlett Gas Company vs. J. Millard Tawes, Comptroller of the Treasury, etc. In the Circuit Court for Charles County.

Roberts Industries, Inc. vs. J. Millard Tawes, Comptroller of the Treasury. In the Circuit Court for Wicomico County.

Alfred M. Smith vs. J. Millard Tawes, Comptroller of the Treasury. In the Circuit Court for Prince George's County.

Raymond L. Maynard, td. Kingsville Lunch vs. J. Millard Tawes, Comptroller of the Treasury. In the Circuit Court for Baltimore County.

Shipyard Restaurant, Nick Mallis vs. J. Millard Tawes, Comptroller of the State of Maryland. In the Circuit Court for Baltimore County.

M. E. Rockhill, Inc. vs. State of Maryland. In the Circuit Court for Calvert County.

Meade Heights, Inc. vs. State Tax Commission. In the Circuit Court No. 2 of Baltimore City.

Consolidated Engineering Company, Inc., vs. J. Millard Tawes, Comptroller of the State of Maryland. In the Baltimore City Court.

Lloyd E. Mitchell, Inc. vs. J. Millard Tawes, Comptroller of the State of Maryland. In the Baltimore City Court.

Blumenthal-Kahn Electric Company, Inc. vs. J. Millard Tawes, Comptroller of the State of Maryland. In the Baltimore City Court.

In the matter of Osbourne Hudson, Debtor. In the United States District Court for the District of Delaware. In Proceedings for An Arrangement. No. 1514.

State of Maryland vs. Henryene P. Green Powell and National Surety Corporation, a body corporate of the State of New York. In the Superior Court of Baltimore City.

State of Maryland, to the use of the University of Maryland vs. Russell H. Hinds and Russell H. Hinds, Jr., Td. Valley View Farm. In the Circuit Court for Frederick County.

Chesapeake Gardens, Inc. vs. Deeley K. Nice, et al. State Tax Commission. In the Baltimore City Court.

Milton R. Walker, et al. County Commissioners of Harford County vs. State Tax Commission. In the Circuit Court for Harford County.

Robert Reuling vs. Hooper S. Miles, Chairman, et al. Board of Trustees of Employees' Retirement System. In the Superior Court of Baltimore City.

State of Maryland to the use of the Military Department vs. The Colored Master Beauticians' Association, Inc. In the Superior Court of Baltimore City.

Walter C. Clarke, Register of Wills for Montgomery County, etc. vs. Ellen Marjorie Gray Gordon, Frances Gordon Elgin, et al. Exs. Estate of Fulton R. Gordon, deceased, and Marjorie Gray Gordon, et al. Individually. In the Circuit Court for Montgomery County.

State of Maryland vs. The Crofton Company. In the Circuit Court of Baltimore City.

Ralph H. Amrein vs. Beverly Ober, Police Commissioner of Baltimore City. In the Superior Court of Baltimore City.

Elsie L. Klein and Betty Boehmer vs. Clifton T. Perkins, M. D. Commissioner of the Department of Mental Hygiene. In the Circuit Court for Baltimore County.

George A. and Mary E. Frederick Memorial, Incorporated, etc. vs. The State of Maryland and Edward D. E. Rollins, Attorney General of the State of Maryland. In the Circuit Court of Baltimore City.

Provident Savings Bank of Baltimore vs. William H. Kirkwood, Jr. State Bank Commissioner and Edward D. E. Rollins, Attorney General of Maryland. In the Circuit Court of Baltimore City.

Walter Finch vs. A. G. Christie, et al. Board of Professional Engineers. In the Baltimore City Court.

State of Maryland, ex rel. Joseph H. McLain, Chairman, et al. Constituting the Maryland Water Pollution Control

Commission vs. A. H. Smith, Individually and trading as A. H. Smith Sand & Gravel Company. In the Circuit Court for Prince George's County.

David R. Martin vs. The State Board of Funeral Directors and Embalmers. In the Baltimore City Court.

Charles F. Dill vs. State Board of Funeral Directors and Embalmers of Maryland. In the Baltimore City Court.

Helen C. Stevens vs. State Board of Funeral Directors and Embalmers of Maryland. In the Baltimore City Court.

State of Maryland, Department of Correction vs. James Harris, Philadelphia, Pennsylvania. In the Superior Court of Baltimore City.

Elmer F. Rathel vs. Thomas B. R. Mudd, Motor Vehicle Commissioner. In the Circuit Court for Dorchester County.

REPORT OF JOSEPH D. BUSCHER
SPECIAL ASSISTANT ATTORNEY GENERAL
FOR THE STATE ROADS COMMISSION

The duties of the Special Assistant Attorney General for the State Roads Commission and his staff, increased considerably during 1953, due to the expanded road program. The personnel and duties of the Right of Way Department were also substantially increased in order to efficiently handle the greatly increased number of right of way acquisitions which, in turn, increased the legal duties of this office. The functions of this office continue to be varied and many, embracing not only the legal problems but also those bordering upon policy and administration.

This Assistant, with a view toward resolving the legal problem involved in regard to the location of the South East leg of Route #240, in Montgomery County, attended numerous meetings and conferences in cooperation with the Department of Justice, the U. S. District Attorney's Office for the District of Columbia, and the Legal Department of the Maryland National Capital Park and Planning Commission. Conferences were also held with Judge Coleman and representatives of the Department of Interior regarding traffic conditions in respect to military establishments and land owned by the Federal Government, particularly in Fort Meade, and recommendations were made to improve said traffic conditions and coordinate law enforcement.

The stock of the Washington Berkeley Bridge Corporation, which Corporation owned the bridge across the Potomac River at Williamsport, Maryland, was purchased by the State Roads Commission, and the writer and representatives of this Department attended all preliminary conferences in connection with the acquisition of the corporation and prepared all legal papers and performed such legal work as was necessary to accomplish this purchase. At the present time, the writer is serving as legal counsel

for the corporation, the stock of which is now owned by the State Roads Commission, and is also serving as a member of the Board of Directors of said Corporation.

All meetings of the Advisory Council to the State Roads Commission held during 1953, were attended, and this Department advised the Advisory Council on all matters of a legal nature, as well as prepared and recommended necessary legislation.

This Assistant represented the Attorney General and the State Roads Commission during the three month session of the Legislature. The office prepared, in a large measure, the legislation for the Twelve Year Road Program, which was enacted by the General Assembly of Maryland, and the writer attended many conferences and furnished legal advice relative to the Twelve Year Road Program. After the Program was introduced many Committee hearings of both the Senate and House were held relating to the Program and the writer attended and participated in these hearings and drew such amendments as were requested by the Committees.

During the year ninety-nine (99) condemnation cases were tried or settled prior to trial. In each of the cases tried, a representative of this Department participated in the trial. Eighty-one (81) condemnation cases were prepared and filed in the Circuit Courts of the several counties of the State. Approximately eighteen hundred and seven (1807) title examinations made at a cost by local attorneys in the various counties of \$90,000.00, were reviewed by this Department, and about eleven hundred and forty-six (1146) settlements made at a cost by local attorneys of about \$29,200.00 were prepared and supervised.

Also, this Department represented the State Roads Commission and the Members thereof, individually, in all suits and causes of action brought against the Commission and its Members, as individuals, acting in their official capaci-

ties. These legal services required filing of legal papers and appearance of one of the attorneys of the staff in the Circuit Courts of many of the Counties, the Courts of Baltimore City, as well as the Court of Appeals. In addition, this Department prepared all agreements entered into between the State Roads Commission and the various counties, agencies and individuals, and approved as to legal form and sufficiency, all contracts entered into by the State Roads Commission for road construction.

The increased volume of work necessitated an addition to the legal staff, and in July Mr. Murray W. Weight was appointed a Special Attorney. In December, Mr. Henry L. Rogers replaced Mr. Andrew W. Starratt, Jr., who resigned. The legal staff, in addition to those above mentioned, now consists of Mr. Frederick A. Puderbaugh, Mr. W. Warren Stultz, Special Attorneys, and the writer.

The following condemnations were prepared and filed by this Department; some have been tried and determined by a verdict of the Jury, some were settled out of Court, and others are pending:

Alleghany County:

Eleven (11) settled.
Two (2) tried.
Four (4) pending.

Anne Arundel County:

Eighteen (18) settled.
Seven (7) tried.
Five (5) pending.

Baltimore County:

Ten (10) settled.
One (1) tried.
Twenty-one (21) pending.

Carroll County:

Ten (10) settled.
Five (5) tried.

Caroline County:

One (1) tried.

Cecil County:

Eight (8) pending.

Charles County:

One (1) tried.
One (1) pending.

Dorchester County:

Six (6) settled.
Two (2) tried.

Frederick County:

Four (4) settled.
Two (2) tried.
Twelve (12) pending.

Garrett County:

Three (3) settled.
Three (3) pending.

Harford County:

Five (5) settled.
Seven (7) pending.

Howard County:

Two (2) pending.

Kent County:

One (1) settled.
One (1) pending.

Montgomery County:

Five (5) settled.
One (1) tried.
Nine (9) pending.

Prince George's County:

Three (3) settled.
One (1) tried.
Twelve (12) pending.

Queen Anne's County:

Two (2) settled.
One (1) tried.
One (1) pending.

St. Mary's County:

Two (2) settled.
Two (2) pending.

Talbot County:

Two (2) pending.

Washington County:

Six (6) pending.

Worcester County:

One (1) settled.
One (1) pending.

Wicomico County:

Two (2) settled.
Two (2) tried.
Nine (9) pending.

REPORT OF PHILIP T. MCCUSKER, SPECIAL ATTORNEY
FOR THE STATE ACCIDENT FUND

In 1953 one change was made in the membership of the Commissioners of the State Accident Fund. Mr. Thomas W. Offutt, of Baltimore County, was appointed by Governor McKeldin to succeed Mr. William B. Lebherz, of Frederick, whose term expired in 1953. Mr. Offutt was elected Chairman of the Commissioners, the other members being Mr. Royden S. Meise, of Salisbury, Vice-Chairman, Mr. William A. Sullivan, of Baltimore, Secretary, Mr. Joseph D. Weiner, of Leonardtown and Mr. Abraham Watner, of Baltimore County.

On May 15, 1953, an additional attorney, Mr. Harry A. Cole, of Baltimore City, was appointed to the legal department of the Fund by Attorney General Rollins.

The cases tried by these attorneys before the State Industrial Accident Commission involving accidental injury claims are as follows:

Baltimore City	332	Frederick	7
Belair	9	Hagerstown	5
Cambridge	17	La Plata	2
Chestertown	2	Leonardtown	2
Cumberland	25	Oakland	14
Denton	2	Prince Frederick.....	1
Easton	6	Salisbury	26
Elkton	21	Westminster	9

These hearings totaled 480, whereas in 1952 there were 337 such hearings before the Commission.

There were 33 hearings before the Medical Board for Occupational Diseases of the State Industrial Accident Commission, as follows:

Baltimore City	21	Easton	1
Cumberland	10	Salisbury	1

There were approximately 25 cases disposed of by final compromise settlement agreements before the State Industrial Accident Commission.

There were 12 cases tried in the law Courts involving appeals from the Commission, subrogation suits and premium collection suits. There were approximately 30 cases tried in the People's Court of Baltimore City, the law Courts in the counties and before various county Trial Magistrates in appeals and collection suits.

Throughout the year these attorneys met with the Commissioners of the State Accident Fund and rendered legal assistance to the Commissioners and staff of the Fund whenever needed.

Collections in 1953 on accounts certified by the State Accident Fund to the Attorney General under Section 75 of Article 101 of the Code, for premium charges owed by policyholders, amounted to \$9,947.20 for the year. Collections for the year 1952 amounted to \$3,856.64.

REPORT OF MARVIN H. SMITH
SPECIAL ASSISTANT ATTORNEY GENERAL
IN CHARGE OF SUBVERSIVE ACTIVITIES

I am pleased to submit herewith, my report as Special Assistant Attorney General in charge of Subversive Activities.

Almost five years have now passed since Article 85A was added to the Annotated Code of Maryland (commonly known as the Ober Law). Almost four years have elapsed since my predecessor was appointed as the first Special Assistant Attorney General to be charged with the administration of this Act and a little more than two years have elapsed since full time investigators were first assigned to this office. I think in this time we have been able to effectively disprove the fears of many of the opponents of the Act that it would be used for "witch hunting".

The law provides that evidence uncovered by the activities of this office shall be handled in the normal manner of handling other criminal cases, namely, by submission to the Grand Jury of the appropriate political subdivision. This means, of course, that only such evidence as would be admissible in a court of law can be used. The law specifically provides by its terms "such records as may reflect on the loyalty of any resident of this State, shall not be made public or divulged to any person except with permission of the Attorney General to effectuate the purposes of this Article". Our practice has been to interpret this as meaning anything that would reflect either favorably or unfavorably should not be made public, and as a consequence to regard the records and files of our office as a public trust, closed to the eyes of the curious and available only for the appropriate law enforcement agencies.

The acts forbidden by Article 85A amount essentially to treason. Criticism has been leveled at our office from time to time because there have been no prosecutions. Investiga-

tion of subversive activities is not like investigating any other crime. First of all, the communistic philosophy amounts almost to a religion among those who believe in it. By reason of the religious fervor and zeal of its followers, it is most difficult to obtain information from those who now or formerly actively engaged in the conspiracy of the communist party. It took the Federal Government many years of patient effort and cost it many thousands of dollars to bring about the prosecutions in New York, Baltimore and elsewhere under the Smith Act. It likewise will take years of patient effort and cost thousands of dollars to bring about in this State successful prosecution under Article 85A of our Annotated Code.

During the year we have cleared through our files the names of innumerable individuals who were being considered for appointment to positions in the State government or its political subdivisions.

We have had the benefit of a full time secretary since February 16, 1953. Prior to that time such card files as the office had were maintained by the investigators. They were also obliged to type most of their own reports and to handle requested file checks from out of town agencies. Since we acquired a full time secretary, a complete cross file has been established, in that we can tell immediately in what report any person's name may be mentioned. In short, her presence has not only meant that the office can now do a better job, but that there are more man hours available for the doing of that job.

The objection is frequently raised that our office is in fact a duplication of activities by other governmental agencies. Although to some extent this is true, it should be pointed out that we have, during the current year, uncovered data concerning subversive activities in this State which we believe to be information not heretofore known by other agencies. The charge of duplication is not entirely true, however, since certain of the other agencies have as

their goal the gathering of intelligence and counter-intelligence information. Prosecution is not their primary aim. My conception of our office is that our one purpose for gathering information is for ultimate prosecution.

I believe that the existence of the Ober Law has had a positive deterrent effect upon subversive activity within this State. Anyone who believes, however, that the communist conspiracy is not present within this State is laboring under a delusion. It is present, and we are doing our best to enforce the statute within the framework of Article 85A, and to protect the rights of the people.

REPORT OF HERBERT L. COHEN
SPECIAL ASSISTANT ATTORNEY GENERAL FOR THE
MARYLAND EMPLOYMENT SECURITY BOARD FOR THE
YEAR 1953

The Legal Division of the Department of Employment Security is divided into three sections. They are the Recoveries Section, which assists State's Attorneys of the various Counties in assembling and prosecuting persons who file fraudulent claims; the Collection Section, which enforces the taxing provisions of the Maryland Unemployment Compensation Law; and the Claims Investigation Section, the functions of which are integrated with the operations of the other two sections. This report is sectionalized to give a more accurate picture of the overall operations and results of the Division. In this regard, I should like to mention that the trial work is not handled by any of the three sections mentioned, but is done by the supervisory personnel of the Division. For the purpose of presenting this statistical report, the trial work done by the division is set forth under a separate heading entitled "Trial Section", though there is no such section in the table of organization.

I.

TRIAL SECTION

During the year 1953, 27 appeals were entered in the courts from decisions of the Board. There were also pending in the courts 22 appeals taken prior to 1953. We disposed of 13 cases, which included 10 cases instituted prior to 1953, and 3 cases instituted in 1953. There are now pending in the courts 12 cases instituted prior to 1953, and 24 cases instituted in 1953, making a total of 36 pending cases.

Following is a list of the closed cases:

Raymond S. Adams, et al. vs. Employment Security Board of Maryland and Coca-Cola Bottling Works, Inc.

Employer. In the Circuit Court for Allegany County. The decision of the Board was affirmed.

Levi Broadwater vs. Department of Employment Security and Gary Coal Company. In the Circuit Court for Allegany County. The decision of the Board was affirmed.

Mae H. Cohen vs. Employment Security Board, etc. In the Superior Court of Baltimore City. The decision of the Board was affirmed. A subsequent appeal to the Court of Appeals of Maryland was dismissed by the plaintiff's attorney before the case came to trial.

Marshall E. Edmondston vs. State of Maryland, Department of Employment Security. In the Superior Court of Baltimore City. The decision of the Board was affirmed.

H. F. Engelhardt, td. as Engelhardt Real Estate Company vs. William H. Mahaney, et al., Maryland Employment Security Board. In the Superior Court of Baltimore City. The decision of the Board was reversed and the Court ordered that appellant's petition for a refund of contributions paid be granted by the Board.

The Kelly-Springfield Tire Company, Employer vs. Dorothy Hott, Employee, and Employment Security Board. In the Circuit Court for Allegany County. At the trial of this case the employer's attorney indicated that the appeal would be dismissed, and subsequently an order of dismissal was filed with the Clerk of the Court.

Henry Purvis vs. Maryland Employment Security Board. In the Superior Court of Baltimore City. The Board's request for a dismissal under Rule 534 of the Supreme Bench of Baltimore City was granted by the Court.

Owen J. Rice vs. Employment Security Board of Maryland and Potomac Motors, Employer. In the Circuit Court for Allegany County. The decision of the Board was affirmed.

Grace E. Robinson vs. Maryland Employment Security Board. In the Court of Appeals of Maryland. The decision of the Board and the order of the lower Court were affirmed.

Wanda Rojek vs. Maryland Employment Security Board. In the Superior Court of Baltimore City. The Board's request for a dismissal under Rule 534 of the Supreme Bench of Baltimore City was granted by the Court.

Mary H. Runk vs. Maryland Employment Security Board. In the Superior Court of Baltimore City. The Board's request for a dismissal under Rule 534 of the Supreme Bench of Baltimore City was granted by the Court.

Susie P. Stack vs. Maryland Employment Security Board. In the Superior Court of Baltimore City. The decision of the Board was affirmed.

Charles F. Trader vs. H. Clyde Hearn, td. Central Hotel, Employer and Employment Security Board. In the Circuit Court for Wicomico County. This case was marked "stet" by the Clerk of the Court because of the appellant's failure to prosecute his appeal within the required time.

In addition to the above, there were numerous trials held which involved law motions, particularly with regard to the distribution of estates of insolvents and as to the propriety of the procedures used to procure injunctions against employers and to enforce proper contempt proceedings. The citations for contempt and the prosecution of these matters in court were all handled by the Chief of the Division of Recoveries and Collections (this includes the 13 contempt cases reported in the statistics shown under the Collection Section's report).

In connection with the 36 cases pending in the courts as of December 31, 1953, 7 involve the misconduct of an employee in connection with his work; 9 relate to claimants leaving work voluntarily, without good cause; 5 involve

the failure of claimants to apply for available, suitable work; 3 relate to the question of whether or not a claimant is able to work, available for work and actively seeking work; 6 concern the question of whether or not a claimant's unemployment is due to a stoppage of work which existed because of a labor dispute at the premises where he was last employed; 1 concerns the question of whether a claimant was discharged for a wilful act endangering the safety of others; 1 concerns the question of whether a claimant's discharge was for a disqualifying reason within the meaning of Section 5 of the law; 2 involve the question of whether the plaintiff-employer is liable for contributions on certain employees under the terms of the Maryland Unemployment Compensation Law; 1 is concerned with the question of whether the plaintiff-employer is a new employer, and whether the experience of the predecessor can be considered as its experience, and 1 involves the question of whether or not the plaintiff-employer is entitled to a lower experience rating than that assigned by the Board.

Of the 36 pending cases, 29 are in the Superior Court of Baltimore City, 5 in the Circuit Court for Baltimore County and 2 in the Circuit Court for Allegany County.

II.

RECOVERIES SECTION

Through various collection techniques, the Recoveries Section collected a total of \$66,744.86, which had been received by claimants in the form of unemployment compensation to which they were not entitled. Most of this was recovered by correspondence and follow-up procedures, but some of it reflects restitution made and fines paid in Criminal Court cases and recoveries on judgments obtained in the People's Court.

In connection with the fraudulent claims for benefits, evidence was assembled for the State's Attorney of Balti-

more City and the various State's Attorneys of the counties of the State. This office participated in the trials of 35 claimants charged with fraud, all but one of whom were convicted. One man was found not guilty when it was discovered that, through mistaken identity, the employer had incorrectly reported that he had worked during the claim period.

III.

COLLECTION SECTION

During the year, counsel for the Employment Security Board obtained 794 judgments amounting to \$197,818.55. As of November 30, 1953, there were on hand 760 uncollected judgments amounting to \$302,683.40. Exactly 682 judgments were collected during the year totalling \$110,263.86 and 60 judgments totalling \$29,628.20 were marked off as uncollectible. During the year 103 liens totalling \$19,129.60 were prepared for recordation, but payment of the same was enforced prior to recording the liens. The total amount collected by this section for the year was \$129,393.46.

In enforcing collection of the judgments mentioned, counsel was required to issue execution in 338 cases and attachments in 17 cases. Claims were filed in 42 bankruptcy cases; 20 Orphans' Court cases; 33 receivership cases; 51 deed of trust cases; 6 foreclosure cases; 1 reorganization case under Chapter X of the Bankruptcy Act, involving a total of \$306.94, and only 1 of the aforesaid cases was brought to a close and resulted in the collection of \$214.29.

Subpoenae were issued for the appearance of 750 employers who failed to file reports and/or pay contributions, and for 11 employees in overpayment and fraud cases. We received 95 cases involving the payment of benefits to representatives of deceased claimants and closed 85 of them.

We learned of 153 sales of businesses under the Sales In Bulk Act and took all necessary steps in these cases to protect our claims, if any. We handled 12 complaints involving forged checks, of which 10 have been closed. We also handled 48 dissolution of partnership cases.

During the year 1953, we filed in the courts 67 petitions and nisi orders to enjoin employers from operating their businesses for wilful failure to pay contributions incurred under our Act or for wilful failure to file contribution reports required for the effective administration of our law. Only 25 employers were actually enjoined from operating their businesses, final orders having been entered.

We also filed in the courts 45 petitions and nisi orders requiring employers to appear before the Employment Security Board to either offer testimony regarding past due contributions incurred under the Unemployment Compensation Law, or to produce the necessary records for the filing of contribution reports which were delinquent. 30 petitions and nisi orders to have employers held in contempt of court for failure to obey a previous petition and order were also filed during the year 1953. Of these employers, 13 were actually held in contempt of court and punished accordingly. Many of these petitions resulted in employers paying past due contributions or filing delinquent employer contribution reports.

IV.

CLAIMS INVESTIGATION SECTION

At the end of each calendar quarter, this Section conducts a "post audit" of claims filed to determine whether any of the claimants filed claims while working. This operation is commenced in the Wage Record Section of the Department of Employment Security, and after the comparison of wage reports and claims is completed, determinations are made as to whether or not fraudulent claims have occurred, and whether or not the claimants involved are indebted to this

agency. The cases are then referred to the Recoveries Section for further handling, as is more completely shown in this report. The operations of this Section involve the handling of literally thousands of claim reviews each quarter.

In addition to the above, this Section fully investigates anonymous reports of improper claims and completely investigates allegations made by claimants who make affidavit that benefits checks have been forged by other persons. Most of the criminal prosecutions which are handled by the other Sections of the Division originate in this Section.

It is impossible to show a meaningful statistical breakdown of the cases handled by this Section, because they necessarily depend upon the volume of claims filed in the Local Offices. It must suffice to say that it is this Section which is charged with the policing of the payment of claims, and with a great amount of liaison work between employers, Claims Office and Recoveries Section.

REPORT OF NOAH A. HILLMAN
SPECIAL ASSISTANT ATTORNEY GENERAL FOR
DEPARTMENT OF TIDEWATER FISHERIES

This Assistant was appointed Special Assistant Attorney General for the Department of Tidewater Fisheries on August 1, 1953. Before that date the State Law Department had no Special Assistant assigned to this Department.

The Department of Tidewater Fisheries is operated by the Tidewater Fisheries Commission. Under the law the Commission is endowed with "general supervisory power, regulation and control" within the bounds of tidewater, over fish, crabs, terrapin, oysters, clams and other shellfish. It conducts the conservation and propagation program of the State for these natural resources and issues licenses. In addition, it directs and controls the State Fishery Force, its enforcement unit. These marine police, known as Inspectors, have all of the powers conferred upon police officers or constables of this State and their jurisdiction is State-wide.

When this Assistant was appointed his duties were not specifically outlined. However, the Commission was in need of counsel to be always available for the purpose of advising it concerning the many and varied problems; who would be easily available to help the Inspectors of the State Fishery Force regarding their duties, concerning their authority, and for help in preparation of cases for presentation before the proper tribunals of the State, and to correlate the enforcement of the conservation laws, and advise and aid the several State's Attorneys in the tidewater Counties.

Regarding the duties of this Assistant, all fidelity bonds to the State by officers and employees of the Department of Tidewater Fisheries who are required by law to give such bond have been examined as to form and legal sufficiency by this Assistant. He has also examined Regulations No. 93 to 106 inclusive, promulgated by the Commission since

August 1, 1953, for form and legal sufficiency. On numerous occasions, sometimes day to day, he has advised the members of the Commission's staff which consists principally of its Chief Fisheries Inspector, Shellfish Culturist, Accountant, Auditor and Hydrographic Engineer. Questions posed by them have necessitated legal research to render the "informal" opinions required for the guidance of these officials. Furthermore, forms and other documents have been submitted for approval and improvement.

This Assistant attends the regular weekly meetings of the Tidewater Fisheries Commission. During the period of this Report he attended a meeting of the Board of Natural Resources at Solomons. He also lectured to the Inspectors of the Department concerning their powers and duties, at Solomons Training School on another occasion, and remained there two days. The duties of this Assistant require a large number of telephone calls to the State's Attorneys in the tidewater counties and to other persons, in addition to handling considerable correspondence. On occasion he confers with the State's Attorneys in person. During the period of this Report this Assistant has been to Cambridge twice, Leonardtown once, Salisbury three times and Princess Anne twice, on matters in which the Commission is interested.

CASES DISPOSED OF IN LOWER COURTS

Edwin A. Glenn, et al. vs. John R. Reeves, Secretary of State of Maryland. In the Circuit Court for Anne Arundel County. This was a bill to restrain the Secretary of State from certifying Chapter 488 of the Acts of 1953, to the Supervisors of Elections of Anne Arundel County to be placed on the ballots or voting machines at the General Election in 1954. This law prohibits commercial fishing in certain waters. After a hearing the Court held that the referendum petitions were void.

Richard A. Layman, et al. vs. Department of Tidewater Fisheries of Maryland. In the Circuit Court for Talbot

County. No. 711 Law. This was an oyster lease protest case which was disposed of by agreement to dismiss.

This Assistant has aided the State's Attorney for Worcester County in the cases of extradition of two persons from the State of Virginia. (State vs. Bowles and State vs. Lowry). The charges grew out of certain illegal fishing operations in the Atlantic Ocean off Ocean City. After conference with counsel for the defendants, this Assistant was able to arrange to have the accused persons come to Maryland. He has been assured by their counsel that they will come here and plead guilty without the necessity of following through with extradition proceedings.

At the request of the State's Attorney for Anne Arundel County, this Assistant appeared before the Trial Magistrate at Annapolis in a case involving six separate charges against a commercial fisherman for taking oversized rockfish. Convictions were obtained under all six charges and fines imposed.

CASES PENDING IN THE COURTS

State vs. H. B. Kennerly, President of H. B. Kennerly & Sons, Inc., t/a Roaring Point Oyster Company; Levin L. Walter and Travers Willing. No. 129, October Term, 1953, Court of Appeals of Maryland.

State of Maryland vs. Carl Tyler. In the Circuit Court for Somerset County.

J. E. Beitzell, et al. vs. Arthur Brice, et al. Commissioners of Tidewater Fisheries. No. 243, In the Circuit Court for St. Mary's County.

William Taft Tippett, et al. vs. Edwin Warfield, Jr. Conservation Department. In the Circuit Court for St. Mary's County. No. 553.

John W. Hall, et al. vs. Edwin J. Baetjer, et al. Commission of Tidewater Fisheries. In the Circuit Court for St. Mary's County. No. 569 and No. 570.

Clarence Poe, et al. vs. Department of Tidewater Fisheries. In the Circuit Court for St. Mary's County. No. 571.

Ray Daugherty, et al. vs. Delmas Price and Department of Tidewater Fisheries. In the Circuit Court for Somerset County. No. 6, Civil Docket.

Luther Daugherty, et al. vs. John E. Clark, et al. Tidewater Fisheries Commission. In the Circuit Court for Somerset County. No. 8.

The last six named cases are oyster protests which have been pending for some years, although repeated efforts have been made to dispose of them. This Assistant suggests that they be allowed to die a natural death where possible, especially because this type of case will not hereafter be the responsibility of the State Law Department to defend.

Mayo Watermen's League, Inc. et al. vs. Commission of Tidewater Fisheries, et al. In the Circuit Court for Anne Arundel County. No. 9883, Equity.

Clifton B. Mathay vs. David H. Wallace, et al. Department of Tidewater Fisheries and Board of Public Works. In the Superior Court of Baltimore City.

FINANCIAL STATEMENT OF THE STATE LAW DEPARTMENT
FOR THE FISCAL YEAR BEGINNING JULY 1, 1952
AND ENDING JUNE 30, 1953.

Appropriation	\$67,150.00
Appearance fees	293.82
Sales of Attorney General's Reports outside of State	115.00
Sundry reimbursements	176.49
	\$67,735.31
 Appearance fees turned into State Treasury.....	 293.82
	\$67,441.49

Salaries:

Attorney General	\$7,104.02
Deputy Attorney General.....	7,500.00
Assistant Attorney General (3).....	16,942.54
Chief Clerk	4,322.00
Stenographer-Secretary (2)	7,127.44
Senior Stenographer	2,861.30
Law Clerk (Part Time).....	1,500.00
Additional Clerical Assistance.....	300.00

Contractual Services:

General Repairs	351.92
Motor Vehicle Repairs.....	43.67
Traveling	1,976.20
Communication	3,550.00
Printing, other than office supplies..	2,119.97
All Other	2,499.43
Blue Sky Enforcement.....	\$ 29.00
Expenses Legislative Session of 1953	4,892.71

Supplies:

Office	963.08
Motor Vehicle	698.45

Equipment:

Office	533.04
Educational, Vocational, etc.....	1,081.22

Fixed Charges:

Rent	156.00	
Insurance	140.75	
All Other	207.50	
		66,900.24
		<hr/>
Reverted to State Treasury.....	\$	541.25

OFFICIAL OPINIONS
of the
ATTORNEY GENERAL of MARYLAND

ALCOHOLIC BEVERAGES

LICENSES—FIFTY PER CENTUM OF “OWNERS” OBJECTING
UNDER STATUTE APPLICABLE TO BALTIMORE CITY—HOW
DETERMINED.

June 4, 1953.

*Mr. Joseph Van Collom, Jr.,
Executive Secretary,
Board of Liquor License Commissioners.*

We have your letter, enclosing letter to you from an attorney in regard to the license of his client, in the 1000 block of N. Payson Street, in which you inform us that under the present practice of your Department more than fifty percent by number of the owners of properties within a two hundred foot radius of the property involved have protested the renewal of the license. We understand that the attorney who represents the licensee, takes the position that the Board's previously followed method of determining who are “owners” is wrong.

Section 57(d) of Article 2B of the Maryland Code provides that:

“In Baltimore City if it shall appear that more than fifty per centum in numbers of the owners of real or leasehold property situated within two hundred feet of the place of business for which application is made are opposed to the granting of the license, then the application shall not be approved, and the license applied for shall be refused.”

The attorney has taken the position that the words “owners of real or leasehold property” should include not only lease holders under ninety-nine year leases, but also the holders of the ground rents or reversionary interests on the basis that such a holder is one who holds fee simple title to the property and is, therefore, an “owner”. He further points out that the law specifically states “owners”

as differentiated from "residents", and also that even the owner of a leasehold renting the property out to others on short term leases is just as much "an absentee owner" as the holder of the ground rent.

Fortunately, this proposition is about to become, in future cases, of academic interest only as this law has been repealed and reenacted by Chapter 671 of the Acts of 1953, which makes the fifty percent provision applicable only to the original issue of licenses and not to renewals or transfers. However, it is our opinion that, in the instant case, the previous interpretation of this law by the Board, which we understand has been in practice for many years, is correct because we believe that the intent of the statute was to allow for a protest by owners having a substantial interest in the matter involved. For example, in an opinion of the Attorney General, Volume 20, page 144, the word "owner", as used in Section 5 of Article 2B of the 1924 Code and which involved the consent of an owner of property to the issue of a license for his premises, was construed to mean not a tenant with a terminable tenancy nor the owner of the fee but was held to mean the lessee holding the property under a ground rent, which, that opinion states, satisfied the requirement as constituting the substantial ownership of the property within the meaning of the Act. We, therefore, believe that the owners of property should have only one vote, which, as suggested by you in your letter, has been your practice with relation to property owned by husband and wife, and we presume also property owned by joint tenants. Otherwise, you might encounter a situation in which it would be necessary to trace any number of joint or co-tenants, or for that matter you might be forced to search for unknown heirs and people with residuary interests in order to satisfy the definition of "owners of real or leasehold property", which, of course, would be a *reductio ad absurdum*.

It is, therefore, our opinion in the case in question that if the Board finds as a matter of fact under its present rules

that more than fifty percentum of the owners are opposed to the granting of the license, then the license should be refused.

EDWARD D. E. ROLLINS, *Attorney General.*

W. GILES PARKER, *Asst. Attorney General.*

ALCOHOLIC BEVERAGES—THE COST OF ISSUING ALCOHOLIC BEVERAGE LICENSES SHALL BE PAID BY CLERKS OF COURT OUT OF RECEIPTS OF THEIR OFFICES AS ORDINARY EXPENSES.

November 4, 1953.

Mr. W. Waverly Webb,
Clerk, Circuit Court for
Prince George's County.

We have for consideration your letter in which you ask us to advise you concerning the payment of the expenses for bookkeeping materials, license forms, and other supplies necessary to the issuing of alcoholic beverage licenses.

The general question of the receipts and expenses of the offices of the Clerks of the various Courts of this State has frequently been reviewed by this office. In 18 Opinions of the Attorney General, 82, it was said of fees for alcoholic beverage licenses:

“The Legislature did not, however, see fit to adopt the usual method of imposing license fees, but provided a special method for the collecting and remitting of fees, and provided compensation to the Clerk out of the license fee itself.”

In 24 Opinions of the Attorney General, 120, it was held that the one dollar fee for each alcoholic beverage license issued was in lieu of any other commission for the issuance of a license. Article 15, Section 1 of the Constitution provides that:

“Every person holding any office created by, or existing under the Constitution or laws of the State * * * 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 * * * when

the amount received by him for the year shall exceed the sum which he is by law entitled to retain as his salary or compensation for the discharge of his duties and for the expenses of his office, shall yearly pay over to the Treasurer of the State the amount of such excess * * *."

The fee of the Clerk of Court for issuing alcoholic beverage licenses is authorized by Section 60 of Article 2B of the Annotated Code of Maryland (1951 Ed.), which provides in part, as follows:

"Except as otherwise provided in this Section, the Clerk shall forthwith remit all license fees collected by him, less a fee of \$1.00 for the issuance of each license to the Board of County Commissioners for the County, or to the Mayor and City Council of Baltimore, as the case may be * * *."

The payment of the salaries and other expenses of the Clerks' offices is authorized by Section 24, sub-section (1) of Article 17 of the Annotated Code of Maryland (1951 Ed.), which provides:

"The salaries of the Clerks of Courts shall be payable semi-monthly from the fees, receipts and emoluments of the office, after first deducting therefrom the necessary expenses of the office including salaries of deputies and clerks, books, stationery, office supplies, and other necessary and customary expenses of doing business. * * *"

In accordance with the previous opinions of this office, and with the portions of the Constitution and the laws quoted above, we think that the cost of bookkeeping materials, license forms and other supplies necessary to issuing alcoholic beverage licenses must be paid out of receipts of the Clerk's office as one of the ordinary expenses of doing business.

The effect of this ruling is that the surplus receipts going into the State Treasury will be diminished by the costs of printing licenses and other forms used in administering the alcoholic beverages laws, while all the receipts, except the sum of \$1.00 for each license, go into the treasuries of the several political subdivisions of the State. The result may be unfortunate, nevertheless, it is one which the General Assembly may correct if it cares to do so.

EDWARD D. E. ROLLINS, *Attorney General.*

CHARLES MCC. MATHIAS, JR., *Asst. Attorney General.*

BANKS AND BANKING

BANK COMMISSIONER—INDUSTRIAL FINANCE—CREDIT OR BUDGET CERTIFICATE RESTRICTED TO SPENDING WITH CERTAIN MERCHANTS NOT LAWFUL “ADVANCE OF MONEY OR CREDIT” UNDER THE ACT.

June 4, 1953.

Mr. John D. Hospelhorn,
Deputy Bank Commissioner.

Your letter enclosing a copy of letter to you from an attorney, in connection with his proposed plan for financing “budget certificates” is acknowledged.

Article 11, Section 165 of the Code provides for “the making of loans or advances of money or credit”. The proposed plan, as stated by the attorney is, we understand, that the finance company will accept notes or other obligations up to an amount of \$1,500, in return for which the borrower will receive a number of “budget certificates” or “credit certificates” which he can spend as cash *with certain designated merchants* or can use them to repay his loan, and the borrower will make monthly payments against the total amount of credit which has been extended to him by this means.

While it is true that such an arrangement means that for a portion of the time the note contract is outstanding a part of the borrower’s funds would still be in the control of the lender, we do not believe that this alone would affect the legality of the procedure under Article 11.

Apparently, what the lender actually proposes is to lend money in the form of restricted drafts on the lender rather than in cash. Obviously, this benefits the lender and the benefit to the borrower is not apparent except perhaps for the safety factor; as, for example, in the purchase of traveler’s checks, money orders, or where the proceeds of

a loan are credited to the borrower's account at a bank to be drawn on by him as needed. However, it is our opinion that the fact that the proposed plan restricts the "spending" of the budget certificates with "certain designated merchants" it is not in accordance with Article 11, Section 165, which in our opinion, was intended by the Legislature to be applicable to loans or advances of money or unrestricted credits in the form of available cash or its equivalent. It is possible that the lending of "budget certificates" could lead to certain abuses which would violate the intent of this statute.

EDWARD D. E. ROLLINS, *Attorney General*.

W. GILES PARKER, *Asst. Attorney General*.

BANKS AND BANKING—FINANCE COMPANIES—NON-RESIDENT BANKING INSTITUTIONS NOT REQUIRED TO BE LICENSED UNDER SALES FINANCE LAW (Art. 83, sec. 141 et seq.) BUT MUST CONFORM WITH MARYLAND LAW APPLICABLE TO FOREIGN CORPORATIONS DOING BUSINESS IN MARYLAND.

July 8, 1953.

Mr. Lester L. Barrett,
Administrator of Loan Laws.

We have your request for an opinion in connection with the operations of non-resident banking institutions in the State of Maryland with reference to the sales finance business. You have informed us that certain installment sellers in the State of Maryland are selling various items of merchandise in the State to local purchasers under conditional contracts of sale. These conditional contracts are then assigned to non-resident banks which then become the absolute owners of the contracts with the right of enforcement. In some instances, collections are made by the installment seller and forwarded to the non-resident bank; in other instances, the out of State bank employs local collection agencies or re-possessors to enforce the contracts by repossession, suit or otherwise, in case of default.

There are two problems involved. One, under Article 83, Section 141 of the Code, as to whether or not such foreign financial institutions are required to have a license under the Maryland Sales Finance Law; and the second, as to whether or not the above stated practice constitutes "doing business" in the State of Maryland by the non-resident institutions, and if so, what is the effect thereof upon rights of the various parties.

It is to be noted that Section 141 of Article 83 provides that "No person, except a *banking institution* shall engage in the business of a sales finance company in this State without a license therefor obtained from the Commissioner.

as provided in this sub-title." Under this provision, of course, banks, trust companies, etc. may operate in the sales finance business, which means that they may accept, or discount conditional contracts of sale from merchandisers without obtaining any license from your Department, or without being subject to the supervision of your Department.

Further, Section 151(m) of Article 83 says, "'Banking institution' includes any national bank, and any State bank, trust company or mutual savings institution." This would seem to indicate any institution of such nature, wherever located, domestic or foreign, and would hence remove them from the jurisdiction of your Department.

It is, therefore, our opinion that banking institutions, as above defined, whether in Maryland or elsewhere, have the authority under Article 83 to engage in this business without your supervision.

As to the second problem, there is no doubt that a foreign bank can be a foreign corporation with all of the rights and obligations of such as imposed by Article 23 of the Maryland Code, which means that if such foreign banking institutions are "doing business" in the State of Maryland, they are subject to all the provisions of the applicable Sections of Article 23. However, there are certain things to be noted in connection with the above. First, Article 23, Section 86 excepts "national banks" from all registration requirements as foreign corporations; and second, Article 23, Section 84(b) definitively states that maintaining any action or suit to enforce a claim or the settlement thereof is not to be construed as doing intra-State business by a foreign corporation. Under the above, it is obvious that if the foreign banking institution referred to by you in connection with the sales finance business happens to be a national bank, it is completely exempt from the requirements of Article 23. However, if it is a State bank or trust company, for example, it is subject to the general corpora-

tion law applicable to any other foreign corporation in so far as it is doing business in the State of Maryland (*Baden v. Washington Loan & Trust Co.*, 133 Md. 602; 24 Opinions of the Attorney General 240; 20 Opinions of the Attorney General 284).

In connection with the question as to whether or not a foreign corporation is doing business in Maryland in any particular instance, this is a matter which may be raised as a defense, or as a reason for jurisdiction in private litigation, and the answer depends on the circumstances of each particular case. Our opinion should, therefore, be read in the light of these qualifying remarks. In 25 Opinions of the Attorney General, 162, it was stated that foreclosing mortgages and managing and selling properties obtained as a result thereof would constitute doing business in the State of Maryland; but in 23 Opinions of the Attorney General, 634, it was held that merely collecting mortgage interest and enforcing the collection thereof was not "doing business" in the State of Maryland. See also Brune on *Maryland Corporation Law and Practice* (Rev. Ed. 1953) Chapter 26. We can further recommend for a thoroughgoing discussion of the question of "doing business" in Maryland the exhaustive opinion by Judge Chesnut in the case of *Johns v. Bay State Abrasive Co., et al.*, 89 Fed. Supp. 654.

In the light of all the above, it is our opinion that your office has no jurisdiction under the applicable Sections of Article 83 of the Maryland Code over banking institutions as therein defined, whether local or foreign, and they need not be licensed to engage in the business within Maryland. However, any aggrieved party, of course, may maintain a suit against a non-resident corporation doing business in Maryland, in accordance with the various provisions of Article 23.

EDWARD D. E. ROLLINS, *Attorney General.*

W. GILES PARKER, *Asst. Attorney General.*

BANKS AND BANKING—AN INSOLVENT CREDIT UNION MAY
BE LIQUIDATED BY THE BANK COMMISSIONER.

October 15, 1953.

Mr. John D. Hospelhorn,
Deputy Bank Commissioner.

In your recent letter you asked the following question: When placed in receivership, is a credit union subject to the provisions of Article 11, which enables the Bank Commissioner to liquidate certain institutions, or is the receivership of a credit union to be administered in accordance with Article 23, Section 75, etc., which governs the receivership of ordinary corporations?

The most pertinent statute on the subject is found in Article 11, Section 141, which deals with credit unions in an unsafe condition, and provides that if the Bank Commissioner, upon examination, finds that the credit union is insolvent, he may order the credit union to discontinue its unsafe practices, and if the credit union does not comply with the order of the Bank Commissioner within sixty days, the Bank Commissioner may take possession of the business and property of the credit union and retain possession until such time as he may see fit to permit the credit union to resume business, or the Bank Commissioner may "cause its affairs to be finally liquidated as by law provided".

The question is to what law do the last four words in Section 141 refer. In examining Article 23, Section 75, we find that the law provides that when an ordinary corporation is in receivership, a court may order that the corporation be liquidated under its supervision, that is, the court's supervision, either by the directors as trustees, or by one or more receivers appointed by the court. This section does not refer to the Bank Commissioner in any way at all, whereas, Section 141 of Article 11 specifically puts a credit union in the hands of the Bank Commissioner. It is possible to be meticulous and argue that Section 141 of Article 11 in providing that the Bank Commissioner may "cause" a credit union's affairs to be finally liquidated, means thereby

that the Bank Commissioner may only cause proceedings to be instituted, and not that the Bank Commissioner, himself, actually liquidates a credit union in the same way that he liquidates a banking institution. However, this interpretation of the language lacks weight because Section 15 of Article 11 uses the following language when referring to the Bank Commissioner's power to liquidate a bank:

“The Bank Commissioner shall, within a reasonable period after taking possession of any banking institution *cause* proper proceedings to be instituted in the name of the State of Maryland against said institution in a court of competent jurisdiction * * *”.

In view of the fact that it is settled law that the Bank Commissioner does have the power and authority to liquidate an insolvent bank, it seems to us, therefore, that his power to liquidate a credit union is beyond question.

There is another difficulty that is worthy of comment. Article 11, Section 63 says the words “banking institution,” as used in this Article, should be held to mean incorporated banks, savings institutions and trust companies, and not applied to or include building and loan associations. The intention of the Legislature here is somewhat vague, because it does not include credit unions in either clause of the Section, which is made up of only one sentence. However, it does definitely exclude building and loan associations, and, in reading through Article 23 from Section 140 to Section 153, inclusive, we find no reference to the Bank Commissioner in dealing with a building association, whether it be sound or unsound, and it is significant that the very last clause of Section 153 of Article 23 says that building associations “shall in every other respect be regarded as a domestic corporation of this State.” It is very evident, therefore, that the Legislature intended building and homestead associations to be treated as ordinary business corporations, but there is no such expression of intent on the part of the Legislature that credit unions should be

treated as ordinary business corporations. In fact, every reference to credit unions in the Maryland Code indicates that the Legislature intended that credit unions should be under the supervision of the Bank Commissioner, and in case of liquidation, should be liquidated by the Bank Commissioner even as he liquidates a bank.

It will be noted that Section 141 of Article 11 also gives the Bank Commissioner constant supervision of credit unions. It provides that he shall examine all credit unions at least once a year, and, if he thinks it necessary, more frequently. It also provides that in January of each year, credit unions shall make a report to the Bank Commissioner. These provisions, together with other similar provisions mentioned in the said Section 141, we think express a clear intent on the part of the Legislature that the Bank Commissioner is to liquidate a credit union if a credit union is insolvent. However, in dealing with credit unions in Article 11, we must take note of the fact that Section 160 definitely says that the provisions of Sections 63 to 104, inclusive, of this Article, do not apply to credit unions, so the question immediately arises as to whether or not credit unions are to be excluded from the provisions of Section 63 of Article 11 in the same way in which building and loan associations are excluded. After carefully reading all of Sections 63 to 104, we think that credit unions are to be excluded from those provisions only, and that the Legislature did not intend to say that the Bank Commissioner cannot liquidate a building and loan association. To place this construction on Section 160 of Article 11, it seems to us, is to strain the language and is to fail to give full force to the intent of the Legislature as expressed in Section 141 of Article 11.

Therefore, in our opinion, the law is that the Bank Commissioner has the authority and the power to liquidate a credit union under Article 11 of the Annotated Code of Maryland, and not under Article 23.

EDWARD D. E. ROLLINS, *Attorney General*.

H. CLIFTON OWENS, *Asst. Attorney General*.

BUDGET

PROVISION IN BUDGET IMPOSING A CONDITION ON THE USE
OF STATE PROPERTY IS INVALID.

June 11, 1953.

*Dr. R. V. Truitt, Director,
Department of Research and Education.*

In your letter of May 27, 1953, you ask our advice as to the legal effect of language in the Budget Bill (Chapter 661 of the Acts of 1953) immediately following the appropriation for the Department of Research and Education. The language reads:

“Provided that no part of this appropriation shall be available to the Department of Research and Education unless the pier at Solomons Island originally known as the Solomons Steamboat Wharf shall be opened and held opened to the general public use and shall not be held or restricted to the exclusive use of the Department of Research and Education.” (Italics supplied.)

As you know, the Budget Bill passed by the 1952 Legislature, Chapter 15 of the Acts of 1952, also contained language of similar import following the Department's appropriation. In fact, the language in the 1952 Budget Bill is identical with the italicized portion of the language quoted above from the 1953 Act. In an opinion to you (37 Op. A.G. p. 139), we held that the language appearing in the 1952 Act was inappropriate to a Budget Bill, and, therefore, altogether inoperative. As pointed out in that opinion, the Budget Bill may not be employed as a vehicle of general legislation, since it, unlike other Acts, is not subject to gubernatorial veto, and thus does not enjoy the safeguards provided by the Constitution against hasty and ill considered legislation.

The language appearing in the 1953 Budget Bill seeks to accomplish the same end as did the language in the 1952 Act, which we held to be ineffective. The 1953 version merely spells out more emphatically the intent of the Legislature to impose a condition upon the expenditure of the funds appropriated for the Department of Research and Education. Again, therefore, we rule that the language seeking to open the Solomons Steamboat Wharf to the general public use is ineffective. The Department need not fulfill the condition set forth in order to have available to it the appropriations provided.

EDWARD D. E. ROLLINS, *Attorney General*.

FRANCIS D. MURNAGHAN, JR., *Asst. Attorney General*.

BUDGET—VALID CONDITIONS IMPOSED IN THE BUDGET BILL
MUST BE DIRECTLY RELATED TO THE EXPENDITURE.

August 20, 1953.

*Dr. Martin D. Jenkins, President,
Morgan State College.*

We have for consideration your letter in which you inquire whether it would be possible to use excess Special Fund income for the purpose of employing additional teachers even though such additional employment of teachers would result in more positions than are specified in the Morgan State College Instructional Program appropriation.

The pertinent portion of the Appropriation Act of 1954, Chapter 661, Acts of 1953, provides as follows:

“Instruction

General Fund Appropriation.....	529,553
Special Fund Appropriation, provided that revenues in excess of this estimate may be made available by ap- proved budget amendment.....	232,680.....762,233

PROVIDED THAT NONE OF THE FUNDS IN
THIS APPROPRIATION SHALL BE SPENT
FOR SALARIES OF POSITIONS IN EXCESS
OF 121.”

The basic problem raised by your inquiry was discussed fully in an opinion addressed to Dr. R V. Truitt, of the Department of Research and Education, and found in 37 Op. A.G. p. 139. The occasion for the expressed opinion at that time was the inclusion in the Budget Bill (Chapter 15, Acts of 1952) of a condition which read as follows: “The pier at Solomon’s Island, originally known as the Solomon’s steamboat wharf, shall be opened and held open to the general public use and shall not be held or restricted to the

exclusive use of the Department of Research and Education". Judge Hammond said, in the opinion cited, "It is our view that the language quoted above is entirely without legal effect and is not binding or controlling * * * The Legislature may not, under the guise of incorporating in the Budget Bill language purporting to have the effect of law, make that language become a law * * *."

He then proceeded to distinguish the attempt to enact general legislation concealed within the Budget Bill from the valid conditions which the General Assembly may impose upon the expenditure of monies appropriated. The line of demarcation between what is valid and what is invalid is the determination of whether or not the condition or limitation is directly related to the expenditure of the appropriation. As an example, Judge Hammond quoted the provision found on page 224 of the Acts of 1952, which limited the cost of motor vehicles to be purchased by the State. Of such limitation, he said: "The Legislature, in enacting the Budget Bill, can attach such provisions as it pleases—not obviously capricious, nor illegal nor unconstitutional—to the appropriation or expenditure of public monies":

It is manifest that the limitation included in the Instructional Program Appropriation for Morgan State College falls within the category of a condition attached directly to the expenditure of the funds rather than within the category of general legislation. We believe, therefore, that the limitation of positions as found in the Budget Bill to "121" is valid and binding and that you may not pay the salaries of any additional teachers out of that Appropriation.

EDWARD D. E. ROLLINS, *Attorney General*.

CHARLES MCC. MATHIAS, JR., *Asst. Attorney General*.

CIVIL DEFENSE

EXPENDITURE OF FUNDS MAY NOT BE MADE BEYOND EXISTING APPROPRIATIONS.

October 6, 1953.

*Mr. Sherley Ewing, Director,
Civil Defense Agency.*

We have your letter wherein you ask us to supply you with the following information:

1. Reference to any legislative authority (other than Civil Defense legislation) giving "operational authority of State and its agencies to handle disasters or unusual emergencies."
2. "To what extent can State or any of its agencies borrow money or incur obligations beyond existing appropriations."
 - a) For Disaster Relief?
 - b) For Civil Defense?

The only reference we can find for operational authority for the State and its agencies to handle disaster and other emergencies are Section 8 of Article 65 which provides for the calling up of the militia in certain circumstances and Section 4 of Article 43 which deals with the authority of the Board of Health in the event of "an epidemic or pestilential disease".

We can find no authority for the expenditure of funds beyond the existing appropriations. In fact Section 5 of Article 31 places a penalty not exceeding \$1000.00 for the first offense and \$2000.00 for all subsequent offenses or imprisonment for a period of two years or both for any officer enumerated in Section 3 of said article which includes practically any officer of the State who is "guilty of wilfully or knowingly creating a deficiency, incurring a liability,

or expending a greater sum than is appropriated by the General Assembly of Maryland for any public institution or department of this State in any one year. . . .". See also Section 32 of Article 3 of the Constitution of Maryland.

The Police Commissioner of Baltimore City is authorized by Section 901 of the Charter & Public Local Laws of Baltimore City (1938 Edition) to call on the Sheriff of Baltimore City to summon the *posse comitatus* for the preservation of the public peace and quiet. The sheriffs of the counties have the right at common law.

EDWARD D. E. ROLLINS, *Attorney General*.

MARVIN H. SMITH, *Special Asst. Attorney General*.

CIVIL DEFENSE—PROPERTY DONATED BY FEDERAL GOVERNMENT FOR DEFENSE PURPOSES MAY NOT, WHILE STILL USABLE, BE GIVEN AWAY BY THE LOCAL AUTHORITIES.

October 6, 1953.

*Mr. Sherley Ewing,
Director, Civil Defense Agency.*

We have your letter in which you request advice as to whether or not the Director of Civil Defense for Allegany County may procure property from the Air Force under the provisions of Paragraph 345 (c), Section XXX, AFM 67-1, which provides for donations to public bodies and whether Allegany County Civil Defense may in turn donate same to a volunteer fire company which assists in the civil defense program. A public body is defined in that Air Force regulation as "Any state, territory or possession of the United States, any political sub-division thereof, the District of Columbia, any agency or instrumentality of the foregoing, or any agency of the government . . .". You further state that the Civil Defense Organization does not wish to hold title to equipment so procured if you can secure it for the volunteer fire companies, and have them pay all the expenses.

The County Commissioners of each county are vested under Section 1 of Article 25 of the Annotated Code of Maryland ('51 Edition) with control over all property of the county. It therefore would seem to follow that if a local Civil Defense Agency procures property on the strength of its status as a part of a political sub-division, namely, a county, then the decision as to the disposition of that property would have to rest with the governing body of that sub-division, namely the County Commissioners under the aforementioned section of the statute. We doubt the authority of the County Commissioners to give away usable public property.

It would seem that if those writing the Air Force regulation cited by you had intended for property to be donated to volunteer fire companies for operating the civil defense program that they would have so stated. Accordingly, since your ends cannot be accomplished under existing laws and regulations, you may desire to suggest some change therein to the Office of Civil Defense.

EDWARD D. E. ROLLINS, *Attorney General*.

MARVIN H. SMITH, *Special Asst. Attorney General*.

CONSERVATION

OYSTERS—LEASES—RIPARIAN OWNER OF LAND BORDERING
CREEK LESS THAN ONE HUNDRED YARDS IN WIDTH
MAY OBTAIN LEASE FOR BOTTOM THEREOF.

February 20, 1953.

*Mr. John C. Widener, Engineer,
Department of Tidewater Fisheries.*

We are writing in reply to your letter of January 29, 1953, in which you ask whether the riparian owner whose land borders a creek less than one hundred yards in width may apply for and receive a lease for the bottom of such creek under Article 66C, Section 661 of the Annotated Code of Maryland (1951 Edition). Under subsection (z), such an owner clearly is granted the exclusive right to use the creek for preserving, depositing, bedding or sowing oysters.

A casual reading of subsection (b) of Section 661 would indicate that there is no right in such an owner to a lease, for the Section provides "no lease shall be granted for any of the following submerged areas of this State, nor shall any person acquire by lease * * * any of these areas: any area beneath any creek * * * less than one hundred yards at its mouth at mean low water". Nevertheless, consideration of the matter makes it evident that, for the particular purposes with which we are here concerned, the phrase "any person" in Section 661(b) is meant not to include persons who are riparian owners bordering on creeks less than one hundred yards wide at their mouths. As was pointed out in 32 Opinions of the Attorney General 98:

"* * * On its face Section 12 (b) would appear to reserve in the State and the public the exclusive right to waters of a creek, cove, bay or inlet less than one hundred yards wide at its mouth, but when the section is considered in the light of its history heretofore discussed, it seems obvious that

the legislature intended by Section 12 (b) to preserve the riparian owner the exclusive right to such waters which the landowner had enjoyed since 1829. * * *”

Such a reading of the term “any person” is supported by the fact that it is the only one which will prevent Section 661(s) from being in irreconcilable conflict with Section 661(z). Subsection (s) makes it unlawful for “any person other than a lessee * * * to appropriate to himself or to use for any purpose, any of the submerged lands of this State * * *”. It is apparent, therefore, that, in using the term “any person” in Section 661 of Article 66C, the Legislature meant the term to be exclusive of riparian owners given rights under subsection (z).

It is, therefore, our opinion that a qualified riparian owner may apply for and obtain a lease to lands reserved for his exclusive use by subsection (z) of Section 661 of Article 66C.

EDWARD D. E. ROLLINS, *Attorney General*.

FRANCIS D. MURNAGHAN, JR., *Asst. Attorney General*.

CONSERVATION—CLAMS—STATUTES REGULATING TAKING
OF CLAMS APPLY TO THE MANINOSE OR SOFT CLAM.

February 20, 1953.

Mr. Robert Lee Shores,
Chief Fisheries Inspector.

This letter is written in reply to yours of February 13, 1953, which raises certain questions as to the applicability of the conservation statutes to the maninose or soft clam.

The conservation statutes appearing in Article 66C of the Annotated Code of Maryland (1951 Ed.) speak only of clams, drawing no distinction between hard shelled and soft clams, and we are satisfied that the Legislature, in using the general term, meant it comprehensively to include the maninose. According to Funk & Wagnall's New Standard Dictionary, "maninose" is merely a local term, derived from Indian sources, for the soft clam. In view of this conclusion, Section 651 of Article 66C, forbidding a non-resident to take clams in the waters of the State, is fully applicable to the taking of the maninose.

You have informed us that those presently engaged in commercial taking of the maninose do so by means of a device which first washes away a portion of the bottom and then scoops up the maninose. You state that it is your belief that the device is a dredge. By Article 66C, Section 651 of the Annotated Code of Maryland (1951 Ed.), clams may be legally taken only through use of rakes, tongs, patent tongs, dredges or hand scoops. The device which you describe, therefore, could be legal only if it is a dredge. Assuming, therefore, that it is a dredge, the further question is presented as to whether it may be used over natural oyster bars for the purpose of taking maninose. We understand that the boat on which the device is mounted is self-propelled. That fact makes it perfectly clear that the use of the device over a natural oyster bar is forbidden. Article 66C, Section 654. That Section prohibits all dredging on

natural bars by self-propelled boats, and the fact that the dredging carried on is for other purposes than taking oysters makes no difference. The destructive effect on the oysters is just as great.

EDWARD D. E. ROLLINS, *Attorney General.*

FRANCIS D. MURNAGHAN, JR., *Asst. Attorney General.*

CONSERVATION—POTOMAC RIVER—MARYLAND RESIDENTS
SUBJECT TO MARYLAND FISHING LAWS IN POTOMAC
RIVER EVEN THOUGH THEY ARE MORE STRINGENT
THAN COMPARABLE LAWS OF VIRGINIA.

March 26, 1953.

*Captain Robert Lee Shores,
Chief Fisheries Inspector,
Department of Tidewater Fisheries.*

In your letter of March 19, 1953, you ask advice about enforcement in the Potomac River against Maryland fishermen of the statute which limits the size of legal rock to fifteen pounds. Article 66C, Section 288 of the Annotated Code. The comparable statute of the Commonwealth of Virginia fixes the maximum legal size for rock at twenty-five pounds. You ask whether the Compact of 1785, providing as it does that "all laws and regulations which may be necessary for the preservation of fish in the River Potomac shall be made with the mutual consent and approbation of both States", makes the Maryland lesser limit inapplicable.

In the case of *State v. Hoofman*, 9 Md. 28, the Court of Appeals appears to have held that prosecution of a Maryland citizen under a Maryland statute, not concurred in by Virginia, for acts occurring in the Potomac River, would fail because of such lack of concurrence by Virginia. However, subsequent to that case, Virginia and Maryland have duly passed concurrent legislation which provides that each State may prosecute its own citizens for acts taking place in the Potomac River, regardless of whether the laws of the two States governing such acts are substantially identical. Article 66C of the Annotated Code, Section 301, provides:

"It shall be lawful for any citizen of the State of Maryland or of the State of Virginia to take fish, oysters or crabs from the Potomac River after complying with the requirements of the laws of

*the State of which he is a citizen for the taking of fish, oysters or crabs, from the waters of such State; and any citizen of either State who takes fish, oysters or crabs from the Potomac River without having complied with the requirements of the law of his State as to the taking of fish, oysters or crabs in its own waters shall be considered guilty of violating the laws of the State of which he is a citizen, and shall be prosecuted according to such laws. * * ** (emphasis supplied)

The concurrent Virginia legislation appears as § 28-219 of the Annotated Code of Virginia, 1950 Edition.

Thus, the requirements of the Convention of 1785 are met, and Marylanders who fish in the Potomac River violate the law if they retain rock weighing more than fifteen pounds. See 37 Op. A.G. 165. As pointed out in that opinion, the existence of such concurrent legislation makes it unnecessary to decide whether the Compact of 1785 standing alone is binding on the parties to it at the present time.

By the same token, Virginia fishermen operating in the Potomac, who comply with the laws of the Commonwealth, violate no Maryland fishing laws which are more restrictive than comparable Virginia ones. We are not unaware of the inequities which may seem to flow from this ruling in that Virginia fishermen will operate at a distinct advantage over Maryland fishermen in the Potomac River. Nevertheless, the Legislature has seen fit to establish the fifteen pound limit for the Potomac, as well as for the rest of the State, and, until it sees fit to change the law, you have no alternative but to enforce it. Compare 7 Opinions of the Attorney General 64.

EDWARD D. E. ROLLINS, *Attorney General.*

FRANCIS D. MURNAGHAN, JR., *Asst. Attorney General.*

CONSERVATION—CRABS—REGULATION PROVIDING FOR CONFISCATION OF ILLEGAL CRAB POTS INVALID, SINCE ONLY LEGISLATURE MAY ESTABLISH PENALTY FOR VIOLATION OF LAW.

June 24, 1953.

Captain Robert Lee Shores,
Chief Fisheries Inspector,
Department of Tidewater Fisheries.

In your letter of June 16, 1953, you ask for an opinion as to the validity of those provisions of Crab Pot Regulation 1, calling for confiscation by law enforcement officers of the Department of Tidewater Fisheries of any pots not identified in the manner required by the Regulation. Your question arises in relation to ten pots which were confiscated. Counsel for the owners of those pots assert that the Regulation is invalid in so far as it provides a penalty for its violation and refer to Section 326 of Article 66C, which specifically spells out the penalty for violating any rules and regulations promulgated by the Department of Tidewater Fisheries. Such violation is declared by the Section to be a misdemeanor subject to a fine of not less than \$10 nor more than \$25.

We are informed that the value of crab pots is small and, therefore, we are satisfied that, if the Legislature had provided for summary confiscation of crab pots illegally used, such a provision would have been valid even though no judicial condemnation was required. *Lawton v. Steele*, 152 U.S. 133. However, the grant by the Legislature of the power to make rules and regulations did not extend to the Department of Tidewater Fisheries the power to provide a penalty for violation thereof. As is stated in 42 Am. Jur. at p. 355 (Section 50 of Title "Public Administrative Law") :

“Administrative authorities may be empowered to enact rules and regulations having the force and

effect of law, but any criminal or penal sanction for the violation of such rules and regulations must come from the legislature itself. Administrative authorities may not initiate such sanctions."

Thus, we conclude that it is not proper for the Department of Tidewater Fisheries to confiscate crab pots not conforming with the Department's Regulation. Nevertheless, each such crab pot doubtless constitutes a separate offense which would support a prosecution under Section 326 of Article 66C of the Annotated Code. While an officer coming upon such a pot would not be authorized to confiscate it, we do believe that he would be entitled to seize it as evidence in any forthcoming prosecution inasmuch as its being in the water in a manner not authorized by the Regulation would constitute a misdemeanor committed in his presence. Section 233 of Article 66C makes it the duty of officers of the Commission of Tidewater Fisheries to seize "all boats, seines, nets or other fishing outfit used to violate" the provisions of Article 66C falling under the sub-title "Fish and Fisheries". The statutes concerning crabs appear under that sub-title.

EDWARD D. E. ROLLINS, *Attorney General.*

FRANCIS D. MURNAGHAN, JR., *Asst. Attorney General.*

CONSERVATION—FISH AND FISHING—POUND NET LOCATIONS MUST BE 400 YARDS APART EVEN THOUGH RIPARIAN OWNERS HAVE CONSENTED TO THEIR SETTING.

July 28, 1953.

*Mr. Arthur H. Brice, Chairman,
Department of Tidewater Fisheries.*

At a recent meeting held in your office, you asked our advice on several matters concerned with the location of pound nets in Cecil County.

There is, as you know, under Article 66C, Section 268 of the Annotated Code (1951 Ed.), an absolute prohibition against the setting of any such net without the written consent of the riparian owner. See 33 Opinions of the Attorney General, 133. Your first inquiry concerns a situation where adjoining landowners, or persons who have obtained their written consent, desire to set two pound nets within 400 yards of one another. Under Section 296 of Article 66C, the Commission is directed to refuse a pound net license to any person "to operate a pound net on the location occupied by any other licensee or within four hundred (400) yards thereof * * *".

At the outset, it appears evident that the proper agency for resolving such a conflict between competing applicants for licenses, at least in the first instance, is the Commission of Tidewater Fisheries, since it is the body charged with the issuance of pound net licenses.

In resolving conflicting claims arising in this manner, we believe the Commission should employ the principles applicable to the very analogous situation in which duck blind locations are in dispute. As pointed out in *Councilman v. LeCompte*, 179 Md. 427, and *Boyd v. Shaefer*, 184 Md. 621, every effort should be made to work out an amicable settlement between the disputing parties. Only should such an attempt fail will a strict application of the principles which we set forth hereinafter be necessary.

In the first place, it seems evident that the provisions of Sections 249 and 268 of Article 66C, giving priority in the setting of pound nets to the riparian owner or to someone holding under him, do not create an absolute right to set. Such right is subordinate to the requirement that pound nets be located at least 400 yards apart. See *Wampler v. LeCompte*, 159 Md. 222. Unlike the provisions of the duck blind law, which call for the setting of a blind at least 250 yards (i.e. one-half of the minimum distance of 500 yards) from a division line, the statutes governing location of pound nets apparently permit a set anywhere opposite the riparian owner's shore, so long as such a set does not come within 400 yards of a previously existing one. Thus, priority in time would seem to be the controlling factor, and where licenses are sought for two sets within 400 yards of one another, if one of the sets has previously been licensed by the applicant, he should have priority. Should the two applications have no advantage in time over one another, it would, we believe, be the duty of the Commission to deny a license for each location, leaving the parties to work out a solution conforming with the 400 yards requirement.

It should be evident that all that we have said rests on one principal underlying assumption; namely, that the license applicants have secured consent of the riparian owner. In this connection, you have pointed out that it is often difficult to determine whose land a pound net location is opposite, the answer depending on the manner in which the division line between neighbors is extended over the water. You have asked our advice as to how these division lines should be extended, but unfortunately, it is not possible to give generalized instructions, for the courts have determined, and wisely so, that each case must depend on the particular geography of the location. In some situations, the simple extension of the division line along the same course provides the best solution. In others, the drawing of a line perpendicular to the shore or to the channel may be fairest. See *Councilman v. LeCompte*, *supra*, and *Boyd v. Schaefer*, *supra*. In each case, the Tidewater Fisheries Com-

mission should extend the line in the manner dictated by the peculiar geography of the area concerned. A desirable objective would be to have the line run in a way best suited to secure each riparian owner a fair share of any fishing grounds located off the shore.

EDWARD D. E. ROLLINS, *Attorney General.*

FRANCIS D. MURNAGHAN, JR., *Asst. Attorney General.*

CONSERVATION—HUNTING LICENSE—MERE OWNERSHIP OF LAND DOES NOT ENTITLE A NON-RESIDENT TO LOCAL OR STATE-WIDE LICENSE—UNLESS ONE LIVES IN STATE SIX MONTHS OUT OF TWELVE PRECEDING MONTHS HE IS A NON-RESIDENT WITHIN MEANING OF LAW GOVERNING HUNTING LICENSES.

October 2, 1953.

Mr. George B. Shields,
Chief Game Warden,
Department of Game and Inland Fish.

The matter of John A. Pierce v. Garner W. Denmead, Chairman, William B. Holton, et al., constituting the Game and Inland Fish Commission of Maryland, and Ernest A. Vaughn, Director, and J. W. Ivens, Jr., Deputy Game Warden for Kent County, has been referred to this office for an opinion. The question is whether or not one John A. Pierce is a resident of Kent County, Maryland, and is therefore entitled to take out a hunting license for Kent County, or whether he should be obliged to take out a non-resident hunting license, as the Deputy Game Warden of Kent County contends. Mr. Pierce contends that he has been a resident of Kent County since he was 2½ years of age. However, as we understand it, his parents were, at that time, residents of New York State.

It is the fixed law of all jurisdictions that the domicile of a child during its minority continues to be that of its father, and no minor can change his domicile from that of his parents except he be a legally emancipated child, or a child whose parents are divorced, or an illegitimate child, or an adopted child. (See Restatement of the Law, Conflict of Laws, par. 30, p. 55. In fact, Chapter 2 of said Volume deals very thoroughly with the subject of domicile.) Not one of these exceptions is stated anywhere in the entire correspondence that we have in our hands. See *Sudler v. Sudler*, 121 Md. 46.

Under the Maryland law, the pertinent statutes involved are found in Article 66C of the Maryland Code, Sections 127 and 130. Section 127 reads, in part, as follows:

“The owner of farmlands, his children or spouses of children, or tenants, or children or spouses of children of such tenants residing on said farmlands shall, without procuring such license, have the right to hunt said enumerated game during the open season for the same on the said farmlands of which he or they are bona fide owners, children or spouses of children of such owners, or tenants, or children or spouses of children of such tenants. * * *”

The key word in this provision is the word “residing”, and it seems to us that the question as to whether or not Mr. Pierce is a resident of Kent County turns on the construction of this word. As you know, the word “reside” is interpreted to have one of two meanings, according to the type of case involved. The Court of Appeals said in *Harrison v. Harrison*, 117 Md. 607, at p. 612:

“* * * The term residence is one which is used to signify different things. Sometimes it is to be construed as meaning the domicile of a party, and in others simply to indicate an abiding place for the time being without reference to domicile. * * *”

The latter construction is the construction placed upon this particular statute by an opinion of the Attorney General’s Office, written by Thomas H. Robinson on November 14, 1926. See 11 Opinions of the Attorney General, 203. The case involved men working at Conowingo Dam in Harford County. Some of these men had been working there for quite a period of time and had applied for hunting licenses, and the Attorney General said that the Clerk of Court should question the applicants very thoroughly to find out if they had been there for a considerable period of time

and if they intended to stay there for a considerable period of time, but the Attorney General said to give them the benefit of the doubt "even though they do not intend to make Maryland their permanent place of abode and have not declared their intention to become a resident in order to entitle them to vote, still under the terms of the law requiring persons gunning or hunting to take out a license, they are entitled to a resident license."

It seems to us, therefore, that this office is on record as saying that the word "residence" does not necessarily mean domicile, or a permanent place of abode. However, the Attorney General felt, at that time, that applicants should have been in Harford County for a considerable length of time before applying for a hunting license, and should have prospects of remaining in Harford County for a considerable length of time after obtaining a hunting license.

A second question, which is bound to come up, is the construction of the entire sentence above quoted from Section 127 of Article 66C. This sentence uses the word "residing" in such a way as to make it difficult to decide whether it means, if a man owns a farm, he must also reside on it in order to be entitled to hunt without any license at all, or whether the word "residing" applies only to tenants who happen to be living on the farm at the time. This question was discussed in an opinion in 32 Opinions of the Attorney General, 103, where the Attorney General reached the conclusion that, if a resident of the State of Maryland owns a farm, he may hunt on that farm without obtaining any hunting license at all, regardless of whether he resides on the farm or not. We think this is a fair construction of the statute. In the same opinion, another statute was construed, which had at one time been in force, but was no longer in force, which read as follows:

"* * * if a non-resident landowner of any county to the assessed value of \$500.00, he shall pay a fee of \$1.00 which will entitle him to hunt in the

county in which his lands are assessed and if he shall desire a state-wide license he may pay a fee of \$5.00."

From this, the Attorney General concluded that the Legislature obviously intended that a non-resident should purchase a non-resident hunting license at a cost of \$15.50, even though he owned property in the State, if he hunted on other property.

In Article 66C, Section 125, sub-section (c), we find this language, which is clear and directly on the point:

"For the purpose of this sub-heading, a resident shall be a person who has resided in this State permanently for a period of not less than six (6) months during the preceding twelve months."

The intent of the Legislature, it seems to us, is beyond doubt that before a man can qualify as a resident of the State of Maryland so as to obtain a limited County license, or a State-wide resident license, he must have spent more than six months in actual recorded time in this State out of the twelve months immediately preceding his application for a hunting license. Anyone else would be considered a non-resident.

Attorney General Walsh, in 26 Opinions of the Attorney General, 93, had occasion to construe a statute similar to the statute referred to in the above paragraph and said that it was his opinion that the Legislature intended that which we have set forth in the preceding paragraph, and that the residential period should be for six months immediately prior to the application for a hunting license. However, the statute which he was construing were Sections 86 and 87 of Article 39 of the 1939 Edition of the Code, and which General Walsh characterized as being inartistically drawn, provided as follows:

“For the purpose of this Act a resident shall be a person who has resided in this State permanently for a period of not less than six (6) months.”

A comparison of the statute now in force with the statute then in force shows that the Legislature added the words to the statute construed by General Walsh, “during the preceding twelve months”. Taking this altogether, it seems to us that the intent of the Legislature is clear as can be that a person must actually reside in this State more than six months before he is eligible to obtain a hunting license. It is difficult to see how the Legislature could make its intention plainer.

Mr. Pierce further complains that he must pay \$15.00 a year for the privilege of shooting ducks and geese on his own premises. This matter has also been construed in 32 Opinions of the Attorney General, 118. The Section of the law there construed was Section 17 of Article 99, which is almost exactly like Section 130 of Article 66C of the present Code, and it reads as follows :

“All persons hunting wild fowl on any of the land or waters of this State must first procure a hunter’s license to so hunt, shoot or kill * * *.”

The Attorney General said that this is clearly an addition to all the other provisions of the hunting license law, and is to be construed independent of all other provisions. His exact language is as follows :

“To hold that persons are not required to procure a hunting license to hunt wild water fowl on their own lands would be to give no effect to Section 20 of Article 99, as amended, and it is not conceivable that the Legislature would have enacted this Section if it were to be nugatory; and since the legislative words are clear, precise and unambiguous when they say all persons hunting wild

water fowl on any of the lands and waters of this State must procure a license, it must be understood to mean that the Legislature intended just that.”

In conclusion, we might add that the Legislature has progressively manifested an intent that a non-resident, whether a landowner or not a landowner, should pay a non-resident license fee before he is permitted to hunt in the State of Maryland. And we think the present law which requires that a man actually live in the State six full months out of the twelve months immediately preceding hunting season is to be taken literally and is not to be given some theoretical interpretation, which is clearly in the teeth of the language of the Legislature.

EDWARD D. E. ROLLINS, *Attorney General*.

H. CLIFTON OWENS, *Asst. Attorney General*.

CONSERVATION—GAME AND INLAND FISH DEPARTMENT—
CLERKS OF COURT MAY NOT DELEGATE THEIR POWER
TO ISSUE ANGLERS' AND HUNTING LICENSES.

October 6, 1953.

*Mr. Ernest A. Vaughn, Director,
Department of Game and Inland Fish.*

You have inquired as to the legality of the issuance of anglers' licenses by persons other than those designated by you as official issuing agents, and in particular as to the propriety of a Clerk of a Circuit Court permitting or appointing persons in various Counties to issue licenses on his behalf in the field.

Section 215(b) of Article 66C of the Annotated Code of Maryland (1951 Ed.) provides, among other things, that

“* * * Said license shall be procured from the Clerk of the Circuit Court of any county or from the Clerk of the Court of Common Pleas of Baltimore City and in addition thereto may be issued by such person or persons as the Director may designate * * *.”

And Section 217 provides that the Clerk of Court, or other persons shall retain as compensation for issuing the above licenses, the sum of 25¢, the balance to be remitted to the Game and Inland Fish Commission for eventual credit to “The State Game Protection Fund”.

It is the opinion of this office that the Clerks of Court mentioned above in Section 215(b) may not delegate their authority to persons otherwise unauthorized to issue anglers' licenses. They may, of course, be issued by a deputy or by the Clerk himself at his own office during business hours. However, any other person issuing anglers' licenses is only authorized to do so when designated by you, as required by Section 215(b) above.

It is further noted that Section 226 of Article 66C provides that:

“Any person found guilty for violating any of the provisions of this sub-title, unless the penalty is provided in the section otherwise, shall be deemed guilty of a misdemeanor and upon conviction before any justice of the Peace of this State or Court shall be fined not less than Ten Dollars nor more than Fifty Dollars (\$50.00) and costs for each and every offense or sentenced to jail until said fine and costs have been paid.”

EDWARD D. E. ROLLINS, *Attorney General.*

W. GILES PARKER, *Asst. Attorney General.*

CONSERVATION—ISSUANCE OF ANGLERS' AND HUNTING
LICENSES.

October 8, 1953.

*Mr. Ernest A. Vaughn, Director,
Department of Game and Inland Fish.*

Further in reference to our opinion of October 6, 1953, respecting the authority to issue anglers' licenses, you are advised that the same ruling applies to the issuance of hunting licenses under Section 125 of Article 66C of the Code (1951 Ed.), and that, therefore, the Clerks of Court may not delegate their authority to issue such licenses.

EDWARD D. E. ROLLINS, *Attorney General.*

W. GILES PARKER, *Asst. Attorney General.*

CONSERVATION — GAME & INLAND FISH COMMISSION—
“BOOTS” MAY BE OUTLAWED FOR WATER FOWL HUNTING—POWERS OF COMMISSION.

November 5, 1953.

*Mr. Ernest A. Vaughn, Director,
Game and Inland Fish Commission.*

We have before us your question as to whether or not our conservation law, as expressed in Article 66C, Section 115, as amended by Chapter 672 of 1953, and also Section 150(a), as amended by Chapter 362 of 1953, would outlaw the use of “body boots” in the hunting of wild water fowl, or, in the alternative, whether your Department would have the authority to prohibit the same under your powers as expressed in Section 115.

Article 66C, Section 150(a), referred to above, provides in part that:

“* * * It shall be unlawful to use any airplane, sink box or sink boat, or floating device towed by a power boat or a sail boat for the purpose of hunting wild water fowl therefrom; provided, however, it shall be lawful to use sneak boat or bushwack rig on the Susquehanna flats and on the waters of the Elk and Sassafras Rivers in Cecil County and on the waters of the Potomac and Monocacy Rivers in Allegany and Frederick Counties and on the waters of the Potomac River in Montgomery and Washington Counties.”

The above is the applicable provision of the law and we can see no substantial difference, either in the manner of use or in its effect upon the taking or killing of water fowl, or in its effect upon owners of licensed blinds, between a sink box and a body boot.

Furthermore, you will note that under Section 115(a), referred to above, your Commission has the power and

authority "to determine when, to what extent, restrict or prohibit in any degree the provisions of law obtaining in this State for the hunting, taking, capture * * * of any wild bird, wild animal, or fish from inland waters, and may adopt regulations for such purpose."

It seems to me that, in view of the above, you would be completely within your powers, within the letter of the law, and certainly within the intent of the law, if you issue a rule or regulation outlawing "body boots" for use in hunting wild water fowl in the waters under your jurisdiction.

EDWARD D. E. ROLLINS, *Attorney General.*

W. GILES PARKER, *Asst. Attorney General.*

CONSERVATION—LEGAL METHOD OF TAKING HARD SHELL
CLAMS DEFINED.

December 4, 1953.

*Mr. John L. Sanford, Jr.,
State's Attorney for Worcester County.*

You have requested an interpretation of Chapter 744, Acts of the General Assembly of 1953, dealing with the manner of taking clams.

The Act adds a new subsection (e) to Section 663 of Article 66C of the Annotated Code of Maryland (1951 Edition), title "Natural Resources", subtitle "Oysters and Clams". It also repeals and reenacts, with amendments, subsection (m) of Section 665 of said Article.

We understand that you are particularly concerned with Section 663 as it has been amended. The problem presented is whether a person (licensed) may take clams from the Sinepuxent or Chincoteague Bays and Isle of Wight Bay with "hand scrapes" without violating the provisions of subsection (e) of Section 663. This subsection now reads as follows:

"It shall be unlawful to take or catch hard shell clams (*Venus mercenaria*) with any hydraulic dredge or mechanical dredge of any kind, provided, however, that this Act shall not apply on leased lands or in the Atlantic Ocean."

The State of Maryland has two species of clams which are of commercial importance. First is the soft shell clam (*Mya* species) and second, the hard shell clam (*Venus* species). Soft shell clams are found throughout most of the oyster growing areas of the Chesapeake Bay and its tributaries. On the other hand, hard shell clams are found almost entirely along the seaside, in Chincoteague and adjacent waters. These clams are likewise found in the Atlantic Ocean extending to the edge of the continental shelf. (Mr.

Ralph C. Hammer, Shellfish Culturist, Department of Tidewater Fisheries.)

Clams, no distinction being made between soft clams or hard clams, may be legally taken in this State in one of several ways. Section 651(a), Article 66C. The taking of them may be by "dredges or *hand scrapes*". A "dredge" as used in catching oysters is well known to Maryland watermen. Basically, it is a device which is operated by dragging on the bottom. Likewise, a "hand scrape" is defined specifically as "any dredge as defined herein, which is cast and hauled in *by hand* and without any winch, winder or spool".

The prohibition against use of any *hydraulic dredge or mechanical dredge of any kind* is, in our opinion, an attempt by the Legislature to define or redefine the "dredge" that may be used in taking clams. This restates, in effect, that clams may be legally taken by those devices named in the statute, namely, rakes, tongs, patent tongs, dredges or hand scrapes. Section 651(a). We believe that the term "hydraulic dredge or mechanical dredge of any kind" means that a *mechanical dredge* is prohibited and not the type of dredge or hand scrape which has been used these many years past.

It is not a "mechanical device" which is prohibited, as mentioned in your letter, but a mechanical dredge. A dredge is defined by law in Section 649(c) of the Article. So, too, is a "hand scrape" (Section 649(d)), which you state is the device used in taking clams from the Bays herein mentioned.

We are of the opinion for the reasons herein stated that hard shell clams may be taken or caught by hand scrapes, as defined in Section 649(d), or by any of the devices mentioned in Section 651(a) of Article 66C, and by no other means—except that this rule does not apply to leased beds or to the Atlantic Ocean.

EDWARD D. E. ROLLINS, *Attorney General*.

NOAH A. HILLMAN, *Spec. Asst. Attorney General*.

CONSERVATION—THE FUND KNOWN AS THE "OYSTER FUND"
MAY BE USED FOR THE PURCHASE OF AN AIRPLANE TO
BE USED BY THE TIDEWATER FISHERIES AS PART OF
THEIR DUTY IN THE PLANTING OF OYSTERS.

December 16, 1953.

*Mr. Arthur H. Brice, Chairman,
Department of Tidewater Fisheries.*

This is in reply to your inquiry concerning specially collected taxes and revenue derived by the Department of Tidewater Fisheries from sale of seed oysters or other sources, which you desire to use for the purchase of certain equipment. You state that this equipment will be used to replace other similar equipment which you operate, in part, to supervise, control and protect oyster plantings of the State of Maryland. The equipment is an airplane to be purchased in exchange for the present one which has become obsolete. Inasmuch as no specific allocation of funds for the purpose desired has been made by the General Assembly, you ask whether you might properly use unexpended funds, which you have, from the monies known as the "Oyster Fund".

Reference is made, first, to the powers conferred upon your Commission. Art. 66C, Section 7, Ann. Code of Maryland. The statute gives the Commission "general supervisory power, regulation and control over the following natural resources of the State, within the bounds of tidewater, viz: fish, crabs, terrapin, oysters, clams and other shellfish." It further reposes in the Commission "the power conferred and * * * duties imposed by all laws now in force or hereafter enacted relating to any of the above subjects, * * *".

It is quite apparent that it was the intent of the General Assembly to grant the Commission wide authority and powers, within the area of its purpose. Moreover the grant specifically authorizes the Commission to "operate, sell, buy,

lease, *exchange*, rent or repair such vehicles, vessels, boats, nets *and other equipment* as may be necessary for its work, * * * ". Apparently the limitation of these powers is only subject "to the provisions of the Budget and Procurement Law, Article 15A of the Code". Sec. 7, *supra*.

The Budget and Procurement Law, as it applies to the facts before us, deals with the use of "dedicated" funds for specific purposes and payment for the purpose or purposes for which the same are dedicated. In the situation presented, the dedicated fund is the "Oyster Fund".

Use of the term *oyster fund* is found in a number of places in Article 66C. The monies collected by the Commission, which are to be deposited in the Oyster Fund, are mentioned in Section 664—"Oyster Fund", Article 66C, in these words—

"All monies received by the Comptroller of the Treasury, under the provisions of this Article, from license fees, taxes, fines, penalties, forfeitures, or any other source, shall be credited by said Comptroller to the Oyster Fund."

The question you pose for solution must be determined by a consideration of the powers of the Commission, as limited by the Budget and Procurement Law, together with a sensible construction of the provisions of Section 660 (j) of said Article. So much of it as is pertinent is herewith set forth:

"The Department of Tidewater Fisheries or its successors shall expend for the *planting* of oyster shells, other cultch or seed oysters on the natural oyster bars or seed areas *or for the purchase of necessary equipment to plant said materials* and for no other purpose (1) all funds appropriated in the Budget for oyster propagation, and (2) all monies required by Section 664 of this sub-title to be credited by the Comptroller to the Oyster

Fund. Any unexpended balance in the Oyster Fund at the end of any fiscal year shall remain in the Fund and be spent for the planting of shells or seed oysters during subsequent years and shall not be spent for any other purpose *nor shall such moneys revert to general funds. * * **. (Emphasis supplied)

The foregoing section must be read and considered, also, in conjunction with sub-sections (b), (f), (h) and (i). These cover the authority to close the Chesapeake Bay oyster bars to plant oysters, shells or other cultch; levying of a special tax on closed areas, etc.

It is quite clear that under Section 660 (j) of the Article, the Department of Tidewater Fisheries is authorized to spend the monies in the Oyster Fund *without any limitation* other than mentioned therein. The statute provides for the planting of shells on the natural bars or seed areas and provides for the purchase of *necessary equipment* to plant said materials. What is necessary equipment is determinable by the Commission, within the bounds of reason, under Section 7 of the Article, *supra*.

While the words "necessary equipment" may be termed words of limitation on the power of the Commission nevertheless, as already stated, it is their discretion which is to be used. However, we believe the limiting power bears more on the *purpose* of the use of the Fund. What is it to be used for? The statute reads for the purpose "to plant said materials". The Fund could not be used for salaries, office equipment, etc. It must be used for *equipment* which relates to the planting of oyster shells, cultch or seed oysters. Therefore, if the airplane is used to supervise, control and protect the oyster planting of the State it would reasonably have sufficient relation to the subject matter.

We conclude, on the facts presented and a consideration of the whole purpose underlying use of the Oyster Fund, that the airplane may be purchased, or exchanged for the

present one, and that funds necessary to expend for same may be used from the Oyster Fund. It is assumed that any payment for the present airplane will go into the Oyster Fund. See, too, 1 Op. A.G. 68.

EDWARD D. E. ROLLINS, *Attorney General*.

NOAH A. HILLMAN, *Spec. Asst. Attorney General*.

CONSERVATION—ART. 66C, SEC. 131(7) CONSTRUED TO DEFINE THREE DISTINCT CRIMES—SHOOTING FROM AUTOMOBILES—SHOOTING ON OR NEAR A HIGHWAY—HAVING LOADED GUN OR RIFLE IN AN AUTOMOBILE.

December 28, 1953.

Game and Inland Fish Commission.

Of recent date you asked this office to interpret Section 131(g) of Article 66C of the Maryland Code, dealing generally with Natural Resources, and specifically with shooting from automobiles, shooting within 100 yards of a paved highway, and having a loaded gun or rifle in or on an automobile or other vehicle. Your specific question is, Does having a loaded gun or rifle in or on an automobile or other vehicle constitute a separate crime?

It is our opinion that this Section defines three distinct offenses. First, it makes it unlawful to shoot at any wild bird or animal, whether it be a game bird or animal or not, from any automobile or other vehicle. Second, it makes it unlawful to shoot on or within 100 yards of any paved public highway in any County of this State. Kent County is excepted from this provision because in Kent County it is against the law to shoot from any public highway whether it is paved or not. Third, under this Section, it is a violation to have a loaded shot gun or rifle in or on an automobile or other vehicle, regardless of whether on a paved highway or on an unpaved highway, or in an open field or in woods, or anywhere else.

As we understand it, a number of people have been arrested and fined for no other offense than having a loaded shot gun or rifle in an automobile. This seems to be the general interpretation of the law by Magistrates throughout the State. We know of no judicial decision to the contrary.

EDWARD D. E. ROLLINS, *Attorney General.*

H. CLIFTON OWENS, *Asst. Attorney General.*

CONSTITUTIONAL LAW

BILL IS VALID IF PROPERLY SIGNED UPON PRESENTATION TO GOVERNOR EVEN THOUGH PRESENTATION DOES NOT OCCUR UNTIL AFTER JUNE 1, FOLLOWING LEGISLATIVE SESSION.

June 11, 1953.

*Hon. Theodore R. McKeldin,
Governor of Maryland.*

You have asked advice with respect to certain irregularities in the treatment of Senate Bill No. 413, enacted by the 1953 Session of the General Assembly. The Bill provides for increases in salary of the Mayor and members of the City Council of the City of Cumberland. As originally introduced, it was passed by the Senate. In the House, substantial amendments were made, primarily one calling for a referendum before the Bill should become effective. Thereafter, in a conference of representatives of both the Senate and the House, a common version was agreed upon in which the referendum requirement did not appear, and the mutually satisfactory version was subsequently enacted by both the House and the Senate.

Inadvertently, the Secretary of the Senate sent to the printer an earlier version of Senate Bill No. 413, containing the requirement for a referendum. In this form the Bill was presented to you and you signed it on April 27th. It was then assigned Chapter No. 624.

We have no doubt that the version presented to you and signed is a complete nullity, since it never received approval by both the Senate and the House. In fact, Senate Bill No. 413, as actually enacted, has never been presented to you. We are satisfied that if the appropriate steps are taken by the proper officials to present the correct version to you, and you promptly sign it, then it will become a valid subsisting law. The fact that a much greater delay than is usual will

have occurred between enactment by the House and Senate and signature by you will not, in our opinion, render the Act invalid. In *Robey v. Broersma*, 181 Md. 325, the Court of Appeals pointed out that there is "no constitutional or statutory limit to the time, after passage, within which a bill must be presented to the Governor." The Court indicated that it is a practical question and must be answered by the particular circumstances attending each case. In that case, an Act provided that it should take effect on May 1. However, it was not presented to the Governor until after that date, and was signed by him only on May 14. The Court held the Act not to be a nullity although presented to the Governor only after the date on which the Legislature intended it should take effect. It was held that the effective date was May 14, the date of signature.

It is true that in 21 Opinions of the Attorney General, 274 and 277, this office ruled that an Act to become operative must be signed before June 1 following the legislative session. However, in those opinions we were concerned with a situation in which the bill had been presented to the Governor sometime before the first of June. Where no presentation is made before the first of June, an Act is valid if promptly signed by the Governor upon presentation, even though the date of signature is after June 1. As pointed out by the Court of Appeals in *Robey v. Broersma, supra*, a contrary conclusion would lead to the undesirable possibility that the Secretary of the Senate or the Chief Clerk of the House of Delegates could prevent the going into effect of an Act by withholding its presentation from the Governor until after the arrival of the date designated by the Legislature for it to go into effect. The rule stated in 21 Opinions of the Attorney General, 274 and 277 derived from the language of Section 31 of Article III of the Constitution, which provides:

"No law passed by the General Assembly shall take effect until the first day of June next after the session at which it may be passed, unless it be otherwise expressly declared therein."

The reasoning of the Court of Appeals is equally applicable to a situation where the Legislature has specifically designated a particular date for the Act to become effective, and where, in the absence of such provision, June 1 is read into the Act as the result of the constitutional directive. In either event, it would be most undesirable for the secretarial officials of the Legislature to have a power amounting substantially to one of veto. As the Court of Appeals stated in *Robey v. Broersma*, "It would be a dangerous innovation and it should not now be introduced into our legislative system."

EDWARD D. E. ROLLINS, *Attorney General*.

FRANCIS D. MURNAGHAN, JR., *Asst. Attorney General*.

CONSTITUTIONAL LAW—EVEN YEAR SESSIONS OF GENERAL ASSEMBLY—A SINGLE BILL, COMBINING BOTH STATE-WIDE AND LOCAL PROVISIONS, MAY NOT BE ENACTED AT EVEN YEAR SESSION.

December 3, 1953.

Dr. Carl N. Everstine,
Secretary, Legislative Council.

We have your letter of November 19th in which you inform us that a special committee of the Legislative Council has been working for about a year and a half on a revision of the election laws, that the task is now substantially completed, and you ask our views on certain questions which have arisen in connection with the proposal to seek the enactment of the new law at the regular session of the General Assembly, which will convene on the first Wednesday in February, 1954. A draft of the Bill, enclosed with your letter, discloses that it has 234 sections, many of which are broken down into as many as eight or more sub-sections. Although it contains neither a title nor an enacting clause, we presume that it will follow the plan which was used with the enactment of Chapter 934 of the Acts of 1945, the last general revision of the election laws, by repealing Article 33 of the Code in its entirety and enacting a new Article in its place.

The question which arises is whether the enactment of this law at the 1954 Session of the General Assembly is permitted by the Constitution, Article III, Section 15. Prior to 1950, the General Assembly met in biennial sessions in odd years, but following the ratification by the voters of Chapter 497 of the Acts of 1947, the General Assembly now meets annually. Constitution, Article III, Section 14. The constitutional amendment did not undertake to impose any further limitations upon the powers of the General Assembly in so far as the odd year sessions are concerned, but at the even year sessions, which may continue for no longer than 30 days, its power to enact laws is limited to the following categories:

“(1) Bills having to do with budgetary revenue and financial matters of the State Government, (2) legislation dealing with an acute emergency, and (3) legislation in the general public welfare”.
Article III, Section 15.

We take it that the power to enact this law must be found, if at all, in the general public welfare provision.

Despite the fact that the proposed new law was designed to be fundamentally a public general law, it contains numerous provisions which are local in character, and it is these which have given rise to your inquiry. As samples of the local aspects of the proposed law, we find that Section 6 is confined entirely to Baltimore City and has no relation whatever to any other part of the State. Section 7 is limited in its application to Dorchester and Harford Counties. Montgomery County is the only political sub-division of the State to which Section 8 applies. Section 9 is composed of ten sub-sections, sub-section (g) of which relates to Allegany County only, and sub-section (h) to Baltimore City. Sub-sections (b) and (d) of Section 12 relate to Baltimore City and Dorchester County, respectively. Sub-section (c) of Section 16 is limited expressly to Harford County. Section 47 is inapplicable to Harford County, while Sections 48 to 53, both inclusive, apply to Baltimore City alone. It is unnecessary, we think, to recite other provisions of the proposed law to demonstrate that in many of its features it is not State-wide in its application.

In 1949, in expressing our views on the interpretation of the constitutional provision involved here, we said:

“We believe the third category embraces the whole field of legislative power, so long as it is exercised in the public *general*, as opposed to *local* or *special*, welfare.”

And further,

“* * * the language ‘general public’, as defining ‘welfare’, certainly has the same connotation as the phrase ‘public general’ in defining ‘laws,’ as distinguished from the phrase ‘public local’, used in the same circumstances. The meaning of public general laws, as distinguished from public local laws, has been established for such a long period of time and with such clarity as to leave little room for doubt, in our opinion, that the practical equivalent, namely ‘general public’, when used in defining ‘welfare’ is intended to mean legislation affecting the State as a whole, or a considerable segment thereof, as in contrast to legislation affecting a particular county, or a portion thereof.”

34 Opinions of the Attorney General, 130.

At the 1950 session of the General Assembly, Chapter 30 was enacted, prescribing the hours of work for laborers in the execution of contracts for the State of Maryland. This law also set up the machinery for the promulgation of schedules of prevailing wages. The Act was applicable to Baltimore City and twenty of the Counties, the remaining three Counties of the State having been covered by Chapter 999 of the Acts of 1945, the objective of which was somewhat similar to the Act of 1950. The Act of 1950 was challenged and in *Funk v. Mullan Contracting Co.*, 197 Md. 192, the Court of Appeals held it was unconstitutional because it was not State-wide in its application and, therefore, it violated Article III, Section 15 of the Constitution. The Court of Appeals referred to the ruling of the Attorney General (34 Opinions of the Attorney General, 130) heretofore mentioned, but it declined to adopt the views which we had expressed. Instead, the Court of Appeals said:

“We think the term ‘general’, as used in Sec. 15 of Article III of the Constitution, is intended to mean legislation that applies to all of the State

without exception. Were it not so intended, it would be an entirely useless provision."

On the same day, the Court of Appeals decided in *Washington Suburban Sanitary Comm. v. Buckley*, 197 Md. 203, that Chapter 93 of the Acts of 1950 was likewise invalid because it did not deal with an acute emergency within the meaning of the constitutional provision. So far as we are aware, these are the only cases in which the Court of Appeals has considered this constitutional provision in determining the validity of laws passed at even year sessions of the General Assembly.

In another case, which did not reach the Court of Appeals, the Circuit Court for Calvert County held that Chapter 32 of the Acts of 1950 was invalid. *Shaw v. North Beach*, Daily Record, October 6, 1950. In 12 Md. Law Rev. 124, in an article entitled "Limitations on Even-Year Legislative Sessions", it is said that the air of confusion which surrounded the 1950 Session of the General Assembly should be dispelled and legislation can now fall into clear and distinct patterns which have been established by judicial precedent. The author concludes by saying that the "general public welfare" clause means the welfare of the entire State, and if one of the twenty-three Counties or Baltimore City is exempted from the operation of an Act, it ceases to come within that provision.

Unfortunately, the pattern at this time is rather incomplete because, so far as we know, there have been no adjudications other than the three referred to above, and in each of those, the Act was held invalid. Thus, the pattern does not extend into the field of permissible legislation at all.

The question which you have presented is a difficult one, more especially so because we have a proposed law containing many provisions which clearly are State-wide in their effect, interspersed with numerous Sections and subsections which apply to one or more, but not all, of the

political sub-divisions of the State. But in view of the language of the Court of Appeals in *Funk v. Mullan, supra*, that Section 15 of Article III of the Constitution contemplates the enactment at the even year sessions of "legislation that applies to all of the State without exception", we are constrained to conclude that the Legislature may not enact at an even year session the proposed revision of Article 33 of the Code in the form in which you have presented it to us. That the several Sections to which we have referred, and perhaps numerous others, are local in character, is beyond dispute. To say that it is permissible to enact this law in 1954, is to encourage the vice to which the Court of Appeals referred in *Funk v. Mullan, supra*, when it said:

"* * * any amount of local legislation might be passed in that form, and the entire purpose of the restriction which we have heretofore discussed would be thwarted."

EDWARD D. E. ROLLINS, *Attorney General*.

J. EDGAR HARVEY, *Deputy Attorney General*.

COUNTY COMMISSIONERS

OBLIGATION TO PAY CERTAIN COSTS TO THE CLERKS OF THE COURTS.

November 25, 1953.

*Mr. Marvin I. Anderson, Counsel,
County Commissioners of Anne Arundel County.*

In your letter to this Department, you state that the County Commissioners of Anne Arundel County have paid over to the Clerk of the Circuit Court for Anne Arundel County the following amounts:

"July Term—1952	\$136.85
October Term—1952	139.25
January Term—1953	59.95
April Term—1953	146.15"

You also state that the above items paid by the County Commissioners to the Clerk were the following:

- "1. Transcribing and indexing law cases on trial docket at 30 cents each.
2. Recording minutes of court at 10 cents per page.
3. Cost in criminal cases at \$1.25 each.
4. Issuing summons for witnesses to appear before the Grand Jury at 10 cents each.
5. Swearing witnesses before the Grand Jury—10¢ each.
6. Drawing and noticing Jurors for October Term—\$25.00."

Incidentally, you state, among other things, that the Clerk of the Circuit Court generally has a large surplus each year which he turns over to the State, and, for this reason, it

seems to you that the Clerk of the Court possibly should not bill Anne Arundel County for the above items or, in fact, for any other item.

In the case of *Mayor and City Council of Baltimore v. Pattison*, 136 Md. 64, the Clerk of the Criminal Court of Baltimore sued the Mayor and City Council of Baltimore to recover fees for the following classes of service:

“* * * entering on the grand jury dockets commitments from the police justices, issuing subpoenas for witnesses to testify before the Grand Jury, filing reports from the various station houses, issuing certificates to grand and petit jurors and to witnesses, filing and docketing indictments, issuing warrants for the accused, arraigning prisoners, entering continuances, issuing subpoenas for witnesses to testify at trials, swearing the juries, issuing attachments for witnesses, defendants and bailors, and recording the minutes of the Court.”

The position of the City in that case was stated in a special plea, the substance of which was that the Clerk was not a City official; that the Mayor and City Council of Baltimore was not a party to any criminal proceeding; and that, in performing his duties in the Criminal Court, the Clerk rendered no service for the Mayor and City Council of Baltimore but rather his services were for the State or for the accused; and that there was no law which required the Mayor and City Council of Baltimore to pay the fees of the Clerk of the Criminal Court, except when the accused was acquitted or fined only 15¢. The Court, in its opinion on page 67, said:

“There is no statute which imposes this liability, but it appears to have been recognized as necessarily incident to the governmental responsibility of the Mayor and City Council of Baltimore and of the commissioners of the respective counties.”

The Court went on to say that it was a long established practice and that this long established practice has existed in the counties for the collection of similar fees, and, on page 68, the Court said:

“* * * While the State cannot be charged with the costs or sued for their recovery, there is no corresponding exemption in favor of the city and of the counties that relieves them from the duty of compensating the clerks of the courts administering justice within their limits for services required to be rendered in the public interest.”

The law expressly authorizes the Clerks to charge for such services as those upon which the pending claim is based and the fees to which they are entitled for their various official acts are definitely prescribed.

As you know, the fees which a Clerk of the Court may lawfully charge are itemized in Article 36, Section 12 of the Maryland Code, and in subsection 43 of Section 12, there is this provision:

“For any services rendered by the Clerk of any court of this State not covered or enumerated herein, the said Clerk shall be entitled to demand and receive a reasonable fee for said services.”

Then it goes on to say that if the party aggrieved is dissatisfied he may take it to the Judge of the Court and let him decide the matter. It will also be noticed that in Section 6 of Article 36 this provision is made: “For any service not mentioned in this Article which any officer may render, he shall be allowed the same fees herein allowed for similar services”. It is under this Section 6 that the case of *Baltimore v. Pattison*, above mentioned, is cited.

However, we call your attention to subsection 42 of Article 36, Section 12, which reads, as follows:

“No charge shall be made by the clerks of court against the County Commissioners of any County of the State for any of the *services enumerated herein rendered such County* except with the consent of the County Commissioners of such County.”
(emphasis supplied)

We would like to make two observations on this provision of the law. First, it refers to any and all counties and would apply to the situation presently obtaining in Anne Arundel County of which you speak. Assuming that the *Pattison* case is predicated on the common law, then subsection 42 of Section 12 of Article 36 is in derogation of the common law and is, therefore, to be strictly construed. But any construction of this statute must take into consideration the fact that it applies only to services *enumerated in Section 12* and rendered to such County. In addition to this, subsection 42 does not prevent the County Commissioners from paying any of these items if the County Commissioners consent thereto. So as we understand the law as set out in the *Pattison* case and in the statute, it appears to us that the County Commissioners are bound to pay the items mentioned in your letter, and other similar items.

We call to your attention all the provisions set out in Article 17 of the Maryland Code and especially Sections 1 and 2. Your attention is directed also to Article 24 and Article 75, Sections 173 and 177 of the Annotated Code, and to the Public Local Laws of Anne Arundel County, especially Section 271, which provides that the County Commissioners must pay the court crier's salary; and Sections 165 to 185, which deal with the County budget; especially Sections 178 and 209, which provide that the Clerk of the Grand Jury must be paid for by the County Commissioners. Sections 210 and 211 provide that the County Commissioners must pay for the Court stenographer. Sections 215 and 216 impose a duty on the Clerk of the Court to index judgments, decrees, etc. It is proper to tax such costs against litigants if it can possibly be done, but since these

indices are for the benefit of the people of the County as a whole, we can see no reason why such indices should not be paid for by the County Commissioners if that is the established practice. Section 222 provides that plat books shall be paid for out of the surplus revenue of the office. Other expenses of the Clerk of the Court are specifically covered by Sections 215 to 233, inclusive, and Section 244.

Perhaps the most important of all the Sections in the Maryland Code pertaining to the handling of funds by Clerks of Court are found in Article 17, Sections 23, 24 and 25. These Sections are so clear that they speak for themselves. However, we think that they do throw considerable light on the problems which you state in your letter. In case the Clerk of the Court of any County shall have insufficient funds to pay his salary, the State Comptroller is required to pay the deficiency from State funds. This is the only deficit that the Comptroller is specifically required to pay. The *Pattison* case, as well as Article 24, Section 7, states that where a defendant is acquitted he is not required to pay the costs, and that such costs shall be paid by the County. The Court said further in the *Pattison* case, on page 68:

“* * * A judgment of conviction in a criminal case subjects the defendant to legal responsibility for the costs as between himself and the State, but it does not affect the primary rights of the clerk as to the collection of his fees.”

In conclusion, we are of the opinion that the payment of items mentioned in your letter is the responsibility of the County Commissioners.

EDWARD D. E. ROLLINS, *Attorney General*.

H. CLIFTON OWENS, *Asst. Attorney General*.

DENTAL EXAMINERS

BOARD MAY NOT BY RULE AND REGULATION PROVIDE FOR
THE COLLECTION OF FEES NOT AUTHORIZED BY STATUTE.

June 30, 1953.

*Dr. Harry Levin, Secretary,
Maryland State Board
of Dental Examiners.*

We have your letter in which you inform us that the revenues received by your Board have reached the point where you deem additional funds are necessary to enable the Board to discharge properly its duties under the law, and in order to provide additional funds, you have asked us if the Board has the authority to make a rule and regulation whereby a fee of \$5.00 will be charged for the certificate of registration issued under the provisions of Section 5 of Article 32 of the Annotated Code of Maryland (1951 Ed.) to each person passing the Board's examination.

We find no provision of law authorizing the Board to charge a fee for the certificate of registration, although Section 6 of Article 32 does require the payment of a fee of \$1.00 for annual registration for all dentists. Section 7 authorizes a fee of \$5.00 for the issuance of a duplicate license where the original is lost or destroyed, and Section 8 fixes a fee of \$20.00 to be paid by each person applying to take the State Board examination.

The State Board of Dental Examiners occupies the same position as most of the examining boards of the State in that the costs and expenses of the Board are met from the moneys which it collects, rather than from general revenues of the State, and the Board may not, therefore, fall back upon the general treasury for funds with which to meet an operating deficit.

It is our view that the problem with which you are confronted is one requiring legislative action for its solution,

rather than the promulgation of a rule and regulation. While it is generally true that administrative boards possess the power to make rules and regulations, such rules must operate within the framework of the Acts of the General Assembly, rather than extend or broaden the area of the statute.

The statutes regulating the practice of dentistry have enumerated the fees to be collected for annual registrations, for duplicate licenses to replace those lost or destroyed, and for taking the examinations given by your Board. If additional fees are to be exacted, we believe they must originate with the General Assembly, and that under the present state of the law, your Board is without power to require their payment.

EDWARD D. E. ROLLINS, *Attorney General.*

J. EDGAR HARVEY, *Deputy Attorney General.*

DEPARTMENT OF CORRECTION

CHAPTER 625 OF THE ACTS OF 1953—HOW SENTENCES TO BE SERVED BY PAROLED PRISONERS CONVICTED OF SUBSEQUENT CRIME.

October 9, 1953.

*Mr. Enos S. Stockbridge, Chairman,
State Department of Correction.*

Your letter of recent date is acknowledged, requesting an interpretation of Article 41, Section 101, as amended by Chapter 625 of the Acts of 1953, which provides as follows:

“Whenever any paroled prisoner shall be convicted of any crime committed while on parole, and shall be sentenced as a penalty therefor, to an additional period of incarceration in any institution within this State, the time to be served on the original term shall run consecutive to such new sentence, and be served in confinement prior to the beginning of such new sentence, unless expressly ordered to the contrary by the judge imposing such new sentence. If the crime is committed in another State, the Board of Parole and Probation shall file with the Warden or Superintendent of the penal institution in such other State in which such paroled prisoner may be confined in penalty thereof, a declaration of violation of parole to serve as a detainer upon his release from such institution.”

In the case where an offender has been held in jail for some time prior to trial and the Judge, in pronouncing sentence, specifies that the sentence shall begin to run from the date on which his confinement in jail awaiting trial began, it is obvious that, in so specifying, the Judge intends to give the offender credit for the time spent in

awaiting trial, and we do not believe that such a sentence is, or would amount to an "express order," as provided for in Chapter 625 of 1953, as aforesaid. Therefore, we believe that such a sentence should run consecutively to the unserved portion of the previous sentence unless it is expressly and affirmatively ordered to the contrary by the Judge imposing the second sentence. However, we feel that the prisoner should obtain credit under such conditions for the time spent in jail awaiting trial.

EDWARD D. E. ROLLINS, *Attorney General.*

W. GILES PARKER, *Asst. Attorney General.*

EDUCATION

COUNTY SUPERINTENDENT—APPOINTMENT MADE OUT-OF-PHASE BY REASON OF VACANCY CONTINUES IN FORCE UNTIL AUGUST 1, FOLLOWING EXPIRATION OF FOUR YEARS FROM EFFECTIVE DATE.

April 21, 1953.

*Dr. Thomas G. Pullen, Jr.,
State Superintendent of Schools.*

In your letter of April 6, 1953, you ask advice as to the duration of the term of a County Superintendent of Education whose appointment, by reason of the death or resignation of his predecessor, was made effective as of some other date than August 1.

Article 77, Section 142 of the Annotated Code (1951 Ed.) provides that the County Board of Education shall make its selection in May, and that the appointment shall take effect in the following August. See 20 Opinions of the Attorney General, 644. In case of a vacancy which occurs prior to the normal expiration of a term, however, a new appointment is to be made effective at once, rather than allow the office to remain unoccupied until the succeeding August. The Section further provides that in case of such an appointment, the term of office shall be four years. The question which you present is whether, when such an out-of-phase four year appointment expires, a successor should be immediately reappointed, thus perpetuating the departure from the generally prescribed effective date of August 1.

It is our opinion that Section 142 contemplates that, in general, appointments shall take place as of August 1, and that departures from the general rule required by extraordinary terminations by death, resignation, removal for cause, or retirement, should be minimized. The Section, in part, provides, "In case of vacancy due to any cause,

the County Board of Education shall fill the vacancy and the appointment shall be for a full term of four years, and until a successor shall qualify." Thus we conclude that when an extraordinary four year term draws to a close, the incumbent should remain in office until the following August 1, at which time his successor, selected by the County Board in the normal manner in the preceding May, should take office.

EDWARD D. E. ROLLINS, *Attorney General.*

FRANCIS D. MURNAGHAN, JR., *Asst. Attorney General.*

EDUCATION—BOARDS OF EDUCATION; MEMBER THEREOF
MAY NOT PROPERLY SELL LAND TO THE BOARD FOR
SCHOOL PURPOSES.

November 19, 1953.

*Dr. Thomas G. Pullen, Jr.,
State Superintendent of Schools.*

We have your letter in connection with the acquisition of a piece of property by the Board of Education of Washington County for school building purposes. We understand that Mr. John D. Zentmyer, who is President of the County Board of Education owns this piece of land.

The School Board is forbidden the acquisition of this property by Section 70 of Article 77 of the Annotated Code of Maryland (1951 Ed.), which reads as follows:

“It shall be unlawful for any member of the Board of Education in any county in Maryland or for any County School Superintendent to be interested for profit in any contract or purchase to which the Board of Education in that county is a party, and any member of such a Board or any County School Superintendent so interested shall be deemed guilty of a misdemeanor, and upon conviction thereof after indictment by the Grand Jury, shall forfeit his office as a member of the Board of Education or as County School Superintendent, and shall be subject to a fine not to exceed Five Hundred Dollars, or imprisoned in the Maryland House of Correction for a term not to exceed one year; provided, however, that the provisions of this section shall not apply to any contract or other transaction involving the deposit of school funds in any authorized State or Federal Banking institution.”

We understand that Mr. William P. Kreykenbohm, Counsel to the Washington County Board, is of the opinion

that this disability is overcome by Section 55 of Article 77, which reads as follows:

“When land shall be required for the site of a schoolhouse, or for enlarging a school-house lot, or for playgrounds or other school purposes, and the county board of education shall for any cause be unable to contract with the owner or owners thereof upon what they deem to be a fair valuation thereof, the county board of education may institute proceedings for the acquisition of such lands, in accordance with Article 33A of the Annotated Code; but no lot so taken or enlarged shall exceed, in the whole thirty acres, including the land occupied by the school buildings.”

This Section, quoted above, provides for the acquisition of school lands by condemnation, which would mean an action at law in which Mr. Zentmyer, as President of the Board, would be a plaintiff in the case, and, at the same time, as owner of the property, would be defendant. Of course, this is an anomalous situation that this office cannot approve, and your Department should not approve. While we are not attempting to advise either you or Mr. Zentmyer as to the properties involved, we certainly do not believe that any such action as has been proposed would be free from public criticism, even in the absence of technical illegality.

We must, therefore, advise you that you cannot approve the acquisition of this piece of property while Mr. Zentmyer remains as a member of the County Board of Education for Washington County and, at the same time, owns the property which it is desired to acquire.

EDWARD D. E. ROLLINS, *Attorney General.*

W. GILES PARKER, *Asst. Attorney General.*

ESTATES

BANK ACCOUNT HELD IN NAME OF DEPOSITOR PAYABLE ON DEATH TO ANOTHER IS SUBJECT TO ADMINISTRATION IN DEPOSITOR'S ESTATE, SINCE THE WORDS "PAYABLE ON DEATH" STANDING ALONE ARE NOT EFFECTIVE TO DISPOSE OF THE ACCOUNT.

November 20, 1953.

Mrs. Agnes Phelps McAllister,
Register of Wills for Dorchester County.

We have for consideration your letter of October 20, 1953, in which you ask whether bank accounts "payable on death" to a named person are subject to administration. We understand the case before you involves a bank account which is held as follows:

"Mr. John Doe, Payable on Death to Mrs. Jane Johnson."

The disposition of bank accounts is a subject which has been often considered by the Court of Appeals of Maryland. The well settled principles which control in this State have been so clearly enunciated by the Court of Appeals in the cases of *Whalen v. Milholland*, 89 Md. 199, 43 A. 45, and *Milholland v. Whalen*, 89 Md. 212, 43 A. 43, that it is unnecessary to review them at length. Suffice it to say that, in order to avoid administration, there must have been either a gift or the creation of a trust.

We assume from your letter that the decedent died intestate. You have not indicated that there is any evidence of a gift having been made to "Mrs. Johnson". As an examination of the cases cited will indicate, the impression of a trust upon a bank account does not require the use of the word "trust" or "trustee", but there should at least be language sufficient to discern the intention of the donor to impress a trust upon the bank account. The words "payable on death", employed in the instant case, do not create a prima facie trust.

Although the facts are not entirely in point, this case seems to us to be analogous to that discussed in 26 Opinions of the Attorney General, 432, wherein it was said:

“The case is clearly distinguishable from those in which the deposit is made in trust for the depositor and others. In such instances the mere declaration of the trust is sufficient to transfer a present interest to the beneficiaries, and the retention of the bank-book by the settlor is immaterial since he holds it as trustee. See *Milholland vs. Whelan*, 89 Md. 212; 21 Opinions of the Attorney General, 768.

“The present case is simply one where the decedent not only failed to make any effective transfer of the funds but also retained complete dominion and control over them during his lifetime. It is therefore our opinion that the entire balance is a part of his estate and must be taken into account in computing both the inheritance tax and the tax on commissions.”

Under the circumstances, it is our opinion that, in the absence of further evidence of the intent of the original depositor, there has been no effective disposition of this bank account and it is subject to administration and taxation.

In order to prevent any confusion between the principles governing domestic bank accounts and United States Government Bonds “payable on death”, let us point out that the latter are created and issued according to the provisions of an Act of Congress which controls the devolution of government securities so payable without reference to the laws of the several States.

EDWARD D. E. ROLLINS, *Attorney General*.

CHARLES MCC. MATHIAS, JR., *Asst. Attorney General*.

EXTRADITION

ESCAPED CONVICTS.

February 19, 1953.

Mr. Hamilton P. Fox, Jr.,
State's Attorney for Wicomico County.

This will acknowledge receipt of your letter of February 13, 1953. You inquire whether the extradition law of this State (Annotated Code of Maryland, 1951 Edition, Article 41, Sections 15-41, inclusive) applies to fugitives who have been convicted and escaped from prison in a sister State, as well as to those against whom prosecution merely is pending.

It is true, as you point out, that the Annotated Code of Maryland, 1951 Edition, Article 27, Section 297, which applies to fugitive convicts, does provide, in part, that "* * * if such person shall be demanded by the State whence he escaped he shall be immediately delivered up agreeably to such demand". It is likewise true that the language used in the extradition sections indicates that they apply to those persons against whom prosecution merely is pending in a sister State. However, the language of the Uniform Act has been construed to apply also to escaped convicts. *Commonwealth, ex rel. Bucksbarg v. Good*, 58 A (2d) (Pa.) 842; *Commonwealth, ex rel. Davis v. Dye*, 53 A (2d) (Pa.) 750; *Powell v. Turner*, 207 Pac. (2d) (Kan.) 492, (*cert. den.* 338 U.S. 835); *U. S., ex rel. Faris v. McClain*, 42 F. Supp. 429; *Huff v. Ayers*, 71 A (2d) (N.J.) 392; *Ex parte Nabors*, 267 Pac. (N.M.) 324.

In view of the decisions to which reference has just been made, it is the opinion of this office that one who has escaped from confinement in a sister State, after conviction for a crime, and flees to this State is entitled to the benefits of the Uniform Extradition Act.

EDWARD D. E. ROLLINS, *Attorney General.*

KENNETH C. PROCTOR, *Asst. Attorney General.*

FINES & FORFEITURES

GOVERNOR—THE GOVERNOR ALONE HAS THE POWER TO
REMIT FINES & FORFEITURES.

August 7, 1953.

*Mr. A. Earl Shipley, Director,
Division of Parole and Probation.*

Some time ago you wrote us for our opinion concerning Chapter 570 of the Acts of 1949, which is codified as Article 26, Section 41, and Article 52, Section 43 of the Annotated Code of Maryland (1951 Ed.). This Act authorizes the Judges of each of the judicial circuits and Justices of the Peace and Trial Magistrates, in their discretion, to strike out the forfeiture of bond or collateral when the defendant can show reasonable grounds for his non-appearance. The question which you have raised is in effect whether the striking out of a judgment of forfeiture entitles the defendant to a remission without further action by the Governor. The power to remit fines and forfeitures is vested in the Governor by Section 20 of Article II of the Constitution, which provides in part that:

“He shall have power * * * to remit fines and forfeitures for offences against the State; * * *”

This provision is supplemented by Section 50 of Article 41 of the Annotated Code, which provides:

“The Governor may remit the whole or any part of any fine or forfeiture.”

In discussing this constitutional provision nearly twenty years ago, the Attorney General stated:

“This unequivocal language is not restricted by any other provisions of the Constitution and is, of course, the highest authority in our State on the subject.”

20 Opinions of the Attorney General, 365. See also 32 Opinions of the Attorney General, 179.

Chapter 570 of the Acts of 1949 confers express authority upon the several Judges and Justices of the Peace throughout the State to strike out judgments of forfeiture, but it does not alter in any fashion the constitutional power which the people have confided to the Governor to remit forfeitures. Consequently, in our view, it is the prerogative of the Governor alone to remit fines and forfeitures.

EDWARD D. E. ROLLINS, *Attorney General*.

J. EDGAR HARVEY, *Deputy Attorney General*.

HEALTH

STATE BOARD OF HEALTH MAY ORDER EXTENSION OF SEWERAGE SERVICE BY THE WASHINGTON SUBURBAN SANITARY COMMISSION INTO AREAS OVER WHICH THAT COMMISSION HAS JURISDICTION WHERE THE LACK OF SUCH SERVICE IS PREJUDICIAL TO PUBLIC HEALTH.

March 4, 1953.

*Dr. Robert H. Riley, Director,
State Department of Health.*

In your recent letter you state that the Arcola section of Wheaton, Maryland, which is located in Montgomery County, contains about 95 dwelling houses and is largely undeveloped due to the lack of public sewers. At present, approximately 25 of the existing private sewage disposal systems have failed, resulting in a seepage of sewage effluent on the surface of the ground where it either ponds or runs off into gutters or ditches. This condition is due to the character of the soil which is such as to prevent effective effluent absorption into the ground. The Montgomery County Health Department has refused to approve any further private sewage disposal installations in this area, and you are of the opinion that this attitude is in the best interests of public health.

The area falls within the jurisdiction of the Washington Suburban Sanitary District. A group of Wheaton citizens, several community organizations, and the Wheaton Chamber of Commerce requested the Washington Suburban Sanitary Commission to extend trunk sewers into the area. The Commission refused the request, and the Wheaton Citizens Association brought the matter to the attention of the State Board of Health. The Board recognized the need for the public sewers in the neighborhood and requested that the Sanitary Commission consider the extension of necessary trunk sewers. The Sanitary Commission requested a hearing on the matter in which request the interested Wheaton citizen groups joined.

At the December meeting of the State Board of Health a hearing was held, at which all interested parties presented evidence and arguments. The Wheaton group contended that a lack of sewers is not only a menace to health, but is interfering with the economic development of a large area of their community. They requested the Board to order the Sanitary Commission to extend the necessary trunk sewers. The Sanitary Commission maintained that the problem of the Wheaton area is a secondary one, that there are areas which are more in need of sewerage service, and that a full scale extension into the Wheaton area would embarrass the Commission's borrowing capacity, so that extensions in areas where the need is greater would be hindered. The Commission recommended a progressive extension of the requested sewers over a period of several years. The point has been made that if the Board should act in the manner requested by the citizens of Wheaton, it would be placed in the position of being called upon to determine the precedence of each project undertaken by every Sanitary Commission in the State of Maryland.

The decision to be made is fraught with many difficulties. Some of these relate to policy; others are legal in nature. The Attorney General, of course, may advise you concerning legal matters only, but may not make determinations of policy. The legal question which looms largest here relates to the authority of the State Board of Health to order the Washington Suburban Sanitary Commission to extend sewerage service to an area in which the lack of such service has created a menace to health.

Under Section 371 of Article 43 of the Annotated Code of Maryland (1951 Ed.), the State Board of Health is empowered to order the installation of a public system of sewage disposal or an extension of an existing system where the "absence or incompleteness of a public system of water supply, sewerage or refuse disposal in any County, muni-

cipality, district, sub-division or locality is, in the opinion of the State Board of Health, sufficiently prejudicial to the health or comfort of that or any other County, municipality, district, sub-division or locality". That the use of the term "district" was intended to include a Sanitary District is made evident by the Sections which follow Section 371. Thus, Section 373, which provides a method of raising money by which to finance an improvement ordered by the Board, specifically refers to a "sewerage or sanitary district" as the possible recipient of such an order. Section 382, which provides an appeal from an order of the Board refers to the taking of such an appeal by a "sewerage or sanitary district".

The law under which the Washington Suburban Sanitary District was created is found in Chapter 130 of the Montgomery County Code (1950 Ed.). Section 130-19 of that Chapter creates a Commission to be known as the Washington Suburban Sanitary Commission, under whose jurisdiction the sanitary district is to be operated. There is nothing in Chapter 130 which indicates that the sanitary district is intended to be free of the supervision of the State Board of Health to which all other political subdivisions are subject under the general law. To the contrary, Section 130-62 of Chapter 130 provides in part as follows:

"Provided that nothing herein contained shall be taken as restricting any control which the State Board of Health of Maryland is empowered to exercise within the sanitary district."

We conclude, therefore, that if the State Board of Health finds that the lack of sewerage service in the Wheaton area is creating a danger to the public health or comfort, it has authority to issue an order upon the Washington Suburban Sanitary Commission, within whose jurisdiction the area

lies. The validity of Section 371, *supra*, has been upheld by the Court of Appeals. *Welch v. Coglean*, 126 Md. 1. It was there held that the "reasonableness of the exercise" of the power conferred by that Section may be reviewed by the courts. Section 382 of Article 43 of the Code provides for court review of an order "on the ground that such order or regulation is unlawful or unreasonable, or that said order is not necessary for the protection of the public health or comfort."

As we have indicated above, the present problem presents aspects which are not legal in nature, but which relate to policy. It may very well be that the sewerage needs of the area in question present no imminent health problem, and that there are other areas within the jurisdiction of the Commission where sewerage service is more urgently needed. If such is the case, we are of the opinion that the State Board of Health is justified in requiring that the Washington Suburban Sanitary Commission present to the Board a systematic plan whereby sewerage service shall be extended to the various areas which do not presently have such service in the order of their need. There is ample statutory authority for such procedure. See Sections 366, 368 through 370 and 372 of Article 43 of the Code. A gradual extension of sewerage service simultaneously to all needy areas is a possible solution to the problem. The Board may be of the opinion that the Washington Suburban Sanitary Commission is, within its financial capacity, presently doing all in its power to extend sewerage trunk lines systematically to all needy areas, and that the Board would therefore be unjustified in interfering in the internal administration of the Sanitary Commission. On the other hand, the Board may be of the opinion that the situation in the Wheaton area presents a menace to public health and requires immediate correction. If such is the case, the Board has the authority to order the immediate extension of sewerage service to that area.

The possible solutions which we have outlined are suggestions only. We are of the opinion that the State Board of Health may require the Washington Suburban Sanitary Commission to follow any one of these courses. However, we do not feel that we have the authority to advise the Board which of these solutions will best meet the interest of public health. This is a matter for the expert knowledge of the Board.

EDWARD D. E. ROLLINS, *Attorney General.*

AMBROSE T. HARTMAN, *Asst. Attorney General.*

HEALTH—SOFT DRINKS AND OTHER NON-ALCOHOLIC BEVERAGES WHICH CONTAIN ARTIFICIAL SWEETNESS MAY NOT BE OFFERED FOR SALE IN MARYLAND.

July 22, 1953.

*Dr. Robert H. Riley, Director,
State Department of Health.*

Representatives of your Department have recently been approached by bottlers of soft drinks who have their establishments in States other than Maryland and who market artificially sweetened, carbonated beverages in other States. They wish to know whether artificially sweetened soft drinks may be sold legally in this State. You have referred the matter to us, specifically requesting our opinion relative to the applicability of Sections 160 through 173 of Article 43 of the Annotated Code of Maryland (1951 Ed.).

Article 43, Section 160, prohibits the sale, in bottles or jugs, of any soft drink or other non-alcoholic beverage, except apple cider, by any person, firm or corporation without first obtaining a license from the State Board of Health. Sections 168 and 169, which were enacted by Chapter 120 of the Acts of 1922, regulate the sugar content of soft drinks and other non-alcoholic beverages, as follows:

“168. The use of saccharin, dulcin, glucin and other artificial sweeteners is prohibited.

“169. For the purpose of Sections 160-173 all soft drinks or other non-alcoholic beverages, except non-alcoholic fruit juices, shall consist of a beverage made from pure cane or beet sugar syrup or such other sweetening liquids or substances as shall be permitted by the regulations of the State Board of Health, containing pure flavoring material with or without added fruit acid, with or without added color, provided that nothing in Sections 160-173 shall prohibit the use of any other

harmless ingredient in the manufacture of soft drinks or other non-alcoholic beverages; provided that in case pure cane or beet sugar syrups are used as the sole sweetening agents, the finished beverage shall contain no less than seven (7%) per cent by weight of sugar, except in case of Ginger Ale which must contain not less than six (6%) per cent. The provisions of this section shall not apply to non-alcoholic beverages, made in imitation of beer, bitter drinks and other similar drinks. It is provided further that when artificial coal tar colors are used nothing but the certified colors as approved by the Federal Government are permissible."

We believe that the intent of these Sections as explicitly stated is to prohibit the use of all artificial sweeteners. The bottling industry in this State so understands the law and, with one exception, no artificially sweetened soft drink is marketed here. The one exception is a company which was given permission in 1939 by Mr. A. L. Sullivan, who was then an employee of the Health Department, with the title of State Food and Drug Commissioner, to market a saccharin sweetened ginger ale for use by diabetics. You have forwarded to us a letter dated August 17, 1939, written by Mr. Sullivan and addressed to the company, in which he approved a label for the above mentioned beverage and in which he stated that a representative of the company had agreed not to advertise the product and to sell it only upon order. The sale of the beverage is not explicitly authorized by the letter, but such is its implication.

The company argues that Sections 168 and 169, *supra*, are ambiguous and that the action taken by the Food and Drug Commissioner in 1939 is tantamount to an administrative interpretation, to which the courts give great weight in arriving at the intent of the Legislature. It is true that where a statute is ambiguous or uncertain, an administrative interpretation over a long period of time

by the agency charged with its enforcement constitutes an invaluable aid in determining the intent of the lawmakers. *Bosley v. Dorsey*, 191 Md. 229, 239; *Rogan v. B. & O. Railroad Co.*, 188 Md. 44, 58; *Smith v. Higinbothom*, 187 Md. 115, 132-133; Sutherland, *Statutory Construction*, 3d Ed., Vol. II, Section 5103; 42 *Am. Jur.*, page 392 (Public Administrative Law, Section 78). However, it is equally well settled that "an administrative practice contrary to the plain language of the statute is a violation of the law; and a violation of the law, even though customary, does not repeal the law." *Bouse v. Hutzler*, 180 Md. 682, 687. See also *State Tax Comm. v. Western Maryland Ry. Co.*, 188 Md. 240, 258; Sutherland, *Statutory Construction*, 3d Ed., Vol. II, Section 5104. Thus, in *Graham v. Joyce*, 151 Md. 298, 307, the Court of Appeals said:

"* * * 'The language of a statute is its most natural expositor, and when the language is susceptible of a sensible interpretation, it is not to be controlled by any extraneous considerations.' *Alexander v. Worthington*, 5 Md. 471, 485; *Victory Sparkler Co. v. Francks*, 147 Md. 368, 378. Administrative practice opposed to such a clear, explicit statute, could only be in violation or disregard of it, and could not serve as a construction of it. A customary violation of the law does not repeal and re-enact the law. *Haughton v. Payne*, 194 U.S. 88, 99; *Ewart v. Bluejacket*, 259 U.S. 129, 138; * * *."

Sections 168 and 169 are in no sense ambiguous or conflicting. Section 168 prohibits explicitly the use of artificial sweeteners without exception. In fact, saccharin and other such products are enumerated. While Section 169 authorizes the State Board of Health to permit, by regulation, the use of sweetening substances other than pure cane or beet sugar syrup, we are of the opinion that this was intended to authorize the Board to permit the use of sweeteners falling within the classification of natural sugar

syrup. This conclusion is inescapable in light of the absolute prohibition of Section 168. Further, the State Board of Health has made no attempt to pass a regulation which purports to allow the use of any artificial sweetener in soft drinks. The letter written in 1939 by the then Food and Drug Commissioner and upon which the company apparently acted is in no sense a regulation of the State Board of Health. The adoption of such a regulation requires the action of a legally constituted board. See 42 *Am. Jur.*, page 384 (Public Administrative Law, Section 72).

It is our conclusion that the prohibition of Section 168, *supra*, against the use of artificial sweeteners for soft drinks has not been and may not be nullified by administrative interpretation. You state in your letter that there is no public health justification for the absolute prohibition of the Section. In support of this, you point to the fact that your Department has been approached by representatives of the Johns Hopkins Hospital and of the School of Hygiene and Public Health and that they indicated their interest in having such a product available to diabetics in Maryland. The product may be a desirable one, but it is not within our power to repeal an act of the General Assembly, even though the particular law may be a relic of another era and no longer conducive to the public welfare. The remedy is for the Legislature to provide, rather than the courts or the Attorney General.

You also ask whether the State Board of Health has the responsibility for the enforcement of the law in question. Section 172 of Article 43 charges the State Board of Health with the enforcement of the Sections relating to soft drinks or other non-alcoholic beverages.

EDWARD D. E. ROLLINS, *Attorney General*.

AMBROSE T. HARTMAN, *Asst. Attorney General*.

HEALTH—CHRONIC DISEASE HOSPITALS — COLLECTIONS
FROM PATIENTS ARE TO BE MADE BY THE COUNTY OR
BALTIMORE CITY, AS THE CASE MAY BE, AND NOT BY
THE STATE DEPARTMENT OF HEALTH.

July 23, 1953.

*Mr. Clemens W. Gaines, Chief, Bureau of
Management, State Department of Health.*

This is in answer to the letter in which you seek advice concerning certain problems which have arisen in connection with the administration of the law relating to chronic disease hospitals and infirmaries. Sections 559-564 of Article 43 of the Annotated Code of Maryland (1951 Ed.) Under this law, the State Board of Health is authorized to establish three institutions for needy persons who require medical, nursing or custodial care by reason of chronic illness or infirmity. Only persons who are not able to pay the cost of proper hospital care elsewhere may be admitted to these institutions. The problems with which you are confronted concern collections from patients, recertifications, and arrangements for discharging patients.

With reference to collections, you ask several questions which may be effectively treated as one; *viz.* upon what agency does the responsibility fall to make collection from patients who are able to pay something toward the cost of their hospitalization, Under Section 562 of Article 43, it is the duty of the County Welfare Board or the Department of Welfare of Baltimore City, as the case may be, to investigate the financial condition of persons certified by physicians as in need of chronic hospital and infirmary care. The Welfare Board must also investigate the financial condition of any relative or other person who may be legally chargeable with the patient's support. If the particular Welfare Board determines that the patient or some other person chargeable with his support is able to pay, the Board must specify the amount of such payments to be made, which shall not exceed the average of the per diem

cost of maintaining the patient in the particular hospital. Under Section 563 of Article 43, the County Commissioners or the Mayor and City Council of Baltimore, as the case may be, must pay into the State Treasury the sum of 75¢ per day for each patient admitted to a chronic disease hospital.

Under Section 562(c), all payments required of the patient or the person chargeable with his support must be made to, and collected by, the County Treasurer or the Treasurer of Baltimore City, as the case may be. Any amount so collected shall first be applied against the 75¢ per day which the County or Baltimore City is required to pay into the State Treasury. Any amount collected over and above the 75¢ per day shall be paid by the particular subdivision to the State Treasurer. Under Section 562(d), the County Treasurer or the Department of Welfare of Baltimore City, as the case may be, is entitled to make claim against the estate of any person for his maintenance and support while in a chronic disease hospital. The claim is a preferred one and may be waived if the enforcement of it will result in hardship to others.

It is apparent to us that the Sections above mentioned contemplate that collection and enforcement of claims which arise under the chronic disease hospital law are to be made by the governing bodies of the particular political subdivision in which the patient resided. We do not believe that the State Board of Health is vested with the responsibility or given the right to enforce collection of such claims. However, the collection of the claims is clearly a duty which the County Commissioners or the Mayor and City Council of Baltimore City, as the case may be, must perform.

A method of collection of the 75¢ per day for each patient from a particular subdivision to which the State is entitled is provided in Section 563. That Section provides that the said charge of 75¢ per day shall be collectible by the State Comptroller "in the same manner as in the case

of patients admitted to the insane hospitals of the State, as provided in Section 43 of Article 59 of the Code * * *". Applying Section 43 of Article 59 to the chronic hospital law, we find that the State Board of Health must furnish to the County Treasurer of each County having patients in the chronic hospitals a quarterly statement giving the number of patients, the name of each patient coming from and charged to the particular County, and the cost of maintenance due from such County for such patients. The Department of Health must then certify to the State Comptroller the amounts due from the several Counties for patients residing in such Counties. The State Comptroller must then notify the County Treasurer of each County relative to the amount owing by the County. The Board of County Commissioners of each County must then levy a tax in the County for the amount due the State. Should any County fail to levy the tax, it becomes the duty of the Attorney General to bring an action in the name of the State against the defaulting County to require the levying of the tax. Delinquent Counties are chargeable with interest at one per cent, upon the amount of indebtedness for each month until payment is made.

You also ask how you may effect the removal of a patient who, after admittance, is found to be financially ineligible for continued care or who no longer requires hospitalization and refuses voluntarily to vacate a bed. We believe that this problem can best be met administratively. However, if there are cases in which the patient proves adamant, which should be rare, we shall be happy to institute the necessary legal action to have the patient removed.

You ask further whether the charge of 75¢ per day may be made against the County in those cases in which patients remain in a hospital beyond the period of their eligibility for care. We are of the opinion the County is chargeable for the care of a patient in such a case. Section 563 provides, in part, as follows:

“For each patient admitted to either of the chronic hospitals and infirmaries from any county of the State or Baltimore City, the County Commissioners of said county and the Mayor and City Council of Baltimore shall pay into the State Treasury the sum of Seventy-five Cents per day, as long as said patient remains in such institution. * * *”

It appears from this that once a patient is admitted, he is a charge upon his County in the amount of 75¢ per day to and including the day he leaves the hospital.

EDWARD D. E. ROLLINS, *Attorney General.*

AMBROSE T. HARTMAN, *Asst. Attorney General.*

HEALTH DEPARTMENT—MERIT SYSTEM STANDARDS UNDER
FEDERAL REGULATIONS AS AFFECTED BY SECTION 17 OF
CHAPTER 310 OF ACTS OF 1953.

October 9, 1953.

*Mr. Clemens W. Gaines, Chief,
Bureau of Management, Department of Health.*

Your letter of recent date is acknowledged concerning the request made to you by the Federal Department of Health, Education and Welfare as to Section 17 of Chapter 310 of the Acts of 1953. We note that the Federal Department apparently takes the position that the Section referred to above might not conform with the provisions regarding examinations in the Standards for a Merit System, issued pursuant to the merit system requirement in the Social Security Act.

The Social Security Act, particularly Title 42, Section 703 U.S.C.A., which applies especially to maternal and child health services (and the other related laws are substantially similar) says that a State plan must provide for methods of administration, including maintenance of personnel standards on a merit basis.

I presume that this requirement, by application at least, would authorize the Federal Department to request or require that so-called "merit system materials" be deposited with it. However, the statute provides that "the Administrator shall exercise no authority with respect to the selection, tenure of office and compensation of any individual employed in accordance with such methods."

I note that the Federal Department has stated in paragraph 3 of its letter to you of September 3rd that they would like you to submit a statement qualifying your letter of May 28th, so as to exclude from applicability of Section 17 certain personnel engaged in programs in which the Federal Government is interested.

I do not believe that you have the authority to exclude anyone from the provisions of Section 17 of the pertinent Act of the Maryland Legislature, as such is the law of Maryland and applies to all personnel under the State Merit System, and I do not believe that any provision of Section 17 violates any statute of the Federal Government with which I am acquainted, nor does it violate the dictates of common sense providing, as it does, for the appointment of persons to jobs which cannot be filled because of the absence of qualified applicants in a technical profession or administrative capacity.

I see no harm in your notifying the Federal Government as to what your plans of operation are in connection with this matter, and I believe that the letter already given to the Regional Merit System representative by the State Commissioner of Personnel was not only proper, but should be sufficient for the purpose for which it was presented. It is to be noted that a statement that the procedure permitted by Section 17 will not be used in certain appointments, is an entirely different thing from a statement that you will "exclude from applicability of Section 17 certain State personnel," as that latter action would definitely be a denial by you of your duty to carry out the dictates of the Maryland Legislature.

EDWARD D. E. ROLLINS, *Attorney General.*

W. GILES PARKER, *Asst. Attorney General.*

INSURANCE

DEFINITION OF INSURANCE BUSINESS—LAWFUL FOR AN
INSURANCE SOLICITOR TO ADVERTISE HIMSELF AS BEING
IN THE INSURANCE BUSINESS.

August 7, 1953.

Mr. Charles S. Jackson,
State Insurance Commissioner.

We have for consideration your letter in which you note that The Maryland Association of Insurance Agents has filed a protest with your Department against permitting solicitors to hold themselves out to the public as being in the insurance business. You have asked to be advised whether or not the holder of an insurance solicitor's license should be prohibited from holding himself out to the public as being in the insurance business, and if he is in violation of the Unfair and Deceptive Practices Act if he so advertises.

Section 1 of Article 48A of the Annotated Code of Maryland provides that:

“ ‘Insurance business’, or ‘business of insurance’, means and embraces, among other things, the making, negotiating or soliciting of any contract of insurance or reinsurance, * * *.”

In the light of the express words of the statute, we think it is entirely lawful for a solicitor to advertise himself as being in the insurance business.

CHARLES MCC. MATHIAS, JR., *Asst. Attorney General.*

INSURANCE—INSURANCE COMMISSIONER HAS AUTHORITY
TO REQUIRE CERTAIN PROVISIONS IN BONDS OR POLICIES
GIVEN IN CONNECTION WITH FIREWORKS DISPLAYS.

August 20, 1953.

Mr. Charles S. Jackson,
State Insurance Commissioner.

We have for consideration your inquiry concerning your powers as Commissioner relative to the acceptance of bonds required by Article 48A, Section 100, upon the issuance of special permits for the display of fireworks.

Section 100 vests the Insurance Commissioner with wide discretion as to approval of corporate surety, fixing the amount of the penalty and determination that the fireworks display will not endanger the health or safety of persons in the locality, or cause injury to property belonging to others and provides that: "The Insurance Commissioner is hereby authorized and directed to establish such regulations as may be necessary for the enforcement of this subtitle". Accordingly, it is our opinion that you may, by regulation, require that the bond or insurance policy be issued by an authorized insurance company and that the agency issuing an insurance policy, or a certificate or binder filed in lieu of a policy, furnish evidence that it has unqualified authority to issue said policy, certificate or binder. We believe also that your regulatory powers authorize you to require the policy, certificate or binder to set forth all the terms, conditions and endorsements and to specify the manner in which a policy may be canceled.

You ask about the phraseology to meet the requirement that the undertaking be payable to the State of Maryland. The bond or policy must be filed with and approved by you before the permit is granted, and we think it is incumbent upon you to examine the instrument and to disapprove it and withhold the permit if it does not meet the require-

ments of law, one of which is that it is payable to the State of Maryland. No particular formula is required in this connection, we think, so long as the face of the instrument shows expressly that the State is the payee.

EDWARD D. E. ROLLINS, *Attorney General*.

CHARLES MCC. MATHIAS, JR., *Asst. Attorney General*.

INSURANCE—FIRE INSURANCE RATES MUST BE BASED UPON
CONSIDERATION OF THE EXPERIENCE OF THE FIRE IN-
SURANCE BUSINESS, WHICH INCLUDES BOTH STOCK AND
MUTUAL COMPANIES.

October 7, 1953.

Mr. Charles S. Jackson,
State Insurance Commissioner.

We have for consideration your letter in which you ask our opinion as to whether it is proper for you to approve rates recommended by the Maryland Fire Underwriters Rating Bureau based upon statistics accumulated only by its members which are, for the most part, stock companies, and without consideration of statistics accumulated by its non-member subscribers which are, for the most part, mutual insurance companies.

Persuasive arguments have been advanced leading to the conclusion that the practice of basing rates upon the experience of stock companies is equitable since the method used by each class of company to transact this business is somewhat different. Such classification has been provided by statute in several of the States and has been approved by both State and Federal courts. In the leading case of *German Alliance Insur. Co. v. Lewis*, 233 U.S. 389, 58 L.Ed. 1011, the Supreme Court of the United States said:

“There are certainly differences between stock companies, such as complainant is, and the mutual companies described in the bill, and a recognition of the differences we cannot say is outside the *constitutional power of the Legislature*. (Italics supplied.)

In the case of *Aetna Insur. Co. v. Commonwealth of Virginia*, 160 Va. 698, 169 S.E. 859, the court held:

“* * * the classification of ‘local mutual insurance companies and associations organized under

the laws of the State (of Virginia) conducting business only in this State and exclusively upon the assessment plan' in a class different from that in which stock fire insurance companies are classed and exempting them from the provisions of the act here in question is a reasonable exercise of *legislative discretion.*" (Italics supplied.)

But these cases depended upon specific legislative provisions that are absent from our statutes. At the same time, it is impossible to escape the clear implication of the law of Maryland, as set forth in Article 48A, Section 125, sub-section (3), paragraph (a) of sub-paragraph (3), which employs the following language:

"Due consideration shall be given to past and prospective loss experience within and outside this State, to the conflagration and catastrophe hazards, to a reasonable margin for underwriting profits and contingencies, to dividends, savings or unabsorbed premium deposits allowed or returned by insurer to their policyholders, members or subscribers, to past and prospective expenses both country-wide and those specially applicable to this State, and to all other relevant factors within and outside this State; and in the case of fire insurance rates consideration shall be given to the experience of the fire insurance business during a period of not less than the most recent five-year period for which such experience is available."

Sub-section (2) provides:

"This section applies to all insurance companies, including stock and mutual companies * * *."

In *Graham v. Joyce*, 151 Md. 298, the Court said:

"The language of a statute is its most natural expositor, and when the language is susceptible

of a sensible interpretation, it is not to be controlled by any extraneous considerations."

In *Bouse v. Hutzler*, 180 Md. 682, it was said:

"An administrative practice contrary to the plain language of the statute is a violation of the law; and a violation of the law, even though customary, does not repeal the law."

It is our opinion that the legislative intent, as indicated by the portion of the statute quoted, makes it mandatory to consider "the experience of the fire insurance business," and that this would include the experience of both stock and mutual companies. As was said in 17 Opinions of the Attorney General, 189:

"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, * * *."

If this construction of the law is in conflict with the practice of the business, or will result in injustice to the companies or to the public, recourse should be had to the General Assembly for revision of the law.

EDWARD D. E. ROLLINS, *Attorney General*.

CHARLES MCC. MATHIAS, JR., *Asst. Attorney General*.

INSURANCE—STATE INSURANCE COMMISSIONER MAY BY
RULE OR REGULATION LIMIT THE WRITING OF LIFE,
ACCIDENT AND SICKNESS INSURANCE UPON THE
APPLICATION OF PERSONS WITH INSURABLE INTERESTS.

October 14, 1953.

Mr. Charles S. Jackson,
State Insurance Commissioner.

We have for consideration your letter of July 7, 1953, in which you state that some companies are permitting the solicitation of individual life and accident and sickness insurance without the consent of the insured in writing being first obtained. You have also set forth the text of a ruling which has been suggested as a remedy for the evils inherent in such a situation, and have asked our opinion on the validity of such a ruling. The ruling, as proposed, is as follows:

“No life insurance policy or accident and sickness insurance policy except a policy of group life insurance or of group or blanket accident and sickness insurance shall be made or effectuated unless at or before the making of such contract, the individual insured, being of competent legal capacity to contract therefor, applies in writing therefor or consents in writing thereto; except in the following cases:

- (1) A spouse may, by written application, effectuate such insurance upon the other spouse.
- (2) Any person having an insurable interest in the life of a minor, or any person upon whom a minor is dependent for support and maintenance, may, by written application, effectuate such insurance upon the life of the minor.”

It is well settled in this country that the party applying for a policy of insurance upon the life of another must have an insurable interest in the life of the insured. If this were not so, and applicants were permitted to obtain insurance upon strangers' lives, there might be an inducement, or at least a temptation, to accelerate the termination of the insured life by some criminal means. A general statement of the law is found in 2 Appleman, "Insurance Law and Practice", Section 761:

"Before a person can validly procure insurance upon the life of another, he must have an insurable interest in that life. Many courts have stated broadly that insurance contracts in which the beneficiary lacked insurable interest were against public policy and void, usually upon the ground that they are mere wagering or gambling contracts. Such a wagering contract is against public policy and will not be enforced, even though the company knew that fact when issuing the policy. The test is generally whether or not the beneficiary had any pecuniary interest in the life of the insured, and where there is no such showing a speculative purpose is presumed regardless of the real intention of the parties. The contract is particularly against public policy where the insured had no knowledge of the application for and issuance of the policy.

"Other cases have held that a beneficiary in a life contract may recover after the death of the insured even though he may have no pecuniary interest in the insured's life. Broadly stated, this latter rule is usually not considered to be the law. Such beneficiary may, however, be validly designated, even though totally lacking in insurable interest, by following one special mode of procedure.

"The insured is considered to have an insurable interest in his own life. For this reason, the in-

sured may himself take out a policy of insurance and make it payable to his estate or to any other person, even though such person properly has no insurable interest in his life whatsoever.”

An insurable interest may be either by way of relationship or by way of some pecuniary interest. It is quite possible to imagine that an insurable interest may exist under circumstances where the consent of the insured will be difficult, if not impossible, to obtain. A few examples of this type of situation might be that of estranged or even divorced spouses, creditors and debtors between whom a controversy has arisen, and partners or employees who are separated by considerable distances, and who experience delay in communicating with each other. To require the consent of the insured as a prerequisite to the issuance of life insurance or health and accident insurance in any one of the suggested cases might be to foreclose the insurable interest of the estranged spouse, the creditor and the employer or partner.

Consequently, it is our opinion that the proposed ruling is not proper unless it is amended to permit the application for an issuance of policies of life, accident and sickness insurance to parties with a bona fide insurable interest in spite of the absence of consent on the part of the insured, and therefore we propose the following addition to your suggested regulation:

“(3) A creditor or employer having an insurance interest in the life of his debtor or employee may, by written application, effectuate such insurance upon the debtor or employee.

“(4) Nothing contained in Sections (1), (2) and (3) hereof shall be construed to restrict the existence of insurable interests to the several relationships enumerated therein.”

EDWARD D. E. ROLLINS, *Attorney General*.

CHARLES MCC. MATHIAS, JR., *Asst. Attorney General*.

INSURANCE—A MUTUAL INSURANCE COMPANY WHICH FINDS IT NECESSARY TO USE A PORTION OF THE CAPITAL OF ITS GUARANTY FUND TO PAY THE "INTEREST" REQUIRED BY GUARANTY FUND NOTES IS NOT COMPLYING WITH ARTICLE 48A, SECTION 221, AND SHOULD NOT BE LICENSED BY THE INSURANCE COMMISSIONER TO DO BUSINESS IN MARYLAND.

October 15, 1953.

Mr. Charles S. Jackson,
State Insurance Commissioner.

We have for consideration a letter concerning the eligibility of a Company for a license to do business in Maryland. This Company is a mutual insurance company which is organized under the laws of the State of Illinois. It is required to maintain a net surplus to policyholders of "more than \$250,000." This surplus to policyholders is also referred to in the correspondence of the Company and its attorneys as a "Guaranty Fund." It was increased to the sum of \$400,000 in 1939, but has since been depleted to the sum of \$280,000.

The Guaranty Fund was provided by lenders who advanced their money to the Company and in evidence thereof received "Guaranty Fund Notes". The Company has paid and proposes to continue to pay interest on these notes, but in order to do so it has withdrawn and must continue in the future to withdraw funds from capital, or the Guaranty Fund itself, to provide the necessary money for this purpose. It is the propriety of using the money in the Guaranty Fund to pay interest on that Fund that you wish us to consider.

In a leading Maryland case, the Court of Appeals considered the position of capital invested in insurance companies to provide a surplus. In *Goldsborough v. Siegl*, 150 Md. 557, on pages 568 and 569, the Court said:

"* * * What seems to have been contemplated was that the contributions made at that time, and

subsequently, should be retained by the company as long as they were necessary to keep the surplus up to \$50,000, so that the company might do business in Massachusetts; or until the directors voted to forego that part of the company's business. The transaction amounted to a loan of assets for a definite purpose so far as the contributors and the directors were concerned.

"But while that apparently was the purpose of those immediately connected with the transaction, such purpose was not disclosed to the public by the annual statements of the company signed and sworn to by the said contributor, filed with the insurance commissioner, abstracts of which he is required by law to publish. In these statements these contributions were listed as assets of the company and as a part of its surplus, and there was no reservation as to the purpose for which the surplus might be used. The public therefore had a right to rely upon these statements as true representations of the strength of the company. As to subsequently accruing claims of those doing business with the company *anywhere, relying on these statements*, and of *all persons* doing business with the company *in Massachusetts*, the company held these contributions impressed with a trust, on the familiar principle that where one accepts money or property to be held for the use of another he becomes a *quasi* trustee for the beneficiary in relation to the thing so held; and no technical language is necessary to create such a relation. *American Casualty Ins. Company's Case*, 82 Md. at p. 560; *Coyne v. Supreme Conclave*, 106 Md., at p. 56; *Clark v. Callahan*, 105 Md. at p. 614; *Basshor Co. vs. Carrington*, 104 Md. 629; *Hayne v. Metropolitan Trust Co.*, 67 Minn. 245, cited in *Vandiver v. Poe*, 119 Md., at p. 354.

“And where the donor represents conditions to exist between himself and the donee, which, if true, constitute him in equity the trustee of the donee, he is estopped to deny that such relation exists, as against any one having the right to rely on such representations and in fact acting on them. This is merely an application of the general principle of estoppel. But in order for this doctrine to apply it must appear that those invoking it are in a position to do so. It seems clear that for the enforcement of rights arising out of such relations equity is the appropriate tribunal. *American Casualty Insurance Company's Case*, 82 Md. 535; *Basshor Co. v. Carrington*, 104 Md. 606; *Beachey v. Heiple*, 130 Md. 683; *National Union Bank v. Miller Rubber Co.*, 148 Md. 449; *Legum v. Campbell*, 149 Md. 148; *Lupton v. American Wholesale Corporation*, 143 Md. 334; *Clews v. Johnson*, 182 U.S. 461.”

Since that ruling contemplated the insurance law before the adoption of Chapter 492, Section 119 of the Acts of 1922, we do not rely upon that case as authority for our opinion although we believe the equitable consideration stated therein applies strongly to the facts of the present case.

The structure and organization of mutual insurance companies are not susceptible of a standard definition and each case must be viewed individually. At the same time, counsel for the Company have referred your attention to the case of the *Commissioner of Internal Revenue v. National Grange Mutual Liability Company*, 80 F(2d) 316. In that case, Judge Morton carefully analyzed the nature of the mutual company which was a party litigant. His conclusion, as to the intention of the parties in that case, was as follows:

“* * * The intention of the persons interested in the respondent company clearly was to substi-

tute for the guaranty fund provided by the preferred stock one made up of borrowed money; of this there seems to be no room for doubt. The requirements of the situation compelled them to put the company's obligation to the lenders into a tenuous and unusual form. But the essential character of the obligation, i.e., to repay borrowed money, was not changed. Payments for the use of this money were therefore interest and properly deductible as expenses of doing the business. * * *

In the same opinion, Judge Morton remarked "that the company's liability for it (Guaranty Fund) should be postponed to its liability under its policies."

Although the Guaranty Fund is a secondary liability, it is indeed a liability of the Company. While it was not the intention of the parties or of the law that the Company would have to accumulate profits enabling it to be in a position to pay back the Guaranty Fund before it could pay interest on its Guaranty Fund notes, in the normal course of business it was certainly the intention of the parties that receipts from the business would take care of the ordinary losses, expenses of doing business and a reasonable profit and that the Guaranty Fund would merely provide a margin of safety for the policyholders. With these general considerations in mind, it can be seen that under normal business conditions the loss liability to the Company would be paid out of operating receipts and the Guaranty Fund would be maintained at an even level for the primary benefit of policyholders and for the secondary benefit of the holders of Guaranty Fund Notes. Under these circumstances, it can be said that a Company complies with Section 221 of Article 48A and properly may pay interest since it has provided for "all reserves and other liabilities".

A very different situation confronts us, however, when the Company's operations are unsuccessful to the extent that the Guaranty Fund is depleted so that, while the

Company may still be maintaining the surplus to policyholders within the limits required by law, it is not maintaining its ability to repay the capital advanced by the holders of Guaranty Fund Notes.

Added weight is given to this reasoning in the present instance where the Company proposes to pay the interest on the Guaranty Fund Notes out of the capital of the Fund itself. Under such a procedure, the Company would be returning the lenders' capital under guise of paying interest, without providing for "other liabilities", and actually aggravating its situation by reducing its capital and thereby making it more difficult than ever to restore its principal and provide for its secondary liability to holders of the Fund Notes.

We think the Company's payment of interest under the circumstances recited is the practical equivalent of the payment by a corporation of dividends when there are no profits available for distribution. Certainly the payment of dividends in such case is unlawful. Code, Article 23, Section 33. The difference between that situation and the one presented in your letter is in name only. In substance it is the same.

It is our opinion, therefore, that, if the Company continues to pay interest on the Guaranty Fund Notes out of the capital invested in the Guaranty Fund, the Company's operations are not being conducted in accordance with the law of Maryland and that the Company should not be licensed by your Department to do business in Maryland.

EDWARD D. E. ROLLINS, *Attorney General*.

CHARLES MCC. MATHIAS, JR., *Asst. Attorney General*.

INSURANCE—TEXAS INSURANCE COMPANY SHOULD BE ALLOWED CREDIT AGAINST THE MARYLAND RETALIATORY TAX TO THE EXTENT OF THE COST TO IT OF AN EXAMINATION MADE BY THE MARYLAND INSURANCE DEPARTMENT.

December 21, 1953.

Mr. Charles S. Jackson,
State Insurance Commissioner.

We have for consideration your letter in which you state that the Insurance Department of Maryland participated in the examination of an insurance company in Dallas, Texas, and collected from the Company the sum of \$2,283.17 for per diem fees and traveling and subsistence expenses of the participating examiner. You further state that under the statutes of the State of Texas fire insurance companies are taxed at the rate of 3.5% of their premiums written, with a surcharge of 10% of three-fourths of the tax so developed, plus a .4 of 1% fire marshal tax, so that a Maryland company doing business in Texas pays premium taxes of a little more than 4% of the premiums written.

In accordance with the provisions of Section 44 of Article 48A of the Annotated Code of Maryland (1951 Edition), companies organized under the laws of Texas and doing business in the State of Maryland are taxed by applying the Texas rates to each company's premium income in Maryland. You state that the premiums written by the insurance company in the State of Maryland during the year 1951 amounted to \$370,554.67. The normal tax was \$7,411.09, but the tax developed by applying the Texas formula amounted to \$15,452.02. The difference between the Maryland tax and the Texas tax is the area in which the retaliatory tax operates. We understand that the Company has requested you to allow a credit for examination fees amounting, as stated above, to \$2,283.17 in determining the amount of retaliatory tax which should be collected.

The examination of insurance companies is authorized by Section 55 of Article 48A of the Annotated Code of Maryland. It is provided that "The Insurance Commissioner shall be paid by the company whose affairs are examined, the traveling and other necessary expenses incurred in any such examination, and in addition thereto, a per diem fee to be fixed by the Commissioner". The retaliatory tax on insurance companies of other States or foreign countries is imposed by Section 44 of Article 48A, which provides, in part, as follows:

"(Retaliation.) When by the laws of any other state or foreign country any premium or income or other taxes, or any fees, fines, penalties, licenses, deposit requirements or other obligations, prohibitions or restrictions are imposed upon Maryland insurance companies doing business, or that might seek to do business in such other State or country, or upon the agents of said companies, which in the aggregate are in excess of such taxes, fees, fines, penalties, licenses, deposit requirements or other obligations, prohibitions or restrictions directly imposed upon insurance companies of such other state or foreign country under the statutes of this State, so long as such laws continue in force, the same obligations, prohibitions and restrictions of whatever kind shall be imposed upon insurance companies of such other state or foreign country doing business in Maryland. * * *"

In 27 Opinions of the Attorney General 213 and also in 37 Opinions of the Attorney General 233, it was pointed out that the primary purpose of the retaliatory tax is "to accord parity to the companies of each State transacting business in the other State." In the latter opinion it was further stated: "It is to be noted that Section 41 of Article 48A refers not only to taxes but also to 'other obligations * * * under the statutes of this State'."

In our latter opinion above referred to, the item for which credit was allowed the Texas company against its retaliatory tax liability was the expense of operating a rating organization. Such expense is necessary in both States, although rating services are provided by the State in Texas and by an organization of companies in Maryland. In either case, however, the companies ultimately pay the cost of the service. The Texas maintenance tax provides the revenue which supports the Texas rating service. The computation of the Maryland retaliatory tax includes consideration of the Texas Maintenance tax. To charge the Texas Company the Maryland retaliatory tax and not to allow credit for its contribution to a Maryland rating bureau would have been to assess it double for rating services.

You have further advised us that the cost of an examination of a Maryland company by a representative of the Texas Insurance Department is a permissible deduction when paying the Maryland company's tax assessed on premiums by the State of Texas. Such a credit against the premium tax brings the question of examination fees within the same rule as the cost of rating services. We feel, accordingly, that so long as the State of Texas allows credit against the tax for examination services, that you may properly allow Texas companies a similar credit against the Maryland Retaliatory Tax.

It is our opinion, therefore, that you should allow the insurance company a credit against the Retaliatory Tax in the amount of \$2,283.17.

EDWARD D. E. ROLLINS, *Attorney General.*

CHARLES MCC. MATHIAS, JR., *Asst. Attorney General.*

LICENSES

DETECTIVE AGENCIES—INVESTIGATOR FOR LAWYERS WHO SECURES INFORMATION IN CONNECTION WITH PREPARATION FOR CASES MUST OBTAIN PRIVATE DETECTIVE'S LICENSE.

October 1, 1953.

*Mr. John L. Sanford, Jr.,
State's Attorney for Worcester County.*

Your letter of September 23, 1953, asks whether a certain individual is required by the provisions of Article 56, Section 64, et seq., of the Annotated Code of Maryland (1951 Edition), as amended by Chapter 553 of the Acts of 1953, to obtain a license as a private detective. The individual conducts private investigations for members of the Bar in connection with the preparation and presentation of defenses in criminal cases and certain tort, equity and Orphans' Court matters. His services are not available to the general public but only to the members of the Bar, and his activities are confined solely to the obtaining of statements from witnesses, taking photographs, making plats of scenes of automobile accidents and reporting to lawyers, for whom he works, the results of his investigations.

As you have indicated in your letter, in 25 Opinions of the Attorney General 346, it was held that someone conducting similar activities was not required to obtain a private detective agency license. However, the law setting forth the requirements for a license has been so materially changed since the issuance of that opinion that it provides little or no authority in the present case.

It is our conclusion that, under the present law, the individual whose activities you have described must secure a license. By Section 64(a) of Article 56, the term "private detective business" is defined to include, *inter alia*, "the securing of evidence to be used before any investigating

committee, board of award, board of arbitration, or in the trial of any civil or criminal cause * * *". Obviously, this definition covers the activities which you have described. The only basis, therefore, for saying that a license is not required would be the exemption provided by Section 64 for "any attorney or counsellor-at-law in connection with the regular practice of his profession" and "any person employed by any such attorney or counsellor at law when engaged upon his employer's business". It is, however, our opinion that the exemption does not extend to the present case. The language contemplates an investigator working only for one lawyer or a law firm. The individual you have described appears not to be the employee of any single lawyer or firm but rather to be available as an independent contractor to law firms generally. Even though the language might be susceptible of a construction extending its coverage to one working for law firms generally, such a construction is not required. Since the language creates an exemption from a license fee, it is subject to the well known rule of construction that it is to be strictly construed against him seeking to fall within its terms. As was recently said by the Court of Appeals in *Comptroller of the Treasury v. Crofton Co.*, 198 Md., 398, 84 A(2d) 86:

"It is not a definition but an exemption. We must apply the familiar rules that an exemption from taxation must be strictly construed and to doubt is to deny the exemption. The words of the statute permit, but do not compel, a broader construction."

EDWARD D. E. ROLLINS, *Attorney General*.

FRANCIS D. MURNAGHAN, JR., *Asst. Attorney General*.

MARYLAND EMERGENCY HOUSING AND
PARK COMMISSION

POWERS EXTENDED TO ACCEPTING AND EXPENDING ON
BEHALF OF STATE, FUNDS PROVIDED BY FEDERAL
HOUSING AND HOME AGENCY FOR STATE OFFICE
BUILDING.

February 20, 1953.

*Hon. Theodore R. McKeldin,
Governor of Maryland.*

This letter is written in reply to yours of February 10, 1953, in which you ask to what extent the statutes of the State of Maryland permit or limit the State's participation in projects in which the Housing and Home Finance Agency is interested under appropriate Federal legislation. Your inquiries are prompted by plans to erect the State Office Building within an area now being redeveloped by the Redevelopment Commission of Baltimore City. You also ask in particular what the State's powers of participation are with respect to public housing projects of the Housing and Home Finance Agency.

It is our understanding that you do not wish our opinion as to what benefits the State may hope to obtain under the Federal law. That is a problem primarily for those charged with the administration of the Federal law. Our understanding is that rather you wish to know what authority the State has to participate in whatever benefits may be determined to be available under the Federal law, that is, whether the State qualifies as a duly authorized public agency within the meaning of the Federal statutes.

It is our opinion that the Maryland statutes adequately authorize the State of Maryland to participate in the Federal programs. By Article 78A, Sections 26 through 35 of the Annotated Code of Maryland (1951 Ed.), there is created the Maryland Emergency Housing and Park

Commission, which, among other things, is by Section 29 “specifically authorized and empowered, * * * to apply for, receive and expend without limit as to amount and under such regulations and conditions as it may deem advisable or as may be prescribed by the United States of America or other governing authority, any monies, loaned, granted or otherwise made available by the Federal Emergency Administration of Public Works of the United States, * * * the Reconstruction Finance Corporation, * * * or by any other corporation or agency of the United States of America for the purpose of making plans for, acquiring by purchase or otherwise, constructing and operating public works * * *”.

The term “public works” is defined in Section 26 as “including housing and park projects with rentals within the means of wage earners, and the demolition or abolition of unsanitary buildings and conditions, and the rehabilitation of blighted areas by means of the construction of any of the works herein mentioned.”

This grant of power is, in our opinion, broad enough to authorize the State to act in cooperation with the Federal Government with respect to either public projects under Title 42 U.S.C.A. Sections 1401 through 1433, or private housing under Title 42 U.S.C.A. Sections 1441 through 1460.

The constitutionality of the statutes permitting such participation by the State can hardly be questioned, in view of the decision in *Matthaei v. Housing Authority*, 177 Md. 506. In 36 Opinions of the Attorney General, 127, some doubt is suggested as to the constitutional propriety of a statute calling for participation in the redevelopment program of the Federal government under Title 1 of the Housing Act of 1949 (Title 42 U.S.C.A. Sections 1441 et seq.). However, the doubt arose from the provisions calling for condemnation by a public authority with the purpose of returning the property condemned to private hands.

In the present case no intention exists on the part of the State to buy property and then turn it over to private individuals. All property condemned by the State will be retained by the State for purposes of erecting a State Office Building. We can see no objection to the State's coordinating its plans for the State Office Building with those of the Baltimore Redevelopment Commission, whose activities have been specifically authorized by constitutional amendment, Article XIB of the Constitution of Maryland.

One practical difficulty which may arise as a result of this letter derives from the fact that the Maryland Emergency Housing and Park Commission is, at the present time, totally inactive. Its inactivity doubtless derives from the fact that, in general, it has been the policy of the State to encourage local political subdivisions to participate in the housing and redevelopment plans of the Federal government. See Articles 44A and 44B of the Annotated Code. There has, therefore, been no occasion for the functioning of the Maryland Emergency Housing and Park Commission. Nevertheless, now that occasion for the Commission's functioning has arisen in connection with the State Office Building, it would appear appropriate to activate it so that the powers granted to it may be exercised.

If, on the other hand, you would prefer action on behalf of the State to be carried out by the Board of Public Works directly, rather than through the Emergency Housing and Park Commission, we believe legislation will be required, transferring to the Board of Public Works the powers presently conferred upon the Emergency Housing and Park Commission. No positive statutory powers presently exist in the Board of Public Works permitting it to participate on behalf of the State in Federal projects, and the fact that such powers are specifically given to the Emergency Housing and Park Commission negatives the implication of any such powers. However, the legislative enactment necessary to confer the appropriate powers upon

the Board of Public Works would be simple in form, and, if you wish, we shall be glad to prepare a bill to the desired effect for submission to the present session of the Legislature.

EDWARD D. E. ROLLINS, *Attorney General.*

FRANCIS D. MURNAGHAN, JR., *Asst. Attorney General.*

MARYLAND SCHOOL FOR THE DEAF

USE OF THE PROPERTY AND FACILITIES OF THE SCHOOL FOR THE DEAF IS LIMITED BY THE CORPORATE CHARTER TO THE CARE, EDUCATION AND WELFARE OF DEAF AND MUTE.

December 21, 1953.

*Mr. William M. Storm, Secretary,
Board of Visitors of the Maryland School for
the Deaf.*

In your letter, you request, on behalf of the Board of Visitors of the Maryland School for the Deaf, an opinion whether the Maryland School for the Deaf may properly make available its facilities for various types of handicapped children during the summer vacation. You note in your letter that the Act of Incorporation, Chapter 247 of the Acts of 1867, provides "that the funds and estates of the said corporation, shall not at any time be diverted from the purposes contemplated by its formation, without the permission of the General Assembly of Maryland". The Act from which the above excerpt is quoted is entitled "An Act to establish and incorporate an asylum for the deaf and dumb of the State of Maryland" and the individuals named in the Act are "made and constituted a body politic and corporate by and under the name of the President and Visitors of the Asylum, for deaf and dumb mutes of the State of Maryland". It appears, therefore, that the purpose contemplated by the formation of the corporation is the betterment of the condition of the deaf and the mute.

You state in your letter that the handicapped children who would use the facilities of the Maryland State School for the Deaf, if permission is granted, are spastics, epileptics, cardiac cases and children suffering from other physical defects. You further state that such cases are recognized as a separate problem from that of the deaf and the mute.

It has long been settled in Maryland that a corporation may not deviate from the purpose for which it was formed. The Court of Appeals has ruled on this point many times and opinions in two cases are quoted below, in part:

“A corporation is the creature of the law, and is incapable of exercising any powers than those conferred by the act of incorporation, or in any other manner than it authorizes.” *Annapolis v. Harwood*, 32 Md. 471.

“The cardinal rule of statutory construction is that the intention of the Legislature must be sought first of all in the words of the statute itself. If these words convey a clear and sensible meaning, the statute must be enforced exactly as it stands, and cannot be varied by reason of any considerations found outside the statute or based on mere conjecture. * * * Acts of incorporation and statutes granting franchises or special benefits or privileges to corporations are construed strictly against the corporation.” *Rogan v. B. & O. R.R. Co.*, 188 Md. 44.

It is, therefore, our opinion that it will be improper to allow, without the permission of the General Assembly, the use of the facilities of the Maryland School for the Deaf by any individual or group of individuals who were not classified in the category of either the deaf or the mute. Our conclusion here may very well be unfortunate, because the need for the facilities of the School by the groups mentioned is no doubt very great. May we suggest, therefore, that we shall be glad to prepare a draft of a bill to amend the law if it is the feeling of the Board that the use of the School's facilities should be expanded to include the other groups.

EDWARD D. E. ROLLINS, *Attorney General*.

CHARLES MCC. MATHIAS, JR., *Asst. Attorney General*.

MENTAL HYGIENE

COUNTY COMMISSIONERS MUST INVESTIGATE THE FINANCIAL CONDITION OF EACH PERSON ADMITTED TO HOSPITALS UNDER THE LAW PROVIDING TREATMENT FOR DEPENDENT INSANE PERSONS.

January 29, 1953.

Department of Mental Hygiene.

In your recent letter you state that a man who was admitted to the Eastern Shore State Hospital on July 28, 1951, under the provisions of Article 59 of the Annotated Code of Maryland (1951 Ed.), as a charge of Dorchester County, died there on September 13, 1952. A total of \$678.33 is due from his estate or from those responsible for his support for his hospitalization. If this amount is collected, the County will be entitled to retain \$141.23, and the balance will go to the State Treasury.

You have written the County Commissioners of Dorchester County concerning the matter and their answer to you is that they have established the policy of not attempting to enforce the payment of the cost of hospitalization in this type of case. The reason they give is that experience has shown that only a small percentage of patients from Dorchester County are able to pay for care in mental hospitals. You believe that this policy may place a heavy burden upon the State, and you wish to know, therefore, whether the County Commissioners have authority to adopt it. It is probably true that if such a blanket policy is adopted, the burden upon the State Treasury will be greatly increased. Under Section 43 of Article 59, the County contributes \$125.00 per annum for the board, care and treatment of each patient who is a resident of the County and the remaining amount is paid from the Treasury of the State.

Under Sections 1 and 2 of Article 59, the State is charged with "the maintenance, care, control and treatment of all

dependent insane persons". Section 4 provides that where a resident of a County is committed under the preceding Sections, the County Commissioners are required to investigate the financial condition of the person as well as his relatives and other persons legally chargeable with his maintenance and support, in order to determine whether there is ability to make payment in whole or in part. This provision is in no sense discretionary, since it requires that the County Commissioners "shall investigate the financial condition", etc. Section 4 then goes on to provide that:

"* * * If the County Commissioners or the Department of Welfare of Baltimore City, as the case may be, shall determine that such person shall be required to pay for his or her maintenance and support while in such institution, or that his or her relatives or other persons legally chargeable with his or her maintenance and support shall be required to pay for the same, then, before any such person shall be admitted into such institution, they shall make and issue an order to that effect, and shall specify therein the amount of such payments so to be made, and the times when the same are to be made, and shall have the power to require the relatives of any such person or others legally chargeable with his or her maintenance and support, to enter into appropriate and binding agreements with respect to the making of such payments, and from time to time may modify or change the terms thereof, as circumstances may justify."

We believe that this latter provision does vest the County Commissioners with discretion to determine whether the person admitted, or other persons legally chargeable with his maintenance and support, are in fact financially able to make payment. This discretion, however, is to be exercised only after the investigation, which is required by the first portion of the Section, is made. The policy which the County Commissioners of Dorchester County have adopted

with reference to all dependent insane persons seems, therefore, contrary to the duty imposed upon them to investigate the financial condition of each and every patient.

The last paragraph of Section 4, *supra*, which is applicable to the facts related in your letter, is as follows:

“Upon the death of any person committed to any of the said institutions as aforesaid, the County Commissioners or the Department of Welfare of Baltimore City, as the case may be, shall be entitled to make claim against the estate of any such person for his or her maintenance and support while in such institution, or for the balance due therefor if part has been paid. Such claim shall constitute a preferred claim against the estate of any such person, and all claims arising hereunder against the relatives and other persons legally chargeable with the maintenance and support of such inmates, shall constitute preferred claims. All such claims may be waived by the County Commissioners or the Department of Welfare of Baltimore City, as the case may be, in their discretion, if in their judgment the enforcement of the same will result in hardship to others dependent upon those against whom such claims exist. All payments received as a result of the enforcement of such claims shall be accounted for and paid as hereinbefore provided.”

Again, the County Commissioners are vested with discretion to determine whether payment will be required. However, in exercising their discretion, they must determine in each case whether enforcement of the claim will result in a hardship “upon those against whom such claims exist”. Clearly, therefore, the County Commissioners are required to consider each case individually on its merits. The policy adopted by the County Commissioners of Dorchester County does not contemplate the consideration of each case separately, but rather it exempts all cases from payment.

The Court of Appeals of Maryland, in *Saltzgaver v. Saltzgaver*, 182 Md. 624, at pp. 635-636, made clear that the exercise of discretion has its limitations when it said:

“As stated by Lord Mansfield, discretion means ‘sound discretion guided by law.’ * * * As stated in *Bowers, supra*, par. 10: ‘If there be an authoritative command for performance in a particular way obedience must follow; if not discretion must be exercised.’”

The statute presently under discussion does furnish guides for the exercise of the discretion by the County Commissioners, other than that of hardship to those dependent upon the person responsible for payment. If the County Commissioners make no investigation of the financial condition of each patient or those persons chargeable with his maintenance and support, there is no basis for the exercise of discretion to determine whether the enforcement of any claim for payment will result in hardship to others “dependent upon those against whom such claims exist”. It is only after they have done these things that they may exercise the discretion granted by Section 4, *supra*.

Further, Section 3 of Article 59 declares the intent of the dependent insane person law, namely, that persons who have sufficient income for their own maintenance and support, or who have relatives or others legally chargeable with their support, are not entitled to the benefits of Sections 1 and 2. Therefore, it is in keeping not only with the explicit requirements of the law, but also with its express intent, that the County Commissioners investigate each case and require payment either in full or in part where the person hospitalized is able to make payments, or where there are others who are able to do so and who are legally chargeable therewith.

Concerning the case of persons last mentioned, it is noteworthy that Section 4, *supra*, provides in part:

“It is the intent of Sections 3, 4 and 5 that a husband may be liable for the support of a wife while an inmate of any such institution, a wife for a husband, a father or mother, or both for a son or daughter, and a son or daughter, or both, for a father or mother.”

While the ultimate determination of requiring payment to be made in a particular case is for the County Commissioners, in the exercise of their honest discretion, unless an investigation is made to determine the ability to pay, there is no basis upon which the County Commissioners may exercise the judgment which the law has placed in their keeping. It is only when they are in possession of the facts that they may exercise their discretion, guided by law, and determine the ultimate question of responsibility for payment.

EDWARD D. E. ROLLINS, *Attorney General.*

AMBROSE T. HARTMAN, *Asst. Attorney General.*

MOTION PICTURES

BOARD OF CENSORS—IMPOSITION OF AN ADMISSION CHARGE
DOES NOT EMPOWER BOARD TO REQUIRE THAT EDUCA-
TIONAL FILMS BE SUBMITTED TO IT FOR EXAMINATION.

October 22, 1953.

*Mr. Sydney R. Traub, Chairman,
Maryland State Board of
Motion Picture Censors.*

We have your letter of October 20th in which you advised us that the Maryland Academy of Sciences is planning to exhibit a motion picture in Baltimore City within the near future. One showing will be held at the Baltimore Polytechnic Institute, where the admission fee will range from 50¢ to 80¢, and another showing will be held at the Lyric Theatre, where the admission charge will vary from 60¢ to \$2.40. We are informed that the motion picture is a travel film of the country of Norway, and that there will be a lecturer who will speak to the audience concerning the various views as they are shown on the screen. Set forth in your letter is Rule 14 of the Board of Motion Picture Censors, which Rule, adopted on December 17, 1952, is as follows:

“In all cases where an admission fee is charged to see a motion picture film or view of the type, nature, description and character provided for in Section 23, formerly Section 22 of the Act of 1922, Chapter 390, of the General Assembly of Maryland, by and/or under the auspices or direction of any of the persons, groups, societies, organizations and agencies set forth in the said section of the said Act, each and every one of the same shall submit the said film or view to the Board for due processing, accompanied by the license fee set forth in Section 11 of the said Act, prior to such exhibition of the said film or view in the State of Mary-

land, in the event the said film or view lacks the seal of approval and the perforation of the Board.”

You have asked us to inform you if you are correct in informing the Maryland Academy of Sciences that it is required to submit the films to your Board for examination and pay the fee prescribed therefor.

You have informed us that Rule 14 was not submitted to the Attorney General for approval as to its legality, and that copies of the Rule have not been filed with the Clerk of the Court of Appeals, the Secretary of State, and the Department of Legislative Reference. Code, Article 41, Section 9. In view of the requirement of that Section that:

“* * * No rule or regulation hereafter made, promulgated or adopted shall be effective until after compliance with this section. * * *”

it is perfectly clear, we think, that your Rule, if valid, may not be enforced at this time. While Code, Article 66A, Section 16 empowers your Board, in carrying out and enforcing the purposes of the Article, to adopt such reasonable rules as may be necessary, not inconsistent with law, the provisions of Article 41, Section 9, must be observed, and until such time as the requirements of the latter statute are complied with, such of your rules and regulations as are subject to its provisions, are ineffective.

But because of the importance of your inquiry, we do not wish to dispose of it on the technical ground that the rule was not submitted to and approved by us and filed with the designated officers. We shall, therefore, consider your letter of October 20th as submitting the Rule to us for our approval as to its legality.

With the enactment of Chapter 209 of the Acts of 1916, the General Assembly established a Board of Motion Picture Censors, and provided for the examination of motion picture

films by the Board before said motion pictures were permitted to be shown in this State. Section 22 of that Act stated:

“This Act does not apply to any exhibition of, or use of films, reels or views, for purely educational, charitable, fraternal or religious purpose, by any religious association, fraternal society, library, museum, public school, private school or institution of learning.”

Section 22 remained unchanged until the enactment of Chapter 390 of the Acts of 1922, which repealed the Act of 1916 and set up an entirely new Article dealing with the subject of motion picture censorship. The portion of the law which deals with exempted films is now Article 66A, Section 23 of the Code (1951 Ed.). Its provisions are as follows:

“This Article shall not apply to any non-commercial exhibition of, or non-commercial use of films or views, for purely educational, charitable, fraternal or religious purposes, by any religious association, fraternal society, library, museum, public school, private school or institution of learning. The Board may, in its discretion, without examination thereof, issue a permit for any motion picture film, intended solely for educational, fraternal, charitable or religious purposes, or by any employer for the instruction or welfare of his employees, provided that the owner thereof either personally or by his duly authorized attorney or representative, shall file the prescribed application, which shall include a sworn description of the film. No fee shall be charged for any such permit.”

In 1919, while Section 22 of Chapter 209 of the Acts of 1916 was still in force, Attorney General Ritchie ruled that it was not clear from the law whether exhibitions for religious purposes were intended to be exempted when an

admission fee was charged, and consequently, he thought the Board of Motion Picture Censors was empowered to resolve the doubt by adopting a rule and regulation on the subject. 4 Opinions of the Attorney General, 122. Two years later, Attorney General Armstrong held that pictures shown for educational purposes were entitled to an exemption under the law, and that his conclusion was unaffected by the fact that "an admission fee sufficient to cover the cost of the film service is charged". 6 Opinions of the Attorney General, 344. More recently, we referred to both of those opinions and made the comment that if the rule referred to by Attorney General Ritchie was still effective, and an admission charge was made, in our view, the submission of the films was required, even though the other provisions of Section 23 were met. 28 Opinions of the Attorney General, 153. However, you have informed us that even if such rule were in force in 1919, it has been repealed, or at least ignored and forgotten and no record of it can be found. For that reason, the Board attempted to formulate its own rule on the subject on December 17, 1952.

The Maryland Academy of Sciences was incorporated by Chapter 151 of the Acts of 1867 of the General Assembly of Maryland. The title of the Act, we think, is significant in connection with the question presented here. The title is:

"Whereas, the cultivation of science is highly conducive to the glory and prosperity of States; *and whereas* the establishment of learned societies has been found greatly to promote this end in other countries, and in most of the States of this Union by the encouragement of the various departments of science and the collection and preservation of natural objects; *and whereas* a society has been already organized for this purpose, which is desirous of obtaining an act of incorporation, and as it is important to direct the attention of ingenious and observant men to the development of the natural resources of our State;"

Subsequently, by Chapter 345 of the Acts of 1896 the General Assembly donated to the Academy portions of the State's exhibits at the World's Industrial and Cotton Centennial Exposition, held at New Orleans in 1884, and at the World's Columbian Exposition, held at Chicago in 1893. In the preamble of this Act, it is recited that:

"It is desirable that said articles should be placed where they will be of educational value and afford pleasure and instruction to the people, and the Commissioner of the Land Office, in his report to the Governor, has recommended that they be donated to the Maryland Academy of Sciences, in the City of Baltimore, an institution which is open daily and is free to all citizens of this State."

The Maryland Academy of Sciences is presently the recipient of an annual appropriation of money out of the State Treasury in the amount of \$2,000. Chapter 661 of the Acts of 1953 (page 1410). That appropriation, along with others, appears under the heading, "State-aided Educational Institutions." The Legislature, in enacting the Budget, did not regard the Maryland Academy of Sciences as a commercial enterprise. The General Assembly has classified that organization in the category of "State-aided Educational Institutions", and we lack the power and authority, as does the Board of Censors, to reclassify the Academy.

But apart from that, the statute, Code, Article 66A, Section 23, exempts the non-commercial exhibition and non-commercial use of films for educational, charitable, fraternal or religious purposes by any religious association, fraternal society, library, museum, public school, private school or institution of learning. We presume that the non-commercial exhibition and use of films is the direct opposite of the commercial exhibition and use thereof.

Webster's New International Dictionary (2nd Ed.) Unabridged (1953) defines "Commercial" as, "1. Of or per-

taining to commerce; mercantile; hence, variously: occupied with commerce; engaged in trade; as, commercial houses; relating to or dealing with commerce; as, a commercial treaty; of the nature of commerce; as, a commercial transaction; derived by commerce or trade; as, commercial profits; fit for commerce; as, commercial wares, or packages (often implying inferiority or dilution; as, commercial butter or alcohol); in respect of commerce; as, commercial success. 2. Having financial profit as the primary aim; as, a commercial drama."

The word "commercial" is defined in Black's Law Dictionary (4th Ed.) as "relating to or connected with trade and traffic, or commerce in general."

Applying, therefore, these definitions of the word "commercial," we think they do not embrace the activities of the Maryland Academy of Sciences.

It seems to us that the test is not whether an admission fee is charged, or if one is charged, whether it is limited, as General Armstrong expressed it, to an amount sufficient to cover the cost of the film service, but rather, the test is whether there is a non-commercial exhibition of, or non-commercial use of films or views for the purposes and by the denominated groups.

It is probable that the admission fees charged by the Maryland Academy of Sciences are more than sufficient to defray the cost of procuring the films and paying the expenses incident to their exhibition. Even if this assumption is correct, that does not change the character of the Maryland Academy of Sciences from an educational institution, or alter the character of the work in which it is engaged, and place it in the classification of a commercial enterprise. It is a matter of general public knowledge, of which we take official notice, that the Academy is not engaged in the business of showing motion pictures for pecuniary gain or profit. The funds which it receives from the exhibition of

motion picture films, we are told, are used in furtherance of its work, which the General Assembly has pronounced to be educational in character. In view of the foregoing, we have no difficulty in concluding that, as applied to the Maryland Academy of Sciences, your rule is beyond the scope of the power which the General Assembly has bestowed upon the Board of Motion Picture Censors. If the Academy is to be subjected to the provisions of Article 66A by reason of an admission charge which it exacts for its showings of educational pictures, the General Assembly must enact appropriate legislation on the subject.

In our opinion your proposed Rule 14, in so far as it relates to the Maryland Academy of Sciences, undertakes to invade a field into which your power to make rules and regulations does not extend, hence we withhold our approval of it because we think in this application of it, it is null and void. To the extent that our opinion in 28 Opinions of the Attorney General, 153 may be out of harmony with the views herein expressed, it is overruled.

EDWARD D. E. ROLLINS, *Attorney General.*

J. EDGAR HARVEY, *Deputy Attorney General.*

MOTOR VEHICLES

A RESIDENT OF MARYLAND WHO OWNS AND OPERATES A MOTOR VEHICLE UPON THE HIGHWAYS OF THIS STATE MUST SECURE MARYLAND REGISTRATION AND CERTIFICATE OF TITLE EVEN THOUGH THE VEHICLE HAS BEEN REGISTERED IN ANOTHER STATE.

July 29, 1953.

*Mr. Hamilton P. Fox, Jr.,
State's Attorney for Wicomico County.*

We have recently received requests for an opinion from you, the Department of Motor Vehicles and the Maryland State Police relative to the provisions, if any, of the Motor Vehicle Laws which are violated by residents of Maryland who operate trucks on the highways of this State which are registered and titled in other States. You specifically mention a number of truck owners in your County who have registered their vehicles in Georgia or Alabama where the registration fee is considerably lower than that required under the laws of this State, thereby depriving the State of Maryland of considerable revenue. Due to the nature of our motor vehicle laws, the answer to your question has two aspects. The first of these revolves around the question whether our motor vehicle laws permit a resident to operate upon the highways of this State a motor vehicle which has been registered and titled in another State. If the answer to this is in the negative, the problem arises as to which Sections of Article 66 $\frac{1}{2}$ of the Code may be invoked for purposes of prosecution.

Various Sections of Article 66 $\frac{1}{2}$ contemplate that a resident of this State who owns a motor vehicle and operates it on our highways must have the vehicle registered and titled with the Department of Motor Vehicles of the State of Maryland. Section 22(a) of that Article requires that: "Every motor vehicle, trailer, and semi-trailer when driven or moved upon a highway shall be subject to the

registration and certificate of title provisions" of the motor vehicle laws with certain enumerated exceptions. The exceptions are unimportant for present purposes save for the one relating to non-residents. That the terms "registration" and "certificate of title", used in Section 22, are meant to refer to Maryland registration and certificate of title is manifest by Section 23, which provides that every owner of a motor vehicle subject to registration under the provisions of Article 66 $\frac{1}{2}$ shall make application to the Department of Motor Vehicles for the registration thereof, and for issuance of a certificate of title. It is thus apparent that the registration and certificate of title referred to are those issued by the authorities of this State.

As mentioned above, Section 22 allows certain exceptions to the registration and certificate of title requirements. A distinction is made between residents and non-residents of the State. Section 55, as amended by Chapter 85 of the Acts of 1953, permits a *non-resident* to operate a foreign vehicle in this State without registering the vehicle here, provided: (1) that there is displayed upon the vehicle valid registration plates issued for said vehicle at the *place of residence* of the owner; (2) that the State of residence of the owner extends the same privilege to the residents of Maryland; and (3) that if the non-resident takes up permanent residence here, he must obtain Maryland registration within 30 days of said residence. The definition of the term "resident", for purposes of the motor vehicle laws, must be considered in connection with this exemption granted to non-residents. This definition is found in Section 2(a)(43), as follows:

"Every person who is a legal resident of this State, and every non-resident (owner, corporation, manufacturer, dealer, used car dealer) owning, maintaining or operating place or places of business in this State and using motor vehicles intra-state in connection with such business in this State, or, any non-resident who maintains a temporary

residence in this State and accepts any employment or engages in any trade, profession or occupation in this State, or any non-resident who maintains a temporary residence in this State in excess of ninety days during the registration year.”

We conclude from the express requirement that all motor vehicles driven upon the highways of this State must be registered here, and from the exception which allows a non-resident to display the registration plate of his home State, that our motor vehicle laws compel every resident of this State owning and operating a motor vehicle here to register and title it with the Department of Motor Vehicles. Certain vehicles owned by residents are exempted under Section 22, as above indicated, but these are not important for purposes of the present discussion. We have ruled on a number of occasions that a non-resident who maintains a temporary residence in this State in excess of 90 days must register here, regardless of the purpose of the visit. See 35 Opinions of the Attorney General, 227 and 33 Opinions of the Attorney General, 280. The basis of those opinions has obvious application here.

While the clear intent of the law is as above indicated, the question remains as to the sanctions which may be brought to bear upon persons who are residents of Maryland, and who do not comply with the registration and titling provisions. There is no question that these persons are subject to prosecution under Section 21 of Article 66 $\frac{1}{2}$, which provides that any person who drives, or any owner who knowingly permits to be driven “upon any highway, any vehicle of a type required to be registered hereunder which is not registered or for which a certificate of title has not been issued or applied for or for which the appropriate fee has not been paid”, shall be guilty of a misdemeanor punishable by a fine. These persons are also in violation of Section 32(b) which provides that no person shall operate, or an owner knowingly permit to be operated upon any highway of this State any vehicle required to be

registered under Article 66 $\frac{1}{2}$ "unless there shall be attached thereto and displayed thereon when and as required by this Article a valid registration plate or plates issued therefor by the Department for the current registration period * * *". As we pointed out above, a resident must have his motor vehicle registered here, and the mere fact that he has the vehicle registered in another State which registration may be valid under the laws of that State, does not exempt him from the provisions of the laws of the State of Maryland, or from the requirement that "valid registration plates" be displayed.

Section 32(b) also proscribes the display of a "fictitious registration plate". You have inquired specifically whether the display of a foreign registration plate by a resident of this State may be considered a fictitious display. Inasmuch as the use of foreign tags is in violation of Section 32(b), we think this question is unimportant; nevertheless, we believe that a court would have no difficulty in concluding that the use by a resident of foreign license plates would be a fictitious display as well.

EDWARD D. E. ROLLINS, *Attorney General.*

AMBROSE T. HARTMAN, *Asst. Attorney General.*

PHYSICAL THERAPY

PERSONS DISCHARGED FROM THE MILITARY SERVICE WHO
QUALIFY FOR LICENSE WITHOUT EXAMINATION.

July 8, 1953.

*Mr. Clemens W. Gaines, Secretary,
Board of Physical Therapy Examiners.*

You have recently had several requests for licenses from persons who desire to practice physical therapy in this State and who claim to qualify for license without examination under Section 571 of Article 43 of the Annotated Code of Maryland (1951 Edition). One of these persons is a man who entered the Navy on March 14, 1949, and who had no training in physical therapy prior to that time. While in the Navy, he was given physical therapy training. He was discharged on March 13, 1953. The other person is a woman who attended physical therapy school from September, 1943, to April, 1944, and who, upon graduation, entered the Air Force and served as a physical therapist. She was discharged on December 7, 1952. Neither of these persons practiced physical therapy before entering the service. Section 571 (A), *supra*, provides for licensing without examination, as follows:

“(A) Without Examination: Any person practicing Physical Therapy in the State of Maryland on June 1, 1947 shall be entitled to be licensed as a Physical Therapist if: (1) he or she is a member of the Maryland State Registry of Physical Therapists, or Maryland State Physical Therapy Society, Inc., or (2) if: (a) he or she produces statements from three (3) active, reputable licensed doctors of medicine certifying that he or she is of good moral character and has treated patients under the direction and supervision of the certifying doctor of medicine for a period of

not less than two years in the State of Maryland prior to the application for license, or if: (b) he or she produces satisfactory evidence to the State Board of Physical Therapy Examiners, of experience and training in Physical Therapy for a period of not less than one year in an approved hospital. No applications for licenses without examination shall be accepted after January 1, 1948, unless the applicant shall be engaged in the military service of the United States or any of its allies, in which case such application shall be accepted at any time within six (6) months after honorable discharge from such military service."

The two persons above mentioned claim that, under the last sentence of the quoted provision, they are entitled to licenses without examination, inasmuch as they served in the military service of the United States and made application for their licenses within six months after honorable discharge. We do not believe that the last sentence of the quoted provision was intended to require the licensing without examination of all persons who are discharged from the service after January 1, 1948, and who apply for the license within six months of discharge. Such a result would be unreasonable and not in keeping with the obvious intent of the Section. The last sentence must be read in conjunction with what goes before it. The obvious intent is to insure that persons who would otherwise be entitled to licenses without examination will not lose that right because they were in the military service at the time the Act became effective.

We are of the opinion, therefore, that a person who was discharged from the military service may qualify under the Section only if he practiced physical therapy in this State on June 1, 1947, and if he meets one of the other requirements of the first sentence of the Section. The applications of the two persons in question should, therefore, be

denied inasmuch as neither of them was in the service on June 1, 1947, nor were they practicing physical therapy on that date or at any time prior thereto.

EDWARD D. E. ROLLINS, *Attorney General.*

AMBROSE T. HARTMAN, *Asst. Attorney General.*

POLICE COMMISSIONER

POLICE COMMISSIONER—ORDINANCE OF MAYOR AND CITY COUNCIL OF BALTIMORE AUTHORIZES THE SALE ON SUNDAY OF ARTICLES CUSTOMARILY SOLD IN DRUG STORES.

June 3, 1953.

Colonel Beverly Ober,
Police Commissioner of Baltimore City.

We have your letter of April 29, 1953, enclosing a copy of Ordinance No. 352 approved June 25, 1952, and duly passed by the voters of Baltimore City at the General Election held in November 1952. The Ordinance in authorizing certain sales on Sunday provides:

“* * * In addition to the articles hereinbefore mentioned, drug stores may sell on Sunday toilet goods, hospital supplies, thermometers, camera films, surgical instruments and appliances, rubber goods, drugs, medicines, patent medicines and all other such articles as are customarily sold in drug stores or used for the relief of pain or prescribed by physicians. * * *”

You state that claim is made that this ordinance authorizes the sale on Sunday of any article of merchandise that is customarily sold in drug stores on other days and ask our opinion in the matter.

In the case of *Ness v. Baltimore*, 162 Md. 529, the Court of Appeals considered the special Act which excepted Baltimore City from the operation of the State law regulating Sunday observance and an ordinance passed pursuant thereto. Discriminations in the ordinance between activities to be permitted and those not to be permitted on Sundays were objected to as unconstitutional because of the inequality of treatment of citizens engaged in the

activities of the one group and the other, and because of supposed deprivation of the liberty and property of those whose activities are excluded, without due process of law. The Court of Appeals said:

“* * * the mere fact of inequality is not enough to invalidate a law, and the legislative body must be allowed a wide field of choice in determining what shall come within the class of permitted activities and what shall be excluded.”

In 19 Opinions of the Attorney General, 470, it was stated:

“* * * It was unquestionably the intent of the City Council to limit the privilege of selling on Sunday, the articles described in the ordinance, to druggists. Although this may appear to be a discrimination against others selling such articles, it is the opinion of this Department that it is not such a discrimination as to invalidate the ordinance. You are therefore advised that until there is some court decision to the contrary, the ordinance should be literally construed, and the privileges conferred by the section quoted, should be limited to druggists. * * *”

We re-affirm that declaration. In our opinion drug stores of Baltimore City, under the provisions of this Ordinance, may sell on Sunday any article customarily sold in drug stores on other days.

EDWARD D. E. ROLLINS, *Attorney General.*

MARVIN H. SMITH, *Spec. Asst. Attorney General.*

POLICE COMMISSIONER—EMPLOYEE OF POLICE DEPARTMENT IS ENTITLED TO CREDIT FOR PRIOR SERVICE IN TRAFFIC COURT IF HE WAS A MEMBER OF A BALTIMORE CITY PENSION SYSTEM WHILE IN HIS PREVIOUS EMPLOYMENT.

July 1, 1953.

Colonel Beverly Ober,
Police Commissioner of Baltimore City.

We have your letter wherein you ask whether an employee of your Department who was appointed a clerk on July 1, 1924, who has been a member of the Special Fund since that date, is entitled to credit for service in the Traffic Court as a stenographer from June 1, 1921 until her appointment as clerk on July 1, 1924.

Section 592 of the Charter and Public Local Laws of Baltimore City, (1949 Ed.) provides in part:

“Any officer or employee of the said Police Department who is eligible to receive retirement payments under the provisions of this sub-title and who prior to his service in the said Department was a member of another pension or retirement system operated by the Mayor and City Council of Baltimore, shall be credited for all the purposes of this sub-title with the time so spent as a member of such other pension or retirement system. * * *”

If your employee was a member prior to July 1, 1924, of such retirement system and then proceeded to comply with the other provisions of Section 592, such employee would be entitled to credit for the service in the Traffic Court.

If, on the other hand, the service as a stenographer in Traffic Court at that time came under the Police Department, then the employee would be entitled to credit for

such service provided that contributions were made at the time of such service as presently required by sub-section 8 of Section 583 of the Charter and Public Local Laws of Baltimore City (1949 Ed.), which provision has continued in force without change from its original enactment by Chapter 266 of the Acts of 1900. Your Department, of course, will have a record as to whether or not such contributions were actually made.

EDWARD D. E. ROLLINS, *Attorney General*.

MARVIN H. SMITH, *Spec. Asst. Attorney General*.

POLICE COMMISSIONER—EMPLOYEE OF THE POLICE DEPARTMENT INJURED ON HIS WAY TO OR FROM WORK IS NOT ENTITLED TO THE PROFESSIONAL ATTENDANCE OF A DEPARTMENT PHYSICIAN.

August 7, 1953.

Mr. Thomas L. Miller,
Chief Personnel Officer, Police Department.

Our opinion is requested on several problems which have arisen with reference to the duty of the physicians to the Police force of Baltimore City.

Under Section 573 of the Charter and Public Local Laws of Baltimore City (1949 Ed.), the Police Commissioner is authorized to appoint seven physicians meeting the qualifications therein set forth to act as physicians of the Police Department of Baltimore City. Section 574 describes the duties of those physicians as follows:

“The duties of the said physicians shall be to examine thoroughly all applicants for position in the police force of Baltimore City and to test their entire fitness in every respect for such position; to visit all policemen, turnkeys, detectives, officers of police and clerks of said force, who may be returned as sick, and to report their condition to the said Commissioner, to visit and professionally attend any and all of the said persons who may be injured or disabled in the performance of their duties as members of the said force; to thoroughly examine and report to the said Commissioner the physical condition of each and every member of said force, who may, upon his own application, or who the said Commissioner may think should be retired from the said force and be pensioned under this sub-division of this Article and to perform all such other and further professional duties in connection with the said

department and force as the said Commissioner may from time to time deem necessary and prescribe for them."

You wish to know first whether an employee of the Police Department who is injured on his way to or from work is entitled to the professional attendance of one of the physicians. We are of the opinion that the words "performance of their duties as members of the said force" are not sufficiently broad to entitle an employee to the benefit of professional attendance in the situation which you describe. We reach this conclusion in light of the opinion of the Court of Appeals of Maryland in the case of *Lancaster v. Celanese Corp.*, 163 Md. 516. It was there held that an employee who was injured by a passing automobile, at the conclusion of his day's work, had not received an injury arising out of and in the course of his employment, within the meaning of the Workmen's Compensation Law, and that the disability resulting therefrom was not compensable. Cf. 22 Opinions of the Attorney General, 833, and an opinion to the Maryland State Firemen's Association in 38 Op. A.G. p. 340. We do not believe that the meaning of the words "in the performance of their duties as members of the said force" differs so greatly from the meaning of the term "arising out of and in the course of his employment", as would justify us in distinguishing the case of *Lancaster v. Celanese Corp.*, *supra*.

You ask also whether an employee who does not fall within a job classification specifically set forth in Section 574 may qualify for professional attendance by a Department physician. The classifications mentioned in the statute are policemen, turnkeys, detectives, officers of police and clerks of the force. The General Assembly may have intentionally omitted certain classifications. On the other hand, new classifications may have been created subsequent to the enactment of Section 574. We do not know what these classifications are, the nature of the duties of a particular classification, etc. It may be that some of them, while

called by another name, have duties identical or similar to those set forth in the statute. Therefore, rather than exclude all such classifications by the statement of a general rule, we would prefer to deal with specific cases as they arise.

EDWARD D. E. ROLLINS, *Attorney General*.

AMBROSE T. HARTMAN, *Asst. Attorney General*.

POLICE COMMISSIONER—DISPOSITION OF UNCLAIMED, SEIZED
OR ABANDONED PERSONAL PROPERTY.

November 16, 1953.

Colonel Beverly Ober,
Police Commissioner of Baltimore City.

Some time ago we conferred with Lieutenant Lorian of your Department in connection with a problem which had arisen as to the proper disposition of certain personal property which had been in the possession of your Department and unclaimed since 1930. We further understand that the same problem is presented in connection with quite a large amount of other personal property which is in the possession of your Department.

This office ruled on November 7, 1927 (12 Opinions of the Attorney General, 216) that jewelry seized by your Department should not be returned to claimants except in compliance with a writ of replevin, as otherwise no protection will exist for your Department in the event that property should be returned to someone not the true owner thereof, and we can state authoritatively that property returned under a writ of replevin is done so in compliance with a court order and, therefore, no liability can be incurred in connection therewith by any member of your Department.

There is no specific direction in the statutes telling you what to do with unclaimed personal property in your possession. However, Section 557 of the Charter of Baltimore City states, as follows:

“It shall be the duty of every officer of police, and every policeman and detective, to report to the Police Commissioner, and deliver to him all property seized or found by said officer of police, policeman or detective, immediately after the same shall have come into their possession, which property,

with the date of delivery and description of the same, and the name of the officer, policeman or detective depositing the same, shall be entered in a book by the secretary, to be provided for that purpose; said secretary shall have the custody of all such property, and shall be held responsible for the safe delivery of the same to the claimants, when ordered to do so in writing by the said Commissioner, which order shall be his voucher; and any officer, policeman or detective who shall fail or refuse for a period of twenty-four hours to deposit all such property as aforesaid, shall be subject to removal by the said Commissioner; and every officer, policeman or detective who shall wilfully refuse to return all such property as aforesaid, or shall return the same to any claimant, shall be forthwith dismissed from office."

And further, Section 583 of the Charter states, among other things, that:

"4. All lost, abandoned, unclaimed, or stolen money remaining in the possession of the Secretary of the Police Commissioner for the space of one year, and for which there shall be no lawful claimant, and all moneys arising from the sale by the said Secretary or said Commissioner of unclaimed, abandoned, lost or stolen property, and all moneys realized, derived or received from the sale of any condemned, unfit or unserviceable property belonging to or in the possession or under the control of the Police Department."

We believe that Section 583(4), as quoted above, definitely authorizes, at least by implication if not expressly, the sale of chattels remaining in your possession for the space of at least one year, and provides that the receipts from the sale of the said chattels shall be a part of the "Special Fund," as provided for by the Charter.

It is further our opinion that sales of such unclaimed chattels in your possession should be conducted after proper advertisement, which means at least once in a newspaper of general circulation in the City of Baltimore, at public auction by a licensed auctioneer, and must be sold, of course, for the best price obtainable.

EDWARD D. E. ROLLINS, *Attorney General.*

W. GILES PARKER, *Asst. Attorney General.*

POST MORTEM EXAMINERS

RECORDS TO BE PRESERVED EVEN THOUGH MICROFILMED.

June 4, 1953.

Dr. Russell S. Fisher,
Chief Medical Examiner.

Your letter in connection with the disposition of the original records of your office is acknowledged. Section 8 of Article 22 of the 1951 Code provides that it is the duty of your office "to keep full and complete records" and that "the original report of the Chief Medical Examiner, Assistant Medical Examiners or Deputy Medical Examiners and the detailed findings of the autopsy, if any, shall be attached to the record of each case".

It is our opinion that all the original records must be kept indefinitely under the present law even though micro-filmed. In 31 Opinions of the Attorney General, page 124, we advised the Department of Health that their records of vital statistics, births, deaths, marriages and divorce records, although authorized to be microfilmed, could not be destroyed under the law; and we feel that your problem is substantially the same as that posed by the Department of Health at that time.

Apparently, your only relief in the matter will be to request that the present law be amended by the Legislature.

EDWARD D. E. ROLLINS, *Attorney General.*

W. GILES PARKER, *Asst. Attorney General.*

PUBLIC IMPROVEMENT

PUBLIC IMPROVEMENTS—WHERE BUILDING CONTRACT WITH THE STATE PROVIDES FOR INSTALMENT PAYMENTS WHICH INCLUDE VALUE OF MATERIAL SUITABLY STORED AT SITE OF THE PROJECT, THE STATE IS NOT LIABLE FOR COST OF SUCH MATERIALS WHICH ARE NOT ULTIMATELY INCLUDED IN THE BUILDING.

March 28, 1953.

*Mr. Nathan L. Smith, Director,
Department of Public Improvements.*

You have asked us to advise you relative to a claim which has been made against your department by a contractor with whom the State has a contract for the construction of an admissions building at the Spring Grove State Hospital. The contractor stored seventy-five cartons of acoustical tile, valued at \$1,100, in a basement area of the Hospital. The storage space provided was considered adequate both by the contractor and by the Hospital. A break in a drain line in the area where the material was stored resulted in damage to it which rendered it useless for inclusion in the project.

The contractor contends that title to this material passed to the State as of the time it was stored and that the State should compensate him for the purchase of new tile. He relies upon a standard clause which is contained in construction agreements with the State and which provides as follows:

“Manner of payment—the owner shall make payment on account of the contract price as follows: on or about the 10th day of each month, 90% of the value, based on the contract prices, of labor and materials incorporated in the project and of materials suitably stored at the site thereof up to the first day of that month, as estimated by said architect or engineer * * *.”

We are of the opinion that this provision of the contract does not pass title to the State of material suitably stored at the site of the project. The State is contracting for a building, not for material. The clause in question merely provides a method of payment in advance.

The Supreme Court of the United States in the case of *United States v. U. S. F. & G. Co.*, 236 U.S. 512, 59 L. Ed. 696, interpreted a similar contractual provision as follows:

“* * * The contract was entire and indivisible; a completed building was the thing bargained for; the partial payments were not to be considered as an acceptance of any work or material; * * * the true intent and meaning are plain; the ‘progress payments’ were not to be treated as payments for parts of a building, but as partial payments advanced on account of a building to be completed thereafter as agreed. The contractor’s right to retain them was conditioned upon his subsequent fulfilment of the contract. * * *”

The Court of Appeals of Maryland adopted a similar construction of a building contract, which called for installment payments, in the case of *Heinse v. Howard*, 153 Md. 380, 387, when it said: “While the amount to be paid under the contract for the construction of the house was to be paid in installments, nevertheless the contract was entire and indivisible.” See also *McConnell v. Corona City Water Company*, 149 Cal. 60, 85 P. 929, *Chamberlin v. Booth and McLeroy*, 135 Ga. 719, 70 S. E. 569, and *Williston on Contracts*, Volume III, Section 885.

We are of the opinion that, under the cases above cited, the contract in question is entire and indivisible and that the State is not obliged to pay for material which ultimately is not incorporated in the building.

EDWARD D. E. ROLLINS, *Attorney General.*

AMBROSE T. HARTMAN, *Asst. Attorney General.*

PUBLIC IMPROVEMENTS—ERROR IN BID SUBMITTED BY CONTRACTOR ON STATE PROJECT MAY BE CORRECTED WHERE SAME DOES NOT AFFECT THE COMPETITIVE NATURE OF THE BIDDING.

May 6, 1953.

*Mr. Nathan L. Smith, Director,
Department of Public Improvements.*

Some time ago you wrote us concerning the propriety of allowing a rearrangement in the bids submitted by a certain company, hereinafter referred to as "X". We advised you orally at that time, and are now writing to confirm that advice. Quotations on the project in question were to be based on two separate specifications, one headed "Tenant House—Board of Mental Hygiene, Whitneys Landing", and the other headed "Implement Shed and Well House—Whitneys Landing". Bids for both projects were to be submitted at the same time, but separate prices were to be quoted on each of these projects. The bids of X contained a proposal for "Tenant House and Well House" in amount of \$10,494, and for "Implement Shed—Whitneys Landing" in amount of \$9,370. X, therefore, included the well house with the tenant house and did not include the well house with the implement shed. X thereafter became aware of the error and wrote you requesting permission to rearrange its proposals on the two projects so that the cost of the well house, which was quoted at \$1,460, might be deducted from its quotation on the tenant house and added to its quotation on the implement shed. This made the tenant house quotation \$9,034 and the implement shed and well house quotation \$10,830. As a result of this rearrangement, X became the low bidder on both projects. Prior to the requested rearrangement, X's quotation for the implement shed alone was the low bid. It is to be observed that X is not altering any figures making up the quotation submitted by him, but is transferring from one column to another a figure which by mistake, was placed in the wrong column. By reason of the transfer, of course, the totals of the columns are necessarily changed.

You wish to know whether you may properly make the rearrangement requested by X. It is to be noted that the mistake was apparently an honest one and that X erroneously grouped the well house with the tenant house and not with the implement shed. Under these circumstances, we are of the opinion that you have the authority and will be justified in making the requested rearrangement.

There is nothing in the law requiring that your Department invite sealed bids on contracts. This was recognized in the case of *Piracci Construction Co., Inc. v. Lane, et al.*, in the Circuit Court of Baltimore City, Daily Record, October 3, 1949. There, your Department received bids on a project where time was a very important element, and your Department had specified that the time for completion must be filled in by the bidders in their proposals. One of the bidders inadvertently failed to do this and your Department allowed the omission to be supplied. The Company which submitted the irregular bid did not know what was contained in the bids of its competitors at the time the irregularity was detected and the omission was supplied. Under these circumstances, the court upheld the action of your Department and said:

“The answer to the legal question raised by the plaintiff is quite simple if its counsel’s major admission in argument is kept in mind, that is, the Board is not legally required to advertise for bids and there is no statute which would have prevented it from negotiating and entering into a contract for building the stadium with any builder selected by it without inviting sealed bids. * * *

“When there are such statutory requirements the courts, at the instance of a tax payer, will determine whether the law has been observed with respect to material matters. Counsel for plaintiff have been unable to cite any legal precedent, where

a statute was not involved, in which the court sustained the plaintiff's contention with respect to the bid involved in this case. Of course, a tax payer may enjoin a proposed contract based on fraud, collusion or similar bad faith, but there is no such allegation in the bill nor would the testimony support such a finding. No question of public policy is involved which would give the court power to act if it were disposed to do so.

* * * All the Maryland cases cited by plaintiff involve the Charter of the City of Baltimore, which, as above mentioned, requires advertisement and award to the lowest responsible bidder.

“Even under said charter provisions, the city may waive slight irregularities and accept the bid notwithstanding it could reject it for such reason. *Maryland Pavement Co. v. Mahool*, 110 Md. 397, 408; *Biddison v. Whitman*, 183 Md. 620, 627. The public authority has a wide discretion in determining who is the lowest responsible bidder which will not be controlled by the courts, except for arbitrary exercise, collusion or fraud, and in addition to pecuniary responsibility, the bidders other qualifications may be considered. *Maryland Pavement Co. v. Mahool*, supra p. 408.

* * *

“As the Board was not required by law to invite bids in order to let a contract for the work and, as it reserved the right to waive any informalities in the bidding (which is not necessarily limited to slight irregularities), and to reject *any* or all bids, or to award the contract to the person deemed most advantageous to the best interests of the State, I reach the conclusion that:

(1) The Board of Public Works may consider the bid of Baltimore Contractors, Inc., even though it was not tendered until two minutes after two o'clock.

(2) The representative of the Department of Public Improvements had the right to permit the blank in said bid as to the time of completion to be filled in and to report the circumstances to the Board and the Board has the legal right in its discretion to award the contract to said Baltimore Contractors, Inc."

In an opinion to your Department in 34 Opinions of the Attorney General 217, this office defined the purpose of advertising for bids as follows: "It has been uniformly accepted by the courts that the purpose of advertising for bids under named specifications is to insure true competition in the placing of the contract for which bids are invited." We feel that the rearrangement which is requested in the present case is in no way repugnant to the basic policy underlying advertisements for bids. The change which is sought here in no way affects the otherwise competitive nature of the bids. The well house, which was included by X in the tenant house project, rather than in the implement shed project, did constitute a part of the bids as originally submitted by X. It also constituted a part of the bids submitted by all of the contractors. Therefore, to remove this from one project and place it under the project where it belongs in no way alters the detailed figures making up the bid submitted by X, but simply changes the total or gross amount of the proposal for each project. In our view, this in no way affects the competitive nature of the bidding.

EDWARD D. E. ROLLINS, *Attorney General.*

AMBROSE T. HARTMAN, *Asst. Attorney General.*

RACING COMMISSION

RACING FUND—PAYMENTS FROM.

January 27, 1953.

*Mr. D. Eldred Rinehart, Chairman,
Maryland Racing Commission.*

This office has for reply your letter dated January 16, 1953, and copy of letter from the Maryland State Fair, Inc. (owner of Laurel Race Course), to your Commission dated January 8, 1953. We have also received a letter from the attorney for the Maryland State Fair, Inc.

The questions propounded by this correspondence are as follows:

(1) May the Maryland Racing Commission at the present time determine that it will, in future years, as sums accumulate in the Racing Fund to the credit of a particular licensee, grant such funds to that licensee to reimburse it for improvements approved by the Commission and made by the licensee during the prior years, provided, of course, that there is no change in the applicable provisions of the Annotated Code of Maryland, Article 78B?

(2) May the Maryland Racing Commission in future years, in the exercise of its discretion, make grants of sums in the Racing Fund to the credit of a particular licensee for improvements previously approved by the Commission, in accordance with the requirements of the Annotated Code of Maryland, Article 78B, Section 11, which improvements were completed by such licensee in a year prior to that in which the proposed grant is considered, provided, of course, that there is no change in the applicable provisions of the Annotated Code of Maryland, Article 78B?

After due consideration of these problems, it is the opinion of this office that the answer to each of the foregoing questions is "no".

The Annotated Code of Maryland, Article 78B, Section 12(c), provides, in part, as follows:

“The amount of the Racing Fund on hand at any time, representing the deductions made by any particular licensee from the mutuel pool, previously deducted by such licensee and paid to the State as a tax, may, with the prior written and express permission of the Commission, upon such terms and conditions as it may prescribe, be granted by the Commission to that particular licensee as a contribution to its capital for any substantial alterations, additions, changes, improvements or major repairs to or upon the property owned or leased by such licensee and by it used for the conduct of racing. In determining whether to make such grant or grants as contributions to capital of any portion of the Racing Fund, the Commission shall give due consideration to whether its expenditure in each instance will promote the safety, convenience and comfort of the racing public and horse owners and generally whether it will tend toward the improvement of racing in this State. * * *”

In the year 1950, this office had occasion to consider this particular Section. In an opinion to your Commission (35 Opinions of the Attorney General, 257) the Attorney General, after quoting the portion of the Section set forth above, stated:

“The quoted language, now codified as Section 12 of Article 78B of the 1947 Supplement, is in form plainly mandatory and plainly prospective in that expenditures from the collections made as agent for the Commission may, in so many words, be expended only ‘with the prior written and express permission of the Commission.’” (Italics supplied)

Consideration of the applicable language of the Section demonstrates clearly that the Section is in form "plainly prospective"; that your Commission can make grants only from sums then on hand in the Racing Fund and only for improvements to be made—not for improvements which have already been completed.

EDWARD D. E. ROLLINS, *Attorney General.*

RACING COMMISSION—POWER TO MAKE RULES, PRESCRIBE
PURSES AND REVIEW CONDITION BOOK.

April 10, 1953.

Mr. D. Eldred Rinehart, Chairman.
Maryland Racing Commission.

This will acknowledge receipt of your letter of April 8, 1953, in which you ask the opinion of this office on the following questions:

“(1) When a licensed Racing Association advertises a daily purse distribution (exclusive of stakes) is the distribution of this sum dependent upon the Race filling as advertised or is it a guaranteed fund to be distributed to horsemen without regard as to whether advertised race or races fill or fail?

(2) If a race as published in Condition Book does not fill (through no fault of management) what, if any, is the obligation of the Association to distribute the difference between the purse advertised and the purse offered for the substitute race? A substitute race would ordinarily have cheaper horses and a smaller purse. Can the Commission under Sec. 11 of Article 78B require the Association to distribute the difference between the purse of the race failing to fill and the purse offered for the substitute race?

(3) Does ‘Condition’ as used in Sec. 11 Art. 78B mean—*Condition of Racing generally* or as contended by some Horsemen, *to condition of a Race*?

(4) Is it the prerogative of the Commission to require the Association to submit ‘Book’ or list and conditions of Races to the Horsemen for ap-

proval by them before or after it is submitted to the Commission for its approval of purse distribution as authorized under Sec. 11 Art. 78B.”

The Annotated Code of Maryland, Article 78B (Racing Commission), Section 11, in part, provides as follows:

“Said Racing Commission shall have full power to prescribe rules, regulations and conditions under which all horseraces shall be conducted within the State of Maryland. Said Commission may make rules governing, restricting or regulating betting on such races and may fix, regulate and condition the rate of charge by the licensee for admission, or for the performance of any service, or for the sale of any article on the premises of such licensee, and may regulate the size of the purse, stake or reward to be offered for the conduct of such races. * * *”

Shortly after the enactment of Article 78B, this office was asked to construe Section 11. In an opinion by the then Attorney General Alexander Armstrong (6 Opinions of the Attorney General 475), it was stated:

“* * * The Racing Commission was created for the purpose of controlling and regulating horse racing within the State of Maryland. It is clothed with ample powers to exercise a very effective control of the various organizations which conduct horse racing, and it may adopt, promulgate and enforce such rules and regulations as may seem necessarily incident to proper regulation and control. The power of the Commission is limited, however, to regulation. The Associations themselves still have functions to perform, subject to the supervision and control of the Commission. These corporations must conduct their racing meets and otherwise carry on the racing business in which they are engaged, and the Commission has no right

to invade the field of operation which is thus reserved to the associations themselves. * * *”

From the foregoing, it is clear that the powers of your Commission are limited to “regulation” of horse racing in the State of Maryland; that your Commission has no right to interfere with the Racing Associations so far as operation and management are concerned. Those details are necessarily left to the Racing Associations. Into which category do the matters referred to in your questions fall?

Under the above quoted provisions of Section 11, the Maryland Racing Commission “may regulate the size of the purse, stake or reward to be offered for the conduct of such races”. Up to the present time, the Commission has elected, as a matter of policy, to regulate purses by a requirement that the mile tracks offer, exclusive of stakes, a daily purse distribution of a specified amount. The Racing Associations have complied with this requirement except where races scheduled in the Condition Book have not filled and, accordingly, it was necessary to run a substitute race which ordinarily offered a smaller purse for the reason that the horses eligible were of cheaper quality than those eligible for the race originally scheduled. It is the opinion of this office that the daily purse distribution required by the Commission is not a guaranteed fund; that the Racing Associations fulfill their obligations when they prepare Condition Books scheduling races which carry an average daily purse distribution in the amount required by the Commission and submit such Condition Books to the Commission for its approval of purse distribution. If the horsemen feel that the Racing Associations are not acting in good faith in preparing the Condition Book, they have a right to submit their objections to the Commission for consideration. If the Commission determines that the Condition Book has been prepared in good faith and that there is no substance to the objections of the horsemen, then the burden shifts to the horsemen to fill the various races covered by the Book. If, for one reason or another, a particular

race fails to fill so that the Association holding the meeting is forced to cancel the scheduled race and run a substitute race, the Commission, in the opinion of this office, has no authority to require that the excess purse be distributed during the balance of the meeting. Such consideration is not a regulatory matter within the jurisdiction of the Commission, but is operational within the province of the several Racing Associations. The advertised daily purse distribution, if offered in good faith, is merely an offering not a guaranteed fund. It is believed that the foregoing answers the first and second questions set forth in your letter.

Referring to the third question, in view of the opinion of General Armstrong, quoted above, it is the opinion of this office that the power of the Racing Commission "to prescribe * * * conditions under which all horseracing shall be conducted in the State of Maryland" is limited to the power to prescribe general conditions. The Commission does not have jurisdiction to determine the conditions under which any particular race should be run. If the Commission were authorized to do this, it would be tantamount to assuming the manifold duties of a racing secretary. Obviously, the special conditions under which each of the many horseraces is conducted in Maryland fall within the jurisdiction of the Racing Associations—not the Maryland Racing Commission.

Finally, answering the fourth question in your letter, your Commission does not have authority to require the Racing Associations to submit Condition Books to the horsemen for approval by them either before or after they have been submitted to the Commission for approval of purse distribution. This again is a matter of operation and management with which the Commission has no right to interfere.

EDWARD D. E. ROLLINS, *Attorney General.*

KENNETH C. PROCTOR, *Asst. Attorney General.*

SHERIFF

SHERIFF WHO MADE SALE UNDER EXECUTION IS THE PROPER PARTY TO MAKE CONVEYANCE, ALTHOUGH HIS TERM OF OFFICE MAY EXPIRE BEFORE EXECUTION OF THE DEED.

September 25, 1953.

Mr. R. Paul Buhrman,
Sheriff of Frederick County.

We have for consideration your letter in which you pose the question of who should execute a deed conveying property sold under an execution by a Sheriff whose term of office has expired.

It seems that this is a novel problem in the State of Maryland and there are no reported opinions of the Courts or any statutes governing such a situation. However, the law in this country seems to be settled on the subject and the majority rule is stated in *21 Am. Jur.*, Section 90, page 51, which is quoted below :

“Unless it is otherwise provided by statute, a sheriff who has sold land under an execution may lawfully execute a deed of conveyance thereof after his tenure of office, although another sheriff may have qualified and entered on the duties of the office. Indeed, in some cases it has even been declared that the officer who made the execution sale was the only person authorized to execute the deed to the land sold. In some jurisdictions, however, the deed may be executed by the successor in office of the sheriff who made the sale.”

This rule is also referred to in 10 A.L.R., at page 1349. In support thereof, the case of *People ex rel. Ehrlich v. Grant* (1901), 61 App. Div. 238, 70 N.Y. Supp. 504, is cited, wherein “an order was affirmed granting a writ of man-

damus to compel an ex-sheriff to execute a deed to the holder of a certificate of sale, though the mandamus action was not begun until thirteen years after the sale, and long after the expiration of the term of office of the sheriff who issued the certificate”.

In view of these decisions, it appears clear that the proper person to execute a deed under the circumstances described in your letter is your predecessor in office who actually made the sale.

EDWARD D. E. ROLLINS, *Attorney General*.

CHARLES MCC. MATHIAS, JR., *Asst. Attorney General*.

SMALL LOAN LAW

SMALL LOAN LAW—CHATTEL MORTGAGES MAY NOT CONTAIN POWER OF ATTORNEY OR CONSENT TO A DECREE—FORECLOSURE PROCEEDINGS NECESSARY BEFORE FORCIBLE SEIZURE AND SALE.

June 26, 1953.

Mr. Lester L. Barrett,
Administrator of Loan Laws.

Your letter of recent date, enclosing samples of chattel mortgage forms used by various members of the small loan industry, is acknowledged. We note that you believe that the chattel mortgage forms in general use are improper under the Uniform Small Loan Law (Article 58A of the Maryland Code).

Of course, Sections 19 and 20 of Article 58A of the Code are clear and there can be no doubt that it is improper for a licensee to take a power of attorney or assignment, etc., as security for a small loan. It is our opinion, therefore, that all of the forms which you have submitted to us for study are improper, with the exception of the chattel mortgage form of the Household Finance Corporation, which provides that in case of default the mortgage may be foreclosed and that the mortgagee may thereafter take possession of said property and sell it in such manner as provided or permitted by law.

In Volume 19 of the Opinions of the Attorney General, at page 434, this office ruled, on October 6, 1934, that a clause authorizing repossession before maturity or default in payment and sale without notice was improper as being too broad to be covered by the statute. It was suggested in that opinion that it might be desirable to advocate the passage of a law at the next Legislature authorizing the Small Loan Administrator or Deputy Bank Commissioner to prescribe standard forms for chattel mortgages. It was further ruled in that opinion that a mortgage containing an

assent to the passage of a decree violated the provision forbidding the taking of a confessed judgment or a power of attorney.

In Volume 20 of the Opinions of the Attorney General (1935), there are three opinions, at pages 681, 687 and 692, which are on the point. In the opinion referred to on page 687, it was ruled that your office should not sanction the inclusion of a power of sale in a chattel mortgage covering a loan from a licensee under the Small Loan Act; and in the opinion at page 692, it was flatly ruled that licensees may not use a form of chattel mortgage containing a power of attorney or a consent to a decree. The applicable section of the Act was construed by that opinion as being intended to prevent a licensee from requiring or receiving from this class of borrowers any advance authority to either obtain a judgment or cut off his title or interest in property pledged in an ex parte manner. We find no statute nor do we see any reason to change or overrule these previous opinions of this office, and, therefore, our answers to your specific questions are as follows:

(1) A chattel mortgage under the Uniform Small Loan Law may not contain an assent to a decree.

(2) A chattel mortgage under the Uniform Small Loan Law may not properly contain a provision allowing the mortgagee to seize and sell property without a foreclosure of the mortgage in a court of competent jurisdiction.

(3) A mortgagee may not seize and repossess the property covered by the mortgage prior to institution of foreclosure proceedings.

(4) The deed of trust now being used by some of the small loan companies is improper in that it amounts to "a power of attorney".

EDWARD D. E. ROLLINS, *Attorney General.*

W. GILES PARKER, *Asst. Attorney General.*

POWERS OF ADMINISTRATOR UNDER SMALL LOAN LAW,
PROCEDURES FOR ENFORCEMENT OF LIENS, FORE-
CLOSURES, ETC.

October 15, 1953.

Mr. Lester L. Barrett,
Administrator of Loan Laws.

This is a supplemental opinion amplifying our opinion to you of June 26, 1953, concerning the propriety of various forms of chattel mortgages in use in the small loan business, and procedures in connection with the proper enforcement of liens, upon default by a borrower, under the Uniform Small Loan Law (Article 58A, Annotated Code of Maryland, 1951).

If you will refer to our previous opinion, you will note that we stated that a chattel mortgage under the Uniform Small Loan Law may not contain a provision allowing a mortgagee to seize and sell property without a foreclosure proceeding, and that mortgagees may not seize the chattels covered by the mortgage prior to the institution of foreclosure proceedings. Please note that the above refers only to forcible seizures as such and if the mortgagee obtains peaceful, quiet and lawful possession of the mortgaged chattels, either by voluntary surrender, assignment, or otherwise, there is no necessity for formal foreclosure proceedings in court, and the mortgagee may proceed to dispose of the chattels according to the terms of the mortgage if the same are permitted by law. Mortgaged chattels so obtained must, however, in any event, be sold at public sale after notice to the mortgagor of the time and place of said sale, and public advertisement of the sale (see 22 Opinions of the Attorney General, 548 and 549), and in the absence of any formal foreclosure proceeding all costs of sale must be paid by the mortgagee. If the mortgagee resorts to a foreclosure, or other form of legal proceeding, of course, the costs of such proceeding will be assessed by the court, but in the absence of such a court order, the costs of sale,

collection, storage, moving, or other related expenses must be borne by the mortgagee (18 Opinions of the Attorney General, 422, and 19 Opinions of the Attorney General, 435).

You are further advised that a deed of trust of chattels located in another State, securing a loan made under the Uniform Small Loan Law of Maryland, may not contain a power of attorney, an assent to a decree, or confession of judgment, nor may it authorize seizure and sale of the chattels in the name of the borrower.

Of course, as pointed out in our previous opinion, no chattel mortgage under the Uniform Small Loan Law may properly contain a power of sale, consent to a decree or any power of attorney, (20 Opinions of the Attorney General, 692).

You are further advised that under Section 11 of Article 58A, you have the right to require information regarding repossessions and foreclosures together with the status of the accounts of the defaulting borrower and reports of sales made as a result thereof.

EDWARD D. E. ROLLINS, *Attorney General.*

W. GILES PARKER, *Asst. Attorney General.*

STATE ROADS COMMISSION

NO EXCEPTIONS MAY BE MADE IN COMPLYING WITH LAW
REQUIRING PERMITS AND FEES FOR MOVEMENT OF
OVERSIZE VEHICLES ON STATE HIGHWAYS.

March 13, 1953.

Mr. Austin F. Shure,
Assistant to Chief Engineer.

You have asked our opinion concerning the question of whether or not exceptions in favor of state, county or local boards or agencies may be made to the law requiring permits and fees for the movement of oversize vehicles on the state highways. It is my opinion that no such exceptions validly may be made.

Section 80 (b) of Article 66 $\frac{1}{2}$, Title "Motor Vehicles", provides that "A fee is hereby imposed on *every* oversize motor vehicle using the highways of the state, the said permit to be issued by the State Roads Commission and the permit shall specify the route to be followed, and the hour and date on which the passage is to be effected and the maximum size.

The fee to be charged for said permit shall be \$10.00."
(Emphasis mine)

Section 80 (c) of said Article provides for a permit and a fee in the same amount for *all* vehicles, the weight of which is in excess of that permitted by law, when said vehicles use the State highways.

The use of the words "every" and "all", respectively, in the above quoted sub-sections indicates without qualification that the Legislature intended that there should be no exception to the requirement of a permit and the payment of the fee therein provided.

If it is contended that Sub-section 80 (e) of the same Article gives to the State Roads Commission, acting jointly with the Commissioner of Motor Vehicles, the power to apply the section differently, it is my opinion that such construction would render Sub-section 80 (e) unconstitutional as an invalid delegation of legislative powers. Article 8 of the Declaration of Rights says: "That the Legislative, Executive and Judicial powers of Government ought to be forever separate and distinct from each other; and no person exercising the functions of one of said Departments shall assume or discharge the duties of any other." The contention supposed, would result in the exercise of legislative powers by the State Roads Commission and the Commissioner of Motor Vehicles, both of which are agencies of the Executive Department.

As laid down in the case of *Ahlgren v. Cromwell*, 179 Md. 243, the rule is that the Legislature may not delegate to the Executive Department of the State Government the authority to amend a legislative act. To permit the contention supposed would violate this rule and, therefore, cannot be allowed.

W. WARREN STULTZ, *Special Attorney.*

STATE ROADS COMMISSION—CHESAPEAKE BAY BRIDGE—
PASSES SHOULD BE ISSUED TO MEMBERS OF THE STATE
POLICE DEPARTMENT FOR USE WHILE ON OFFICIAL
BUSINESS.

April 10, 1953.

*State Roads Commission,
Office.*

This is being written following a conference between Attorney General Rollins and the writer with the Commission on March 8. At that time the Attorney General and I recommended that passes for the Chesapeake Bay Bridge be issued to members of the State Police Department for their use in going to the Eastern Shore from the Western Shore, and return, while on official business, and while driving their own cars.

It is our opinion that State Police in this category are employees of the Executive and Administrative branches of the Government, and are entitled to free transportation under the Trust Indenture. However, it is recommended that strict regulations be attached to this privilege, and it is suggested that two books of passes be issued to each of the nine State Police Barracks, and two books to State Police Headquarters at Pikesville. These books should be so designated on the inside cover that the user will have to show his badge and police identifications, when using same. This administrative procedure can be worked out satisfactorily between Mr. O'Donnell and Major Weber of the State Police Department.

You will also recall that we stated, in our opinion, that the duties of the office of Sheriff were such that in some cases they would come within the exceptions set forth in the Trust Indenture. However, we feel that in each case the Sheriff should present his claim either to the Commission or to Mr. O'Donnell, and that they should be individually acted upon.

JOSEPH D. BUSCHER, *Special Asst. Attorney General.*

STATE ROADS COMMISSION—PROCEEDS OF SALE OF FIVE FERRY BOATS FORMERLY USED BY CHESAPEAKE BAY FERRY SYSTEM; AFTER DEDUCTION OF EXPENSES, TO BE APPLIED TO PAYMENT OF ANY UNPAID CONSTRUCTION COSTS; REMAINDER TO BE APPLIED TO SINKING FUND FOR RETIREMENT OF BONDS; REMAINDER OF PROPERTIES MAY BE DISPOSED OF AS COMMISSION DEEMS PROPER.

July 3, 1953.

State Roads Commission.

You have asked me to advise you if the properties belonging to the State Roads Commission and formerly used in connection with the operation of the Chesapeake Bay Ferry System, in Queen Anne's County, could be used by the Board of Natural Resources or some State agency for State purposes. We think it advisable in order to dispose of all of the foreseeable questions that might arise relating to the properties used in connection with the operation of the Chesapeake Bay Ferry System, to briefly review the legal requirements relating thereto.

Section 113 of Article 89B of the Code (1951 Ed.) as enacted by Chapter 41 of the 1947 Special Session of the General Assembly, in referring to the properties belonging to the Chesapeake Bay Ferry System, provides as follows:

“* * * Upon completing the construction of such crossing and opening the same to traffic the Commission shall sell or otherwise dispose of all ferries and other properties belonging to said system, except such properties as the Commission may deem desirable to retain in connection with the operation of such crossing or of the Claiborne-Romancoke Ferry Service, and the proceeds of such sale or other disposition shall be applied to the payment of any remaining items of cost of such crossing or shall be deposited to the credit of

the sinking fund for the revenue bonds issued for such crossing or for such crossing and other projects.”

The Trust Indenture, dated October 1, 1948, between the State Roads Commission and the Baltimore National Bank, as Trustee, however, provides as follows:

“Nothing in this Agreement expressed or implied shall be construed (i) as pledging to the payment of the principal of or the interest on any bonds issued hereunder any revenues of the Chesapeake Bay Ferry System or any proceeds of the sale or other disposition of the ferries or other properties belonging to said system or (ii) as requiring the application of such revenues or such proceeds to the cost of the Bay Bridge; and the Trustee shall have no right or duty of any kind or character whatsoever with respect to such revenues or proceeds.”

This particular language was placed in the Trust Indenture after careful deliberation by its framers in order that there would be no question as to the constitutionality and the validity of the bonds issued pursuant to the Trust Indenture.

It follows accordingly, that the Trustee has no authority over the disposition of any of the ferry properties, and neither the Trustee nor any bondholder would have a legal right, under the Trust Indenture, to require that the funds be applied to pay any outstanding cost of the structure or to cause the proceeds to be deposited in the sinking fund for the retirement of the revenue bonds issued for such crossing.

Nevertheless, the State Roads Commission is bound by the above quoted Section 113 of Article 89B, and must, therefore, apply the funds received from the sale of the

ferry properties for any unpaid items remaining of the cost of the structure, or to the sinking fund for the retirement of the bonds, as the case may be.

We are advised that the Commission is contemplating, and in fact has already advertised, the five ferry boats formerly used by the Ferry System, for sale. When this sale is made, and after deducting from the proceeds of the sale the cost thereof, and the cost of maintaining the boats during the period of their non-use, the balance of the proceeds under the statutory provision above quoted, must go toward the payment of any unpaid items of construction, if any, with the remainder of the proceeds of the sale applied to the sinking fund for the retirement of the bonds.

As to the remainder of the properties of the Ferry System, which consists almost entirely of real estate and improvements, located at Matapeake in Queen Anne's County, the Commission, in our opinion, has authority to dispose of them in such manner as it deems fit. If the Commission should determine, for instance, by appropriate resolution that the real estate should be disposed of by conveying the fee interest or some lesser interest therein to the Department of Tidewater Fisheries or to the Department of Resources and Education, or other State Agency, it has the legal right to do so and its action will not be in violation of the Trust Indenture.

Further, if the Commission determines that all or part of the buildings thereon are necessary for storage or other use in connection with the maintenance and operation of the Chesapeake Bay Bridge, then it has the legal right to negotiate with the authorities responsible for the bridge operation, and dispose of all or such part of the building as may be needed in a manner to be worked out between the two parties.

Likewise, if the Commission is of the opinion that portions of the building or the property should be used by the

State Roads Commission to store or otherwise facilitate the operation of the State Roads Commission, I see no legal impediment that would prevent such a disposition.

EDWARD D. E. ROLLINS, *Attorney General*.

JOSEPH D. BUSCHER, *Special Asst. Attorney General*.

STATE ROADS COMMISSION—COMMISSION MAY USE FUNDS APPROPRIATED IN BUDGET TO CONSTRUCT JETTIES NORTH OF CITY LIMITS OF OCEAN CITY TO PROTECT BEACH; CONSTRUCTION FUNDS MAY NOT BE USED TO CONSTRUCT JETTIES FROM CITY LIMITS TO DELAWARE LINE.

July 15, 1953.

State Roads Commission.

Several problems have arisen relating to the beach front at Ocean City. They are as follows:

1. Can the State Roads Commission use all or part of the \$30,000. which, since 1933, has been annually appropriated in the Budget for the protection of the beach at Ocean City, to construct jetties protruding out into the ocean north of the City limits of Ocean City? and

2. Can the State Roads Commission use Construction Funds to the extent of some \$650,000 to construct a series of jetties from the City limits of Ocean City northward to the Delaware Line?

The problems will be answered in the order enumerated above.

1. Since the year 1933 the Legislature has appropriated from the State Roads Commission's Budget the sum of \$30,000 for "Ocean City Beach Protection". That money has been used, among other purposes, for the construction of jetties, dikes and sand fences within the boundary of Ocean City for the purpose of protecting the beach at Ocean City, and to prevent same from washing away and to prevent erosion damage.

Mr. Walter C. Hopkins, Deputy Chief Engineer of this Commission, has made an exhaustive investigation into the conditions that exist along the coast and advises that the removal of sand dunes adjacent to the ocean north of Ocean

City, has caused, and will continue to cause, to a greater extent, as time goes on, a condition dangerous to the beach front in Ocean City itself, as well as impairing the beach north of Ocean City. He states that the littoral drift which moves in a southerly direction, will, when all of the sand dunes are leveled, carry whatever sand is available on the beach north of Ocean City southward, with the result that the beach north of Ocean City will become denuded of sand and erosion of the underlying marsh formation will occur, and the constant action of the sea will continue to march inward, thus impairing, if not actually destroying, the beach.

If this condition should be allowed to occur immediately to the north of and generally north of Ocean City, it seems to logically follow that the effect to the beach within the City limits of Ocean City will be extremely detrimental and erosion will likely occur there also, though to a lesser extent than north of Ocean City.

The Legislature does not define, in detail, how the Ocean City Beach Protection Fund shall be used. However, in our opinion it necessarily follows that this fund can properly be used to include the construction or reconstruction of jetties, dikes, walls or other type of construction which would serve to aid in the protection of the beach front at Ocean City; and even if it were necessary to construct the jetties and dikes and other construction mentioned above, in an area outside of Ocean City, it would be proper to expend all or part of the \$30,000 annually appropriated for that purpose as long as it is determined, as a matter of fact, that said construction does improve or protect the beach front at Ocean City.

From Mr. Hopkins' exhaustive report, there seems little doubt that the construction of jetties north of Ocean City, will protect the Ocean City Beach, and therefore, in our opinion, unless it should be determined, as a matter of fact,

that the proposed construction does not aid toward the protection of the Ocean City Beach, the funds can be so used.

See 26 Opinions of the Attorney General, 351.

2. The next question to be determined is whether or not the State Roads Commission has the authority to expend \$650,000 of its Construction Funds to construct a series of jetties from the limits of Ocean City northward to the Delaware Line.

Mr. Hopkins' report, mentioned above, predicts that unless a series of jetties are built between Ocean City and the Delaware Line, there is grave danger that the beach in that area will be wholly or partially destroyed, and that serious damage will be caused to the entire coastal area by erosion. If this should happen, it would logically follow that a storm of unusual severity could seriously injure or even destroy part of the eight mile stretch of State Highway between Ocean City and the Delaware Line.

It is true the State Roads Commission is charged by law to maintain State Highways and keep same in good condition (Section 15, Article 89B, 1951 Code). The question, therefore, to be resolved is, would the State Roads Commission be justified in expending \$650,000 of State Roads Commission's Construction Funds to protect the coastal highway between Ocean City and the Delaware Line from possible damage or destruction because of damage that might be caused by a severe storm.

A cursory investigation of the State Roads Commission's record reveals that after storm damage in 1938 the road, which was then only partially constructed, and of a very poor type of construction, was repaired in 1938 and 1939, at a cost of approximately \$3,000. Early in the 1940s the entire eight mile stretch between Ocean City and the Delaware Line was graded and black topped at an approximate cost of \$214,000. If normal overhead and engineering charges

are added to this figure, I am informed that the total cost of the eight mile stretch would, at that time, have been in the vicinity of \$250,000. Taking into consideration the higher cost of construction, it is estimated that at today's prices the cost of reconstructing the entire road between the two points above mentioned would cost somewhat in excess of \$500,000.

In view of the fact that the road has only been severely damaged once by storm during the past ten or twelve years, and further, in view of the fact that if a severe storm should again occur, it is extremely unlikely that the entire eight mile section would be completely destroyed, and it appears to us that there is little justification for spending construction funds to construct jetties at a cost in excess of the amount that it would cost to build an entirely new highway at the present time. Further, it is pointed out there is no guarantee that the highway would not be damaged even after the construction of jetties.

Undoubtedly, the construction proposed by Mr. Hopkins' report should be accomplished not only as it would afford some means of protection to the State Highway above mentioned, but more important, it would afford immeasurable protection to the beach properties between Ocean City and the Delaware Line. This is one of the State's most valuable assets, and unquestionably every possible means should be taken to prevent its destruction. This, in our opinion, can be accomplished in one of several ways, i.e. it could be done by an Act of the Legislature, it could be done by the next session of the General Assembly providing for same in the budget, in the same manner that the Ocean City Beach Protection Fund is established, or it could probably be done by Budget Amendment to the 1953 Budget, because the Budget Bill Text which provides for the Ocean City Beach Protection Fund, goes on to state:

“Special Fund Appropriation provided that revenues in excess of this estimate may be made

available by approved budget amendment, and that no part thereof shall revert to the General Fund of the State."

Because of the apparent necessity and urgency of undertaking and completing the construction of the jetties above described and recommended, we might venture the opinion, if we are permitted to comment upon matters of policy, that this subject be discussed with the Governor of the State of Maryland or the Board of Public Works at an early date.

EDWARD D. E. ROLLINS, *Attorney General*.

JOSEPH D. BUSCHER, *Special Asst. Attorney General*.

STATE ROADS COMMISSION—INSTALLATION OF TRAFFIC
SIGNAL BY PUBLIC UTILITY COMPANY CARRIES WITH IT
RESPONSIBILITY OF MAINTAINING THE SIGNAL.

July 16, 1953.

Mr. George N. Lewis, Jr.,
Director, Traffic Division.

In reply to your letter to this office of July the 14th with attachment of your letter of May 27th to the State Roads Commission regarding responsibility of maintenance of a traffic signal on Frederick Road near Montrose Avenue, please be advised of the following.

Section 156, Article 66½ provides in part, as follows:

“* * * provided, that the company operating over said street car tracks shall, upon demand prior to installation, agree to pay one-half the cost of said traffic control signal and one-half the cost of erecting same, but should said company fail so to agree then said traffic control signal need not be installed.”

It is the opinion of this office that this part of Section 156, Article 66½, along with the fact that the Baltimore Transit Company has installed said signal in accordance with stipulations in their permit to do so, carries with it the responsibility of maintaining this signal.

I have discussed the above with Mr. Buscher and he agrees with this opinion.

And we so hold.

MURRAY W. WEIGHT, *Special Attorney.*

STATE ROADS COMMISSION—STATE PLANNING COMMISSION
MEMBERS NOT ENTITLED TO PASSES ON THE CHESA-
PEAKE BAY BRIDGE.

July 28, 1953.

*Mr. David M. Nichols, Member,
State Roads Commission.*

In reply to your recent memorandum addressed to Mr. Buscher, relating to the question of whether members of the State Planning Commission are entitled to passes on the Chesapeake Bay Bridge, I believe that they are not so entitled as members of the State Planning Commission.

The Trust Agreement in Article V, Section 502, states “. . . that no free vehicular passage will be permitted over any of the Projects except to officials or employees of the executive and administrative departments of the State and members of the General Assembly of Maryland while in discharge of their official duties”. It is my opinion that the State Planning Commission does not qualify as an executive or administrative department of the State inasmuch as Article 88C of the Code sets this body up as a planning and studying agency, as distinguished from an executive or administrative one. (*Cf School Comrs. v. Goldsborough, 90 Md. 193*).

The members of that Commission are, of course, entitled to reimbursement for such tolls paid when on official business through their expense accounts, so that the question of free passage by the issuance of complimentary tickets would not seem to be a problem of particular concern.

ANDREW W. STARRATT, JR., *Special Attorney.*

STATE ROADS COMMISSION—EXISTING HIGHWAY MAY NOT
BE DESIGNATED AS A “PARKWAY.”

August 20, 1953.

*Mr. George N. Lewis, Jr.,
Director, Traffic Division.*

By letter of August 5, 1953, you asked to be advised as to the legality of designating our section of the Baltimore-Washington Highway a “parkway”.

In the past our designation of this highway has been the “Baltimore-Washington Expressway”, and this designation is by resolution of the State Roads Commission and recorded in the minutes of this Commission’s meeting. Article 89B, Section 149, Annotated Code of Maryland, 1943 Supp., gives the State Roads Commission broad powers to construct, maintain and protect highways known as “parkways”; in 29 Opinions of Attorney General, 170, there is an interpretation of this Act. The following is a quotation from this opinion:

“It is our opinion, however, that no existing highway of the State may be designated as parkways. Only roads which the Commission plans and duly names as parkways, prior to their construction or completion will be legally constituted as such and fall within the provisions of this law.”

It is, therefore, my opinion that there may be legal restrictions to the use of the word “parkway” in designating the name of this road which has heretofore been designated as an “Expressway”.

Mr. Buscher has authorized me to say that he concurs in this finding.

MURRAY W. WEIGHT, *Special Attorney.*

STATE ROADS COMMISSION—TRAFFIC REGULATIONS IN
MUNICIPALITIES.

November 19, 1953.

Mrs. Marion Nagel,
Town Clerk, Edmonston, Md.

Your letter of November 13, 1953, addressed to the Commissioner of Motor Vehicles has been referred to me. You inquire whether it is permissible for the Mayor and Town Council of Edmonston to post a 15 mile speed limit sign on a public highway in front of a school.

A minimum speed limit of 25 miles per hour has been set for public highways by the General Assembly (Maryland Code, 1951 Edition, Article 66½, Section 176 (c)). No municipality or other local authority has jurisdiction to post or enforce a lower speed limit other than in public parks within their jurisdiction (Maryland Code, Article 66½, Sections 1, 151 (5) ; see also 26 Opinions of the Attorney General 350 ; and as to state highways, 24 Opinions of the Attorney General 742).

However, it is suggested that there is authority (Maryland Code, Article 66½, Section 155) to place appropriate signs at the desired area such as "Slow—School", which signs should be the usual uniform signs used throughout the State. The law further provides a measure of protection in that a vehicle must not travel upon a public highway, regardless of the speed limit, at a rate of speed greater than is reasonable and prudent under the conditions then existing (Section 176(a)), and in that a driver shall decrease his speed when special hazard exists with respect to pedestrians regardless of speed limits (Section 176(e)).

I further desire to point out that if the particular conditions you have reference to are extremely unusual, another section of the Code (176(h)) might apply wherein the State Roads Commission may determine, upon the basis of

an engineering and traffic investigation on a State maintained street within the corporate limits, that a speed limit other than what the general law has provided may be declared.

ANDREW W. STARRATT, JR., *Special Attorney.*

TAXATION

PROPERTY TAX—EXEMPTION FOR CROPS OR PRODUCE DOES NOT APPLY ONCE CROPS OR PRODUCE HAVE BEEN TRANSFORMED BY MANUFACTURE FROM THEIR NATURAL STATE.

January 8, 1953.

*Mr. Albert W. Ward, Secretary,
State Tax Commission.*

You have asked our advice as to the eligibility of certain canned corn for an exemption under Article 81, Section 8, par. (9) of the Annotated Code (1951 Ed.), which reads: "Crops or produce of any land in the hands of the producer or his agent." A certain company engaged in the canning of corn, grew corn on a farm owned by it. The question is whether that corn, after having been canned by the Company, is entitled to the exemption for crops or produce so long as it remains in the Company's hands.

It is our opinion that the exemption does not extend to such corn. The terms "crops" and "produce", as ordinarily defined, usually are restricted to things grown on the land while in their natural state. See definitions of the terms contained in Black's Law Dictionary. That canned corn no longer is in a natural state is strongly indicated by *County Commissioners of Carroll County v. B. F. Shriver Co.*, 146 Md. 412. It was there held that the canning of corn was manufacturing. As pointed out in *Arnreich v. State*, 150 Md. 91, the essential definition of the term "manufacturing" is the changing of the original article to "a new, different and useful article".

Of course, under certain circumstances and for certain purposes, produce may be given a broader definition so as to include articles manufactured from it. See, for example, *Kimball v. Blanchard*, 90 N.H. 298, 7 A. 2d 394. However, a restricted definition of the term is clearly indicated in the

present case, inasmuch as the statutory language involved provides an exemption from taxation and, therefore, must be construed strictly against the taxpayer. The very statutory language which we are here construing has been recently held by this office to be subject to strict construction in 37 Op. A.G. p. 400. Strict construction of a tax exemption is inapplicable unless the set of facts involved satisfies the spirit as well as the letter of the law. Consideration of the purposes behind the exemptions contained in Article 81, Section 8 of the Annotated Code (1951 Ed.) makes it evident that no exemption under the instant circumstances was intended.

The exemption of crops and produce was doubtless intended by the Legislature to encourage farming. This purpose is adequately accomplished in the case of all who are simply farmers by an exemption of crops and produce in their natural state alone. In so far as manufacturing is concerned, encouragement of it is secured through the provisions of Article 81, Section 8, paragraphs (23) and (24). These paragraphs indicate that the Legislature meant to encourage manufacturing through exemption of tools used but, so far as State taxation is concerned, not of finished products. For purposes of County taxation, finished goods are not exempt unless the County in which the finished goods are located chooses to exempt them. To hold that the exemption for crops or produce extends to corn after it has been put in a manufactured state, therefore, could only be deemed in accordance with an intention of the Legislature, if it were assumed that it was the legislative desire to encourage individuals who farm also to manufacture. There is, however, nothing in the applicable statutes indicative of such an intention.

In view of this conclusion, it is not necessary to investigate the further question of whether an exemption of the

finished product for a manufacturer who happens to grow his raw materials would offend the uniformity requirements of Article 15 of the Declaration of Rights to the Constitution of Maryland, because similar exemptions are not extended to manufacturers processing purchased raw materials.

EDWARD D. E. ROLLINS, *Attorney General.*

FRANCIS D. MURNAGHAN, JR., *Asst. Attorney General.*

TAXATION—INHERITANCE TAX—AN INTEREST TRANSFERRED FROM A COLLATERAL TO A LINEAL TAKER, WHERE TRANSFER IS MADE INDEPENDENTLY OF THE SETTLEMENT OF THE DECEDENT'S ESTATE, IS SUBJECT TO COLLATERAL RATHER THAN LINEAL RATE.

January 20, 1953.

Mr. Leroy C. Shaughnessy,
Register of Wills of Baltimore City.

We are writing in reply to your letter enclosing one from a firm of Baltimore attorneys, stating certain facts and requesting information as to the inheritance tax consequences. The facts are as follows: On May 28, 1938, A conveyed his fee simple residence situated in Baltimore City to himself, his son B, and his son's wife C, as Trustees, A to have the use and occupancy of the house, rent free, during the term of his lifetime, upon payment by him of all taxes, insurance and other charges. Upon the death of A, the property was to be held on similar terms for the benefit of B during his life, and thereafter in similar fashion for C during her life. Upon the death of the survivor of all three life tenants, the property was to vest in then living children of B and C or, in the default of children, in the Board of Trustees of the McDonogh Educational Fund and Institute, Incorporated. In September, 1942, presumably in connection with a divorce settlement, C transferred to B all her interest in the property. Also, in 1942, B obtained a divorce from C. The marriage of B and C produced two children, both of whom are still living.

A resided in the property until his death in 1949. Thereafter, B, instead of living there, rented the property to others and continued to do so until his death in November, 1952. B died a resident of Virginia. C is still living. No inheritance taxes have been paid by reason of A's death, and the inquiries presented to you by the attorneys concern tax liabilities resulting from A's death and those by reason of B's death.

On A's death, the property clearly was subject to inheritance taxes, the retention of a life estate by the decedent amounting to dominion within the meaning of Article 81, Section 150 of the Annotated Code of Maryland (1951 Edition). See, e.g., 26 Opinions of the Attorney General 479. As indicated in 37 Op. A.G.-p. 375, those responsible for the taxes by reason of A's death have an alternative under Section 160 of Article 81. The Section permits, but does not require, acceleration of the tax on the remainder interests devised to C and to the children. The life estate of B, however, vested in possession upon A's death and a tax thereon, together with a penalty of twenty-five percent, is due under Sections 168 and 169 of Article 81. As explained in 37 Op. A.G. p. 375, the right to accelerate payment on the remainders may still be availed of since valuation of the life estate of B has not yet taken place. If acceleration is chosen, however, under that opinion the twenty-five percent penalty is also due. If acceleration is not chosen by those responsible for the taxes on the remainder to C and the children, a tax is, nevertheless, presently due on the life estate for the life of C since it has now vested in possession. Assuming no acceleration, the calculation of that tax must take place without credit for the tax on A's life estate, but also without the twenty-five percent penalty, in view of 37 Op. A.G. p. 444. Valuation would, of course, under the rule of *Shaughnessy v. Perlman*, 85 A(2d) 38, be as of the date of vesting in possession of the remainder for C's life. Absent acceleration, no tax is yet due on the remainder in fee to the children. That tax will become due on the death of C.

The question has been presented to you whether the tax, by reason of A's death, on the estate for the life of C should be at the collateral or lineal rate in view of the transfer by C of the interest to B and of the holding in *Hart v. Mercantile Trust Company*, 180 Md. 218. In support of a lineal tax, the attorneys cite 34 Opinions of the Attorney General 257 and 34 Opinions of the Attorney General 258. However, those opinions deal with situations

where compromises in settlement of estates result in lineals taking property which would have passed to collaterals had the terms of the decedent's will been strictly applied. However, transfers made independently of the settlement of an estate do not fall within the rule of *Hart v. Mercantile Trust Company*. As pointed out in 34 Opinions of the Attorney General 278, in the case of such a transfer, the question of whether the lineal or collateral rate applies is determined with reference to the transferor and not the transferee. See also 22 Opinions of the Attorney General 653.

Turning now to the questions raised by the death of B, the problem is whether any tax is due on the life estate for the life of C passing from B. The attorneys point out that a life estate *per autre vie* is personal property and ask whether it is taxable in view of the fact that B died a non-resident. The answer to the question is that the interest is taxable in Maryland since it is a tangible item. Compare 30 Opinions of the Attorney General 246, holding that leasehold property situated in Maryland is taxable on the death of its non-resident owner.

EDWARD D. E. ROLLINS, *Attorney General*.

FRANCIS D. MURNAGHAN, *Asst. Attorney General*.

PROPERTY TAX—EXEMPTION—GREENHOUSE PRODUCE DOES
NOT QUALIFY FOR EXEMPTION. NURSERY PRODUCE
QUALIFIES FOR EXEMPTION.

January 26, 1953.

*Mr. Albert W. Ward, Secretary,
State Tax Commission.*

We are writing in reply to your letter of January 21, 1953, in which you ask whether or not flowers, shrubs, etc., raised by a florist in a greenhouse and in an adjacent nursery are exempt, under Article 81, Section 8, paragraph 9, from property taxation as "crops or produce of any land".

In so far as things produced on the adjacent nursery are concerned, we have reached the conclusion that they are entitled to the exemption. They were held, in *Burton v. Comptroller*, Circuit Court for Prince George's County, Daily Record of January 15, 1949, to be exempt from the sales tax law as it then read as "products of the farm, dairy, grove, or garden". The opinion, it is true, states that that result was reached by construction of the exemption liberally in favor of the taxpayer and to that extent rests on an incorrect proposition of law. See 37 Op A.G. 400, indicating that tax exemptions, in general, and the one contained in Article 81, Section 8, paragraph 9, in particular, are to be strictly construed. Nevertheless, the result reached by the Circuit Court for Prince George's County seems to us to be the correct interpretation of the statutory language, even assuming a strict construction. Compare *Keeney v. Beasman*, 169 Md. 582, 587. Our conclusion that the opinion is controlling in the present instance is reinforced by the fact that the desirable end will be obtained of giving identical scope to exemptions for similar purposes under two different statutes. 37 Op. A.G. p. 372.

As to produce of the florist grown in a greenhouse, we have concluded that the exemption in Article 81, Section 8, paragraph 9, does not apply. The exemption is restricted to

produce *of any land*. It is at least doubtful to us that the word "land" as so used was meant to encompass a greenhouse, for not only are operations carried on in a building but generally the produce therein grown is planted not in the land itself but in specially constructed boxes or troughs. The doubt that the exemption was intended to cover such an operation is sufficient to deny it. E.g. *Knights of Pythias v. Baltimore*, 157 Md. 542.

EDWARD D. E. ROLLINS, *Attorney General*.

FRANCIS D. MURNAGHAN, JR., *Asst. Attorney General*.

TAXATION—EXEMPTION—CAPITAL OF PRODUCTION CREDIT
ASSOCIATION NO LONGER EXEMPT FROM TAXATION
UPON RETIREMENT OF STOCK HOLDINGS OF FEDERAL
GOVERNMENT INSTRUMENTALITY IN THE ASSOCIATION.

February 4, 1953.

*Mr. Albert W. Ward, Secretary,
State Tax Commission.*

This letter is in reply to yours of January 28, 1953 raising the question of whether exemption from taxation is still enjoyed, under the appropriate Act of Congress, by the Frederick Production Credit Association, now that all stock in that organization owned by the Production Credit Association of Baltimore has been retired.

In answering this question, we have found the letter of December 18, 1952 from the General Counsel of the Farm Credit Administration of Baltimore of great assistance. It provides a very detailed explanation of the nature of Production Credit Associations, as well as the arguments in favor of a continued exemption from taxation. We regret, however, that we have come to an opposite conclusion, namely, that the Farm Credit Act of 1933 intended tax exemption to end upon the retirement of stock owned in any Production Credit Association by the Production Credit Corporation. Of primary importance to us in reaching this conclusion is the fact that the exemption contained in 12 U.S.C.A. Section 1138(c) applies to Federal as well as State taxation. That Section provides:

“The Central Bank for Cooperatives, and the Production Credit Corporations, Production Credit Associations, and Banks for Cooperatives, organized under this chapter, and their obligations, shall be deemed to be instrumentalities of the United States, and as such, any and all notes, debentures, bonds, and other such obligations issued by such banks, associations, or corporations shall be

exempt both as to principal and interest from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States or by any State, Territorial, or local taxing authority. Such banks, associations, and corporations, their property, their franchises, capital, reserves, surplus, and other funds, and their income shall be exempt from all taxation now or hereafter imposed by the United States or by any State, Territorial, or local taxing authority; except that any real property and any tangible personal property of such banks, associations, and corporations shall be subject to Federal, State, Territorial, and local taxation to the same extent as other similar property is taxed. The exemption provided herein shall not apply with respect to any Production Credit Association or its property or income after the stock held in it by the Production Credit Corporation has been retired, or with respect to the Central Bank for Cooperatives, or any Production Credit Corporation or Bank for Cooperatives or its property or income after the stock held in it by the United States has been retired."

Had the Section dealt only with the taxable status of Production Credit Associations, vis-a-vis the State and local taxing authorities, it might perhaps be arguable that the usual rules of strict construction applicable to exemption statutes have no pertinence, Federal instrumentalities being exempt from State taxation without specific statutory enactment. However, the Section is equally applicable to Federal taxation, and there can, therefore, be no doubt that the usual rule of strict construction applies.

The argument of the General Counsel of the Farm Credit Administration is that, in providing the exemption, the statute extends it to property of the Associations and also lists *inter alia* capital, reserves, surplus and other funds.

He reasons that the portion of the Section withdrawing the exemption does so "with respect to any Production Credit Association or its property or income", and that property should be read in a consistent fashion as not including capital, reserves, surplus and other funds.

Our first disagreement with this line of argument stems from the fact that tangible personalty and realty were never exempted under the provisions of 12 U.S.C.A., Section 1138(c) and that, consequently, this restricted reading of the term "property" would render it virtually meaningless. We believe instead that Congress, in enacting the exemption portion of the Section, wished to be very explicit as to what the word "property" meant, in order that there could be no doubt whatever as to whether it included such things as capital, reserve, surplus and other funds. If any such doubt were not specifically laid to rest in the statute, the exemption would not be afforded, because of the well known rule that to doubt is to deny an exemption. In dealing with the termination of the exemption, however, Congress did not need to anticipate any such application of restrictive rules of interpretation and, therefore, could safely employ the term "property" in its usual sense. That sense would, of course, include capital, reserves, surplus and other funds. We believe this interpretation of Section 1138(c) is borne out if the language "or its property or income" is entirely eliminated from the sentence terminating the exemption. In that case, the exemption would end for "any Production Credit Association after the stock held in it by the Production Credit Corporation has been retired". If the language were this and no more, we believe the conclusion we have reached would be established beyond any dispute. It seems to us that the words "or its property or income" were included in an expansive, not a restrictive sense, to prevent any argument, however far fetched, that a tax was still barred by the exemption provisions since levied with respect to property of a Production Credit Association and not with respect to the Association itself. From such cautious phraseology on the part of the drafts-

man of the statute should not be inferred the conclusion for which the counsel of the Production Credit Association of Baltimore has argued.

EDWARD D. E. ROLLINS, *Attorney General*.

FRANCIS D. MURNAGHAN, JR., *Asst. Attorney General*.

TAXATION—MOTOR VEHICLE TAX—FEDERAL INSTRUMENT-
ALITY ENTITLED TO REFUND.

March 6, 1953.

Mr. Joseph O'C. McCusker,
Chief Deputy Comptroller.

We are writing in answer to your letter of January 30, 1953, which raises questions as to the status, for purposes of Maryland taxation, of the Federal Reserve Bank of Richmond and its branches. Specifically involved are the liabilities of the Bank for fees for licensing and registering automobiles, and for the excise tax on certificates of title for automobiles, and the right of the Bank to refunds of motor vehicle fuel taxes on gasoline used in automobiles of the Bank.

The immediate question which so largely controls the answer to these problems is that of the status of the Federal Reserve Bank. Is it or is it not an instrumentality of the United States, entitled to the immunities which the United States itself enjoys from taxation by the States? This is not an easy question to answer, for the Federal Reserve Banks, while they are used to carry out many fiscal and monetary objectives of the Federal Government, are owned not by the United States but by the member banks, each of which is required to subscribe to stock of the Federal Reserve Bank to which it belongs.

The Federal Reserve System as a whole is divided into three primary categories. The first of these is the Federal Reserve Board, as to which there is no doubt but that it qualifies, as an instrumentality of the United States, for whatever tax exemption that Government itself enjoys. See 23 Opinions of the Attorney General 550. On the other hand, the second principal category includes the member banks of the System and they are not regarded as instrumentalities or agencies of the United States but are subject to non-discriminatory taxation by the States. See e.g.

Fidelity-Philadelphia Trust Company v. Hines, 337 Pa. 48, 10 A(2d) 553. Between these two extremes lies the connecting link of the Federal Reserve Bank. Authority on the subject of the Bank's status is sparse. The Supreme Court has applied tests, in determining that Federal Land Banks are governmental instrumentalities, which would seem to indicate similar status for a Federal Reserve Bank. See *Federal Land Bank of St. Paul v. Bismarck Lumber Company*, 314 U.S. 95. Yet, some States have regarded the private ownership of the Banks as a significant factor and denied them exempt status. See, for example, Ruling 2014 under the California Sales and Use Tax Laws, 1 CCH, All State Sales Tax Reporter, page 24,534. However, in general, the States have taken a different view and acknowledged Federal Reserve Banks to be instrumentalities of the Federal Government. *Geery v. Minnesota Tax Commission*, 202 Minn. 366, 278 N.W. 594, specifically so held on the theory that the determining factor is the function of the corporation and not the title to its stock. Compare *Federal Reserve Bank v. Register of Deeds*, 288 Mich. 120, 284 N.W. 667. To a large extent, the necessity for a purely judicial decision on the issue has been obviated by the provisions of Title 12, U.S.C.A., Section 531:

“Federal reserve banks, including the capital stock and surplus therein and the income derived therefrom, shall be exempt from Federal, State, and local taxation, except taxes upon real estate.”

It is now generally accepted that Congress may extend exemption under the theory of intergovernmental immunities further than the Courts, left to their own devices, would have done. See *Carson v. Roane-Anderson Company*, 342 U.S. 232, and Annotation thereon, 96 L. Ed. 263.

It is our belief that the very fact that Congress has chosen to provide such an immunity from taxation has an important bearing on whether a corporation is one properly describable as a Federal instrumentality. We conclude that

the Federal Reserve Bank is an instrumentality of the Government, entitled to whatever immunity from taxation the Government itself enjoys under the doctrine of *McCulloch v. Maryland*, 4 Wheat. 316. In view of this conclusion, the Federal Reserve Bank is entitled to refund of the taxes on motor vehicle fuel purchased by it, afforded by Section 140 of Article 56 of the Annotated Code. This conclusion does not conflict with 28 Opinions of the Attorney General 309 for that opinion construed an earlier version of Section 140, which granted to the United States and any of its agencies a refund of the tax "upon all motor vehicle fuel purchased by it or them *for use in the exercise of an essential governmental function, to the extent required by the Federal Constitution, or by any Act of Congress passed pursuant to and in conformity with the Federal Constitution*" (emphasis supplied). As there pointed out, the motor vehicle fuel tax is on the dealer not the user, and so the tax refund is not compelled by the Constitution or by any exemption statute passed by Congress in the interest of an agency of the Federal Government. By Chapter 523 of the Acts of 1945, however, the Legislature eliminated the italicized portion of the above quotation from the predecessor to Section 140 and thereby undertook to extend the right of refund to the Government and its agencies as a matter of grace even though there was nothing in the Federal Constitution or Federal statutes compelling the granting of the exemption.

On the other hand, no such intention in so far as corporate agencies of the United States are concerned appears in the statutes controlling titling and registration of motor vehicles so that, if the Federal Reserve Bank seeks to title its vehicles and register them in Maryland, its status as an instrumentality of the Government will not qualify it for any explicit exemption contained in the statutes providing for the appropriate fees and taxes. In 27 Opinions of the Attorney General 432, we ruled that vehicles of a similar United States corporation could, for reasons of intergovernmental tax immunity, be operated in the State without

registration markers or motor vehicle certificates or titles, and hence without payment of the fees or taxes, but that if the corporation chose to register and take out title in Maryland it would be deemed to have waived its exemption and to have consented to the exaction of the tax or fee. It is true that Article 66½, Section 22 (a) (4) provides exemption from payment of registration fees on motor vehicles "owned and used by the Government of the United States", but that Section creating an exemption from taxation must be strictly construed to mean only the United States itself and not a corporation not owned by the United States which performs functions for it. Thus, if registration takes place in Maryland, the appropriate fees must be paid.

EDWARD D. E. ROLLINS, *Attorney General.*

FRANCIS D. MURNAGHAN, JR., *Asst. Attorney General.*

TAXATION—INHERITANCE TAX—GENERAL POWER OF APPOINTMENT EXERCISABLE IN FAVOR OF DONEE'S ESTATE OR CREDITORS—TAXABILITY ON THEORY OF TRANSFER FROM DONEE DISCUSSED BUT NOT DECIDED.

April 21, 1953.

Mr. Joseph O'C. McCusker,
Chief Deputy Comptroller.

This letter is written in reply to yours of April 16, 1953, forwarding an inquiry from the executor of the will of a Maryland decedent as to the impact of the Maryland Estate Tax and the Maryland Inheritance Tax. The decedent, who died on July 4, 1952, was the life tenant of a trust, over the corpus of which she enjoyed a general testamentary power of appointment. The trust was created by a Massachusetts decedent in 1925 and has been administered in Massachusetts. In 1943, the Maryland decedent reduced her general testamentary power to a special power to appoint among her issue. By her will, the decedent exercised the power in favor of her daughter and her daughter's children.

In so far as the Maryland Estate Tax is concerned, it is fully subordinated to and controlled by the operation of the Federal Estate Tax. Whether or not the property over which the decedent owned the power of appointment is subject to the Maryland Estate Tax depends primarily, therefore, on the decision of the question by the appropriate Federal taxing authorities or, in case of litigation, by the Federal Courts. Under Article 62A, Section 1(e) of the Annotated Code of Maryland (1951 Edition), the subject of the Maryland Estate Tax is defined as the portion subject to the taxing power of Maryland of "the entire estate, and/or interest therein, of said 'Decedent,' which is subject to or liable for the payment of the 'Federal Estate Tax' ". The executor has indicated in his letter that the trust corpus is not includable in the estate of the donee/decedent for Federal Estate Tax purposes. Therefore, it is not necessary for us to decide whether the trust corpus, though admin-

istered in Massachusetts, would be part of the Maryland Estate of the donee of the power and hence subject to Maryland Estate Tax.

With respect to the Maryland Inheritance Tax, it is well established that the transfer of property occasioned by the exercise of a testamentary power of appointment is not taxable on a theory of a transfer from the donee of the power. *Connor v. O'Hara*, 188 Md. 527. As the Court of Appeals points out, this rule has consistently been followed in opinions of this office.

Nevertheless, a possible basis of distinction of the present case suggests itself, inasmuch as the power of appointment existed over the corpus of a trust located outside the State of Maryland. At the outset, it may be stated that since the decedent was a Maryland resident, the location of the trust beyond the borders of this State, unless the corpus were composed of real estate or tangible personalty, would not, of itself, affect tax consequences one way or the other. Compare 29 Opinions of the Attorney General 226 with 31 Opinions of the Attorney General 244, and cases there cited, in particular *Graves v. Schmidlapp*, 315 U.S. 657, 141 A.L.R. 948. There might, however, be significance in the fact that the trust concerned is subject to Massachusetts rather than Maryland law. As is clearly indicated by the opinion of the Court, the result in *Connor v. O'Hara*, *supra*, depends to a substantial degree upon the peculiar rule of Maryland law that a general power, in the absence of express language, may not be exercised in favor of the donee's creditors or estate. Compare *Lamkin v. Safe Deposit & Trust Company*, 192 Md. 472; 22 Opinions of the Attorney General 738. What is described in Maryland as a general power of appointment would approximate a broad special power under the law of most other jurisdictions, including that of Massachusetts. From the point of view of strict legal definition, the Maryland "general" power of appointment is apparently neither special nor general. See *Restatement*, Property, §320; 1 *Simes*, Law of Future Interests,

§246. No doubt the power here involved, since as originally created it was truly "general", under Massachusetts law could have been exercised in favor of the donee's creditors or estate.

It is, however, unnecessary to answer in the present situation the interesting but involved question of whether an exercise by a Maryland donee of a general power of appointment which is broad enough to permit appointment to the donee's creditors or estate gives rise to Maryland Inheritance Tax on a theory of transfer from the donee. During her lifetime, the donee here involved cut down the power so that she might exercise it only among her issue. The power, at the time of her death, therefore, fell within the rule of *Connor v. O'Hara, supra*.

It is perhaps arguable that the partial release of the power in 1943 was manifestly for the purpose of avoiding Federal Estate Taxes, and hence was in contemplation of death. See *Farmers' Loan & Trust Co. v. Bowers*, 98 F(2d) 794 (C.C.A. 2d, 1938), *cert. den.* 306 U.S. 648. However, under Article 81, Section 150 of the Annotated Code, only those transfers occurring within two years prior to death are presumed to be in contemplation thereof. In view of the long lapse of time between the reduction of the power in 1943 and the donee's death in 1952, there would be no reasonable hope of proving that the reduction was, in fact, in contemplation of death. In reaching this conclusion, we find support in the provisions of Article 93, Sections 357-360 of the Annotated Code, authorizing releases and partial releases of general powers of appointment, especially the language of Section 359 declaring such releases to be in accord with the public policy of the State of Maryland. It is an unresolved philosophical question whether taxation of gifts in contemplation of death proceeds on a theory of prevention of inheritance tax avoidance or on a theory of taxation of substitutes for testamentary disposition. Nevertheless, it is clear that the existence of the stigma of calculated tax avoidance plays an important part in individual

instances where gifts are found to be in contemplation of death. See 1 *Paul*, Federal Estate and Gift Taxation, 293. No such stigma could be said to exist in the present case in view of the legislative pronouncement as to public policy.

We are not unmindful of the fact that the question of taxability of a broad general power of appointment which extends its coverage to the donee's creditors or estate is one which will become in time of substantial importance to the Maryland bar. This is so because recent amendments to the Federal Estate Tax laws encourage creation of such powers in order to qualify for the marital deduction benefits. However, we believe it would be unwise to attempt to decide this question until it is presented in an actual controversy.

EDWARD D. E. ROLLINS, *Attorney General*.

FRANCIS D. MURNAGHAN, JR., *Asst. Attorney General*.

TAXATION—RECORDATION TAX—DEED OF AFTER-ACQUIRED
PROPERTY UNDER DEED OF TRUST—NO NEW BONDS
ISSUED.

May 25, 1953.

*Mr. M. Luther Pittman, Clerk,
Superior Court of Baltimore City.*

This will acknowledge receipt of your letter of May 19, 1953, in which you inquire concerning the following: Prior to the issuance of Series Y, First Refunding Mortgage Sinking Fund Bonds, in the principal amount of \$25,000,000, the Consolidated Gas Electric Light and Power Company of Baltimore City proposes to execute a deed to Bankers' Trust Company, Trustee, of all property acquired by the Company since the recording of the last Supplemental Indenture of January 15, 1951. This deed will be executed and recorded pursuant to the after-acquired property clause of such Indenture. The Trustee, of course, at the present time has equitable title to such after-acquired property. The object of the deed is to vest legal title to such property in the Trustee.

It is understood that there will be no consideration paid for such deed; that it will not increase the amount of the indebtedness secured by the aforesaid Supplemental Indenture, and that no bonds will be issued in connection with the execution of such deed.

The underlying theory of Article 81, Section 273, as to the applicability of the recordation tax to deeds of trust, is that such tax is due on the amount of the indebtedness at the time when the indebtedness is incurred. Subsection (k), in part, provides:

“If the total amount of the debt which may become secured by any instrument securing a debt shall not have been incurred at the time such instrument is offered for record, the tax shall be

computed solely in the principal amount of the debt then incurred and secured by such instrument. * * *”

As the amount of the indebtedness under the Supplemental Indenture of January 15, 1953, will not be increased by the recording of the deed referred to above, it is the opinion of this office that no recordation tax will be due at the time of the recording of such deed.

It has been suggested that subsection (1) makes ineffective the exemption set forth in subsection (k) because in this case the original Indenture was issued in 1919. However, that portion of subsection (k) upon which this opinion is based is not the exemption portion of said subsection to which subsection (1) refers.

EDWARD D. E. ROLLINS, *Attorney General.*

TAXATION—INHERITANCE TAX—WHEN PROPERTY PASSES THROUGH EXERCISE OF A TRUE GENERAL POWER OF APPOINTMENT EXERCISABLE BY DEED OR WILL, THE TRANSFER IS TREATED AS COMING FROM THE DONOR OF THE POWER AND NOT FROM THE DONEE.

June 3, 1953.

Mr. W. Andrew Seth,
Register of Wills for Cecil County.

In a recent letter, you pose an inheritance tax problem with respect to a decedent's interest in real property located in Cecil County. Decedent's mother had, by her will, established a trust of which the real property formed part of the corpus. The trust provided for payment of the income to the decedent for life "with the right in her at any time to withdraw, upon her written order, all or any part of the principal". Furthermore, a general power of appointment by will over the trust corpus was given to decedent. Both decedent and her mother were residents of Philadelphia, and the trustee is a Philadelphia trust company. At the time of the death of the present decedent's mother, direct inheritance taxes on the full appraised value of the real estate were paid. Decedent died on January 27, 1947, and, by her will, exercised the testamentary power of appointment in favor of her sister, who was, of course, a direct descendant of the creator of the power.

You ask whether any additional inheritance tax became due by reason of the death of decedent on a theory of property passing from decedent to her sister.

It is, of course, the well established rule of Maryland inheritance tax law that the passage of property by reason of the exercise of a power of appointment does not give rise to tax on a theory of transfer from the donee of the power; rather the theory applied is one of transfer from the donor and only as such is the transfer normally subject to tax, *Connor v. O'Hara*, 188 Md. 527. On the other hand,

the fact that property passed by exercise of a power of appointment does not necessarily insulate the transfer from inheritance taxation if sufficient other interests in the appointive property were owned by the donee of the power. Cf. 36 Opinions of the Attorney General 248, 251. Thus, as we have had occasion recently to point out, the decision in *Connor v. O'Hara*, *supra*, depends to a substantial degree upon the peculiar rule of Maryland law that donee's interest in a general testamentary power of appointment is, from the donee's point of view, a limited one since the power cannot be exercised in favor of the donee's estate or creditors. See 38 Op. A.G. p. 295. In that opinion, we specifically left open the question of whether a truly general testamentary power of appointment, under which the donee could also appoint in favor of his estate or creditors, would give rise to tax on the theory of transfer from the donee. Since the trust here involved is a Pennsylvania one, created by a Pennsylvania decedent, the general testamentary power owned by decedent would in all probability be construed under the laws of that State. Under the law of Pennsylvania, a general power may be exercised in favor of the donee's estate or creditors.

In the present case, an even stronger argument in favor of taxability can be made since the decedent, in addition to the general testamentary power of appointment, had during her lifetime a power completely to consume the corpus of the trust. That power, together with the general testamentary power of appointment, except for certain nebulous legal distinctions, made decedent the owner of the property subject to the trust. The Restatement on Property, in the Introductory Note to Chapter 25 (Powers of Appointment) states:

“* * * The general power presently exercisable is the practical equivalent of ownership, since it gives to the donee the power to acquire ownership at any time by appointing to himself * * *”.

Compare *Literski v. Literski*, 166 Md. 641, 645; *Takaes v. Doerfler*, 187 Md. 62. For purposes of the rule against perpetuities, exercise of a power of appointment is normally not the date from which the perpetuities period runs; rather the time of creation of the power usually controls. Restatement, Property, Sections 373, 392; *Lamkin v. Safe Deposit and Trust Company*, 192 Md. 472. However, where the donee of the power has, as well, an unlimited power of disposition during life, his position as actual owner is acknowledged, and his appointments by will are measured, for perpetuities purposes, from the time of his death, not from the time of creation of the power. Restatement, Property, Section 391. Accord *Ryan v. Ward*, 192 Md. 342. It thus can be strongly argued that receipt by the appointee named by decedent involved a passage of the property from the decedent which was subject to inheritance taxation.

Nevertheless, we are satisfied that the doctrine of relation back, under which the transfer is deemed to have been from the donor of the power to the appointee, controls even in this extreme case. Though the distinction between outright ownership in fee and ownership of a life estate with a power to invade or consume may be a refined one, it is a clearly recognized one. *Benesch v. Clark*, 49 Md. 497; *Foos v. Scharf*, 55 Md. 301; *Pope v. Safe Deposit and Trust Company*, 163 Md. 239. It has, we believe, substance enough to require treatment, for inheritance tax purposes, of an exercise of a power by deed or will as a transfer from the donor of the power, not from the donee. This is the conclusion reached by the Restatement, Property, after examination of the inheritance tax laws of all the States. See 3 Restatement, Property, page 1814, and Restatement, Property, Section 333.

In reaching this result, we are not unmindful of the fact that thereby it is possible for what are substantially two transfers of complete dominion over property to take place, yet only one inheritance tax to be collected. Complete power

over the property passes from the donor of the power to the donee and again from the donee to the appointee. We appreciate the existence of a constitutional argument that this result is discriminatory against taxpayers involved where actual fee simple title is similarly transferred. Were an estate tax rather than an inheritance tax involved, we would be inclined to adopt the lack of reasonableness in classification as a basis for construing the statute to require two taxes. Cf. 22 Opinions of the Attorney General 689. It is a well accepted doctrine of interpretation that a constitutional reading, if at all possible, will be preferred over an unconstitutional one, and Article 81, Section 150 of the Annotated Code (1951 Edition) could be read to apply to the transfer from the donee of the power to the appointee. It would be possible to say that the donee retained dominion over the property concerned during his lifetime. However, there is an important and here controlling distinction between an estate tax and an inheritance tax; for the impact of the former is upon the assets owned or controlled by the decedent, whereas the latter falls upon the beneficiary receiving the assets. It is well established that the Maryland inheritance tax need not be paid until an interest actually vests in possession, but may be accelerated. In the present situation, acceleration did, in fact, take place, so the tax with respect to receipt by the appointee of the property has already been paid. Assume, however, a case involving powers similar to those owned by the decedent here in which a tax had been paid only upon the life estate. It is well established that the donee of the power need not have paid any further tax by reason of the mere existence of a general power to appoint by deed or will. 34 Opinions of the Attorney General 259; 33 Opinions of the Attorney General 360; 25 Opinions of the Attorney General 630; 23 Opinions of the Attorney General 585; 19 Opinions of the Attorney General 510, but see 5 Opinions of the Attorney General 480. In such a case, the only basis on which two inheritance taxes could be collected would be to have the appointee pay two taxes at the same time, one on the theory of transfer from the donee of the power and another on a

theory of vesting in possession of the property interests transferred from the donor of the power. While the Legislature clearly deferred the impact of the latter tax, we do not believe it was the legislative intent to heighten its effect by coupling it with another imposition of inheritance tax to fall due simultaneously.

While the various considerations involved were not discussed, an earlier opinion of this office, appearing in 20 Opinions of the Attorney General 882, came to a result substantially identical to the one which we have reached. Although the opinion was rendered under an earlier version of Section 150 of Article 81, prior to its amendment by Chapter 124 of the Acts of 1936, Special Session, we do not believe that the changes in statutory language affected the basis of the opinion. See *Connor v. O'Hara, supra*. Cf. 23 Opinions of the Attorney General 585.

EDWARD D. E. ROLLINS, *Attorney General*.

FRANCIS D. MURNAGHAN, JR., *Asst. Attorney General*.

TAXATION — PROPERTY TAX — EXEMPTION FOR YOUNG
POULTRY CONSTITUTIONAL.

June 11, 1953.

*Mr. Albert W. Ward, Secretary,
State Tax Commission.*

We have your letter of June 4, 1953, inquiring as to the constitutionality of Chapter 755 of the Laws of 1953. That statute exempts from taxation "All young poultry, including chickens, ducks, turkeys and guineas, not more than 6 months of age and not kept for reproductive purposes."

You point to several administrative inconveniences which the State Tax Commission and the assessors under its supervision can look forward to in giving force to this exemption, and ask whether the Act is constitutional. You question constitutionality on the grounds that two chickens under six months of age and otherwise identical might receive different tax treatment, depending on whether they were kept for reproductive purposes.

It may be supposed that the primary purpose in raising poultry, other than for reproduction, is for sale as food. It seems to us that a classification between chickens raised for food and those raised for reproduction purposes is reasonable and will justify the distinction which the Legislature has seen fit to draw. That it may be desirable to encourage the raising of chickens for food to a greater extent than the raising of chickens for breeding purposes does not seem so clearly an unreasonable assumption as to destroy the statute, especially in view of the strong presumption in favor of constitutionality. Certainly, only in the most obvious and indisputable case should we take the extraordinary action of advising the State Tax Commission to ignore an Act of the General Assembly. See 37 Op. A.G. 424.

To aid you in overcoming the administrative difficulties which you forecast, we should like to remind you that the

burden of proving facts entitling one to an exemption from taxation is on the taxpayer himself. The taxing authorities are not required to prove that the exemption is inapplicable. We imagine that in poultry breeding there are certain established precepts as to the percentages of young chickens, or other fowl, to keep for breeding, and the percentages to send to market. The assessors will, we believe, be justified in applying such percentages to poultry flocks where the birds are under six months of age, and in requiring strong proof by the owner if he claims exemption for more poultry than the percentages indicate. Similarly, in determining the age of poultry, we suspect that there is an established practice determining what percentages of various age groups should make up a flock. Again, the assessors might make use of such percentages. Furthermore, hatching records are doubtless kept by poultry farmers and these records will give general indications as to the age of the various birds. The assessors can doubtless make use of such records. These suggestions are, of course, in no way exclusive of any other techniques of assessment which may seem appropriate to the circumstances.

EDWARD D. E. ROLLINS, *Attorney General*.

FRANCIS D. MURNAGHAN, JR., *Asst. Attorney General*.

TAXATION—INCOME TAX—LIQUIDATING DIVIDEND IN KIND
OF CAPITAL ASSET WHICH HAD APPRECIATED IN VALUE
IN HANDS OF CORPORATION NOT INCOME TO SHARE-
HOLDER EVEN AS TO AMOUNT OF APPRECIATION.

August 7, 1953.

Mr. Frank W. Forestell,
Income Tax Division,
Comptroller of the Treasury.

Recently you have asked our advice as to income tax liability in the following situation:

A corporation, all of whose stock is owned by a single individual, is liquidated. In the course of such liquidation, there is a distribution to the sole shareholder of real property which either was an original contribution by the shareholder to the capital of the corporation, or else was purchased by the corporation out of capital. Between the time of acquisition by the corporation and distribution to the shareholder, a substantial increase in value took place. Prior to distribution, the corporation had the property appraised, wrote it up on its books, and credited the increase in value to surplus. You ask whether there is income to the shareholder to the extent that the property distributed to him exceeds in value that portion of his contribution to the company's capital allocable to such property.

Of course, had the corporation sold the real estate prior to distribution and then paid over to the shareholder the proceeds of the sale, there would no doubt be an income tax liability of the shareholder with respect to the appreciation in value of the property. 28 Opinions of the Attorney General, 254, 33 Opinions of the Attorney General, 394. As pointed out in those opinions, the fact that the appreciation would be a capital gain to the corporation, not taxable to the *corporation* in view of the exclusion provided in Article 81, Section 276(a) of the Annotated Code of Maryland (1951 Ed.), does not lead to the result that the *share-*

holder is not taxable. Section 276 of Article 81 defines "income" as including dividends, and Section 275(j) of Article 81 defines "dividend" as "any distribution * * * out of * * * net profits * * *." The definition goes on to state that "Amounts paid in liquidation or dissolution of a corporation shall be treated as dividends to the extent that they represent earnings of the corporation."

In those two opinions of the Attorney General previously cited, it was determined that the sale by the corporation of the property and the resulting realization of a gain equalled "earnings". In the present situation this same criterion controls, and the question is whether the appreciation of the property, prior to its distribution by the corporation, represents earnings to the corporation. Our researches indicate that the appreciation is not "earnings" of the corporation. It is the general principle of income taxation that realization must occur before "earnings", "profits", or "gains" come into being. In this case, whether or not there was a realization by the shareholder, there was none by the corporation itself. Thus, the dividend in kind was not from earnings, but rather represented a return of capital.

The case of *Sears v. Commissioner of Corporations and Taxation*, 322 Mass. 446, 78 N.E. 2d 89, is precisely in point. That case involved a corporate dissolution. Capital funds of the corporation had been used to purchase stock in another company which increased in value while held by the corporation. The stock was distributed to the shareholders, and it was contended that the shareholders were subject to income tax on the appreciation in value of the property. The court held that there was no realization by the corporation, and hence the dividend was made from capital, rather than from "accumulated profits". The Massachusetts statute taxed dividends from accumulated profits but exempted distributions from capital. The Massachusetts court specifically ruled that there was no realization by the corporation, although there might indeed be realization by the shareholder.

You have suggested that it might be possible to distinguish the *Sears* case on the grounds that the corporation here involved is a closely held one, completely dominated by the shareholder and that, therefore, realization by him may be considered to be realization by the corporation. In effect, you argue that the corporate entity should be disregarded. However, if this is done, it seems to us that by that fact alone, all basis for assessing income tax liability against the shareholder disappears. If the shareholder and the corporation are deemed to be one, then the shareholder owned the real estate in question from the outset, and the appreciation in value would be regarded as a capital gain to him. As such, of course, it would be exempted from Maryland income taxation.

You also suggest that the act of the corporation in writing up the real estate on its books and making a corresponding credit to surplus was a realization by it which would convert the appreciation in value into earnings. However, it does not seem to us that taxable consequences should turn, in this case at least, upon a purely internal bookkeeping technique. Any surplus so created would be capital surplus rather than earned surplus under the rationale of the *Sears* case, *supra*.

In view of the conclusion which we have outlined above, it is not necessary to consider whether the gain realized by the taxpayer in the present case is or is not a capital gain, and thus for this additional reason exempt under the provisions of Article 81, Section 276(a).

EDWARD D. E. ROLLINS, *Attorney General*.

FRANCIS D. MURNAGHAN, JR., *Asst. Attorney General*.

TAXATION—INHERITANCE TAXATION—NON-RESIDENT DECEDENT—INTANGIBLES OF A SOUTH CAROLINA DECEDENT HAVING A MARYLAND SITUS ARE EXEMPT FROM MARYLAND INHERITANCE TAX UNDER THE RECIPROCAL EXEMPTION STATUTE.

August 12, 1953.

Mr. Leroy C. Shaughnessy,
Register of Wills of Baltimore City.

In your letter of August 6, 1953, you ask whether inheritance taxes are due with respect to interests in a trust created by Edward W. Brannan. On February 6, 1937, Mr. Brannan, while a resident of Maryland, conveyed to Maryland trustees certain properties, all of which were intangibles, with the exception of a ground rent on Maryland real estate. He retained the substantial equivalent of a life estate and provided for various remainders. The trust was specifically declared to be irrevocable except for remainder interests in one-fourth of the corpus. Subsequently, Mr. Brannan became a domiciliary of South Carolina, where he died on February 22, 1951. He had never exercised the power of revocation as to one-fourth of the corpus. The trust estate at the time of his death consisted purely of intangibles, with again the single exception of the ground rent on Maryland real estate.

It is our conclusion that the only property passing by reason of the death of Mr. Brannan subject to Maryland inheritance taxes is the ground rent on Maryland real estate. All other interests were intangibles passing from a non-resident decedent. It is true, of course, that the intangibles have a taxable situs in Maryland and fall within Article 81, Section 149 of the Annotated Code of Maryland. See 36 Opinions of the Attorney General 276. However, the statutes of South Carolina contain a provision substantially identical with Article 81, Section 172 of the Annotated Code of Maryland (1951 Edition). Under that Section, therefore, since South Carolina would not tax intangibles

of a Maryland decedent in a reverse situation, the intangibles with which we are here concerned are not subject to Maryland taxation.

It is probable, of course, that the reciprocal exemption from taxation contained in Article 81, Section 172, is intended to apply only with respect to intangibles of a non-resident decedent which constitutionally are subject to tax in his State of domicile. The purpose of the statute was to avoid double taxation of intangibles and not to create a situation whereby intangibles would pass free of inheritance taxation in any jurisdiction. It might perhaps be argued in the present case, with respect to the irrevocable remainders created by the decedent, that the transfer of them was completed while the decedent was still a resident of Maryland that consequently there was nothing upon which the tax laws of South Carolina constitutionally could operate to tax their transfer from decedent. See *MacClurkan v. Bugbee*, 106 N.J.L. 192, 150 A. 443. If such were indeed the case, we believe that, despite the apparently all-inclusive exemption of intangibles passing from a non-resident decedent contained in Section 172 of Article 81, those particular interests would be subject to Maryland inheritance taxes. We have not been deterred by the apparent generality of the language of the reciprocal exemption statute from giving effect to the dominant purpose when the situation was the reverse; namely, where literal application of the statute would seem to lead to double taxation. 27 Opinions of the Attorney General 455. Cf. *Re Robbins' Estate*, 258 Wis. 206, 45 N.W. (2d) 678, 47 N.W. (2d) 889; *Bliss v. Bliss*, 221 Mass. 201, 109 N.E. 148.

We are convinced, nevertheless, that, despite the holding in *MacClurkan v. Bugbee*, *supra*, South Carolina constitutionally may subject to taxation the transfers taking effect at or after death here involved even though the remainders following the settlor's life estate were created in Maryland and the trust corpus always was located here. The *MacClurkan* case was decided prior to the important decisions of

the Supreme Court of the United States in *Graves v. Elliott*, 307 U.S. 383, and *Graves v. Schmidlapp*, 315 U.S. 657. Under those decisions, it is now established that where a decedent had changed domicile after settling trusts in which he retained a power of appointment or a power of revocation, the State of which he died a resident may constitutionally subject the intangibles in the trust to tax. Admittedly, those cases did not have to go so far as we must in the present situation. Nevertheless, the underlying rationale of the cases appears to us to uphold the theory that South Carolina could constitutionally tax in the present situation. The relationship of the decedent to the remainders in the intangible property was maintained and continued by his ownership of the intervening life estate and the continuation of that relationship until his death made it reasonable for South Carolina to impose a tax. This is especially so, it seems to us, since the constitutional inhibitions against a tax by South Carolina which must be overcome are those created by the due process clause. At least where the two States concerned have mutually agreed not to tax intangibles passing from each others' resident decedents, it is difficult to see any lack of due process where the State of decedent's domicile taxes the transfer of a remainder interest following a retained life estate in a trust of intangibles created while the decedent was domiciled elsewhere.

In conclusion, therefore, you should collect a tax only with respect to the interests passing in the Maryland ground rent.

EDWARD D. E. ROLLINS, *Attorney General*.

FRANCIS D. MURNAGHAN, JR., *Asst. Attorney General*.

TAXATION—STATE NOT TO PAY SOCIAL SECURITY CONTRIBUTIONS ON COUNTY EMPLOYEES PAID PARTLY FROM STATE FUNDS.

August 25, 1953.

*Mr. Albert W. Ward, Secretary,
State Tax Commission.*

We have your recent request concerning the propriety of the County Commissioners of Wicomico County billing your Department for one-half of the Social Security taxes paid by that County. We understand that Wicomico County has, under the appropriate provisions of the Code, enrolled its employees within the Federal Social Security System, and has billed you for one-half of the Social Security tax paid on the salaries of the Supervisor of Assessments and his assessors on the theory that half the money which is used to pay these particular employees is supplied by the State of Maryland.

Sections 234 and 235 of Article 81 of the Maryland Code of 1951 provide that the salaries of all Supervisors of Assessments shall be paid monthly by the several Counties; and further provides in Section 234(d) that "A sum equivalent to one-half of the annual salary shall be paid by the Comptroller for the State of Maryland from general funds to the several counties and the City of Baltimore, such payments to be made to the said counties and Baltimore City quarterly." It is to be noted, however, that certain Counties are authorized to pay more than the salaries fixed in Section 234, and even in such case, the State is not authorized to contribute more than one-half of the amount prescribed in the statutory schedules.

It is our opinion that the Supervisors of Assessments are primarily County employees, and the fact that a sum equal to part of the money paid them by the respective Counties is reimbursed to them by the State would not make the State liable for Social Security taxes upon their salaries,

and if these employees participate in the Federal Social Security System, all contributions thereto, not paid by the employees, must be paid by the Counties.

EDWARD D. E. ROLLINS, *Attorney General.*

W. GILES PARKER, *Asst. Attorney General.*

TAXATION—INHERITANCE TAXES—CHARITABLE EXEMPTION
 —FOUNDATION WAS NOT SUBSTANTIALLY ACTIVE IN
 MARYLAND WHERE ITS SOLE CONTACT WITH THE STATE
 WAS A SINGLE GRANT TO A MARYLAND CHARITY.

September 11, 1953.

Mr. Edward E. Coursey,
Register of Wills for Queen Anne's County.

We are writing in reply to your inquiry as to the status, for purposes of inheritance taxation, of specific and residuary devises and bequests in the will of Mr. Moffett to the Whitehall Foundation, Inc. Solution of the problem revolves about the eligibility of the devises and bequests for the exemption provision of Section 149 of Article 81 of the Annotated Code (1951 Ed.) which reads as follows:

“* * * And provided further that nothing in this section shall apply to property passing, in trust or otherwise, to or for the use of a corporation, trust or community chest, fund, or foundation, created or organized under the law of the United States or of any State or territory or possession of the United States, organized and operated exclusively for religious, charitable, scientific, literary or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, a substantial part or all of the activities and work of which are carried on in the State of Maryland, and no part of the net earnings of which inures to the benefit of any private shareholder or individual.”

Whitehall Foundation, Inc., was organized in 1938 as a non-profit corporation under the laws of the State of New Jersey permitting the incorporation of “associations not for pecuniary profit”. The purposes for which the Foundation was established were:

“To give financial aid directly or indirectly to the sick, infirm and others in need; to loan money for educational purposes with or without charging interest in the discretion of the Trustees in each case; to give financial aid to charitable, benevolent or educational work through such agencies or institutions, whether or not incorporated, as the Trustees may determine, directly or through any charitable medium selected by the Trustees, to promote the well-being, assist in the education and relieve the suffering of persons in need, and exercise any corporate powers necessary to these purposes.”

The business office of the Whitehall Foundation, Inc., is situated in New York City, where the meetings of the Trustees of the Corporation are customarily held. The Corporation has never registered or qualified, appointed a resident agent or otherwise complied with the requirements of Article 23, Sections 83 through 89 of the Annotated Code. None of the present Trustees (who were also the Trustees at the time of Mr. Moffett's death) are residents of Maryland. The decedent, George M. Moffett, was one of the original incorporators and had been since its inception a member but not a Trustee of the Foundation. Prior to his death Mr. Moffett's gifts to the Foundation totalled \$676,679.00, and gifts from all other sources amounted to \$96,288.14, of which \$69,478.81 was contributed by George M. Moffett, Jr. Mr. Moffett's death occurred on December 22, 1951, and prior to that date the Foundation had disposed, in the years 1938 through 1951, of the following sums in pursuance of its corporate purposes:

Contributions to benevolent and educational institutions	\$158,434.50
Scholarship contributions	19,250.00
Contributions to needy individuals.....	49,936.84
	<hr/>
	\$227,621.34

The scholarship awards have apparently never been made to any residents of Maryland, rather having gone to students at high schools in or near North Kansas City, Missouri, Pekin, Illinois, and Argo, Illinois, where plants of the Corn Products Refining Company are located. Mr. Moffett was Chairman of the Board of Corn Products Refining Company at the time of his death and for many years prior thereto. Loans and gifts were contributed to individuals in need upon the recommendations of individual Trustees or members of the Foundation. No such gifts or loans have been made to residents of the State of Maryland. Of the contributions to benevolent and educational institutions, the only ones which the Foundation had made prior to Mr. Moffett's death to institutions active in Maryland were grants of \$10,000 in 1950 and 1951 to the Johns Hopkins University. These grants were in furtherance of a pledge made on December 7, 1949, to the University of a total of \$38,500 to be paid over a four year period to enable doctors at the University to continue research work on syphilis. Further payment of \$10,000 was made in 1952, and it is expected that the balance of the pledged amount will be made available to the University.

Following Mr. Moffett's death, the Foundation, in 1952, provided \$20,000 for the building fund of the Easton (Maryland) Memorial Hospital and \$400 as a contribution to the Old Wye Church in Queen Anne's County, Maryland. Moreover, since the death of Mr. Moffett, the Foundation has continued the scientific experiments in the breeding of hogs and cattle carried on by Mr. Moffett for a number of years prior to his death for the purpose of improving the breed and qualities and prolificness of such animals. Mr. Moffett carried on these experiments through Blakeford Farms, Inc., a Maryland corporation which operated Blakeford Farms in Queen Anne's County. The farms, together with the entire stock of Blakeford Farms, Inc., were devised and bequeathed to Whitehall Foundation, Inc., by Mr. Moffett.

On November 13, 1952, an amendment of the Certificate of Incorporation of Whitehall Foundation, Inc., took place, which provided that "a substantial part of the activities and work of the corporation shall be carried on in the State of Maryland".

In addressing ourselves to the legal questions presented, we find the natural point of departure to be 37 Op. A.G. p. 391. That opinion concerned the inheritance tax status of a residuary bequest made by John J. Raskob to the Raskob Foundation for Catholic Charities (Incorporated), in which Mr. Raskob had been greatly interested prior to his death. In that opinion, we determined that the inheritance tax liability should properly be established by reference not to the Foundation, which in the first instance was the recipient of the bequest, but rather by reference to the active charitable organizations to which the Foundation redistributed the funds by grants either of principal or of income. This conclusion was based on the fact that the Raskob Foundation for Catholic Charities (Incorporated) conducted no charitable activities of its own whatsoever, acting instead simply as a conservator of funds which were subsequently granted to active charities. We felt that its functions were altogether analogous to those of a trustee with power of appointment, and that, therefore, the Foundation itself actually acquired no beneficial interest in the bequest made to it by Mr. Raskob.

Consequently, the first problem with which we are here concerned is whether the question you have posed should be answered by reference to the Whitehall Foundation, Inc., or by reference to each charity to which it may hereafter make capital or income grants. The solution of this question is not easy for by far the greatest part of the Foundation's activities up until the death of Mr. Moffett had been the making of grants to active charities. Nevertheless, the Foundation has itself directly carried on substantial charitable activities of its own, primarily through relief of needy individuals. Upon consideration of the matter, we have

concluded that the direct charitable activities of the Foundation in the past have been substantial enough to make the analogy to a trustee with power of appointment inapposite. In the absence of prior history indicating that all or substantially all of the funds of a Foundation will be redistributed to active charities, it becomes practically impossible to predict in what proportions a Foundation will use its funds directly for charitable purposes or will redistribute them to active charities. On the basis of the prior history of the Whitehall Foundation, it is substantially possible, if by no means certain, that the emphasis in application of Mr. Moffett's devises and bequests and their income will be on direct use by the Foundation. Thus, in the present case, we believe that the answer to the problem depends upon whether Whitehall Foundation, Inc., itself qualifies for the language of the exemption contained in Section 149 of Article 81.

It is our conclusion that Whitehall Foundation, Inc., does not so qualify. In the first place, we strongly doubt whether installments of \$20,000 on one single gift to a Maryland charitable or educational institution out of the many contributions by the Foundation, totalling \$227,621.34 makes the Foundation one a substantial part or all of whose activities and work are carried on in the State of Maryland. It is true that Johns Hopkins University, the recipient, is active in this State, but for purposes of the exemption, it is the activities and work of Whitehall Foundation, Inc., that matter. Those activities are, in this case, the granting of the money, and that doubtless occurred in New York, at the principal office of the corporation. The amount donated to the Hopkins is, doubtless, from the point of view of percentage of all donations by the Foundation, substantial, being 8.78%. See 37 Op. A.G. p. 358. However, that does not appear to us the sole, or even the controlling, criterion in deciding whether a substantial part of the

Foundation's activities and work is carried on in Maryland. The quantum of the Foundation's connections with the State seems to us to be most important. We doubt, therefore, whether one single such contact in fourteen years of operations, during which time many contributions have been made by the Foundation, all, with this single exception, unrelated to Maryland, qualifies as "a substantial part * * * of the activities and work" of the Whitehall Foundation, Inc. It is, of course, elementary that, in construing exemption statutes, to doubt is to deny the exemption. In this regard we consider it material that the Foundation never registered or qualified to do business in Maryland. That fact is not alone conclusive of whether a corporation is substantially active in Maryland. See *Shaughnessy v. Linguistic Society of America*, 198 Md. 446, 84 A 2d 68. However, it affords evidence of the opinion of the Foundation itself as to whether it was carrying on substantial activities in Maryland.

Nor will it avail the Foundation to point to increased activities in the State of Maryland following the death of Mr. Moffett and to the amendment of the Charter to provide that a substantial part of the activities of the Foundation shall be carried on in Maryland. As pointed out in 37 Op. A.G. 391, the question of eligibility for the charitable exemption under the inheritance tax law is to be determined as of the date of the death of the decedent and not by reference to events occurring thereafter. It is so held in *Re Colman's Estate*, 187 Wash. 312. Compare 31 Opinions of the Attorney General, 209, where it is said: "The theory back of the inheritance tax statutes is that they are a tax on the right to receive a bequest. Since a will speaks as of the death of the testator, the governing factor would be the status of the recipient at the time of the testatrix's death." See *State v. Safe Deposit & Tr. Co.*, 132 Md. 251. If it were the case that the impact of the exemption language of Sec-

tion 149 of Article 81 is felt not at the testator's death, but at the time of actual payment of the bequest (following administration of the estate), there would be no reason for one important provision in Section 2 of Chapter 964 of the Acts of 1943. Chapter 964 created the exemption for gifts to charitable, educational, and scientific institutions, and Section 2 thereof read in part:

“That, to the extent not previously provided for, the exemptions granted by this Act shall apply in addition to property passing at deaths hereafter, to property passing or passed at deaths which occurred before the passage of this Act, *in those instances where the property has not yet been distributed * * **” (Emphasis supplied)

It is true that in 35 Opinions of the Attorney General, 333, it was indicated that the charter of a corporation, the establishment of which was called for in the decedent's will so that it might receive and administer a charitable bequest, might be made to include a provision for carrying out a substantial part of the corporation's activities in the State of Maryland, and that such a provision would bear upon the question of inheritance tax liability, even though it would inevitably come into existence only following death of the decedent. However, that opinion only indicated that, if the testator's intent was that the funds which he bequeathed to a corporation to be set up after his death were to be substantially employed in Maryland, the corporation's charter could and should so provide if the charitable exemption were to be obtained. Where, however, the testator had no such intention of his own, the corporation to which the funds are bequeathed may not alter its status with respect to its activities in the State of Maryland in order to qualify for an exemption it was not entitled to at the date of the death of the decedent. The bequests and devises to the Whitehall Foundation indicate that Mr. Moffett had no intention to require substantial employment in Maryland of the assets given; for the Corporation, as Mr. Moffett knew

it, was not substantially active in this State, and his will in no way conditioned the bequests and devises upon the Foundation's becoming so. The mere giving of the Blakeford Farms and shares in the managing corporation was not indicative of such an intent, even if the activities carried on at the farms could properly be described as charitable, educational or scientific, for no requirement was made that such assets be retained and operated by the Foundation.

In view of the conclusion which we have reached, it is not necessary to determine whether a bequest to the Whitehall Foundation would be ineligible for the charitable exemption for the further reason that Section 11 of Chapter 188 of the New Jersey Laws of 1898, under which the Foundation is incorporated, calls for distribution of the corporation's assets to its individual members in the event of a dissolution. It is perhaps arguable that because of this provision net earnings of the Foundation may inure to the benefit of a private individual. The Foundation has contended that no such benefit to its private members is, in fact, possible. We, however, express no opinion on the matter.

EDWARD D. E. ROLLINS, *Attorney General.*

FRANCIS D. MURNAGHAN, JR., *Asst. Attorney General.*

TAXATION—TESTATOR MAY NOT WORK EQUITABLE CONVERSION IN VIOLATION OF DOWER. WIDOW CLAIMING AGAINST WILL TAKES PROCEEDS OF SALE AS REALTY.

November 5, 1953.

Mr. Joseph P. Connor,
Register of Wills for Baltimore County.

We are in receipt of your letter of October 15, 1953, and enclosures therewith, from which it appears that Marion A. Francis, deceased, executed a will which predated his marriage to his widow, and, consequently, made no provision for her. Under the provisions of paragraph 2 of the will, the testator directs the sale of certain real property and the distribution of the proceeds to his four children. We do not understand from your letter that the widow renounced the will, but apparently she claimed the one-third share of the real estate as provided by law, and, in addition, claimed one-third of the rents arising out of the real estate subsequent to the death of the decedent and during the period of administration of the estate. The questions you ask us to consider are whether the widow's share in the real estate, or the proceeds thereof, and the rents, come to her by operation of law as an heir, or through the hands of the executors; and whether an inheritance tax is due the State on both her interest in the share of the real estate, or proceeds thereof, and her interest in the interim rents.

It is well settled in Maryland that when a will makes no provision for the testator's widow, there is no necessity for her to make a renunciation since there is nothing in it for her to renounce. *Pacholder v. Rosenheim*, 129 Md. 455; *Matthews v. Targarona*, 104 Md. 442; *Marriott v. Marriott*, 175 Md. 567.

In the *Pacholder* case, *supra*, the facts are very similar to those in the case in point. In its opinion, the Court said:

“She now claims to be entitled to one-half of the proceeds of the real estate left by Mr. Pac-

holder, and which was sold by his executor in conformity with the power and direction before set forth. The trustee insists that her rights in this property are not the one-half, but such interest as she would have been entitled to in the real estate of her husband under the rules of the equity courts. The argument on behalf of Mrs. Pacholder is that an equitable conversion took place with regard to the real estate, transforming it from real to personal property, and that where the conversion is authorized by the will it is regarded in law as so converted at the time of the death of the testator. The rule as thus stated has been repeatedly recognized and applied in this Court. *Cronise v. Hardt*, 47 Md. 433; *Sloan v. Safe Dep. & Tr. Co.*, 73 Md. 239; *Kennedy v. Dickey*, 99 Md. 300; *Stake v. Mobley*, 102 Md. 408.

“That rule is without application in the present case. Mrs. Pacholder is now claiming, not by virtue of the will, but in opposition to its provisions, and she is entitled, therefore, to the same interest and no other than if Mr. Mitchell S. Pacholder had died intestate. She cannot claim a benefit by reason of being entirely omitted from the provisions of the will, and an additional benefit which can arise only by virtue of its provisions. If Mitchell S. Pacholder had in fact died intestate there would have been no conversion whatever of his real property, and the interest of Mrs. Pacholder must be determined upon that basis. The conversion from real to personal property which took place, resulted only because of the express provision of the will * * *.”

We conclude, therefore, that the interest Mrs. Francis will take in the instant case will be one-third of the sale price of the realty as realty in the same manner as if there had been no conversion. We conclude further that since there

is no equitable conversion as to Mrs. Francis' interest, her share in the proceeds is realty and is cast upon her by operation of law and is not subject to administration by the executors named in the will. This conclusion is supported by reason, since it is clear that the testator could not foreclose his widow's right of dower by his sole act.

Since the widow's share was realty and title vested in her immediately upon the death of her husband, it follows that interim rents arising out of the property came to her clear of the administration of the estate and free from any inheritance tax.

For the reasons stated, it is our opinion that Mrs. Francis is entitled to one-third of the proceeds of the sale of the testator's real property in the same manner as if there had been no equitable conversion, but that her share may not escape the charge of the inheritance tax of one percent with respect to the corpus although it does so with respect to the interim rents and profits.

EDWARD D. E. ROLLINS, *Attorney General.*

CHARLES MCC. MATHIAS, JR., *Asst. Attorney General.*

TAXATION—STATE ROADS FUNDS; NOT DISTRIBUTABLE TO MUNICIPALITY UNLESS TAXES LEVIED TO THE EXTENT OF ONE DOLLAR PER CAPITA UNDER CHAP. 475 OF ACTS OF 1953.

November 20, 1953.

*Mr. George E. Gannon, Chief Accountant,
Office of State Comptroller.*

We have your letter in connection with the application of Chapter 475 of the Acts of 1953, Section 2, to the Commissioners of Church Creek, Maryland, a municipal corporation.

We note from the letter from Mr. Howard F. Jones, Mayor of Church Creek, which you have forwarded to us, that this municipality has never levied any taxes, and that the members of the Board, the Attorney and the Clerk, all work without pay, simply to improve conditions within the corporate limits. In other words, they are operating as a municipal corporation without any receipts, and apparently with the expenditure only of funds received from the State of Maryland. Further, we note that they have legislative authority to assess a tax not to exceed 25¢ per \$100.00, and that if this tax should be assessed, it would result in a return of somewhat less than \$400.00, as their total assessable basis is approximately \$150,000, and the population, according to the official census figures for the year 1950 is 187.

Chapter 475 of the Acts of 1953, by Section 2 enacted sub-section (e) of Section 22 of Article 89B of the Annotated Code, to read as follows:

“No distribution as provided in this Section shall be made to any county or municipality, however, unless it shall have levied, in its current fiscal year, taxes sufficient to collect a minimum of one dollar per capita in revenue and unless it shall have certi-

fied a copy of said levy to the State Comptroller; and provided further, that any moneys, otherwise distributable under this section, which shall not be distributed at the close of the fiscal year of said county or municipality because of failure of said county or municipality to make such levy or certification, shall revert to the Gasoline Tax Fund to be paid over separately to the State Roads Commission, for use by the Commission with the other moneys received from the Gasoline Tax Fund. Per capita revenue shall be computed for purposes of this section by using the population figures furnished by the latest Federal Census or by an official local census, whichever is latest."

The intent of the above legislation is clear and cannot be construed except to mean that, if a municipality does not assess taxes sufficient to collect a minimum of \$1.00 per capita, it would not be entitled to State funds distributable to it under the State Roads Special Fund Section.

We sympathize deeply with the public spirited citizens of Church Creek who are serving their municipality without pay. However, we must rule that, until and unless they levy an assessment which will collect at least \$187.00 in taxes, your office has no authority to disburse any State moneys to them, as provided in the statute above quoted.

EDWARD D. E. ROLLINS, *Attorney General.*

W. GILES PARKER, *Asst. Attorney General.*

TAXATION—ESTATES—ARTICLES OF PARTNERSHIP MAY DISSOLVE JOINT TENANCY IN PARTNERSHIP PROPERTY. DECEASED PARTNER'S WIDOW SHOULD BE ASSESSED 1% TAX ON THE DECEDENT'S PARTNERSHIP INTEREST.

December 21, 1953.

Mr. Walter C. Clarke,
Register of Wills for Montgomery County.

We are in receipt of your letter of October 6, 1953, and the accompanying papers. From this correspondence, we understand that a decedent in your County obtained certain real estate in 1951, which was conveyed to him and another as joint tenants with right of survivorship. Subsequent to the purchase of this real estate, the joint tenants are alleged to have entered into Articles of Partnership. The Articles state that the purpose of the Partnership is the purchase and operation of a farm in Montgomery County, Maryland, provide that the Partnership shall trade under a specified name, and stipulate that the capital necessary for commencing and operating the Partnership shall be contributed by the partners, in equal shares.

One of the partners died during the current year, leaving a widow whom he named as sole beneficiary under the will.

You ask our opinion as to whether the surviving tenant should be assessed an inheritance tax at the rate of 7½% on the decedent's one-half interest in the real estate above referred to; or, whether the widow should be assessed an inheritance tax at the rate of 1% on the decedent's partnership interest in the realty.

This very question was recently considered by the Court of Appeals of Maryland in the case of *Williams, et ux. v. Dovell*, 202 Md. 351, 96 A(2d) 484. The facts in that case were that two parties purchased realty in 1937, which

was conveyed to them as joint tenants. In 1946, they executed a written partnership agreement. In its opinion, the Court said:

“In any event, the partnership agreement, which was executed in 1946, shows conclusively that it was the intention of the partners that if a joint tenancy did exist, it was then terminated. As we pointed out in *Eder v. Rothamel, Md.*, 95 A.2d 860, there are a number of ways in which a joint tenancy may be terminated. One of the ways is by an agreement between the joint tenants to hold as tenants in common. Such an agreement may be inferred from the manner in which the parties deal with the property. *Duncan v. Suhy*, 378 Ill. 104, 37 N.E. 2d 826; 2 *Tiffany, Real Property*, 3d Ed., sec. 425. We also mention that joint tenancies are always regarded with disfavor by the courts. The reason for this is that from early times the courts have looked with favor upon the Widow's claim to dower as a humane provision for the support of the widow and her children, and have allowed her claim except when denied by the clearest mandate of the law. *Chew v. Chew*, 1 Md. 163, 171, 172.”

We believe that the portion of the opinion quoted is conclusive in the instant case. It is, therefore, our opinion that the widow should be assessed 1% tax on the decedent's partnership interest, as represented by the realty in question, assuming that the existence of the partnership is proved.

EDWARD D. E. ROLLINS, *Attorney General*.

CHARLES MCC. MATHIAS, JR., *Asst. Attorney General*.

TRIAL MAGISTRATES

SUBSTITUTE TRIAL MAGISTRATES ARE INCLUDED IN THE PROHIBITION OF MAGISTRATES PRACTICING BEFORE OTHER MAGISTRATES IN THE SAME COUNTY.

September 22, 1953.

*Mr. Robert H. Archer, Jr.,
State's Attorney for Harford County.*

In your recent letter you inquire whether it is lawful for Substitute Trial Magistrates to appear as counsel in civil and criminal cases before other Trial Magistrates.

Article 52, Section 113(a) provides as follows:

"It shall be unlawful for any trial magistrate to appear as counsel in any case before another trial magistrate in the same county."

The statute employs the language "any trial magistrate" and we believe that a Substitute Trial Magistrate is included within the purview of this law. It is our opinion, therefore, that a Substitute Trial Magistrate may not lawfully appear as counsel in any case, civil or criminal, before any other Trial Magistrate.

EDWARD D. E. ROLLINS, *Attorney General.*

TRIAL MAGISTRATES—FUGITIVE WARRANTS MUST BE ISSUED
UPON FOREIGN WARRANT CHARGING COMMISSION OF A
CRIME IN A FOREIGN STATE, IF PROPER UPON ITS FACE.

October 2, 1953.

*Mr. John E. Raine, Jr.,
State's Attorney for Baltimore County.*

Your letter of September 29, 1953 asks for our opinion on the following facts: One of the Trial Magistrates in Baltimore County has been presented with a warrant by an officer of the Maryland State Police, which warrant was issued by the authorities in Roanoke, Virginia, charging a certain person with larceny after trust.

You ask our opinion as to the propriety of the Magistrate issuing a fugitive warrant, because, in his opinion and in the opinion of the police officer, the facts of the case do not constitute a crime under the laws of this State, and perhaps under the laws of the State of Virginia, and you inquire: "Must an out of State warrant be accepted if proper on its face or may a Trial Magistrate in Maryland refuse to honor it if he entertains a belief that no crime is involved but that the issuance of the warrant in the foreign jurisdiction does pervert the criminal law to the collection of a civil debt?"

Section 27 of Article 41 of the Annotated Code (1951 Ed.), part of the Uniform Criminal Extradition Act, provides:

"(Arrest Prior to Requisition.) Whenever any person within this State shall be charged on the oath of any credible person before any judge or Justice of the Peace of this State with the commission of any crime in any other state and, except in cases arising under Section 20, with having fled from justice, or with having been convicted of a crime in that state and having escaped from

confinement, or having broken the terms of his bail, probation or parole, or whenever complaint shall have been made before any judge or Justice of the Peace in this state setting forth on the affidavit of any credible person in another state that a crime has been committed in such other state and that the accused has been charged in such state with the commission of the crime, and, except in cases arising under Section 20, has fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his bail, probation or parole, and is believed to be in this state, the judge or Justice of the Peace shall issue a warrant directed to any peace officer commanding him to apprehend the person named therein, wherever he may be found in this state, and to bring him before the same or any other judge, Justice of the Peace or court who or which may be available in or convenient of access to the place where the arrest may be made, to answer the charge or complaint and affidavit, and a certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant."

Section 28 provides:

"(Commitment to Await Requisition; Bail.) If from the examination before the judge or Justice of the Peace it appears that the person held is the person charged with having committed the crime alleged and, except in cases arising under Section 20, that he has fled from justice, the judge or Justice of the Peace must, by a warrant reciting the accusation, commit him to the county jail for such a time not exceeding thirty days and specified in the warrant, as will enable the arrest of the accused to be made under a warrant of the Gov-

error on a requisition of the Executive Authority of the state having jurisdiction of the offense, unless the accused give bail as provided in Section 29, or until he shall be legally discharged."

Further, Section 29, provides:

"(Bail; in What Cases; Conditions of Bond.) Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the state in which it was committed, a judge or Justice of the Peace in this state may admit the person arrested to bail by bond, with sufficient sureties, and in such sum as he deems proper, conditioned for his appearance before him at a time specified in such bond, and for his surrender, to be arrested upon the warrant of the Governor of this state."

It is the opinion of this office that the provisions of the said Sections do not give the Justice of the Peace any right to try the case, or use any discretion in the matter other than in fixing the amount of bail and in conducting a preliminary hearing for the sole purpose of determining whether or not the person held is the person charged with having committed the crime in the foreign State, and bail must be fixed with sufficient sureties to assure the appearance of the traverser in accordance with the other provisions of the extradition laws.

In other words, a Trial Magistrate has no right to determine the propriety of an extradition proceeding, but such can only be determined by the Governor or other executive authority, as provided in the Uniform Criminal Extradition Act. It will be noted that under certain circumstances, fugitives may be arrested even without a warrant. See 23 Opinions of the Attorney General, 405.

EDWARD D. E. ROLLINS, *Attorney General.*

W. GILES PARKER, *Asst. Attorney General.*

UNIVERSITY OF MARYLAND

ACTS OF GENERAL ASSEMBLY AUTHORIZING ISSUANCE OF
REVENUE BONDS ARE VALID.

February 18, 1953.

*Board of Regents of the
University of Maryland,
College Park, Maryland.*

We have examined Sections 242 to 251, inclusive, of Article 77 of the Annotated Code of Maryland (1951 Ed.), title "Public Education", sub-title "University of Maryland", as enacted by Chapter 61 of the Acts of 1950, as amended by Chapter 264 and Chapter 629 of the Acts of 1951, authorizing the University of Maryland to construct, maintain, equip, repair, and operate certain specified buildings, and to issue Revenue Bonds of the University, payable solely from fees, charges and revenues received from the use of said buildings, for the purpose of paying all or any part of the cost of any one or more of said buildings.

In accordance with the above Acts, the Board of Regents of the University of Maryland has determined to construct, maintain, equip, repair, and operate a combination physical education and auditorium building, ten housing units for fraternities and sororities, and a student union building, at College Park, Maryland (hereinafter called the "projects"), and to finance the projects, pursuant to its authority, and we have accordingly examined the proceedings of the Board of Regents of the University of Maryland in connection with its determination to construct and finance the projects, as well as its proceedings concerning its execution and delivery of the Trust Agreement hereinafter referred to, and its proceedings authorizing the issuance of the aforementioned Revenue Bonds, and other proofs submitted relative to the issuance and sale of such bonds. The issue will consist of Three Million Eight Hundred Fifty Thousand

Dollars (\$3,850,000) University of Maryland Revenue Bonds, payable solely out of fees, charges, and revenues received from the use of the projects, said bonds being dated January 1, 1953, in the denomination of One Thousand Dollars (\$1,000) each, numbered from 1 to 3850, inclusive.

After full consideration of all the instruments and proceedings to which we have referred, we are of the opinion:

- (1) That the Acts mentioned herein are valid;
- (2) That the execution and delivery of the Trust Agreement mentioned herein have been duly authorized;
- (3) That the issuance of the herein described University of Maryland Revenue Bonds has been duly authorized and that all conditions precedent to their delivery have been fulfilled;
- (4) That the above mentioned Acts, proceedings, and Trust Agreement provide for the collection of fees, charges, and revenues for the use of the projects;
- (5) That the above mentioned University of Maryland Revenue Bonds are valid special obligations of the University of Maryland, payable solely from the fees, charges, and revenues received for the use of the projects in accordance with the methods and procedures established by the aforementioned Trust Agreement;
- (6) That the Trust Agreement dated January 1, 1953, and authorized by the Acts and proceedings above referred to, has been duly executed by the University of Maryland and the Baltimore National Bank, as Trustee for the holders of the bonds herein mentioned, and that the University of Maryland is legally obligated to, and may legally comply with, the terms and conditions therein stated;

(7) That the bonds mentioned herein do not create or constitute any indebtedness or obligation of the State of Maryland or any political sub-division thereof, either legal, equitable, moral, or otherwise and do not constitute a debt or obligation contracted by the General Assembly or pledge the faith and credit of the State of Maryland, but are payable solely from the fees, charges, and revenues received from the projects.

EDWARD D. E. ROLLINS, *Attorney General.*

UNIVERSITY OF MARYLAND—SPECIAL POLICE—AUTHORITY—
MEMBERS OF CLASSIFIED SERVICE.

May 25, 1953.

Mr. George W. Fogg,
Director of Personnel,
University of Maryland.

This will acknowledge receipt of your letter of May 6, 1953, concerning special police at the University of Maryland.

The appointment of these police officers is authorized by the provisions of the Annotated Code of Maryland (1951 Edition), Article 23, Sections 316 to 322, inclusive, as interpreted by the opinions of this office found in 21 Opinions of the Attorney General 385 and 20 Opinions of the Attorney General 367. As stated in the earlier of these opinions:

“* * * These special officers are vested with ‘all the authority and powers held and exercised by constables at common law, and under the statutes of this State,’ in the county where the premises with respect to which they have been appointed lie.

“I am of the opinion, therefore, that these special officers may pursue an offender beyond the physical limits of the properties of the University of Maryland, and make an arrest for an offense committed in the officer’s presence, or may serve a warrant beyond the properties of the University. I am also of the opinion that these officers may enforce the traffic laws of the State while directing traffic on the Baltimore-Washington Boulevard, and may make arrests for violations of such statutes.

“While there is no objection to the special officers acting as escorts throughout the State, I do not believe that they have official authority beyond the limits of Prince George’s County.”

We believe that this answers the first question set forth in your letter.

Concerning the second question as to whether these special police are members of the Classified Service of the State of Maryland, it is our opinion that they are. We assume that they are appointed pursuant to the provisions of the Annotated Code of Maryland, Article 77, Section 241 (e) (1), which gives the University the authority to appoint all its employees “without being in any manner subject to or controlled by the provisions of Article 64A of the Annotated Code, ‘Merit System’.” That subsection goes on to provide that “after appointment, all employees in positions which are so designated by the University shall be regarded and treated as Classified Employees of the State, to have all the rights and privileges accorded to Classified Employees under the provisions of said Article 64A”. The result of this is that if the positions filled by the special police are properly designated by the University, then the employees who fill such positions are members of the Classified Service.

EDWARD D. E. ROLLINS, *Attorney General*.

VOLUNTEER FIREMEN

BENEFITS ARE NOT PAYABLE FOR HIGHWAY ACCIDENTS NOT INVOLVED IN GOING TO OR RETURNING FROM A FIRE.

June 10, 1953.

*Mr. Vincent A. Simmel, Secretary,
Board of Trustees,
Maryland State Firemen's Association.*

We have your letter in which you inform us that a member of the Corriganville Volunteer Fire Department has filed with the Board of Trustees of the Maryland State Firemen's Association a claim for disability for injuries suffered by the fireman resulting from his being struck by a hit and run driver, while walking along a road on his way from the Corriganville Fire Department to his home, after he had served as Chairman of a Dance Committee. The question which you present for our consideration is whether the injured fireman is entitled to benefits under the provisions of Article 88A, Section 38 of the Annotated Code of Maryland (1951 Ed.).

An appropriation is made by the General Assembly of Maryland to the Maryland State Firemen's Association for disabled and injured firemen, in accordance with the provisions of Chapter 260 of the Acts of 1935. That Act, with subsequent amendments, is set forth in Article 88A of the Code, beginning with Section 38. Section 38 reads as follows:

"Whenever any volunteer fireman in good standing of an incorporated volunteer fire company in the State of Maryland, shall be temporarily or permanently disabled as a direct result from active participation in fighting a fire or while going to or from a fire, or performing any other duties necessary to the operation or maintenance of the fire company, the said fireman shall lay his case

before the Board of Trustees of the Maryland State Firemen's Association, supported in all cases by the recommendation of the fire company of which he is a member, and the Board of Trustees aforesaid shall proceed to consider the same, and if the facts are found as above stated, the name of the fireman shall be placed on a list to be kept by the Secretary of the Maryland State Firemen's Association, to be known as 'Disabled Firemen's List', and every person so placed on said list shall be entitled to receive a pension from the Maryland Firemen's Association in a sum, the amount of which shall be decided upon by the Board of Trustees of the Maryland State Firemen's Association and to be paid out of its treasury at such times and in such instalments and in such amounts as the said Board of Trustees of the Maryland State Firemen's Association may decide, during the period he is so disabled or so long as said pensioner is without other means of comfortable support."

In order to qualify for benefits under Section 38, the applicant must be a volunteer fireman in good standing of an *incorporated* volunteer company. Benefits may be paid only during the period of disability, or so long as the pensioner is *without other means of comfortable support*. Your letter does not inform us whether the injured man was a member of an *incorporated* volunteer fire department, or whether he is *without other means of comfortable support*. But, in our opinion, the decisive question is the meaning of the phrase "performing any other duties necessary to the operation or maintenance of the fire company". Hence, it is unnecessary, in our view, to consider at this time whether the Corriganville Volunteer Fire Department is incorporated, or whether the injured fireman is without other means of comfortable support.

Several years ago we had occasion to consider whether a fireman was entitled to benefits under the Act when the fire department was called out because of an accident or emergency other than a fire. We ruled that the disability was not the direct result of going to or from a fire and that the language of the Act was not broad enough to comprehend injuries sustained while answering a call which did not result from a fire. 22 Opinions of the Attorney General, 833. We have not had occasion to construe the phrase "performing any other duties necessary to the operation or maintenance of the fire company", and we know of no judicial interpretation of that portion of the statute.

In determining the legislative intent, we are compelled to give to the words of the Act their plain and natural meaning without resorting to a forced, strained or distorted construction. Without attempting to determine precisely the nature and scope of the activities falling within the definition of "other duties necessary to the operation or maintenance of the fire company", we think it is significant that the General Assembly did not see fit to include the words "going to or from" the fire department premises in connection with the performance of such duties. The fact that benefits are payable for active participation in fighting a fire or while going to or from a fire leads us to conclude that the absence of the traveling provision is not the result of oversight, but rather, that the General Assembly did not intend it to apply except to actual fire fighting.

The Court of Appeals has held that an employee who is injured by a passing automobile at the conclusion of his day's work has not received an injury arising out of and in the course of his employment within the meaning of the Workmen's Compensation Law, and that the disability resulting therefrom is not compensable. *Lancaster v. Celanese Corp.*, 163 Md. 516. We believe that even if the fireman's service as Chairman of the Dance Committee con-

stituted the performance of other necessary duties within the meaning of the law, but this we find unnecessary to decide, nevertheless we are compelled by the decision in *Lancaster v. Celanese Corp.*, *supra*, to hold that these duties did not continue while the fireman was on his way to his home, and it follows, therefore, in our opinion, that the disability resulting from the highway accident does not entitle him to benefits under the provisions of Section 38 of Article 88A of the Code.

EDWARD D. E. ROLLINS, *Attorney General*.

J. EDGAR HARVEY, *Deputy Attorney General*.

WORKMEN'S COMPENSATION

LUMP SUM PAYMENTS, WITHOUT DISCOUNT, MAY NOT BE MADE UNDER ACT OF 1953, IN CASES WHERE THE INJURIES WERE SUSTAINED BEFORE ACT BECAME EFFECTIVE.

May 28, 1953.

Mr. Melvin L. Fine, Chairman,
State Industrial Accident Commission.

You have asked for our opinion concerning the construction to be placed upon Section 50 of Article 101 of the Code, as amended by Chapter 207 of the Acts of 1953. That Section is as follows:

"In every case providing for compensation to an employee or his dependent, excepting temporary disability, the Commission may, if in its opinion the facts and circumstances of the case warrant it, convert the compensation to be paid in a partial or total lump sum, *without discount*."

The only change made by the Act of 1953 was the addition of the words "without discount". The question which you have raised is whether the State Industrial Accident Commission may convert compensation without discount on awards passed prior to June 1, 1953, the effective date of Chapter 207. In the view which we take, the date of the award is not the controlling element, but rather, the date of the accident for which compensation is claimed and awarded. As a general rule, an amendment of substantive law does not apply to injuries or claims which arise before the amended law became effective. Changes in procedural law generally are effective as to pending cases. The rule is stated in 58 Am. Jur. page 599, as follows:

"In harmony with the established principle that legislative enactments, in the absence of a clearly

expressed intent to the contrary, will be deemed to be prospective, and not retrospective, workmen's compensation acts have been held not to apply to injuries which occurred before the law went into effect. On the same principle it is held that an amendment of the statute in respect of a matter of substantive right does not apply to existing injuries, or to claims arising by reason of the prior death of an injured employee. Neither can a curative statute be made applicable to claims for compensation accruing prior to the enactment thereof. A constitutional amendment relating to the jurisdiction of an industrial accident commission can have no application to accidents which have occurred and been decided by the commission before the amendment takes effect."

We think the Act of 1953 is substantive, rather than procedural and accordingly, it follows that the application of the Act of 1953 is limited to injuries which occur on June 1, 1953 and thereafter, and not to injuries which were sustained prior to the effective date of Chapter 207. This conclusion, we think, finds support in *Bethlehem Steel Co. v. Jackson*, 199 Md. 642, 87 A 2d 841, which dealt with the granting of a lump sum without discount. In reversing the judgment of the Circuit Court for Baltimore County which upheld the Commission's award, the Court of Appeals said:

"To require prepayment of amounts not yet due without the allowance of a discount would in effect *increase the award to the extent that the lump sum paid exceeded the present value of the future payments*. We think the concept of an equivalent value is implicit in the word 'convert'."
(Emphasis supplied.)

In view of the authorities cited, we conclude that under Chapter 207 of the Acts of 1953, the State Industrial Accident Commission may not award lump sums without discount except in cases of injuries sustained on June 1, 1953 and thereafter.

EDWARD D. E. ROLLINS, *Attorney General*.

J. EDGAR HARVEY, *Deputy Attorney General*.

WORKMEN'S COMPENSATION—OCCUPATIONAL DISEASES—
NEWLY CONSTITUTED MEDICAL BOARD MAY DECIDE
CASES PENDING BEFORE ITS PREDECESSOR.

June 30, 1953.

*Mr. Melvin L. Fine, Chairman,
State Industrial Accident Commission.*

We have your letter in which you inform us that the Medical Board for Occupational Diseases, as it was constituted before June 1st last, had seven cases pending before it upon which no decisions were rendered. You ask if the Medical Board, as it exists today, with an entirely new membership, may render decisions in the cases heard but not decided by its predecessor.

The law extending the Workmen's Compensation Act to occupational diseases came about through the passage of Chapter 465 of the Acts of 1939. Under that law, the creation of a Medical Board was provided for and the State Industrial Accident Commission is required to "refer every claim for compensation for an occupational disease to the Medical Board for investigation, hearing and report, excepting, however, such cases wherein there are no controverted medical issues. No award shall be made in any case until the Medical Board shall have duly investigated and heard the case and made its report and its decisions with respect to all medical questions at issue. The date of disablement, if in dispute, shall be deemed a medical question." Code Article 101, Section 27.

The law provides further that, upon the reference to it of a claim, the Medical Board shall notify the claimant and the employer to appear before it, and that either party may offer testimony, and that the claimant shall submit to such examinations as the Board may require. As soon as practicable after the completion of its consideration of the case, the Medical Board is required to report in writing on every

medical question in controversy to the State Industrial Accident Commission its findings and conclusions, and to file with the Commission the record of all proceedings held before the Board, including a transcript of the testimony of all witnesses appearing on behalf of the claimant and employer.

Thus, it will be seen that in every case in which there is a claim for compensation for disability resulting from an occupational disease, in which there are controverted medical issues, reference to the Medical Board is required and the State Industrial Accident Commission is forbidden to make an award of compensation until after the Medical Board has heard the case and rendered its decision on the controverted medical issues. Therefore, in the seven cases which were heard by the former Board but left undecided by it, the State Industrial Accident Commission is without the power at this time to make an award of compensation to the same extent as if those cases had never been considered by the Medical Board. Unless that Board, as presently constituted, has the power to conclude the cases which were pending before its predecessor, the result is that compensation must inevitably be disallowed in every one of them without regard to their merits. We know of no rule of law upon which that harsh result may be justified.

In our opinion, the Medical Board may render decisions in the cases about which you wrote us. As to the procedure to be followed, we think the Board may render its decisions upon the testimony heard by the former Board, if it is sufficient for that purpose, or that it may, in its discretion, set the cases for further hearings and thereby resolve the controverted medical issues and, thereafter, based upon the report of the Board, the State Industrial Accident Commission may proceed to a final determination thereof.

EDWARD D. E. ROLLINS, *Attorney General.*

J. EDGAR HARVEY, *Deputy Attorney General.*

WORKMEN'S COMPENSATION—PROPER FOR STATE INDUSTRIAL ACCIDENT COMMISSION TO REMOVE CASES FROM ONE COMMISSIONER TO ANOTHER UPON SHOWING OF PREJUDICE.

August 20, 1953.

*Mr. Melvin L. Fine, Chairman,
State Industrial Accident Commission.*

We have for consideration your inquiry as to whether the State Industrial Accident Commission has the right to grant a removal of a case from one Commissioner to another on the grounds of "prejudice".

Article 101, Section 10 of the Annotated Code of Maryland (1951 Ed.) provides, as follows:

"The Commission shall not be bound by the usual common law or statutory rules of evidence, or by any technical or formal rules of procedure, other than as herein provided, but may make the investigation in such a manner as in its judgment is best calculated to ascertain the substantial rights of the parties and to carry out justly the spirit of this Article."

Davis, on "Administrative Law", devotes a full chapter to a discussion of the effect of bias upon the operation, procedure and decisions of administrative bodies. In Section 117 he states the following conclusions:

"One who stands to gain or lose by a decision either way is disqualified by interest from participating in a judicial function. Difficult problems of line-drawing largely concern the determination of what interest is sufficiently substantial to require disqualification. * * * Although a judge of a Federal District Court must disqualify himself upon the filing of a sufficient affidavit of prejudice,

irrespective of truth or falsity of facts alleged, the A.P.A. (Administrative Procedures Act) provides that an administrative officer need not withdraw from participation in a decision unless the agency finds disqualification."

Although the Workmen's Compensation Article contains no specific provision for the disqualification of members of the Commission on the ground of "bias" or "prejudice", it is interesting to note by way of analogy that Congress has felt it necessary to make such provision with respect to Federal administrative bodies. The Administrative Procedures Act, U.S.C.A. Tit. 5, Sec. 1006, provides:

"The functions of all presiding officers and of officers participating in decisions * * * shall be conducted in an impartial manner. Any such officer may at any time withdraw if he deems himself disqualified; and upon the filing in good faith of a timely and sufficient affidavit of personal bias or disqualification of any such officer, the agency shall determine the matter as a part of the record and decision in the case."

In view of the authorities quoted and the right given to the Commission by Section 10, quoted above, to establish its own procedure, "as in its judgment is best calculated to ascertain the substantial rights of the parties", it is our opinion that it would be both proper and appropriate for the Commission, upon cause shown, to grant a removal of a case from one Commissioner to another on the grounds of "prejudice".

EDWARD D. E. ROLLINS, *Attorney General*.

CHARLES MCC. MATHIAS, JR., *Asst. Attorney General*.

WORKMEN'S COMPENSATION—COLLECTIONS FROM EMPLOYERS AND INSURERS FOR THE SECOND INJURY FUND SHOULD BE RESUMED WHEN THE CASH BALANCE IN THE FUND WILL BE REDUCED BELOW \$50,000 WITHIN THREE MONTHS.

November 4, 1953.

*Mr. Melvin L. Fine, Chairman,
State Industrial Accident Commission.*

We are in receipt of your letter in which you request our opinion on the construction of Article 101, Section 67, subsection (4), which relates to the Second Injury Fund. The question you ask is whether the collections from employers or their insurance carriers, provided by subsection (2), shall be resumed when the reserve is reduced to \$50,000, or when the actual cash balance is reduced to \$50,000. An examination of the statute reveals no mention of any reserve, nor can we find by any reasonable implication that the General Assembly intended that there should be a reserve. The law reads:

“* * * whenever thereafter the amount of the Fund shall be reduced below Fifty Thousand Dollars (50,000.00), by reason of payments made pursuant to this section, or otherwise, or whenever the State Industrial Accident Commission shall determine that payments likely to be made from the Fund in the next succeeding three (3) months will probably cause said Fund to be reduced below Fifty Thousand Dollars (\$50,000.00), the said Commission shall notify all employers, their insurance carriers, and the State Accident Fund that such contributions are forthwith to be resumed as of the date set in such notice, and such contributions shall thereafter continue as above provided in all cases above specified after the effective date of said notice, and such contributions

shall thereafter continue until the Fund shall again amount to One Hundred Thousand Dollars (\$100,000.00).”

In view of the language employed by the Legislature, it is our opinion that collections should be resumed when the Commission shall determine that the cash balance in the Fund will probably be reduced below \$50,000 within three months.

EDWARD D. E. ROLLINS, *Attorney General.*

CHARLES MCC. MATHIAS, JR., *Asst. Attorney General.*

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