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ANNEAPOLIS, MARYLAND

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COMPLIMENTS OF

EDWARD D. E. ROLLINS

ATTORNEY GENERAL

ANNUAL REPORT
AND
OFFICIAL OPINIONS
OF THE
ATTORNEY GENERAL
OF
MARYLAND

1954

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Superseded by Carroll.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 the Lordship's Great Seal.

Col. George Plater I of St. Mary's City (Cath.) acting Attorney General, for the first time in 1691; superseded by Wynne.

Edward Wynne of St. Mary's City (Cath.) Attorney General, 5 April 1692.

Col. George Plater II of St. Mary's City (Cath.) Attorney General, 1711-1712. Married, 1712.

ADDENDUM
Where the case of Clarke v. Welden appears on pages 369 and 426, the reference should be 204 Md. 26 instead of 80 Md. 26.

... by Gov. Nicholson,
... as again commissioned
... continued to serve until his
... Naval Officer of North Potomac,
... 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.

Daniël 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.

(Reprinted from "His Lordship's Patronage", pages 132-34, by permission of the author, Mr. Donnell M. Owings, Department of History, University of Oklahoma).

ADDENDUM

Where the case of *Clarke v. Welden* appears on pages 369 and 426, the reference should be 204 Md. 26 instead of 80 Md. 26.

THE UNIVERSITY OF CHICAGO
DEPARTMENT OF CHEMISTRY
5708 SOUTH ELLIS AVENUE
CHICAGO, ILLINOIS 60637

1978

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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.

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STATE LAW DEPARTMENT

Edward D. E. Rollins.....Attorney General
¹J. Edgar Harvey.....Deputy Attorney General
²Ambrose T. Hartman.....Assistant Attorney General
W. Giles Parker.....Assistant Attorney General
H. Clifton Owens.....Assistant Attorney General
³James H. Norris, Jr.....Assistant Attorney General
⁴Charles McC. Mathias, Jr.....Special Assistant Attorney
General for the Comptrol-
ler of the Treasury
⁵Francis 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
Marvin H. Smith.....Special Assistant Attorney
General in Charge of Sub-
versive Activities Control
Herbert L. Cohen.....Special Assistant Attorney
General for the Employ-
ment Security Board
Noah A. Hillman.....Special Assistant Attorney
General for the Department
of Tidewater Fisheries
Philip T. McCusker.....Special Attorney for the
State Accident Fund
Mrs. Anne Davis Greer.....Chief Clerk
Miss Margaret E. Holliday.....Stenographer-Secretary
⁶Miss L. Erma Leonard.....Stenographer-Secretary
⁷Mrs. Katherine D. Hudlin.....Stenographer-Secretary
Miss Agnes T. Conroy.....Senior Stenographer

¹Resigned December 18, 1954.

²Appointed Assistant Attorney General for Comptroller of Treasury De-
cember 1, 1954.

³Appointed April 5, 1954.

⁴Resigned November 30, 1954.

⁵Resigned February 1, 1954.

⁶Resigned August 13, 1954.

⁷Appointed June 30, 1954.

Offices: 1201 Mathieson Building,
Baltimore 2, Md.

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Annual Report for 1954

December 20, 1954.

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

DEAR GOVERNOR MCKELDIN :

The term for which I was appointed Attorney General, has now come to a close, and in accordance with the provisions of Article 32A, Section 10 of the Annotated Code of Maryland (1951 Edition), I herewith submit my report of the business and proceedings of the State Law Department beginning January 1st, 1954 and ending December 20th, 1954. The official opinions rendered by the Department during the time noted follow this report.

There were one hundred and seventy one cases disposed of during the time covered by this Report, seventy-six are still pending, some of which are partially tried, others are in the process of negotiation with the view of eliminating court trials if possible. 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 proceedings of the Department to which he is assigned, and the same are included herein. In addition to these, there is the report of the Assistant in Charge of Subversive Activities Control, which is not in detail, for the very obvious reason that the work of this Department is of a highly confidential nature.

There were twenty-nine criminal cases tried in the Court of Appeals and fifteen 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 counties and Baltimore City, and the People's Court of Baltimore City. The various subjects covered in the cases are as follows: bookmaking, conspiracy to defraud and cheat; failure to comply with the Workmen's Compensation Law, receiving stolen goods and unlawful taking of an automobile, larceny, murder, illegal practice of medicine, false pretenses, lottery, escape from a penal institution, carnal knowledge, abortion, breaking and entering for the purpose of theft, assault with intent to murder, forcible rape, unlawful possession of whiskey for resale, manslaughter by automobile, wilful neglect to provide for maintenance and support of infant child and bigamy. 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 and alcoholic beverages taxes; constitutional law, testamentary law, motor vehicle suspensions and revocations, election laws, petitions for refunds and suits for damages to State property.

As in the past we have approved as to form and legal sufficiency all bonds submitted to the Department by employees who handle State revenues, as well as all public officials required by law to be bonded. A conservative estimate would be approval of between twelve and fifteen hundred bonds. 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 Department 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 provided by law.

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

During 1954, my office completed negotiations leading to the construction of the two new State office buildings at Annapolis and Baltimore, respectively. Architect-Engineer Agreements were approved by this office after negotiation by the Department of Public Improvements, and in the case of the Annapolis office building, the land acquisition was forwarded to an attorney in Annapolis and demolition of buildings on the site was begun.

With respect to the site of the State Office Building in Baltimore City, this office, during the year, finished negotiations of a tripartite agreement between the Mayor and City Council of Baltimore, the Slum Clearance Agency of the Federal Government and the State of Maryland, whereby the State, through its Department of Public Improvements, becomes a re-developer of a slum clearance area for the purpose of constructing the State Office Building, and as a result thereof, the City of Baltimore agreed to acquire the necessary land with the aid of \$7,000,000 of Federal Funds, and to turn the same over to the State for the re-development purpose. This was an unique contract, being the first of its kind ever negotiated under the Slum Clearance Plans of the Federal agency. At this point, I wish to express my appreciation of the cooperation received from the office of the City Solicitor of Baltimore City in connection with this matter, and from the representatives of the Department of Public Improvements of the State of Maryland. Acquisition of land has begun on the project site, Architect-Engineer Agreements have been approved and the work is rapidly progressing.

The General Assembly convened on February 3, 1954, and adjourned on March 4, 1954. We again maintained an office in the State House during the Session, to advise and consult with the members and committees of the Assembly relative to legislation, and the State Departments and officials interested in bills to be introduced. The office was in charge of Mr. Joseph D. Buscher and Mr. Ambrose T. Hartman.

During the year the following Bonds were issued:

\$7,500,000 General Construction Loan of 1952
 \$5,585,000 General Public School Construction
 Loan of 1953 (June 1954)
 \$6,025,000 General Construction Loan of 1952
 \$10,000,000 General Construction Loan of 1953
 (November 1954)

The necessary official opinions were prepared as to the legality of the various Bond Issues and the office approved all arrangements in connection with the sale thereof, and a member of the office attended the settlement on behalf of the State, together with private bond counsel.

On December 7th, 1954, Mr. Ambrose T. Hartman and Mr. W. Giles Parker attended the meeting of the National Association of Attorneys General in White Sulphur Springs. Because of illness I was unable to attend, and Mr. Hartman submitted to the Convention the Report of the Committee on Habeas Corpus, of which I am Chairman.

During the course of the year, members of my staff participated in various activities throughout the State, some of which were the attendance of Mr. Parker and Mr. Hillman as instructors at the Annual School for Enforcement Officers of the Tidewater Fisheries Division of the State, held at Solomons Island; Mr. Mathias attended and spoke at the Annual Meeting of the Maryland Municipal League and participated in a panel discussion on the subject of

Social Security for Municipalities in the State of Maryland, together with representatives of the Comptroller's Office and the Federal Old-Age and Survivors Insurance Division of the Department of Health, Education and Welfare. Mr. Hartman and I attended the meetings of the Habeas Corpus Committee of the National Association of Attorneys General which were held in Washington during the year.

The Blue Sky Law Enforcement matters have been very active during the year and applications for registration under this law have been received from all parts of the country. The requests for information by mail, telegram and telephone have doubled in volume during the year and the number of registrations increased over that of the previous year.

The following changes in personnel occurred during the year:

On February 1st, 1954, Mr. Francis D. Murnaghan, Jr., resigned as Special Assistant Attorney General for the Comptroller of the Treasury and I assigned Mr. Charles McC. Mathias, Jr. to this position, Mr. Mathias having been appointed as an Assistant in July, 1953. On April 5th, 1954, I appointed Mr. James H. Norris, Jr. as Law Clerk, which position had been vacant since I appointed Mr. Ambrose T. Hartman as an Assistant Attorney General. On November 30th, 1954, Mr. Charles McC. Mathias, Jr. resigned as Special Assistant Attorney General for the Comptroller of the Treasury and I appointed Mr. Ambrose T. Hartman to succeed him in this position, to become effective November 30th, 1954. At the same time I appointed Mr. James H. Norris, Jr., to the position vacated by Mr. Hartman. On December 18th, 1954, Mr. J. Edgar Harvey resigned as Deputy Attorney General.

We continued the policy of conferring frequently with State officials and heads of Departments, which aided materially in the disposition and solution of the many problems which arose from day to day. We have found this policy to

be of great benefit, not only to the individual departments concerned, but also to the best interests of the State.

I would like to take this opportunity to thank you and the members of your official family for the cooperation and courtesy extended to me and the members of my staff, in the administration of the proceedings of the State Law Department during my tenure of office.

With kindest regards, I am

Sincerely yours,

EDWARD D. E. ROLLINS,
Attorney General.

SUMMARY OF LITIGATION FOR 1954

CASES DISPOSED OF IN THE SUPREME COURT OF
THE UNITED STATES

Miller Brothers Company vs. State of Maryland. No. 160, October Term, 1953. See Volume 38 of the Report and Official Opinions of the Attorney General, pages 29, 30. An appeal from the judgment of the Court of Appeals was filed by Miller Brothers, and on April 5, 1954, the Supreme Court reversed the decision of the lower court and remanded the case for further proceedings. On April 13th, 1954, the State filed a motion for a re-hearing and on May 3, 1954, it was denied. Mr. Murnaghan represented the State.

William Adams vs. State of Maryland. No. 271, October Term, 1953. The petitioner asked for a writ of certiorari to the Court of Appeals of Maryland, which writ was granted and the case set for argument during January 1954. The case came on for argument, with the result that judgment was reversed and the cause remanded. The opinion of the Court in this case which is reported at 347 U.S. 179, has been of great national interest in view of its determination of the proper use of testimony taken before a Congressional Investigating Committee in a State criminal prosecution. Mr. Parker represented the State.

George Edward Grammer vs. State of Maryland. No. 408, Misc. 1953. See Volume 38, Report & Official Opinions of the Attorney General, page 22. This was a petition for a writ of certiorari to the Court of Appeals of Maryland. On April 6, 1954, the petition was denied. Mr. Hartman represented the State.

David Aitchison vs. State of Maryland. No. 166, Misc., October Term, 1954. See case under heading of CRIMINAL CASES TRIED IN COURT OF APPEALS. No. 137, October Term, 1953 (Vol. 39). This was a petition for a writ of certiorari, which was opposed by the State and a motion

was filed for leave to file a brief as Amicus Curiae by the Maryland Naturopathic Association, Inc., and others. On November 8, 1954, the petition for the writ of certiorari was denied and also the motion to appear as Amicus Curiae. Mr. Parker represented the State.

Charles Cooper vs. State of Maryland. No. 362, October Term, 1954. See case under heading of CRIMINAL CASES TRIED IN COURT OF APPEALS. No. 174, October Term, 1953 (Vol. 39). This was a petition for a writ of certiorari, which was opposed by the State. On December 8, 1954, the petition was denied. Mr. Parker represented the State.

CASE PENDING IN THE SUPREME COURT
OF THE UNITED STATES

Oliver Brown, et al., vs. Board of Education of Topeka, Shawnee County, Kansas, et al. Nos. 1, 2, 4, and 10, October Term, 1953.

CASES DISPOSED OF 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. This was an appeal from a denial of a writ of habeas corpus by the U.S. District Court for the District of Maryland. A motion to dismiss the appeal was filed by this office, and on December 29, 1954, the motion was granted. Mr. Hartman represented the Police Department.

Aldine T. Carroll vs. Vernon L. Peppersack, Warden, Maryland Penitentiary. No. 6792, October Term, 1953. This was an appeal from an Order passed by Judge W. Calvin Chesnut, United States District Judge for the District of Maryland, refusing appellant's application for the issuance of a writ of habeas corpus. On June 2nd, 1954, the petition was denied. Mr. Owens represented the Warden.

Luther C. Sykes, Jr. vs. Warden, Maryland Penitentiary. No. 6803, October Term, 1953. This was an appeal which was allowed in forma pauperis from an Order of the United States District Court for the District of Maryland (Chesnut, J.) dismissing the appellant's petition for a writ of habeas corpus. On June 2nd, 1954, the petition was denied. Mr. Owens represented the Warden.

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

Robert M. Dawson, Jr. et al. vs. Mayor and City Council of Baltimore City, et al. No. 6903, October Term, 1953.

Milton Lonesome, et al. vs. R. Brooke Maxwell, et al. No. 6904, October Term, 1953.

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

Central Greyhound Lines, Inc. of New York, etc. vs. Thomas B. R. Mudd, Commissioner of Motor Vehicles of the State of Maryland. Civil Action 7178. Action in this case arose because the Commissioner of Motor Vehicles insisted that the Greyhound Lines, an interstate carrier, deposit bonds to protect passengers injured or killed in the course of transportation, as required by the Maryland statute. The matter was tried before Judge William C. Coleman, who held that since Congress has enacted legislation which preempts this field, the said legislation supersedes the Maryland law, and, therefore, the Commissioner of Motor Vehicles of Maryland cannot require interstate buses to deposit such bonds. The Federal law requires that similar bonds which offer equal or greater protection to the traveling public be deposited with the Interstate Commerce Commission. Mr. Owens represented the Commissioner of Motor Vehicles.

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. Civil Action No. 6646.

United States of America vs. 290,107 square feet of space in the Candler Building situate in Baltimore, State of Maryland, and Emory University, et al. Civil Action No. 7667.

Kenneth C. Hitchcock, et al. vs. Henry T. Collenberg, et al. Civil Action No. 7866.

CRIMINAL CASES TRIED IN THE COURT OF APPEALS

Merrill George Gibson vs. State of Maryland. No. 108, October Term, 1953. An indictment was found against the appellant which contained fifteen counts charging violations of the law which prohibits the selling of book or pool on the results of horse racing. Prior to the trial, he filed a Motion to Dismiss the indictment, which was overruled. He was tried before a jury, found guilty on nine counts of the indictment, and sentenced to pay a fine of \$1,000 and to serve one year in the Maryland House of Correction. The judgment of the lower Court was affirmed with costs. Mr. Hartman represented the State.

Martin J. Yamin vs. State of Maryland. No. 109, October Term, 1953. Appellant was tried upon an indictment which charged that he, Angelo Napoli, Cecil Roil and Lee Clarence Cohen unlawfully conspired from the 1st day of December, 1950, and continuing until February 28, 1952, to cheat and defraud one Ellis H. Barnes and William C. Robinson & Son Co., and the Globe Indemnity Company by deliberately and intentionally causing an automobile "accident" with an automobile owned by the said William C. Robinson & Son Co., and operated by the said Ellis H. Barnes, and insured by the said Globe Indemnity Company. Appellant was tried separately from his co-conspirators, pleaded not guilty, and requested a jury trial. He was found guilty and after denial of a motion for a new trial, was sentenced to one year in the Maryland Penitentiary, which sentence was to run concurrent with the one he was serving in that institution at the time of his trial. The appeal was dismissed with costs. A motion for re-argument was filed on June 1st, 1954, and was denied on June 22nd, 1954. Mr. Hartman represented the State.

State of Maryland vs. Marvin R. Fisher. No. 110, October Term, 1953. An indictment was found against the appellee, which charged that he was an employer of persons engaged in extra-hazardous employment, to wit, truck

drivers, that he failed to furnish satisfactory proof to the State Industrial Accident Commission of his financial ability to pay the compensation specified in Article 101 of the 1951 Code, that he failed to submit to the Commission the method he desired to adopt for assuring compensation to his employees, as provided in that Article, and that he failed to insure voluntarily the compensation specified in Article 101 (1951 Code). He was represented by counsel, entered a plea of guilty, was found guilty and sentenced to pay a fine of \$500.00 and costs; the fine and costs were suspended. This appeal was from the judgment suspending sentence. The judgment of the lower Court was affirmed with costs. Mr. Hartman represented the State.

William Albert Strine vs. State of Maryland. No. 115, October Term, 1953. The appellant, Strine, along with George C. Cole and George A. Branson, was indicted for Motor Vehicle Larceny, Receiving Stolen Goods and Unlawful Taking of a Motor Vehicle, on the 13th of October, 1953. On the 16th of October, 1953, he was arraigned and entered a plea of "Not Guilty". On October 28, 1953, the case was tried before a jury, Judge John B. Gray, Jr., presiding. At the close of the State's case, the defendant moved for a directed verdict of "Not Guilty". The motion was refused by the Court and at the close of the whole case the defendant renewed his motion for a directed verdict. And it again was overruled by the Court. The jury rendered a verdict of "Not Guilty" on the 1st and 3rd counts of the indictment, and "Guilty" as to the 2nd count, that of Receiving Stolen Goods. On the same day, October 28, 1953, the Court imposed a sentence of five years in the Maryland House of Correction upon the defendant, William Albert Strine. On October 28, 1953, the defendant noted an appeal to the Court of Appeals, which court affirmed the judgment of the lower Court. Mr. Parker represented the State.

Robert Roy White vs. State of Maryland. No. 130, October Term, 1953. An indictment was found against the appellant which contained fifteen counts charging violations

of the law which prohibits the selling of book or pool on the results of horse racing. The appellant filed a Motion to Dismiss the indictment prior to the trial, which was heard in open court on September 25, 1953, which was overruled. The appellant was tried before a jury on October 14, 1953, and found guilty on nine counts (six other counts having been stricken by the Court) and was sentenced to serve one year in the Maryland House of Correction and pay a fine of \$1,000, the sentence being suspended and the appellant to be placed under probation. The judgment of the lower Court was affirmed with costs. Mr. Hartman represented the State.

Marcus Ray Nixon vs. State of Maryland. No. 134, October Term, 1953. This was an appeal from a sentence of imprisonment for life after conviction of the appellant by a jury, of murder in the first degree, without capital punishment, in the Circuit Court for Anne Arundel County, Judge Michaelson presiding. The judgment of the lower Court was reversed and a new trial awarded, the costs to be paid by the County Commissioners of Anne Arundel County in accordance with Chapter 492 of the Acts of 1953. Mr. Hartman represented the State.

David Aitchison vs. State of Maryland. No. 137, October Term, 1953. This was an appeal by David Aitchison from a conviction in the Circuit Court for Montgomery County upon four counts in an indictment charging him with the illegal practice of medicine in violation of the Maryland statutes relating to practitioners of medicine. The first count in brief charged Aitchison with practicing medicine in Montgomery County without being registered by the Clerk of the Circuit Court for Montgomery County, as required by law. The second count charged him in effect with treating certain persons unknown to the Grand Jury for certain physical ailments without being licensed to practice medicine. The third count was nolle prossed by the State. The fourth count charges the defendant with practicing without a license and further states that he used the terms "Dr.", "Doctor", "M.D.", etc. with intent to imply that he

was engaged in the lawful art and science of healing and in the practice of medicine, contrary to law. The fifth count, in effect, was similar to the second count. The statutes involved generally are found in Article 43, Sections 117 to 147, inclusive of the Annotated Code of Maryland (1951 Ed.). The defendant was given a suspended sentence on the first and fourth counts and fined Two Hundred Dollars (\$200.00) each on the second and fifth counts. The judgment of the lower Court was affirmed with costs. Mr. Parker represented the State.

Edward N. Cullings vs. State of Maryland. No. 138, October Term, 1953. This was an appeal from the Criminal Court of Baltimore City. The appellant was tried on five indictments containing four counts each. He was convicted on the third and fourth counts in each indictment. The third count in each indictment charged the appellant with using a bad check as an inducement to part with personal property of considerable value. The fourth count in each indictment charged the appellant with obtaining the very same personal property from the very same people mentioned in the third count by means of false pretenses. The appellant was sentenced to five years in the Maryland House of Correction on the counts of the indictments on which he was found guilty and the said sentences run concurrently. From these verdicts and judgments, the appellant appealed. Mr. Owens represented the State.

William J. Gattus, Jr. vs. State of Maryland. No. 146, October Term, 1953. This was an appeal from a sentence of the Criminal Court of Baltimore City under which the defendant was sentenced to a fine of \$500.00 and six months in the House of Correction on a conviction of the alleged crime of bookmaking. The judgment of the lower Court was reversed and a new trial awarded. Mr. Owens represented the State.

Leonard Little vs. State of Maryland. No. 147, October Term, 1953. This was an appeal from a judgment of the Circuit Court for Washington County sentencing the de-

fendant to be confined in the House of Correction for six months and to pay, in addition, a fine of \$1,000 and costs below, which judgment was entered on a verdict of guilty upon a trial by jury on an indictment containing fifteen counts charging, in various forms, the defendant with the violation of the gambling laws of Maryland in so far as those laws pertain to accepting bets on horse races or maintaining premises for such purposes. The judgment of the lower Court was affirmed, with costs. Mr. Parker represented the State.

Louis A. Alagia vs. State of Maryland. No. 156, October Term, 1953. On September 22, 1953, the State's Attorney for Cecil County presented an Information to the Grand Jury of that County in the September Term of Court relative to violation of the Anti-Bookmaking Statutes. September 23, 1953, the Grand Jury found a True Bill and returned two indictments against Louis A. Alagia, each charging him on fifteen counts with violation of the Anti-Bookmaking Statutes. On September 25, 1953, the defendant was arraigned, entered a plea of "Not Guilty", and elected a Jury Trial; recognizance in the amount of \$2,000 filed. On September 28, 1953, a Motion to Dismiss the Indictment was filed. On October 20, 1953, by agreement of Counsel, Nos. 335 and 336 Criminals were consolidated for purposes of trial; at this time the Motion to Dismiss the Indictment was overruled. The case came up for trial on Tuesday, October 20, 1953, the Jury was struck, empaneled and sworn; upon a Motion by the State's Attorney, Counts Nos. 5, 7, 9, 11, 14, 15 were stricken from the Indictment. The Court instructed the foreman of the Jury to step from the Jury box and the Court declared a "Mistrial". The case again came up for trial on Wednesday, December 16, 1953, under the caption of "State of Maryland v. Louis A. Alagia" in the Circuit Court for Cecil County, Nos. 335 and 336 Criminals, September Term, 1953, with the Honorable Floyd J. Kintner, Associate Judge, presiding. The Jury was struck, empaneled and sworn, and a Motion to Dismiss on all counts was made and promptly overruled. Witnesses were sworn and testimony heard. The Jury was instructed

by the Court and rendered a verdict of "Guilty" on all counts remaining in the Indictment, namely, Nos. 1, 2, 3, 4, 8, 12, 13.

On December 21, 1953, the defendant was sentenced by the Honorable Floyd J. Kintner, Associate Judge, to pay a fine of \$1,000 and to be sentenced to the Maryland House of Correction for one (1) year. The prison part of the sentence was suspended on condition that the fine be paid and the defendant was placed on probation under the supervision of the State Parole Officer. On December 28, 1953, an appeal was taken from the said verdict and sentence of this Honorable Court. The judgment of the lower Court was affirmed with costs. Mr. Hartman represented the State.

William Dean vs. State of Maryland. No. 164, October Term, 1953. The appellant was tried in the Criminal Court of Baltimore before the Court sitting as a jury upon an indictment which charged violations of the laws relating to lottery. He was found guilty on six of the eleven counts and, after denial of a motion for new trial, was sentenced to serve two years in the Maryland Penitentiary and to pay the costs. This was an appeal from that judgment. The judgment of the lower Court was affirmed. Mr. Hartman represented the State.

Joseph Baker, et al. vs. State of Maryland. No. 170, October Term, 1953. The six appellants in this case were brought before the Magistrate for Juvenile Causes for Prince George's County on January 19, 1954, and were charged upon Petitions of Thomas D. Jones, Assistant Superintendent of Boys' Village of Maryland, as juvenile delinquents by reason that on January 18, 1954, they escaped from Boys' Village. The Magistrate waived jurisdiction in each case and each was transferred to the criminal docket. Each appellant filed a waiver of indictment and informations were returned charging them with the crime of escape. Each appellant, through counsel who represented

them on this appeal, filed a motion to dismiss the information for the reason that it did not show an offense against the laws of the State of Maryland. These motions were denied and the cases consolidated for trial. Each appellant elected to be tried before the Court sitting as a jury and pleaded not guilty. The appellants were found guilty and each was sentenced to serve a sentence of not to exceed three years in the Maryland State Reformatory for Males. The judgments of the lower Court were affirmed with costs. Mr. Hartman represented the State.

Charles M. Willis vs. State of Maryland. No. 172, October Term, 1953. The appellant was tried in the Circuit Court for Montgomery County upon an indictment which charged that he obtained twenty cubic yards of concrete, valued at \$285.60, from the Maloney Concrete Company by a certain false pretense made to Lewis Armstrong, which pretense was made knowingly and designedly to obtain said property. At his request and pursuant to Section 694 of Article 27, (1951 Code) the appellant was furnished with a bill of particulars, in which it was stated that the false pretenses intended to be given in evidence "is a check given on the 12th day of May, 1953, drawn on the Farmers' Banking and Trust Company * * * to the Maloney Concrete Company, Inc., in the amount of \$285.68 * * * signed by C. M. Willis at the time of delivery of the last load of concrete furnished by the Maloney Concrete Company, Inc." He was tried before the Court (Woodward, J.) sitting as a jury, was found guilty and sentenced to serve three months in the Maryland House of Correction. The judgment of the lower Court was reversed. Mr. Hartman represented the State.

Charles Cooper vs. State of Maryland. No. 174, October Term, 1953. This was an appeal from a judgment of the Criminal Court of Baltimore, wherein the appellant was convicted of assault with intent to commit the crime of carnal knowledge under the fourth count of the indictment. The case was heard before the Court without a jury upon pleas of not guilty. The judgment of the lower Court was

affirmed, with costs. A petition for a re-argument was filed but was denied on July 26th, 1954. The mandate was stayed pending an appeal to the Supreme Court. Mr. Parker represented the State.

Allan Zerwitz vs. State of Maryland. No. 2, October Term, 1954. The appellant was tried upon an indictment containing six counts which charged him with various violations of the law proscribing bookmaking. He was tried before the Court sitting as a jury, entered a plea of not guilty and was found guilty on all six counts. He was sentenced to pay a fine of One Thousand Dollars (\$1,000) and costs and to serve nine months in the Maryland House of Correction. The judgment of the lower Court was affirmed, with costs. Mr. Hartman represented the State.

Hyman Polansky vs. State of Maryland. No. 7, October Term, 1954. The appellant was jointly charged with William E. Anderson, Julius J. Loverde, Howard W. Owens and Silvio Sigismondi upon an indictment containing three counts. The first of these charged them with the larceny of five cases of whiskey belonging to Churchill Ltd., the second with receiving the stolen whiskey and the third with conspiracy to steal the five cases of whiskey. Loverde and Sigismondi pleaded guilty to the second count and were so found. Anderson pleaded not guilty and was so found. Owens pleaded not guilty and was found guilty on the second count, i.e. receiving stolen goods. Appellant pleaded not guilty and was found guilty on the second count. Appellant was sentenced to serve eighteen months in the Maryland House of Correction. This was an appeal from that judgment. The judgment of the lower Court was affirmed. Mr. Hartman represented the State.

Hortense Jones vs. State of Maryland. No. 15, October Term, 1954. This was an appeal from the judgment entered in a criminal case tried before a jury of the Circuit Court for Wicomico County. The appellant was convicted of the crime of abortion. The only testimony tending to prove that

an abortion had been committed upon a pregnant woman was that of the alleged victim and Dr. I. Rivers Hanson. The judgment of the lower Court was reversed, with costs, and the case remanded for a new trial. The opinion was written by Judge Hammond and a dissenting opinion filed by Judge Henderson in which Judge Delaplaine concurred. Mr. Hartman represented the State.

Willie Williams vs. State of Maryland. No. 16, October Term, 1954. The appellant was tried upon an indictment containing three counts which charged him with breaking and entering a warehouse with the intent to commit a felony therein, to wit, the theft of property of the value of one hundred dollars or more, with the larceny of \$5,438.39, and with receiving the stolen \$5,438.39. He was tried before the court and jury and found guilty on the first and second counts. He was sentenced to confinement in the Maryland Penitentiary for a term of fifteen years on the count charging larceny, and to a term of five years on the count charging breaking and entering, the sentences to run consecutively. The judgment of the lower Court was affirmed. Mr. Hartman represented the State.

Henry M. Moxley vs. State of Maryland. No. 20, October Term, 1954. The appellant was tried before the Court sitting as a jury upon an indictment containing two counts which charged him with simple assault and with assault with intent to murder. He entered a plea of not guilty and was found guilty on both counts. He was sentenced to serve fifteen years in the Maryland Penitentiary. This was an appeal from that judgment. The judgment of the lower Court was reversed and a new trial granted. Mr. Hartman represented the State.

Sylvester W. Madison vs. State of Maryland. No. 24, October Term, 1954. In June, 1951, the appellant was convicted of murder in the first degree, and received a sentence of death. He was tried before the court (Warnken, Moser and Byrnes, JJ.) and a jury. An appeal was taken from

that conviction and judgment affirmed in *Madison v. State*, 200 Md. 1. On February 16, 1954, appellant filed a Motion to Strike Out Judgment and Sentence, and a Motion for a New Trial on the Ground of Newly-Discovered Evidence. The basis for these motions was an affidavit in which Dolores Wooden, one of the witnesses for the State at appellant's trial, recanted her testimony given at that time. The State filed a counter-affidavit in which Dolores Wooden repudiated the renunciation. The Criminal Court of Baltimore denied the motions after argument. This appeal was taken from those denials. The order of the lower Court was affirmed. Mr. Hartman represented the State.

Samuel David Floyd vs. State of Maryland. Nos. 27-28, October Term, 1954. Appellant was tried on two indictments, one of which charged him with the forcible rape of Dorothy Mildred Jones, and the other of which charged him with the robbery of \$28.00 from Dorothy Mildred Jones. He was tried before the court, sitting as a jury, found guilty, and received the death sentence. The judgments of the lower Court were affirmed. Mr. Hartman represented the State.

William Davis vs. State of Maryland. No. 32, October Term, 1954. Appellant was tried in the Criminal Court of Baltimore on an indictment containing five counts, the fifth of which charged him with the possession of lottery tickets. He was found guilty on the fifth count and sentenced to serve six months in the Maryland House of Correction and to pay a fine of \$1,000 and costs. The judgment of the lower Court was affirmed, with costs. Mr. Hartman represented the State.

Robert Roberts vs. Warden of the Maryland Penitentiary. No. 40, October Term, 1954. This was an appeal from an Order dated March 5, 1954, under which Honorable John T. Tucker, Associate Judge of the Supreme Bench of Baltimore City, sitting as the Baltimore City Court, remanded appellant to the custody of the appellee. The appellant was sentenced to a total of fifty-four years in the

Maryland Penitentiary, imposed by the Criminal Court of Baltimore, and alleges in his petition that he is being illegally detained. An appeal was allowed by the Court. The appeal was dismissed with costs. Mr. Norris represented the Warden.

Mitchell Bonneville, et al. vs. State of Maryland. No. 41, October Term, 1954. Appellants Walter Johnson and Joseph Weatherly were tried on separate indictments, each of which contained two similar counts. The first count charged that each appellant "unlawfully did keep or suffer to be kept on his premises****for the purpose of sale and delivery***alcoholic beverage, to wit, whiskey****". Each was found guilty and each was sentenced to pay a fine of \$850.00 and to serve twelve months in the Maryland House of Correction, sentence of imprisonment subject to suspension upon payment of costs. Appellant Harold Sterling was tried on an indictment containing two counts which charged him with the unlawful sale of whiskey to a certain W. E. Kulley, and with an attempt to sell the said whiskey. He was sentenced to pay a fine of \$500.00 and to serve a sentence of twelve months in the Maryland House of Correction, the sentence of imprisonment subject to suspension upon payment of costs. Appellant Bonneville was found guilty on an indictment containing two counts which charged him with the unlawful sale of whiskey to a certain M. W. Zumbrun, and with an attempt to sell the said whiskey. He was sentenced to pay a fine of \$750.00 and to serve twelve months in the Maryland House of Correction, the sentence of imprisonment subject to suspension upon payment of costs. This was an appeal from those judgments. The judgment as to Joseph Weatherly and Walter Johnson was reversed and the case remanded. The appeals of Bonneville and Sterling were dismissed and the costs ordered to be paid by them. Mr. Hartman represented the State.

Harry William Thomas vs. State of Maryland. No. 48, October Term, 1954. The appellant, Harry William Thomas, as the result of the death of two young boys, 13 and 14

years of age, was charged with manslaughter by automobile of one of the children, tried in the Trial Magistrate's Court for Montgomery County and found not guilty, from which verdict the State appealed to the Circuit Court for Montgomery County. After the death of the second boy, appellant was indicted for manslaughter by automobile. The two cases were consolidated for trial and heard in the Circuit Court for Montgomery County, sitting without a jury, and appellant was convicted in both cases. Sentence was suspended generally in No. 885 Criminal appeals, and in No. 934 Criminals, the appellant was sentenced to the Maryland State Reformatory for Males for an indeterminate period not to exceed one year and three months. The verdict in No. 934 Criminals was appealed, and appellant petitioned and was allowed a review in No. 885 Criminal Appeals. The judgments of the lower Court were reversed and the cases remanded, the costs ordered to be paid by the County Commissioners of Montgomery County. Mr. Norris represented the State.

Eugene E. Dayhoff vs. State of Maryland. No. 49, October Term, 1954. Appellant was tried on an indictment which charged him with wilfully neglecting to provide for the maintenance and support of his infant child. He was tried before the court and a jury and was found guilty. The Court ordered that he pay to his wife \$10.00 per week for a period of three years for the support and maintenance of the child, subject to the further order of the Court in the premises. The judgment of the lower Court was affirmed, with costs. Mr. Hartman represented the State.

Heinz A. Schroder vs. State of Maryland. No. 54, October Term, 1954. Appellant was tried before the Court sitting without a jury upon an indictment charging bigamy. He entered a plea of not guilty and was convicted and sentenced to serve three years in the Maryland Penitentiary. This was an appeal from that judgment. The judgment of the lower Court was affirmed, with costs. Mr. Norris represented the State.

Redge Fowell vs. State of Maryland. No. 55, October Term, 1954. Appellant was convicted on two counts under an indictment charging him in general terms with the violation of Section 118 of Article 2B of the Annotated Code of Maryland, and Section 93 of Article 2B of the Code, as amended by Chapter 119 of the Acts of 1953. (Alcoholic beverages) He was found guilty as charged by a jury and sentenced to pay a fine of Two Hundred and Fifty Dollars (\$250.00) on each count. A motion to dismiss the indictment, presented by the appellant was refused by the Court. The judgment of the lower Court was reversed and the County Commissioners of Charles County ordered to pay the costs. Mr. Norris represented the State.

CIVIL CASES TRIED IN THE COURT OF APPEALS

Walter C. Clarke, Register of Wills for Montgomery County, for the Use of the State of Maryland vs. Elise Jones Welden, Surv. Execut. Will and Testament of Wallace E. Gregg, and Elise Jones Welden, Individually. No. 80, October Term, 1953. The appellant, Register of Wills for Montgomery County, brought an action for inheritance taxes due by reason of the death of Wallace E. Gregg against the appellee, both as the Executrix of the Will of Wallace E. Gregg and as the sole beneficiary thereunder. The appellee filed a general issue plea and thereafter made motion for summary judgment. The appellant made a cross motion for summary judgment. The lower court denied the motion of the appellant and granted the motion of the appellee. The judgment of the lower Court was affirmed with costs. Mr. Mathias represented the Register of Wills.

Hyman A. Pressman vs. Deeley K. Nice, et al. Constituting the State Tax Commission, et al. No. 84, October Term, 1953.

Mayor and City Council of Baltimore, etc. vs. Deeley K. Nice, et al. Constituting the State Tax Commission of Maryland, et al. No. 85, October Term, 1953. These are two

appeals from Decrees of the Circuit Court of Baltimore City, sustaining all demurrers to the Bills of Complaint, without leave to amend, and dismissing the respective Bills of Complaint. The suits instituted by Hyman A. Pressman and the Mayor and City Council of Baltimore, alleged that Chapter 783 of the Acts of the General Assembly of Maryland, passed at the 1953 Session was invalid, unconstitutional and unenforceable, and prayed for a Declaratory Decree to that effect. The decrees of the lower Court were affirmed, with costs. Mr. Harvey and Mr. Murnaghan represented the State Tax Commission.

Herbert R. Eck, et al. vs. State Tax Commission, et al. No. 105, October Term, 1953. Appellants filed on the law side of the Circuit Court for Montgomery County, a Petition for Writ of Mandamus with claim for injunction. Relief was prayed against the members of the State Tax Commission with respect to alleged failure to perform certain duties required of the Commission by Article 81, Sections 230 and 239 of the Annotated Code of Maryland. It was alleged in the Petition that the failure to perform such statutory duties resulted in assessments which, between the various Counties of Maryland, were not uniform. Also joined as defendants in the action were the Supervisor of Assessments for Montgomery County, Maryland, and the members of the Appeal Tax Court of Montgomery County, who were charged with failure to perform other statutory duties set forth in Article 81, Section 232 of the Annotated Code of Maryland.

In the prayer for relief, the Petitioners sought three separate writs of mandamus, one against the members of the State Tax Commission, directing them to fulfill the duties assigned to them by statute; another against the Supervisor of Assessments for Montgomery County, directing him to fulfill his statutory duties; and a third against the members of the Appeal Tax Court, directing them to take certain steps as required by statute. Also injunctive relief was sought against the Montgomery County officials.

No such relief was sought against the State Tax Commission. A Motion to Dismiss was filed on behalf of the State Tax Commission and Demurrers were filed by the other defendants. After hearing, the Circuit Court for Montgomery County granted the State Tax Commission's Motion to Dismiss and sustained the Demurrer of the Appeal Tax Court of Montgomery County, but overruled the Demurrer of the Supervisor of Assessments for Montgomery County. The order of the lower Court was affirmed with costs. A Motion for Re-argument and Modification of Order was filed on April 21, 1954 and denied on April 30th, 1954. Mr. Murnaghan represented the State Tax Commission.

Commonwealth of Pennsylvania, Ex Rel. Beulah Warren vs. George Warren. No. 132, October Term, 1953. This was an appeal taken by the State of Maryland through the State's Attorney for Wicomico County on behalf of the Commonwealth of Pennsylvania ex rel. Beulah Warren, arising out of the determination of the court below upon a demurrer and motion to quash filed by the appellee in response to a petition filed under the Uniform Reciprocal Enforcement of Support Act (Article 89C, Annotated Code of Maryland, as amended by Chapter 498 of the Acts of 1953), the court below having declared the said statute to be unconstitutional. The appeal was dismissed and the case remanded for further proceedings indicated in the Court's opinion. Mr. Parker represented the State.

Joseph R. Bucher vs. Beverly Ober, Police Commissioner of Baltimore City. No. 151, October Term, 1953. This was an appeal from an order sustaining, without leave to amend, a demurrer to a petition for a writ of mandamus to compel the Police Commissioner of Baltimore to return to the appellant his retirement allowance which had been suspended indefinitely following conviction of the appellant in the Criminal Court of Baltimore City, and from a judgment against the appellant for costs. The judgment of the lower Court was affirmed with costs. Mr. Mathias represented the Police Commissioner.

Suburban Propane Gas Corporation vs. J. Millard Tawes, Comptroller of the Treasury of the State of Maryland. No. 158, October Term, 1953. This was an appeal by the Suburban Propane Gas Corporation from an order of the Circuit Court of Montgomery County, affirming a final determination of the Comptroller of the Treasury which refused an exemption from use taxes provided by law, of certain tangible personal property not readily obtainable in Maryland, purchased outside of the State of Maryland by the taxpayer and used in the conduct of the taxpayer's business within the State of Maryland during the period of July 1st, 1947 to October 31st, 1952. The order of the lower Court was affirmed with costs. Mr. Mathias represented the Comptroller.

State of Maryland, Retail Sales Tax Division, Comptroller of the Treasury vs. M. E. Rockhill, Inc. etc. No. 173, October Term, 1953. An assessment of tax having been made by the appellant against the appellee, the latter, pursuant to law Section 347 of Article 81 of the Annotated Code, (1951 Ed.) applied to the appellant for revision of the tax assessed. The hearing authorized by Section 347 was granted by the appellant, but the appellee, in the exercise of his statutory authority, concluded that no revision of the assessment should be made.

Following final determination by the appellant, the appellee resorted to the remedy provided by Section 348 of Article 81 and appealed the decision of the appellant to the Circuit Court for Calvert County. On appeal, the Court ordered the action of the appellant in effecting the assessment reversed, and the assessment against the appellee in the amount of \$171.57 vacated and set aside. Pursuant to the further provisions of Section 348, this appeal was taken from the judgment of the Circuit Court for Calvert County. The judgment of the lower Court was affirmed with respect to the assessment of the Comptroller, but the opinion overruled the lower Court's objections to the Comptroller's regulations. Mr. Mathias represented the Comptroller.

William H. Kirkwood, Jr. State Bank Commissioner and Edward D. E. Rollins, Attorney General vs. Provident Savings Bank of Baltimore, etc. No. 180, October Term, 1953. This was an appeal from action of the Circuit Court of Baltimore City in sustaining a demurrer and passing a final decree granting the relief prayed by the appellees in a case filed for a declaratory judgment construing certain Sections of Article 11 of the Annotated Code of Maryland (1951 Ed.), in connection with the appellee's charter. The basic question involved the power of the appellee to establish a branch bank in Baltimore County without the approval of the State Bank Commissioner, the principal office of the appellee being in Baltimore City. The decree of the lower Court was affirmed. Mr. Parker represented the Bank Commissioner.

This was a case of considerable interest in banking circles because it involved the construction of charters of mutual savings banks of the State of Maryland as well as a construction of Sections 40 and 52 of Article 11 of the Code.

J. Millard Tawes, Comptroller of the Treasury vs. Alfred H. Smith. No. 21, October Term, 1954. An assessment of use tax having been made by the appellant against the appellee, the latter, pursuant to the provisions of Sections 394 and 347 of Article 81 of the Annotated Code of Maryland (1951 Edition), applied to the appellant for revision of the tax assessed. The hearing authorized by Section 347 was granted by the appellant, but the appellant, in the exercise of his statutory authority, concluded that no revision of the assessment should be made. Subsequent to this final determination by the appellant the appellee resorted to the remedy provided by Section 348 of Article 81 and appealed the assessment to the Circuit Court for Prince George's County. On appeal, the Court ordered that the determination of the Comptroller imposing the use tax upon the purchase of a Simplicity double shell, batch type asphalt plant be reversed; the Comptroller was directed to cancel the assessment made upon said transaction. From this

order of the Circuit Court this appeal was taken. The judgment of the lower Court was reversed, with costs. Mr. Mathias represented the Comptroller.

Leo E. Lloyd vs. Board of Supervisors of Elections of Baltimore County. No. 22, October Term, 1954. This was an appeal from an order of the Circuit Court for Baltimore County, sustaining the appellee's Demurrer and dismissing the appellant's Petition for a Writ of Mandamus to compel the Supervisors to place the appellant's name on the ballot of the Republican Party for Judge of the Orphans' Court of Baltimore County, to be voted on at the Primary election to be held on June 28, 1954. The appeal was dismissed with costs. Judge Brune filed a dissenting opinion. Mr. Parker represented the Supervisors of Elections.

George P. Mahoney vs. Board of Supervisors of Elections of Baltimore City. No. 52, October Term, 1954. (Advanced)

Philip H. Dorsey, Jr. vs. Board of Supervisors of Elections of Baltimore City. No. 53, October Term, 1954. (Advanced)

These were appeals from adverse rulings on petition for writ of mandamus to compel the appellees to permit examination of various records in the possession of the appellees. The filing of printed brief was dispensed with and typewritten briefs were filed as the cases were advanced and argument was heard on July 26, 1954. Per curiam opinions were filed on the same day affirming the judgments of the lower Court. Mr. Harvey and Mr. Norris represented the Board of Supervisors of Elections.

Edward Earl Coursey, Register of Wills for Queen Anne's County, vs. The Hanover Bank and James A. Moffett, 2d, Executors of the Estate of George M. Moffett, Deceased and Whitehall Foundation, Inc. No. 72, October Term, 1954. Pursuant to the provisions of General Equity Rules 45, 46 and 47, as made and adopted by the Court

of Appeals of Maryland, a Special Case Stated was filed in the Circuit Court for Queen Anne's County to determine whether the devise and bequests to Whitehall Foundation, Inc., under the last will and testament of George M. Moffett, deceased, are exempt from payment of any inheritance tax to the State of Maryland under Article 81, Section 149 of the Annotated Code of Maryland (1951 Ed.). The Chancellor issued a decree in which he held that the said devise and bequests were exempt from the Maryland collateral inheritance tax. From that decree this appeal was taken. The decree of the lower Court was affirmed with costs. Mr. Mathias represented the Register of Wills.

The Saint James Savings Bank of Baltimore City, vs. William H. Kirkwood, Jr., State Bank Commissioner and Edward D. E. Rollins, Attorney General of Maryland. No. 95, October Term, 1954. This case was brought by The Saint James Savings Bank of Baltimore City for a declaratory judgment and injunction against the Attorney General and the Bank Commissioner for the purpose of permitting the plaintiff to open branch offices in the Counties of the State of Maryland, which right had been denied by the defendants. The court below (Mason, J., sitting in the Circuit Court of Baltimore City) dismissed the bill after hearing argument on the merits of this case, the facts all having been admitted or stipulated. The decree of the lower Court was reversed and the case remanded for the passage of a decree in accordance with the opinion of the Court of Appeals, with costs. Mr. Parker represented the Bank Commissioner and the Attorney General.

CASES PENDING IN THE COURT OF APPEALS

James H. Bowen vs. State of Maryland. No. 78, October Term, 1954.

Frank J. Tischler vs. State of Maryland. No. 81, October Term, 1954.

Westinghouse Electric Corporation vs. State Tax Commission. No. 90, October Term, 1954.

Eugene Elmer Bryant vs. State of Maryland. No. 91, October Term, 1954.

Henry J. LaQue, Jr. vs. State of Maryland. No. 107, October Term, 1954.

William C. Thomas vs. State of Maryland. No. 110, October Term, 1954.

Albert Burns, et al. Board of Regents of the University of Maryland vs. Herbert Brown, Jr., etc., Trustees of the Endowment Fund of the University of Maryland. No. 111, October Term, 1954.

Dolfi A. Salinger vs. Superintendent of Spring Grove State Hospital. No. 115, October Term, 1954.

Alvin Payne vs. State of Maryland. No. 119, October Term, 1954.

James Elwood Shipley vs. State of Maryland. No. 124, October Term, 1954.

Walter Lorenzo Dow and Willie Howard Wynn vs. State of Maryland. No. 125, October Term, 1954.

In the year 1954, 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 filed by Mr. Hartman in the following cases:

OCTOBER TERM, 1953

Ronald Harris vs. Warden, Maryland Penitentiary. No. 23.

Charles J. Ahern vs. Warden, Maryland House of Correction. No. 24.

Matthew Spence vs. Warden, Maryland House of Correction. No. 25.

Joséph William Laslo vs. Warden, Maryland House of Correction. No. 26.

Peter Steve Thanos vs. Superintendent, Maryland State Reformatory for Males. No. 27.

Memoranda in the following cases were prepared and filed by Mr. Norris:

OCTOBER TERM, 1954

George Grant Stokes vs. Warden, Maryland House of Correction. No. 1.

Aldine Carroll vs. Warden, Maryland Penitentiary. No. 2.

James A. Williams vs. Warden, Maryland Penitentiary.
No. 3.

Charles Alisworth vs. Warden, Maryland Penitentiary.
No. 4.

Joseph France vs. Warden, Maryland House of Correction. No. 5.

William Williams vs. Warden, Maryland Penitentiary.
No. 6.

Philip Roland Wagner vs. Warden, Maryland Penitentiary. No. 7.

Boyd C. Faught vs. Warden, Maryland Penitentiary.
No. 8.

William T. Frazier vs. Warden, Maryland Penitentiary.
No. 9.

John B. Friedel vs. Warden, Maryland Penitentiary.
No. 10.

Ernest Edward Lewis vs. Warden, Maryland Penitentiary. No. 11.

Harry L. Cumberland vs. Warden, Maryland Penitentiary. No. 12.

William Leek vs. Warden, Maryland House of Correction. No. 13.

Joseph Franklin Hands vs. Warden, Maryland House of Correction. No. 14.

Albert C. Johns vs. Warden, Maryland Penitentiary.
No. 15.

Clarence E. Tyler vs. Warden, Maryland Penitentiary.
No. 17.

James L. Presley vs. Warden, Maryland Penitentiary.
No. 18.

Leon Legrand vs. Warden, Maryland House of Correction. No. 19.

CASES FINALLY DISPOSED OF IN LOWER COURTS

Thomas E. Loving, et al. vs. John R. Reeves, Secretary of State of the State of Maryland. In the Circuit Court for Anne Arundel County. The bill of complaint in this case had for its purpose the passage of a decree declaring invalid a referendum petition directed to Chapter 491 of the Acts of 1953. An answer was filed on behalf of the Secretary of State and the Court found said referendum petition to be invalid and enjoined the Secretary of State from certifying it to the Supervisors of Elections. Mr. Harvey represented the Secretary of State.

George P. Mahoney vs. Board of Supervisors of Elections of Baltimore City. In the Superior Court of Baltimore City.

Philip H. Dorsey, Jr. vs. Board of Supervisors of Elections of Baltimore City. In the Superior Court of Baltimore City. George P. Mahoney and Philip H. Dorsey, Jr., candidates for nomination by the Democratic party for Governor and Attorney General, respectively, petitioned for a writ of mandamus to require the Board of Supervisors of Elections to allow the petitioner to examine the paraphernalia of the Primary Election, including, but not limited to, the voting authority cards, precinct registration binders and all affidavits executed by voters for assistance in voting. A demurrer was filed to the petition and was sustained without leave to amend. Mr. Harvey represented the Board of Supervisors of Elections. An appeal to the Court of Appeals was noted.

Edward Dabrowski 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 for a writ of mandamus by Edward Dabrowski to compel the Board of Supervisors of Elections to remove from the voting machines the name of Casimir Dombrowski. Both parties were candidates for the House of Delegates. An answer was filed on behalf of the Board stating that it had no power to reject the certificate of Dombrowski because on its face it appeared to be in proper form, and the Board possessed no power to go behind it, and it concluded its answer by praying that Dombrowski, who was the real party in interest, rather than the Board of Supervisors of Elections, be made a party defendant. Dombrowski appeared with an attorney at the trial of the case, and after a full hearing, the Court granted the writ of mandamus as prayed. Mr. Harvey represented the Board.

Sol Perolman vs. Dr. Kermit F. Smith, et al. State Board of Chiropractic Examiners. In the Superior Court of Baltimore City. This was a petition for a writ of mandamus to compel the Board of Chiropractic Examiners to admit

the petitioner to an examination to which he had been refused because of the Board's conclusion that he did not possess the qualifications required by law. Judge Moser signed an order requiring the Board to examine the petitioner without prejudice to the merits of the controversy concerning his qualifications. The Secretary of the Board advised Perolman who appeared and took two examinations, failing both of them. He did not appear to take the last two examinations given by the Board, and for the purposes of this report we have closed our files in the matter. Mr. Harvey represented the Board of Chiropractors.

Bessye H. Braverman vs. Michael J. Grossfeld. In the Superior Court of Baltimore City. This was an attachment on judgment sued out of the Superior Court of Baltimore City and laid in the hands of the Insurance Commissioner. As the Commissioner informed us that he had no property of any kind in his hands belonging to the defendant in the attachment case, a plea of nulla bona was filed. Mr. Harvey represented the Insurance Commissioner.

Charles D. Beshore vs. Motor Vehicle Commissioner. In the Circuit Court for Harford County.

Robert Campbell vs. Motor Vehicle Commissioner. In the Circuit Court for Prince George's County.

James Cloyd Cassell vs. Motor Vehicle Commissioner. In the Circuit Court for Carroll County.

John Edward Copeland vs. Motor Vehicle Commissioner. In the Circuit Court for Harford County.

Claude T. Crouse vs. Motor Vehicle Commissioner. In the Circuit Court for Harford County.

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

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

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

John Edward Johnson vs. Motor Vehicle Commissioner.
In the Circuit Court for Baltimore County.

Thomas E. Judkins, Jr. vs. Motor Vehicle Commissioner.
In the Baltimore City Court.

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

George W. Koenig vs. Motor Vehicle Commissioner. In
the Circuit Court for Kent 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 Worcester 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.

Joseph T. McLynn vs. Motor Vehicle Commissioner. In
the Circuit Court for Prince George's County.

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

Mollie Davis Nicholson vs. Motor Vehicle Commissioner.
In the Circuit Court for Montgomery County.

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

Elmer F. Rathel vs. Motor Vehicle Commissioner. In the Circuit Court for Dorchester County.

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

Maurice Nelson Rill vs. Motor Vehicle Commissioner. In the Circuit Court for Carroll County.

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

Joseph C. Sauerwein vs. Motor Vehicle Commissioner. In the Circuit Court for Prince George's County.

Morton Snesil vs. Motor Vehicle Commissioner. In the Baltimore City Court.

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

Florence Stuart vs. Motor Vehicle Commissioner. In the Circuit Court for Prince George's County.

Mary Louise Vanorsdale vs. Motor Vehicle Commissioner. In the Circuit Court for Harford 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.

Charles Edward Whittington vs. Motor Vehicle Commissioner. In the Circuit Court for Harford County.

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

Washington Suburban Sanitary Commission vs. State Board of Health of Maryland. In the Circuit Court for Prince George's County. This was an appeal from an order of the State Board of Health requiring the Washington Suburban Sanitary Commission to extend sewage facilities to the Arcola Section of Wheaton, Montgomery County, Maryland. An answer was filed on behalf of the Board of Health and after negotiations with the Commission it was agreed that the work would begin in June of 1954 and completed in June of 1955. The Commission took the initial steps pursuant to the agreement, looking to a correction of the health problem, and the pending suit was, therefore, dismissed. Mr. Hartman represented the Board of Health.

Mayor and City Council of Cumberland vs. Thomas S. Cullen, et al. State Board of Health. In the Circuit Court for Allegany County. This was an appeal by the City of Cumberland from an order of the State Department of Health under which the City was compelled to construct a sewage disposal plant. After extended negotiation, the City of Cumberland agreed to comply with the order of the Board. Mr. Hartman represented the Board of Health.

A. Austin Pearre, et al. State Board of Health of the State of Maryland, The President and Commissioners of Princess Anne. In the Circuit Court for Somerset County. The State Board of Health ordered the Town of Princess Anne to install sewage facilities and a sewage treatment plant for the reason that the lack of the same constituted

a menace to health. The Town refused to abide by the order and this office filed a bill for mandatory injunction to require the Commissioners to provide the facilities. After the bill was filed, the Town and the Board of Health entered into negotiations and the matter was settled without the necessity of court action. Mr. Hartman represented the Board of Health.

Joseph James Svrjcek vs. Springfield State Hospital. Before the Supreme Bench of Baltimore City. This was a petition for a sanity hearing by Joseph James Svrjcek, a patient at Springfield State Hospital. Pursuant to Section 20 of Article 59 of the 1951 Annotated Code, the petitioner requested a jury trial to have his sanity determined. After hearing, the jury found the petitioner insane and he was ordered returned to the Hospital. Mr. Hartman represented the Hospital.

Stanley Akonom vs. Springfield State Hospital. Before the Supreme Bench of Baltimore City. This was a petition for a writ of Habeas Corpus addressed by Stanley Akonom, a patient at Springfield State Hospital, requesting a hearing before a jury in order to determine his sanity. A hearing was had and the jury rendered a verdict finding the patient insane. Mr. Hartman represented the State Hospital.

Dolfi Salinger vs. Superintendent of Spring Grove State Hospital. In the Baltimore City Court. This was a petition by a patient in Spring Grove State Hospital for a sanity hearing, pursuant to Section 20 of Article 59 of the 1951 Annotated Code. The petitioner was represented by court-appointed counsel and requested a jury trial. After an extended hearing, the jury determined that the petitioner was insane and he was remanded to the custody of the Hospital. An appeal was entered to the Court of Appeals. Mr. Hartman represented the Hospital.

Columbia Pictures Corporation vs. Sydney R. Traub, Chairman, et al. constituting the Board of Motion Picture

Censors. In the Baltimore City Court. This was an appeal from the action of the Maryland State Board of Motion Picture Censors in ordering certain eliminations from the motion picture entitled "On the Waterfront". The appellant argued that the action of the Board in ordering the deletions was arbitrary and capricious, and also that the law relating to motion picture censorship was unconstitutional. The Court found the action of the Board to be arbitrary and capricious and ordered it to approve and license the subject film. Mr. Hartman represented the State Board.

Charles F. Forwood vs. Motor Vehicle Commissioner. In the Baltimore City Court. This was an appeal from an order of the Commissioner of Motor Vehicles revoking the appellant's license to operate a motor vehicle. After a hearing, the order of the Commissioner was sustained. Mr. Hartman represented the Commissioner.

Thomas Vincent McDonald vs. Motor Vehicle Commissioner. In the Baltimore City Court. This was an appeal from an order of the Commissioner of Motor Vehicles revoking the appellant's license to operate a motor vehicle. After a hearing the order of the Commissioner was sustained. Mr. Hartman represented the Commissioner.

In the matter of Osbourne Hudson, Debtor. In the United States District Court for the District of Delaware. In Proceedings for an Arrangement. No. 1515.

This was a bankruptcy proceeding in which a claim was filed on behalf of the State of Maryland for sales and use taxes on property sold by the bankrupt to Maryland purchasers. The Referee allowed the claim. Mr. Murnaghan represented the State Comptroller.

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. The defendants, as

personal representatives and individually, refused to pay the inheritance tax due on certain real estate which had been conveyed by the decedent to himself and wife as tenants by the entirety within two years of the date of his death. The suit for the tax was filed on behalf of the Register of Wills to which demurrer was interposed by the defendants. After argument, the Court overruled the demurrer. The defendants then paid the tax and the case was dismissed. Mr. Mathias represented the Register of Wills.

The Hanover Bank, James A. Moffett, 2d, and Whitehall Foundation, Inc. vs. Edward Earl Coursey, Register of Wills for Queen Anne's County. In the Circuit Court for Queen Anne's County. The Executors declined to pay Maryland collateral inheritance taxes on certain bequests and devises made by George M. Moffett to Whitehall Foundation, Inc. The case came before the Circuit Court for Queen Anne's County, and a decree was rendered relieving the Executors of liability for the taxes. An appeal was entered to the Court of Appeals. Mr. Mathias represented the Register of Wills.

State of Maryland vs. Mary Anne Scott and Ernest C. Clark, Inc. and as Executors of the Will of John W. West. In the Circuit Court for Wicomico County. The State of Maryland made a claim for sales taxes against the decedent's estate. The executors of the will denied the claim and suit was filed. Subsequently the Comptroller accepted a compromise and the case was marked "agreed and settled". Mr. Mathias represented the State Comptroller.

Leroy C. Shaughnessy, Register of Wills for Baltimore City, vs. Dorothy Bastian Thayer, et al. Exs. of Leon P. Thayer, and New Amsterdam Casualty Company. In the Superior Court of Baltimore City. This was a suit filed on behalf of the Register of Wills of Baltimore City to collect inheritance taxes due by reason of the death of Leon P. Thayer. The case was settled under a compromise agreement approved by the Board of Public Works. Mr. Mathias represented the Register of Wills.

Camille O'Hara, Adm. c. t. a. Estate of Joyce O'Hara, vs. Walter C. Clarke, Register of Wills of Montgomery County. In the Circuit Court for Montgomery County. The question as to whether a joint tenancy had been dissolved by formation of a partnership between the joint tenants, thereby extinguishing the partner's right of survivorship and relieving him of inheritance tax, was put to the Court for Declaratory Judgment. On November 3, 1954, the Circuit Court signed a decree declaring that a partnership did exist between the parties, and ordering the plaintiff to pay the costs of the proceedings. Mr. Mathias represented the Register of Wills.

State of Maryland vs. Fidelity and Deposit Company, etc. In the Superior Court of Baltimore City. This was a suit to collect inheritance taxes by reason of the death of Sterling Geatty. Demurrers were filed by the defendant. A hearing on the demurrers was postponed pending the outcome in the Court of Appeals of the case of *Clarke vs. Welden*, No. 80, October Term, 1953, which raised the identical point involved in this proceeding. On February 17, 1954, the Court of Appeals held in the *Clarke* case that where Maryland decedents are concerned, for inheritance tax purposes, the entire Federal Estate tax was deductible even where some of the property owned by the decedent was real estate situated outside of Maryland, and hence not subject to Maryland inheritance taxes. On February 24, 1954, in accordance with the Rules of Court, the case was dismissed. Mr. Mathias represented the State of Maryland.

Briggs Trailer Sales, Inc. vs. J. Millard Tawes, Comptroller of the Treasury. In the Baltimore City Court. This was an appeal from an assessment made by the Comptroller. In view of the adverse decision of the Supreme Court of the United States in *Miller Bros. vs. Comptroller*, 347 U. S. 340, 98 L. ed. 744, a consent judgment was entered reversing the assessment. Mr. Mathias represented the State Comptroller.

Alfred H. Smith vs. J. Millard Tawes, Comptroller of the Treasury of the State of Maryland. In the Circuit Court

for Prince George's County. This was an appeal from an assessment of use taxes by the Comptroller on equipment purchased outside of Maryland and claimed to be unique. The Court reversed the Comptroller and vacated the assessment. An appeal was entered to the Court of Appeals. Mr. Mathias represented the State Comptroller.

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. This was an action brought against the defendant Henryene P. Green Powell, Administratrix of the Estate of Vernon Green, and the National Surety Company, surety on the bond, for failure to pay the Maryland income tax due from the decedent, prior to distribution of the assets of the estate. A judgment was obtained against the principal for tax and penalties, and was satisfied by the Surety Company. Mr. Mathias represented the State in the proceedings.

Raymond L. Maynard, t/a Kingsville Lunch vs. J. Millard Tawes, Comptroller of the Treasury. In the Circuit Court for Baltimore County. This was an appeal from an assessment for sales taxes made by the Comptroller. After argument, the Court reversed the Comptroller and vacated the assessment. Mr. Mathias represented the State Comptroller.

Mason-Dixon Sand & Gravel Company vs. State of Maryland. In the Circuit Court for Cecil County. This was an appeal from an assessment made by the Comptroller of use taxes on certain equipment purchased outside the State. The taxpayer contended that the equipment was used in the business of manufacturing, but the Comptroller's action was affirmed by the Circuit Court. The taxpayer entered an appeal to the Court of Appeals. Mr. Mathias represented the State Comptroller.

Roberts Industries, Inc. vs. J. Millard Tawes, Comptroller of the State of Maryland. In the Circuit Court for

Wicomico County. This was a suit for sales taxes assessed by the Comptroller. Prior to trial, the taxpayer rendered payment of the tax which the State claimed was due on materials used to repair boats under contract with the Federal Government, and the case was dismissed. Mr. Mathias represented the State Comptroller.

M. E. Rockhill, Inc. vs. State of Maryland. In the Circuit Court for Calvert County. This was an appeal from a decision of the State Comptroller affirming a sales tax assessment against a company which rented for the owners, houses at Long Beach, Maryland. The assessment was with respect to such rentals to transients. The case was argued and a memorandum of law submitted on behalf of the State. The Court reversed the Comptroller and vacated the assessment on the grounds, among other things, that the Comptroller's pertinent regulations were invalid. An appeal was entered to the Court of Appeals. Mr. Mathias represented the State Comptroller.

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. This was an appeal from an order of the State Comptroller assessing sales and use taxes against Consolidated for the purchase of items used by that company in rehabilitating Bainbridge Naval Base for the Federal Government. Said order was rendered after a full hearing with testimony and exhibits before the Director of the Retail Sales Tax Division of the Comptroller's Office. Consolidated maintained that it made the purchases as agent of the Federal Government, or alternatively, that the purchases were made by the Federal Government itself and that, therefore, all such purchases were exempt from

the sales and use taxes under the Maryland law, and that a holding otherwise by the Comptroller was unconstitutional.

Lloyd E. Mitchell and Blumenthal-Kahn Company are sub-contractors of Consolidated, and inasmuch as the law as to all three companies was identical the said cases were consolidated in the hearing before the Comptroller and were consolidated in the Baltimore City Court. Subsequent to the rendition of the opinion by the Supreme Court of the United States in the case of *Kern-Limerick v. Ark.*, 347 U. S. 110, 98 L. Ed. 546, adverse to the position of the State, this litigation was terminated by the rendition of a consent judgment reversing the Comptroller and vacating the assessments. Mr. Mathias represented the Comptroller.

Westinghouse Electric Corporation, etc. vs. Deeley K. Nice, et al. State Tax Commission. In the Circuit Court No. 2 of Baltimore City. This was an appeal from an assessment of personal property made by the State Tax Commission. The Circuit Court sustained the Commission and affirmed the assessment. The taxpayer appealed to the Court of Appeals. Mr. Mathias represented the State Tax Commission.

Meade Heights, Inc. vs. State Tax Commission. In the Circuit Court No. 2 of Baltimore City. The State Tax Commission in its original jurisdiction made a personal property assessment against stoves and refrigerators of the Meade Heights Corporation located on the real estate previously held subject to State taxation in *Meade Heights, Inc. vs. State Tax Commission*, 95 Atl. (2d) 280. Memoranda were submitted to the Court in connection with the appeal of the taxpayer, and on April 26, 1954, the Court filed a Memorandum Opinion in which the action of the State Tax Commission was affirmed. Mr. Mathias represented the State Tax Commission.

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

ery County. This was an appeal by Montgomery County from the action of the State Tax Commission in reversing the Appeal Tax Court of Montgomery County exempting certain land owned by the Bullis School, Inc., from property taxation. After a hearing the Circuit Court affirmed the action of the State Tax Commission. Mr. Mathias represented the Commission.

James B. Ferguson, Sr. td. Ferguson Company vs. James G. Rennie, Director, Department of Budget and Procurement. In the Circuit Court No. 2 of Baltimore City. This was a bill for injunctive relief in which it was prayed that the Director of the Department of Budget and Procurement be enjoined from awarding a certain contract to Fisher Scientific Company, and to require that the contract be awarded to the petitioner, it being alleged that the petitioner was the low bidder on the contract. The petitioner subsequently dismissed his bill. Mr. Mathias represented the State Department.

Michael Fisher vs. Charles S. Jackson, State Insurance Commissioner. In the Superior Court of Baltimore City. This was a suit in contract to which the Insurance Commissioner was mistakenly made a party. The plaintiff apparently wanted to file suit against certain insurance companies for whom the Insurance Commissioner is by law made attorney for service of process. The suit having mistakenly been brought against the Insurance Commissioner a Motion for Summary Judgment was filed on his behalf by this office, thus terminating the suit. Mr. Mathias represented the Insurance Commissioner.

State of Maryland to the use of the University of Maryland vs. Russell H. Hinds and Russell H. Hinds, Jr. t/a Valley View Farm. In the Circuit Court for Frederick County. The defendants purchased poultry from the Department of Poultry Husbandry of the University of Maryland and failed to pay for the same. A motion for summary

judgment was filed on behalf of the University, and a judgment was obtained for the University. Mr. Mathias represented the University.

John P. Paca, Jr. vs. Emilie Schmidt, et al. 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 owing and submitting its rights to the protection of the Court. Mr. Mathias represented the State.

Peter Grabowski vs. John Adams, et al. 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 requesting that any State and County taxes on the subject land, which were due and owing, be paid. Mr. Mathias represented the State.

Peter Grabowski vs. Philip Lederer, et al. and State of Maryland. In the Circuit Court for Howard County. This was a bill of complaint for the foreclosure of the right of redemption of real estate sold at a tax sale. This office filed an answer requesting that the State and County taxes on the subject land, which were due and owing, be paid. Mr. Mathias represented the State.

Ben Dubin vs. Beverly Ober, Police Commissioner of Baltimore City. In the People's Court of Baltimore City. This was a case brought by one Ben Dubin to recover a pistol which had been taken from him by the Police Department for his own protection. Suit was filed and the Police Department agreed to return the gun which was undoubtedly Mr. Dubin's property, to any responsible person. The Judge of the People's Court refused to accept the pistol or order its return to Mr. Dubin. To date the pistol is still in the possession of the Police Department but the case was dismissed. Mr. Parker represented the Police Commissioner.

State of Maryland vs. Joe Nathan Newsome and George J. Brennan, Secretary of Police Commissioner of Baltimore City. In the Criminal Court of Baltimore City. This was a criminal case in which the Baltimore Transit Company filed a petition to recover money which had been found on the person of Newsome at the time of his arrest on a charge of stealing from the Transit Company, and which had come into the possession of the Police Department. An answer was filed admitting custody of the sum of \$103.52 and submitting to whatever order might be passed by the Court, which subsequently ordered that it be returned to the Baltimore Transit Company. Mr. Parker represented the Police Department.

Joseph Henry Reilly vs. Beverly Ober, Commissioner of Police. In the Criminal Court of Baltimore City. This case involved a dispute as to the disposition of \$304.00 having been found on the person of Joseph Henry Reilly at the time of his arrest. It was claimed by Reilly, his counsel, and also by the Sheraton Belvedere Corporation. The Police Commissioner filed an answer admitting possession of the money and submitting to whatever order might be passed by the Court. Mr. Parker represented the Police Commissioner.

Mary Mattiucci vs. Beverly Ober, Commissioner of Police of Baltimore City, et al. In the Circuit Court No. 2 of Baltimore City. This was a suit to recover sums of money held by the Police Commissioner, having been found upon the person of one Ernest Mattiucci when arrested, and amounting to \$942.20 in small change alleged to have been the receipts of a fence manufacturing business operated by Mattiucci. The money was claimed by Mary Mattiucci and the Police Commissioner filed an answer admitting custody of the money and submitting to whatever order the Court might pass in the matter. Mr. Parker represented the Police Commissioner.

Philip H. Dorsey, Jr. vs. Charles A. Dorsey, et al. Board of Supervisors of Elections of Baltimore City. In the Su-

perior Court of Baltimore City. This was a petition for a writ of mandamus filed by Philip H. Dorsey for the purpose of securing a Court order requiring the Board of Supervisors of Elections to allow him and his counsel to examine and inspect the voting authority cards for the 4th District of Baltimore City, and to compare them with the voters' signatures on the registration records. The Attorney General's office, on behalf of the Supervisors, demurred to this petition contending that the voting authority cards are not registration records, or even public records of the State of Maryland under the wording of the election laws as enacted by the Legislature. Judge Cullen overruled this demurrer and sustained the petitioner's demurrer to the answer which was subsequently filed on behalf of the Board of Supervisors, and which answer set forth the same legal grounds as the original demurrer. Mr. Parker represented the Board of Supervisors.

Henry R. Hergenroeder, et al. vs. Charles A. Dorsey, et al. Board of Supervisors of Elections of Baltimore City. In the Circuit Court of Baltimore City. This was a case brought against the Supervisors to enjoin the Board from placing upon the ballot a proposed amendment to the Charter of the Mayor and City Council of Baltimore, re-districting the City for the election of Councilmen. Several other defendants intervened by petition. The State filed a demurrer to the bill of complaint, and after argument before Judge Mason, the State's demurrer was sustained and the case dismissed. Mr. Parker represented the Supervisors of Elections.

Curtis E. DeWolfe vs. Frederick J. Green, Jr. et al. and Frank J. Hanson, et al. constituting the Board of Liquor License Commissioners for Baltimore City. In the Circuit Court No. 2 of Baltimore City. This case was filed by DeWolfe, who had for some years, held a license and contract to sell beer and other merchandise at Carlin's Park in the City of Baltimore. His lease having been cancelled by the owners of the property, and he having been evicted,

suit was filed to enjoin the Liquor License Commissioners of Baltimore City and others, from interfering with his business, and specifically refusing to consider his Class D Beer and Wine License as cancelled. The State filed a combined demurrer and answer to the bill of complaint, and a hearing was had on November 18, 1954, at which time, the State's demurrer was sustained and the case was dismissed. Mr. Parker represented the Liquor License Commissioners.

State of Maryland vs. George H. Kahl. In the Criminal Court of Baltimore City. This case arose out of an appeal from the Traffic Court of Baltimore City which convicted Kahl for a parking violation, the defendant's contention being that he had never received a ticket which had been placed on his unattended automobile, and that a warrant was not issued until after the period of limitations had run. This question having been the subject of considerable discussion between the Judges of the Traffic Court and the Police Commissioner of Baltimore City, as well as this office, the Attorney General intervened at the request of Judge Michael J. Manley, and filed a brief as *amicus curiae*. The Court, however, did not agree with the position taken by the State and in a memorandum opinion reversed the conviction of Mr. Kahl on January 29, 1954. Mr. Parker represented the State.

Orville Eberly, et al. vs. Department of Geology, Mines and Water Resources, etc. and Edward D. E. Rollins, Attorney General of the State of Maryland. In the Circuit Court of Baltimore City. This was an action brought under the Uniform Declaratory Judgment Act for the construction of certain provisions of Chapter 613 of the Acts of 1953, and alleging that the said Act was unconstitutional regarding the regulation of natural gas production in the State, the plaintiffs being natural gas producers in Garrett County. An answer was filed and the case heard before Judge Mason, who, in an opinion dated March 23, 1954, upheld the constitutionality of the Act and arrived at a construction of the same satisfactory to both the plaintiffs and defendants. It is

to be noted that the Legislature of 1954 repealed the Act in question. Mr. Parker represented the State.

State of Maryland, ex rel. Joseph H. McLain, 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. This case, although determined by the courts in 1950, is still pending in the Circuit Court for Prince George's County, as it was the contention of the Water Pollution Control Commission that Smith had failed to carry out the Order of the Court as originally passed, and the State petitioned for a citation for contempt, which was answered by the defendant. Following the citation for contempt mentioned, the defendant mended his ways and agreed to cease the practices which the Commission had been objecting to. The injunction is still in effect, although no further Court proceedings have been necessary. Mr. Parker represented the State in the contempt proceedings and in the negotiations.

Consolidated Gas Electric Light & Power Company vs. Holmes Perdue, et al. In the Circuit for Baltimore County. This case was brought under its statutory power of eminent domain by the Consolidated Gas Electric Light & Power Company. The State of Maryland was made a party thereto. However, upon investigation it was determined that the State had no interest in the matter and therefore no answer was filed and the case is considered closed as far as this office is concerned. Mr. Parker represented the State.

Walter Finch vs. A. G. Christie, et al. Board of Professional Engineers. In the Baltimore City Court. This was an appeal from the action of the State Board of Professional Engineers and Surveyors in denying the appellant registration as a professional engineer, and petitioning the Court to declare Section 12 of Article 75½ of the Annotated Code of Maryland (1951 Edition) unconstitutional and to

enter a decree directing the issuance of a certificate of registration to the appellant. An answer was filed on behalf of the Board. After various delays the case was set down for trial on October 10, 1952. On the request of the appellant and with the consent of the appellees and the Court, the trial was postponed pending the filing of a new application by the appellant for registration as a professional engineer. The appellant filed a new application, alleging that he had had further experience as an engineer, and the case was held in abeyance pending the Board's action on his new application. However, in February the appellant voluntarily dismissed his appeal. Mr. Parker represented the Board.

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. This was a bill for a declaratory judgment and an injunction, involving an interpretation of the banking laws of the State of Maryland in their application to mutual savings banks, and particularly in connection with the charter of the Provident Savings Bank, which was originally granted by the General Assembly of Maryland by legislative Act in 1886. The State filed a demurrer and answer to the bill of complaint. Subsequently the case came on for hearing and the Court determined it against the position taken by the Bank Commissioner. An appeal was noted to the Court of Appeals. Mr. Parker represented the Bank Commissioner.

Saint James Savings Bank vs. William H. Kirkwood, Jr. Bank Commissioner of the State of Maryland. In the Circuit Court of Baltimore City. This case was brought by the Bank for the purpose of enforcing its alleged right to establish branches outside of the City of Baltimore without the approval of the Bank Commissioner. The action was precipitated by the opinion of the Court of Appeals in *Kirkwood vs. Provident Savings Bank*, 106 A 2d 103, which was tried by this office early in 1954. The difference between the two cases was in the wording of the charters of the two

banks. The case was argued by Mr. Parker before Judge Mason and a decree was handed down in favor of the Bank Commissioner from which the plaintiff entered an appeal to the Court of Appeals.

Roy T. Wright and Louise Wright, et al. vs. Baltimore Federal Savings & Loan Association, et al. and Gilbert G. Miller, Sheriff of Baltimore County. In the Circuit Court for Baltimore County. This case was brought by the plaintiffs to set aside a Sheriff's sale under the execution of a confessed judgment and was actually a controversy between the plaintiffs and the other defendants, the Sheriff, who was represented by the Attorney General, being a mere stake holder in the matter. An answer was filed submitting to whatever the Court determined as between the real parties in interest. Mr. Parker represented the State.

Water Pollution Commission vs. Caroline Poultry Farms, Inc. This case arose out of a violation of the Water Pollution Control Law by the Caroline Poultry Farms, Inc. in Caroline County. A complaint was filed before a Trial Magistrate in Denton and suit for an injunction was in course of preparation when the defendant settled the matter by entering into an agreement with the Commission to make the changes that were necessary to avoid further violation. Mr. Parker represented the Commission.

John A. Pierce vs. Garner W. Denmead, Chairman, et al. Game and Inland Fish Commission of Maryland. In the Circuit Court for Kent County. This was a petition filed by John A. Pierce to establish the fact that he is a resident of Kent County, Maryland. After a hearing at Chestertown before Judge Horney, the Court decided that Mr. Pierce was a resident of Kent County and therefore entitled to a resident hunting license which had been denied him. Mr. Owens represented the State.

Springfield State Hospital vs. John R. Fletcher, Jr. Employee of Springfield State Hospital.

Springfield State Hospital vs. George L. Dyson, Employee of Springfield State Hospital. Before the Commissioner of Personnel of the State of Maryland. The Hospital preferred charges against Fletcher and Dyson, attendants at the Hospital and after a hearing both were removed as attendants as of the date of their suspension, but the Commissioner held that they could re-apply for any other State position for which they were qualified except hospital service. Mr. Owens represented the Commissioner.

Rae E. Brooks vs. Thomas W. Jackson and Martin C. Jenkins, President, Morgan State College, Garnishee. In the People's Court of Baltimore City. This was an attachment laid in the hands of the President of Morgan College for alleged non-payment of rent by an employee of the College. An answer was filed and after a hearing, the Court held that the funds owing to the employee could not be attached in the hands of any agent of the State. Mr. Owens represented Morgan College.

Albert Burns, et al., Trustees of the Endowment Fund of the University of Maryland, vs. B. Herbert Brown, Jr. et al. Board of Regents of the University of Maryland. In the Circuit Court No. 2 of Baltimore City. This was a petition filed by the Trustees of the Endowment Fund of the University, attacking the constitutionality of Chapter 5 of the Acts of 1952. After a hearing Judge Moser decided that the Act is unconstitutional, null, void, and of no effect whatsoever. Mr. Owens represented the Board of Regents. An appeal was noted to the Court of Appeals.

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. This was a petition for a writ of mandamus and declaratory judgment with claim for injunction filed by Carpel, Inc., against the State Board of Health. The Board refused to license the petitioner for the sale in this State of certain

soft drinks which were artificially sweetened. Article 43, Section 168 prohibits the sale of beverages so sweetened. On behalf of the Board a demurrer to the petition was filed, which demurrer was overruled. An answer was then filed. The case came on for hearing before Judge Moser who decided that Carpel, Inc., was not violating the statute and the State did not appeal. The law was amended by the passage of Chapter 71 of the Acts of 1954, to include artificial sweeteners. Mr. Owens represented the State Board of Health.

Horace P. Whitworth, Jr., Member of the General Assembly of Maryland, vs. William P. Cole, Jr. et al. Board of Regents of the University of Maryland. In the Baltimore City Court. H. P. Whitworth, Jr., a member of the 1954 General Assembly of Maryland, filed a petition for a writ of mandamus to compel the Regents of the University to furnish him with the Evaluation Report, basing his claim on sub-section (d) of Section 240 of Article 77 of the Annotated Code of Maryland (1951 Ed.) as enacted by Chapter 14 of the Acts of 1952. Upon hearing, his application was denied. Mr. Owens represented the University.

Olive Hill vs. Frank Burke. In the People's Court of Baltimore City. This was an attachment laid in the hands of the Commissioner of Motor Vehicles for the return of certain money alleged to have been advanced to the defendant Burke by the plaintiff. Inasmuch as the State is immune from the process of attachment, a motion to quash was filed on behalf of the Commissioner. After a hearing, the motion was granted. Mr. Owens represented the Commissioner.

John W. Middleton vs. Motor Vehicle Commissioner. In the Superior Court of Baltimore City. This was a petition for mandamus to compel issuance of special tags to appellant in accordance with the provisions set forth in Chapter 533 of the Acts of 1953. A demurrer was filed on behalf of

the Commissioner, which, after a hearing, was sustained without leave to amend. Mr. Owens represented the Commissioner.

Temus Bright vs. Motor Vehicle Commissioner. In the Baltimore City Court.

Walter C. Mohr vs. Motor Vehicle Commissioner. In the Baltimore City Court. These two cases against the Commissioner of Motor Vehicles were appeals from revocations of the appellants' licenses to operate a motor vehicle, and the Commissioner was represented by Mr. Owens.

William H. Kane vs. Security Title and Joseph C. Deegan, Sheriff of Baltimore City. In the Circuit Court of Baltimore City. This was a suit amending the bill of complaint filed in this case and reported in 38 Opinions of the Attorney General, page 36. An answer was filed on behalf of the Sheriff stating that he had no interest in the controversy and consenting to abide by any order that may be passed by the Court. Mr. Norris represented the Sheriff.

Virginia C. Fisher vs. Aubrey Fisher and Joseph C. Deegan, Sheriff of Baltimore City. In the Circuit Court of Baltimore City. This was a petition to enjoin the Sheriff from making a levy on the petitioner. The Sheriff had no interest in the controversy, and an answer was filed to that effect and submitting his rights to the determination of the Court. Mr. Norris represented the Sheriff.

Hillcrest Building and Loan Association, Inc. Assignee, vs. Waddell Gerald and Elease Gerald, etc. In the Superior Court of Baltimore City. This was a petition for the application of proceeds of a sale to the satisfaction of a judgment. An answer was filed showing that the Sheriff had no interest in the matter and would submit his rights to the determination of the Court. Mr. Norris represented the Sheriff.

Isabelle Hummel vs. Stormco Company, Inc. and Storm Seal Corporation. In the Circuit Court No. 2 of Baltimore City. This was a petition to restrain the Sheriff from paying out any money resulting from the sale of chattels under a distraint sale and to pay part of that money to the petitioner. An answer was filed on behalf of the Sheriff stating that he had no interest in the controversy and would submit his rights to the determination of the Court. Mr. Norris represented the Sheriff.

Service Auto Spring Co., Inc. vs. Beverly Ober, Garnishee of Charles V. Broyhill. In the People's Court of Baltimore City. This case involved a "non-resident" attachment obtained against a resident of North Carolina, in the matter of a 1950 International Truck which came into the possession of the Police Department following a motor vehicle accident. The only interest of the Department was the collection of a \$6.50 towage charge which was awarded by the Court after a hearing. Mr. Norris represented the Police Commissioner.

State of Maryland to the use of the Maryland State Police vs. Joseph W. Hellman. In the People's Court of Baltimore City. This was a suit for damages arising out of a collision between a motor vehicle driven by the defendant and one owned by the Maryland State Police. A verdict was rendered in favor of the State. Mr. Norris represented the State.

State of Maryland to the use of the Military Department vs. Benjamin Berger and Martin Lee Berger. In the People's Court of Baltimore City. This was a claim and counterclaim for property damage to a motor vehicle owned by the Military Department of Maryland and driven by an employee of that Department. At the trial the Judge dismissed both the claim and the counterclaim. Mr. Norris represented the Military Department.

State of Maryland for the use of the Department of Health vs. Mrs. Betty N. Gilbert. In the People's Court

of Baltimore City. This was a suit by the Health Department to recover salary paid Mrs. Gilbert while in their employ, to which she was not entitled. A judgment was rendered to the State and a settlement was agreed upon with the concurrence of the Comptroller. Mr. Norris represented the Health Department.

In the Matter of Harry Schapiro, Individually and t/a Security Furniture Company. In the Circuit Court of Baltimore City. A claim was filed on behalf of the Comptroller of the Treasury of Maryland for unpaid sales taxes, less penalties and interest, owing to the State of Maryland by the Security Furniture Company. The claim was paid by the Trustee and the matter was closed. Mr. Norris represented the Comptroller.

Robert Hare vs. Gordon L. Saunders. In the Magistrate's Court for Baltimore County. This was an action against Saunders, a State Game Warden, to replevin an eight-point buck deer. The deer had been taken from the plaintiff as the State claimed he did not have lawful possession. The Magistrate held that the plaintiff did have lawful possession and the writ was allowed. Mr. Norris represented the Game Warden.

Maryland State Police vs. Asher H. Scott. In the Trial Magistrate's Court for Prince George's County. This was a suit filed on behalf of the Maryland State Police to recover damages to a State-owned car as a result of a collision with an automobile owned by the defendant. A verdict was rendered in favor of the State. Mr. Norris represented the Maryland State Police.

In the Matter of Charges Made by J. George Eierman, Inspector of Tobacco Against James R. Tippett, Tobacco Sampler. Before the Commissioner of Personnel. The charges were that Tippett violated Merit System Rule No. 55, paragraphs (a) (b), (d) and (e). The testimony was that he had threatened and harassed classified employees of

the Warehouse; that he habitually left his job daily fifteen to twenty minutes earlier; that he used profane and abusive language against the Inspector and his supervisors; and that he was particularly critical of the Warehouse policies of the Inspector. A hearing was held before the Commissioner and the respondent found guilty of insubordination and ordered removed from his position at the Tobacco Warehouse. Mr. Parker and Mr. Norris represented the State Inspector of Tobacco.

Karl Romanchuk vs. Superintendent of the Springfield State Hospital. In the Baltimore City Court. This was a petition for a writ of habeas corpus. A hearing was held before Judge Cullen and the writ denied. The attorney for the petitioner indicated that a request for a sanity hearing would be made. Mr. Norris represented the Hospital.

Ira E. Robertson vs. Dr. Isadore Tuerk, Superintendent of Spring Grove State Hospital. In the Superior Court of Baltimore City. Robertson, a patient confined in Spring Grove State Hospital, was given a sanity hearing before Judge John T. Tucker. At the conclusion of the hearing Robertson was found to be insane and was remanded to the custody of the Superintendent of the Hospital. Mr. Norris represented the Superintendent.

State of Maryland ex-rel William Brewer vs. Dr. Isadore Tuerk, Superintendent, Spring Grove State Hospital. In the Circuit Court for Queen Anne's County. This was a petition filed by Brewer who had been a patient at the Hospital for some years, and sought to have a jury determine the issue of his sanity. After a hearing the jury found him sane. Mr. Marvin H. Smith represented the Hospital.

CASES PENDING IN LOWER COURTS

Wayne Edward Alter vs. Motor Vehicle Commissioner. In the Circuit Court for Wicomico County.

Boyd L. Harper vs. Motor Vehicle Commissioner. In the Circuit Court for Allegany County.

Willard Glenn Owensby vs. Motor Vehicle Commissioner.
In the Circuit Court for Carroll County.

Mills Middleton, Jr. vs. Motor Vehicle Commissioner. In the Circuit Court for Talbot County.

Burton E. Richardson vs. Motor Vehicle Commissioner.
In the Circuit Court for Harford County.

Milford Eugene Warner vs. Motor Vehicle Commissioner.
In the Circuit Court for Talbot County.

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

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

The Free State Realty Company, Inc. vs. Frank J. Gross and Jessie M. Gross, his wife. In the Baltimore City Court.

In re: Western Maryland Chronic Disease Hospital. See 38 Opinions of the Attorney General, page 41.

Sydney D. Peverly, Chairman et al. vs. Donald L. Lewis and Freda N. Lewis, his wife and Lloyd H. Broadwater and Mertie V. Broadwater, his wife. In the Circuit Court for Garrett County.

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

Board of County Commissioners of Cecil County, a body corporate vs. The State Board of Health of the State of Maryland. In the Circuit Court for Cecil County.

Dr. Gerald Singer, vs. Dr. Kermit F. Smith, et al. Maryland State Board of Chiropractic Examiners. In the Circuit Court No. 2 of Baltimore City.

Shep Hochberg vs. Beverly Ober, Baltimore City Police Commissioner. In the Superior Court of Baltimore City.

In the Matter of the Estate of Frank Newcomer Hack. In the Orphans' Court of Baltimore County.

Thomas Raymond Demyon vs. Maryland Racing Commission. In the Baltimore City Court.

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

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

William A. Furman, et al. vs. State Tax Commission of Maryland. In the Circuit Court for Montgomery County.

Household Finance Corporation vs. State Tax Commission. In the Circuit Court of Baltimore City.

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

Maryland Technical Institute, Inc. vs. State Tax Commission. In the Circuit Court No. 2 of Baltimore City.

Sears Roebuck Company vs. State Tax Commission. In the Circuit Court No. 2 of Baltimore City.

R. Manfred Kwasnik, et al. vs. State Tax Commission. In the Circuit Court for Baltimore County.

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

J. C. Penney Company vs. State Tax Commission. In the Circuit Court No. 2 of Baltimore City.

J. J. Newberry Company vs. State Tax Commission. In the Circuit Court No. 2 of Baltimore City.

Henry Rose Stores, Inc. vs. State Tax Commission. In the Circuit Court No. 2 of Baltimore City.

H. L. Green Company, Inc. vs. State Tax Commission. In the Circuit Court No. 2 of Baltimore City.

W. T. Grant Company vs. State Tax Commission. In the Circuit Court No. 2 of Baltimore City.

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

Otis Beall Kent vs. State Tax Commission. In the Circuit Court for Montgomery County.

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

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

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

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

State of Maryland vs. Triangle Realty and Construction Company, Garnishee of The Crofton Company, Inc. In the Superior Court of Baltimore City.

Ruth R. Startt, Register of Wills for Talbot County, to the use of the State of Maryland vs. Harrison Tilghman, Ex. Estate of Rosa M. Lockwood, Deceased, and St. Paul Mercury Indemnity Company. In the Circuit Court for Talbot County.

Home Utilities Company vs. The Lionel Corporation, Edward D. E. Rollins, Attorney General of Maryland, et al. In the Circuit Court No. 2 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, to the use of the Maryland State Apple Commission vs. Lancelot Jacques. In the Circuit Court for Washington County.

Joseph F. Hughes Company, Inc. a body corporate, vs. J. Millard Tawes, Comptroller of the State of Maryland. In the Baltimore City Court.

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

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

Baltimore Towel Supply & Laundry Company, Inc. vs. J. Millard Tawes, Comptroller of the State of Maryland. In the Baltimore City Court.

Bugle Coat, Apron and Linen Service, Inc. etc. vs J. Millard Tawes, Comptroller of the State of Maryland. In the Baltimore City Court.

State of Maryland vs. Albert A. Shuger, et al. co-partners t/a Baltimore Paint and Color Works, Garnishee of Donaldson Art Sign Company. In the Baltimore City Court.

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

John R. Fletcher and Reuben Bonnett vs. Air Conditioning, Inc. of Maryland et al. In the Circuit Court for Prince George's County.

American Can Company vs. J. Millard Tawes, Comptroller of the Treasury of the State of Maryland. In the Baltimore City Court.

Frank P. R. Bohager & Sons, Inc. vs. J. Millard Tawes, Comptroller of the State of Maryland. In the Baltimore City Court.

Marion R. Price t/a Price's Dairy vs. J. Millard Tawes, Comptroller of the Treasury, Walter E. Kennedy, Director, Retail Sales Tax Division. In the Circuit Court for Baltimore County.

Charles R. Gross, t/a Gross Drive-In vs. J. Millard Tawes, Comptroller of the Treasury, Walter E. Kennedy, Director, Retail Sales Tax Division. In the Circuit Court for Baltimore County.

Peter Chrusniak vs. Police Commissioner and Mayor and City Council of Baltimore. In the Superior Court of Baltimore City.

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

The Baltimore Transit Company vs. Mayor & City Council of Baltimore and Beverly Ober, Police Commissioner of Baltimore City. In the Circuit Court No. 2 of Baltimore City.

Elsie L. Klein and Betty Hoehmer 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.

Margaret A. Farr vs. Russell A. Davis, State Employment Commissioner. In the Superior Court of Baltimore City.

Martin G. Imbach, Inc. vs. Joseph C. Deegan, Sheriff of Baltimore City. In the Superior Court of Baltimore City.

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. In the Baltimore City Court.

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

J. Collinson Joyce vs. George B. Shields, Chief Game Warden, and Wilson K. Barnes. In the Circuit Court for Anne Arundel County. In Equity.

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

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

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

The Twelve-Year Construction and Reconstruction Program began in full force and effect with the beginning of the calendar year 1954. In addition thereto, much preliminary work in connection with the Patapsco Tunnel Project was completed, the net result being a substantial increase in the duties of the Legal Department for the year.

The increased duties may be clearly envisioned by realizing that the Commission put under contract \$74,420,000 in construction and re-construction projects during the year, as compared with \$34,494,000 for the year 1953.

A further evidence of the increased work is reflected in the number of rights-of-way acquired and the amount expended for them during 1954. Three thousand one hundred and fifty-six (3,156) parcels were acquired at a cost of \$9,857,341, whereas in 1954 one thousand two hundred and fifty-two (1,252) parcels were acquired at a cost of \$2,645,243.

Many cases of a special nature arose, such as the controversy over the location of the Inter-County Beltway in Montgomery County, which culminated in an injunction suit, the result of which, if successful, would have been to prohibit the Commission from constructing the proposed road at the planned location in Montgomery County. The filing of this suit required numerous conferences with officials from the Maryland-National Capital Park and Planning Commission and the United States District Attorney for the District of Columbia. Even though this Commission was not named as a party to the suit, it had a direct bearing upon the activities of the Commission which required considerable, and almost continuous, attention. It can be reported that the United States District Court for

the District of Columbia denied the injunction and this decision was affirmed by the United States Court of Appeals of that District.

Further, in connection with this proposed highway, legislation was introduced in the United States Senate which would have, if validly enacted, denied the State Roads Commission and the State of Maryland, of certain of its rights. This legislation is being actively opposed by this office.

This Department represented the Commission in the purchase of the stock of the Washington Berkeley Bridge Corporation, which negotiation and purchase became very much involved, with many and varied legal questions. The acquisition of the stock of the bridge and the dissolution of the corporation were finally resolved during 1954.

One of the most time consuming duties of the office during 1954 was assisting in the preparation of the Trust Indenture which was necessary for the sale of \$180,000,000 in bonds, the proceeds of which were used to refund the existing bonds on the Chesapeake Bay Bridge, and will be used for the construction of a tunnel under the Patapsco River and the approach roads in connection therewith.

Numerous conferences were held with members of the Commission, local bond counsel, representatives of the Investors Syndicate and their counsel, as well as representatives of the Federal Government in connection with the preparation and drafting of the Indenture and the legal problems incident thereto.

These conferences were held in Washington, D. C., New York City as well as in Baltimore. In addition, it was necessary to attend conferences relating to the awarding of contracts of the several consulting and design engineers, and to review and approve, for legal sufficiency, the contracts, as well as to approve the form and type of bond and insurance required under each of the contracts.

All meetings of the Advisory Council to the State Roads Commission held during 1954, were attended by this Assistant, and he advised the Council on many matters of a legal nature. In addition he met with the Council and the Commission on matters relating to legislative problems and drafted such legislation as was requested. This Assistant represented the Attorney General and the State Roads Commission during the 1954 Session of the General Assembly, and appeared before such Committees of the Legislature as was deemed necessary or desirable on legislation affecting the State Roads Commission.

During the year one hundred and fourteen (114) condemnation cases were tried or settled prior to trial. In each of the cases tried, a representative of this Department participated in the trial. Two hundred and seventy-eight (278) condemnation cases were prepared and filed in the Circuit Courts of the several counties of the State. Approximately four thousand two hundred and fifty-four (4,254) title examinations made at a cost by local attorneys in the various counties of \$241,024.00 were reviewed by this Department, and about one thousand seven hundred and sixty-one (1,761) settlements made at a cost by local attorneys of \$50,084.50, 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, as such, and its members, as individuals, acting in their official capacities. 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 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 staff of the Special Assistant Attorney General for the State Roads Commission during the year 1954 was comprised of Mr. Frederick A. Puderbaugh, Mr. W. Warren Stultz, Mr. Murray W. Weight and Mr. Henry L. Rogers, in addition to the writer.

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

Alleghany County:

Two (2) tried.
Seven (7) settled.
Two (2) pending.

Anne Arundel County:

Four (4) tried.
One (1) settled.
Ten (10) pending.

Baltimore County:

One (1) tried.
Sixteen (16) settled.
Thirty-seven (37) pending.

Calvert County:

One (1) tried.
Four (4) settled.
Two (2) pending.

Caroline County:

One (1) settled.

Carroll County:

Three (3) tried.
Two (2) settled.
Fifteen (15) pending.

Cecil County:

Three (3) settled.
Fourteen (14) pending.

Charles County:

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

Dorchester County:

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

Frederick County:

Five (5) settled.
Six (6) pending.

Garrett County:

Five (5) pending.

Harford County:

Two (2) tried.
Nine (9) settled.
Twenty-seven (27) pending.

Howard County:

Three (3) settled.
Eight (8) pending.

Kent County:

One (1) tried.
Four (4) pending.

Montgomery County:

One (1) tried.
Six (6) settled.
Twenty (20) pending.

Prince George's County:

Two (2) tried.
Fourteen (14) settled.
Twenty-one (21) pending.

Queen Anne's County:

Four (4) tried.
 Seven (7) settled.
 Eight (8) pending.

St. Mary's County:

Three (3) tried.
 Eighteen (18) settled.
 One (1) pending.

Somerset County:

One (1) pending.

Talbot County:

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

Washington County:

Seven (7) pending.

Wicomico County:

Five (5) tried.
 Ten (10) settled.
 Fourteen (14) pending.

Worcester County:

Seven (7) pending.

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

During the year 1954 there were no changes made in the membership of the Commissioners of the State Accident Fund, and the members remained as follows: Chairman, Mr. Thomas W. Offutt, Baltimore County; Vice-Chairman, Mr. Joseph D. Weiner of St. Mary's County; Secretary, Mr. William A. Sullivan of Baltimore City; Mr. Royden S. Meise, Wicomico County and Mr. Abraham Watner of Baltimore County.

Mr. Richard K. Coggins of Baltimore City is Superintendent of the State Accident Fund.

As of December 15, 1954, Mr. Harry A. Cole who had been with this office since May 15, 1953, resigned his position.

Cases tried before the State Industrial Accident Commission involving accidental injury claims, are as follows:

Baltimore City.....	454	Easton	13
Pre-Trial Confer-		Elkton	22
ences in Balti-		Frederick	11
more City	20	Hagerstown	15
Bel Air	6	Hyattsville	9
Cambridge	24	Leonardtwn	6
Centreville	2	Oakland	8
Chestertown	16	Rockville	3
Cumberland	25	Salisbury	17
Denton	1	Westminster	13

These hearings total 645. Since December 1, 1954, we have attended pre-trial conferences on approximately twenty (20) cases.

Cases tried before the Medical Board for Occupational Diseases of the State Industrial Accident Commission are noted as follow:

Baltimore City.....	14	Cumberland	10
Bel Air	2	Salisbury	3

Approximately seventy (70) cases were disposed of by Final Release and Compromise Settlement Agreements.

There were seven (7) cases tried in the various nisi prius Courts throughout the State.

Two cases were argued in the Court of Appeals.

Many suits have been filed and are pending; these involve the collection of premiums due the State Accident Fund by policyholders.

The total sum collected during the year on the accounts turned over to the State Law Department for collection for non-payment of premiums, by the State Accident Fund, amounted to \$21,553.19.

We met with the Commissioners of the State Accident Fund and rendered legal assistance to the Commissioners and staff of the Fund whenever needed throughout the year.

REPORT OF MARVIN H. SMITH, SPECIAL ASSISTANT
ATTORNEY GENERAL IN CHARGE OF SUB-
VERSIVE ACTIVITIES CONTROL

It has been written that "Time, patience and perseverance accomplisheth all things". There are many who see the function of this office as being a place for spectacular action without considering the fact that it does take much "time, patience and perseverance" to accumulate the evidence upon which a successful prosecution could be made.

Investigation of known and suspected subversive persons and organizations operating in the State of Maryland has been pursued relentlessly, vigorously and without fear or favor during the last year. We know that the Communist conspiracy is a present and continuing conspiracy in the State as demonstrated and emphasized by recent literature outlining the program of that party delivered through the mails and otherwise in recent weeks. Through our investigations we know many of the leaders of the conspiracy, but, as in so many other crimes and as previously indicated, "knowing" a culprit and being able to amass sufficient admissible evidence to obtain a conviction of that culprit are two different things.

We are proud of our accomplishments during the past year and feel that we have come far, but the very nature of the office makes it impossible for us to set forth in detail exactly what we have done. To do so would be to apprise the Communists of our methods, sources of information, and probable next moves. Moreover, to disclose exactly what we have done would be both a violation of the statute as well as amounting to trial in other than the duly constituted forums of justice.

There is nothing that would give me more pleasure than to detail completely the progress we have made, since to do so would be an answer to those who have criticized us for doing nothing. This, however, would constitute a breach of the trust reposed in us.

We have continued to answer numerous inquiries from other investigative agencies concerning individuals in the State of Maryland. The information that we have amassed has, I believe, been of substantial assistance to these agencies. We have continued to clear through our files the names of new employees in an effort to keep disloyal persons from entering upon the public payroll.

It has been an honor and a privilege to have served with you in this office. I have enjoyed the work immensely. I feel that we have made progress and that in due season that progress will be demonstrated.

REPORT OF HERBERT L. COHEN
SPECIAL ASSISTANT ATTORNEY GENERAL FOR THE
MARYLAND EMPLOYMENT SECURITY BOARD
FOR THE YEAR 1954

The Legal Division of the Department of Employment Security is divided into three sections. They are the Recoveries Section, which enforces collection of benefit overpayments and 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 1954, 50 appeals were entered in the courts from decisions of the Board. There were also pending in the courts 36 appeals taken prior to 1954. We disposed of 30 cases, which included 8 cases instituted in 1954 and 22 cases instituted prior to 1954. There are now pending in the courts 56 cases, which includes 42 cases instituted in 1954 and 14 cases instituted prior to 1954.

Following are the results of the disposed of cases:

The Board was affirmed in twelve (12) cases;

The Board's request for dismissal was granted in six (6) cases;

The Board's decision was reversed in four (4) cases;
Appeals dismissed by claimants in seven (7) cases;
Remanded for further hearing one (1) case.

The case of *State of Maryland vs. Charles F. Hunter*, in the Circuit Court for Carroll County was an unusual one. It involved a citation for contempt on the part of the defendant, in that he failed to abide by an injunction prohibiting him from doing business in violation of the Unemployment Compensation Law. He had established a spurious partnership and alleged that he had no employees. Following a trial he was found guilty of contempt.

In addition to the above, there were a considerable number of trials held which involved law motions, particularly with regard to the distribution of estates of insolvents and the propriety of the procedures used to procure injunctions against employers.

In connection with the 56 cases open and pending in the courts as of December 31, 1954, 11 involve the misconduct of an employee in connection with his work, 19 relate to claimants leaving work voluntarily without good cause, 7 involve the failure of claimants to apply for available, suitable work, 5 relate to the question of whether or not a claimant is able to work, available for work and actively seeking work, 7 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, 2 relate to the question of whether a claimant has performed work in covered employment and thus eligible for benefits, 1 concerns the question of whether a claimant has filed a proper claim, 1 relates to the question of whether a claimant is entitled to an injunction against the Board, 1 concerns the question of whether or not the receipt of vacation pay is a bar to benefits for the week following the commencement of the layoff, 1 relates to the question of whether an employer

must pay contributions at a 2.7% rate until such time as a reduced rate is earned, and 1 concerns the question of whether an employer is a successor to another employer under the law.

Of the said 56 open cases, 39 are pending in the Superior Court of Baltimore City, 7 in the Circuit Court for Baltimore County, 3 in the Circuit Court for Allegany County, 1 in the Circuit Court of Baltimore City, 1 in the Circuit Court for Caroline County, 1 in the Circuit Court for Cecil County, 1 in the Circuit Court for Prince George's County, 1 in the Circuit Court for Washington County, 1 in the Circuit Court for Worcester County, and 1 in the Court of Appeals of Maryland.

II

RECOVERIES SECTION

Through various collection techniques, the Recoveries Section collected a total of \$83,806.90 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 Attorneys of Baltimore City and the Counties of the State. This office participated in the trials of 37 claimants charged with fraud, all of whom were convicted.

III

COLLECTION SECTION

During the year, counsel for the Employment Security Board obtained 853 judgments amounting to \$193,738.24. As of November 30, 1954, there were on hand 1,028 uncollected judgments amounting to \$409,964.21. Exactly

438 judgments were collected during the year, totaling \$100,891.01, and the amount of \$9,455.35 in judgments was marked off as uncollectible. During the year, 114 liens, totaling \$18,042.33 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 \$118,933.34.

In enforcing collection of the judgments mentioned, counsel was required to issue execution in 509 cases and attachments in 19 cases. Claims were filed in 51 bankruptcy cases, 18 Orphans' Court cases, 35 Receivership cases, 56 deed of trust cases, and 5 foreclosure cases. Two (2) re-organization cases under Chapter X of the Federal Bankruptcy Act, involving a total of \$448.37 were filed during the year, and one re-organization case filed previous to this year was brought to a close and resulted in the collection of \$814.30.

Subpoenas were issued for the appearance of 585 employers who failed to file reports and/or pay contributions. We received 170 cases involving payment of benefits to representatives of deceased claimants and closed 160 of these cases.

We learned of 223 sales of businesses under the Sales In Bulk Act, 145 of these having been reported in the Daily Record and 78 of these having been brought to our attention by attorneys and by telephone calls. In each of the aforementioned cases, we took all necessary steps in order to protect our claim, if any. We handled 23 complaints involving forged checks, of which 15 have been closed. We also handled 60 dissolution of partnership cases.

During the year we filed in the courts 81 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 re-

ports required for the effective administration of our law. 24 employers were actually enjoined from conducting their businesses, final orders having been entered.

We also filed in the courts 105 petitions and nisi orders requiring employers to appear before a representative of the Department of Employment Security to either offer testimony regarding past due contributions incurred under the Maryland Unemployment Compensation Law, or to produce the necessary records for the filing of delinquent contribution reports.

Sixty-one 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 1954. Many of these petitions resulted in employers paying past due contributions or filing delinquent contribution reports.

IV

CLAIMS INVESTIGATION SECTION

This section was engaged in conducting a constant audit and investigation of claims filed for unemployment compensation benefits and of internal procedures used in the Department. Cooperation was extended to the Police Department and the offices of various sheriffs in locating persons who had been indicted, or upon whom service was desired. The section also conducted such special investigations as were ordered from time to time by the Employment Security Board in connection with cases pending before it.

The number of cases audited, and the resulting overpayments thereby established were more than doubled over 1953, with very small increase in personnel. This is expected to be one of our more serious problems in the future since the work must be done, but personnel for staffing the operation seems hard to get.

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

This is the first annual report of the Special Assistant Attorney General for the Department of Tidewater Fisheries. A prior report covered the period from August 1, 1953 to December 31, 1953. Before August 1, 1953 the Department did not have a Special Assistant Attorney General assigned to it.

A three member board compose the Tidewater Fisheries Commission which, in turn, operates and manages the Department of Tidewater Fisheries. The Commission meets weekly at Annapolis. Other officials of the Department are: an Assistant to the Chairman, Chief Fisheries Inspector, Shellfish Culturist, Accountant, Auditor, Public Relations and Training Officer and a Hydrographic Engineer. Personnel also includes other employees who aid these officials in their duties.

Law enforcement is an ever present, every day problem with the Department. In fact it has its own law enforcement officers, known as "Inspectors". There are 96 of these Inspectors operating on a full-time basis, sometimes described aptly as "Maryland's Oyster Navy". The officers have full police powers throughout the State. In addition to the patrol vessels manned by the Inspectors, the Department also operates a patrol plane.

The Commission has "general supervisory power, regulation and control" within the bounds of tidewater. It exercises jurisdiction, conducts conservation practices and engages in propagation programs for fish, crabs, terrapin, oysters, clams and other shellfish in tidewater areas. This includes Baltimore City and the Counties of Anne Arundel, Baltimore, Calvert, Caroline, Cecil, Charles, Dorchester, Harford, Kent, Prince George's, Queen Anne's, St. Mary's, Somerset, Talbot, Wicomico and Worcester.

The duties of the Special Assistant Attorney General for the Department of Tidewater Fisheries are not defined or spelled out by a specific statute. This Assistant was appointed because of the Department's many and complex problems, including legal questions intertwined with economic, sociological and biological matters. Including as it does, a widely scattered police force, immediate answers are often necessary for the efficient management of the Department. Gradually, during the past year, the duties of this Assistant have taken on a definite shape.

An enumeration of the scope of operation and duties which this Assistant performs, will of necessity overlap categories. Basically though, it can be said to consist of general advice and counsel on all legal problems confronting the Commission of Tidewater Fisheries within its sphere of power, regulation and control; help and advice to the Chief Fisheries Inspector and the Inspectors under him, including aid in preparing some cases for prosecution; advising the State's Attorneys of tidewater counties upon their requests for opinions and assisting them in the actual trial of the more important cases, and writing formal opinions on legal problems warranting them, plus rendering numerous informal opinions, written and oral, to the Commission, its officials, the State's Attorneys and others.

GENERAL ADVICE AND AID TO COMMISSION

This Assistant, being at Annapolis, is always available to the Commission and its personnel there, whenever needed. Questions of law posed by Department officials and employees are answered. At times this takes the form of complaints from private citizens, and when received, they are handled by this Assistant. Also, there is the matter of collection of various taxes under the conservation statutes; this poses legal questions for the Auditor and for the Accountant of the Department and when they arise the matters are handled by this Assistant. Employees' bonds, which include one for each Inspector as well as for other officials, have been examined as to their form

and legal sufficiency of all Regulations promulgated by the Commission. Regulations 107 to 115, concerning opening or closing of certain oyster areas, have been acted on and approved by this Assistant. Crabbing Regulation VI was promulgated by the Commission. It was approved as to form and the necessary procedure to place it in effect as law, was set forth by this Assistant. On occasion, this Assistant passes on the legality of forms or documents. An important one is the set of new forms which commercial fishermen will be required to file periodically, showing their catch, species of fish, type of gear fished, etc.

AID TO INSPECTORS AND STATE'S ATTORNEYS,
PROSECUTIONS AND OTHER MATTERS

Since the report ending December 31, 1953, the cases then pending in the Court of Appeals of Maryland have been decided.

State of Maryland vs. H. B. Kennerly, etc. Levin L. Walter and Travers Willing. No. 129, October Term, 1953. All three appeals were combined in one record. This Assistant aided the State's Attorney for Wicomico County in obtaining indictments, argued against motions to dismiss the indictments and argued the cases in the Court of Appeals. The Trial Court quashed the indictments under the Oyster Law of 1951, for failure to set aside oyster shells for the State, after being notified of the State's intention to purchase the shells. The new statute came into effect on June 1st, 1953 and the appellees contended that the offenses were not committed until after June 1st, 1953. The Court of Appeals held that the Act of 1953 did not become operative until the ensuing May 1st. The legislative intent was that the old statute should remain in effect until the new one came into operation, and the Court reversed the judgment of the lower Court.

Two other cases, in Somerset County, on basically similar facts and indictments, are pending. All of these cases are indictments of licensed oyster packers who are charged

with failure to comply with the law requiring certain quantities of oyster shells from oysters shucked in their establishments to be turned over to the State.

The previous report mentioned the case of *State vs. Carl Tyler*, as pending in Somerset County. In that case the charge was assault with intent to kill, and arose because of a ramming of a Department vessel and shooting. A trial at Princess Anne, participated in by this Assistant, resulted in disagreement by the jury. The Chief Judge of the Circuit, who presided with an Associate Judge at the trial, has been advised that the case will again be tried.

This Assistant also aided the State's Attorney for Talbot County at Easton, at the trial of the case of *State of Maryland vs. George A. Whitely*, No. 6 Criminal Appeals, May Term, 1954. The defendant was found not guilty of the charge of illegal dredging.

The *Whitely* case is of more than passing interest. It concerned the method of taking maninose or soft-shell clams. Rigs have been built which take up the clams by hydraulic dredging by which jets of water, under pressure, are directed against the bottom of the river or other stream. The clams are forced onto a moving belt and they are then removed from the belt by hand. This method of taking clams has stirred up quite a controversy, mainly on the Eastern Shore. While on the facts of the case the defendant in this case was found not guilty, the Court announced that the ruling did not mean a hydraulic dredge of the type used was a legal device to take clams.

Another case which this Assistant believes to be of great importance is *State of Maryland vs. Atwell*. Two cases were actually docketed against the defendant, Nos. 405 and 406, in the Circuit Court for Charles County. A nolle pro was entered in No. 405, an indictment for oystering on Sunday. In No. 406, a fine of \$350.00 was imposed. The defendant was also sentenced to confinement in the House of Cor-

rection for a term of six months, but the sentence was suspended on condition that the defendant not engage in oystering business during the balance of 1954. In addition, the Court condemned and forfeited the vessel and its apparatus, which was taken over by the Department of Tidewater Fisheries.

Residents of Virginia, because of the Compact of 1785, may engage in fishing in the Potomac River. The River is closed to dredging, but Atwell, who was a resident of Virginia, was found dredging on January 18, 1953. When the Department's Inspectors attempted to come up with Atwell's boat he not only refused to stop, but actually shot at the pursuing vessel. He also poured some inflammable substance on the water and set it afire so as to further hamper the officers in their attempt to capture him. However, they ran his boat aground on the Virginia side, secured a line aboard and towed it back to the Maryland side.

Time and tactics convinced Atwell he should come to Maryland for trial. Extradition proceedings were being prepared when he decided to stand trial at LaPlata, where he entered a plea of guilty.

Legal problems handled by this Assistant are not always on the criminal side of the Courts. An example was an attachment suit filed by the Department of Employment Security of Maryland against an owner of a vessel engaged in hauling shells for the Department of Tidewater Fisheries, for hire. The Department was named as Garnishee in No. 5384 Law, in the Circuit Court for Anne Arundel County, *State of Maryland vs. Delcher*. Regardless of the application of the general law with respect to placing attachments in the hands of a State Department, this Assistant filed a Confession of Assets, and the State collected \$999.76.

The following cases are pending:

Louis D. Cantler, et al. vs. James F. Collison and Department of Tidewater Fisheries. No. 10,850 Equity. In the Cir-

cuit Court for Anne Arundel County. This case involves the validity of a lease for private oyster culture. A Demurrer has been filed on behalf of the Department, but has not yet come up for hearing.

Clifton B. Mathay vs. David H. Wallace, et al. Department of Tidewater Fisheries, and Board of Public Works. No. 1094/1950. In the Superior Court of Baltimore City. This case has been pending since 1950, and efforts to interest the plaintiff's counsel to dispose of the Demurrer filed on behalf of the Commission and other public officials, have been unsuccessful.

Enumeration of the foregoing cases does not include, of course, the total number of prosecutions by officers of the Department before the Trial Magistrates in all tidewater counties and in Baltimore City. This Assistant has not personally appeared in those cases, but has on a number of occasions assisted and advised the Inspectors. The Department keeps records of arrests, prosecutions, convictions, acquittals, etc.

Having a Special Assistant Attorney General for the Department, which in large measure is a State marine police department, is somewhat like having a State's Attorney at Large. This is inevitable if the Assistant is to do more than merely confer with the Inspectors and this Assistant feels that in the present day thinking of conservation as such, it is necessary that the Special Assistant Attorney General should actively engage in important prosecutions. A system of assisting the State's Attorneys and not directing them has been followed. It is believed that the State's Attorneys have approved the method of operation and approach to the problems presented.

In addition to other duties and matters, this Assistant drafted seven formal opinions doing all of the necessary legal research. There were many times this number of "informal" opinions. An example is the matter of the

long-standing dispute as to whether Herring Island is located in Talbot County or Queen Anne's County. As a matter of fact the island, a victim of erosion, has long since disappeared, but its site is important because of oyster bars in its vicinity. Representatives of the two counties produced maps and charts before the Commission and the matter was referred to this Assistant for study and advice. After thorough study and considerable research, the dispute was settled by the Commission in an "informal" opinion.

There is urgent need for legislation to further clarify the conservation statutes. Some of the Judges, officials of the Department, Inspectors, Trial Magistrates, as well as this Assistant, are of the opinion that such clarification is necessary, as some statutes are clearly inconsistent with others and some ought to be repealed.

This Assistant has been requested by several Judges of the State, some State's Attorneys and by the Department officials to prepare amendments to the conservation statutes. A study and analysis has been made of each recommendation. Helpful practical advice has been sought and obtained by this Assistant from officials of the Department, its Inspectors and the biologists and scientists of the Department of Research and Education.

FINANCIAL STATEMENT OF THE STATE LAW DEPARTMENT
FOR THE FISCAL YEAR BEGINNING JULY 1, 1953
AND ENDING JUNE 30, 1954

Legal Counsel and Advice—Program 01:

Appropriation	\$84,570.00
Appearance fees	214.15
Sales of Attorney General's Reports outside of State and Budget refunds.....	19.50
Prior year refunds.....	970.51
	<hr/>
	\$85,774.16
Appearance fees and prior refunds turned into State Treasury	1,184.66
	<hr/>
	\$84,589.50

Salaries:

Attorney General	\$ 8,000.00
Deputy Attorney General.....	7,764.12
Assistant Attorney General (3).....	23,395.40
Chief Clerk	4,720.16
Stenographer-Secretary (2)	7,512.44
Senior Stenographer	3,074.24
Law Clerk (Part Time).....	753.10
Additional Clerical Assistance.....	156.68
Communication	3,740.42
Travel	1,983.11
Motor Vehicle Operation and Maintenance	1,317.45
Contractual Services	4,160.06
Supplies and Materials.....	871.37
Equipment—Replacement	2,996.38
Equipment—Additional	731.00
Fixed Charges	12,435.50
	<hr/>
Balance	\$ 978.07

Subversive Activities Control—Program 02:

Appropriation	\$15,527.00	
Transfer of Funds from other Programs.....	1,529.00	
		<hr/>
		\$17,056.00

Salaries:

Assistant Attorney General.....	\$ 7,156.24	
Stenographer-Secretary	3,443.57	
Communication	35.73	
Travel	2,480.15	
Contractual Services	411.06	
Supplies	109.34	
Equipment—Additional	3,306.90	
Fixed Charges	74.72	17,017.71
		<hr/>
Balance	\$	38.29

Legal Services to Legislative Session—Program 03:

Appropriation	\$ 1,500.00	
Transfer of Funds to Program 02.....	375.00	
		<hr/>
		\$ 1,125.00

Salary:

Stenographer-Secretary	\$ 350.00	
Communication	87.20	
Travel	647.64	
Motor Vehicle Operation and Maintenance	38.57	
		<hr/>
		1,123.41
		<hr/>
Balance	\$	1.59

Printing Records, Briefs—Program 04:

Appropriation	\$ 2,500.00	
Transferred to Program 02.....	1,154.00	
		<hr/>
		\$ 1,346.00
Amount Expended		183.40
		<hr/>
Balance	\$	1,162.60
		<hr/>
Total Amount of All Programs.....		\$104,116.50

TOTAL EXPENDITURES

PROGRAM 01.....	\$83,611.43	
PROGRAM 02.....	17,017.71	
PROGRAM 03.....	1,123.41	
PROGRAM 04.....	183.40	
	<hr/>	\$101,935.95

TOTAL REVERSIONS TO STATE TREASURY

PROGRAM 01.....	978.07	
PROGRAM 02.....	38.29	
PROGRAM 03.....	1.59	
PROGRAM 04.....	1,162.60	
	<hr/>	2,180.55
		<hr/>
		\$104,116.50

OFFICIAL OPINIONS
of the
ATTORNEY GENERAL of MARYLAND

ALCOHOLIC BEVERAGES

ALCOHOLIC BEVERAGES—CONSUMPTION OF BEER ON LI-
CENSED PREMISES ALTHOUGH PURCHASED ELSEWHERE.

January 21, 1954.

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

We acknowledge your recent request for interpretation of Section 110 of Article 2B of the Annotated Code of Maryland (1951 Ed.), which provides in part:

“* * * It shall be unlawful for any person to drink on the licensed premises of any license holder any alcoholic beverages not purchased from the license holder on said premises and not permitted by this Article to be consumed on the premises; and, likewise, it shall be unlawful for any license holder to permit any person to drink any alcoholic beverage not purchased from the said license holder on the premises covered by the license which he holds and not permitted by this Article to be consumed on the premises.”

We understand that you would like to know specifically whether the Section quoted above would make it illegal for a person to consume beer on premises licensed for the sale of beer, which consumed beer was not purchased from the licensee but was brought upon the licensed premises by a patron.

This Section of the law, which was originally codified as Section 34 of Article 2B of the Annotated Code (1939 Ed.), and which, in its present form was passed as Chapter 501, Section 102, of the Acts of 1947, has been previously interpreted by this office, prior to its amendment, in 20 Opinions

of the Attorney General, 135. In that opinion, it was ruled that a person could bring distilled spirits upon premises licensed to sell only beer, and purchase ginger ale or other soft drinks or set-ups and mix his own distilled spirits with the same without violating the law. Following this opinion, and possibly as a result thereof, the law was amended to its present form, and it is our opinion that, as it is now written, this law would prohibit anyone from bringing distilled spirits, that is to say, whiskey, etc., upon premises licensed only to sell beer for consumption thereon. However, in view of the fact that the word "and", as used in both clauses quoted above is conjunctive, and not in the alternative, it would be legal for consumers to bring beer procured elsewhere upon the premises of a beer license holder and consume the same thereon, because the law, as quoted above, only makes it unlawful to drink beverages "not permitted by this Article to be consumed on the premises". The same thing applies to "permitting", as has been stated above in connection with "consuming".

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

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

ANATOMY BOARD

ANATOMY BOARD—DEPARTMENT OF PUBLIC WELFARE—
DUTIES OF BOARD IN CONNECTION WITH DECEASED WEL-
FARE RECIPIENTS.

October 6, 1954.

*Mr. Thomas J. S. Waxter, Director,
State Department of Public Welfare.*

Your recent inquiry concerns procedures and authority in connection with the State Anatomy Board law. I understand that under the Old Age Assistance law, the County Welfare Boards are required to bury deceased recipients of welfare where no other funds are available. I understand the County Commissioners do provide money for so-called pauper burials.

Under the Anatomy Board law (Article 43 of the Annotated Code of Maryland, Sections 156 to 159, inclusive, enacted by Chapter 669 of the Acts of 1949) it would appear that the major purpose of the law was to require that the Anatomy Board be notified, where any public officer of the State or of any County thereof had charge or control of the bodies of deceased persons required to be buried at public expense. Undoubtedly there is a difference between a case where a welfare recipient dies in an institution operated by the State, and dies simply as a recipient of welfare funds having no relatives or other persons willing to undertake the expenses of his burial. On the other hand, it would seem to me that the County Welfare Boards would be under a duty to notify the Anatomy Board of the existence and possession of dead bodies of persons who previously had been recipients of welfare, and in connection with whom the County Board would have information that prospective burial would have to be at public expense. The body, of course, may be reclaimed at any time for the purpose of burial by any relative or friend of the deceased, from the Anatomy Board after it takes possession of the same (Sec-

tion 157(d) of Article 43 of the Code). But to repeat, it is my opinion that it is the duty of the local welfare boards to notify the Anatomy Board of the existence and possession of such body or bodies.

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

AVIATION

AVIATION—CONDITIONAL SALES, MORTGAGES ETC. ON AIRCRAFT NEED NOT BE RECORDED WITH THE STATE AVIATION COMMISSION—AIRPORTS SELLING GOODS AND SERVICES MUST OBTAIN COMMERCIAL TYPE LICENSES.

June 3, 1954.

*Mr. Richard A. Jamison, Director,
State Aviation Commission of Maryland.*

In your recent letter you inquire whether conditional sales, mortgages and assignment of mortgages on aircraft must be registered and recorded in the office of the State Aviation Commission.

We find that, until the enactment of Chapter 422 of the Acts of 1949, there was such a requirement in your law. Section 55(a) of Article 1A of the Annotated Code of Maryland (1939 Ed.) provided that every sale, contract, or conditional sale, conveyance, mortgage and assignment of mortgage on an aircraft must be registered and recorded in your office. As you know, Chapter 422 of the Acts of 1949 repealed and re-enacted Article 1A in its entirety. Section 55(a) was repealed by the Act of 1949, and it has never been re-enacted. The only provision relative to recordation contained in the 1949 Act is that found in Section 24(a). This Section grants a mechanics lien to a person who furnishes services to an aircraft, and it provides that the lien shall be subordinate only to a bill of sale, contract of conditional sale, conveyance, or mortgage on the aircraft which has been executed and recorded with the Administrator of Civil Aeronautics of the Federal Government.

We are of the opinion, therefore, that, since the effective date of Chapter 422, *supra*, which was June 1, 1949, there is no provision in Maryland law for the recordation with the State Aviation Commission of contracts of sale of aircraft.

Another problem has arisen in reference to several privately owned airports which have applied to you for licensing under the regulations adopted by the State Aviation Commission. Your question is whether these airports are commercial in nature and must, therefore, comply with the requirements of Sections 6 and 7 of the regulations which deal with the licensing of commercial airports. You state that these airports are open to the general public; sell gasoline and oil and rent hangar and tie-down facilities. The regulations relating to commercial airports were adopted pursuant to the authority vested in the Commission by Section 26 of Chapter 422 of the Acts of 1949, now codified as Section 26 of Article 1A of the Annotated Code of Maryland (1951 Ed.).

The term "commercial" has been given both a broad and a restricted meaning by the courts, dependent upon the context in which it is found. In its broad sense, it is taken to encompass industrial enterprises as well as enterprises relating to the buying and selling of goods and services. In its narrow sense, it is restricted to the latter enterprises. See *Mechanical Farm Equipment Distributors, Inc. v. Porter*, 156 Fed. 2d 296, 298; *United States v. Public Service Co. of Colorado*, 143 Fed. 2d 79, 82; *Schill v. Remington Putnam Co.*, 179 Md. 83, 88. It is apparent that even under the narrow construction of the term "commercial", the activities of the airports in question fall within the word's meaning. They are engaged in the sale of goods and services to the general public. It is your understanding that the only charge not made by these airports, and which is often customary, is a landing fee. We do not believe that the absence of this one charge changes the commercial nature of the enterprises. We, of course, assume that the usual customer of the airports in question engages in flight activity at the sites of the airports in order to avail himself of the goods and services sold. See the definition of the term "airport" contained in Section 1(c) of Article 1A.

It is noted that the regulations contain no definition of the term "commercial". The Commission may wish to adopt

the interpretation above set forth. Further, it may be wise for the Commission to adopt a definition of the term as a part of the regulations, such definition being drawn to encompass those facilities which the Commission desires covered by the commercial type license.

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

AMBROSE T. HARTMAN, *Asst. Attorney General*.

BANKS

BANKS—A STATE BANK MAY NOT OBTAIN THE POWERS OF A TRUST COMPANY BY A MERE AMENDMENT OF ITS CHARTER.

January 12, 1954.

Mr. John D. Hospelhorn,
Deputy Bank Commissioner.

We are in receipt of your letter in which you inform us that a State bank, duly chartered and authorized to do business by the Bank Commissioner, under the provisions of Article 11 of the Annotated Code of Maryland, has requested permission to amend its charter "to give the bank the usual trust powers of a trust company".

The General Assembly has provided for the creation of State banks in Sections 28 through 31 of Article 11 of the Annotated Code of Maryland (1951). It has also provided for the creation of trust companies in Sections 53 through 57 of the same Article.

The requirements for the capitalization of the two types of institutions are substantially different. Section 28 provides:

"* * * The capital stock for any bank shall not be less than Twenty-five Thousand Dollars (\$25,000.00) in cities, towns or villages having up to fifteen thousand (15,000) inhabitants, and shall not be less than Seventy-five Thousand Dollars (\$75,000.00) in cities, towns or villages, having more than fifteen thousand (15,000) and up to fifty thousand (50,000) inhabitants and shall not be less than One Hundred Thousand Dollars (\$100,000.00) in cities, towns and villages having more than fifty thousand (50,000) and up to one hundred and fifty thousand (150,000) inhabitants, and shall not be

less than Five Hundred Thousand Dollars (\$500,000.00) in any city, town or village having more than one hundred and fifty thousand inhabitants (150,000); * * *”

Whereas, Section 53 requires that the capital stock of trust companies:

“* * * must be at least Seven Hundred and Fifty Thousand Dollars; provided, however, that a corporation with a capital of not less than Two Hundred Thousand Dollars may be organized in a city containing more than one hundred thousand and less than two hundred and fifty thousand inhabitants, and a corporation may be organized with a capital of not less than One Hundred and Fifty Thousand Dollars in a city containing more than twenty-five thousand inhabitants and less than one hundred thousand inhabitants, and with a capital of at least One Hundred Thousand Dollars in a city or town the population of which does not exceed twenty-five thousand inhabitants, * * *”

The powers conferred upon banks by the sixth paragraph of Section 31 and upon trust companies by the ninth paragraph of Section 57 are not identical but are similar. Likewise the provisions of the seventh paragraph of Section 31 and the eleventh paragraph of Section 57 are similar. In other respects, however, the powers conferred upon trust companies by Section 57 are vastly different and substantially broader than the powers conferred upon banks, including authority to act as a fiscal or transfer agent of any State, municipality, body politic or corporation; to act as trustee under any mortgage or bond issued by any municipality, body politic or corporation; to accept trusts from and execute trusts for married women; to act under the order or appointment of any court of record as a guardian, receiver or trustee of the estate of any minor or person or corporation; to take, accept and execute any and all such legal trusts, duties and powers in regard to the holding,

management and disposition of any estate, real or personal, and the rents and profit thereof, as may be granted or confided to it by any court of record, or by any person, corporation, municipality or other authority; to take, accept and execute any and all such trusts and powers of whatever nature or description as may be conferred upon or entrusted or committed to it by any person or persons, or any body politic, corporation or other authority; and to be appointed and accept the appointment of executor or of trustee, or administrator, or as the committee of the estate of lunatics, idiots and drunkards. Thus, many powers are vested in trust companies that are denied to banks.

The reverse of the situation now before you was considered by this office in 1916 in a situation in which a trust company desired to amend its charter, eliminating trust company powers and thus make the company a bank limited to banking powers. 1 Opinions of the Attorney General, 32. In his opinion, Attorney General Albert C. Ritchie stated:

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

“There is no doubt that the company could dissolve altogether, under the Act of 1916, Chap. 596, Sec. 76, amending Bagby’s Code, Art. 23, Sec. 76, and Bagby’s Code, Art. 11, Sections 60 and 61. It cannot, therefore, be against the policy of the law to permit the company to dissolve or eliminate the trust feature of its business.”

The obverse is not, however, true. It would not be proper to enlarge existing bank powers or to create new trust powers by any other method than that provided by the Legislature.

It is our opinion, therefore, that a State bank may not become a trust company by an attempted amendment of its charter. If such an institution wished to obtain the powers of a trust company, it would be necessary to organize a trust company in accordance with the provisions of the statutes cited, including conformity to the Section quoted relative to the capitalization of trust companies.

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

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

DORMANT ACCOUNTS—CHARGES ON IN EXCESS OF STATUTORY LIMIT ARE ILLEGAL.

November 29, 1954.

Mr. John D. Hospelhorn,
Deputy Bank Commissioner.

A trust company licensed by your Department takes the position that service and/or maintenance charges are legal if agreed to by a depositor, and that such an agreement or contract between a banking institution and a depositor is not affected by Chapter 417 of the Laws of 1951, which are codified as Article 11, Section 206, of the Annotated Code of Maryland (1951 Ed.). Service and maintenance charges have been the subject of several opinions addressed by this office to your Department. In 1949 we ruled, in effect, that service and maintenance charges on dormant deposits in savings banks were prohibited by law. This conclusion, published in 34 Opinions of the Attorney General, 88, was reached by virtue of a construction of Article 11, Section 83.

Subsequent to, and probably as a result of this opinion, the General Assembly passed Chapter 417 of the Laws of 1951. After the effective date of that Act, it was considered and interpreted by the Attorney General, and his conclusions are published in 36 Opinions of the Attorney General, 107.

After reviewing all of the correspondence that you have forwarded, the pertinent opinions and statutes, I can find no ground for supposing that the law has altered since the ruling in 36 Opinions of the Attorney General, 107. It is my opinion, therefore, that the banking institution is in violation of Article 11, Section 206, if it makes charges on dormant accounts in excess of the limit prescribed in that statute.

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

BLIND

MARYLAND WORKSHOP FOR THE BLIND—HAS NO POWER TO
ACQUIRE STANDS IN PRIVATELY OWNED BUILDINGS.

June 30, 1954.

Mr. John G. Schilpp,
Chairman Board of Trustees,
Maryland Workshop for the Blind.

I have your letter of June 16, 1954, in which you request an opinion on the question of whether the Maryland Workshop for the Blind has the authority to enter into a contract with the Maryland Society for the Blind for the purchase of certain vending machines located in privately owned buildings in the City of Baltimore.

The Maryland Workshop for the Blind is operated under the provisions of Sections 6 through 11 of Article 30, (1951 Code). Under Section 8, the Board of Trustees of the Workshop is established as a corporation "with the right to acquire and hold property, real, personal and mixed, in any manner whatsoever; * * *". There follows an authorization to establish a workshop which shall be open for the labor of and manufacture by all blind persons meeting certain qualifications. Section 11 of the Act authorizes the Maryland Workshop for the Blind to issue licenses to blind persons "for the operation of stands in all State, county and municipal buildings, including buildings located in public parks, playgrounds and other recreational centers, for the vending of newspapers, periodicals, etc. * * *". While I fully realize the desirability of acquiring the stands in question, I do not believe that the provisions of Section 11 allow such an interpretation of the powers of the corporation. It is, of course, elemental that a corporation has no powers except such as are expressly or impliedly conferred by its charter. This rule was stated in the case of *In Re German Savings and Loan Association*, 253 Fed. 722, 723, as follows:

“If a corporation is to be treated as having a natural person’s freedom of action in all directions except those prohibited, it would be senseless for a Legislature to enumerate granted powers; it would be necessary only to list the prohibitions. But the fundamental principle is the converse.”

I believe that the enumeration in Section 11 of those places in which the Workshop may establish vending machines impliedly excludes all other locations. Considering the desirability of entering into the proposed contract, I suggest that you endeavor to have the General Assembly broaden the powers conferred upon your corporation by Section 11, *supra*.

I regret that the law requires the result above indicated.

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

Note: Chapter 5 of the Acts of 1955 amended the law to allow the Workshop to make contracts to place vending machines in privately owned buildings.

BOARD OF PUBLIC WORKS

BOARD OF PUBLIC WORKS—FUNDS EARMARKED FOR CERTAIN PURPOSES BY GENERAL CONSTRUCTION LOAN OF 1954 MAY BE TRANSFERRED FOR THE USE OF OTHER PROJECTS.

August 5, 1954.

Mr. Joseph O'C. McCusker,
Secretary, Board of Public Works.

In your letter of July 19, 1954, you inform us that the Department of Forests and Parks has requested that the Board of Public Works approve the expenditure of certain moneys for the acquisition of land for purposes of the Seneca Creek State Park. The Board is willing to approve the use of these funds but has some doubt relative to the legality of their expenditure for the stated purpose.

The General Construction Loan of 1951, as enacted by Chapter 412 of the Acts of 1951, contained an item in the amount of \$20,000 for the "acquisition of land and improvements, Seneca Creek State Park, Montgomery County". The General Construction Loan of 1954, as enacted by Chapter 45 of the Acts of 1954, authorizes three expenditures for the purposes of the Seneca Creek State Park, totaling \$19,500. One of these items, which is in the amount of \$10,000, is earmarked "parking areas, Clopper Recreation Area". The Department of Forests and Parks advises that the \$20,000 authorized by the 1951 Act for the acquisition of land and improvements is insufficient for that purpose and has requested the Board of Public Works to approve the use of \$6,000 of the \$10,000 authorized by the 1954 Act for the parking areas. Your question is whether the Board of Public Works has the authority to make the requested transfer of funds.

Prior to 1939, we ruled that where the General Assembly had authorized the expenditure of moneys for a stated

purpose, the Board of Public Works did not have the authority to transfer the funds for the use of some other project. See 21 Opinions of the Attorney General, 218; 21 Opinions of the Attorney General, 231; and 2 Opinions of the Attorney General, 220. With the enactment of Chapter 64 of the Acts of 1939, codified as Article 15A, much of the procedure concerning Budget and Procurement was changed. One of these changes is contained in Section 8 of Article 15A, which authorizes the Governor, upon the request of any department, board or commission, to approve amended schedules for the disbursement and apportionment of the appropriations made by the General Assembly in any budget bill, supplementary appropriation bill or bond issue bill. However, Section 6 of Chapter 45 of the Acts of 1954 provides that all unexpended funds remaining from completed projects authorized under that Act shall be transferred to the Annuity Bond Fund and shall be applied to the debt service requirements of the State. Did the General Assembly, by inserting this provision in the 1954 Act, manifest an intent that the amounts authorized for the purposes stated in the bill may be used for no other purposes? There is no question that an act authorizing a bond issue may repeal a pre-existing law. See 34 Opinions of the Attorney General, 105, where the Attorney General quoted extensively from a prior opinion in which it was held that the Budget Bill may, in an appropriate case, repeal a pre-existing law.

It is to be noted, however, that if Section 6 of the General Construction Loan of 1954 is to have the suggested effect, the result is one reached by implication rather than anything expressly stated. The Section deals merely with unexpended funds and makes no mention of an intention of limiting the authority vested in the Governor by Section 8 of Article 15A. The Court of Appeals has often held "that the law does not favor repeals by implication, unless there is a manifest inconsistency between a statute and a later one, or unless their provisions are so repugnant and irreconcilable, that they cannot stand together". *Buchholtz*

v. Hill, 178 Md. 288, and cases there cited. We find no such manifest inconsistency between Section 6 of the General Construction Loan of 1954 and Section 8 of Article 15A, which makes their provisions repugnant and irreconcilable. As above pointed out, Section 6 of the 1954 Act mentions unexpended funds and does not expressly restrict the general authority vested in the Governor by Section 8 of Article 15A.

We wish to point out one likely result involved in a transfer of a part of the \$10,000 authorized for parking areas in Seneca Creek State Park by the General Construction Loan of 1954. Section 7 of the Act authorizing the loan provides that no department shall begin any work with funds secured pursuant to the provisions of the Act unless satisfactory assurances are made to the Board of Public Works that the work described in the individual items of the Act can be completed with the funds specified for each such item. In light of the fact that the Department of Forests and Parks secured an appropriation of \$10,000 for the parking areas, it is unlikely that it will be able to complete this project with the \$4,000 which will remain, after \$6,000 is used for the acquisition of land. If such proves to be the case, the Department will lose the use of the \$4,000.

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

AMBROSE T. HARTMAN, *Asst. Attorney General*.

CLERKS OF COURT

CLERKS OF COURT—SURVEYOR OR ENGINEER WHOSE SIGNATURE APPEARS ON PLAT SUBMITTED FOR RECORD MAY BE REGISTERED IN A FOREIGN JURISDICTION.

November 26, 1954.

*Mr. E. Wilfred Ross, Clerk,
Circuit Court for Worcester County.*

We are in receipt of your letter in which you state that a plat has been tendered to your office for recording, which is signed and sealed by a professional engineer and land surveyor registered as such in the State of Delaware. You inquire whether Article 17, Section 72 of the Annotated Code of Maryland (1951 Ed.) requiring plats to be signed and sealed by registered land surveyors or engineers shall be construed to mean only such surveyors or engineers registered in the State of Maryland.

This question would be difficult to answer from the words of the statute itself, but, fortunately, the legislative intent may be discerned by reference to another section of Article 17. Section 75, applicable only to Montgomery and Prince George's Counties, specifies that the surveyor or engineer signing and sealing a plat intended for record must be registered in the State of Maryland by the State Board of Registration for Professional Engineers and Land Surveyors.

Sections 71 to 74, inclusive, of Article 17 were enacted by Chapter 1016 of the Acts of 1945. Section 75 had its origin in Chapter 428 of the Acts of 1947. It is obvious that the Act of 1945 did not limit the making of plats to surveyors and engineers registered in Maryland, for if it did, the Act of 1947 is without meaning or purpose. See 31 Opinions of the Attorney General, 67.

According to the familiar rule of statutory construction stated by the Court of Appeals in *Graham v. Joyce*, 151 Md. 298, 134 A. 332: "The express imposition of this one qualification shows a deliberate rejection of any other. * * *"

Consequently, it is our opinion that you may accept and record plats which are signed and sealed by professional engineers and land surveyors who are registered in States other than the State of Maryland.

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

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

CONSERVATION

CONSERVATION—POUND NETS, AS WELL AS FYKE, GILL AND HOOP NETS MAY BE USED IN MARYLAND BY LICENSED COMMERCIAL FISHERMEN.

February 24, 1954.

Mr. Robert Lee Shores,
Chief Fisheries Inspector.

You recently requested an opinion on legality of the use of a fish net device in the tidewaters of this State. This device you term a "double pound net".

A pound net is well known to Maryland commercial fishermen. It is a stationary device made of netting, held together with the aid of poles or stakes and it forms a trap. Quite a fine diagram of this type of net appears (Fig. 3) in the booklet issued by Department of Research & Education—"The Fin-Fish Gears". What you have described as a *double* pound net consists of two complete pound net gear placed end to end, in line, with overlapping "leaders". Normally, a pound net is constructed with the leader extending from the pound toward the shore.

Man has through the years devised many forms of fish traps, lures, etc. The pound net is a favorite in Maryland waters and its use is quite likely the most important method of taking fin-fish in this State. There is no doubt more effective types of commercial-fishing gear can be made. However, conservation minded persons believe this would lead to eventual depletion of the supply of food fish. The *kind* of gear which may legally be used in commercial fishing is regulated by statute.

Fin-fish gear of the following kinds may be used in Maryland for commercial fishing, viz: pound net, haul seine, gill net (anchored or drift) and fyke or hoop net. Art. 66C, Sec. 291, Annotated Code of Maryland. In the case of pound

nets it is furthermore provided that their exact location must be stated in the application for license. Sec. 293.

No one can commercially fish in this State without a license, and no license may be issued for other than the nets mentioned. Sec. 297. There are special regulations for the Potomac River. Sec. 302.

In short, no serious question should arise as to the *kind and type* of commercial fishing gear which Maryland watermen may use. Fish may be caught by commercial fishermen through "impoundment, entanglement, entrapment (with or without bait), encirclement * * *" (Fin-Fish Gears, p. 3). This is by use of the pound net, gill net, fyke or hoop net and with haul seine. The General Assembly has provided that no other kind of net "*or other device*" may be used. Sec. 259c.

While there may be improvements, changes and refinements of these well known types of nets from time to time, nevertheless the best guide on the question—may a double pound net be used, is to follow strictly the language of Section 260 (b) (1) set forth below. It seems to be rather final.

*"No pound net shall at any time be set or used closer to another pound net than 1500 yards in the Chesapeake Bay and 500 yards in the tributaries of the Chesapeake Bay, measured at right angles to the line of stakes * * *".* (Emphasis supplied)

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

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

CONSERVATION—EQUIPMENT USED IN FISHING UNLAWFULLY MAY NOT BE CONFISCATED IN THE ABSENCE OF STATUTE.

April 28, 1954.

Department of Tidewater Fisheries.

You have requested an opinion, first, on what procedure to follow with respect to unlicensed fishing gear in the Chesapeake Bay and tributaries, and you further desire to be informed as to whether it is within the province of your Department to "confiscate" such gear.

In 38 Opinions of the Attorney General, p. 124, we had occasion to advise that it was improper for your Department to confiscate crab pots under the provisions of Crab Pot Regulation Number 1, promulgated by the Department, because only the Legislature can authorize penalties for the violation of law. Since there is no statute authorizing confiscation of crab pots, it was believed that the power did not lie with the Department to pass such a regulation. The present question is not unlike the crab pot situation, hence we have made reference to it.

Licenses are to be issued for commercial fishing gear. The type of gear which may be used legally in Maryland is controlled by statute. It consists of pound nets, haul seines, gill nets (anchored or drift) and fyke or hoop nets. (Code, Article 66C, Section 291). We understand that you are referring to one or more of the named types of nets.

Confiscation of property is certainly a penalty and if your Department may confiscate, it must be through legislative sanction. Confiscation is distinguishable from forfeiture. There is, for example, the liability of forfeiture in certain instances under the oyster laws. A person, by his illegal act, may forfeit his property. *Smith v. Maryland*, 18 Howard (US) 71, 15 L.Ed. 269. There is, too, legislative authority for direct or immediate confiscation under the

Code, Article 66C, Section 337 (1951 Ed.), in the enforcement of terrapin conservation. It can be seen that the General Assembly has considered and passed upon the subjects of confiscation and forfeiture as it applies to the administration of the conservation laws.

We have failed to find any mention of power conferred upon your Department to *confiscate* fishing gear within the framework of the statutory provisions under which you operate, nor do we believe this power exists.

It is true that your inspectors may come upon unmarked, illegally marked or unlicensed fishing gear. When that occurs, we can only reiterate our statement in the crab pot opinion above cited that, they "would be entitled to seize it as evidence in any forthcoming prosecution". Certainly, if it is gear in the water used or intended to be used in a manner prohibited by law, then it could constitute a misdemeanor committed in the presence of the inspector who seizes it for evidence. However, the *penalty* therefor must be controlled by statute.

We refer you to Section 300 of Article 66C of the Code (1951 Ed.) for the penalty of violating any section of the sub-title "Tidal Waters". Unless a different penalty is provided in the Section violated, the only penalty for violating any section of the sub-title "Tidal Waters" is a fine of not less than \$25.00, nor more than \$100.00.

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

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

CONSERVATION—FACTS WARRANTED A FINDING THAT AN
APPLICANT FOR A LICENSE TO DREDGE OYSTERS WAS A
“RESIDENT” OF TALBOT COUNTY.

September 24, 1954.

*Mr. John T. Baynard, Clerk,
Circuit Court for Talbot County.*

We have your inquiry concerning application for a license to dredge oysters in Talbot County.

You pose two questions: First, whether the applicant has established “residence” in Talbot County, and secondly, if it is established that he is a “resident”, is it of sufficient length of time to entitle him to obtain a license for his dredge boat in your County and would such residence have to continue for a year prior to the issuance of a County dredging license.

The facts stated by you are, that in March of 1954, the applicant, who had been a resident of Somerset County for several years, came to Talbot County with his dredge boat on which he lived during the rest of that month and stated he was unable to find a “house”; that in April of this year he obtained and rented a house in the vicinity of Tilghman’s Island; that he moved his family, consisting of his wife and two children, to that house in Talbot County, and you are informed the applicant has entered one child in school at Tilghman’s and one at St. Michael’s, and that at the time you wrote the letter, August 26, 1954, the family still resided in Talbot County.

You have raised the question of residence of the man because of the provisions of Article 66C, of the Annotated Code of Maryland, (1951 Ed.) “Natural Resources”, subtitle “Oysters and Clams”, Section 656(c), “Dredging in County Waters”. Section 656(c) reads as follows:

“Every applicant for a license to dredge in the waters of Dorchester, Talbot or Somerset Coun-

ties shall make application for said license to the Clerk of the Circuit Court of the County wherein he may reside in the same manner that application is made to the Department of Tidewater Fisheries for a license to dredge in the Chesapeake Bay."

The manner of applying for a Chesapeake Bay dredging license is set forth in Article 66C, Section 655(b) of the Annotated Code (1951 Ed.). The person applying must exhibit a Custom House certificate showing the name, size and gross tonnage of the dredge boat to be used, make oath or affirmation that he is the bona fide owner of said boat, that there is no lien on the boat held by a non-resident of this State and that he has been a resident of the State for one year prior to the making of such application, etc. Your letter states that the applicant has been a resident of Somerset County for several years, hence a resident of Maryland for the purpose of a dredge boat license.

Residence requirements for issuance of a dredge boat license are as hereinabove set forth. The Legislature has not set down in so many words any required number of months of "residence" in a County before one may apply for a dredge boat license. Attention is called to tonging licenses where, in Section 653(c), the applicant must be a "bona fide resident of the County for twelve months next preceding his application for said license".

The problem then is of determining what constitutes residence in this State and in a County thereof. It is usually a mixed question of law and fact. 22 Opinions of the Attorney General, 222. This opinion dealt with an application for a tonger's license. The applicable law was there succinctly stated that a change of residence is one "depending on the intention of the applicant as evidenced by his acts".

The term "residence" is often synonymous with "domicile". This is true in election and registration cases as well as divorce proceedings. *Harrison v. Harrison*, 117 Md. 607. The case of *Patterson v. Firor*, 146 Md. 243, dealt with the place where letters testamentary or of administration on an estate should be granted on the issue of the decedent's residence. The Court of Appeals stated that residence has been "defined to be the place where a person's habitation is fixed, without any present intention of removing therefrom. The place where a person lives is prima facie taken to be his residence, unless facts be established to the contrary". The Court, on another occasion, had before it a question of residence of persons where the issue was whether they were non-residents of the State of Maryland. *Wagner v. Scurlock*, 166 Md. 284. In that case the non-resident had actually registered as a voter in Anne Arundel County though when the summer was over he and his family returned to his residence in Washington. The Court there held that: "It takes something more than a vote at a primary election to give permanency to a place of residence". While exercising the right to vote is quite important, nevertheless, the Court held, when this is overbalanced by other circumstances the fact of voting is of slight importance. In other words, intent of the person is important but his acts, rather than his words, are more important.

Inasmuch as there is no required number of months to establish "residence", the question might be asked, of which County is the *applicant* an *inhabitant*? His "bodily presence" is required for him to be an inhabitant and thus, unless he be domiciled in another place, he would be a resident of Talbot County. *White v. Hofferbert*, 88 F. Supp. 457 (Maryland). There is absolutely no requirement of a certain, fixed or definite duration of residence under the law to acquire a new domicile. *Lee v. Green*, 195 Md. 462.

One does not have to intend to live all his days, or for an indefinite or unlimited time, in one County, neither does

it mean a residence for *temporary purposes* where there is an intention of returning to the former residence when that purpose has been accomplished. The rule is plainly stated in *Shaeffer v. Gilbert*, 73 Md. 66 at 71, to be “* * * one’s actual home in the sense of having no other home, whether he intends to reside there permanently, or for a definite or indefinite length of time.” See also *McLane v. Hopps*, 74 Md. 166.

Recognizing that the rules for establishing “residence” apply with equal force to everyone, nevertheless it is equally well recognized that while it has some element of permanence it may differ widely in special cases. Reference was made to this in *Langhammer v. Munter*, 80 Md. 518, 525. Examples were cited in that case of a farmer, a clergyman, and a railroad laborer. The first might expect to reside upon the farm until his death; the clergyman might have his home changed in two years and the railroad laborer might very well change his home in two months. The Court in that case cited *Shaeffer v. Gilbert*, *supra*, and stated:

“In other words, there must be, to constitute residence, an ‘actual home in the sense of having no other home whether he intends to reside there permanently, or for a definite or indefinite length of time.’”

The Court held further in the *Langhammer* case that residence was a question which depends upon fact and intention.

Since you requested our opinion whether the applicant for the dredging license in Talbot County is a resident of that County, we feel that we should set forth your guides rather fully. While we hesitate to state precisely that the applicant to whom you refer is a resident of Talbot County, nevertheless we have no hesitancy in stating that he has made out a *prima facie* case as such. We can illustrate this by quoting further from a recent ruling of the Court of Appeals and refer to *Lee v. Green*, *supra*, as follows:

“No certain or definite duration of residence is requisite under the law to accomplish the acquisition of a new domicile. *What is required, and all that is required, is that there shall be a clear, definite intent and an act done in the execution of that intent.*”

The emphasis shown appears in the report. *Harrison v. Harrison, supra*, and *Patterson v. Firor, supra*, are cited.

We feel that both of your questions merge into one, that is, what is the duration of residence requirement for a Maryland citizen to establish residence in Talbot County for the purpose of obtaining a license to dredge oysters in that County. Having determined that the applicant has made out a prima facie case of residence, we believe that you will be justified in issuing the license unless other facts, not set forth in your letter, indicate residence other than in Talbot County.

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

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

CONSERVATION—RESIDENTS OF WEST VIRGINIA REQUIRED
TO HAVE MARYLAND LICENSE TO FISH IN POTOMAC
RIVER ABOVE TIDEWATER.

December 8, 1954.

Mr. Donald W. Mason,
Trial Magistrate for Allegany County.

You have requested an interpretation, under certain stated facts of Article 66C, Annotated Code of Maryland, (1951 Ed.) "Natural Resources", sub-title "Birds, Game and Inland Water Fish", Section 215. This Section is under the heading "Regulations for Taking of Game and Fresh Water Game Fish in Non-Tidal Waters", and is covered by Sections 205 to 209, inclusive. We understand that the facts in a case heard by you are undisputed and are, substantially, as follows:

1. A Maryland Deputy Game Warden encountered two men, both residents of the State of West Virginia, fishing in the Upper Potomac River, where the tide does not ebb and flow, near Paw Paw, West Virginia.
2. The men had "resident West Virginia" fishing licenses and were fishing from the West Virginia "bank" of the river or its "shore".
3. They had their West Virginia licensed automobile parked on the Maryland side of the river.
4. When the men returned to the Maryland side of the river to get their automobile, the Deputy Game Warden arrested them.

The men were arrested and charged with violating Section 215 of Article 66C (1951 Ed.), in that they had failed to obtain the angler's license required by the statute. Sub-section (a) thereof, reads, as follows:

“(Angler’s License) (a) For the Purpose of providing a fund for the payment of the expense of protecting and propagating game fish and fresh water fish and preventing unauthorized persons from fishing for or taking or attempting to fish for or take any game fish or fresh water fish without first having procured an angler’s license so to fish, fish for, or take, or attempt to fish, fish for, or take and then only during the respective periods of the year when it shall be lawful to fish for or take said game fish or fresh water fish.”

There is a specific provision regarding Angler’s License for Potomac River fishing. Such licenses are to be issued in accordance with Section 215(d) of Article 66C. This Section reads, as follows:

“The Clerks of the Circuit Court, or Agent, of the Counties bordering on the Potomac River above Little Falls are authorized to issue to an applicant who is a legal resident of West Virginia, District of Columbia or Virginia, a non-resident fishing license at the cost of One Dollar and Seventy-five Cents (\$1.75) valid only to residents of the above named States and valid for fishing on the Potomac River by rod, hook and line only and at such times and in such manner as the laws of Maryland permit. Said license shall prohibit said non-residents, except residents of the District of Columbia, from standing on the banks of Maryland and fishing in the Potomac River, however, said license shall be valid to said non-residents for fishing from boat or standing in the waters of the Potomac River.”

The facts being as stated and the law as above quoted, you ask the question whether this special \$1.75 Potomac River license for residents of West Virginia is required when these persons fish from “the West Virginia shore”

or just when they fish from a boat or wade in the water. It also appears, from your letter, that one of the defendants was charged with having undersized catfish in his possession which, under the West Virginia law, would be of legal size.

We are aware of the questions which sometimes arise concerning jurisdiction over Potomac River fisheries and fishing. The Potomac River, except for a certain portion in the District of Columbia, lies wholly within the boundary of the State of Maryland. This is unlike most rivers which have arbitrary dividing lines or divide at the channel.

Basically and for practical reasons, the States of Maryland and Virginia agreed in the Compact of 1785 to share the Potomac River as a route for free trade and commerce. Virginia straddled the Chesapeake Bay, and ships sailing through the Capes to ports in Maryland were subject to restrictions by, and payment of tolls or duty to Virginia. In return for free movement of commerce upon both bodies of water, Maryland granted equal fisheries rights upon the Potomac River to Virginia. The pertinent portions of the Compact for the purpose of this opinion are the Sixth and Seventh Articles. They are herewith set forth, as follows:

“Sixth, The river Patowmack shall be considered as a common highway for the purpose of navigation and commerce to the citizens of Virginia and Maryland, and of the United States, and to all other persons in amity with the said states trading to or from Virginia or Maryland.

“Seventh, The citizens of each state respectively shall have full property in the shores of Patowmack river adjoining their lands, with all emoluments and advantages thereunto belonging, and the privilege of making and carrying out wharfs and other improvements, so as not to obstruct or injure the navigation of the river, but the right of fishing in the river shall be common to, and equally

enjoyed by, the citizens of both states; provided, that such common right be not exercised by the citizens of the one state to the hindrance or disturbance of the fisheries on the shores of the other state, and that the citizens of neither state shall have a right to fish with nets or seans on the shores of the other."

The Potomac River rises on the West Virginia-Maryland boundary, flows southeastward and at Harper's Ferry it is joined by the Shenandoah River. The adoption of the Federal Constitution in 1789 superseded much of the Compact, such as the Articles dealing with interstate trade and maritime matters. The State of Virginia has recognized this since at least 1849. (Virginia Code, 1849, Title I.) Articles 7, 8, 10 and 11 of the Compact were set out in this Code and, so far as we know, this has been followed by all later codifiers. Accordingly, so far as the State of Virginia is concerned, with which the State of Maryland made the Compact, that State recognizes the Compact as embodying only these four Articles which cover, respectively, property rights of lands abutting the Potomac River, fishing laws in the Potomac and Pocomoke Rivers, the punishment of crimes committed in certain parts of the Chesapeake Bay and on the Potomac and Pocomoke Rivers, and the attachment of vessels for debt. See "The Compact of 1785", Research Report No. 26, by Carl N. Everstine, for Legislative Council of Maryland, 1946.

The Compact has been the subject of decisions by the Courts of Maryland, Virginia and the Federal Courts, including the Supreme Court of the United States. We refer you to a case construing the Compact, concerning the upper part or non-tidal portion of the Potomac River, *Binney's Case* (1829) 2 Bland 95. Binney sought an injunction against the Chesapeake and Ohio Canal Company to restrain it from building a dam across the river. The dam would assure a supply of water to the canal. Binney claimed it would interfere with his use of a mill and

claimed that the river was navigable above tidewater, hence a highway of Maryland and Virginia, or its common property. However, it was held that there is nothing in the Compact which relates "in any manner whatever to the River Potomac above tidewater". The construction of the dam was not enjoined because there was no "navigation" with which it could interfere.

It follows that if, as a result of judicial interpretation, the Compact relates only to the tidewater portions of the Potomac River, then the Seventh Article of the Compact, giving citizens of Maryland and Virginia property rights in the "shores", does not apply to the "shores" of the State of West Virginia. Nor do the fishing privileges which are also set forth in the Seventh Article apply above tidewater.

We find the case of *Herald v. United States* (1922) 284 Fed. 927 bears on the subject at hand. There, one Herald was convicted of unlawfully fishing in the Potomac River, within the District of Columbia, in that he was fishing on rocks projecting from the Virginia shore. He had operated a dip net from the rocks and was between the high and low watermarks. The Court held that the boundary between the District of Columbia and the State of Virginia, at that point of the Potomac River, was at the high watermark on the Virginia shore. This came about because the Compact, as between the District of Columbia and the State of Virginia had been abrogated by the cession of that portion of the original District which had been conveyed by Virginia and by re-cession of this same area by the United States to Virginia. See also *Evans v. United States*, 31 App. D.C. 544.

Fishing rights of the citizens of the State of West Virginia in the Potomac River are dealt with in the case of *Middlekauff v. LeCompte* (1926), 149 Md. 621. This case arose as a result of the enforcement of Chapter 340 of the Acts of 1924, prohibiting the taking of certain species of fish "in any of the waters of this State above a point where the tide ebbs and flows with * * * fish pots". An injunction

was sought to enjoin enforcement of this law, joined in by citizens of West Virginia and Maryland. Virginia had not concurred in the legislation and the plaintiffs contended that this violated the concurrent consent provision in the Eighth Article of the Compact.

The decision in the *Middlekauff* case was, that the Compact did not relate to the river above tidewater; that the concurrence of Virginia was therefore not necessary. Chancellor Bland's arguments in *Binney's* case were quoted and the *Middlekauff* case squarely affirms the decision in *Binney's* case.

The origin and background of the Compact are set forth in an interesting manner in *Barnes v. Maryland* (1946) 186 Md. 287. Barnes claimed to be a citizen of Virginia. He was convicted of rape on a citizen of that State, and the crime occurred on the Potomac River on a vessel proceeding from Norfolk to Washington. Barnes was tried in Prince George's County, Maryland, and he questioned the jurisdiction of Maryland to try him on the basis of Article 10 of the Compact. The conviction, however, was sustained, the Court of Appeals holding that Maryland did have criminal jurisdiction over such offenses. The opinion holds also that Virginia's jurisdiction over the Potomac River extends only to the fishing laws.

In 1909, Maryland took the controversy of its western boundary to the Supreme Court. *Maryland v. West Virginia*, 217 U.S. 1, 54 L.Ed. 645. The boundary in dispute was from the headwaters of the Potomac River to the Pennsylvania line. A cross-bill of complaint of the State of West Virginia was dismissed, in so far as it asked for a decree fixing the north bank of the Potomac River as her boundary.

We believe the following quotation, at page 659 of 54 L.Ed. (*Maryland v. West Virginia, supra*) will be helpful to you in deciding the points raised in your letter:

“As to the contention made by West Virginia in her cross-bill, that she is entitled to the Potomac River to the north bank thereof, we think that claim is disposed of by the case of *Morris v. United States*, 174 U.S. 196, 43 L.Ed. 946. * * *

“After making reference to the award of the commission to fix the Virginia and Maryland boundary, appointed in 1877, fixing the line and boundary at low-water mark on the Virginia shore, to which arbitration the state of West Virginia was not a party, this court disposed of the controversy, irrespective of that award, in the following language, * * * ‘Whether the result of this arbitration and award is to be regarded as establishing what the true boundary always was, and that therefore the grant to Thomas, Lord Culpeper, never of right included the Potomac River, or as establishing a compromise line, effective only from the date of the award, we need not determine. For, even if the latter be the correct view, we agree with the conclusion of the court below, that, upon all the evidence, the charter granted to Lord Baltimore by Charles I., in 1632, of the territory known as the province of Maryland, embraced the Potomac River and the soil under it, and the islands therein, *to high-water mark on the southern or Virginia shore*; that the territory and title thus granted to Lord Baltimore, his heirs and assigns, were never divested by any valid proceedings prior to the Revolution; * * *’” (Emphasis supplied.)

It will thus be seen that while the boundary commission of 1877 fixed the line and boundary at low watermark on the Virginia shore, the Supreme Court was unconvinced. It termed this neither the true boundary nor a compromise line. Note also that West Virginia was not a party in this arbitration. There is a square ruling, then, that the Charter granted to Lord Baltimore included the Potomac

River, the soil under it and the islands therein to high watermark on the southern or Virginia shore. Even if this is not true today so far as the tidewater portion of the Potomac River is concerned, because of arbitration, nevertheless the boundary runs to the high watermark on the non-tidal portion of the Potomac River and, as in this case, to the bank of the West Virginia side.

In 1931 the Attorney General had occasion to advise the Conservation Commission of Maryland on the necessity for a resident of West Virginia or Virginia to obtain a license to fish in the non-navigable waters of the Potomac River. 16 Opinions of the Attorney General, 80. The Attorney General of West Virginia, who relied on the Compact of 1785, had rendered an opinion holding that a "citizen of West Virginia might fish in the waters of the Potomac River from the West Virginia bank or in the River itself without obtaining a Maryland license". However, the Maryland Attorney General pointed out that the case of *Middlekauff v. LeCompte*, *supra*, had disposed of that question.

The Attorney General of Maryland concluded that residents of Virginia and West Virginia may not fish in the waters of the Potomac River above Little Falls, which was referred to as the dividing line between the tidal and non-tidal portions of the River, without first obtaining a Maryland license. We have no reason to depart from or modify that opinion. Prior to the opinion above referred to, Thomas H. Robinson, while Attorney General of Maryland, had occasion to answer a question posed by the Conservation Commissioner as to the right of Virginians to fish in the Potomac River above tidewater, without securing a non-resident license as provided by Chapter 693 of the Acts of 1927. 12 Opinions of the Attorney General, 55. Here too, reference was made to the *Middlekauff* case in disposing of the matter. Attorney General Robinson concluded that citizens of Virginia were to be treated as non-residents, under the Maryland statute, and were required to secure anglers' licenses. We believe his conclusion was correct.

It is hoped that the foregoing will be sufficient to guide you as to the law applicable to the stated facts in the case before you. You have referred also to the use of the word "on" instead of the use of the word "in" as it applies to fishing *on* the Potomac River. However, we believe the word "on" to be synonymous with the word "in" the meaning intended by Section 215(d).

Residents of West Virginia are required to secure the special \$1.75 Potomac River license, whether they fish in the River from a boat, wade in the River or stand on rocks or other objects in the River. Furthermore, if undersized catfish are caught in Maryland waters, Maryland law applies. Since it is clear that the Potomac River is a part of Maryland, it is equally clear that the law of Maryland relating to the size of fish, and not the law of West Virginia controls.

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

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

CONSTITUTIONAL LAW

CONSTITUTIONAL LAW—REGISTERS OF WILLS AND THEIR DEPUTIES MAY NOT PERSONALLY RETAIN FEES GIVEN THEM FOR RENDERING SPECIAL SERVICES RELATED TO THEIR OFFICIAL DUTIES.

August 23, 1954.

Mr. Walter C. Clarke,
Register of Wills for Montgomery County.

We are in receipt of your recent letter concerning a problem which has arisen in the administration of your office. We understand that from time to time your deputies make trips outside the office in connection with taking affidavits, making inventories of safe deposit boxes and sundry other errands relating to the probating of wills and administration of estates. It has been the practice for the deputies to charge a fee for such services, which fees are retained by them personally. The practice of allowing deputies to retain these fees has been questioned by the State Auditor.

A number of years ago it was determined by this office in 15 Opinions of the Attorney General, 235, that the position of Deputy Register of Wills is an office of trust and profit under the State of Maryland. The Constitution of Maryland provides in Article 3, Section 35, that the salary or compensation of any such officer shall not be increased or diminished during his term of office. This constitutional prohibition has been the subject of many opinions of this office—20 Opinions of the Attorney General, 209. In 20 Opinions of the Attorney General, 217, it was specifically ruled that compensation may not be increased by way of allowing unitemized expense accounts.

In addition to the constitutional question involved, we feel that it is at least doubtful for the Register or his deputies to accept personally compensation for services rendered in the performance of duties relating to their office,

in view of the terms of Article 93, Section 295, of the Annotated Code of Maryland, 1951 edition.

Accordingly, it is our opinion that neither the Register nor his deputies should retain personally any charge for rendering any official services. This is not meant, however, to preclude the reimbursement to the Register or deputies for any additional expenses which they may have incurred in rendering such services, such as milage on their own automobiles or cost of public transportation.

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

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

CONSTITUTIONAL LAW—POLICE MAGISTRATE FOR BALTIMORE
CITY MAY BE APPOINTED TO THE ADVISORY BOARD FOR
DEFECTIVE DELINQUENTS.

August 31, 1954.

Mr. Blanchard Randall,
Executive Department.

This is in answer to your letter of August 20, 1954, in which you state that the Governor is considering the appointment to the Advisory Board for Defective Delinquents a man who presently holds a commission as a Police Magistrate in and for Baltimore City. You wish to know whether the appointment to the Advisory Board will violate Article 35 of the Declaration of Rights to the Maryland Constitution. Article 35 provides in part "that no person shall hold, at the same time, more than one office of profit, created by the Constitution or Laws of this State * * *". The question to be determined is whether an appointment as a member of the Advisory Board for Defective Delinquents is an "office" within the meaning of Article 35.

In *The Board of County School Commissioners of Worcester County v. Goldsborough*, 90 Md. 193, 206, the Court of Appeals stated:

"The nature of the duties, the particular method in which they are to be performed, the end to be attained, the depository of the power conferred and the whole surroundings must be all considered when the question as to whether a position is a public office or not is to be solved."

It is settled that the relevant matters to be considered in making this determination are whether the incumbent receives a commission, takes an oath of office, must give a bond, has a fixed term of office and exercises a portion of the sovereign power of the Government. *Board of County*

School Commissioners of Worcester County v. Goldsborough, supra; *State Tax Commission v. Harrington*, 126 Md. 157, 159-160; *Clark v. Harford Agricultural & Breeders Association*, 118 Md. 608, 618-619; 35 Opinions of the Attorney General, 192; 32 Opinions of the Attorney General, 295; 20 Opinions of the Attorney General, 598; 23 Opinions of the Attorney General, 382. The most important of these considerations is the exercise of a portion of the sovereign power and the taking of an oath of office.

The Advisory Board for Defective Delinquents was established by Chapter 476 of the Acts of 1951, now codified as Section 4 (d) of Article 31B, (1951 Code). The 1951 law creates an institution for defective delinquents to be known as the Patuxent Institution. The Director of the Institution is a psychiatrist appointed by the Governor with the advice and consent of the Senate. It is provided in Section 4 (a) of Article 31B that the Patuxent Institution shall be within the general administrative control and supervision of the Board of Correction. The Advisory Board for Defective Delinquents is to consist of six members, two of whom must be practicing members of the Maryland Bar with at least five years' experience in the trial of civil or criminal cases. The members of this Board are appointed by the Governor for terms of five years each. The law specifies that the Board "shall receive a per diem payment for every day spent in the duties of the Board". The duties of the Board are stated as follows:

"The Board shall confer with the staff of the Institution, and with the Board of Correction from time to time, and shall give to the Institution a general consultative and advisory service on problems and matters relating to its work. The advisory Board shall have the power to prefer charges and recommend to the Governor the removal of the Director."

As above noted, the members of the Board do receive compensation and this, no matter how small, does con-

stitute the position one of profit. Other considerations, however, lead to the conclusion that the positions are not "offices" within the meaning of Article 35. While the members are appointed for a fixed term, they are not required to take oath or to post a bond. The most important consideration is the fact that they do not exercise any of the sovereign powers of the State, either executive, legislative or judicial. They act in an advisory capacity only. See 20 Opinions of the Attorney General, 598. It is also noted that the advisory power conferred by the statute is exercised not by the individual members of the Board, but by a majority of members acting in concert. The Court of Appeals has held that where members or a body are vested with no individual authority, they cannot be considered persons who hold offices of profit or trust within the meaning of the various constitutional provisions in which these terms are used. See *Board of County School Commissioners of Worcester County v. Goldsborough*, *supra*, at page 209 of 90 Md., *Clark v. Harford Agricultural & Breeders Association*, *supra*, page 617 of 118 Md.

It seems, therefore, that one of the most important factors in determining whether the members of the Board are public officers is entirely lacking, viz., the delegation of sufficient authority so that it may be said that they exercise a part of the sovereign power of the State.

We conclude that the person in question may be appointed to the Advisory Board for Defective Delinquents and retain his position as Police Magistrate.

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

AMBROSE T. HARTMAN, *Asst. Attorney General*.

CREDIT UNIONS

CREDIT UNIONS—ALL DIRECTERS OF CREDIT UNIONS, INCLUDING EX OFFICIO DIRECTORS, MUST TAKE THE OATH REQUIRED BY LAW.

February 16, 1954.

Mr. John D. Hospelhorn,
Deputy Bank Commissioner.

We are in receipt of your letter of February 5, 1954, in which you state that the requirement that Directors of credit unions execute an oath of office has been questioned in so far as it appertains to an ex-officio member of the Board of Directors of the Municipal Credit Union of Baltimore.

Article 11, Section 144 of the Annotated Code of Maryland (1951 Ed.) provides that "all directors * * * shall be sworn to the faithful performance of their duties, and shall hold their several offices until such time as may be determined by the by-laws."

You inform us that Section I of Article VI of the By-Laws of the Municipal Employees Credit Union of Baltimore provides:

"The board of directors shall consist of the Mayor of the City of Baltimore, ex-officio, the Comptroller of the City of Baltimore, ex-officio, the City Solicitor of the City of Baltimore, ex-officio, and the Chief of the Central Payroll Bureau of the City of Baltimore, ex-officio, and of nine members elected annually by the membership at the first meeting in each and every fiscal year. The nine members of the Board elected at the Credit Union's first meeting shall serve until the first annual meeting only."

In view of the clear and comprehensive language of the statute quoted, it is our opinion that the requirement of the law with respect to taking an oath applies both to regular and to ex-officio members of the Board of Directors.

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

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

CRIMINAL LAW

CRIMINAL LAW — JURISDICTION — FRIENDSHIP INTERNATIONAL AIRPORT—COURTS OF ANNE ARUNDEL COUNTY HAVE JURISDICTION OVER PERSONS COMMITTING CRIMES AT FRIENDSHIP AIRPORT.

August 23, 1954.

Mr. C. Osborne Duvall,
State's Attorney for Anne Arundel County.

We have your letter in which you inform us that some doubt has arisen as to the jurisdiction of the Trial Magistrates and the Circuit Court for Anne Arundel County as to alleged crimes committed within the boundaries of the Friendship International Airport, which is located in Anne Arundel County but is owned by the Mayor and City Council of Baltimore.. You ask whether persons charged with committing crimes on the property of the Airport may be tried for such offenses by the Trial Magistrate and the Circuit Court for Anne Arundel County.

Article 1A, Section 13(e) of the Annotated Code of Maryland (1951 Edition), reads in part:

“Every city * * * which acquires, leases, controls * * * property of any kind for an airport, * * * may establish, construct, reconstruct, erect, alter, expand, enlarge, improve, equip, maintain, protect, police, repair and operate the same * * *”

You raise the question whether “police” in this law confers jurisdiction upon the Courts of Baltimore City over those persons accused of committing crimes on the Airport property, and divests the Courts of Anne Arundel County of such jurisdiction. The words “maintain, protect, police” are used, we think, in the same general sense, namely, that of preserving the property. We cannot interpret them to

give the Courts of Baltimore City the power to hear, try and determine cases involving the commission of offenses at the Airport.

It follows, therefore, that the Trial Magistrates and Circuit Court for Anne Arundel County have jurisdiction to try persons charged with crimes committed within the boundaries of the Friendship International Airport.

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

JAMES H. NORRIS, JR., *Spec. Asst. Attorney General*.

DENTAL EXAMINERS

DENTISTRY—RESTRICTIONS ON ADVERTISING BY DENTISTS.

April 15, 1954.

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

You have requested an interpretation of Section 12 of Article 32 of the Annotated Code of Maryland (1951 Edition), which regulates advertising by dentists. You state that in the classified section of the telephone directory, under the heading "Dentists", several persons have space approximately one inch by two inches, in which appear their names, addresses, telephone numbers and, in some, office hours and specialties. You wish to know whether these advertisements are in violation of Section 12, *supra*.

Section 12 of Article 32 provides that all advertising by dentists is prohibited, with certain exceptions, one of which is as follows:

"(a) A dentist may use a personal professional card of not more than 3½" by 2", upon which may be printed only his name, title, address, telephone number and office hours. Such card may be printed in newspapers or publications of this State, and that which is set forth on the card may be announced over the radio. Not more than one card shall be in any edition of any newspaper or publication at one time; not more than two radio announcements shall be made in any one twenty-four-hour period."

It has been suggested that the advertisements in question come within this exception, inasmuch as they do not exceed the measurements of 3½ inches by 2 inches and inasmuch as they appear in a publication. We are of the opinion that the matter in question does not come within

the quoted exception. It is to be noted that the card "may be printed in newspapers or publications of this State". The question is the breadth to be given to the word "publication". It is a general rule of statutory construction that "where general words follow specific words in an enumeration describing the legal subject, general words are construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words". *Sutherland*, Statutory Construction, 3d Edition, Volume 2, Section 4909. See also *Baltimore v. Smith*, 168 Md. 458, 462; *Smith v. Higinbothom*, 187 Md. 115, 130; *United States v. Alpers*, 338 U.S. 680, 94 L. Ed. 457. We believe that application of this rule requires that the word "publications" be limited to those which are similar to newspapers. This would include only publications which are distributed at relatively frequent intervals and not something as permanent in nature as the telephone book.

That the Legislature intended the word "publications" to be limited to those which are transient in nature is indicated by other provisions of the exception under discussion. Thus, it is to be noted that not more than one card may appear in any edition of any newspaper publication at one time and that not more than two radio announcements shall be made in any twenty-four hour period.

The Court of Appeals in *Smith v. Higinbothom*, *supra*, at page 125 of 187 Md., said:

"If a word is fairly susceptible of more than one interpretation, the Court should seek the legislative intention by considering the cause or necessity of the enactment and the mischief it was intended to remedy, and adopt the meaning which will harmonize with the general scheme of the statute and assist in carrying out the legislative purpose. * * *"

The purpose of the absolute prohibition against advertising is to raise the standards of the profession by elimi-

nating this form of competitive practice. We feel that any exception to such a prohibition must receive a strict construction in order to carry out the purpose of the legislation. For this reason, we would not construe the term "publication" as used in Section 12 to apply to any other than those in the nature of a daily newspaper, or a weekly or monthly magazine. Further, we doubt whether the term "publication" could ever be taken to encompass a telephone directory.

A similar problem arises in reference to subsections 12 (d) and (e) of Article 32. These subsections permit a dentist to mail removal notices to any bona fide patient stating that the dentist is removing his office to a new address and permit a dentist who is about to begin practice to notify the public of his intention. Again, it is provided that "such notice may be printed in any newspaper or publication. Not more than one notice shall be in any edition of any newspaper or publication at one time". This problem is controlled by the same considerations above discussed. The notice may be printed only in a newspaper or other publication having similar transient qualities.

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

AMBROSE T. HARTMAN, *Asst. Attorney General*.

DEPARTMENT OF PUBLIC IMPROVEMENTS

DEPARTMENT OF PUBLIC IMPROVEMENTS IS UNDER A DUTY
TO INSPECT THE ERECTION OF TEMPORARY STRUCTURES
IN WHICH THE STATE HAS AN INTEREST.

February 11, 1954.

*Mr. Nathan L. Smith, Director,
Department of Public Improvements.*

In your recent letter you ask if the Department of Public Improvements is under any duty to inspect State-owned property when temporary structures are being erected in or upon such property for purposes other than State use.

The law applicable to this question and the two questions hereafter quoted from in paragraph 5 of your letter, is found in Article 78A of the Annotated Code of Maryland (1951 Ed.), Sections 14, 15 and 16. Section 15 provides in general that:

“The Department of Public Improvements shall have supervision over and advise the Board of Public Works and other State departments and agencies in connection with all engineering questions and matters pertaining to any and all public improvements, and all contracts, plans and specifications for any and all public improvements involving any engineering question shall be submitted to said Department and be subject to its approval.”

Section 16, however, is much more specific, and the introduction to Section 16 plainly says that all of the subsections of Section 16 are in addition to the general duties and powers assigned to the Department of Public Improvements in Section 15. Sub-sections 6 and 7 of Section 16, therefore, read as follows:

“In addition * * * said Department shall:

(6) Inspect and approve materials, equipment, and methods used in making public improvements, *and inspect public improvements during the course of construction or repair*, such inspection and approval of materials, equipment and methods to be in addition to and not in lieu of the responsibility of the architect or engineer to supervise work for which employed;

(7) Review maintenance and operation of public improvements to the extent that any engineering questions are involved therein;” (Emphasis supplied.)

Whether or not the sub-sections quoted from Section 16 apply to permanent structures or temporary structures can only be determined by properly interpreting Section 14, which reads in part as follows:

“Wherever used in this sub-title, the term ‘public improvement’ shall include the construction, maintenance and repair of *any and every* building, *structure* or other public work now owned or hereafter constructed or acquired by the State of Maryland or any department, officer, board, commission or agency thereof, or constructed or acquired in whole or in part with State funds; * * *” (Emphasis supplied.)

It will be noticed that the term “public improvement” includes the *construction, maintenance and repair of any and every building, STRUCTURE or public work*. It seems to us, therefore, that this language is broad enough to include temporary structures. This being true, the Department of Public Improvements is under a duty to supervise and inspect any and all such buildings and structures even though they be temporary. In applying this law to any specific structure, a few simple questions should be asked:

(1) Is this structure now owned either wholly or partly by the State of Maryland or any of its agencies?

(2) Is the contemplated structure to be financed in whole or in part with State funds? Or, after construction, is it contemplated that the building or structure shall be acquired by the State or any agency of the State in whole or in part?

If the answer to any of these questions is "Yes", then it is our opinion that the Department of Public Improvements is to inspect and supervise the construction of the building. In fact, sub-section (6) of Section 16 makes it the duty of the Department of Public Improvements to inspect and approve materials, equipment and methods used in making such public improvements, and *to inspect all such public improvements during the course of construction or repair.*

Your inquiry goes a little further and asks if your Department is under duty to inspect a structure that in all likelihood will also be inspected by the City of Baltimore. The answer to this is found in the last clause of sub-section (6) of Section 16 as quoted above, which says that the inspection hereby required shall be *in addition to* and not *in lieu of* the responsibility of the architect or *engineer* to supervise work for which employed. The spirit of this sub-section, if not the exact phraseology of it, seems to us to place a responsibility on the Department of Public Improvements to see to it that anything done on State property, as above defined, is done properly. We also feel that the word "engineer" could very well be construed to mean the engineer of the City of Baltimore or other municipality issuing the permit, save for those improvements hereinafter referred to which are specifically exempted in Section 14 of Article 78A. More specifically, in paragraph 5 of your letter, you propound two questions: First, if a permit is requested through a lessee of the Military Department or other State Department, and the City in response thereto inspects, does your Department have any further responsibility to superimpose its inspection and either approval or

rejection upon the action taken by the City; or, second, if such temporary structures be erected in State-owned property without a permit, and without City inspection, does your Department have any obligation to conduct an inspection and either approve or reject the temporary structures erected?

Our answer to your first question in paragraph 5 of your letter is "Yes". The plain language of the statute requires such an inspection. Such a structure would be built on property owned by the State. The mere fact that the City also inspects such a structure does not relieve the Department of Public Improvements from its statutory duties. To use a concrete example: Should the State lease the Fifth Regiment Armory to a person or corporation for show purposes, and it is necessary for the tenant to build bleachers or grandstand seats, for the protection of the public, the Department of Public Improvements would be bound to see to it that the seats and other accommodations for the public would be safe. This is the object and spirit of Article 78A, Sections 14, 15 and 16 of the Code.

The second question set out in paragraph 5 of your letter is more difficult. Before reaching any definite conclusion as to whether or not you should inspect any specific structure, every test set out in the statute must be applied. These tests have already been enumerated in paragraph 5 of this opinion, and as we have said before, if the answer to any of the questions propounded is "Yes", then it is the statutory duty of the Department of Public Improvements to see to it that the structure is properly and safely erected.

Of course, you must keep in mind that the statute itself contains certain exceptions. These exceptions are set out clearly in the latter part of Section 14 of Article 78A, which reads as follows:

"* * * nothing in this sub-title shall apply to public improvements made by the State Roads

Commission of Maryland, Housing Authorities created pursuant to Article 44A of the Code of Public General Laws, Maryland National Capital Park and Planning Commission, Washington Suburban Sanitary Commission, Baltimore County Metropolitan District, Anne Arundel County Sanitary Commission, or any county, the City of Baltimore, any other incorporated town or city, or any agency thereof.”

All through the Sections of Article 78A which are applicable to the Department of Public Improvements, language is used to indicate that your Department is under special responsibility where public improvements involving any “engineering questions” shall be submitted to your Department for its approval. We will not presume to define the meaning of the term “engineering questions”, as we are fully aware of the fact that you are perfectly capable in every way of determining what is an engineering question. Any attempted definition of that term from us, we feel, would be superfluous.

However, it seems to us that whenever a permit is issued for anyone anywhere in the State to use any building, structure or grounds belonging to the State, or in which the State has any interest whatsoever, it should contain a clause making it obligatory on the persons obtaining the said permit to comply strictly with any local or general law that may govern the building, operation and maintenance of any temporary structure that may be erected in any building or on any grounds so belonging to the State. It seems to us that this would place some responsibility on the local authorities to see to it that their own laws are obeyed and that their own regulations are complied with.

It has been held that even though the State itself is not responsible for injuries which may be suffered by individuals due to the fact that the State is immune to suit,

yet State officials as individuals have sometimes been held responsible where the evidence clearly indicated that they were guilty of negligence in the discharge of their duties.

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

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

EDUCATION

EDUCATION — SCHOOL ATTENDANCE LAW — CHIROPRACTOR
NOT A PHYSICIAN FOR PURPOSES OF CERTIFYING ILLNESS
OF CHILD.

October 14, 1954.

*Mr. William P. Kreykenbohm,
Attorney for Board of Education
of Washington County.*

We acknowledge your recent letter concerning the question as to whether or not the certificate of a chiropractor would be considered to be the equivalent of a certificate of a physician, authorizing the School Board of Washington County to excuse a student from attending classes because of his illness. While the Attorney General is counsel to the State Department of Education and does not normally represent County School Boards, this is a matter concerning a By-law of the State Board and of general application throughout the State, and we are, therefore, venturing our opinion on the subject.

Section 223 of Article 77 of the Annotated Code of Maryland (1951 Ed.) provides for the compulsory attendance of children at school and, among other things, states:

“* * * provided that the superintendent or principal of any school, or persons duly authorized by said superintendent or principal may excuse cases of necessary absence among its enrolled pupils; and provided further, that the provisions of this section shall not apply to a child whose mental or physical condition is such as to render its instruction as above described inexpedient or impracticable.”

In furtherance of this statute, By-Law 71 of the State Board of Education states as follows:

“Absence from school within the compulsory attendance ages shall be considered lawful only under the following conditions :

* * *

2. Illness of child: The principal shall require a physician's certificate from the parent or guardian of a child reported continuously absent for illness.

* * *

5. Physical incapacity: Physical incapacity shall be interpreted as meaning such a state of ill health or physical defect as shall render the instruction of the child impracticable in any other than a special class or school; and the supervisor of pupil personnel may require of the parent a certificate to this effect, signed by a reputable physician.

6. Mental Incapacity: Mental incapacity shall be interpreted to mean feeble-mindedness or such nervous disorders as make it either impossible for such a child to profit by the instruction given in the school, or impracticable for the teacher properly to instruct the normal pupils of the school. The supervisor of pupil personnel may require of the parent a certificate to this effect, signed by a reputable physician.”

In the first place, it should be noted that these By-Laws, as quoted above, amount to instructions to the school authorities from the State Board of Education and are not necessarily required by the language of the statute itself. In 10 Opinions of the Attorney General, 98, it was ruled by this office that the statute in effect at that time (1925) gave no particular authority to the school administrators to require certificates from practicing physicians as to a child's physical or mental disability to attend school, but the opinion proceeded to point out that the County Superintendent or principal would have the right to prosecute the person hav-

ing the child under his control in the event of non-attendance, and in such case, the burden would be upon the defendant to produce competent evidence by way of a physician's certificate, or otherwise, in order to prove the child's disability.

It is, of course, within the administrative powers of the school authorities to lay down rules for school operation such as they have done by means of their By-Law 71, quoted above, which would indicate that if the terms of By-Law 71 were not complied with by parent or guardian, that it should then be the administrative duty of the principal or superintendent to institute proceedings for the purpose of prosecuting the person who has the child under his control, in accordance with the terms of Section 223 of Article 77, which makes non-compliance with the statute a misdemeanor and provides a penalty therefor.

This leads us to the question of whether or not the school authorities should accept the certificate of a chiropractor under the rules of By-Law 71, as quoted above, all portions of which use the word "physician". In 24 Opinions of the Attorney General, 172, it was held that a licensed chiropractor may not use the term "chiropractic physician", and that the Board might revoke his license for such use if intended to deceive the public. Previously this office had ruled at 15 Opinions of the Attorney General, 62, that a chiropractor could not issue death certificates, and at page 63, that he could not prescribe diets; and in 16 Opinions of the Attorney General, 73, it was ruled flatly that the term "physician", as used in our statutes, means one who is authorized to practice medicine and surgery, and that in view of the various provisions of law, a chiropractor is not a "physician" in the State of Maryland. It must be presumed that the language used in the By-Laws of the State Board of Education was intended to follow the meaning of the same word as used in the statutes.

Your attention is invited to the fact that an opinion of this office in 1946 (31 Opinions of the Attorney General, 65)

considered a similar situation to the one you have presented also arising from Washington County. In this opinion it was held that the Board of Chiropractic Examiners had no right to require local school authorities to accept certificates relating to the illness of school children, but not determining flatly that chiropractors were or were not physicians, as was done in the previous opinions cited above. "Chiropractic" is defined in Section 465(c) of Article 43 of the Annotated Code of Maryland.

In view of the foregoing authorities, we feel that we should not upset the established rulings of this office and, therefore, it is our opinion that the school authorities are justified, as an administrative measure, in refusing to accept the certificate of anyone but a licensed physician as an excuse for the non-attendance of a child because of illness, physical or mental incapacity.

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

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

ELECTIONS

ELECTIONS—BALLOTS—CANDIDATE MAY HAVE FULL NAME ON BALLOT, EVEN THOUGH HE IS NOT REGISTERED BY HIS FULL NAME.

March 18, 1954.

*Mr. Albert E. Weir, Chief Clerk,
Board of Supervisors of Elections
of Baltimore City.*

We have your letter of March 17th in which you inform us that a person who registered as a voter in Baltimore City in 1942 under his first name, middle initial and surname, wishes to be a candidate for office at the election to be held this year, under his first name, full middle name and surname. For example, the person registered in 1942, we shall say, under the name of "John T. Doe", and he wishes to file a certificate of candidacy now under his full name, which is "John Thomas Doe". You ask if you may accept his certificate of candidacy in this form. Our conclusion is in the affirmative, assuming, of course, that he is the same person who is registered.

On occasions in the past we have instructed you to reject candidates' certificates which undertook to incorporate therein nicknames by which the candidates often were better known than by their real names. We have no doubt that it is the intention of the law that a person must run for office under his real name, but we have never suggested that a person is not entitled to have his full middle name printed on the ballot in lieu of his middle initial. No reason has been assigned why we should place such a construction on the law, and if we undertake to do so, we will, in our opinion, import into the statute something which the General Assembly has not seen fit to place there itself.

Section 59 of Article 33 of the Code requires that a certificate of candidacy be in writing, and that it contain "the name of the person seeking a nomination for office".

Section 68, dealing with ballots, requires the Board of Supervisors to print thereon "the name of every candidate whose name has been certified to or filed with the proper officers". Again, Section 69 provides that the ballots "shall contain the name of every candidate whose nomination for any office specified in the ballot has been certified to and filed" according to the provisions of Article 33. Nowhere do we find a statement of law which forbids a person who is registered under his first and last names and middle initial, to file a certificate of candidacy using both his Christian names in full along with his surname. This, we think, is entirely different from the use of nicknames as such, and our conclusion here is not to be understood as a departure from our views on the prohibition against the use of nicknames.

Accordingly, it is our opinion that if you are satisfied that the person offering the certificate of candidacy is the same person who is registered, the substitution of the middle name for the middle initial furnishes no ground for the rejection of the proffered certificate.

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

J. EDGAR HARVEY, *Deputy Attorney General.*

EMPLOYMENT SECURITY BOARD

EMPLOYMENT SECURITY BOARD—BOARD MAY BECOME
AGENT OF UNITED STATES DEPARTMENT OF LABOR TO
PAY UNEMPLOYMENT COMPENSATION TO FORMER FED-
ERAL EMPLOYEES.

October 28, 1954.

*Mr. Daniel E. Klein, Chairman,
Maryland Employment Security Board.*

You asked for an opinion as to whether or not it would be possible for the Maryland Board to become the agent of the United States Department of Labor for the purpose of paying unemployment compensation under Title XV of the Social Security Act as amended (Public Law 767, 83rd Congress), and to establish a special fund from which such benefits would be paid.

I have reviewed the statute and draft of the proposed agreement and conclude that there is no reason why the Maryland Board cannot cooperate with the Federal Government or serve as its agent, for the payment of benefits under an unemployment compensation program designed to benefit former Federal employees. It was pointed out in 37 Opinions of the Attorney General, 210, concerning the payment of benefits under Title IV of Public Law 550 of the 82nd Congress, Chapter 875, that there is specific statutory authority for cooperative benefit payment plans. I refer to Section 18(a) (2) of Article 95A of the Maryland Unemployment Compensation Law, which provides:

“Potential rights to benefits accumulated under the unemployment compensation laws of one or more States or under one or more such laws of the Federal Government, or both, may constitute the basis for the payment of benefits through a single appropriate agency under terms which the Board

finds will be fair and reasonable as to all affected interests and will not result in any substantial loss to the fund;"

As was pointed out in the aforementioned opinion there is ample precedent for cooperative plans, and as to the propriety of entering into an agreement and establishing a separate fund there cannot be much doubt. There are certain aspects, however, of Title XV of the Social Security Act as amended, and particularly of the proposed agreement, that need clarification since they may constitute serious problems in their present form.

I am particularly disturbed by the provisions in the law and in the contract that in connection with former Federal employees the findings of the Secretary shall be final and conclusive as to the facts concerning the reasons for termination of the service of the claimant. This would appear to divest this agency of the right to exercise its judicial function to determine eligibility for benefits. While this may not be too objectionable if the total eligibility of the claimant is based on Federal wages, I can conceive cases wherein eligibility will be based upon combined State and Federal wage credits and our fact finders may conclude that the separation was caused by one thing and the Federal Government may "finally and conclusively" determine that it was caused by another. The major question that must be considered here is, what effect would this final and conclusive report have on eligibility for State benefits?

Another question on which the Act and the contract are not clear is, what part of the benefits would be paid by the Federal Government and what part would be paid out of our trust fund where the claimant has eligibility for the full weekly benefit amount and the full duration under our Act based on covered employment in the base period prior to Federal service? In other words, are the Federal benefits simply added on the top of State benefits?

I am also concerned about the type of case wherein a claimant earns not quite enough in wages under covered

employment and is totally ineligible for benefits as a result of a monetary determination, but Federal wages in a small amount would make him eligible. What part of the benefits then payable to the claimant would be charged to our trust fund and what part paid to the Federal Government?

I also feel that the contract should contain a definite provision that this agency would only be required to conform with such regulations and rules prescribed by the Secretary as are inconsistent with or repugnant to State law.

The final point upon which I am not satisfied has to do with Provision IX of the proposed agreement, wherein it is stated that "The State will be liable for such erroneous payments or losses only if there has been gross negligence, fraud, or failure to take appropriate recovery action." The terms upon which this contract would base liability on the part of the State are subject to many interpretations, and I do not think the meaning of this sentence is sufficiently clear. But regardless of its language, it is my opinion that this Board has no authority to bind the State of Maryland under any circumstances except for the payment of unemployment compensation benefits. Only the General Assembly has the authority to create an obligation on the part of the State for negligence or for any failure of duty.

In view of the above it is my opinion that the Maryland Board has authority to enter into an agreement, but I recommend against the one proposed, and suggest full discussion of the above questions with the Federal authorities, in the hope that some more acceptable arrangement might be worked out.

HERBERT L. COHEN, *Special Asst. Attorney General.*

EXECUTORS AND ADMINISTRATORS

EXECUTORS AND ADMINISTRATORS—LETTERS TESTAMENTARY
MAY BE ISSUED TO MARYLAND DOMICILIARY WHO IS
TEMPORARILY ABSENT FROM THE STATE.

June 1, 1954.

Mr. A. Charles Stewart,
Register of Wills for Allegany County.

We are in receipt of your letter with respect to the estate of the late V. F. P., who, by her will, nominated her son, R. P., as her executor.

You advise us as follows:

“Mr. P. is employed by the United States Engineers and is stationed at Parkersburg, West Virginia. Mr. P. formerly resided in Allegany County, Maryland, and owns a property in this county. He was a registered voter of this county. During the re-registration several years ago, he did not re-register. Mr. P. testified that he has been stationed in Parkersburg for the past three years where he resides with his wife and family; however, he is not a registered voter in any state and he stated that he definitely intends to return to this county and that he has always considered himself a resident of this county.”

A similar situation is discussed in 15 Opinions of the Attorney General, 246. In that opinion, it was concluded that a resident of West Virginia was not eligible to qualify as executor of the estate of a decedent who was a resident of Maryland. We are advised that there has been no change in the law of the State of West Virginia which alters the effect of this opinion. It appears, therefore, that if Mr. P. is a *resident* of West Virginia, he is not eligible to qualify as executor of his mother's estate.

It thus becomes necessary to determine the status of Mr. P. with respect to *residence*. The fact of voting or registration upon election books is evidential but not conclusive. *Wagner v. Scurlock*, 166 Md. 284, 170 A. 539. In the case of *Shenton v. Abbott*, 178 Md. 526, the Court of Appeals discussed this question at some length. Judge Delaplaine, speaking for the Court, said, in part, at page 530:

“A person’s domicile is the place with which he has a settled connection for legal purposes, either because his home is there or because that place is assigned to him by the law. It is well defined as that place where a man has his true, fixed, permanent home, habitation and principal establishment, without any present intention of removing therefrom, and to which place he has, whenever he is absent, the intention of returning. While a person may have several residences, he can have only one domicile at a time. *Croop v. Walton*, 199 Ind. 262, 157 N.E. 275; *Restatement of Conflict of Laws*, secs. 9, 11. This court holds that the orphans court of one county has no authority to probate the will of a testator who had his domicile in another county. *Shultz v. Houck*, 29 Md. 24, 27; *Brafman v. Brafman*, 144 Md. 413, 415, 125 A. 161.

“It is a fundamental rule that, in order to effect a change of domicile, there must be an actual removal to another habitation, coupled with an intention of remaining there permanently or at least for an unlimited time. But a change of residence, to enable a person to perform the duties of a civil office, whether elective or appointive, does not of itself constitute a change of domicile. No temporary residence, whether for the purposes of business, health, or pleasure, occasions a change of domicile. Even though a person may be absent from his domicile for many years, and may return only at long intervals, nevertheless he retains his domi-

cile if he does not acquire a domicile elsewhere.
Wagner v. Scurlock, 166 Md. 284, 170 A. 539;
Mitchell v. United States, 21 Wall. 350, 22 L. Ed.
 584, 588; 1 *Beale, Conflict of Laws*, 142, 163, 167,
 171; 17 *Am. Jur., Domicile*, secs. 16, 18. * * *

In light of the facts as you have presented them and of the several expressions of the Court of Appeals on this subject, it is our opinion that Mr. P. is still a *resident* of Allegany County, that he is eligible to qualify as executor of his mother's estate and that letters testamentary may be issued to him by the Orphans' Court of Allegany County.

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

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

EXPLOSIVES

EXPLOSIVES—"FIREWORKS" CONSTRUED TO INCLUDE EXPLOSIVE CAPS FOR TOY PISTOLS, BUT NOT THE PISTOLS THEMSELVES.

August 23, 1954.

Mr. John H. Coppage,
Deputy Insurance Commissioner.

We are in receipt of your recent letter requesting our opinion as to whether toy "cap pistols" are embraced within the meaning of Article 48A, Section 97, of the Annotated Code of Maryland, 1951 Edition, as "fireworks". This statute defines "fireworks" as:

"The term 'fireworks' as used in this sub-title shall mean firecrackers, squibs, rockets, sparklers, Roman candles, torpedoes, bombs, grenades, fire-balloons, signal lights, and any combustible or explosive composition, or any substance or combination of substances, or article prepared for the purpose of producing a visible or an audible effect by combustion, explosive, deflagration, or detonation."

In the case of *Henderson v. Massachusetts Bonding and Insurance Company*, 84 S.W. 2d 922 at 925, 337 Mo. 1, the Court defines "fireworks" as contrivances of inflammable and explosive materials combined in various proportions for the purpose of producing in combustion beautiful or amusing scenic effects, or to be used as night signals on land or sea, or for various purposes in war.

Perusal of the statute indicates that cap pistols are not specifically within the definition. The caps for pistols are likewise not specifically mentioned, but would certainly fall within the meaning of "any substance or combination of substances, or article prepared for the purpose of produc-

ing a visible or an audible effect by combustion, explosive, deflagration, or detonation". It is, however, otherwise with respect to the toy pistols which will receive the caps or a dummy cartridge containing the caps and detonate them by percussion. Under the familiar rule of *ejusdem generis*, which is applied in the construction of statutes, it would not seem proper to include a device for bringing about the explosion of an explosive substance in the same classification as the explosive substance itself.

For the reasons stated, it is our opinion that toy pistols capable of discharging caps are not within the definition of "fireworks" as set forth in Section 97 of Article 48A.

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

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

FUNERAL DIRECTORS AND EMBALMERS

FUNERAL DIRECTORS AND EMBALMERS—CORPORATIONS LICENSED TO CONDUCT THE BUSINESS OF FUNERAL DIRECTING MAY ADVERTISE JOINTLY—RIGHTS OF CORPORATE LICENSEE ARE NOT AFFECTED BY AMENDMENT OF CORPORATE NAME.

August 31, 1954.

*Mr. Charles E. Delosier,
State Board of Funeral Directors
and Embalmers.*

In your letter of August 18, 1954, you state that a representative of Toulson & Wilson, Jr., Inc., a corporation holding a license to conduct the business of funeral directing, issued by the State Board of Funeral Directors and Embalmers, has informed you that the corporation has amended its charter to change its name to Wm. Cook-Blight, Inc. The change of name amendment has been filed with the State Tax Commission. After you received this communication, an advertisement for funeral services appeared in *The Baltimore Sun* which was, in part, as follows: "Wm. Cook, Inc., Funeral Mansion, St. Paul at Preston St., Mulberry 5-8080, or Wm. Cook-Blight, Inc., 6009 Harford Road, Hamilton 6-4162". You wish to know whether the above advertisement indicates that the establishments operated by the two corporations are in violation of Section 337 of Article 43, 1951 Code, which provides in part that "no corporation (licensed to engage in the business of funeral directing) shall be permitted to operate any branch establishment unless it is in operation June 1, 1945".

An answer to this question requires a review of the law relating to the licensing of corporations by your Board. Chapter 160 of the Acts of 1902 created the "State Board of Undertakers of Maryland". Under Sections 7 and 8 of that Chapter, all persons, copartnerships and corporations engaged in the business of undertaking, and "all assistants

and employees of any such persons, copartnerships or corporations * * * whose duties (engaged) him in * * * the care, preparation, disposition or burial of the dead", were required to obtain licenses to engage "in the business of undertaking". Until 1937, each amendment of this law permitted a corporation to engage in the business of undertaking provided that every employee of the corporation, whose duties involved the care, preparation for burial, etc., of human bodies, also received a license from the Board. See Chapter 389 of the Acts of 1904; Chapter 496 of the Acts of 1908; Chapter 399 of the Acts of 1910; and Chapter 575 of the Acts of 1924. With the enactment of the 1924 law, a new license was required, applicable to those who engage in the "profession of embalming" and the licensing provision relating to the business of undertaking was retained. A corporation could not obtain a license to practice embalming.

With the enactment of Chapter 503 of the Acts of 1937, the reference to a license to engage "in the business of Undertaking" was changed to a license to engage "in the business of Funeral Directing", and corporations were no longer qualified to receive such a license. See Sections 296 and 297 of Chapter 503 of the Acts of 1937. Section 306 of the 1937 Act contained the provision, now codified as Section 337 of Article 43, *supra*, which is that the act "shall not be construed as preventing the conducting of the business or profession of Funeral Directing by a corporation heretofore licensed" and that "no corporation shall be permitted to operate any branch establishment unless it is in operation at the time of the passage of this Act".

The legislative history discussed above illustrates that corporations have been denied gradually the right to secure licenses under the law relating to funeral directors and embalmers. In the 1937 law, however, the General Assembly was careful to preserve the rights of corporations licensed at the time of the effective date of the act, although such corporations were prohibited from establishing branches in the future.

We understand that both of the corporations in question secured their licenses prior to the 1937 law. They, therefore, have the right to continue in the business of funeral directing. While neither of the corporations may establish new branches operated as a part of the general business of the corporation and under the corporate name, there is nothing in the law which prohibits the joint type of advertisement employed by the corporations in question. It may be that one person owns controlling stock in both corporations. The fact that a single person has such control does not change the fact that in the eyes of the law each corporation is a separate and distinct entity. See *ex parte Garey*, 202 Md. 11, 17; *Leister v. Bank of Westminster*, 199 Md. 241, 244-245; *Ace Development Co. v. Harrison*, 196 Md. 357, 366; *Llewelyn v. Queen City Dairy*, 187 Md. 49, 57. In *Ace Development Company v. Harrison, supra*, at page 366 of 196 Md., the Court of Appeals observed that there "is nothing wrong in owning shares in a corporation and such an owner is not the corporation, and except for his right to vote his stock, he has nothing to do with the corporation". The corporate entity is disregarded by the courts only where it is "necessary to prevent frauds and impositions, or to enforce superior equities". *Ex parte Garey, supra*, 202 Md. at p. 17. We conclude, therefore, that the type of joint advertisement involved here does not constitute either of the establishments of the two corporations a branch of the other within the meaning of Section 337 of Article 43.

This conclusion is consonant with the intent of Section 337, as exemplified in the history leading up to its enactment. The purpose of the Section was to prevent the licensing of corporations in the future and to preserve the rights of corporations to which licenses had already been issued. The fact that corporations holding licenses at the time of the enactment of Section 337 were precluded from opening branch establishments shows clearly that the primary purpose of the General Assembly was that the number of establishments operated by corporations was not to

be increased. An increase in the number of establishments operated by corporations is not involved here. Neither is there an increased number of corporate licensees. Each of the corporations continues the business it has a lawful right to pursue and which it was pursuing when the Act of 1937 was passed.

You ask also whether Wm. Cook-Blight, Inc., has violated the law by advertising under its new name without having secured the permission of the State Board of Funeral Directors and Embalmers. Section 10 of Article 23, 1951 Code, confers certain general powers of amendment upon corporations, among which is the right to change the corporate name. It has been held that the mere change in the corporate name does not change the identity of the corporation, nor does it affect the rights of the corporation or add to its obligations. See *Ozan Lumber Co. v. Davis Sewing Mach. Co.*, 284 F. 161, and discussion in 13 Am. Jur. p. 276 (Corporation Section 141). Section 339 of Article 43 provides in part that "no funeral director granted an original license under this sub-title shall conduct business under any other name than the name appearing on his or her license". In 22 Opinions of the Attorney General, 822, we ruled that this Section does not preclude a corporation, issued a license in one name, from changing its name by lawful amendment and from obtaining a new license in the new name without additional examination. See also 22 Opinions of the Attorney General, 927.

The corporation here involved has notified the Board that its name has been changed in accordance with the charter amendment filed with the State Tax Commission. In light of the fact that the change in name has no effect upon the rights of the corporation, we conclude that the Board has only the ministerial duty of changing the corporation's license so as to make it conform with the change in corporate name as effected by the charter amendment.

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

AMBROSE T. HARTMAN, *Asst. Attorney General.*

FUNERAL DIRECTORS AND EMBALMERS—VETERAN APPLYING FOR LICENSE TO PRACTICE EMBALMING WITHOUT EXAMINATION NEED NOT HAVE A LICENSE TO PRACTICE BOTH FUNERAL DIRECTING AND EMBALMING ISSUED BY THE FOREIGN STATE.

September 23, 1954.

*Mr. Charles E. Delosier, Secretary,
State Board of Funeral Directors and Embalmers.*

In your recent letter you state that a person has requested that he be licensed by the State Board of Funeral Directors and Embalmers as an embalmer without examination, pursuant to Section 338 of Article 43, (1951 Code). Section 338 is as follows:

“Notwithstanding any provision of this sub-title to the contrary, any honorably discharged Veteran of World War II who is a graduate of a recognized College of Embalming and has held a license and has actually engaged in the practice of Funeral Directing and Embalming in another State for a period of five years, and who has practiced in the State of Maryland as a duly registered Apprentice Funeral Director and Embalmer for a period of one year, shall be entitled to be licensed to practice Funeral Directing and Embalming in Maryland without the necessity of taking an examination.”

The applicant in question is a graduate of a school of embalming and was licensed as an embalmer in the State of Nebraska in August, 1937, after passing a written and oral examination. Your question is whether a person may receive an embalmer's license without examination under Section 338, where he has not received both a funeral director's and embalmer's license from the foreign state.

A literal interpretation of this Section would require that a person who applies for a license without examination under it must have both a funeral director's and embalmer's

license issued by the foreign state. You are informed by the authorities of the State of Nebraska that the State has separate licensing provisions relative to embalmers and funeral directors. The law of this State, likewise, makes provision for two separate types of license. Under Section 327 of Article 43, (1951 Code), the Board of Funeral Directors and Embalmers is authorized to issue licenses to persons who desire "to engage in the profession of embalming in this State". In order to qualify for such a license, the person must meet the qualifications and pass the examination provided in the Section. A separate provision for the licensing of persons who desire to engage in the business of funeral directing is set forth in Section 323 of Article 43.

As above noted, Section 338 provides that a veteran of World War II may "be licensed to practice Funeral Directing and Embalming in Maryland without the necessity of taking an examination" where he "has actually engaged in the practice of Funeral Directing and Embalming in another state for a period of five years". We believe that here the conjunctive "and" must be given the disjunctive meaning of the word "or" in order to give the statute a reasonable meaning. It is a rule of statutory construction that the word "and" may be substituted for the word "or" when necessary to make a statute express the true legislative intent as gathered from the context and the circumstances attending its passage. See *Union Starch and Refining Co. v. Natl. Labor Rel. Bd.*, 186 Fed. 2d 1008, 1014; *Proprietary Ass'n. v. Bd. of Pharmacy*, 27 N.J. Super. 204, 99 Atl. 2d 52, 59; *Bania v. Town of New Hartford*, 138 Conn. 172, 83 Atl. 2d 165, 167-168; *Kassarich v. Unemployment Compensation Bd.*, (Pa.) 12 Alt. 2d 823, 824-825; *Knoxville v. Gervin*, 169 Tenn. 532, 89 S.W. 2d 348, 103 A.L.R. 877; *Pac. Mut. Life Ins. Co. v. Lowe*, 354 Ill. 398, 188 N.E. 436, 91 A.L.R. 788; Cf. *Fidelity & Deposit Co. v. Lumber Co.*, 176 Md. 217, 226.

We do not believe that it is reasonable to assume that the General Assembly intended that a person who wishes to

qualify for a license without examination under Section 338 must have both a funeral director's and embalmer's license from the foreign state in order to be licensed as an embalmer here. The fact that the Maryland law provides separate licenses for embalmers and funeral directors is significant in this connection. In *Pittman v. Housing Authority*, 180 Md. 457, 463-464, the Court of Appeals said:

“The court must construe the Act by giving effect to the legislative intention as expressed in the Act as a whole. It is recognized that the meaning of the plainest words in a statute may be controlled by the context. A statute should be so construed that all its parts harmonize with each other and render them consistent with its general object and scope. *Crescent Mfg. Co. v. South Carolina Tax Commission*, 129 S.C. 480, 124 S.E. 761; *Louisville & Nashville R. Co. v. Gaines*, 3 F. 266, 276.”

For the reasons above given, we believe that Section 338 may be made to harmonize with the other provisions of Article 43 by interpreting it to mean that a person is qualified for license without examination either as a funeral director or embalmer where he has the appropriate license from another state.

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

AMBROSE T. HARTMAN, *Asst. Attorney General*.

HAIRDRESSERS & BEAUTY CULTURISTS

HAIRDRESSERS & BEAUTY CULTURISTS—ALL PERSONS GIVING DEMONSTRATIONS AND EXHIBITIONS OF HAIRDRESSING MUST BE LICENSED BY THE STATE BOARD OF HAIRDRESSERS AND BEAUTY CULTURISTS.

July 8, 1954.

Mrs. Kathryne C. Linder,
State Board of Hairdressers and Beauty Culturists.

We have for reply your letter of July 1, 1954, with further reference to the practice of the State Board of Hairdressers & Beauty Culturists in exempting artists who give exhibitions of hair styling, from the provisions of Article 43, Section 510(b), Annotated Code of Maryland (1951 Ed.) and your regulations which require a Demonstrator's License.

Apparently it has been the feeling of your Board in the past that these artists are particularly skilled, and that they make a contribution to the public and to the hairdressing profession above and beyond the commercial aspect of the exhibition. Such exhibitions are understood to be infrequent and unusual, but are usually arranged by a commercial sponsor.

The Demonstrator's License is issued by the Board to a person who puts on a demonstration of the use of cosmetics and hairdressing preparations under the sponsorship of a manufacturer or vendor of these products. They may be given on a broad scale and at more frequent intervals than the artists' exhibitions mentioned above. They are also frankly commercial.

Although there is a difference between the exhibitions and demonstrations, as outlined above, it is questionable whether there is a distinction which would support an administrative classification. In the interest of equal and impartial administration of the laws entrusted to the Board,

I doubt if it is proper to exempt one type of demonstrator, and to charge the other a fee for a license. It is, therefore, our opinion that so long as your regulation and custom provide for a Demonstrator's License, you should require that it be obtained by all persons who conduct public demonstrations.

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

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

HAIRDRESSERS AND BEAUTY CULTURISTS—UNLAWFUL TO
PRACTICE BEAUTY CULTURE FOR COMPENSATION OUT-
SIDE OF REGISTERED BEAUTY SHOP, UNLESS AUTHOR-
IZED BY STATUTE.

August 4, 1954.

*Mrs. Agnes L. Giordano, Chairman,
State Board of Hairdressers & Beauty Culturists.*

We are in receipt of your letter requesting our opinion on the interpretation of Section 499 of Article 43 of the Annotated Code of Maryland (1951 Ed.). You inform us that a person, residing in the residential portion of a Maryland city, from time to time dresses the hair of her friends. She makes no charge for so doing, but she does receive presents from the friends for whom she performs hairdressing services. It is understood that she neither advertises nor otherwise holds herself out as a professional beauty culturist, nor does she sell any beauty preparations.

Section 499, cited above, provides:

“It shall be unlawful for any person to practice beauty culture for compensation of any kind in any place other than a registered beauty shop; provided that nothing contained in this sub-title shall prevent duly registered operators from practicing beauty culture upon their patrons in the residences of such patrons by appointment.”

The words of the statute are clear and compelling. From the facts as we have been informed of them, we feel it is a reasonable deduction that the “presents” given by friends are a form of compensation. Consequently, the practice of beauty culture under the circumstances herein recited is a violation of the law of Maryland.

In this connection, it is interesting to note that the pertinent statute forms part of Article 43, which is entitled “Health”. This indicates an intention on the part of the

Legislature to protect the health of clients of beauty culturists by providing for training, examinations, licensing and inspections. The practice of the art of beauty culture without the benefit of such salutary measures as have been provided by the Legislature might lead to the dangers which the law has attempted to eliminate. With this apparent legislative intent in mind, the commercial character vel non of the practice of beauty culture becomes relatively unimportant as compared with the health and safety factor.

For the reasons stated, it is our opinion that it is unlawful for any person to practice beauty culture for compensation of any kind in any place other than a registered beauty shop, unless it is otherwise specifically permitted by law.

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

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

HEALTH

HEALTH—COLD STORAGE—WHO MUST SECURE LICENSE FROM
DIRECTOR OF THE STATE BOARD OF HEALTH.

January 20, 1954.

*Dr. Robert H. Riley, Director,
State Department of Health.*

We have your letter in which you state that in recent years the rapid expansion in the frozen food industry has created problems for your Department in the enforcement of the cold storage law contained in Sections 217 through 229 of Article 43 of the Annotated Code of Maryland (1951 Ed.). You seek our advice relative thereto.

Your first inquiry is whether a company which processes frozen food at its plant must secure a cold storage license if some of the food products are held for 30 days or more at a temperature below 45 degrees Fahrenheit. Section 218 of the cold storage law requires any person, firm or corporation that maintains or operates a "cold storage warehouse" to secure a license from the Director of the State Board of Health. Section 217 defines a "cold storage warehouse" as "any place artificially cooled to or below a temperature above zero of 45 degrees Fahrenheit, in which articles of food are placed and held for 30 days or more". This definition standing alone is sufficiently broad to include cold storage facilities which a person maintains for personal or family use. We feel, however, that a more reasonable construction is one which limits the definition to the cold storage of food where subsequent sales to the public are contemplated, or where the storage is the service rendered to the public. In any event, we believe that a company of the type mentioned in your first inquiry must secure a license, inasmuch as the food which is stored will later be placed on the market for sale.

You also ask whether a company which receives food on consignment only, and which stores the food for 30 days

or more at a temperature below 45 degrees Fahrenheit must take out the license required by Section 218. The definition of "cold storage warehouse", which is above discussed, does, in our view, include such a company. Again, the food is stored for later distribution to the public.

In your third question you state that some cold storage plants rent sections of their storage rooms to the public, each section being partitioned off with the lessee keeping his section locked with his own key. You ask whether in such a situation one cold storage license serves for the entire plant, or whether each lessee, of a section must obtain a license if his food is stored for 30 days or longer. Section 217, *supra*, sets forth the term "frozen food locker plant", and defines it as "any place artificially cooled to or below a temperature above zero of ten degrees Fahrenheit and containing locked boxes or lockers in which articles of food are stored and held by patrons renting said locked boxes or lockers." This term seems to include the type of business to which you refer. Section 218, however, is somewhat ambiguous on the point of whether the licensing provision applies to a "frozen food locker plant". That Section provides expressly for the licensing of "Cold storage warehouses". We believe, however, that the term "cold storage warehouse", as used in Section 218, was intended to include those premises which fall within the meaning of the term "frozen food locker plants". This is manifest by Section 220 which requires a "licensee" to keep records of the articles of food received in and withdrawn from his "cold storage warehouse". The Section goes on to provide:

"that in the case of frozen food locker plants, the operators shall not be required to keep records of the holdings and withdrawals of foods by individual lessees where such food is primarily for the use of the lessee, and not for sale."

This phrase would, of course, be meaningless if in fact the operator of a "frozen food locker plant" did not need

to comply with the license requirement of Section 218. Likewise, Section 220 clearly indicates that the General Assembly intended the operator of the frozen food locker plant to obtain the license. We conclude therefore that the individual lessee of a frozen food locker in such a plant need not secure a license.

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

AMBROSE T. HARTMAN, *Asst. Attorney General*.

HEALTH—ORDERS ISSUED UPON POLITICAL SUBDIVISIONS OF THE STATE BY BOARD OF HEALTH MAY BE FRIENDLY SO LONG AS BOARD CONDUCTS AN INDEPENDENT INVESTIGATION—THE PUBLIC COMFORT MAY FURNISH THE BASIS FOR SUCH AN ORDER.

June 17, 1954.

*Dr. Robert H. Riley, Chairman,
State Board of Health.*

In your recent letter, you seek our advice concerning the practice which the State Board of Health has adopted relative to its orders issued upon political subdivisions of the State for the installation of sewerage facilities, under the provisions of the Water, Ice and Sewerage subtitle of Article 43 of the 1951 Code, Sections 365 through 385. You state that these orders are often "friendly orders" in that the political subdivision requests the Board to take the action so that the subdivision may benefit by the indebtedness authorization contained in Section 373 of Article 43, as amended by Chapter 40 of the Acts of 1954. Under this provision, any political subdivision upon which an order of the Board is served may proceed to raise such funds as may be necessary to comply with such order within the time specified. Upon approval of the Governor and the Attorney General, the political subdivision may issue bonds, stocks or notes without prior legislative enactment. Such indebtedness shall not exceed three percent of the total value of all property within the limits of the subdivision as listed and assessed for taxation. For reasons stated hereinafter, we believe that the issuance of such friendly orders may be unlawful where there is, in fact, no real justification for the order.

Under Section 369 of Article 43, the State Board of Health is authorized to issue an order upon the proper officer having charge of any water supply, sewerage system or refuse disposal works, where, upon investigation, it appears that the system is not producing such results "from a sanitary standpoint, as might reasonably be expected, or

is in any way a menace to health or comfort, or is creating a nuisance * * *". The order may direct the proper officer to secure reasonable operating results from existing equipment. Under Section 370, if any such system is found, upon investigation, to be "in any way a menace to health or comfort, or is creating a nuisance", the Board may order alterations or extensions to the system as well as the installation of such new system or plant as the Board may determine necessary. It is noteworthy that each of the Sections requires the Board to make investigation and the order is not authorized unless a menace to health or comfort, or a nuisance, is found.

The Section providing for the issuance of orders upon various political subdivisions is Section 371, which is, as follows:

"When the State Board of Health finds, upon investigation, that any of the waters of the State are being, or are liable to become, polluted in a way dangerous to health, or so as to be in any way a nuisance, and such condition is due to the fact that there is no, or only a partial, system of public water supply, sewerage or refuse disposal in a certain County, municipality, district, sub-division or locality; or in case absence or incompleteness of a public system of water supply, sewerage or refuse disposal in any County, municipality, district, subdivision 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; then the State Board of Health may issue an order to the effect that a public system of water supply, sewerage or refuse disposal shall be installed and put into operation, or the existing system completed, in that County, municipality, district, subdivision or locality, within a specified time; or the Board may order the installation of such devices or

the institution of such methods, and enforce such measures or regulations, as it may deem proper under the circumstances.”

This Section, like the two preceding it, requires an investigation by the State Board of Health, and an affirmative finding that the absence or incompleteness of a sewerage system is polluting the waters of the State “in a way dangerous to health or so as to be in any way a nuisance * * * sufficiently prejudicial to the health or comfort * * *” of the public. We feel that the Board must make the investigation and must find affirmatively a menace to public health or comfort in order to give validity to any order issued under this Section. It follows, of course, that the existence of a valid order is a prerequisite to the raising of funds under Section 373.

We do not mean to imply that a political subdivision may not request the State Board of Health to conduct an investigation to determine whether an order under Section 371 may be issued. It is not unlikely that a situation may arise where the political subdivision finds that the public health and comfort are jeopardized but it lacks the authority to raise the necessary money to make the necessary improvements. In such event, we believe that an order may issue properly so that the political subdivision may take advantage of the financing provisions of Section 373 even though the subdivision is not in opposition to the order, provided, of course, that the State Board of Health conducts its own investigation and makes a determination based thereon that corrective measures within the purview of the statute are necessary.

You also ask whether, under Section 371, it is necessary to find an actual menace to public health or whether a condition prejudicial to the public comfort is sufficient. The practical aspect of this question is the difficulty of proving an actual health menace in many cases involving inadequate sewerage disposal facilities. In these cases, however, there is often no problem in finding prejudice to public comfort.

Health aspects are always present, but, in the light of modern scientific knowledge, proof is often difficult. As above stated, the order is justified under the terms of the statute where the waters of the State are in danger of being polluted "in a way dangerous to health, or so as to be in any way a nuisance * * * sufficiently prejudicial to the health or comfort * * *" of the public. Clearly, under this language, the existence of a nuisance detrimental to the public comfort may furnish the basis for the issuance of the order.

The question presents itself as to whether public comfort is a proper concern of the State under its police power. In the early cases, the State, in the exercise of its police power, was limited to the public health, morals and safety. However, this concept of the police power has been greatly expanded. This was recognized by the Court of Appeals of Maryland in *State v. Seney Co.*, 134 Md. 437, 447, where the Court said:

"* * * In the process of the application of that power to new and varied conditions affecting the public welfare, it has been gradually extended beyond its original scope. It was formerly concerned with the protection of the public health, morals and safety. By our own recent decisions it is now recognized as extending to the promotion of the general welfare. *American Coal Co. v. Allegany County*, 128 Md. 573; *C. & P. Telephone Co. v. Board of Forestry*, 125 Md. 666."

More recently, in *Jack Lewis, Inc. v. Mayor and City Council of Baltimore*, 164 Md. 146, 153, the Court of Appeals specifically recognized that the public comfort was a proper concern of the State, when it said:

"* * * Nor does a due consideration for the public safety and welfare necessarily stop with protection against the spread of disease, the ravages of fire, the hazards of traffic, or the predatory activities of the lawless, but it may properly extend to the maintenance of conditions under which

people may live and work in reasonable comfort, and without unnecessary impairment of their physical and mental vigor.”

See also *Pocomoke City v. Oil Company*, 162 Md. 368, 375; *Liberto v. City of Baltimore*, 180 Md. 105, 112; *Burley v. City of Annapolis*, 182 Md. 307, 315.

It is to be noted that Section 371 also uses the term “nuisance” as a standard. In *Burley v. City of Annapolis*, *supra*, the Court of Appeals discussed the concept of public nuisance as follows, at page 312:

“Public nuisances, that is to say, those nuisances which have a common effect and produce a common damage, are usually placed in three classifications: First, those which are nuisances *per se* or by statute; second, those which prejudice public health or comfort such as slaughterhouses, livery stables, etc.; third, those which in their nature are not nuisances, but may become so by reason of their locality, surroundings, or the manner in which they may be maintained.”

See also *Hart v. Wagner*, 184 Md. 40, 46, and *Horner v. State*, 49 Md. 277.

We conclude, therefore, that the Board may issue an order pursuant to Section 371 where, upon its own investigation, it finds that by lack of, or inadequacy in, sewerage facilities, there is a public nuisance prejudicial to either the health or comfort of the community. We wish to point out, as held by the Court of Appeals in *Welch v. Coughlan*, 126 Md. 1, a case sustaining the constitutionality of Section 371, that the reasonableness of the exercise of the power conferred upon the State Board of Health is subject to court review and may be set aside if found arbitrary.

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

AMBROSE T. HARTMAN, *Asst. Attorney General*.

HEALTH — LAW RELATING TO DISINTERMENT OF DEAD
BODIES LACKING IN UNIFORMITY.

June 29, 1954.

*Dr. Robert H. Riley, Director,
State Department of Health.*

This is to answer the letter in which you call our attention to an inconsistency in the laws relating to the disinterment of dead bodies and request our opinion in reference thereto.

Section 333 of Article 27, (1951 Code) provides that every person who shall remove from any graveyard any dead body shall be deemed guilty of a misdemeanor unless such person shall have been authorized by the State's Attorney for Baltimore City, or for the County in which such graveyard may be situated, to remove the body. This law was enacted by Chapter 422 of the Acts of 1882 and has never been amended.

Section 19 of Article 43, 1951 Code, regulates in detail the interment, transportation and disinterment of dead bodies. Sub-section (f) of Section 19 requires that a permit to disinter a human body be obtained from the local Registrar or Deputy Registrar where the body is located. These permits are issued on forms prescribed by the State Board of Health. Section 19 was first enacted by Chapter 312 of the Acts of 1898. That Act created local Registrars of Vital Statistics and prescribed their duties generally. Among those duties was the one with reference to the issue of permits to disinter human bodies. Section 2 of the Act of 1898 provided that all acts or parts of acts inconsistent with it were thereby repealed. There is certainly inconsistency between the two acts inasmuch as they require the issuance of a permit from two different sources in order to authorize the performance of the same act. The Court

of Appeals has often held "that the law does not favor repeals by implication, unless there is a manifest inconsistency between a statute and a later one, or unless their provisions are so repugnant and irreconcilable that they cannot stand together". *Buchholtz v. Hill*, 178 Md. 280, 288, and cases there cited.

It is equally well settled, however, that where a later act covers the whole subject of the first act and embraces new provisions plainly showing that it was intended as a substitute for the first act, it will operate as a repeal of that act. Thus, in *Montel v. Consolidation Coal Co.*, 39 Md. 164, 171-172, the Court of Appeals said:

"It is thus stated by the Supreme Court of Massachusetts in *Bartlett v. King*, 12 Mass. 545; 'A subsequent statute revising the whole subject-matter of a former one and evidently intended as a substitute for it, although it contains no express words to that effect, must on principles of law as well as in reason and common sense, operate to repeal the former'. * * * There is also a very well considered case by the Supreme Court of California, *State v. Conkling*, 19 Cal. 512, where it is said: 'We do not consider that the rule applicable here is, that this is a repeal by implication as that rule is usually applied; but the principle is, that when the Legislature makes a revision of particular statutes, and frames a general statute upon the subject-matter, and from the framework of the Act it is apparent that the Legislature designed a complete scheme for this matter, this is a legislative declaration that whatever is embraced in the new law shall prevail, and whatever is excluded is ignored. This doctrine of construction not only commends itself by its plain sense and justice, but is sanctioned by numerous authorities'."

See also *Appeal Tax Court v. W. M. R.R. Co.*, 50 Md. 274, 296; *Beall v. Southern Maryland Agricultural Association*, 136 Md. 305, 311-312; *LaFontaine v. Wilson*, 185 Md. 673, 681.

We feel that the principle last cited is dispositive of the question here. Chapter 422 of the Acts of 1882, by which it was required that a permit be obtained from the State's Attorney in order to disinter a body, did not deal with the subject matter in the same comprehensive manner as did Chapter 312 of the Acts of 1898. As above stated, the Act of 1898 created the office of Registrar of Vital Statistics for the various counties and described his duties in detail. These duties involve the compilation of vital statistics on a State-wide basis. It was obviously an undertaking "to deal with the whole subject matter", and that subject matter included disinterment, for which specific provision was made. We conclude, therefore, that under the principle announced in *Montel v. Consolidated Coal Co.*, *supra*, the act of 1898 served to repeal Chapter 422 of the Acts of 1882.

Your attention is directed to Section 335 of Article 27 of the Code. That Section was repealed by Chapter 407 of the Acts of 1953, which was approved by the Governor on April 11 of that year. The same General Assembly then enacted Chapter 681 of the Acts of that year, which amended Section 335. That Act was approved on April 27, 1953. Because of the confusing language in the amendatory act, Chapter 23 of the Acts of 1954 was passed, amending Section 335, with the result that, as to abandoned cemeteries, the written permission of the State's Attorney of Baltimore City or the County, as the case may be, is required for the removal of bodies. You may deem it advisable to bring to the attention of the General Assembly the requirements of these several provisions with a view of securing uniformity therein.

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

AMBROSE T. HARTMAN, *Asst. Attorney General*.

HEALTH—MONEY COLLECTED FROM PATIENT IN CHRONIC DISEASE HOSPITAL OF THE STATE MAY NOT BE ALLOCATED TO THE ACCOUNTS OF OTHER PATIENTS FOR PURPOSE OF DETERMINING AMOUNT COUNTY MUST PAY INTO STATE TREASURY.

September 3, 1954.

*Mr. Clemens W. Gaines, Chief,
Bureau of Management,
State Department of Health.*

You inform us that a problem has recently arisen concerning the distribution of funds collected by the various counties from persons who receive treatment in the chronic disease hospitals and infirmaries of the State. Some counties take the position that the amounts collected from an individual patient may be applied to the accounts of patients from whom no or insufficient payment is received. This procedure, as hereinafter explained, has the effect of reducing the amount which the county pays into the State Treasury as its contribution to the maintenance of chronic disease hospitals. You ask whether the procedure adopted by these counties is a proper one.

The law authorizing the operation by the State of chronic disease hospitals and infirmaries is contained in Sections 559-564 of Article 43, 1951 Code. Under Section 560, persons suffering from chronic diseases, who are unable to pay the cost of their care, may be admitted to the hospitals. Under Section 562, the County Welfare Board of the county in which a patient is a resident must make an investigation so as to determine the amount the patient, or those responsible for his maintenance and support, are able to pay. No payment may be collected in excess of the average *per diem* cost of maintaining a patient in the hospital. Section 563 provides for the financing of the chronic disease program, 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. The remaining cost of board, care and treatment, and the cost of operation shall be paid out of appropriations in the budget." (Emphasis supplied.)

The distribution of moneys collected from patients who are able to contribute to the cost of their care is provided in Section 562 (c) of Article 43, as follows:

"(c) All payments required to be made under the provisions of this section shall be made to and collected by the County Treasurer or Treasurer of Baltimore City, as the case may be, who shall account for same. Any amounts so collected shall first be applied against the Seventy-five Cents (\$.75) per day which the County or Baltimore City are required to pay. Any amount collected over and above Seventy-five Cents (\$.75) per day from or *on account of any patient* shall be paid by the County or Baltimore City to the State Treasurer." (Emphasis supplied.)

The counties in question take the position that where collection in excess of Seventy-five Cents (\$.75) per day is made from a particular patient, the excess may be allocated to the accounts of those patients from whom no or insufficient payment is received. Such allocation obviously allows the county to retain a greater amount of the funds collected than it would retain under a system maintained on an individual accounting basis. We believe, however, that the law relating to the chronic disease hospitals is

clear in its requirement that the accounting system must be on an individual basis and that payments collected from one patient may not be transferred to the account of other patients for purposes of determining the amounts to be retained by the county.

This conclusion is required by the provision of Section 563, which states that the county shall pay Seventy-five Cents (\$.75) per day "for each patient admitted", and by the provision of Section 562 (c), which requires that any amount collected from a patient which is over and above Seventy-five Cents (\$.75) per day "on account of any patient" shall be paid to the State Treasurer. The language employed in these Sections indicates that the General Assembly intended each account to remain separate, and that in cases where more than Seventy-five Cents (\$.75) per day is collected, the excess is to be paid to the State Treasury. It is also to be noted that Section 562 (b) provides that the amount collected from any patient shall not exceed the average *per diem* cost of maintaining a patient in the hospital. When this provision is considered in conjunction with the other Sections above discussed, it is apparent that the intention of the Legislature is that the cost of treatment for each patient is to be considered separate and distinct for accounting purposes.

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

AMBROSE T. HARTMAN, *Asst. Attorney General.*

INSURANCE

INSURANCE—EDUCATIONAL INSTITUTION MAY NOT SELL ANNUITIES CONDITIONED UPON THE PROBABILITIES OF DURATION OF LIFE OR RATE OF MORTALITY AS PART OF FUND RAISING PROGRAM.

May 12, 1954.

Mr. Charles S. Jackson,
State Insurance Commissioner.

You have asked our views on the legality of a plan by which an educational institution in Maryland is considering a program of raising funds for the institution. The form that this program takes is to offer to the public the opportunity to donate funds to the institution which will guarantee for the life of the donor a certain rate of interest on the amount of the gift or deposit. The amount of interest offered is predicated on a sliding scale according to the age of the donor or depositor, so that the younger he may be the lower the rate of interest he will receive. Certain alternative variations of the plan are proposed but they adhere to the basic scheme outlined.

Article 48A, Section 147 of the Annotated Code of Maryland (1951 Edition) provides:

“(Life Insurance Companies.) Any company making any engagement for the payment of money or other benefits in the event of death, either to the member, policy or certificate holder, or by whatsoever name the same may be known, or to their families or representatives, or entering into any contract or agreement in which the chances or probabilities of the duration of life, or the rate of mortality are in any way involved as an element or condition of such contract or agreement, shall be deemed and taken to be a life insurance company within the meaning of this Article,

and shall be subject to all the requirements of law applicable to said life insurance company. Every domestic life insurance company is hereby also authorized to insure individuals against accident, sickness and disability and to grant, purchase, or dispose of annuities, unless it shall be otherwise provided in its charter or by-laws."

This provision of the law was considered in 16 Opinions of the Attorney General, 171 and 182, and 18 Opinions of the Attorney General, 298. The exemptions provided in Section 281 of Article 48A are not applicable.

Since the proposed program provides for fixed payments at a rate of return to the donor or depositor in which the probability of the duration of life is an element, it is our opinion that such a program amounts to an annuity and may be instituted and operated only by a life insurance company within the meaning of Article 48A.

As was said by the Court in *Continental Illinois Bank & Trust Co. v. Blair*, 45 F. (2d) 345:

"Ayer delivered to these institutions stocks and bonds to the amount of \$350,000, and received in return their obligations to pay him at stated times certain sums of money during a prescribed period. These sums are purchased annuities * * *."

We are advised that similar programs are in force in certain other States. Wherever this may be true, it appears that it is specifically sanctioned by law. In Maryland such a program is not within administrative discretion, and an institution other than a life insurance company may only be authorized to engage in such an activity by the Legislature.

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

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

INSURANCE—SECURITIES—SECURITIES OF MARYLAND INSURANCE COMPANIES MUST BE KEPT WITHIN THE STATE OF MARYLAND.

August 31, 1954.

Mr. Charles S. Jackson,
State Insurance Commissioner.

I regret the delay in answering your letter relative to the request of a Maryland insurance company for a modification of 19 Opinions of the Attorney General, 292, requiring Maryland companies to keep their securities within the borders of the State of Maryland.

I have carefully reviewed the subject opinion, which was rendered by Judge William L. Henderson of the Court of Appeals when he was Assistant Attorney General. The opinion is dated February 8, 1934, and must, of course, be considered in relation to the chaotic financial situation of the insurance business, and indeed of the whole economic world, at that time.

Today we are facing business and financial conditions which are vastly different. Companies which then seemed weak or unstable have now accumulated surpluses and appear to be impregnable. At the same time, however, the principles enunciated by Judge Henderson are as salutary today as they were in 1934. The complications which might ensue if a Maryland insurance company took its securities beyond the reach of the Maryland courts are endless. The expense to the State of Maryland, to Maryland creditors, and to Maryland policy holders in pursuing such securities could be very substantial. While the probability of such difficulties arising in connection with the particular company which has made this request is remote, it must be remembered that your requirements, promulgated as a result of Judge Henderson's opinion, apply to all Maryland insurance companies without distinction as to size or relative financial standing.

Under the circumstances, I do not believe that it is proper for you to modify your requirements so as to permit Maryland insurance companies to take their securities into foreign jurisdictions.

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

INSURANCE—RETLIATORY TAX—NO CREDIT DUE ON RETALIATION TAX TO FOREIGN INSURANCE COMPANY FOR TAX PAID FOR SUPPORT OF MARYLAND STATE INDUSTRIAL ACCIDENT COMMISSION WHEN STATE OF COMPANY'S DOMICILE DOES NOT PERMIT INSURANCE COMPANIES TO WRITE WORKMEN'S COMPENSATION INSURANCE.

August 31, 1954.

Mr. Charles S. Jackson,
State Insurance Commissioner.

You have forwarded to us your file on the refund claim of an Ohio insurance company, based upon an alleged overpayment of the Maryland retaliatory tax imposed by Article 48A, Section 44 of the Annotated Code of Maryland (1951 Ed.). The basis of the claim is that in the years 1950, 1951 and 1952, the Ohio Company made overpayments by reason of its failure to include in the aggregate of taxes paid to the State of Maryland the "special tax" levied by Article 101, Section 16, for the maintenance of the State Industrial Accident Commission of Maryland. Failure to include this item resulted in the computation of a larger difference between the Maryland taxes and the relative higher premium taxes imposed by the State of Ohio and consequently, in a larger retaliatory tax represented by this difference.

The purpose of the Maryland retaliatory tax is not to penalize foreign companies doing business in Maryland, but to promote the equalization of economic burdens between Maryland companies doing business in foreign jurisdictions and foreign companies doing business in Maryland.

We are advised by the Hon. W. D. Schumacher, Secretary of The State Industrial Commission of Ohio that "Private insurance companies are not permitted to write Workmen's Compensation Insurance in Ohio. Under the Ohio Law we have an exclusive State Fund, administered by The Industrial Commission of Ohio."

It thus appears that the Ohio company is attempting to claim credit on the basis of its participation in Maryland in a type of business which does not even exist in its domiciliary jurisdiction. Such a situation could not have been within the contemplation of the General Assembly of Maryland in the enactment of our retaliatory tax law, which refers to Maryland companies "doing business, or that might seek to do business in such other State or country". Obviously, Maryland companies are not doing this kind of business in Ohio, nor can they seek to do so.

If you were to allow the credit claimed by the Ohio company, it would amount to providing for that company the services of the State Industrial Accident Commission of Maryland free of charge. No similar benefit is provided for Maryland companies by the State of Ohio. An inequality, rather than equality, would be the ultimate result.

It is worth noting in passing that, in addition to the considerations mentioned above, the administrative costs of the Ohio State Fund are appropriated by the Legislature of that State, one-third being paid from the General Revenue Fund, and two-thirds assessed against the insured employers. Since Maryland companies doing business in Ohio are substantial taxpayers there, it cannot be said that they are entirely free from the burden of contributing to the support of The State Industrial Commission of Ohio.

For the reasons stated, it is our opinion that the application for refund made to you by the Ohio insurance company should be denied, and that no credit against the Maryland retaliatory tax should be allowed to Ohio companies on account of any payments made under Article 101, Section 16 of the Annotated Code of Maryland.

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

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

INSURANCE—RETLIATORY TAX—COST OF PUBLICATION OF
ABSTRACT OF ANNUAL STATEMENT OF INSURANCE COM-
PANY MAY BE ALLOWED AS CREDIT AGAINST RETALIA-
TION TAX, SUBJECT TO COMMISSIONER'S REGULATIONS.

September 7, 1954.

Mr. Charles S. Jackson,
State Insurance Commissioner.

We have in hand your letter in which you state that an insurance company, organized and incorporated under the laws of the Commonwealth of Virginia and doing business in Maryland, has requested credit against the retaliation tax on account of the cost of publication of abstracts of its annual statement as required by Article 48A, Sec. 34 of the Annotated Code of Maryland (1951 Ed.). The company's contention is that the cost of such publication should be computed as part of the aggregate "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".

You inform us that in actual practice, it has been the custom to require the two publications directed by Section 34, but that, in each case, you have allowed the company involved to select the newspapers in which the publication is to be made. Thus, there has been diversity in the costs of publication arising from the newspaper chosen and the style and size of type in which the abstract has been printed.

We believe that it would be better practice for the Commissioner to publish the abstract of the annual statement of each company in some uniform or standard style. This would not only be in strict conformity with the statute, but it would also reduce the diversity of costs of publication to the difference between rates of various newspapers published in the City of Baltimore. Since the statute further provides that "the actual cost of such publication by the

Commissioner shall be taxed against and collected from the companies whose statements are so published by him", we believe that the sums so taxed and collected should be allowed as a credit against the retaliatory tax of States which do not make a similar charge against Maryland companies.

The second publication of abstracts of annual statements required by Section 34 may be published in any other newspaper of Baltimore City, chosen by the company. Although this second publication is directed by law, its style, format and cost are entirely within the discretion of the company. Thus, it would hardly be within the intention of the Legislature that unlimited expenditures for this statement which, in many instances, would be a form of advertising, should be allowed as a credit against the retaliation tax. Virginia companies would otherwise be virtually allowed a free advertisement, and consequently the result would be to defeat the purpose of the statute in attempting to equalize the economic burdens of foreign and domestic companies. We suggest, therefore, that you could adopt a regulation establishing the maximum cost for publication of the abstract of the annual statement by the company which would be allowed as a credit against the retaliation tax. If the company chose to publish its abstract in a more elaborate manner at a cost in excess of the amount specified by your regulation, it would have to do so without credit against the retaliation tax, so far as the excess is concerned.

For the reasons stated, it is our opinion that the cost of publication of the abstracts of annual statements of foreign companies by the Commissioner should be allowed as a credit against the retaliation tax, but that credit should be allowed against the tax on account of the company's own publication of the abstract only to the extent specified by the Insurance Department.

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

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

INSURANCE—CORPORATION FURNISHING MEDICAL EXAMINATIONS AND MINOR SERVICES TO MEMBERS OF LABOR UNIONS NOT ENGAGED IN BUSINESS OF INSURANCE.

November 19, 1954.

Mr. Charles S. Jackson,
State Insurance Commissioner.

Re: Labor Health Plan of Maryland, Inc.

You have recently forwarded to us a copy of a brochure published by "Labor Health Plan of Maryland, Inc.", describing its proposed activities together with a letter from its attorney. According to the information contained in these sources, the proposition is to form a corporation which will employ and utilize the services of doctors in practically all fields of medicine, together with related technical assistants. When in operation, the Company will provide medical service for labor unions for the benefit of their members with emphasis upon preventive medical service, i.e. early diagnosis and treatment. The unions will be invited to contract with the Corporation for such services for a specific period of time. You ask our opinion as to whether such a plan would be subject to the provisions of Article 48A, Annotated Code of Maryland (1951 Ed.).

Section 149 of that Article provides:

"Any company other than a life insurance company writing or issuing any contract insuring against bodily injury, disablement, or death by accident, or against disablement resulting from sickness or old age, and every insurance appertaining thereto, shall be deemed and taken to be a health and accident insurance company within the meaning of this Article, and shall be subject to all the requirements of law applicable to casualty insurance companies."

If Labor Health Plan of Maryland, Inc. intended to contract to provide medical attention upon the happening of a stated contingency—illness—it would appear that it would be within the scope of Section 149, and, therefore, subject to the other applicable requirements of Article 48A. Since the Plan contemplates, however, periodic examinations at stated times with such minor out-patient care as may be disclosed to be necessary, the intrinsic element of insurance is absent. Thus, these facts seem to fall within the principles of 18 Opinions of the Attorney General, 312, in contrast to 18 Opinions of the Attorney General, 303 and 311. Moreover, Section 281 (1) (b) exempts:

“orders, societies or associations which admit to membership only persons engaged in one or more crafts or hazardous occupations, in the same or similar lines of business, and women’s societies or women’s auxiliaries operating in conjunction with such orders, societies or associations;”

This language operates to exempt a union which provides the services proposed by Labor Health Plan of Maryland, Inc., although it would not extend to a corporation which was offering such services to the general public. The subsection contemplates, in other words, exempting organizations whose members are its immediate beneficiaries. Under the facts recited herein, it would appear that the relationship between the Corporation and the members of the unions who will receive medical attention is no closer than that of a third party beneficiary to a contract. Thus, the service is provided by the union for its members through the Plan in the same manner as if the union retained a physician on its staff for the purpose of examination and diagnosis.

For the reasons stated, it is our opinion that if Labor Health Plan of Maryland, Inc. is organized and operated in accordance with the prospectus, it would not be subject to the pertinent provisions of Article 48A governing the insurance business in the State of Maryland. Whether the

proposed plan will involve a violation of the Medical Practice Act or the ethics of the medical profession is not a matter for us to decide. 18 Opinions of the Attorney General, 312, 313.

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

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

INSURANCE—INSURANCE COMMISSIONER MAY REQUIRE APPLICANTS FOR LICENSE AS INSURANCE ADVISERS TO SUBMIT TO COMPREHENSIVE EXAMINATION.

November 29, 1954.

Mr. Charles S. Jackson,
State Insurance Commissioner.

You put to us the case of a candidate for a license as insurance adviser whose application states that he does not give advice with respect to life insurance. This candidate has refused to take an examination which includes life insurance questions and insists that he be examined and given a license limiting him to acting as an insurance adviser for fire, casualty and miscellaneous lines only.

Article 48A, Section 119, Sub-sections 4, 5 and 6 of the Annotated Code of Maryland, 1951 Edition, provide as follows:

“(4) The Insurance Commissioner may issue an insurance adviser’s license to any person who is a legal resident of this State, or who is a non-resident licensed as an insurance adviser in the State of his residence, hereinafter designated as a licensee, who is trustworthy and competent to act as an insurance adviser in such manner as not to jeopardize the public interest and who has complied with the pre-requisites herein prescribed.

“(5) Before any such license or any renewal thereof shall be issued by the Commissioner there shall be filed in his office a written application therefor. Such application shall be in the form or forms and supplements thereto prescribed by the Commissioner and shall contain such information as he may require.

“(6) The Commissioner shall, in order to determine the trustworthiness and competency to act

as an insurance adviser of each individual applicant for such license, require every such individual to take and pass, to the satisfaction of the Commissioner, a personal written examination. In the case of application for renewal license, such examination shall not be required, unless the Commissioner determines that such examination is necessary in order to determine the trustworthiness or competency of such individual."

Nothing in Section 119 authorizes the issuance of a restricted or limited insurance adviser's license. A wide discretion is vested in you as Commissioner, since the personal written examination required must be passed to your satisfaction.

If, in the exercise of this broad discretion, under your commission you find it is necessary for the welfare of the State and of the insurance industry, that insurance advisers be competent in all fields of insurance, I believe that you may validly insist that examination include questions concerning life insurance as well as fire, casualty and miscellaneous lines, and that you may decline to issue a license in the absence of a satisfactory performance upon such examination.

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

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

INSURANCE—PREMIUMS COLLECTED BY INSURANCE COMPANY FROM ITS OWN EMPLOYEES UNDER RETIREMENT PLAN ARE TAXABLE—“TERMINATION ALLOWANCES” ARE DEEMED TO BE SURRENDER VALUES AND AS SUCH ARE NOT DEDUCTIBLE.

November 29, 1954.

Mr. Charles S. Jackson,
State Insurance Commissioner.

Re: Reports of Premiums for Taxation—The Equitable Life Assurance Society of the United States.

You put to us the case of an insurance company which has not included premiums collected from Maryland agents of the company, who participate in the company retirement plan, in its reports of premiums for taxation. We also understand that the company has been deducting termination allowances under annuity contracts as return premiums in preparing tax reports. In 1943, the company established a contributory retirement plan for its agents and employees. Since that time, total contributions from Maryland employees and agents have amounted to \$13,576.21 and have not been allocated or reported to the State as taxable premium income. You also advise us:

“The group annuity contracts provide, in general, for the refund of employees’ contributions plus interest if they leave the employ of the employer; and for the refund to the employer of his contribution, unless the employer’s contributions are vested. These refunds were charged to surrender values of group annuities until 1945, thereafter the contributions refunded (both employers’ and employees’) were charged to a new account ‘Group Annuity Contributions Refunded’, and these were offset against the premium income account. At the time of refund a surrender charge of 5% of the total employee and employer contributions plus

interest is made against the employer. The amount of interest refunded is charged to an interest account. Thus the amount of \$275,523.85 represents termination allowances on group annuities not in excess of the premiums originally taxed.

“In addition to this deduction the Society claimed a deduction of \$227,582.14 as returned annuity considerations which is reported on the tax return submitted to your state. This amount is analyzed:

Surrender value allowed—		
death prior to commencement of annuity		
—group	\$ 41,607.26	
Less: excess of surrender value allowed over premiums received	4,138.93	\$ 37,468.33
	<hr/>	
Surrender value allowed—		
death prior to commencement of annuity		
—ordinary	\$147,725.19	
Less: excess of surrender values allowed over premiums received	79,567.73	68,157.46
	<hr/>	
Surrender value allowed—		
Annuity ordinary	\$172,577.37	
Less: excess of surrender values allowed over premiums received	40,944.01	
Less: surrender values used to purchase supplementary contracts involving life contingencies	9,677.01	121,956.35
	<hr/>	<hr/>
Total		\$227,582.14”
		<hr/>

The Maryland premium tax specifically provides that surrender values may not be deducted as return premiums. We can find little distinction between so-called "termination allowances" and surrender values.

In our opinion, the premiums collected from agents and employees of an insurance company are taxable in the same manner as premiums collected from other citizens of the State under similar plans. We further believe that the termination allowances under annuity contracts are surrender values which are excluded from the deductions allowed under Paragraph (b) of Section 135 of Article 81.

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

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

INSURANCE—COST OF UNDERWRITING ACTIVITIES IS INCLUDED AMONG ORGANIZATIONAL AND PROMOTIONAL EXPENSES LIMITED BY ARTICLE 48A, SECTION 46.

November 29, 1954.

Mr. Charles S. Jackson,
State Insurance Commissioner.

You have requested a ruling in the case of several incorporators who are in the process of organizing a stock insurance company. They frankly anticipate that the costs of organizing and promoting the company will be in excess of the limits prescribed by Article 48A, Section 46, of the Annotated Code of Maryland, 1951 Edition, if the sale of stock is to be conducted by agents or brokers.

The promoters of the company now propose to revise their plan so as to eliminate the sale of stock by agents or brokers and to place the whole issue in the hands of an underwriter. You inquire, in effect, whether the activities of the underwriter should be included in computing the expenses contemplated by Section 46.

Underwriting has frequently been defined by courts in this country. A Federal court recently said, in substance, that underwriting is defined as an agreement made before shares are brought before the public that if the public does not take all of the shares, the underwriters will personally buy the unsold shares. *In Re Hackett, Hoff and Thiermann*, C.C.A. Wisc. 70 F. 2d 815, 819. See also *Firebaugh v. Segren*, 265 Ill. App. 381; *Busch v. Stromberg Carlson*, C.C.A. Mo. 217 Fed. 328, 330; *Bone v. Hayes*, 99 Pac. 172, 174, 154 Cal. 759.

In the light of these judicial definitions, I do not believe that there is a difference, under the circumstances described, between the activities of an underwriter and the activities of an agent or broker which would serve to sup-

port a distinction. Consequently, I feel that in computing the promotional expenses contemplated by Section 46, you should include activities of underwriters as well as agents and brokers.

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

JUVENILE COURT

JUVENILE COURT—MAY NOT IMPOSE WORK PROGRAM ON MINORS IN LIEU OF DISCIPLINARY ACTION SPECIFIED BY STATUTE.

August 5, 1954.

*Hon. Evan Crossley, Judge,
Juvenile Court of Washington County.*

We have carefully reviewed your letter in which you point out the problem existing in Washington County, where it is difficult for youths to obtain employment at this time. We understand that this condition makes it difficult for you to provide for rehabilitation of delinquent juveniles in accordance with the spirit of the law. You have, therefore, proposed that your court should impose appropriate sentences of confinement in proper cases and suspend them on condition of payment by the offenders from the proceeds of their own independent work; or in the alternative, by voluntary collecting trash from county roadsides for an appropriate number of days. You suggest that the County Commissioners of Washington County would probably be willing to cooperate with this program by providing a truck and driver.

The use of convict labor is provided by Article 27, Sections 800 to 814, and Article 89B, Section 163. We do not believe, however, that either of these statutes would be applicable to a case arising in your court in the absence of some explicit statutory expression on the subject.

The Juvenile Court of Washington County was created by Chapter 526 of the Laws of 1941. That Act repealed Sections 558 to 578, inclusive, of Article 22 of the Code of Public Local Laws of Maryland (1930 Edition), and enacted in lieu thereof eighteen new Sections to be known as Sections 558 to 575, inclusive. Section 568 provides, among other things, for the Court's powers in rendering judgment.

Among the provisions of Section 568, we find no specific authorization for the type of rehabilitation program which you propose. Subsection 2 (a) does provide, however, that the Court may suspend sentence. Subsection 2 (b) provides that a child may be placed on probation upon such terms as the magistrate shall determine and subject to the further orders of the magistrate. Subsection 2 (f) provides that the Court may render such other and further judgment as the magistrate may deem to be for the best interests of the said child. Section 560, subsection (c) defines "child" as a person less than eighteen years of age.

It is to be noted, however, that Section 568(g) (2) provides that the court may find a child "delinquent, neglected, dependent, or otherwise within the provisions of this act * * *". This enumeration of possible findings does not include that of criminal guilt. Section 568 (h) provides that "No adjudication upon the status of any child under the age of sixteen in the jurisdiction of the court shall operate to impose any of the civil disabilities ordinarily imposed by conviction, nor shall any such child be deemed a criminal by reason of such adjudication, nor shall such adjudication be deemed a conviction".

Such language is material and significant, especially when it is compared with the Thirteenth Amendment to the Constitution of the United States, which provides:

"Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

"Section 2. Congress shall have power to enforce this article by appropriate legislation."

In view of the nature of the jurisdiction conferred upon your Court, and of the Constitutional limitations imposed by the Thirteenth Amendment, we are of the opinion that

to attempt to impose some type of labor upon juveniles in lieu of other action specifically authorized by law would be of at least doubtful validity.

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

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

JUVENILE COURT — WASHINGTON COUNTY — TRIAL MAGISTRATE SITTING AS JUVENILE COURT JUDGE HAS POWER TO RELEASE PRISONER SENTENCED BY THAT COURT.

October 6, 1954.

Mr. Harold E. Donnell,
Superintendent of Prisons,
State Department of Correction.

We acknowledge your recent inquiry concerning the authority of the Justice of the Juvenile Court of Washington County (who is a Justice of the Peace and not a Circuit Court Judge) to order the release of prisoners sentenced by him in his court to the Maryland State Reformatory for Males.

There is no question but that an ordinary Justice of the Peace, even one designated as a Trial Magistrate under the Trial Magistrates System Law, has no power to re-open a case after a judgment, or to recall or amend a commitment, 25 Opinions of the Attorney General, 191. However, Article 52, Section 93 of the Annotated Code provides that Trial Magistrates have power to release prisoners upon suitable written orders if their fines are paid after they have been committed for non-payment of fines by the Trial Magistrate so ordering.

Your letter does not indicate whether or not this was the case in connection with the particular individual involved. Further, Section 70 of Article 26 of the Maryland Code, which sets up courts for juvenile causes under the various Circuit Courts for the Counties, states that the sub-title in connection with juvenile causes shall not apply to Washington County, and the juvenile court for Washington County derives its authority from public local law applicable to that court and that County alone. It is, therefore, necessary to examine that law to determine just what the jurisdiction and powers of the Washington County Juvenile Court Judge are. These may be found in Chapter 526 of the Acts of 1941.

The Magistrate for Juvenile Cases in the Juvenile Court for Washington County has the authority to suspend sentences, place children or adults on probation, continue proceedings and place children in institutions and even "render such other and further judgment as said Magistrate may deem to be for the best interest of said child." He has the power to modify judgments and modify or revoke orders of commitment with respect to children, and Section 569 (a) of Chapter 526 states that:

"All provisions of this act relative to procedure in cases of children, so far as practicable shall be construed as applying to cases against adults also
* * *"

A thorough reading of this Act of the Legislature, namely, Chapter 526 of 1941, leads us to the belief that the Magistrate for Juvenile Cases in Washington County would have the right to release prisoners whom he had sentenced to the Maryland Reformatory for Males, and we would, therefore, advise your Department to honor such release orders when presented.

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

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

LEGISLATURE

LEGISLATURE—RECORDING OFFICER MAY CORRECT ERRORS
IN RECORDS WHEN HE DISCOVERS THEM FROM INFOR-
MATION AVAILABLE IN HIS OFFICE.

June 23, 1954.

Mr. James P. Brock,
Administrative Assistant.

We are in receipt of your inquiry as to the propriety of making a correction on your Legislative Docket of the 1954 Session of the General Assembly when an error was discovered therein. We understand that a legislative agent registered with you on February 19, 1954. Under the current procedure in your office, such an agent personally fills in the pages of the Docket assigned to him. When the agent in question, registered, he stated the date of employment was February 20, 1954, with employment to continue until March 15, 1954. For some reason which can only be presumed to be inadvertent he then put ditto marks under the date of March 15, 1954, and opposite the words "Date of Registration". The page in question was No. 50. Page 49 shows date of registration of February 24, 1954, and Page 51 shows the same date of registration. Under these circumstances, it was obvious to you that March 15, 1954, could not have been actually the date of registration. Furthermore, the legislative session in 1954 had adjourned prior to March 15th, and the docket was closed before that date, so that there would have been no way to register on that date. Additional corroboration is given by the fact that employees in your office recall that the date of actual registration was in February, rather than March.

All of these circumstances amount to knowledge on your part of a prima facie discrepancy on the Legislative Docket. In 53 C.J., Records, Sec. 29, it is said:

"* * * it is generally held that a recording officer while in office may alter or amend his

record by correcting mistakes or supplying omissions so as to make it conform to the facts; in fact, it has been held that it is the duty of the recording officer to correct mistakes and to supply omissions in records whenever he discovers them from data in his office."

Hudson v Kootenai Power Co., 44 Ida. 423, 258 P. 169; *People v. Hartquist*, 315 Ill. 228, 146 N.E. 140; *Glencoe Bd. of Education v. Trustees of Schools*, 74 Ill. A 401 (Aff. 174 Ill. 510, 51 N.E. 656); *DuPage County v. Martin*, 39 Ill. A. 298 (Aff. 142 Ill. 607, 32 N.E. 269); *Baker v. Webber*, 102 Me. 414, 67A. 144; *Jay v. Carthage*, 48 Me. 353; *Welles v. Battelle*, 11 Mass. 477; *State v. Cornell*, 56 Nebr. 143, 76 N.W. 459; *Sellers v. Sellers*, 98 N.C. 13, 3 S.E. 917; *Baldwin v. Marshall*, 2 Humphr. 116; *Mott v. Reynolds*, 27 Vt. 206; *Kaesar v. Town of Starksboro*, 77 A. 2d 831, 116 Vt. 389.

This situation and the rule quoted from *Corpus Juris* may be distinguished from the factual background of 37 Opinions of the Attorney General, 150, where it was held that a Clerk of Court may not alter marriage license applications except upon Order of Court. In that case, the license application was a mere record of statements made under oath to the Clerk at the time of applying and concerned facts of which he, under normal circumstances, would have no personal knowledge. Being a record of what was said, obviously it must stand, and a mere change of statement by the applicant would not justify alteration of the record.

In the instant case, however, the change was made when the error was discovered from data in your office. This conforms to the general rule quoted above. The facts upon which the change was made were not facts exclusively in the possession of the registrant, but were equally, if not preponderantly, in your possession. Under these circumstances, it is our opinion that it was proper for you to

correct page 50 of the Legislative Docket of the 1954 Session of the General Assembly of Maryland, in order to make it conform to the facts.

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

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

LEGISLATIVE COUNSEL AND AGENTS--EMPLOYERS OF LEGISLATIVE COUNSEL OR AGENTS MUST FURNISH SECRETARY OF STATE WITH COMPLETE AND DETAILED STATEMENT OF ALL EXPENSES INCURRED IN CONNECTION WITH SUCH EMPLOYMENT.

September 1, 1954.

Mr. James P. Brock,
Secretary of State's Office.

Some time ago you forwarded to us pages from the Legislative Docket for the year 1954 along with files numbered 1 to 56, both inclusive, for our examination. Those files which do not show compliance with the requirements of Sections 5 to 14, both inclusive, of Article 40 of the Code fall within one or more of three categories.

The cases in which no reports whatever were filed, as required by Section 10, are numbered 8, 22, 24 and 35. Those in which the reports were not signed, or sworn to, or both, as required by said Section are 1, 2, 3, 5, 10, 11, 12, 13, 18, 23, 26 and 36. The cases in which the reports did not include the salary or compensation of the legislative agents are 9, 12, 13, 16, 19, 21, 25, 29, 31, 32, 33, 34, 41, 42, 45, 48 and 49.

Many of the reports in the last category contained a statement that the legislative counsel or agent was either a full-time employee of his principal, or was on an annual retainer basis, and that no additional compensation was paid for attending the sessions of the General Assembly. It is unlikely, we think, that a statement of this nature satisfies the requirements of Section 10 of Article 40 of the Code, which calls for:

“* * * a full, complete and detailed statement sworn to before a proper officer, by the person making the same, or, if a corporation, by both president and treasurer, of all expenses paid or incurred by

such person or corporation in connection with such employment of legislative counsel or agents, or in connection with promoting or opposing in any manner, directly or indirectly, the passage or defeat by the general assembly of any legislation within the terms of this sub-title; * * *”

In enacting this law, the General Assembly was careful to make provision for the disclosure of the names of persons engaged as legislative counsel and agents, the persons by whom they were employed, and the subject matter of the legislation to which their employment related. Section 10 requires the filing of the report referred to above within 30 days after the adjournment of each session of the General Assembly.

The statute requires expressly that “all expenses paid or incurred” be reported and to be sure that language is broad enough to include the salary or other compensation of a full time employee, as well as that of one who is paid an annual retainer. If less than this is to be required, we think it must come through the action of the General Assembly, rather than from a strained and unnatural construction of the law by us.

Hence, for an employer to state that his legislative counsel or agent was not paid any additional compensation for his work at the General Assembly, we think, is not in compliance with the law. If the person receives an annual salary or retainer, then that part of his compensation which is proportionate to the time or effort spent as a legislative counsel or agent should be set forth in the report filed in accordance with Section 10.

We are informed that successive Secretaries of State have, for many years, accepted from employers of legislative counsel or agents, who are either full time employees of the principal or who are on an annual retainer basis, a statement that no additional compensation was paid for attending the session of the General Assembly. This type of statement

has been considered adequate for purposes of Section 10 of Article 40, *supra*, for many years. The question has been raised as to the effect of this administrative interpretation. 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. R.R. Co.*, 188 Md. 44, 58; *Smith v. Higinbotham*, 187 Md. 115, 132-133; *Popham v. Conservation Commission*, 186 Md. 62, 71; *Baltimore v. Machen*, 132 Md. 618, 622-623. See also Sutherland, *Statutory Construction*, 3rd Edition, Volume 2, Section 5103. It is equally well settled, however, that "an administrative practice opposed to * * * a clear, explicit statute could only be in violation and 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." *Graham v. Joyce*, 151 Md. 298, 307. See also *Arnreich v. State*, 151 Md. 91, 105-106; *Bouse v. Hutzler*, 180 Md. 682, 687; *State Tax Comm. v. Western Maryland R.R. Co.*, 188 Md. 240, 258; *Pierce & Hebner, Inc. v. State Tax Comm.*, 194 Md. 254, 261; Sutherland, *Statutory Construction*, 3rd Edition, Volume 2, Section 5104. For the reasons given earlier in this opinion, we believe that the requirements of Section 10 of Article 40, *supra*, are clear and that, therefore, they may not be changed by administrative interpretation.

It has been brought to our attention, however, that due to the administrative interpretation mentioned above and following the practice of many years, the employers of persons on annual retainers and of persons on full time who also act as legislative counsel or agents during sessions of the General Assembly have kept no record of the time spent by such employees in the interests of their employers in connection with the last session of the Legislature. Therefore, they are unable to state accurately that part of the compensation which is proportionate to the time or effort spent as legislative counsel or agent. While an adminis-

trative construction cannot change the clear meaning of the law, we believe that where persons affected by a law have been misled by an erroneous construction, any change in construction should not be so sudden as to embarrass those who in good faith believed that they were in compliance with the law and who, in fact, did comply with the law as theretofore construed by the administrative officer charged with its enforcement.

In view of the foregoing, we believe that the reports of employers filed this year for counsel or agents in the classification under discussion should be deemed acceptable and sufficient. In the future, however, the employers of legislative counsel or agents in this classification must file reports giving the information as indicated hereinbefore in order to satisfy the requirements of Section 10 of Article 40 *supra*.

With regard to those cases in which no reports whatever were filed, as required by Section 10, we suggest that you write the persons involved informing them that they must file a report as required by law and that unless this is done within a reasonable time, the matter will be turned over to the State's Attorney for Anne Arundel County for prosecution. A similar course should be followed with regard to those who filed reports which were not signed, or sworn to, or both, as required by the Section. These persons should be informed of the irregularities contained in their reports and corrections of these irregularities within a reasonable time should be demanded.

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

AMBROSE T. HARTMAN, *Asst. Attorney General*.

MENTAL HYGIENE

MENTAL HYGIENE—SUPERINTENDENT OF INSTITUTION FOR THE INSANE MAY DESIGNATE EMPLOYEES AS POLICEMEN FOR RETURN OF PAROLED PATIENTS WHO ARE NOT ADJUSTING TO FREEDOM.

February 18, 1954.

*Dr. Isadore Tuerk, Superintendent,
Spring Grove State Hospital.*

You have requested our opinion relative to a problem arising from the parole of a patient from the Spring Grove State Hospital. You refer to the case of a man who has had four admissions to the Hospital since 1936. His last admission was by medical certification on March 17, 1953. On May 17, 1953, he was paroled for twelve months in the care of his family. Since that time, you have received a number of complaints relative to his behavior and it has been suggested to you that the patient be returned to the Hospital. You have written to the patient's parents, requesting them to return him to the Hospital but to date you have received no answer. You do not believe that the Hospital has the authority to enter a man's home in order to return him to the Hospital, and you wish to know whether you are correct in this conclusion.

Section 40 of Article 59, 1951 Code, provides that the Superintendent of any institution for the insane may grant any patient "leave of absence or parole, on trial" for a period not exceeding one year and may renew the one year parole period upon application, in writing, by relatives or friends of the patient who obligate themselves to give him proper care during the period of parole. The Section concludes with this sentence:

"* * * Any such patient may be returned by his friends or brought back by the duly designated officers of the institution from which he has been

paroled at or before the expiration of the period of parole, as provided for the return of patients who have escaped from institutions, asylums, hospitals, homes or retreats for the insane within this State."

It is our opinion that the sentence quoted vests the institution with the authority, through its duly designated officers, to return a paroled patient and that this may be accomplished in the same manner provided for the return of patients who have escaped from the institution. Section 29 of Article 59 provides the method for the return of an escaped patient, as follows:

"The superintendent of any institution, public, corporate or private, or almshouse, which may be duly authorized to hold in custody any insane person in accordance with law, may appoint one or more of the attendants or other employees of such places as policeman or policemen, whose duty it shall be, under the orders of said superintendent or manager or keeper, to arrest and return to such asylum or other institution for the treatment of the insane any insane person who may escape therefrom, and to protect the property and premises of said institution, provided the person or persons so appointed shall be commissioned by the Governor under the provisions of Article 23, Sections 316 to 322, both inclusive, of the Code."

Referring to Article 23, Sections 316 to 322, we find that you may apply to the Governor to have one or more attendants appointed policemen for the purpose of returning to the Hospital both escaped patients and paroled patients whom you feel are not adjusting to their freedom.

It is apparent from your letter that you are reluctant to follow the procedure above outlined. You prefer to follow the usual procedure for arrests in criminal cases; viz., an arrest by a police officer under the authority of a war-

rant issued by a magistrate. We feel that you may continue to follow such procedure in appropriate cases, but there may be cases in which you are unable to obtain either a warrant or the assistance of law enforcement officers and to which the procedure above outlined is peculiarly adapted.

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

AMBROSE T. HARTMAN, *Asst. Attorney General*.

MICROFILMING

MICROFILMING—ALTHOUGH THE LEGISLATURE AUTHORIZES
MICROFILMING OF RECORDS THE ORIGINAL MUST BE
RETAINED AS REQUIRED BY LAW.

April 1, 1954.

Dr. Morris L. Radoff,
State Archivist, Hall of Records.

We are in receipt of your letter of March 4, 1954, in which you inquire whether destruction of records may be authorized without regard to statutory retention requirements when such records have been microfilmed in accordance with the standards established by the Hall of Records Commission. We have read with interest the memorandum which you forwarded with your letter.

At the conclusion of your memorandum, the question is restated. Briefly, it is whether a microphotograph produced in accordance with the provisions of Section 157(a) of Article 41 of the Annotated Code of Maryland (1951 Edition) is, for the purpose of retention requirements, considered to be a record, thereby permitting the disposal of the original document from which the microphotograph was made. Section 154 of Article 41 of the 1951 Edition of the Code is Section 127A of Chapter 755 of the Laws of 1949. The latter Section was construed in 35 Opinions of the Attorney General, 251, at 254, wherein it was said of Section 127A that: "Nothing herein authorizes destruction of the originals in contravention of the express language of Section 127A".

While we are mindful of the increasingly heavy burden of filing and storage of records, it appears that the legislative intent in using the word "original" was to mean the paper writing, and not the microfilm copy, must be preserved.

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

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

MOTOR VEHICLES

MOTOR VEHICLES—AFTER CORPORATION “A” AN INTERSTATE CARRIER HAD PAID ITS SEAT-MILE TAX FOR THE YEAR IT MERGED WITH “B” THE SURVIVING CORPORATION—THE TAX SO PAID INURED TO THE BENEFIT OF “B” BY VIRTUE OF ART. 23 SEC. 67(3) OF THE 1951 CODE. BY THE SAME TOKEN THE 2% TITLING TAX ON BUSES FORMERLY OWNED BY “A” ALSO INURES TO BENEFIT OF “B”.

July 19, 1954.

*Mr. Owen R. E. McGeeney, Comptroller,
Department of Motor Vehicles.*

In answer to your letter of recent date concerning the merger of the Pennsylvania Greyhound Lines, Inc., into The Greyhound Corporation, it is necessary to refer to two Maryland statutes. One is found in Article 81, Section 270 of the Maryland Annotated Code, which Section does not seem to have been changed at all by Chapter 657 of the Acts of 1953, and the other provision is found in Article 23, Section 67 of the Annotated Code of Maryland.

Section 270 of Article 81 provides that if an interstate corporation makes any change in a bus route which curtails the service theretofore rendered, the bus company is entitled to certain refunds, provided that the curtailment was done in accordance with authority exercised by some agency of the State or Federal Government which had the power to grant the company the right to curtail its service. However, this whole Section is entirely silent on the effects of merger. Section 67, subsection (3) of Article 23 does provide that, upon a consolidation or a merger in accordance with the sub-title, “All the property, rights, privileges and franchises, of whatsoever nature and description, of each of the corporations party to the articles, including subscriptions for shares and other choses in action, shall be transferred to, vested in and devolved upon the new or the surviving corporation, without further act

or deed". There can be no doubt but what this applies to interstate corporations because Section 62 of the same Article covers that question precisely, so as to leave no doubt in one's mind. Of course, there are certain steps which have to be taken, which are purely mechanical and bookkeeping in nature, but the rights of the merged corporation are covered by subsection (3) of Section 67 of Article 23, as above set out.

It seems to us, therefore, that it will not be necessary for the merging corporations to ask for any refund as provided in Section 270 of Article 81, as the conditions under which refunds are provided for by this Section do not presently exist. The corporation which has survived the merger should, of course, take all of the legal steps which the law provides for, so that the various agencies of the State of Maryland will be fully informed as to what has taken place. By agencies, we mean, of course, the Public Service Commission, the State Tax Commission, and whatever other agency might be entitled to have such information. In conclusion, permit us to say once again that, after the merger of the Pennsylvania Greyhound Lines, Inc. with the Greyhound Corporation, it will not be legal to collect the seat-mile tax from The Greyhound Corporation which has already been paid by the Pennsylvania Greyhound Lines. By the same token, it will not be necessary to pay another 2% titling tax on the buses that are already titled in the State of Maryland.

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

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

MOTOR VEHICLES—ARTICLE 52, SECS. 92-116 OF 1951 CODE AND AMENDMENTS THERETO SHOULD BE CONSTRUED TO BE PUBLIC GENERAL LAW—THEREFORE SECS. 99 AND 112 OF ARTICLE 52 OF THE SUPPLEMENTAL CODE OF 1954 ARE APPLICABLE TO ALL TRIAL MAGISTRATES THROUGHOUT THE STATE AND SHOULD BE CONSTRUED ACCORDING TO ORDINARY RULES OF INTERPRETATION AND NOT ACCORDING TO ARTICLE 1, SEC. 13, OF THE CODE OF 1951. THIS MEANS THAT THE SAID SUB-SECTIONS ARE APPLICABLE TO PRINCE GEORGE'S COUNTY.

August 27, 1954.

*Mr. Owen R. E. McGeeney, Comptroller,
Department of Motor Vehicles.*

Your recent inquiry has to do with the extent and application of Sections 99 and 112 of Chapter 26 of the Acts of the General Assembly of 1954, now codified as Sections 99 and 112 of Article 52 of the Supplemental Code of 1954. The question is forced upon your Department because of the legal set-up which exists in Prince George's County. By the Acts of 1953, Chapters 464 and 639, the Legislature framed a fairly comprehensive system for Trial Magistrates in Prince George's County, which is quite different from that in any other county in the State. This system was made necessary by virtue of the rapid growth of Prince George's County and the corresponding increase in traffic violations.

Under the provisions of the Acts of 1953, the Trial Magistrate has the power to appoint a clerk and the clerk was given the power and the authority to collect all fines, costs, forfeitures, etc., and it is his duty to see that these fines and forfeitures are turned over to the proper persons and corporations. The intent of the Legislature in 1953, as set out in Article 52 of the 1954 Supplement of the Code, Section 29A, being a part of Chapter 639 of the Acts of 1953, was that the Trial Magistrate in Prince George's County might be relieved of all administrative duties except that of

supervision, so that he might devote his full time to the trial of cases. The law also provided that since the clerk handled all the fines and costs and penalties, he should be under a \$5,000.00 bond. This portion of Chapter 639 is now codified in the 1954 Supplement as Section 112A.

However, Chapter 26 of the Acts of 1954, which is now codified as Section 112 of Article 52 (1954 Supplement), provides that the Commissioner of Motor Vehicles may, by regulation, require the several Trial Magistrates to give and file such additional bonds as, in his determination, shall be advisable or necessary in relation to the amount of fines, forfeitures, penalties and costs collected by the said Trial Magistrate; and Section 99 of Article 52 of the 1954 Supplement provides that every Trial Magistrate shall promptly deposit in a bank or banks, as specified by the Commissioner of Motor Vehicles, in an account or accounts opened in his official capacity, all fines, forfeitures, penalties and costs imposed and collected by him in cases involving violation of the motor vehicle law. This section of the law also provides that all money or moneys so deposited shall be subject only to the order of such Trial Magistrate or his lawfully constituted successor in office. Therefore, it is readily understood why the question arises.

Do the recent enactments of 1954 apply to Trial Magistrates in Prince George's County?

It has been suggested by the Trial Magistrate of Prince George's County that the Acts of 1953 are Public Local Laws and, therefore, should be construed in the light of Article 1, Section 13, of the Code of 1951, which provides as follows:

“Where the public general law and the public local law of any county, city, town or district are in conflict, the public local law shall prevail.”

We feel that there are two answers to this suggestion. In the first place, when the Legislature set up the Trial Magis-

trate system throughout the State of Maryland, it did not enact a series of Public Local Laws, but a Public General Law, which is now known as Chapter 720 of the Acts of 1939. Surely, anyone who reads the aforesaid Chapter and the preamble thereto will be convinced that the Legislature is concerning itself with a State-wide system, and although there are such variations in the system as the Legislature deemed to be necessary to meet the needs of the different counties, it is, nevertheless, obvious that the Legislature was not enacting local legislation, but that it was legislating for the State generally.

The second answer is found in the case of *Alexander v. Baltimore*, 53 Md. 100 at 105. In this case it was claimed that the rule of interpretation was applicable to a situation where there was a conflict between the Public General Law and Public Local Law in Allegany County. However, the Court of Appeals explains that this rule of interpretation as presently set out in Article 1, Section 13, of the Code of 1951, was a necessary rule of interpretation at that time, because the adoption of a whole system of laws, general and local at one time, and by one act of the Legislature, made it necessary that some legislative rule of interpretation should at the same time be enacted by which the possible conflict between general and local laws thus enacted could be solved. As to the legislation occurring since that particular time, the Court of Appeals has consistently applied the ordinary rules of construction. In the case of *State v. Falkenham*, 73 Md. 466, the court held that this rule of interpretation applied to general and local laws adopted simultaneously, but as to subsequent legislation, it does not alter common law rules of construction. It, therefore, seems to us that the point of contention suggested is not applicable to the present situation.

We have given this a great deal of thought and consideration and have come to the conclusion that it was the intent of the Legislature that every Trial Magistrate in every county in Maryland is subject to the recent enact-

ment of 1954. These new statutes, being a part of the Public General Laws of the State, are intended to regulate our system of Trial Magistrates throughout the State. It seems to us, therefore, that the aforesaid Acts of 1953 which apply to Prince George's County only, are repealed to the extent that they are inconsistent with Sections 99 and 112 of Chapter 26 of the Acts of the General Assembly of 1954 and that, therefore, the Trial Magistrate of Prince George's County, as well as other Trial Magistrates throughout the State, must be bonded in accordance with Section 112 of Article 52 of the Supplemental Code of 1954. It is also our firm conclusion that the Trial Magistrate of Prince George's County, as well as the Trial Magistrates of all other counties, must open a bank account in his official capacity in which shall be deposited all the moneys, fines, forfeitures, penalties and costs imposed and collected by him in cases involving violations of motor vehicle laws, and that these moneys so deposited are subject to the withdrawal of the Trial Magistrate only.

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

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

MOTOR VEHICLES—OWNER OR OPERATOR FURNISHING PROOF
OF INSURANCE NEED NOT PROVE CONTINUING FINAN-
CIAL RESPONSIBILITY.

September 27, 1954.

Mr. William C. Leyko,
Financial Responsibility Division,
Department of Motor Vehicles.

Recently you have requested us to interpret Section 119 of Article 66½ of the Annotated Code of Maryland. Your interest in this matter issues out of the fact that frequently persons are involved in accidents and are protected fully by insurance but, for some reason or another, fail to make the fact known to your Department within 90 days after the receipt of a report of the motor vehicle accident under consideration. In these cases, you want to know whether or not such a person must not only prove his ability to legally satisfy any judgment which may be obtained against him for damages resulting from such accident, but must he also give proof of continuing financial responsibility. Of course, if an owner or operator is covered by insurance as specified in Section 119, and that insurance is liable for the judgment in the particular accident under consideration, then, of course, he has shown sufficient financial responsibility within the meaning of the law and he, of course, does not have to show any further financial responsibility in so far as the accident under consideration is concerned.

The second question is, does such an owner or operator have to give proof of continuing financial responsibility because of the mere fact that he fails to prove to your Department within the 90 day period that he does carry sufficient insurance? It seems to us that the answer to this question is "no", because the language of Section 119 very plainly, and in categorical terms, says this Section shall not apply to such operators or owners who are protected by insurance under the circumstances. In further answering this question it seems to us that the owner or

operator involved in such an accident should fully inform your Department within 90 days of the accident that he is so protected by insurance, because we feel that 90 days is a reasonable time in which to do so. If, however, at the end of 90 days from the date that the report of the accident should have been received, the owner or operator involved in the accident has not disclosed the fact that he is sufficiently insured to meet a judgement that may be obtained against him, then you should give him a ten day notice to the effect that he is liable to the penalties set out in Section 119. However, if at any time after that, the owner or operator involved in such an accident shows to your Department that he was covered by insurance at the time of the accident, then there is nothing in the law which will justify your Department in compelling such an owner or operator to give proof of his continuing financial responsibility. We say this because the statute itself specifically says that the first paragraph of Section 119 shall not apply to any owner or operator who was fully protected by insurance at the time the accident occurred.

The only penalties that an owner or operator can suffer under Section 119 are the revocations and suspensions prescribed in Section 119, but that portion of Section 119 which requires proof of continuing financial responsibility is not applicable to a person who carries the amounts of insurance prescribed in that Section, and for the purposes set out therein. Such an owner or operator must comply with the ten day notice which is sent him as provided. If he does not do so, then he must suffer the penalty or penalties set out in Section 119 until he does comply. But once he has shown that he was covered by legally adequate insurance, at the time of the accident, then the penalties imposed upon him must be lifted, because this statute does not authorize your Department to compel proof of continuing financial responsibility.

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

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

MOTOR VEHICLES—WHETHER PLACE WHERE MOTOR VEHICLE IS OPERATED IS A “PUBLIC HIGHWAY” WITHIN MEANING OF STATUTE PROSCRIBING RECKLESS DRIVING IS A QUESTION OF FACT FOR DETERMINATION BY TRIAL MAGISTRATE.

October 28, 1954.

*Judge Harry Leeward Katz,
Traffic Court of Baltimore City.*

In your recent letter you inquire whether violations of law are committed in those cases in which persons operate motor vehicles while drunk or in a reckless manner, at such places as drive-in restaurants, open-air theatres, rights of way to railroad stations, gasoline filling stations, or similar places.

As you state in your letter, Article 66½, Section 2, Sub-section (57), defines a street or highway in the following language:

“The terms ‘street,’ ‘highway,’ ‘roads,’ ‘public highway’ or ‘public roads’ shall include any highway or thoroughfare of any kind used by the public whether actually dedicated to the public and accepted by the proper authorities or otherwise and the term shall include roads and driveways of State Hospitals and other State Institutions.”

It is to be noted that sub-section (35) defines a private road or driveway as follows:

“(Private Road or Driveway.) Every way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner but not by other persons.”

It seems to us that when a person leaves a street and reaches a place where business is transacted, such as a

gasoline filling station or drive-in restaurant, it becomes a question of fact for the court to decide whether the driver is on a public road or on private property. If an operator of an automobile is using filling station property to cut through from one street to another, as many persons do to avoid stopping for traffic lights, he is using the property as a thoroughfare. Each case must, therefore, be decided in accordance with the evidence. It is our opinion that if a driver of an automobile stops at a filling station for gasoline and the operator then drives his car on to a lift for other service, he is on private property and not on a public street or thoroughfare. So, if while backing off the lift he collides with another, he is not guilty of reckless driving because he is on private property and not on a public highway.

However, in applying the law, care must be exercised to ascertain the exact definition of the specific violation as set out in the statute. For example, Code, Article 66½, Section 171, provides that it shall be unlawful for any person who is an habitual user of narcotic drugs or any person who is under the influence of intoxicating liquor or narcotic drugs to drive or attempt to drive any vehicle, street car or trackless trolley "*within this State*". This, of course, means that it is a misdemeanor to drive an automobile anywhere, under any circumstances, on any property, private or public, whether a street, highway or not, while under the influence of liquor or drugs.

However, the statutory provision relating to reckless driving is somewhat different (Article 66½, Section 174 (a)), in that it applies to the operation of a vehicle, street car or trackless trolley over any *public* highway of the State.

It has heretofore been held by the Attorney General that a farm lane is not a public road within the meaning of the statute. See 6 Opinions of the Attorney General, 361. However, it was held by this office that persons who drove

recklessly on certain private roads near Cabin John Bridge near Washington, D. C. could be held to be in violation of the law, because these roads were constantly used by the public as thoroughfares. 6 Opinions of the Attorney General, 378. At another time, this very question was considered by the Attorney General in connection with roads leading in and out of the Glenn L. Martin Company, and the opinion of the Attorney General at that time held that each and every case would have to be decided on its own facts. See 25 Opinions of the Attorney General, 420.

In your letter you ask specifically about such places as the entry to the Mount Royal Avenue Station and the street that runs adjacent to the Pennsylvania Railroad Station between St. Paul and Charles Streets. It seems to us that these streets are public highways within the definition set out in Article 66½, Section 2, sub-section (57). Even though these roadways may not be dedicated to the public and have not been accepted by the municipal authorities of Baltimore City, nevertheless, they are thoroughfares that are constantly used by the public. It, therefore, seems to us that they are clearly within the definition of a public street or highway, as set out in sub-section (57) of Section 2 of Article 66½.

You ask, too, about the Pennsylvania Produce Terminal and you say that there is a road or thoroughfare which leads to it and that wholesale produce dealers may use the road to reach the premises for the purpose of participating in auctions which are held there frequently. However, we are not informed if the road runs through the premises occupied by the produce yard or whether it terminates at that point. We think, therefore, that the determination of the character of the road will have to be decided upon considering all relevant facts which may be presented in any given case, rather than by the formulation of vague and general rules.

We feel that every portion of a drive-in theatre intended for the actual operation of automobiles might properly be

called a road, a street or thoroughfare within the statutory definition. But the places provided for patrons to park their motor vehicles are terminals and are not a part of the street or thoroughfare.

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

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

MUNICIPAL CORPORATIONS

MUNICIPAL CORPORATIONS—TOWN OF CENTERVILLE—AUTHORITY TO REGULATE USE OF PUBLIC HIGHWAYS BY TRUCKS AND OTHERWISE.

October 6, 1954.

Mr. Clayton C. Carter,
Solicitor for Town Commissioners.

We have your recent inquiry concerning the authority of the Town Commissioners of Centerville to prevent, by ordinance, trucks from using certain streets within the town limits, and the possibility of other rules or regulations being made by the Town Commissioners with respect to motor vehicle operations within the town limits of Centerville. As this is not entirely a local problem, but one of general application, we are glad to state our opinion in connection with this matter.

As presently codified, Section 151(a)(5) of Article 66½ of the Annotated Code of Maryland gives local authorities jurisdiction to regulate the speed and weight of vehicles in public parks only, and not upon other public highways. Generally speaking, Section 151 defines and limits the powers of local authorities to make traffic regulations which might possibly be in conflict with the general provisions of Article 66½, the motor vehicle law of Maryland, and local authorities, cities and towns, have no authority to pass any ordinances, rules or regulations in conflict with the provisions of the motor vehicle law, except as specifically stated in Section 151.

There have been numerous rulings by this office on this subject. For instance: 18 Opinions of the Attorney General, 360, wherein it was held that local authorities had no right to regulate the weight of motor vehicles outside of public parks; 19 Opinions of the Attorney General, 379, wherein it was held that local authorities did have the right to regulate parking; 31 Opinions of the Attorney General, 192, wherein it was held that local ordinances con-

trolling speed were in conflict with the general provisions of Article 66½; 32 Opinions of the Attorney General, 346, wherein it was held that the State Roads Commission itself could not designate a public highway as "Trucks Not Allowed"; and finally, 36 Opinions of the Attorney General, 199, wherein it was held that a township could not regulate the speed of vehicles in conflict with the general laws pertaining to speed limits. However, upon examination of the Town Charter of Centreville, we find in the Acts of 1953, Chapter 638, Article III, Section 57 (25) (d), at page 1222, the following:

"To regulate the use of streets and public ways by persons, animals and vehicles; to prohibit the use of such streets and public ways by any or all motor vehicles under such circumstances or upon such conditions as it may, from time to time, by ordinance, deem necessary or expedient in the interest of the public. * * *"

This is exactly the same language as that used in Section 29(d) of the Baltimore City Charter, and under this same language, Baltimore City has made ordinances, rules and regulations prohibiting the use of certain streets to trucks, which have been held to be within the powers of the Mayor and City Council of Baltimore by the City Solicitor, and have apparently never been challenged in the courts. With this view we are inclined to concur, and it is, therefore, our opinion that, under this language in the Charter, the Town Council of Centerville would probably have the authority to exclude trucks over a certain weight from the use of certain streets, assuming, of course, that such ordinance, rule or regulation was reasonable and not arbitrary or capricious, and that its application is uniform and inclusive.

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

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

NATIONAL GUARD

NATIONAL GUARD—OATH FOR COMMISSIONED OFFICERS OF THE MARYLAND NATIONAL GUARD MAY BE ADMINISTERED BY ANY COMMISSIONED OFFICER OF THE ARMED FORCES OF THE UNITED STATES AUTHORIZED TO ADMINISTER OATHS.

June 29, 1954.

*General Harry C. Ruhl,
Military Department.*

We are in receipt of your letter of May 27, 1954, requesting an opinion whether the oath prescribed by the laws of Maryland for officers of the Maryland National Guard may be administered outside of the State by officers of the Armed Forces of the United States duly authorized to administer oaths.

Article 65, Section 19 of the Annotated Code of Maryland, 1951 Edition, sets forth the oath of office which commissioned officers of the organized militia shall take and subscribe. We note with interest that Section 25 of the same Article sets forth the oath of enlistment to be taken and subscribed by men enlisting in the organized militia of the State of Maryland. Section 25 contains a qualification not included in Section 19 to the effect that all officers of the organized militia of the State shall be empowered to administer oaths of enlistment. This qualification apparently restricts authority to administer the enlistment oath to State military officers.

The exact question which you have presented to us is a novel one and not without difficulty. We believe, however, that some significance may be attached to the fact that the General Assembly conferred specific and limited authority to administer the oath of enlistment but refrained from doing so with respect to the commissioned officers' oath. Accordingly, we are not disposed to say the officers' oath

may only be administered by military officers of the State of Maryland. It is our opinion that oaths for commissioned officers of the Maryland National Guard may be validly administered by any United States military officer who is duly authorized by his own commission to administer oaths.

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

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

OFFICER

OFFICER—JUVENILE PROBATION OFFICER IS NOT AN APPOINTED OFFICIAL OF THE STATE WITHIN THE MEANING OF ARTICLE 73B, SECTION 8(1) (b) OF THE CODE.

August 30, 1954.

Mr. C. Addison Hodges,
Juvenile Probation Officer,
Circuit Court for Anne Arundel County.

We are in receipt of your letter of August 2, 1954, in which you request an opinion as to whether the position of Juvenile Probation Officer for Anne Arundel County is an appointive office within the meaning of Article 73B, Section 8 (1) (b) of the Annotated Code of Maryland, 1951 Edition. The position of Juvenile Probation Officer is created by Article 26, Section 55, of the Annotated Code of Maryland, 1951 Edition, which merely provides that judges of the Circuit Courts may appoint suitable persons to act as Probation Officers, who shall receive such salary or compensation as may be fixed by the County Commissioners.

The Court of Appeals has attempted, on several occasions, to define the term "public officer", and has acknowledged that "* * * it is easier to conceive the general requirements of an office than to express them with precision in a definition that shall be entirely faultless * * *". *State Tax Commission v. Harrington*, 126 Md. 157.

The subject of the definition of an "officer" under the above statute has been considered by this office on numerous occasions. (35 Opinions Attorney General, 192, and opinions therein cited). As noted in that opinion, relevant data to be considered in any case is whether the incumbent receives a commission, takes an oath of office, has a fixed term of office or exercises a portion of the sovereign power of the State, as well as the nature of the duties and the general surrounding circumstances.

In considering the language of the statute creating the position of Juvenile Probation Officer in the light of the above noted requirements, it is our opinion that your position is not that of an appointed official of the State within the meaning of Section 8 (1) (b).

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

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

PAROLE AND PROBATION

PAROLE AND PROBATION—TRAVERSER PLACED ON PROBATION BY A JUSTICE OF THE PEACE FOR BALTIMORE CITY MAY BE ARRESTED FOR A VIOLATION OF THE TERMS OF HIS PROBATION ONLY UPON A WARRANT ISSUED BY THE JUSTICE OF THE PEACE—PERSONS WHO VIOLATE IN THIS STATE THE TERMS OF A PAROLE OR PROBATION GRANTED BY ANOTHER STATE SHOULD BE ARRESTED BY AN OFFICER OF THE OTHER STATE.

January 20, 1954.

*Mr. James M. Hepbron, Director,
Department of Parole and Probation.*

You have requested that we advise you whether an officer of your Department may arrest a person who has been placed on probation by a Justice of the Peace of Baltimore City and placed under the supervision of your Department, when the person is suspected of violating the terms of his probation. Your concern is the liability of the officer in case of actions for false arrest.

There is nothing in the law relative to the Department of Parole and Probation which would itself authorize such an arrest. As you know, that law was recently revised by Chapter 625 of the Acts of 1953. The Board has the power to issue warrants for the arrest of alleged violators whom it has paroled previously. See Section 91D of Chapter 625, *supra*. Under Section 91G of that Chapter, any parole officer is authorized to serve the warrant issued by the Board, and under its authority, to return the parolee to the institution from which he was paroled. These provisions, however, have no reference to persons placed on probation by Justices of the Peace.

Section 91 of Article 41 of the 1951 Code sets forth the definition of the terms employed in the law relating to parole and probation. There is a distinction made between

the two terms. The term "parole" means a conditional release by the Board of Parole and Probation of prisoners from penal or correctional institutions; and the term "probation" relates to conditional exemption from imprisonment allowed any prisoner by suspension of sentence in the Circuit Court for any County and the Criminal Court of Baltimore.

It is clear, therefore, that the Board of Parole and Probation has no authority to issue a warrant for the arrest of a person who is suspected of a violation of the terms of his probation, as imposed by a Justice of the Peace. The law relating to your Department makes no reference to this matter.

Section 18(1) of Article 52, (1951 Code), authorizes Justices of the Peace for Baltimore City and Prince George's and Charles Counties to suspend sentence and to place a traverser on probation subject to such written conditions as the Justice of the Peace may deem proper. Section 18(4) of Article 52 provides a method for the arrest of a person suspected of violating such a probation, as follows:

"Said Justices of the Peace at any time may end such period of probation, or during such period, or written charges preferred under oath, of violation of any condition of probation, may issue a warrant or notice requiring the probationer or person accused to be brought or to appear before the Justice of the Peace issuing said warrant or notice, to answer such charges of violation of conditions of probation or suspension of sentence, and to fix a date for the hearing of such charge or violation of said conditions."

No other procedure for the arrest of such a person is provided. We are of the opinion that the procedure for the arrest and appearance before the Justice of the Peace of a probationer must be accomplished by the method set forth

in Section 18(4), *supra*. We do not believe that there exists the authority to make an arrest in such a case without the required warrant or notice issued by the Justice of the Peace. The fact that these persons are released on probation under the supervision of your Department does not authorize officers of the Department to make an arrest for a violation of probation without the required warrant. The custody which you assume relates only to a supervision of the probationer so as to assure that he complies with the conditions of his probation. The obvious intent of Section 18(4), *supra*, is to require the Justice of the Peace to determine whether there has been such a violation of the conditions as to require the probationer to be brought before him. This is analogous to the provision, relating to parolees, which empowers the Board of Parole and Probation to issue warrants for the return to custody of alleged violators of parole.

You wish to know the procedure to be followed in arresting in this State, a person who was placed on parole or probation in another State and permitted by the terms thereof to come to Maryland, and who violates here the conditions of his release. Inter-state parole and probation matters are founded in a compact, to which the Congress of the United States has consented, which is contained in Section 106 of Article 41, (1951 Code). Sub-section (3) of Section 106 provides for the apprehension and return to the sending State of such a violator as follows:

“That duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any person on probation or parole. For that purpose no formalities will be required other than establishing the authority of the officer and the identity of the person to be retaken. All legal requirements to obtain extradition of fugitives from justice are hereby expressly waived on the part of states party hereto, as to such persons. The decision of the sending state to retake a person on probation or parole shall be conclusive

upon and not reviewable within the receiving state; provided, however, that if at the time when a state seeks to retake a probationer or parolee there should be pending against him within the receiving state any criminal charge, or he should be suspected of having committed within such state a criminal offense, he shall not be retaken without the consent of the receiving state until discharged from prosecution or from imprisonment for such offense."

In 31 Opinions of the Attorney General, 160, we ruled that, in light of the Section above quoted, extradition proceedings are not required. We further held that all that is necessary for the return of a parole violator to the sending State is a proper showing of the authority of the officer from that State and the identity of the person to be retaken. The Section does not, in our view, authorize an officer of your Department to make the arrest. Rather this should be done by the duly accredited officer of the sending State.

We advise you as above stated because of your express concern over possible actions for false arrest against officers of your Department. We feel that to follow any procedures other than those above outlined would make the legality of any arrest doubtful.

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

AMBROSE T. HARTMAN, *Asst. Attorney General.*

PAROLE AND PROBATION—WITH THE EXCEPTION OF PRISONERS SERVING LIFE TERMS THE BOARD MAY PAROLE AT ANY TIME PRISONERS SUITABLE FOR RELEASE—PRISONER SERVING TERM OF ONE YEAR OR MORE MUST RECEIVE PAROLE CONSIDERATION AFTER SERVING ONE-THIRD OF TERM.

March 10, 1954.

*Mr. James M. Hepbron, Director,
Department of Parole and Probation.*

In your recent letter you inquire whether the Board of Parole and Probation has the authority to parole persons sentenced under the law of this State when less than one-third of the term has been served. As you know, the law relative to parole and probation was revised during the 1953 Session of the General Assembly. See Chapter 625 of the Acts of 1953. There is no question relative to persons who are sentenced to life imprisonment since Section 100 (b) of that Chapter specifically provides that no person who has been so sentenced shall be eligible for parole consideration until he shall have served in confinement fifteen years. However, the question does arise with reference to persons who receive sentences less than that of life imprisonment because of certain changes made by the new law.

Prior to the enactment of 1953, it was clear that no prisoner sentenced for a term totaling one year or more was eligible for release on parole before having served one-third of his term. Section 100 of Article 41 of the Annotated Code of Maryland (1951 Ed.) so provided, and read as follows:

“It shall be the Duty of the Director of Parole and Probation of his own initiative to cause to be made such investigation as may enable him to determine the advisability of granting parole to persons sentenced under the laws of this State, to any penal institution therein, for a term or terms totaling one year or more.

“Whenever, upon having completed such investigation the said Director of Parole and Probation shall be of the opinion that both the interests of the State and of any prisoner serving a term or terms totaling one year or more, would be best subserved by the release of said prisoner on parole, and that there is reasonable probability that, if such prisoner is released, he will remain at liberty without violating the law, it shall be the duty of the Director of Parole and Probation to recommend to the Governor, who is hereby vested with the authority and power to issue and grant paroles when in his judgment deemed advisable, that the Governor grant a parole to such prisoner upon such terms and conditions as may be reasonable and proper; provided, however, that no prisoner sentenced for a term or terms totaling one year or more, be released on parole before having served in confinement one-third of such term or consecutive terms, and that no person who has been sentenced to life imprisonment shall be eligible for parole consideration until he shall have served in confinement fifteen years.”

Under Section 92 of the law as it existed before 1953, as contained in Article 41 of the 1951 Code, the Division of Parole and Probation was a part of the Executive Department. With the enactment of Chapter 625 of the Acts of 1953, the Board of Parole and Probation was created under a new department. Certain new Sections were added to Article 41 with this revision and one, Section 91E vests the Board with parole power, as follows:

“91E. It shall be the duty of the Board of Parole and Probation:

(1) To consider the circumstances surrounding the crime, and the physical, mental and moral qualifications of persons who become eligible for parole;

(2) To determine whether there is reasonable probability that the prisoner, if released on parole, will remain at liberty without violating the laws, and whether the release of the prisoner on parole is compatible with the welfare of society;

(3) To parole prisoners suitable for release;
* * *”

Section 100 of the former law, which is set forth above was amended to read as follows:

“100.(a) It shall be the duty of the Board of Parole and Probation of its own initiative to cause to be made such investigation as may enable it to determine the advisability of granting parole to persons sentenced under the laws of this State, to any penal institution therein for a term or terms totaling one year or more, whenever such prisoner shall have served in confinement one-third of such term or consecutive terms.

“(b) Whenever, upon having completed such investigation the said Board of Parole and Probation shall be of the opinion that both the interests of the State and of any prisoner would be best subserved by the release of said prisoner on parole, and that there is reasonable probability that, if such prisoner is released, he will remain at liberty without violating the law, it shall be the duty of the Board of Parole and Probation which is hereby vested with the authority and power to issue and grant paroles when in its judgment deemed advisable, grant a parole to such prisoner upon such terms and conditions as may be reasonable and proper. No person who has been sentenced to life imprisonment shall be eligible for parole consideration until he shall have served in confinement fifteen years. Prisoners serving terms of life imprisonment shall only be paroled with the approval of the Governor.”

It is worthy of note that the General Assembly retained the provision which prohibits absolutely any parole of one imprisoned for life until he has served fifteen years of his sentence. However, the provision relative to other sentences does not contain the affirmative requirement that one-third of the term must be served before there is eligibility for parole. It appears, therefore, that the purpose of Section 100(a) of Chapter 625 was to require the Board of Parole and Probation to make investigation of such prisoners whenever they have served in confinement one-third of their term, and was not intended to limit the broad power of parole granted by Section 91E. It is obvious, however, in light of the change which was made, that it was not intended that the Board be limited in its power to parole such prisoners only after they have served one-third of their terms. This conclusion is inescapable in light of the provisions of Section 91E, which vests the Board with absolute authority to parole persons who become "eligible" for parole. The only limitation as to eligibility is that contained in Section 100(b) with reference to persons sentenced to life imprisonment.

We conclude therefore, that persons who receive sentences of less than life imprisonment are eligible for parole when the Board of Parole and Probation, after investigation, concludes that there is reasonable probability that the prisoner, if released on parole, will remain at liberty without violating the laws, and that the release of the prisoner on parole is compatible with the welfare of society. These are the standards set forth in Section 91E(2). Further, with reference to such prisoners, Section 100(a) of Chapter 625 *requires* the Board to investigate such prisoners in order to determine the advisability of granting them parole whenever they have served in confinement one-third of their term.

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

AMBROSE T. HARTMAN, *Asst. Attorney General.*

PAROLE AND PROBATION—PERSON CONVICTED OF THIRD VIOLATION OF THE NARCOTIC LAWS MAY NOT BE GRANTED PAROLE UNTIL MINIMUM SENTENCE PRESCRIBED BY STATUTE IS SERVED.

November 8, 1954.

*Mr. James M. Hepbron, Director,
Department of Parole and Probation.*

In your letter you enclose correspondence from an attorney who brings to your attention the case of a person who was convicted in the Criminal Court of Baltimore of a third violation of the narcotics law, and who was sentenced to serve six years in the Maryland House of Correction. The attorney urges that the person is eligible for parole, even though Section 369 of Article 27, 1951 Code, provides that a person convicted of a third violation of the narcotics laws shall not be paroled until the minimum imprisonment specified in the section is served.

In the case in question, the sentence was less than the ten-year minimum provided in Section 369 of Article 27, which provides, in part, as follows:

“* * * For a third or subsequent offense, * * * the offender shall be fined not more than Three Thousand Dollars (\$3,000.00) and be imprisoned not less than ten or more than twenty years. And except in the case of conviction for a first offense for violation of the provisions of this subtitle, the imposition or execution of sentence shall not be suspended and probation or parole shall not be granted until the minimum imprisonment herein provided for the offense shall have been served.”

You inform us that it has come to your attention that other sentences under this law have been for terms less than those prescribed by statute. While we have no power to review judgments of the courts, we believe that the State has a right of appeal which the State's Attorney may exercise. *State v. Fisher*, 204 Md. 307, 312.

Section 369 is explicit in its requirement that "parole shall not be granted" until the minimum sentence is served. It has often been held that in construing statutes, the words are first to be resorted to and if they are plain in their import, they must be followed and no room is left for construction. *Annapolis v. Harwood*, 32 Md. 471, 480; *Schmeizl v. Schmeizl*, 186 Md. 371, 375; *Rogan v. B. & O. R. R. Co.*, 188 Md. 44, 53; *Crider v. Cullen*, 191 Md. 723, 732.

In *Crider v. Cullen*, *supra*, it was said that where "the language of the act is plain and free from ambiguity, the meaning of the language is the meaning of the legislature." In *Schmeizl v. Schmeizl*, *supra*, the Court said:

"A statute should be construed according to the ordinary and natural import of its language, unless a different meaning is clearly indicated by the context, without resorting to subtle or forced interpretation for the purpose of extending or limiting its operation. Where there is ambiguity in the provisions of a statute, or the intention of the Legislature is doubtful, the court may look to the consequences; but where the language of the statute is clear and explicit, and expresses a definite and sensible meaning, the court cannot disregard the mandate of the Legislature and insert an exception, where none has been made by the Legislature, for the sake of relieving against hardship or injustice."

In the light of the clear and unambiguous language of Section 369, we are of the opinion that a third offender convicted under that Section may not be granted parole until the minimum imprisonment provided in the Section is served, and in cases where less than the minimum is imposed, parole may not be granted at all.

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

AMBROSE T. HARTMAN, *Asst. Attorney General*.

PHYSICAL THERAPY

PHYSICAL THERAPY—PERSON WHO OPERATES A NON-MEDICAL HEALTH CLUB NEED NOT BE LICENSED AS A PHYSICAL THERAPIST BUT MAY NOT USE STETHOSCOPE AND BLOOD PRESSURE MACHINE.

August 5, 1954.

*Mr. Clemens W. Gaines, Secretary,
Board of Physical Therapy Examiners.*

We have your recent letter enclosing correspondence from an attorney, in which letter you are asked whether, under the facts set forth therein, a person must secure a license to practice physical therapy, or comply with some other law regulating the practice of the healing arts. The attorney states that his client intends to operate a "Health Club". The purpose of the Club is "health building, weight gaining and weight reducing regimes". In order to accomplish these ends, it is stated that the following will be made available: (1) Swedish massage, in which oils, ointments and a hand operated vibrator will be used; (2) exercises of various types; (3) steam cabinets; (4) electric light baths; (5) ultra-violet and infra-red lamps. The attorney wishes also to know whether, in connection with these services his client may make use of a stethoscope, blood pressure machine and thermometer.

The law regulating physical therapy is contained in Sections 565 through 575 of Article 43, (1951 Code). Section 565 defines "Physical Therapy" as "the treatment of human injuries, diseases, or disabilities by means of the healing properties of exercise, massage, ultra-violet rays, mechanical devices, heat, cold, air, light, water, and electricity, but not by means of Roentgen rays, radium, surgery or drugs."

Section 566 defines a "Physical Therapist" as one who treats, for fees, "human diseases, injuries or disabilities by physical therapy", and treats "only patients diagnosed and

referred by licensed medical doctors". If a person comes within the meaning of the term "Physical Therapist", he must secure a license required by Section 571.

We are of the opinion that the person in question may offer the proposed services without securing a physical therapy license. First of all, it does not appear to us that such person is treating a human disease, injury or disability. Mere over weight or under weight, we are told, does not necessarily point to the existence of disease, injury or disability. Secondly, the person in question does not intend to treat "only patients diagnosed and referred by licensed medical doctors".

It is to be noted that Section 575 provides, among other things, that "* * * nothing herein contained shall be construed to amend the laws relating to the practice of chiropractic, osteopathy, dentistry, chiropody, nursing, optometry, medicine and surgery or to prohibit chiropractors from practicing physical therapy in their practice as chiropractors; nor to the practice of beauty culture, hair dressing or in the operation of health clubs, in non-medical treatments, except as specifically provided in this sub-title, provided, that nothing in this sub-title shall be construed as to prohibit or prevent the advertising of health clubs as health clubs, nor shall any action be taken under the authority of this sub-title to accomplish such a result." We find no other reference in the entire Code of Public General Laws to health clubs. It is quite clear, we think, from the quoted portion of the statute, that Sections 565 to 575, inclusive, of Article 43, are not intended to apply to health clubs which engage in non-medical treatments. From the information submitted to us, it appears that the health club here is of the non-medical variety. Thus, upon all these considerations, we conclude that the operator of it is not required to procure a license to practice physical therapy.

However, the proposed use of the stethoscope, blood pressure machine and thermometer is quite another matter.

These instruments have long been associated with the practice of medicine. Their functions are well known. Sections 117 through 147 of Article 43 of the Code regulates the practice of medicine and surgery in this State. The definition of the phrase "practice of medicine", set forth in Section 138 is very broad. In the recent case of *Aitchison v. State*, 204 Md. 538, 105 A 2d 495, 499, the Court of Appeals said of the phrase "practice of medicine":

"It is absolutely clear from the definite language of the statute that the Legislature intended 'practice of medicine' to include not only the application of medicine to patients, *but any practice of the art of healing disease and preserving the health* other than those special branches of the art that were expressly excepted." (Emphasis supplied.)

Therefore, we think the use of these instruments is beyond the scope of unskilled operators of non-medical health clubs.

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

AMBROSE A. HARTMAN, *Asst. Attorney General*.

RACING COMMISSION

RACING COMMISSION—MARYLAND RACING COMMISSION MAY
ISSUE LICENSES TO GROOMS.

January 20, 1954.

*Mr. J. William Graham, Secretary,
Maryland Racing Commission.*

I have received your letter in which you inquire whether it is proper for the Maryland Racing Commission to establish a new category of licensees consisting of stable employees to be known as "Grooms" and to amend Rule 91 of the Rules of Racing by the addition of the words "Groom.....\$1,00", to follow the words "Jockey Agent".

The authority of the Racing Commission to require the licensing of persons in, or connected with, horse racing was the subject of a ruling by Attorney General Alexander Armstrong in 6 Opinions of the Attorney General, 480.

Under the provisions of Article 78B of the Annotated Code of Maryland and in accordance with the Opinion above referred to, I believe that it would be proper for the Maryland Racing Commission to issue licenses to "grooms" and to amend Rule 91 in the manner proposed. Article 41, Section 9 requires, of course, all rules and regulations promulgated by any administrative board shall be first approved by the Attorney General and thereafter copies are to be filed with the Secretary of State, the Department of Legislative Reference and the Clerk of the Court of Appeals.

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

REGISTERS OF WILLS

REGISTERS OF WILLS—EXPENDITURE FOR ADDITIONAL COMPENSATION FOR CLERKS IN REGISTERS' OFFICES IS DISCRETIONARY IN REGISTERS AND IS NOT CUMULATIVE FROM YEAR TO YEAR.

November 29, 1954.

Mr. G. B. Smith,
Deputy Register of Wills
for Carroll County.

We have in hand correspondence from you requesting a construction of Article 93, Section 300, of the Annotated Code of Maryland, (1951 Edition), in which you ask the following questions:

1. Does said Section create an annual event subsequent to July 1, 1945?
2. Does said Section create an annual *increase* in regular compensation automatically?
3. Does said Section operate to the end that it might well be referred to as an "annual *bonus*"?
4. Does said Section provide a mandatory event annually?

Section 300 is brief, and we quote it in its entirety:

"The Comptroller is hereby authorized and directed to approve the inclusion in the annual returns, herein required of expenditures by Registers of Wills representing payment of additional compensation to clerks employed in these offices of fifteen per centum (15%) of the regular compensation authorized for such clerks, provided this authority for additional compensation shall be limited to those clerks whose regular compensation does not exceed Three Thousand Eight Hundred

Dollars (\$3,800.00) per annum; the said payment of additional compensation to become effective July 1, 1945, and to be added to the regular compensation at the times of payment of such regular compensation.”

In considering Section 300, it is, of course, necessary to keep in mind the corollary provisions of Section 302, which direct that:

“The comptroller shall, from time to time, limit and fix the number and compensation of assistant clerks or deputies to be employed by any such register, * * *”.

The preamble to Chapter 661 of the Acts of 1945, by which the quoted Section was enacted, contains no evidence of the legislative intent and we are properly left to the words of the statute itself to discern its meaning. “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”. *Graham v. Joyce*, 151 Md. 298.

Having in mind that, by virtue of Section 302, the Comptroller originally fixes the compensation of deputies and clerks, it is clear that by Section 300 the Legislature meant to provide the Registers themselves with an opportunity to reward deserving employees by a discretionary increase in salary not to exceed fifteen per centum (15%) of regular compensation. While it is true that the Comptroller is “authorized and directed” to approve payment of such additional compensation, the Registers are not directed to make such expenditures for additional compensation. Thus, it may well be that where the Comptroller had reasonably increased the compensation of a particular deputy or clerk, the Register would not have felt that any increase was then due and would not have reported any additional compensation as an expenditure of his office.

Section 300 deals primarily with approval of the annual returns "herein required" of expenditures by Registers of Wills, and thus necessitates reference to Section 299, which sets forth the requirement for the returns. When so considered, we believe that the authority granted to the Register of Wills to make expenditures for additional compensation continues from year to year. This, of course, is not to be construed to mean that a cumulative 15% increase in compensation is authorized, for, on the contrary, it is our opinion that once the 15% additional compensation has been paid, the Register's authority to make a further increase has been completely exhausted.

In summary, it is our conclusion that the Register of Wills is vested with the authority to expend annually such sums as may be necessary to pay additional compensation, but that such authority is discretionary in the Register. This additional compensation is not automatic and is limited strictly in the case of any deputy or clerk to a single 15% of his regular compensation, and not an additional cumulative 15% each year. Although the Comptroller is directed to approve such expenditures, we believe, in the light of the foregoing reasons, that they may neither be referred to as an annual bonus nor a mandatory event.

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

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

STATE ACCIDENT FUND

STATE ACCIDENT FUND—MAY PAY TO THE STATE TREASURY ONLY SUCH PORTION OF OPERATING EXPENSES AS ARE APPROPRIATED BY THE LEGISLATURE.

June 11, 1954.

*Mr. Thomas W. Offutt, Chairman,
Commissioners of State Accident Fund.*

We have your letter in which you inform us that you have requested the Board of Public Works to make available to the State Accident Fund the sum of \$10,000 to be used for the purpose of making a survey of certain accounts. The question which you have presented for our consideration is whether said sum of \$10,000 may be returned to the General Funds of the State out of money belonging to and standing to the credit of the State Accident Fund.

While the expenses of the State Accident Fund are paid in the first instance from the General Funds of the State, the Treasury is reimbursed therefor, as required by Section 69 of Article 101 of the Code, which provides, in part, as follows:

“* * * Within ninety days after the close of each fiscal year of the State Accident Fund, the Commissioners thereof shall ascertain the expense incurred in conducting and administering the State Accident Fund during said fiscal year, and shall authorize in the same manner as other disbursements from the State Accident Fund are authorized, the amount thereof to be transferred from said Fund by the Treasurer to the State Treasury to reimburse the State for the moneys so *appropriated* and expended in conducting and administering the State Accident Fund for such fiscal year.” (emphasis supplied)

We think it is quite clear that the State Accident Fund may return to the General Treasury the money advanced

to it by the Board of Public Works for this purpose, provided, of course, that the sum of \$10,000 for making the survey is appropriated to the State Accident Fund by the General Assembly in the annual budget.

Section 32 of Article III of the Constitution provides that:

“No money shall be drawn from the Treasury of the State by any order or resolution, nor except in accordance with an appropriation by law; and every such law shall distinctly specify the sum appropriated and the object to which it shall be applied; * * *”.

The so-called budget amendment of the Constitution, Section 52 of Article III, provides, in part, that:

“The General Assembly shall not appropriate any money out of the Treasury except in accordance with the provisions of this Section. * * *”

Then follow numerous provisions dealing with the budgetary processes. These constitutional provisions, we think, must be read in connection with Section 69 to the same extent as if they were incorporated therein. Furthermore, the very language of the statutory provision above quoted is that the Commissioners ascertain the expense incurred in conducting and administering the State Accident Fund and authorize the transfer of the amount thereof to the State Treasury to reimburse the State for the moneys so “appropriated”.

In the light of the statutory and constitutional provisions referred to, we conclude that an advance of money from the General Funds may not be repaid by the State Accident Fund unless and until the General Assembly makes an appropriation according to law to cover the expenditure.

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

J. EDGAR HARVEY, *Deputy Attorney General*.

STATE FAIR BOARD

STATE FAIR BOARD—MARYLAND STATE FAIR BOARD MAY MAKE GRANTS TO AGRICULTURAL FAIRS AND EXHIBITS ONLY FOR PAYMENT OF PREMIUM AWARDS, PROMOTIONAL OR EDUCATIONAL ACTIVITIES OR SIMILAR PURPOSES.

June 8, 1954.

*Mr. R. Nelson Phelps, Executive Secretary,
Maryland State Fair Board.*

At our recent conference, you posed the question whether the Maryland State Fair Board has the legal authority to alter its current practice of making grants to certain fairs and agricultural exhibits for the purpose of paying premiums. For reasons related to the imposition of Federal income tax, we understand that it may now be desirable to make grants for the purpose of paying for capital improvements at fair grounds.

Certain funds are provided by Section 16 of Article 78B of the Annotated Code of Maryland (1951 Edition) which are required to be expended by your Board “* * * as it deems necessary for premiums * * *”. The authority for making such expenditures is contained in the provisions of Article 66C, Section 63, of the 1951 Code, which states, in part, that the purpose of the Board is “to encourage and foster agriculture in this State through promotion and assistance of agricultural fairs, exhibits, or other activities * * *”. In the pursuit of this object, “the Board shall have sole and complete control of the distribution of and expenditure of all funds allocated to it * * * for the payment of premium awards, promotional and educational activities or otherwise.”

Your precise inquiry is whether the use of the words “or otherwise” authorizes the Board to grant funds allocated to the cost of capital improvements. The use of the words

“or otherwise” is not unusual in statutes and certain rules of statutory construction have been evolved concerning them. *Crawford on Statutory Construction*, in Section 191, says :

“Where general words follow the designation of particular things, or classes of persons or subjects, the general words will usually be construed to include only those persons or things of the same class or general nature as those specifically enumerated. * * * This is the rule known as ‘*ejusdem generis*’, and it is founded upon the idea that if the legislature intended the general words to be used in an unrestricted sense, the particular classes would not have been mentioned. * * *”

This principle has been followed by many courts. In *Hodgson v. Mountain & Gulf Oil*, 297 F. 269, at 272, the Court said :

“What is the interpretation of the term ‘otherwise’ with respect to the classification which immediately precedes it? The *ejusdem generis* rule of statutory construction is that a ‘clean-up’ phrase of this character will include only things of a like or similar kind, and nothing of a higher class than that which it immediately follows.”

This rule of construction has often been employed by the Court of Appeals of Maryland. In *Mayor and City Council of Baltimore v. Smith*, 168 Md. 458, at 462, it is said :

“* * * While this classification is general and approximate, it serves to illustrate the nature of the employments which the Legislature intended to be embraced by the act, and thereby to indicate, by the employments which are included, the type of employment which is excluded as not being hazardous. It is but reasonable to assume that paragraph

46 did not mean to enlarge the act beyond those employments and work which were of the same general nature as those which in the preceding paragraphs had been declared to be extra-hazardous. The construction of the last paragraph must be in connection with the cognate prior paragraphs, and, since the first paragraphs are particular and specific and the final paragraph is general in its language, the latter must be confined to things of the same kind and may not be construed to refer to some larger genus. If this were not done, the consequence would be that the last would be without any comprehensible limitation. See *Sutherland on Statutory Construction*, secs. 268, 277; *Endlich on Interpretation of Statutes*, secs. 400, 405-409; *American Ice Company v. Fitzhugh*, 128 Md. 382, 387-389, 97 A. 999."

In *Levy v. American Mutual Liability Insurance Co.*, 195 Md. 537, at 542, the Court said:

"* * * Under the doctrine of *ejusdem generis* the words 'other personal property' must be construed to mean property of the same nature and description as the particular kinds of property mentioned, and not choses in action for unlawful or fraudulent competition."

In view of the enumeration made by the Legislature in the statute prior to the words "or otherwise" and of the settled rule of statutory construction, it is our opinion that the Maryland State Fair Board does not have the authority to make grants for the purpose of providing capital improvements at fair grounds.

In reaching this conclusion, we are not unaware of the benefits which may be likely to flow from allowing the Board to make grants allocated to capital improvements. However, the authority to make such grants must be de-

rived from appropriate legislative action, rather than from our placing upon the statute an interpretation which we believe is contrary to the intention of the General Assembly.

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

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

STATE POLICE

STATE POLICE—PROPER PROCEDURE UPON ARREST OF PRISONER IN ONE JURISDICTION UPON WARRANT ISSUED BY ANOTHER.

October 15, 1954.

Captain G. E. Davidson,
Investigation and Identification Division,
Maryland State Police.

We have your recent inquiry concerning the procedure following the arrest of the subject of a warrant by your Department, upon such warrant issued out of the Criminal Court of Baltimore City, in Carroll County, and the subsequent detention of the subject at the Carroll County jail. The question involved is, as we see it: "Whose duty is it to deliver the subject of a warrant to the court in Baltimore, after his arrest?"

Section 166 of Article 75 of the (1951 Code) provides:

"If any person shall commit any crime or offense in any county of which he is not an inhabitant, or if any person shall commit any crime or offense in the county of which he is an inhabitant and shall remove after the commission thereof and shall be presented or indicted in the county where the crime or offense shall have been committed, the court before which such presentment or indictment shall be found, may issue process against such person, directed to the sheriff of the county where such person may reside, and the sheriff shall serve and return such process as if issued by a court of his county, and upon neglect or delay, may be fined by the court issuing the same."

This would indicate that it would be the duty of the sheriff of the county where the subject is arrested to return that

person to the court issuing the warrant, wherever it may be located in the State. This was confirmed by an opinion of this office, to be found in 26 Opinions of the Attorney General, 326, which held that the local sheriff had the duty to see that the prisoner was properly returned to the Criminal Court of Baltimore City, and that the sheriff of Baltimore City was not required to go to the county having custody of the prisoner at the request of the local sheriff.

The present situation is, of course, slightly different in that the arrest was actually made not by the sheriff of the county, but by the State police who thereupon deposited the prisoner in the county jail, subject to the jurisdiction of the sheriff. However, we do not believe that this would make any difference in the final effect of the opinion cited above, because the duties of the Department of Maryland State Police in such matters are defined by Section 20 of Article 88B of the 1951 Code, which reads as follows:

“It shall be the duty of police employees of the Department to prevent and detect crime, to apprehend criminals, to enforce the criminal laws and motor vehicle laws of the State, and to perform such other related duties as may be imposed upon them by the Legislature, and to this end, police employees of the Department shall be peace officers, and shall have in any and all parts of the State, the same powers with respect to criminal matters and the enforcement of the law relating thereto, as sheriffs, constables, police officers and peace officers have in their respective jurisdiction, and shall have all the immunities and matters of defense now available or such as hereafter may be made available to sheriffs, constables, police officers and peace officers, in any suit brought against them in consequence of acts done in the course of their employment. Any warrant of arrest issued by any magistrate of the State, at the instance of any police employee, may be exe-

cuted by any police employees of the Department in any part of the State according to the tenor thereof without endorsement. * * *”

It is our opinion that, under this Section, it is the duty of your officers, upon making an arrest, to deliver the prisoner to the authority or court issuing the warrant. However, once having delivered him to a County Jail, or to a County Sheriff, it would become the duty of the County Sheriff to make delivery of the prisoner to the court issuing the warrant—in this case, the Criminal Court of Baltimore City. We do not believe that any law provides that the Sheriff, Clerk of the Criminal Court, or any other of the authorities in the jurisdiction issuing the warrant, should be required to go to any county in the State for the purpose of transporting such a subject to its own jurisdiction.

Of course, as in all police matters, there is no substitute for cooperation and common sense, and it certainly seems to us that in almost every case of this nature, cooperative arrangements could be made between the various law enforcement agencies for transportation of prisoners with the least inconvenience and expense to everyone concerned.

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

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

STATE TAX COMMISSION

STATE TAX COMMISSION—STATUTORY PROCEDURE GOVERNS TRANSFER OR EXCHANGE OF CORPORATE ASSETS—ARTICLES OF EXCHANGE OR LEASE MUST BE FILED WITH STATE TAX COMMISSION WHEN A SINGLE TRANSACTION AFFECTS SUBSTANTIALLY ALL OF CORPORATE PROPERTY —ARTICLES RENDER RECORDED DEEDS UNNECESSARY FOR TRANSFER OF PROPERTY.

September 23, 1954.

*Mr. Albert W. Ward, Secretary,
State Tax Commission.*

We have at hand your letter referring to the construction of Sections 62, 66 and 68 of Article 23 of the Annotated Code of Maryland (1951 Ed.) under a factual situation with which you are confronted. The assets of M Corporation consist of approximately 50% real estate and 50% operating facilities. At a duly convened meeting, the Board of Directors of M Corporation proposed to effect a reorganization of the Company by

(a) Creating a new corporation X, all of whose stock will be issued to the stockholders of M Corporation in exchange for a transfer from M Corporation to X Corporation of all of the operating facilities, subject to certain liabilities, of M Corporation (being 50% of the net assets of the M Corporation); and

(b) Leasing all of the real estate of M Corporation to X Corporation at a stated annual cash rental on long-term leases.

We assume the same conditions would hold true for X Corporation.

You have asked our opinion of the following specific questions:

1. Must the procedure set forth in Article 23, Section 62, be followed by M corporation; i.e., does M corporation have sufficient power to effect the exchange and lease of its assets by virtue of the power given in its charter, or does such power exist only by virtue of the statute?

2. Must Articles of Exchange and Lease be filed with the State Tax Commission in such a situation by M corporation?

3. What is the effect of not filing Articles of Exchange and Lease?

(a) Are the exchange and lease between the two corporations without any legal effect until the Articles of Exchange and Lease are filed with the State Tax Commission?

(b) If the exchange and lease are valid between the two corporations, are they valid as against third persons?

(c) What parties, if any, could set aside the exchange and lease or in any way attack the same?

4. If Articles of Exchange and Lease are filed with the State Tax Commission, does Section 68(1) of Article 23 override the requirement of State stamp taxes and recording the long-term leases among the Land Records of the pertinent jurisdiction?

In answer to question 1, you note that Section 62 of Article 23, as it appeared in the 1951 Edition of the Code, has been amended by Chapter 405 of the Acts of 1953, and now appears as Section 62 of Article 23 in the 1954 Supplement to the Code. The language of the Act, as amended, goes a long way toward removing any doubt from the intention of the Legislature with respect to the operation of this law, since it provides that every such sale, lease, exchange or other transfer "shall be effected in accordance with the provisions of this Section". This can leave little doubt that today, the power to effect such transactions emanates from the statutes and not from cor-

porate charters. This conclusion is supported by Herbert M. Brune, Jr., Esq., who, in Section 316 of the 1953 Edition of his Maryland Corporation Law and Practice, states:

“Until the 1951 revision it was clearly recognized by both statute and decisions in Maryland that a private corporation might sell, lease, exchange or transfer its assets as an entirety or substantially as an entirety in accordance with authority contained in its charter and without any express legislative authority. The 1951 sections assimilating the procedure for sale of assets to that for consolidation and merger, and indicating that such sales may be effected *only* by compliance with these sections, are therefore distinctly restrictive provisions. In other words, prior to the revision either charter authority or statutory authority could be invoked. It now appears, however, that only the statutory authority may be used, and the provisions of the statute are therefore of greater consequence since they cannot be avoided by appropriate charter provisions.”

As already noted, the intent of the 1953 amendment is even clearer than that of the 1951 legislation to which Mr. Brune refers.

In answer to question 2, it is noted that Section 62 refers to the sale, lease, exchange or other transfer of all or substantially all the property and assets of a corporation of this State. If the sale or the lease of 50% of the assets of the Maryland corporation were to be consummated in the ordinary course of business, it might well be that there would be no necessity for filing articles of transfer. When it is determined, however, to sell 50% of the assets and to lease the remaining 50% to a single body corporate as part of the same corporate transaction, it would certainly seem to be within the intent of the statute to require that articles should be prepared and filed with the State Tax Commission.

4(a) Subsection (i) of Section 62, as it appears in the 1954 Supplement of the Code, provides that: "a transfer of property and assets of a corporation of this State, shall be effective when the articles of * * * transfer have been accepted for record by the Commission." Thus, the exchange or lease between the two corporations would be without legal effect until the articles of transfer have been accepted for record by the Commission.

4(b) Article 23, Section 68 of the 1951 Edition of the Code notes:

"The debts and obligations of the transferor shall be assumed by the transferee to the extent, if any, provided in the articles; but regardless of the terms of the articles, no such sale, lease, exchange or transfer shall impair the rights of any creditor of the transferor, including any rights under the sales in bulk act."

It thus appears that the statute creates an area in which the articles of transfer, although operative as between the parties thereto, may be invalid to defeat the rights of third parties as specified in the statute.

4(c) Parties who could attack the exchange, lease or transfer are thus mentioned in the portion of Section 68 quoted above.

5. Section 68(1) of Article 23 of the 1951 Edition of the Code provides that:

"The property, rights, privileges and franchises of the transferor shall be transferred to, vested in and devolved upon the transferee to the extent provided in the articles, without further act or deed. * * *"

This language is clear and unequivocal as was said by the Court of Appeals of Maryland in *Celanese Corporation v. Davis*, 186 Md. 463, 47 A 2d 379:

“The meaning and intention must first be sought in the language of the statute itself.”

It thus appears that Section 68(1) does provide an alternative to the other methods provided by law for the transfer of property, and the recording of the instruments of transfer, conveyance and assignment. On this subject, Mr. Brune notes in Section 316:

“On the other hand, certain advantages accrue from the new statutory procedure. The property, rights, privileges and franchises of the transferor pass to the transferee by virtue of filing the articles, to the extent provided therein, without further act or deed, although confirmatory deeds and assignments may if desired be made and delivered.”

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

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

TAXATION

TAXATION—INHERITANCE TAX—THE FEDERAL ESTATE TAX IS DEDUCTIBLE FOR MARYLAND INHERITANCE TAX PURPOSES EVEN WHERE SOME OF ASSETS ARE FOREIGN REALTY NOT SUBJECT TO MARYLAND INHERITANCE TAX.

February 17, 1954.

To All Registers of Wills:

I am writing to advise you of a decision of the Court of Appeals handed down on February 10, 1954, in the case of *Clarke v. Welden*, 204 Md. 26. The case determined that where a Maryland decedent is concerned, for inheritance tax purposes, the entire Federal Estate Tax is deductible even where some of the property owned by the decedent is real estate situated outside of Maryland and hence not subject to Maryland inheritance taxes.

The rationale of the decision is that the Estate Tax is primarily chargeable to the domiciliary executor. In view of this conclusion, it is illogical to allow a proportionate deduction of Federal Estate Tax in the case of a non-resident decedent who owned Maryland real estate. The Federal Estate Tax attributable to such real estate is chargeable against the domiciliary assets and not against the Maryland property. For this reason, the decision in *Clarke v. Welden, supra*, should be deemed to have overruled 28 Opinions of the Attorney General, 269, 29 Opinions of the Attorney General, 241, and 30 Opinions of the Attorney General, 154, to the extent that they authorize such a proportionate deduction.

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

TAXATION—INHERITANCE TAX—WHETHER TRANSFER MADE
IN CONTEMPLATION OF DEATH IS MATERIAL PART OF
THE DECEDENT'S PROPERTY SHALL BE DETERMINED BY
THE CIRCUMSTANCES OF EACH CASE.

February 18, 1954.

Miss Ruth R. Startt,
Register of Wills for Talbot County.

In your letter of February 5, 1954, you state that you have currently in your office several cases in which counsel for administrators and executors are claiming non-liability for inheritance tax on transfers made within two years prior to death, on the grounds that the amount transferred is not a material part of the estate of the deceased. You have asked our opinion as to the amount which would constitute a material part of an estate.

Apparently this is the first time that this question has been brought to the attention of the Attorney General. The matter has never been referred to by the Court of Appeals of Maryland.

The statute which gives rise to this question is Article 81, Section 154 of the Annotated Code of Maryland (1951 Ed.), which provides in part:

“At the same time the executor shall report under oath to the Register of Wills any transfers of a material part of his decedent's property, in the nature of a final disposition or distribution thereof, made by his decedent within two years prior to his death, other than *bona fide* sales for an adequate and full consideration in money or money's worth, so far as the same are known to the executor. If the executor has no knowledge of any such transfers the report shall so state. If any such jointly owned property or any such transfers shall thereafter

come to the knowledge of the executor he shall immediately report the same to the Register of Wills."

Although the question is a novel one in Maryland, it has been considered in several other States. It was held in substance in *Chase's Executors v. Commonwealth*, 284 Ky. 471, 145 S.W. 2d 58, 61, 62, that the term "material" in a statute similar to the Maryland law is a relative one, meaning "of solid or weighty character", "substantial", "of consequence", and "important", and further, that what is a material part of a donor's estate is to be decided from the facts of the particular case. In that case, gifts amounting to \$30,000 made within four months before the death of the donor who left a net estate of over \$600,000, were held to constitute a material portion of his estate. In *In re Hall's Estate*, 94 N.J. Equity 398, 119 A. 669, modified 99 N.J. Law 1, 125 A. 246, affirmed 100 N.J.L. 405, 196 A. 924, the Court noted that a transaction made in contemplation of death is taxable if it appears that a substantial diminution of the transferor's assets results therefrom.

A leading case on the subject is *Re Ebeling*, — Wis. —, 172 N.W. 734, 4 A.L.R. 1519 at 1523, wherein the Court said:

"The next question is whether these gifts, or any of them, constitute a material part of the donor's estates. Obviously the law would be easier of administration if it were more definite in fixing the character or size of gifts to be deemed to have been made in contemplation of death. Whether that is practicable or possible we do not suggest. The use of the word 'material' does not make the law impossible of administration. Whether a gift constitutes a material part of a donor's estate is left a judicial question. As the legislature has not attempted to define with exactness what shall be considered a material part of an estate, neither shall

we. That question must be left to be determined in each case as it arises. In this case the estate was valued at about \$330,000. We think that occasional gifts of \$500 or \$1,000 made by a donor possessing such an estate should not be deemed a material part thereof. None of the gifts made prior to the year 1917 exceeded \$1,000. We hold that such gifts are not taxable. We hold that the gifts made in 1917 of \$10,000 to each of the children on June 30th; \$5,318.33 to each on August 18th and \$10,000 to each on October 1st, amounting to more than \$75,000, do constitute a material part of the estate and that they are taxable."

We agree with the Wisconsin Supreme Court that the law would be easier of administration if it were more precise. Under the existing state of the law it is, however, our opinion that no formula capable of universal application can be devised to translate the legislative intent as expressed in the term "material part of his decedent's property" into arithmetical terms, but rather that each case may be decided in the light of the circumstances surrounding it.

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

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

TAXATION—REAL ESTATE—RATE MAY BE LEFT TO DETERMINATION OF BOARD OF PUBLIC WORKS.

February 24, 1954.

*Senator Louis L. Goldstein,
Chairman, Senate Finance Committee.*

You have asked for an opinion as to the necessity for the enactment by the General Assembly of a law fixing the rate of State taxation. It has been customary at each regular session for the General Assembly to fix the rate of State taxes for the ensuing year. The most recent example is Chapter 406 of the Acts of 1953. That Act listed seventeen issues of outstanding bonds beginning with the General Bond Issue of 1937 and ending with the General Construction Loan of 1952 and provided for the rate of tax to be collected in order to pay the interest and to redeem the bonds falling due or maturing during the year in which the tax applies.

At the session of the General Assembly in 1949, and at all preceding sessions for many years, Acts authorizing the issuance of bonds representing debts of the State of Maryland fixed precisely the rate of tax to be collected during the entire time that any of the bonds so authorized remained outstanding. An example of an act of this character is Chapter 277 of the Acts of 1949. Beginning with the enactment of Chapter 109 of the Acts of 1950, bond enabling acts have not provided a specific rate of taxation but rather they contain a provision substantially as follows:

“That until all of the interest on and principal of any certificates issued under this act have been paid in full, there is hereby levied and imposed an annual State tax on each \$100 of assessable property at the rate to be determined in the following manner: On or before December 1, 1950, and on or before December 1 in each calendar year thereafter, the Board of Public Works shall

certify to the governing bodies of each of the counties and Baltimore City the rate of State tax on each \$100 of assessable property necessary to produce revenue to meet all interest and principal which will be payable to the close of the next ensuing calendar year on all certificates theretofore issued or theretofore authorized by resolution of the Board of Public Works to be issued, and the governing bodies of each of the counties and Baltimore City shall forthwith levy and collect such tax at such rate."

If your question concerned merely the requirement that the General Assembly enact a law fixing the rate of State tax for the service of bond issues authorized by Acts which themselves prescribed a specific rate of tax, the problem would be very simple. By the Acts passed in 1949 and years prior thereto I can see no necessity for additional legislation for the collection of the tax, but where the enabling Act does not fix the tax rate, another consideration becomes involved, namely, the validity of the provision quoted above empowering the Board of Public Works to fix and certify the rate of tax.

Section 34 of Article 3 of the Constitution provides in part that "No debt shall be hereafter contracted by the General Assembly unless such debt shall be authorized by a law providing for the collection of an annual tax or taxes sufficient to pay the interest on such debt as it falls due, and also to discharge the principal thereof within fifteen years from the time of contracting the same; and the taxes laid for this purpose shall not be repealed or applied to any other object until the said debt and interest thereon shall be fully discharged." As against the requirement of this section, Article 14 of the Declaration of Rights of the Constitution of Maryland provides "That no aid, charge, tax, burthen or fees ought to be rated, or levied, under any pretence, without the consent of the Legislature."

While it is true, of course, that the General Assembly lacks the power to delegate the duties which have been imposed upon it by the people, through the Constitution *Brawner v. Supervisors of Election*, 141 Md. 586, I have concluded that the enactment of bond enabling legislation, in the form which is in current use, does not involve the delegation of legislative power. Chapter 109 of the Acts of 1950 and similar legislation at subsequent sessions of the General Assembly provide expressly that "There is hereby levied and imposed an annual State tax", the rate of which is to be ascertained by the Board of Public Works and certified to Baltimore City and the several counties of the State by December 1 of each year. This procedure involves no departure from the requirements of Article 14 of the Declaration of Rights because the Legislature has not only consented to the tax but it has required its collection and provided the machinery to that end.

There is, I think, another consideration which is relevant in this connection. It is not uncommon for bonds to be issued in an amount less than the total amount permitted by a particular Act. Of course, the enabling Acts passed in 1949 and years prior thereto, in fixing the tax rates assume the issuance of all authorized bonds. Hence, if the taxes are collected at the rates prescribed by those Acts when less than the full amount of bonds authorized has been issued, the result is that the collections are entirely beyond the requirements of Section 34 of Article 3 of the Constitution.

In the very nature of things it is impossible for the General Assembly to know at the time legislation of this character is enacted whether the amount of bonds authorized is precisely equal to the cost of a project, or more or less than the cost. For this reason mathematical precision is impossible. This difficulty is remedied by leaving the rate of tax to the Board of Public Works.

It is my conclusion therefore, to return to the specific question which you presented, that it is not necessary for

the General Assembly to enact a law fixing the State tax rate for the service of outstanding bond issues, but rather that the Board of Public Works has the power to perform that function. In accordance with the provisions of Chapter 109 of the Acts of 1950 and similar Acts passed subsequently, the rate of tax shall be fixed and determined by the Board of Public Works, and for bonds authorized by Acts passed prior to 1950 the Board of Public Works shall include in its certification the specific rate of tax fixed by each such Act under which any bonds remain outstanding.

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

TAXATION—INHERITANCE TAX—PAYMENT OF INHERITANCE
TAX MAY BE POSTPONED UNTIL THE VESTING IN POS-
SESSION AND ENJOYMENT OF AN INTEREST IN RE-
MAINDER.

April 1, 1954.

Mr. Leroy C. Shaughnessy,
Register of Wills for Baltimore City.

Sometime ago, you forwarded to us a letter from an attorney, and upon the facts stated in that letter you have requested our opinion upon the legal question presented.

The facts are as follows: A died in 1926 and by his will he bequeathed certain personal property, in trust, to B, for life, with remainders to C, D and E. At that time, the life estate was valued and a collateral inheritance tax paid thereon. No tax has been paid on the remainders. The life tenant, B, as well as two of the remaindermen are still alive. The remainderman C, however, died prior to the termination of the life estate. C, by will, bequeathed his remainder interest to D and E.

The question posed is whether the collateral inheritance tax on the passing of this remainder interest from C to D and E must be paid instanter or whether payment of the tax may be postponed until B's death, at which time possession of C's interest will vest in the remaindermen D and E.

This situation is a novel one in the law of Maryland. It is clear, under the statute, that when A creates a life estate for B, with remainder to C, there is no tax liability on C until his interest vests in possession. We have recently held that if C predeceases B and the remainder passes to D there is a second taxable event; i.e., transfer from C. 37 Opinions of the Attorney General, 444. The question remains, however, whether the payment of the tax can be postponed until the vesting in possession and enjoyment.

This question is not answered by any statutory provision or by any opinion of the Courts or of the Attorney General. In seeking the answer to the question, it is necessary to ascertain the legislative intent. Article 81, Sections 159 and 160 of the Annotated Code of Maryland (1951 Edition) provide:

“159. Whenever any life-estate, or interest for a term of years or other interest less than an absolute interest, in trust or otherwise, shall pass to a person, and a contingent or remainder or reversionary interest shall pass to another person, the Orphans' Court of the County or City in which administration is granted, or any other Court having jurisdiction over the administration or distribution of such property, shall determine, before any distribution thereof shall be authorized, the value of the life-estate, or interest for a term of years, or other interest less than an absolute interest, in accordance with Table A or B, whichever is applicable, of Section 81.10 of Regulation 105, relating to the Federal Estate Tax under the Internal Revenue Code, as promulgated by the United States Treasury Department, Bureau of Internal Revenue and as in effect on the effective date of this Act, and shall assess the tax against said interest; provided, however, that when any such interest depends upon or is measured by the duration of the life of a person whose life expectancy is shown to be less than average for his or her age by reason of poor health, said Court may adjust such value accordingly. The tax so ascertained shall be paid within thirty days from the date of such determination. The tax so determined shall be and remain a lien upon such interest for a period of four years after the date of death of the decedent, in the case of real estate, or from the date of distribution, in the case of personalty. From any order or determination of the Orphans'

Court, or any other Court having jurisdiction, an appeal shall lie to the Court of Appeals by the Register of Wills on behalf of the State, or by any person in interest, to the same extent and in the same time and manner as from other orders of the Orphans' Court.

"160. Whenever a life-estate, or interest for a term of years, or other interest less than an absolute interest, shall be valued by the Orphans' Court, or other Court having jurisdiction, as provided in Section 159, the person entitled to the property after the termination of such estate, by way of contingent interest, remainder or reversion, may apply to the Orphans' Court, or other Court having jurisdiction, for the valuation of such contingent interest, remainder or reversion. In making such valuation, the Court shall determine the value of the whole corpus and deduct therefrom the value of the preceding estate or estates, to the end that the tax collected shall equal that which would have been payable, if an absolute interest in such property had passed. The tax so ascertained shall be paid within thirty days from its ascertainment. But if said person entitled to the property after the termination of the preceding estate shall fail to apply to the Orphans' Court within a reasonable time after the valuation of the preceding estate, or to pay the tax so assessed after application within thirty days from the date of such determination, then such person shall at the time when the same vests in possession at the termination of the preceding estate, pay a tax on the whole value thereof, without deduction of the tax or taxes previously paid. Upon the termination of said preceding estate, the Orphans' Court, or other Court having jurisdiction, shall value the property as of the date when the same vests in possession, and assess the tax there-

on. The tax so ascertained shall be and remain a lien upon said property for a period of four years from the date when the same vests in possession. Any order or determination under this section shall be subject to the same right of appeal as provided in Section 159."

In these statutes, there is an apparent intent on the part of the Legislature to postpone the determination and payment of the tax on a remainder until the remainderman comes into possession of the property out of which he could pay the tax. The presumption of this intent is consistent with the pecuniary interests of the State, inasmuch as postponement of the payment of the tax until the remainder has vested will mean the assessment of the tax on the basis of the full value of the estate rather than upon the value of the bare remainder, and, consequently, should result in a larger tax being paid. There is a second practical consideration which supports this interpretation of the legislative intent. It is entirely possible that the remainderman may be without property with which to pay the tax upon his future interest in a substantial estate. It can hardly be argued that he should be forced to sacrifice his future interest in the property in order to satisfy the tax obligation, particularly when the State, as well as the remainderman, may lose by such practice.

Many of the authorities quoted in the attorney's letter are, strictly speaking, inapplicable since they deal only with a situation involving A, the testator, B, the life tenant, and C, the remainderman. They do, however, serve as indications of the legislative intent. In 10 Opinions of the Attorney General 271, it was said: "* * * the State is entitled to a collateral inheritance tax upon the fund distributed to the administratrix, and a further tax upon the same fund when it is distributed to the collateral kindred of the deceased". See also 19 Opinions of the Attorney General 491. In 37 Opinions of the Attorney General 375, it was said:

“If C chooses not to accelerate payment of the tax on the alternative remainder in fee, the fact that said remainder became indefeasibly vested on B’s death does not create a tax liability, since the remainder has not yet vested in possession. *Benesch v. Clark*, 49 Md. 497. A tax liability will, however, arise upon that vesting, whether it is caused by C’s death, or by C’s conversion of her life estate and general testamentary power into a fee simple, either by action under the power of revocation contained in the deed of trust or by extinguishment of the power, as is permitted under *White v. Roberts*, 145 Md. 405, and *O’Hara v. O’Hara*, 185 Md. 321.”

The Court of Appeals has considered this general question on several occasions. In *Fisher v. State*, 106 Md. 104, at page 120, the Court said :

“The tax is on the transmission of the property, and upon the estate the beneficiary is to receive and enjoy. There could be no transfer or enjoyment of the property, by the beneficiary in this case, until the death of Mrs. Johnston, and this being so, the collateral inheritance tax was payable, upon the clear value of the estate, at her death, and at the time, the collateral beneficiary received the benefit of the bequest and devise, under the will. * * *”

This principle was reaffirmed in *Shaughnessy v. Perlman*, 198 Md. 619.

In the light of the decision of the Court and of the Opinions of the Attorney General, it may be acknowledged as a well established policy that, although a tax liability is created upon the death of a remainderman, the payment of the tax is postponed until the remainderman’s heir or other beneficiary has actually come into the possession and enjoyment of the subject property. Accordingly it is our opinion that the payment of the collateral inheritance tax

on the passing of the remainder interest from C to D and E may be postponed until the life tenant's death and the vesting of the property in possession in the remaindermen D and E.

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

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

TAXATION—INHERITANCE TAX—WHEN THE WORDS EMPLOYED BY A TESTATOR DISCLOSE AN INTENT TO CREATE A TRUST AND TO CONSTITUTE THE NOMINAL BENEFICIARY AS A TRUSTEE, NO INHERITANCE TAX IS DUE UPON THE DEATH OF THE TRUSTEE.

May 5, 1954.

Mrs. Vernie R. Smouse,
Register of Wills for Garrett County.

Recently you wrote stating that the last will and testament of a resident of Garrett County contained the following bequest:

“I will, devise and bequeath unto my sister, M. G. L. the sum of Ten Thousand Dollars (\$10,000.00) to be invested in United States Government Bonds to be registered in the name of my brother J. H. L. and my sister M. G. L. as co-owner. The income from the bonds to be paid direct to my brother J. H. L. and if found necessary, in the judgment of my sister, any part of the principal amount shall be paid to him. The said bonds to be retained in the possession of my sister M. G. L. for the use of the said J. H. L. as provided herein.”

The testator died in 1948 and thereafter Series G, U. S. Bonds were purchased and registered in the names of J.H.L. or M.G.L. The sister, M. G. L., departed this life on July 29, 1953, and you inquire whether the bonds registered as above described are taxable.

The apparent intent of the testator was to provide for *payment of the income from the bonds to his brother*. The bonds were to be retained by M. G. L. *for the use of J. H. L.* Although the language of the bequest is not technical and does not employ the words “trust” or “trustee” and although there is some ambiguity arising from the words

employed, it seems reasonably clear that the purpose of the bequest was to create a trust. "The use of the words trust, or trustee, does not create a trust, when it was not the intention of the party using them that a trust should be created. Nor are these words essential to create a trust when it is clearly and convincingly shown a trust was intended to be created." *Foschia v. Foschia*, 158 Md. 69.

Under these circumstances, it is my opinion that, since inheritance tax on the entire amount was paid at the death of the testator, there is no inheritance tax liability as a result of the death of the sister, M. G. L.

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

TAXATION—ESTATES—MARYLAND ESTATE TAX, BEING THE DIFFERENCE BETWEEN 80% CREDIT ALLOWED BY THE UNITED STATES AND MARYLAND INHERITANCE TAX SHOULD BE PAID TO COMPTROLLER AFTER MARYLAND INHERITANCE TAX IS COMPUTED AND PAID TO REGISTER OF WILLS.

June 3, 1954.

Miss Ruth R. Startt,
Register of Wills for Talbot County.

Recently you have corresponded with this office on several occasions with reference to the administration of the Maryland inheritance tax law and the Maryland estate tax law. This subject was the topic of an opinion published in 24 Opinions of the Attorney General, 943, wherein approval was given to a procedure whereby the entire tax liability arising from the transfer of property occasioned by death is paid directly to the Comptroller in the form of Maryland estate tax, rather than by paying the appropriate portion as inheritance tax to the Register of Wills and the estate tax to the Comptroller.

The Maryland estate tax, imposed by Article 62A, is not merely the total amount of the 80% credit allowable under Federal estate tax laws, but is the difference between the 80% credit allowed by the Bureau of Internal Revenue, and the Maryland inheritance tax. It is obvious, therefore, that inheritance taxes should be calculated and paid to the Register of Wills as the first step in payment of tax liability to the State. The difference, as defined above, between the Federal credit and Maryland taxes should then be paid to the Comptroller.

As noted in 24 Opinions of the Attorney General, 892, the calculation of taxes is complicated by the fact that both Federal and Maryland estate taxes are properly deductible in computing inheritance tax. In spite of that fact, the total amount paid in taxes to the State, both as inheritance and

estate taxes, will not be reduced by the allowance of the estate tax as a deduction in computing the inheritance tax, inasmuch as the former is the difference between the Federal credit and the latter. Any reduction on the inheritance tax operates to increase the estate tax.

Having in mind the precise words of Article 62A, the problems now in your office and the benefit of the experience obtained in administering the Maryland estate tax since the prior opinion, cited above, was rendered by this office, it is my opinion that the practice heretofore countenanced does not conform to the law and that in the future, the estate tax should be administered in conformity with this opinion.

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

TAXATION—INHERITANCE TAX—WHEN LEGACIES FOR PAYMENT OF FUNERAL EXPENSES ARE INSUFFICIENT TO COVER BILLS PRESENTED FOR SERVICES RENDERED, THE LEGATEES MAY RENOUNCE AND ENTER THEIR CLAIMS AGAINST ESTATE, OR MAY ACCEPT IN FULL PAYMENT SUBJECT TO TAX ON THE DIFFERENCE BETWEEN AMOUNT APPROVED BY ORPHANS' COURT AND AMOUNT OF LEGACY, IF LATTER IS GREATER.

June 3, 1954.

Mr. Frisby N. Willson,
Register of Wills for Kent County.

In your letter of May 19, 1954, you state that, prior to his death, a decedent in your County had discussed his funeral arrangements with a local undertaker and selected his coffin. You further state that the decedent instructed his executor to place a stone at his grave, similar to the one placed by the decedent on his wife's grave.

By his will, the decedent left legacies to the undertaker for burial and to a tombstone dealer for the headstone in the respective amounts of \$750.00 and \$185.00. The undertaker has now fully performed his doleful office, in accordance with the express wishes of the decedent. He has presented his bill to the executor in the amount of \$870.00, which is in excess of the legacy provided for the purpose of the testator. The executor has prudently obtained an estimate of the cost of a gravestone, which has been quoted at \$314.90, likewise in excess of the legacy provided therefor.

Article 93, Section 6 of the Annotated Code of Maryland (1951 Ed.) authorizes the expenditure of \$500.00, or less, for funeral expenses. Any sum in excess of that amount may be authorized by the Orphans' Court. If a legacy is left in favor of the undertaker, and if the undertaker performs the burial, and if the amount provided is reasonably worth the funeral services actually performed, the legacy

is not subject to inheritance tax. See 36 Opinions of the Attorney General, 293. I am not aware, however, of any precedent for the exact facts which are now before you.

It has long been settled law of Maryland to enforce collection of a debt for funeral expenses which are considered reasonable, taking into consideration the rank and the estate of the deceased. In *Lentz v. Pilert*, 60 Md. 296, at p. 300, it was said:

“* * * because proper burial was indispensable, and somebody must take the responsibility of having it attended to, the law has generally been understood to accord payment from the estate on an implied promise on the part of the executor or administrator to pay it.”

The Court further said:

“* * * Whether the expense incurred in this instance was in keeping with the estate and situation of the deceased is a matter still with the Orphans' Court.”

These principles have been upheld in a series of subsequent decisions.

After taking all the facts and circumstances into consideration, if the Orphans' Court determines that the actual expenditures for the funeral and for the tombstone are reasonably necessary, and will consequently approve them, there is no legal reason why they may not be paid. If the undertaker and the tombstone dealer desire to proceed on this theory, it is my opinion that they should submit a bill for their services and materials as in the ordinary case, and should renounce the conditional legacies provided by the will. If, on the other hand, the Court determines that the amounts of the funeral director's bill and the tombstone dealer's estimate are excessive and does not approve them, the funeral director and the tombstone dealer might wish

to accept the legacies in the performance of any agreement they may have had with the decedent. In the latter event, any excess of the amount of the legacies over the approved amount of the claims is subject to the collateral inheritance tax.

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

TAXATION—ASSESSMENT ON STOCK—MUNICIPALITIES HAVE
NO AUTHORITY TO ABATE A PERCENTAGE OF ASSESS-
MENT ON STOCK IN BUSINESS FOR PURPOSES OF MUNIC-
IPAL TAXATION.

June 11, 1954.

*Mr. Albert W. Ward, Secretary,
State Tax Commission.*

We are in receipt of your letter of June 8, 1954, enclosing a letter from the Town Clerk of the Mayor and Council of Easton, dated June 4, 1954, which sets forth a resolution passed by the Mayor and Council relating to the valuation of inventory assessments of all manufacturing and commercial businesses in the Town of Easton. As you note, the purpose of this resolution is apparently to provide the same treatment for manufacturing and commercial businesses in the Town as is provided in Talbot County by Article 81, Section 14, as amended by the Acts of 1953. That statute directs that, for County purposes, such inventories in Talbot County shall be assessed at sixty per cent of value.

You have been requested to certify assessments in accordance with the Town resolution. Prior to making such certification, you have requested our opinion as to the validity of the resolution and as to your authority to make the certification requested.

Chapter 592 of the Laws of 1953 provides, in part:

“* * * Provided, however, that for county taxation in Montgomery and Frederick County, and for municipal taxation in the City of Frederick such stock in business shall be assessed at seventy-five per centum (75%) of such fair average value for the twelve months preceding the date of finality. For the purpose of county taxation in Allegany, Anne Arundel, Calvert, Caroline, Carroll, Garrett, Harford, Kent, Queen Anne’s, Somerset, Tal-

bot and Worcester Counties and the City of Annapolis such stock in business shall be assessed at sixty per centum (60%) of such fair average value for the twelve months preceding the date of finality. * * *"

The settled rule of statutory construction is that the enumeration by the Legislature of certain things in a statute implies an exclusion of all others. See *Johns v Hodges*, 62 Md. 525, which quotes the familiar maxim "*designatio unius, exclusio est alterius*".

Under these circumstances, and noting that Chapter 592 refers to *County* taxation only in Talbot County, and that the only municipality in the State covered by the Act is the City of Frederick, we are of the opinion that the Mayor and Council of Easton do not have the authority "to abate 40% of the fair average value" of inventories, that the resolution is consequently invalid and that you may not make the certification requested. The records of the State Tax Commission are public records, of course, and as such are reasonably available to the public. *Pressman v. Elgin*, 187 Md. 446; 20 Opinions of the Attorney General 755. This opinion is not, therefore, to be construed as denying to the Town of Easton access to the records for the purpose of obtaining such information as it desires.

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

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

TAXATION — ASSESSMENTS — NOTICES OF CHANGES IN ASSESSMENTS MADE UNDER ARTICLE 81, SECTION 230 (8), 1951 CODE, NEED NOT BE GIVEN UNTIL PERIOD PROVIDED FOR SUCH NOTICES BEFORE ASSESSMENT BECOMES EFFECTIVE — PARTIAL REASSESSMENT OF A COUNTY OR CITY WOULD NOT BE EFFECTIVE UNDER SECTION 230 (8), 1951 CODE, UNTIL THE END OF CYCLE — NEITHER SECTIONS 37, 38, OR 39 NOR SECTIONS 251 ET SEQ. OF ARTICLE 81 ARE AFFECTED BY SECTION 230 (8), 1951 CODE, OR CHAPTER 69, ACTS OF 1954 — SECTION 230 (8) ABROGATED BY CHAPTER 69, ACTS OF 1954 — CHAPTER 69, ACTS OF 1954, HELD APPLICABLE TO ASSESSMENT OF REALTY AND PERSONALTY.

June 24, 1954.

*Mr. Albert W. Ward, Secretary,
State Tax Commission.*

We are in receipt of your letter in which you raise ten questions following the enactment in 1952 of Section 230 (8) of Article 81, and the enactment of Chapter 69 of the Acts of 1954. These questions are set forth as follows:

“1. Under the 3-year law, when are notices to be sent to the owner?

(a) If notices are to be sent when appraisal is made, is each successive owner who acquires title before date of finality to be notified also and when?

(b) Need notices be sent to property owner if no change is made in assessment?

(c) If notice is to be sent when appraisal is made, would the owner have the right to more than one protest? If so, how many?

Example: Property assessed in 1st year of 3-year cycle and notice sent, owner protests and

after hearing, assessment is affirmed. Can he appeal following year or before January 1, 1957?

"2. Does the Board of County Commissioners or the Board of Municipal and Zoning Appeals or the Board of Estimates or the State Tax Commission have the right to order a partial or complete reassessment of the County or City in any year to be effective for the following year?

"3. If the nature of the improvements on any property is changed by addition, modification or removal may the assessment be increased, lowered or removed for the following year?

"4. If any parcel of land is changed by being partly or completely sub-divided into lots, may the assessment be changed for the following year?

(a) If a previously undeveloped or unimproved lot or parcel is improved may the assessment be changed for the following year?

"5. In the case of petitions for the reassessment of property which result in a recommendation for a change of assessment, may the assessment be changed for the following year?

"6. Does the local assessing authority have the right to make corrections of errors in assessment when discovered, effective for the following year?

"7. Does the Act of 1954 providing for annual reassessment change the dates of finality of the various counties?

"8. Does the 1954 law wholly or in part abrogate the provisions of Section 230 of Article 81?

"9. Can exemptions or removal of exemptions be made effective for the next fiscal year after proper application?

“10. Does the 1954 law in any way change the present administration of personal property assessments?”

In answer to your first question, it would appear that Section 230(8) of Article 81, which was enacted as Chapter 34 of the Acts of 1952, makes no change in Section 28 of Article 81, which provides for notices before any existing assessment shall be increased, any classification of property changed, any assessment transferred to another person, or any new assessment made. Section 230 (8), which will continue in force until the effective date of Chapter 69 of the Acts of 1954, which is July 1, 1956, provides for a three year cycle of appraisals. These appraisals are clearly differentiated from assessments which shall not become effective until the date of finality terminating the three year cycle, during which such appraisals were made. Consequently, it appears clear that notices are not necessary at the time of appraisal, but are only necessary in accordance with former practice prior to the time of assessment, i.e., at the end of the cycle. This conclusion makes it unnecessary to answer Questions 1(a) and (c).

With respect to Question 1(b), it appears unnecessary to send notices to a property owner if no change is made in his assessment. Both Section 230(8) and Chapter 69 of the Acts of 1954 contemplate reappraisal and merely reassessment on the basis of the reappraisal. Section 28 requires notices only when a new assessment is made.

In advising that it would be permissible to withhold notices until the end of the cycle, whether it be the full three year period, or whether the cycle be accelerated as provided in Section 230(8) (b), we are not unaware of the tremendous physical task involved in sending notices contemplating all of the assessable property in the State of Maryland. At the same time, in view of the inconsistencies existing between the 1952 and 1954 laws, it may well be that no notices will ever be sent under the three year cycle law. This is so because the three year cycle commenced on

January 1, 1954, and would not be completed until January 1, 1957. By virtue of the laws of 1954, however, Section 230(8), which is the three year law, is repealed, effective July 1, 1956, and replaced by Chapter 69 of the Acts of 1954, requiring annual reassessment. Thus, the assessment to be made effective January 1, 1957, would be made pursuant to Chapter 69 of the Acts of 1954, rather than Section 230(8).

In answer to Question 2, it is necessary to refer to several statutes. Section 230(8) empowers assessing authorities to order and enforce a review and appraisal at any time of all property in a County or City, or of all property of any class or district, or part of any district within a County or City. If such appraisal contemplated all the property in the County, it would be in effect an acceleration of the three year cycle and assessments would become effective in the ensuing year. If, however, only part of a County or City were so appraised, it would appear to be the intention of the Legislature that the assessments would not become effective until the end of the cycle. This is assuming, of course, that the partial reassessment is not made under conditions which fall within the scope of Sections 37, 38 or 39 of Article 81. It would appear, however, that, if any inequitable situation exists, the State Tax Commission might report the facts to the Attorney General, who is its counsel by virtue of Section 228 of Article 81, and that the Attorney General, on behalf of the State, under the provisions of Section 251 could demand a hearing before the County Commissioners or other assessing authorities as to the assessment of any property or any unit of tax value, or as to the increase, reduction or abatement of any such assessment, or as to the classification thereof for the next ensuing year. Upon such demand by the Attorney General, or, for that matter, by any taxpayer, it would appear that a partial reassessment could be effective in the ensuing year.

The answer to the third question lies in Section 37 of Article 81, which is not affected by the so-called three-year

law. In 37 Opinions of the Attorney General 367 at 368, it is said: "There is no reference to the assessment and reassessment of individual pieces of property when they come into existence or are first discovered or change their character, or upon appeal or protest by a taxpayer, as heretofore. The amendment no more changes the law as to these matters than did the former rotational assessment statute as enacted by Chapter 717 of the Laws of 1943." Furthermore, Section 37 specifically provides that the County Commissioners and Appeal Tax Court shall annually, effective for the next succeeding levy, alter and correct the account of any person who may have disposed of or acquired any property since the last assessment. Since the levy is an annual event, while the assessment under a system of rotation may be cyclical, it is clear that the Legislature intended new assessments under stated conditions within the period of the cycle.

By the same reasoning, it would be not only permissible but necessary to make new assessments effective in the ensuing year under Section 38. This should answer Question 4 and 4(a).

As intimated in the answer to Question 2, it would appear that the answer to Question 5 is in the affirmative. Petitions for reassessment of properties, which result in recommendations for changes of assessments, should be effective in the ensuing year. See also 37 Opinions of the Attorney General, 367, *supra*.

The answer to Question 6 is affirmative following the reasoning in answers to Questions 3 and 4, above.

In answer to Question 7, it is necessary to refer to Section 13(b), which was repealed by Chapter 69 of the Acts of 1954. This Section of the statute merely refers to "property directed in this Article to be assessed shall be assessed annually on the date of finality * * *". Section 13(a) in the law presently effective, which will become Section 13.

upon the effective date of Chapter 69 of the Acts of 1954, also refers to "the date of finality". Neither the repealer of sub-section (b), nor the re-enactment of present sub-section (a) purports to make any change in the dates of finality of the various Counties.

In answer to Question 8, it appears that Chapter 69 of the Acts of 1954 does abrogate a substantial portion of Section 230 of Article 81 as it is presently in force. Specifically, it repeals Section 230(8) (a) and (b), and substitutes therefor the following language, effective July 1, 1956:

"To enforce and execute a continuing method of assessments so that all assessable property in every county and in Baltimore City shall be thoroughly reviewed at least once each year. It shall be the duty of the Commission, after consultation with the County Commissioners in the several counties, or the Appeal Tax Court where such exists, or the Board of Municipal and Zoning Appeals in Baltimore City, as the case may be, to require that all assessable property in each such political sub-division, respectively, be reviewed and re-assessed each year. The Commission shall have the power at any time, after consultation with the County Commissioners in the several counties, or the Appeal Tax Court where such exists, or the Board of Municipal and Zoning Appeals in Baltimore City, as the case may be, to order and enforce a review and re-assessment of all property in any county or in Baltimore City, if said property has not been reviewed or re-assessed within one year or if the existing assessments are found to be greater or less than the assessments on other properties possessing similar and comparable values."

In answer to Question 9, we can advise that, in our opinion, exemptions, or removal of exemptions, could be

effective for the next ensuing year under circumstances which would properly invoke the provisions of either Sections 37, 38, 39 or 251 of Article 81.

Question 10 may be answered by reference to Section 7(1) and (2) of Article 81, and Section 13, as re-enacted by Chapter 69 of the Acts of 1954. The former provided for the assessment of real property and tangible personal property. The latter provides for the assessment of all property directed in Article 81 to be assessed. Accordingly, any observations made above with respect to the impact of Chapter 69 of the Acts of 1954 would apply equally to the assessment of realty and personalty.

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

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

TAXATION—INHERITANCE TAX—SUM PAID BY EXECUTORS TO COMPROMISE POTENTIAL CLAIM OF DECEDENT'S RELATIVE FOR SHARE OF ESTATE IS SUBJECT TO INHERITANCE TAX—EXECUTORS SHOULD PAY TAX ON SUM BEQUEATHED IN TRUST.

June 24, 1954.

Mr. W. Curtis Hopkins,
Register of Wills for Prince George's County.

We are in receipt of your letter of June 10, 1954, in which you raise two questions arising during the course of the administration of the Estate of Mrs. A.

You first inquire as to the liability for inheritance tax on the sum of \$30,000, which was paid to the late Mr. A's sole heir by the executors of Mrs. A's estate. The alleged consideration for this payment was the surrender of any claims which the said sole heir of Mr. A. might have against the estate of Mrs. A, arising out of the fact that a portion of Mrs. A's estate had been derived from the rest and residue of her husband's estate, and that the ultimate disposition of the said rest and residue was in doubt under the terms of the husband's will. You inquire if any tax is due on the \$30,000 compromise settlement, and if so, by whom it should be paid.

This case is apparently one of first impression in Maryland. An analogous situation arose in 1916 which is the subject of an opinion written by Governor Ritchie when Attorney General, and reported in 1 Opinions of the Attorney General, 261. Governor Ritchie's ruling has, however, no application in the instant case, in view of the fact that he was dealing with monies paid into the estate by way of compromise, rather than by monies paid out by the estate.

In the case before us, the facts as summarized above indicate that, although Mr. A's heir may have given up a substantial right under the terms of the compromise agree-

ment, yet it was a right which came to him by way of inheritance from Mr. A. There was no true consideration in money or monies, we think, which would justify exempting the portion of the estate granted to him, from the Maryland inheritance tax. The compromise was in effect arbitration between several potential beneficiaries. Although the record is not clear on this point, we assume that either one who prevailed would have been subject to Maryland collateral inheritance tax. Thus, if they mutually decided not to litigate in an attempt to obtain the whole estate, but rather determine upon a division of the estate, it does not appear that there is any ground for abatement of the inheritance tax.

In reaching this conclusion, we are not unaware of the general principle that the relinquishment of a right is considered as a sufficient consideration to free the transfer from death taxes. 157 A.L.R. 1004. This rule does not apply when the right surrendered does not satisfy the ordinary requirements of consideration. We are cognizant of the holding of the Court in *In re Hollander*, 123 N.J. Eq. 52, 195 A. 805, where a remainder interest in a fund was held not taxable because the interest arose as the result of a bargain and agreement between the parties, and was acquired by the survivor in exchange for an interest in previous trust provisions which had a substantial money value and constituted adequate consideration. On the other hand, in *Helvering v. Bullard*, 303 U.S. 297, 82 L. Ed. 852, it was held that an agreement of compromise which involved execution of a new trust was not sufficient consideration when the original trust was invalid and the relinquishment of rights under it was not substantial deprivation. Likewise in *Latty v. Commissioner of Internal Revenue*, 62 Fed. 2d 952, it was held that a daughter's promise to make no claim against her father's estate was not sufficient consideration to free the sum agreed upon in payment for such promise, from inheritance tax, because her right to contest any will which her father might make was not the equivalent of cash to her or to anyone else.

Under these circumstances, we are of the opinion that the \$30,000 paid to the sole heir of the decedent husband's estate was an instance of passing property to him as the result of the death of Mr. A. It was not the mere purchase of an assignment from him, as claimed by the executors, since his right to litigate the construction of Mr. A's will was not the equivalent of money or money's worth to him. We, therefore, conclude that the Maryland collateral inheritance tax of $7\frac{1}{2}\%$ is due on the \$30,000 he received, and that the personal representative, who is charged with its payment (Code Article 81, Section 151), should make the necessary deduction before distributing the estate.

You also inquire whether the inheritance tax on the principal of a certain sum bequeathed in trust by Mrs. A should be collected by you, or should be paid by the trustees as part of the execution of their fiduciary duties under the jurisdiction of the Circuit Court for Prince George's County. The personal representatives should provide for payment of the tax to you prior to the transfer of assets constituting the corpus of the trust to the trustees.

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

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

TAXATION—EXECUTORS' COMMISSIONS—WHEN EXECUTORS
 CONDUCT BUSINESS OF DECEDENT THEIR COMMISSIONS
 AND TAX THEREON SHOULD BE COMPUTED ON BASIS OF
 NET PROFITS OF THE BUSINESS—INHERITANCE TAX
 SHOULD BE SIMILARLY COMPUTED.

July 8, 1954.

Mr. W. Curtis Hopkins,
Register of Wills
for Prince George's County.

We are in receipt of your letter stating that in an estate now in process of administration in your office the executors, pursuant to powers contained in the testator's will, have managed his interests in a certain restaurant business. You inform us that the gross receipts of the business amounted to \$494,434.91 and that expenses of doing business were \$482,477.62. You ask our opinion whether tax on the executors' commissions should be paid on \$494,434.91 or on the amount of \$11,957.29, representing the net income of the business.

The tax on commissions levied by Article 81, Section 143 of the Annotated Code of Maryland, 1951 Edition, is imposed upon "all commissions allowed to executors by the Orphans' Courts of this State". Article 93, Section 5, authorizes the payment of commissions "which shall be at the discretion of the Court not under two per cent nor exceeding ten per cent on the first Twenty Thousand Dollars (\$20,000.00) of the estate, and on the balance of the estate not more than two per cent; * * *". The question then becomes one of whether the gross income from the restaurant business during the period of administration is part of the estate.

In jurisdictions where statutes provide, as in Maryland, that commissions shall be computed on the basis of the value of "the estate", there is great divergence of opinion as to the elements which shall be embraced within "the estate". This question has been passed upon by the Court

of Appeals of Maryland on several occasions, although no precise rule has ever been laid down. In *Eversfield v. Eversfield*, 4 H. & J. 12, an executrix was allowed commissions based on the amount of the inventories, excluding what might have been lost or might have perished. Subsequently, in *Evans v. Iglehart*, 6 G. & J. 171, it was held that an executor should have been allowed a commission on the excess of sales over the appraisement. These early cases indicate a trend toward the view that commissions should be allowed on net gains by way of income accumulated during the course of administration of the estate.

21 *American Jurisprudence*, Section 520, pocket part, note 20, comments:

"It appears that, absent any specific statutory provision limiting a personal representative's commissions to, or fixing them upon the basis of, the appraised value of the estate, the valuation fixed by the appraisal, although prima facie the basis for computation, is not conclusive or binding where the estate has a different value at the time of final settlement, and the latter value may be taken as the basis for computation. This is true in the absence of any statutory direction as to basis of computation as well as under statutes which provide for calculation of commissions upon the whole estate accounted for by the representative."

In 173 A.L.R. 1347, it is said:

"While no precise rule can be stated on the basis of the decisions involving the precise question here under consideration, the general conclusion to be drawn is that, absent any specific statutory provision limiting a personal representative's commissions to, or fixing them upon the basis of, the appraised value of the estate, the valuation fixed by the appraisal, although prima facie the basis for computation, is not conclusive or bind-

ing where the estate has a different value at the time of final settlement, and the latter value may be taken as the basis for computation. This is true in the absence of any statutory direction as to the basis of computation as well as under statutes which provide for calculation of commissions upon the whole estate accounted for by the representative."

Exactly on point is 34 *C.J.S.*, Section 865, where it is said:

"Where a personal representative carries on the business of his decedent, he is not entitled to commissions on the gross receipts realized or the necessary disbursements made by him while conducting the business, unless, * * * the entire capital of the business is real estate and the income is derived entirely from rents."

See also *Appeal of Larrabee*, N. J., 130 A. 195, 98 N. J. Eq. 655; *Kottwitz v. Jehn*, Tex., Civ. App., 6 S.W. 2d 209.

The rule as stated in *Corpus Juris Secundum* seems to be clearly the law of Maryland. Accordingly, it is our opinion that commissions should be allowed on the net income from the business during the time it was conducted by the executors, or on \$11,957.29, and that the tax on the commissions should be computed on this basis.

You further ask us whether the executors must report the gross sales receipts of the business for the purpose of computing and paying the inheritance tax or whether they should report the amount after gross expenses have been deducted. The exposition of the rule which is followed in Maryland in *Safe Deposit and Trust Company v. State*, 143 Md. 644, seems to be controlling. The Court of Appeals said there, at page 648:

"It is with the estate as it passes to the beneficiary, and not merely with the estate as it passes from the person who dies 'seized and possessed

therof,' that the collateral inheritance tax law is concerned. The expressed purpose of the law is that any property or money passing from a decedent to one not related within the limits prescribed 'shall be subject' to the tax, and that it shall be paid by the executor or administrator at the rate of five per cent. of 'every hundred dollars he may hold for distribution' among the persons entitled. This payment is directed to be made by the executor or administrator 'before he pays any legacy, or distributes the shares of any estate liable to the tax imposed' by the statute. When the legacy or distributive share consists of property other than money or real estate, the tax is payable 'on the appraised value thereof as filed in the office of the register of wills'."

This principle was affirmed in *Rosenburg v. Bouse*, 172 Md. 530, at page 535, wherein it was said:

"The conclusion of the lower court that the tax was to be paid upon the valuation of the personality as of the time of its transfer to the distributee, and upon the amount of income received by the executors after the decedent's death, is in accordance with the decisions cited of this court, and the terms of chapter 520 of the Acts of 1935, which imposes the tax on all unpaid and undelivered legacies and distributive shares, without an exemption of an increase in appraised value or of the net income received, although decedent may have died before the passage of the amendment."

Accordingly, it is our opinion that the executors should only report the net profit from the business for the purpose of computing the Maryland inheritance tax.

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

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

TAXATION—INHERITANCE TAX—DEVISE IN JOINT TENANCY DOES NOT LAPSE WHEN ONE OF SEVERAL JOINT TENANTS PREDECEASES DEVISOR—MARYLAND INHERITANCE TAX IS COMPUTED ON WHOLE PROPERTY AS PASSING FROM DEVISOR TO SURVIVING JOINT TENANT NAMED IN THE WILL.

July 22, 1954.

Mr. Harry D. Radcliff,
Register of Wills for Frederick County.

We are in receipt of your letter of July 8, 1954, in which you advise that a decedent in your County left a last will and testament which included a devise as follows: "I give, devise and bequeath to my son A and my daughter-in-law B, as joint tenants with the common law right of survivorship, in fee simple and in absolute estate, real property composed of approximately 85 acres improved by house and outbuildings, title to which is now in my name, * * *". The testator died on August 31, 1953, but he had been predeceased on April 24th of the year by his son A.

Article 93, Section 351 of the Annotated Code of Maryland (1951 Ed.) provides that: "No devise, legacy or bequest shall lapse or fail of taking effect by reason of the death of any devisee or legatee * * *". Under the circumstances, however, Section 351 is not applicable.

In *Vogel v. Turnt*, 110 Md. 192, at 198, the Court cites the earlier case of *Craycroft v. Craycroft*, 6 H. & J. 54, where the testator had devised lands to his three sons in joint tenancy. One of them died before the testator, and the Court held, "what must be perfectly clear, that the survivors took. It was held that it was not a lapsed devise, and hence the statute on that subject had no application." Miller on "Construction of Wills", Section 153, summarizes the general law as follows:

"The sole purpose of the statute was to prevent the lapsing of devises and bequests. The

statute means no more than what is clearly expressed; it made provision for a case which before was not provided for by law, by giving life and effect to a devise or bequest which otherwise would be inoperative. Where the devise or bequest would not have lapsed, the statute does not apply; for this reason, the statute does not apply to a gift to a class of persons or to survivors or to a gift to joint tenants. The legacies intended to be provided for by the statute are legacies which would lapse by the death of the legatee; the statute does not apply to any other kind. The language of the statute refers only to such legacies as failed by the common law to take effect, by lapsing, and which, but for the death of the legatee, would have been available legacies. The language clearly imports the happening of some future contingency to defeat a devise, which, without the happening of such contingency, would have been valid and effectual. * * *"

The one-half of the value of the property which B received directly under the will is, of course, taxable at the collateral inheritance rate of seven and one-half per centum. The remaining one-half of the value of the property which B received presents a more difficult question of tax liability. In order to establish the tax due on this transfer, it is necessary to refer to the words of the statute and to discern the nature of the operation of the devise. Article 81, Section 149 of the Annotated Code of Maryland (1951 Ed.) provides that:

"There is hereby levied and imposed a tax at the rate of seven and one-half per centum on every One Hundred Dollars of the clear value of any and all property, having a taxable situs in this State, passing at the death of any resident or non-resident decedent, in trust or otherwise, to or for the use of any person or persons, other than

the father, mother, husband, wife, children or lineal descendants of such decedent; ** **”

No part of the property which is the subject of this devise passed to A's widow upon his death. The mere fact that his father's will at that time named him as a devisee did not create a property interest. The father might well have altered this testamentary provision by a codicil or by a new will. The testator could have sold the property during his lifetime, thereby adeeming the devise. Many other impediments to the execution of the testamentary intent could be cited.

It is clear, therefore, that whatever passed to the daughter-in-law B, passed at the death of her father-in-law, the testator. The words employed in his will did not and could not operate after his death to create a property interest in his son A, who had predeceased him. Consequently, it is our opinion that the Maryland collateral inheritance tax of seven and one-half per centum is likewise due and owing upon the remaining half of the value of the property which daughter-in-law B received under this devise. See 36 Opinions of the Attorney General, 310. In other words, the entire devise is subject to the tax at the rate of seven and one-half per centum.

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

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

TAXATION — INHERITANCE TAX — EXEMPTION — AMERICAN
HEART ASSOCIATION AND DAMON RUNYON MEMORIAL
FUND FOR CANCER RESEARCH DEEMED TO CARRY ON A
SUBSTANTIAL PART OF THEIR ACTIVITIES IN MARYLAND
AND ARE EXEMPT FROM COLLATERAL INHERITANCE
TAX.

August 23, 1954.

Miss Ruth R. Startt,
Register of Wills for Talbot County.

Re: Estate of Florence B. Russell.

We are in receipt of your extensive correspondence relative to the estate of a decedent who, by her last will and testament, made bequests to two national organizations which carry on scientific work with the object of finding cures for certain diseases and to alleviate human pain and suffering. You have asked our opinion whether these bequests are exempt from the Maryland Inheritance Tax.

The first of these organizations is the American Heart Association, Inc. This organization is a corporation organized under the Membership Corporations Law of the State of New York and has its principal office at 44 E. 23rd Street in New York City. Its purposes are to study, acquire, disseminate and apply knowledge concerning the human heart and the circulation of blood. Its activities are financed by contributions which are solicited from the public in national drives each year.

The result of the fund raising campaign of the American Heart Association, Inc., in 1953, was the collection of \$8,555,197.16. Under the general policies of the Association, 25% of all the money raised is forwarded to the National Headquarters for work there, thus \$6,435,334.55 was retained by affiliates and locals throughout the country.

In the same period, the sum of \$89,840.74 was raised in Maryland. Under the policy noted above, \$22,460.18 was

forwarded to the American Heart Association in New York and \$67,380.56 was retained, to be expended in Maryland for the benefit of Marylanders. In addition, the national organization allotted \$14,091.00 to Maryland in connection with the American Heart Association Research Program. The aggregate thus spent in Maryland was, therefore \$81,471.56, which is .95% of the total fund raised throughout the United States.

The other organization is the Damon Runyon Memorial Fund for Cancer Research, Inc., which is also a non-profit corporation organized under the Membership Corporations Law of the State of New York. The purpose of the Corporation is to support cancer research by making grants to institutions which undertake research projects. Since its inception, the fund has made 452 grants and has awarded 287 fellowships in 178 institutions scattered throughout the forty-eight states, the District of Columbia and fifteen foreign countries. This activity has involved the expenditure of \$8,037,718.00. Of this total amount, \$111,000.00 has been expended in Maryland.

In 1948 the University of Maryland received a grant in the amount of \$25,000.00. In 1949 Johns Hopkins University received a grant of \$50,000.00. In 1950 no grant was made in Maryland, but in 1951 the Maryland Division of the American Cancer Society was awarded \$26,000.00 and Johns Hopkins University received a further allocation in the amount of \$10,000.00. There has been no further award of funds to Maryland institutions since 1951.

There can be little doubt that the character of the two organizations involved would bring them within the scope of the exemption allowed by Article 81, Section 149 of the Annotated Code of Maryland, for corporations, funds or foundations organized under the law of the United States or of any State and operated exclusively for religious, charitable, scientific, literary or educational purposes. The

only basis for hesitation in allowing this exemption arises from the fact that in the case of the American Heart Association, Inc., we have only figures for a single year, and in the case of the Damon Runyon Memorial Fund for Cancer Research, Inc., the available information indicates that the activity in Maryland has not been uniform. We are thus faced with the application of these facts to the requirement of Section 149 that exempt organizations must carry on a substantial part or all of their activities or work in the State of Maryland.

This language has been construed on several occasions by the Court of Appeals of Maryland. *Clarke v. Union Trust Co.*, 192 Md. 127, 63 A 2d 635; *Shaughnessy v. Linguistic Society*, 198 Md. 446, 84 A 2d 68. In the latter case the Court construed the word "substantial" as used in the statute to mean "considerable in amount or value. Thus, we speak of a substantial profit or a substantial gift to charity." Under this construction, the volume of activity of the two subject organizations would conform to the requirements of the exemption. 37 Opinions of Attorney General, 358. The application of the time element to the problem is, apparently, the novel question which has not heretofore been considered. In the case of the American Heart Association, Inc., it appears, however, that there is a policy of retaining 75% of funds collected in Maryland for use in Maryland, even if the allocation of research funds in Maryland is disregarded. This policy would seem to insure that activities in Maryland will be continuous and not merely desultory or occasional. With respect to the Damon Runyon Memorial Fund for Cancer Research, Inc., it can be seen from a study of the figures that the activity in Maryland is recurrent although not annual. In view of the nature of the fund and of the work supported by it, this activity would seem to be sufficient to comply with the exemption statute.

It is our opinion, therefore, that the bequests to the American Heart Association, Inc., and the Damon Runyon

Memorial Fund for Cancer Research, Inc., by the testatrix about who you wrote us, should not be reduced by the exaction of the inheritance tax.

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

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

TAXATION—SALES AND USE TAXES—STORAGE TANKS ARE DEEMED TO BE PERSONALTY FOR PURPOSES OF ADMINISTRATION OF SALES TAX ACT WHEN NOT FIXED TO THE EARTH OR INTEGRATED IN A STORAGE SYSTEM, BUT ARE REALTY WHEN SO FIXED OR INTEGRATED.

August 30, 1954.

Mr. Edward F. Engelbert,
Assistant Director,
Retail Sales Tax Division,
Office of the Comptroller of the Treasury.

We are in receipt of your letter relative to the various problems confronting you arising from the question of whether or not liquid storage tanks, when erected by the vendee-contractor, become real property. This question is of vital importance under the law of Maryland because sales and use taxes are imposed upon contractors on account of sales of building materials to them for use for resale in the form of realty. Thus, if the tank, when erected, is realty, the tax would be paid by the contractor on the raw materials which he purchased in order to erect it. If the tank is personalty, when erected, the contractor would be required to collect the tax from the purchaser on the full selling price.

The problem presents several different aspects, represented by the various physical and factual circumstances affecting storage tanks. These circumstances may be classified under several general types, as listed below :

I. Storage tanks of the type which are seen at Curtis Bay, Fairfield and Canton, with capacities up to one million gallons. Plates for such tanks are fabricated by the seller-contractor in his plant and shipped to the site where they are assembled. A concrete rim is usually constructed by the landowner, upon which the edge of the tank is placed, the interior of the circle thus formed being filled with sand to minimize the effect of irregularities in the bottom of the tank. These tanks are not affixed to the realty in any manner

by the contractor, their size and weight being sufficient to hold them in place for all practical purposes. It is alleged, however, that such tanks, when empty, have been known to blow over or to float away during floods, and they are furthermore supposed to be susceptible to being moved without disassembly or damage.

II. A tank similar to that described in Class I but connected by the seller-contractor to pipe lines connecting with other storage tanks or refining facilities. These pipe lines may run on the ground, under the ground, or be suspended in the air between tanks.

III. A tank similar to that described in Class I, but a stairway is erected leading to a catwalk between two tanks, the base of the stairway being set in concrete with anchor bolts embedded into the concrete, the stairway and the catwalks being affixed to the tank.

IV. Tanks of a size which can be constructed at the contractor's plant and moved from the plant to the purchaser's chosen site.

(a) Such tanks under the conditions described in Class II.

(b) Such tanks under the conditions described in Class III.

V. Water tanks of the type that are used to service small communities or large industrial plants, usually erected on steel towers in order that water may be drawn off by gravity, the base of the towers being embedded in concrete.

VI. Gas holders requiring an elaborate foundation which is set at some depth into the ground with the tanks arranged so that they move up and down within the foundation, thereby maintaining sufficient pressure to drive the gas through the mains.

There are few questions in the law more difficult than the definition of the distinction between real and personal property. The courts, the text writers, and the encyclopædists have all labored to make such a distinction clear, but without complete success.

51 Am. Jur. "Taxation", Section 418, says:

"* * * Generally, in regard to the liability of property to taxation as between landlord and tenant, fixtures during the continuance of the annexation are to be treated as a parcel of the realty; and although it is in the power of the tenant to reduce the thing again to the state of goods and chattels by severance, yet until so severed, it remains a part of the realty. * * * Machinery and other fixtures which can easily be removed by unscrewing bolts without doing any physical injury to the freehold are taxable only as personal property."

In 84 C.J.S. "Taxation", Section 72, it is said:

"* * * Whether a structure constitutes an improvement of the land so as to partake of the status of realty for tax purposes depends on the degree of permanence intended in its erection and use, and temporary structures are not 'improvements.'"

In support of this statement, *Standard Oil Company of New Jersey v. Atlantic City*, 15 A 2d 271, 18 N.J. Misc. 582 is cited. In that case, it was held that oil storage tanks erected on, and attached to concrete bases with piping connected thereto and to the ground, constructed and maintained as permanent parts of an oil storage plant by the owner, constituted structures assessable for taxation as improvements.

The Court of Appeals has been faced with this problem in its various aspects many times. It stated the general rule for defining personal property in *Elkton Elec. Co. v. Per-*

kins, 145 Md. 224, 125 A. 851, cert. den. 45 S. Ct. 90, 266 U.S. 602, 69 L. Ed. 462, error dism. 45 S. Ct. 124, 266 U.S. 585, 69 L. Ed. 454, wherein it observed :

“Personal property has been said to be ‘the right or interest which a man has in things personal, or the right or interest less than a freehold which a man has in realty, or any right or interest which he has in things movable,’ 32 *Cyc.* 666, and is also defined in 22 *R.C.L.*, page 63, as follows : ‘The term personal property embraces all objects and rights which are capable of ownership except freehold estates in land, and incorporeal hereditaments issuing thereout, or exercisable within the same.’”

The court has been called upon to adjudicate this question in many specific instances, such as *Dudley v. Hurst*, 67 Md. 44, which involved canning machinery; *Carlin v. Ritter*, 68 Md. 478, which involved ice house, cow stable and carriage enclosure; *Central Trust Co. v. Arctic Ice Machine Mfg. Co.*, 77 Md. 202; *Warren Mfg. Co. v. Baltimore*, 119 Md. 188; *Mt. Vernon Co. v. Continental Trust Co.*, 121 Md. 163—these three cases involved machinery; *Lewis v. Schlichter Co.*, 137 Md. 217, which involved a silo; *Dairy Co. v. Wrecking Co.*, 146 Md. 318, also involved machinery; *Solter v. Macmillan*, 147 Md. 580, which involved rings, molds and cores; *Wurlitzer Co. v. Cohen*, 156 Md. 368, which involved pipe organ; *Credit Co. v. Bldg. & Loan Assn.*, 160 Md. 230, which involved metal garage; *Realty Co. v. Sales Corp.*, 163 Md. 541, which involved oil burner; *Cons. Gas, Elec. Light & Power Co. v. Ryan*, 165 Md. 484, which involved traveling crane; *Finance Corp. v. Bldg. & Loan Assn.*, 167 Md. 222, which involved hot water heating system; *Anderson v. Bldg. & Loan Assn.*, 172 Md. 94, which involved crane and machinery; *Schofer v. Hoffman*, 182 Md. 270, which involved oil heater; *Dermer v. Faunce*, 191 Md. 495, which involved radiators and heaters.

In the case of *Carlin v. Ritter*, *supra*, the court held that, in order to become part of the realty, wooden structures or

buildings must be attached, and that the fact that such structures or buildings rest by virtue of their own weight on flat stones laid upon the surface of the ground does not suffice to operate as an annexation to the freehold.

In the case of *Abramson v. Penn*, 156 Md. 186, the court ruled that gas steam radiators remained personalty when they were so installed as to rest on brackets which were affixed to the wall and were merely connected by a single gas supply pipe to the rest of the system, being otherwise independent units. The rationale of this decision seems to have been that each radiator remained a unit and retained its character as personalty since its only physical attachment to the whole system was the tenuous link of the gas supply pipe.

In the leading case of *Anne Arundel Co. v. Sugar Refining Company*, 99 Md. 481, the Court held that common law distinctions governed the classification of property for taxation and observed that at common law fixed and movable machinery are alike regarded as personal property. There is a question as to whether this rule for "machinery" would embrace "tanks", but it becomes moot upon consideration of a refinement of the distinction made by Baron Parke in *Hellawell v. Eastwood*, 3 Eng. Law & Eq. 562, who said:

"* * * the question depends principally on the object and purpose of the annexation, whether it was for the permanent and substantial improvement of the building, in the language of the civil law, *perpetui usus causa*, or merely for a temporary purpose, or the more complete enjoyment and use of the machine as a chattel."

Applying the general considerations which have led to the determination of the cases cited to the six categories proposed by you, we have come to the following conclusions:

Class I would seem to be clearly personalty, in view of the absence of any physical attachment to the realty or any

connecting links with other tanks or with a manufacturing system which might operate as either a physical or a constructive annexation to the freehold.

Class II is realty by virtue of the fact that its connecting pipes make it impossible to move without disconnecting and rearranging the system. The interconnecting pipes not only incorporate it with the manufacturing plant, or with other storage tanks, but also evidence an intention on the part of the owner that tanks of this class should remain indefinitely a part of the realty. Certainly the integration of a storage tank at a refinery or on a "tank farm" is more analogous to the construction of a warehouse than to the addition of complementary machinery, and is *perpetui usus causa* and, therefore, part of the realty.

Class III is personalty because the presence of a catwalk and stairway seems incidental to the use of the tank and not basically intended to integrate it into a larger system or to affix it irrevocably to the realty.

Class IV is personalty for the same reasons as given in Class I, as is IV(b), for the reasons noted in Class III. Class IV(a) is realty, however, upon its incorporation into a general storage system or manufacturing plant by interconnection of pipe lines.

Class V tanks seem to be fixed or embedded in the realty, and even a layman's observation would indicate that they must be very firmly so established. They are practically always incorporated into an extensive distribution system and could not be moved without disassembly. By all the rules they must be deemed to be realty.

Class VI is likewise firmly and permanently attached to the realty. Although the foundation might be broken up and the tank removed, the whole unit is of little value when disassembled. It has, therefore, become annexed to a part of the realty in which it is fixed.

We trust that the opinions expressed herein relative to the six classes of tanks described will adequately answer the questions now confronting you.

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

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

TAXATION—PROPERTY TAXES—PROPERTY SITUATED IN
MARYLAND AND BELONGING TO FOREIGN NATIONS IS
SUBJECT TO MARYLAND PROPERTY TAXES.

August 30, 1954.

*The Honorable John Foster Dulles,
Secretary of State,
Washington, D. C.*

His Excellency Theodore R. McKeldin, Governor of Maryland, has forwarded to us a letter from the Department of State concerning the liability of a foreign nation for Maryland taxes on real property owned by it and located within this State. The property is intended for use as residential accommodation for diplomatic officers of the foreign country. The Governor has requested us to reply directly to you. We understand that the immediate occasion for this inquiry is the consideration by the Embassy of Burma of the purchase of certain real property in Montgomery County, Maryland. The inquiry contemplates the nature of the State taxes and the extent to which the Burmese Government may be exempted from the payment of them.

We note with interest that similar property located in Burma and owned by the United States of America has been exempted from Burmese taxation.

Article 81, Section 7(1) of the Annotated Code of Maryland (1951 Ed.) provides that:

“All real properties in this State, by whomsoever owned, including that owned or leased by the United States, or any department or agency of the United States, to the fullest extent possible under the Constitution of the United States and laws of the United States pursuant thereto and in conformity therewith, in the county and/or city in which the same are situated.”

shall be subject to assessment and taxation. Section 8(1) exempts:

“Property, real and personal, tangible and intangible, belonging to *this State* or to any county or city of *this State*.” (Emphasis supplied.)

Sub-section (21) exempts:

“Any property exempted from taxation by this State by the Constitution of the United States or by any Act of Congress passed pursuant to and in conformity with the Constitution of the United States, only to the extent that such exemption is so required and no further.”

Thus, it will appear that, under our tax statutes, there is no exemption provided or immunity recognized for the real estate owned by foreign nations.

This question was considered by this office in 1941 in 26 Opinions of the Attorney General, 470. At that time, the Royal Norwegian Government, through its duly accredited Minister, had acquired title to an estate in Montgomery County for the purpose of establishing a home for the Crown Princess of Norway and her children, who had found asylum in the United States during World War II. After dealing with certain related questions, Attorney General Walsh noted:

“It may well be questioned, however, whether the Norwegian Government is entitled to immunity from taxes on real estate located in Maryland. * * * While the United States, where it purchases land within a State, even in the absence of consent by such State, is immune from taxation, this is because such immunity is held to be implicit in our National Constitution, and arises from the nature of our dual system of government.”

The opinion concluded without ruling specifically on this point, in view of the rapid progress of events during which

it was noted there might well be some treaty or other political development which would resolve the question.

To date we have been unable to learn of any treaty, statute or case law which affects the tax liability of foreign nations for the real estate taxes levied in the State of Maryland. The current tax rate in Montgomery County is \$1.93 per \$100 of value in *A* areas and \$1.97 in *B* areas plus surcharges in particular use zones, levied by the County, and \$.0567 per \$100 of value levied by the State. We believe that, under the circumstances described, the property of the Government of Burma will be subject to these taxes.

We are not unmindful of the courtesy extended to the Diplomatic Service of the United States in exempting American Diplomatic property in Burma from local taxation there. Nevertheless, it is impossible to create an exemption from taxation without the express authorization of the General Assembly of Maryland. Should you or the Ambassador of Burma care to pursue this matter further, we shall be glad to consult with you concerning the details of the situation.

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

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

TAXATION — ADMINISTRATRIX'S COMMISSIONS — EQUITABLE
CONVERSION UPON EXERCISE OF AN OPTION DATES
FROM TIME OPTION IS EXERCISED AND DOES NOT RE-
LATE BACK TO CREATION OF OPTION.

August 31, 1954.

Mr. Walter C. Clarke,
Register of Wills for Montgomery County.

Re: Estate of Heeledie E. Cole.

We are in receipt of your recent letter in which you state that the decedent in your County died seized and possessed of certain real estate. Prior to her death, she had appointed an attorney in fact under a power of attorney who, in turn, executed a lease-option-agreement covering the aforementioned real estate. Subsequent to the execution of this agreement, the decedent died and, at a still later date, the lessee notified the administratrix of the decedent's estate, that he intended to exercise the option of purchase contained in the lease-option-agreement. You ask our opinion as to whether or not there has been an equitable conversion of the real estate, and whether, therefore, the real estate should have been treated as personalty and a tax on the administratrix's commissions collected.

This appears to be a case of first impression in the State of Maryland. It is not, however, without precedent in other jurisdictions. This question was adjudicated in 1785 by Lord Kenyon in the celebrated case of *Laves v. Bennett*, Ch., 1 Cox 167, 29 Eng. Rep. 1111, wherein he said:

“When the party who has the power of making the election has elected, the whole is to be referred back to the original agreement, and the only difference is that the real estate is converted into personalty at a future period.”

The rule thus stated by the eminent Master of the Rolls has not found general acceptance in the United States. As

is stated in *Eddington v. Turner*, 27 Del. Ch. 411, 38 A 2d 738, 155 A.L.R. 562:

“All of the cases now hold that the property is converted from the date of the exercise of the option, and not from the date of the agreement by which such option was given.”

The still more recent case of *Durepo v. May*, 73 R.I. 71, 54 A 2d 15, 172 A.L.R. 429, states, under a similar set of facts:

“It is therefore our opinion that the doctrine of equitable conversion is inapplicable in the circumstances of this cause, and that, upon the conveyance of the property in question to the complainants, the purchase price shall go to the heirs
* * *.”

The general rule, as enunciated in 19 Am. Jur. p. 16, Section 16, is that:

“Most American courts have held that, since the conversion is not an absolute but a contingent one, it takes place when the option is exercised and does not relate back to the date of the lease, and that, therefore, the heirs take the purchase money instead of the land, precisely as the ancestor would have done had he survived until that time.”

In the light of the authorities cited, it is our opinion that there was no equitable conversion prior to the decedent's death, and that, therefore, the proceeds of the sale of the property were properly paid directly to the decedent's heirs, and that no tax on the administratrix's commissions is due to the State of Maryland.

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

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

TAXATION — INHERITANCE — “STRONGHOLD CORPORATION”
DEEMED TO BE A CHARITY AND EXEMPT FROM MARY-
LAND COLLATERAL INHERITANCE TAX.

August 31, 1954.

Mr. Harry D. Radcliff,
Register of Wills for Frederick County.

Re: Estate of Gordon Strong, Deceased.

We are in receipt of your letter stating that Colonel Gordon Strong, a resident of Frederick County, died on February 24, 1954, and, by his last will and testament, directed that a corporation to be known as “Stronghold Corporation” be formed for certain public purposes. Colonel Strong devised his extensive real estate holdings in the neighborhood of Sugar Loaf Mountain to the Corporation, to be developed as the Corporation may determine, and to offer to the public for its education and enjoyment all appropriate forms of out-of-door beauty in connection with the property known as “Stronghold”, and to promote by example, by precept, and by such other encouragement as the Corporation may find practicable, the development and enjoyment of out-of-door beauty elsewhere. The Corporation is more particularly instructed by Colonel Strong’s will to maintain and operate the grounds, buildings and gardens at Stronghold for the enjoyment of visitors to the Estate. The Corporation is authorized by the will to charge such reasonable admission fee, not in excess of what the Corporation shall find necessary, in order to provide funds for the operation and development of Stronghold.

In your letter you state that you have reached the conclusion that the devise of real estate and improvements to Stronghold Corporation is not subject to the collateral inheritance tax, in view of the exemption created by Article 81, Section 149. We believe that this conclusion is a sound one and we are happy to concur therewith.

It is to be noted that Article 81, Section 149, specifically exempts from the payment of the collateral inheritance tax

all property passing to or for the use of a corporation organized and operated exclusively for religious, charitable, scientific, literary or educational purposes, a substantial part or all of the activities and work of which are carried on in the State of Maryland. The Court of Appeals in *Rabinowitz v. Wollman*, 174 Md. 6, poses the following question :

“* * * But are the objects of the testatrix’ bounty, or any of them, noncharitable according to the definitions of charities?”

The Court answers its rhetorical question with the following quotation :

“In its legal sense, charity comprises four principal divisions: (1) Trusts for the relief of poverty and distress; (2) trusts for the advancement of education; (3) trusts for the advancement of religion; and (4) trusts for other purposes beneficial to the community not falling under any of the preceding heads.” 11 C.J. 314, sec. 18; *Restatement, Trusts*, sec. 368.”

This position is supported by the decisions of many courts throughout the country. In *Collins v. Lyon, Inc.*, 24 S.E. 2d 572 at 580, 181 Va. 230, the court held that it is not necessary, in order to create a charitable use, that a fund be devoted to almsgiving, but it may be devoted to any purpose in which the public has an interest. More particularly in point is the case of *Winchester v. Cox*, 26 A 2d 592 at 596, 129 Conn. 106, where the Town accepted lands under an agreement to use them as a park, and it was held that a valid charitable use thus came into existence.

For the reasons stated, we are of the opinion that you are correct in believing that the devise to Stronghold Corporation is exempt from the collateral inheritance tax by virtue of the provisions of Article 81, Section 149.

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

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

TAXATION—ADMINISTRATOR'S ALLOWANCE—HUSBAND NOT
ENTITLED TO ALLOWANCE FOR HIS WIFE'S BURIAL EX-
PENSES WHEN ADMINISTERING HER ESTATE.

August 31, 1954.

Mrs. Grace L. Hutchins,
Register of Wills for Calvert County.

With your recent letter you enclosed a copy of the administration account of an estate now being processed in your office. From this account it appears that the assets of the estate were devoted to the payment of funeral expenses, ambulance service, burial clothing and cost of a tombstone. After payment of these items, together with administrative expenses, the entire estate was exhausted and there were no assets for distribution. You request an opinion as to whether the various expenses connected with the burial of the deceased should be allowed the administrator of the estate, who is also the husband of the decedent.

This is a question which has long been settled in the law of Maryland. The Court of Appeals, in the case of *Stonesifer v. Shriver*, 100 Md. 30, 59 A. 2d 139, has ruled unequivocally in the following language:

“At common law, the legal existence and identity of the wife was merged in that of the husband who became entitled to hold and to reduce into his possession all her personal estate, and as a consequence the law cast upon him the duty of supplying her with necessaries suitable to their station in life. The duty of the husband to bury his wife in a suitable manner is involved in the obligation to maintain her while living, and rests also upon a due regard for the decencies of life, and the health of the public. It has been generally held where the subject has been considered by the Courts of this country that statutes creating the wife's statutory estate do not absolve the husband

from his common law obligation to provide suitable burial for the wife, and that he is not entitled to any credit on the settlement of his administration of her estate for such expenditures. *Smyley v. Reese*, 53 Ala. 88; *Sears v. Giddey*, 41 Mich, 590; *Staples Appeal*, 52 Conn. 425; *Matter of Weringer*, 100 Cal. 345."

It is the opinion of this office, therefore, that the Administrator, who is also the husband, is not entitled to an allowance for the items noted, and that since the elimination of such allowance will create a net balance in the estate, that the Maryland lineal inheritance tax at the rate of 1% of the clear value of the estate will be due and should be collected by you.

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

TAXATION—USE TAX—MARYLAND USE TAX APPLIES TO
PROPERTY OF NON-RESIDENTS WHICH IS BROUGHT INTO
MARYLAND.

September 7, 1954.

Mr. Edward F. Engelbert,
Retail Sales Tax Division,
Office of the Comptroller.

We have for reply your letter in which you request our opinion as to the ability of the State of Maryland to tax non-residents on property which is brought into Maryland although the owner himself may not come into the State. You cite as examples a manufacturer of machinery, who leases such machinery to a Maryland resident for use in Maryland, or contractors who are building roads for the State Roads Commission.

Such a tax would, of course, be imposed in the form of a use tax. The present Maryland use tax is codified as Section 369 of Article 81 of the Annotated Code of Maryland, 1951 Edition. It provides:

“An excise tax is hereby levied and imposed on the use, storage or consumption in this State of tangible personal property purchased from a vendor within or without this State on or after the effective date of this Act, for use, storage or consumption within this State. * * *.”

Use taxes complementary to sales taxes have been passed upon as constitutional many times by the Supreme Court of the United States. *Southern P. Co. v. Gallagher*, 306 U.S. 167, 83 L. Ed. 586; *Joseph v. Carter & Weekes S. Co.*, 330 U.S. 422, 91 L. Ed. 993. The use tax has also been reviewed by the Court of Appeals, which has confirmed its legislative characterization as an excise tax, in *Herman v. Mayor and City Council of Baltimore*, 189 Md. 191, at 198. There, it was said:

“Among the earliest, and also among the latest, excise taxes have been various sales taxes. Of modern sales taxes, one of the oldest and most widespread is the gasoline tax. During the last 25 years or more, in an increasing number of states, the gasoline tax and other sales taxes have been complemented by a ‘compensating’ use tax, usually including ‘storage’ (i.e., possession) for future use, to prevent evasion by extra-state purchases and discrimination in favor of such purchases as against local purchases. Such use taxes have frequently been attacked under the Commerce Clause, U.S. Const., art. 1, sec. 8, cl. 3, and under the Fourteenth Amendment; they have been sustained by the Supreme Court when in operation they do not amount to a tax on interstate commerce or a discrimination against such commerce, but only prevent discrimination against local sales. *Gregg Dyeing Co. v. Query*, 1932, 286 U.S. 472, 52 S. Ct. 631, 76 L. Ed. 1232, 84 A.L.R. 831 (unanimous opinion by Hughes, C. J., covering both the Commerce Clause and the Fourteenth Amendment). In the case cited the Supreme Court of South Carolina said, ‘The tax here imposed is an excise tax and not a property tax.’ 286 U.S. at page 477, 52 S. Ct. at page 633, 76 L. Ed. 1232, 84 A.L.R. 831. In *Bowman v. Continental Oil Co.*, 256 U.S. 642, 648, 649, 41 S. Ct. 606, 65 L. Ed. 1139, it was held that an excise tax on the sale or use of gasoline was not a property tax within an equality provision of the New Mexico constitution. A number of state court decisions to the same effect, with respect to gasoline or other use taxes, are collected in Notes in 129 A.L.R. 222, 230-232 and 153 A.L.R. 609, 615, 616. On the point that such taxes are not discriminatory against interstate commerce or unjustly discriminatory under the Fourteenth Amendment, see also *Nashville, C. & St. L. Ry. v. Wallace*, 288 U.S. 249, 264-268, 53 S. Ct. 345, 77 L. Ed. 730, 87 A.L.R. 1191; *Edelman v. Boeing*, 289

U.S. 249, 53 S. Ct. 591, 77 L. Ed. 1155; *Monamotor Oil Co. v. Johnson*, 292 U.S. 86, 54 S. Ct. 575, 78 L. Ed. 1141; *Henneford v. Silas Mason Co.*, 300 U.S. 577, 57 S. Ct. 524, 81 L. Ed. 814.”

In the light of the many decisions on this question, it is our opinion that a use tax may be constitutionally imposed upon the use, storage or consumption of tangible personal property brought into Maryland under the circumstances described in your letter. We believe, moreover, that such a tax is imposed, under the prescribed circumstances, pursuant to the provisions of Article 81, Section 369 of the Annotated Code of Maryland, 1951 Edition, which levies a tax upon tangible personal property purchased for use, storage, or consumption in Maryland. Section 379 creates a presumption that tangible personalty brought into the State is purchased for use, storage or consumption here. This legislative presumption may, apparently, only be rebutted upon the specific grounds set forth in Section 368.

The legislative intent in this matter is revealed by analysis and correlation of the several sections involved. It is unmistakable and is corroborated by the fact that Section 370 (e) exempts property brought into the State by non-residents temporarily in the State. Unless, by the present law, the tax does extend into this field, the exemption referred to is entirely without meaning.

Accordingly, it is our opinion that the State of Maryland may, and does, impose a use tax upon property owned by non-residents of Maryland which is sent into the State.

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

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

TAXATION—FRANCHISE TAX—VOLUNTEER FIRE COMPANIES,
ORGANIZED AS CORPORATIONS WITH CAPITAL STOCK
AUTHORIZED AND ISSUED, ARE EXEMPT FROM PAY-
MENT OF THE MARYLAND CORPORATE FRANCHISE TAX.

September 24, 1954.

*Mr. Albert W. Ward, Executive Secretary,
State Tax Commission.*

In your recent letter you have asked whether volunteer fire companies, organized as corporations with capital stock authorized and issued, are to be deemed as charitable and benevolent institutions so as to exempt them from payment of the franchise tax imposed by Article 81, Section 196, of the Annotated Code of Maryland, 1951 Edition.

In an opinion found in 39 Opinions of the Attorney General, 324, relative to the tax status of Stronghold Corporation, the definition of "charitable uses" in tax exemption statutes is generally held to be broader than mere almsgiving.

The question whether volunteer fire companies are charitable was examined at considerable length by my immediate predecessor in 37 Opinions of the Attorney General, 372. That opinion was primarily concerned with the incidence of the Maryland inheritance tax to fire companies. The considerations therein stated will apply, however, with equal force to the question now before you with regard to the franchise tax.

It is my opinion that, in enumerating charitable corporations among those exempt from payment of the franchise tax, the legislative intent was broad enough to include volunteer fire companies. As was said in 37 Opinions of the Attorney General, 374: "In making this determination, we achieve the desirable purpose of according similar treatment to volunteer fire companies under personal property, inheritance and sales taxes".

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

TAXATION—INHERITANCE TAX—RATE OF INHERITANCE TAX
AND APPLICABILITY OF EXEMPTIONS TO BE ASCERTAINED
UPON EXERCISE OF POWER OF APPOINTMENT BY REFER-
ENCE TO LAW IN EFFECT AT DATE OF DEATH OF ORIG-
INAL TESTATOR WHO CREATED THE POWER BY HIS WILL
—EXEMPTIONS TO RELIGIOUS, CHARITABLE, ETC. OR-
GANIZATIONS GIVEN RETROACTIVE EFFECT.

October 22, 1954.

Mr. Leroy C. Shaughnessy,
Register of Wills for Baltimore City.

Re: Estate of Carolyn Norris Horwitz.

We are in receipt of your recent letter with respect to the Estate of the above named decedent, who, by her last will and testament, exercised the power of appointment granted by the will of her father, who died in Baltimore City on April 5, 1895. The decedent died February 1, 1953, and, in the exercise of the power, bequeathed \$20,000 to the Convention of the Protestant Episcopal Church of the Diocese of Maryland; \$5,000 to the Maryland S.P.C.A.; and \$5,000 to the Order of the Holy Cross at West Park, New York.

It has long been settled in the law of Maryland, both by opinions of the Court of Appeals and by rulings from this office, that, upon the exercise of a power of appointment, granted by a will, the liability for taxation is ascertained by application of the law in effect at the time of the original testator's death. 22 Opinions of the Attorney General, 698 and 738. Miller on *Construction of Wills*, page 741, Section 260, states in part:

“* * * What the donee does is, in theory, done by the donor through him as an instrumentality. The donor makes the appointment through the donee; and the estate created by the execution of the power takes effect in the same manner as if

it had been conveyed by the instrument which created the power, that is, the appointment relates back to the instrument which created the power. The estate created by the execution of the power does not pass through the estate of the donee, but upon the death of the donee passes directly to the appointee from the donor. This doctrine of relation back is regarded as the most important feature of the subject of powers."

In the leading case, *Prince de Bearn v. Winans*, 111 Md. 434, the litigation concerned a trust estate created by the settlor for his daughter, granting her power to make a testamentary appointment. With respect to the taxability of the corpus of the trust upon the exercise of the power of appointment, the court said:

"We do not regard as sound the appellees' contention that it was necessary or at least proper for the trustees to invoke the aid of the Orphans' Court in the distribution of the trust fund because it was liable for the debts of the appellant's wife or the payment of the collateral inheritance tax. In the case of *Price v. Cherbonnier*, 103 Md. 107, we held that property appointed under a power by an equitable life tenant, as was done in the present case, could not be subjected to the payment of his debts. Under the provisions of the Code, Art. 81, secs. 117 *et seq.*, the collateral inheritance tax is imposed only upon property passing to collateral relations from persons who may die seized thereof or transferred by will or by deed or other instrument intended to take effect in possession after the death of the grantor, bargainor, deviser or donor. That description does not include the property involved in the present controversy."

In *Darnall v. Connor*, 161 Md. 210 at 225, the court said:

"* * * The collateral parties holding under and by execution of the power took under the donor,

qua donor, and in like manner as if the power, and the instrument executing it, had been incorporated in the instrument by which the donor created the power.”

In 31 Opinions of the Attorney General, 244, it is said:

“This office has consistently held, as has the Court of Appeals, that where a power of appointment is exercised by one who did not create the power, the appointed property passes direct from the estate of the donor of the power to those who take and is taxable as part of the estate of the donor.”

It thus appears that the liability for the Maryland collateral inheritance tax and the rate of tax must be determined according to the law of Maryland as it existed in 1895. The collateral inheritance tax was imposed by Article 81, Sections 102-125, inclusive, of the Code of 1888. Section 102 set the rate of tax at 2½ per centum on the clear value of estates passing to any person or persons, bodies politic, or corporate, in trust or otherwise, other than to or for the use of the father, mother, husband, wife, children and lineal descendants of the decedent. There was no exemption, such as now exists, in favor of scientific, religious, educational and charitable organizations.

In 1943, the General Assembly enacted Chapter 964 which provided in Section 2:

“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 or where the inheritance taxes previously imposed have not yet been paid.”

The legislative intent embodied in this Act has been considered by this office on several previous occasions. In 32 Opinions of the Attorney General, 486 at 488, it is noted that:

“* * * the fact remains that all taxes previously imposed on dispositions made to charities prior to May 6, 1943, were forgiven by Chapter 964 of the Acts of 1943.”

See also *Safe Deposit and Trust Company v. Bouse*, Superior Court of Baltimore City, Daily Record, July 19, 1943. (Estate of Ellen M. Tormey, Proceeding following *Safe Deposit & Trust Co. of Baltimore v. Bouse*, 181 Md., 351.)

Under these circumstances, the beneficiaries named above may claim the benefit of the exemption, provided that each qualifies therefor. The Convention of the Protestant Episcopal Church of the Diocese of Maryland and the Maryland Society for the Prevention of Cruelty to Animals are, respectively, a religious organization, and an organization for the prevention of cruelty to animals, no part of the net earnings of which inures to the benefit of any private shareholder or any individual, and which, of course, carry on virtually all of their work in the State of Maryland. It is our opinion, therefore, that the bequests to the Convention of the Protestant Episcopal Church of the Diocese of Maryland, and to the Maryland Society for the Prevention of Cruelty to Animals are exempt from the Maryland collateral inheritance tax.

We are informed, however, that the Order of the Holy Cross is a religious body within the Protestant Episcopal Church, which has its headquarters and conducts its principal activities at West Park, New York. Although the Order was, in the past, active within the State of Maryland, we understand that it no longer carries on a substantial part of its activities and work here and, therefore, is not entitled to the exemption created for the benefit of religious institutions. Under the principles which are discussed above.

the bequest to the Order should be taxed at the rate of $2\frac{1}{2}\%$, which was the rate which existed from the effective date of Chapter 483 of the Acts of 1874 until the effective date of Chapter 695 of the Acts of 1908.

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

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

TAXATION—DATE OF FINALITY FOR HARFORD COUNTY NOT
CHANGED BY CHAPTER 295, ACTS OF 1953.

November 29, 1954.

*Mr. Albert W. Ward, Secretary,
State Tax Commission.*

You inquire whether Chapter 295 of the Acts of 1953, which became effective June 1, 1953, had the effect of changing the date of finality for Harford County from November 1st to December 1st.

The Act provides in part: "No later than December 1st in each year, or on the first day thereafter, if December 1st be a legal holiday, the County Commissioners of Harford County shall by a majority vote adopt the final budget, schedule of anticipated receipts, fix the tax rates and impose the levy for the ensuing fiscal year". Article 81, Section 2, Sub-section (20), of the Annotated Code of Maryland, 1951 Edition, defines the phrase "date of finality" as "the date as of which taxes are to be levied for the taxable year in question and upon which assessments become final for such year, subject only to correction as herein authorized". The question of the nature of the date of finality has been considered by this office on several occasions. In 17 Opinions of the Attorney General, 398, it is said: "Clearly the date 'as of which taxes are to be levied' is not the same thing as the date when levy is actually made. The levy merely fixes the rate, and is made after assessments have become final, and a reasonable time has been allowed for corrections, not more than three months from the date of finality". In 24 Opinions of the Attorney General, 767, it is said that: "The date of finality is not the same as the date when the levy is made, that is the date when the tax is imposed and the rate fixed. The date of finality must always precede the date of the levy".

Chapter 77 of the Acts of 1941 provided that "The County Commissioners (of Harford County) shall close

the annual levy for the year 1942 and complete the same on the first day of November, 1941, and on the same day in each succeeding year shall close and complete the annual levy, should the first day of November fall on Sunday however then said action shall be taken on the following day, and the fiscal year for Harford County shall hereafter begin on the first day of January in each year”.

Undoubtedly, the Act of 1953 repeals by implication the Act of 1941, since it directs the Commissioners to “impose the levy for the ensuing fiscal year” on December 1st, although the earlier statute had directed the Commissioners to “close and complete the annual levy” on the first day of November. The Act of 1953 does not, however, necessarily change the established “date of finality” in Harford County, since that is the date when the levy is made.

It is my opinion, consequently, that the date of finality in Harford County will continue to be November 1st until it is specifically changed by statute or by the County Commissioners, pursuant to the authority contained in Article 81, Section 47, of the Annotated Code of Maryland, 1951 Edition.

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

TAXATION—INHERITANCE TAX—CONDITION THAT DEVISEE ASSUME DEBT IS CHARGE ON REAL ESTATE, AND DECREASES TAXABLE VALUE OF REAL ESTATE, BUT INCREASES THE TAXABLE VALUE OF PERSONAL ESTATE TO EXTENT OF DEBTS ASSUMED AND PAID.

November 29, 1954.

Miss Kathryn J. Corddry,
Register of Wills for Worcester County.

Re: Estate of James W. Bevans.

In your recent letter you state, in substance, that a Testator in your County left his farm to his grandson "upon the condition, however, that any mortgage or other debt which may exist against said farm be assumed and paid for by my said grandson, and that said debt be not assumed by or paid out of the general or residuary funds of my estate". At the time of the Testator's death, there was a mortgage on the farm in the amount of \$15,000.00, plus interest. There were other debts which had apparently arisen from the Testator's operation of the farm and which were assumed by the grandson in an agreement which recited that the grandson had accumulated a sufficient amount of money to pay all debts "which could possibly be construed as constituting a charge against said farm". The Executrix' account does not contemplate the debts assumed by the grandson, nor does it provide for the payment of Maryland inheritance tax on the amount of such debts.

In a somewhat similar case reported in 23 Opinions of the Attorney General, 529, this office ruled as follows:

"The Chaney will does not direct the sale of real estate, but there is a provision that certain legatees, sons of the testator, shall pay his debts out of the property devised to them. In our opinion this operates as a charge upon the property which they

take subject to the limitation. The personal estate is insufficient to pay debts, taxes and administration expenses.

“In view of the special provisions of the will, we think the amounts collected by the executor from the legatees to pay the debts should be treated as collections of personalty by him, and the commissions and tax on commissions computed on these and the other gross receipts. There will be nothing left for distribution by way of personalty. The rentals from the property specifically devised are not a part of the estate for administration purposes, and should not be included in the account. Each devisee will be required to pay a tax on his distributive share, but in the case of the sons whose legacies were charged with payment of debts, they should receive credit for such payments in calculating the inheritance tax, as the value of their devises are diminished thereby. 20 Opinions of the Attorney General, 849; 1 Opinions of the Attorney General, 257.”

It is my view that the problems set forth in the portion of the opinion quoted are controlling in the instant case, and that you should collect the Maryland inheritance tax computed on the basis of the amount paid by the grandson to the creditors of the Testator. You should also, of course, diminish the tax due from the grandson in the same proportion that the devise to him was diminished in value by the charge upon it of the Testator's debts.

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

TAXATION—EXECUTORS AND ADMINISTRATORS—TAX ON COMMISSIONS IS TO BE COMPUTED ON BASIS OF GROSS ESTATE—ALLOWANCE OF FUNERAL EXPENSES IN EXCESS OF STATUTORY LIMIT IS DISCRETIONARY IN ORPHANS' COURT.

November 29, 1954.

*Miss Dorothy E. Connolly,
Deputy Register of Wills for
Queen Anne's County.*

Re: Estate of James E. Thompson (also known as James E. Johnson), Deceased.

You have placed before us facts concerning an estate now in your office in which the value of personalty is appraised at \$290.07 and realty is appraised at \$2,500.00. The Executrix seeks an allowance of \$740.00 for funeral expenses, but has declined to petition the court for such an allowance. She has also refused to pay a tax on commissions in the amount of \$2.90 because the funeral expenses exceeded the personal estate.

Whenever funeral expenses exceed the statutory sum of \$500.00, they can only be allowed by a special order of the Court by virtue of Article 93, Section 5, of the Annotated Code of Maryland (1951 Edition). Thus, we believe it is incumbent upon the Court to limit the allowance for funeral expenses to the statutory amount unless it invokes its discretionary powers pursuant to the prayer of the usual petition. See 29 Opinions of the Attorney General, 87.

With respect to the tax question, we call your attention to 11 Opinions of the Attorney General, 280, wherein it was held:

“The commissions must be paid on the \$7,500.00 so that the State receives 1% on the gross amount of the estate. The fact that the mortgage on this property is a preferred claim does not justify you

in withholding the 1% on the amount of this preferred claim. In my opinion this is not an open question in Maryland, as it has been passed upon in accordance with my opinion as late as the January Term, 1926, of the Court of Appeals. You will, therefore, be required to collect from the executors 1% on the total amount of the estate with which they are chargeable."

In 36 Opinions of the Attorney General, 278, it is said:

"The tax on commissions provided by Section 104 of Article 81 fixes the tax on commissions, regardless of whether or not the executor or administrator waives commissions, at a stated percentage 'of the estate'. It is clear under the *York* case that the law imposes the tax on the gross estate which comes into the hands of the personal representative and not merely on the net estate."

The latter opinion refers to the case of *York v. Maryland Trust Company*, 150 Md. 354, where the Court of Appeals remarked:

"It should be noted in this connection that our statutes vest a wide discretion in the orphans' court, in fixing the amount of the commissions to be allowed executors or administrators, and most if not all of the cases of hardship pictured by the appellant as possibly resulting from the placing of the full value of pledged assets in an inventory, where the sums secured by them are almost equal to the value of the assets, can be taken care of by regulating the percentage of commissions, and this method of handling the matter would seem to have been the intention of the Legislature. * * * And as the settlement of an estate which is heavily indebted invariably requires more work and attention than does one which is comparatively free from debt, it would seem to be in every way the part of

wisdom to permit the executor or administrator to place in the inventory all the property of the estate which in any way comes under his control, and to receive as commissions such percentage on the whole estate as the court may, within the discretion given it by the law, deem just."

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

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

TAXATION—PROPERTY OF VOLUNTEER FIRE COMPANIES IS
EXEMPT FROM TAXATION WHETHER INCOME PRODUC-
ING OR NOT.

November 29, 1954.

*Mr. Albert W. Ward, Secretary,
State Tax Commission.*

You request an opinion as to whether, upon the provisions of Article 81, Section 8, Sub-section 37 of the Annotated Code of Maryland, 1951 Edition, income-producing real estate owned by a volunteer fire company is exempt from taxes.

Section 8, Sub-section 37, provides merely: "Property, real and personal, owned by any volunteer fire company or volunteer fire department in the State of Maryland" shall "be exempt from assessment and from State, county and city taxation in this State, each and all of which exemptions shall be strictly construed:"

It is to be noted that many of the exemptions contained in Section 8 have their own limitations, such as Sub-sections 4, 7, 8, 25, 27 and 35. No such limitations are applied to the exemption granted by Sub-section 37. A firm rule of statutory construction is embodied in the well-known maxim: "Expressio unius est exclusio alterius". *Thalhauser v. Savins*, 44 Md. 410; *DeAtley v. Senior*, 55 Md. 479; *Johns v. Hodges*, 62 Md. 525. In *Graham v. Joyce*, 151 Md. 298, the court restated the rule that "* * * the express imposition of this one qualification shows a deliberate rejection of any other".

In the light of this principle, it is my opinion that the Legislature has granted a complete exemption to volunteer fire companies and departments, whether their property is used for commercial purposes or otherwise. In reaching this conclusion, I am not unaware of the equally firm rule of statutory construction that exemptions are to be

construed against the taxpayer. *Clarke v. Union Trust Co.*, 192 Md. 127, 63 A. 2d 635; nor of the possible serious consequences to the revenues of the State and its sub-divisions from an abuse of this immunity granted by the State. Any change must, however, be sought in legislative action, since the statute as it now stands seems clear.

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

TAXATION—INHERITANCE TAX—EXEMPTION FROM INHERITANCE TAX NOT AVAILABLE TO UNINCORPORATED ASSOCIATION.

November 29, 1954.

Mr. Leroy C. Shaughnessy,
Register of Wills for Baltimore City.

We have your letter requesting an opinion concerning the liability of a certain testamentary disposition made under a deed of trust executed by Mary Hudson Scarborough, deceased. One of the beneficiaries under the deed was "the Alumni Association of the State Teachers College at Towson, Maryland". This organization is an unincorporated association.

In 31 Opinions of the Attorney General, 252, it was noted that "The balance of the fund will not be subject to collateral inheritance tax if the Stone Chapel Methodist Church is incorporated and falls within the last quoted provision of Section 110 of Article 81 of the Code (1939). We would suggest that you ascertain this and if it appears that the Church is incorporated and meets the requirements above set forth, the balance of said fund * * * will be exempted. * * *" There is thus a strong and early implication that incorporation was requisite to obtaining the relief offered by the exemption ingrafted on to the collateral inheritance tax statute by the Act of 1943. More specific is 37 Opinions of the Attorney General, 372, wherein it is said:

"We assume that the Volunteer Fire Company is incorporated. If it is not, it is not entitled to the exemption under Article 81, Section 110 of the Annotated Code of Maryland (1939 Edition and 1947 Supplement) even though its activities are charitable. The exemption extends only to 'property passing * * * to * * * a corporation * * * created or organized under the law of the United States or of any State * * *'."

which clearly makes incorporation necessary in order to benefit by the exemption.

Under the circumstances it is our opinion that the testamentary disposition to the Alumni Association of the State Teachers College at Towson, Maryland, is taxable, and it is therefore unnecessary for us to look into the purposes and activities of the Association.

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

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

TAXATION — REGISTER OF WILLS — TIME LIMIT FOR RE-APPRAISAL IMPOSED BY ARTICLE 81, SECTION 153, RUNS FROM DATE OF LETTERS OF ADMINISTRATION AND NOT FROM DATE OF LETTERS AD COLLIGENDUM.

November 29, 1954.

Miss Ruth R. Startt,
Register of Wills for Talbot County.

We are in receipt of your letter in which you state that letters of administration ad colligendum were granted by the Orphans' Court of Talbot County on March 17, 1953. On February 16, 1954, letters of administration C.T.A. were granted to the same individual, who had been collector, and to another. An inventory of real estate was filed by the collector on May 26, 1953, in which a certain piece of real estate was appraised for \$7,500, which real estate was later sold by the devisees under the will of the decedent for \$44,800.

The administrators C.T.A. have filed a petition praying for reappraisal of this parcel of real estate so that its appraised value will conform with the sales price. You inquire whether the relief prayed by this petition is barred by the provisions of Article 81, Section 153 of the Annotated Code of Maryland (1951 Ed.), which forbids the Orphans' Court to entertain such a petition for reappraisal after the expiration of fifteen months from the date of administration. You inquire whether the date of administration is to be considered as the date upon which letters of administration ad colligendum were granted, or the date of issue of letters of administration C.T.A.

Article 93, Section 66 of the Code provides for the grant of letters ad colligendum by the Orphans' Court of the County in which a will was proved, or where letters of administration ought to be granted, in cases of delay on account of absence of the executor and contest relative to the will or right of administration, or the neglect of an

executor or person entitled to administer. Section 72 of Article 93 provides that the powers of the collector are extinguished upon the granting of letters testamentary or of administration. Having in mind that the temporary administration of a collector might be hostile to the administration of an executor or administrator, and likewise considering the exigent nature of a collector's powers, it is difficult to suppose that the date of administration specified in Article 81, Section 153, was the date of the grant of letters ad colligendum. It could be grossly unfair to bind a lawful executor or administrator to acts which were committed or permitted by a collector. It is our opinion, therefore, that the date of administration referred to in Article 81, Section 153 refers, under the circumstances described above, not to the grant of letters ad colligendum, but to the issuance of letters of administration C.T.A.

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

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

TAXATION—INHERITANCE TAX—INTEREST OF LIFE BENEFICIARY UNDER TRUST IN INCOME OF TRUST ESTATE IS A DESCENDABLE INTEREST SUBJECT TO INHERITANCE TAX AS A PART OF LIFE BENEFICIARY'S ESTATE.

November 29, 1954.

Mr. Leroy C. Shaughnessy,
Register of Wills for Baltimore City.

Re: Estate of Nancy Scott Thomas

We have in hand your letter enclosing a copy of the will of a testator who died in 1923. This instrument created a trust providing for the payment of income to the testator's four daughters, with the provision that "should any of my said daughters die leaving children living at the time of my death, I then provide that said child or children shall stand in the place of the deceased parent, and receive her share of the income, until the survivor of my said daughters shall die".

One of the life beneficiaries died, leaving surviving her a daughter who received her mother's share of the trust income during her natural life. This daughter of a life beneficiary, granddaughter of the testator, died intestate on March 23, 1954, leaving as her next of kin her aunts who are the surviving life beneficiaries under the testator's will. The question which arises is whether the surviving life beneficiaries, the aunts of this decedent, take the decedent's share of income under the testator's will or as next of kin. In the first instance, no inheritance tax would be payable; in the latter instance, the Maryland collateral inheritance tax would be due.

The crux of this matter is the interpretation of the language quoted from the will to the effect that the child or children of a deceased daughter "shall stand in the place of the deceased parent, and receive her share of the income, until the survivor of my said daughters shall die". In

other words, does such language create merely a right in a child or children to take precisely what the original life beneficiary would take, or does it create a transmissible interest in a share of the income of the trust estate?

Very similar language has recently been considered by the Court of Appeals in *Walker v. Safe Deposit & Trust Co.*, 192 Md. 695, where a deed of trust provided that:

“* * * the trustee should ‘continue to pay the income of said estate to my brothers and sister, equally, and to the survivors or survivor of them, if any of them die without issue, but if any of them die leaving issue him or her surviving, then in the distribution and payment of said income, such issue shall stand in the place of the parent, and receive the share of said income which the parent of such issue would have taken hereunder if living, and in trust to continue to so distribute and pay said income after my death, not having married, until the death of the longest liver of said persons, my said brothers and sister, and thereafter until the youngest child of my brothers and sister, who shall survive the longest liver of them, shall attain the age of twenty-one years, at which time said Trustee shall divide said estate equally among the children of my brothers and sister then living, *per capita* * * *”.

The court construed this language as follows:

“* * * we think the reasoning of the *Ryan* case supports the conclusion that a gift over to the surviving brother cannot be implied, and that Chauncey took a devisable or descendable interest in the income which was not contingent upon his survival until the termination of the trust.”

In view of this expression of opinion by the Court of Appeals on the construction of such similar language, we

feel that the question is no longer open and that the surviving life beneficiaries, daughters of the Testator, are entitled to receive the income heretofore paid to the deceased daughter of an original deceased life beneficiary as her next of kin and not by virtue of any direction contained in the will. Accordingly, the Maryland collateral inheritance tax is due and should be collected.

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

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

TAXATION—INHERITANCE TAX—SURVIVING JOINT TENANT
IS LIABLE FOR PAYMENT OF INHERITANCE TAX ON HALF
OF JOINT PROPERTY, WITHOUT REGARD TO HIS DISPOSI-
TION OF SUCH PROPERTY, IN ABSENCE OF TRUST.

November 29, 1954.

Miss Kathryn J. Corddry,
Register of Wills for Worcester County.

You tell us of a situation in your County whereby a surviving joint tenant became vested with sole ownership of a bank account by virtue of survivorship. The surviving joint tenant, who was the brother-in-law of the decedent, disbursed a substantial sum for the decedent's funeral expenses and then divided the proceeds of the joint account, over and above the funeral expenses, between two brothers of the decedent. You inquire whether the surviving joint tenant is responsible for payment of the collateral inheritance tax on one-half the amount of the balance in the bank at the time of the death of the deceased joint tenant.

There is nothing in your letter, nor in the enclosures therewith, which indicates the source of the cash represented by the joint account, nor of the existence of any trust, or of any intention to impose a trust upon the proceeds of the account.

Somewhat similar situations have been previously considered by this office. In 24 Opinions of the Attorney General, 835, it was said:

“There has apparently been no legal action taken to compel the bank to pay the money to the administrator. So far as it appears here the entire fund of \$2500 passed to Eva Campbell upon the death of William Walker and the payment by her of \$500 to the widow was an entirely voluntary act on her part. The tax is levied on the fund passing to Eva Campbell at the death of William Walker. What

she did with the money thereafter cannot relieve her of the obligation to pay the tax on what she received."

See also 24 Opinions of the Attorney General, 903; 13 Opinions of the Attorney General, 285.

In the absence of positive information with respect to the matters referred to above, we can only conclude that the payments made by the surviving joint tenant therewith were his voluntary acts. Whatever he may have done with the money does not relieve him of the obligation to pay the tax on the amount that he received.

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

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

TAXATION—INHERITANCE TAX—MARYLAND INHERITANCE TAX ON PROPERTY PASSING AT DEATH IS IMPOSED ON THOSE WHO RECEIVE IT, WHETHER BY VIRTUE OF WILL OR COMPROMISE OF CAVEAT—FILING ADMINISTRATION ACCOUNT DOES NOT PRECLUDE FURTHER PAYMENT OF TAXES.

November 29, 1954.

Mr. Harry D. Radcliff,
Register of Wills for Frederick County.

You put to us the case of a Testatrix domiciled in Frederick County who died February 14, 1952, bequeathing by her last will and testament her entire estate to her husband, who was also named Executor. The will was probated February 25, 1952, and four months later, on June 30th, the Executor stated a first and final administration account, distributing the entire estate to himself and paying the Maryland lineal inheritance tax. Shortly after this distribution, certain collateral relatives of the decedent filed a caveat to the will, but before issues were tried by the Circuit Court, a compromise agreement was reached, whereby the collateral relatives received \$6,000.00. You inquire whether the 7½% collateral inheritance tax is due on the sum of \$6,000.00 distributed to the collateral relatives.

A somewhat similar case was considered by this office in 27 Opinions of the Attorney General, 415, wherein it was said:

“The facts of the instant case bring it clearly within the principles of *Hart v. Mercantile Trust Co. of Baltimore*, 180 Md. 218. In that case, the Court of Appeals decided that the intention of the inheritance tax statutes is to impose a tax on the property received, upon those who receive it, whether they do so by virtue of the will or by virtue of compromise agreements following a

caveat. The Court concluded that the form of the settlement is not controlling, and that what does control is the substance of the distribution, and the persons who actually receive the testator's estate. We can see no pertinent distinction between the facts of the *Hart* case and those which you present to us. It follows, therefore, that, in our opinion, all of the estate which the widow will take is taxable at the lineal rate of 1%."

Later, a similar case was considered in 34 Opinions of the Attorney General, 257, where, again, it was said:

"It is our view that the reasoning and holding of the *Hart* case control the present situation, and that the tax is collectible at the rate of 1%, since the inheritance tax is exacted as a *quid pro quo* for the privilege of receiving property by reason of death, and is imposed under the Maryland law upon the taker."

In these opinions reference is made to the case of *Hart v. Mercantile Trust Company of Baltimore*, 180 Md. 218, in which the Court of Appeals decided, in substance, that the Maryland statute is actually concerned with the person who receives the testator's or the intestate's estate, and that the rate of tax is to be determined by the relationship of the taker to the decedent, irrespective of the manner of taking.

We are not disposed, under the peculiar circumstances of this case, to view the fact that a first and final administration account had been filed before the compromise settlement as a compelling circumstance. Neither the period of notice to creditors, nor the time for caveat had expired when the account was filed. When a caveat actually was filed, there was a legal proceeding instituted, which, under the law, may be considered as a part of the administration of the estate. The collateral relatives who benefited by asserting their claims through the vehicle of the caveat to the will cannot escape proper taxes because of the immaterial fact that the

Executor had filed a final account before their caveat was filed. To rule otherwise would be to open the door to a fruitful source of fraud against the revenues of the State.

In our opinion, a tax of $7\frac{1}{2}\%$ is due on the amount of \$6,000.00 distributed to the collateral relatives of the decedent by virtue of the compromise agreement terminating the caveat proceedings. You should give credit, of course, if any is due, on account of the lineal inheritance tax previously paid by the Executor.

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

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

TAXATION—INHERITANCE TAX—REGISTER OF WILLS—ENGLISH USAGE “DUTY” EQUIVALENT OF “INHERITANCE TAX”.

November 29, 1954.

Mr. R. Glenn Prout,
Register of Wills
for Anne Arundel County.

You request an opinion with reference to the construction to be put upon the last will and testament of a subject of the United Kingdom. The will was written, executed and probated in England, but there is an ancillary administration in the Orphans' Court for Anne Arundel County. The third paragraph of the will provides: “I give the following specific legacies free of duty”. You inquire whether the quoted language is to be interpreted as meaning that inheritance taxes are to be paid by the Estate and not by the legatees.

Henry Campbell Black, in his celebrated Law Dictionary, defines “Death duty” as:

“A charge or toll which the state makes upon the right to transmit or to receive property on the death of the owner. In re Heck's Estate, 120 Or. 80, 250 P. 735, 736. The usual name in England for an inheritance tax.”

Having in mind the English usage of the term “duty”, it is clear that the Testatrix intended that the specific legacies were not to be diminished by the payment of inheritance taxes and, consequently, that such taxes should be paid by the Estate.

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

TRIAL MAGISTRATES

TRIAL MAGISTRATES—MAY NOT SUSPEND PART OF A SENTENCE EITHER IN CASE OF A FINE OR A JAIL SENTENCE —EITHER OR BOTH MAY BE SUSPENDED AS AN ENTIRETY.

February 25, 1954.

*Mr. Owen R. E. McGeeney, Comptroller,
Department of Motor Vehicles.*

In your recent letter you ask if Trial Magistrates, in cases involving the violation of traffic laws, have the right to suspend a part of a jail sentence. You also state that several Trial Magistrates throughout the State are anxious to know the answer to this question. This office has already advised you that a part of a fine may not be suspended, that either the entire fine is paid or the entire fine is suspended.

It is our opinion that the law, as stated in Article 52, Section 93 of the Annotated Code of Maryland (1951 Ed.), makes no provision for partial suspension of either fines, costs or jail sentences. The Section of the Code that applies to cases of this kind reads as follows: "Trial Magistrates shall have and possess power to suspend sentence or costs or both sentence and costs in any case within their jurisdiction, provided that such suspension is made at the trial of the case and not after judgment has been pronounced." The word "sentence" applies to both fines and jail sentences. If one cannot be split up, the other one cannot be split up. An interpretation that is applicable to fines is applicable to jail sentences. To so construe the word "sentence" as to allow a jail sentence to be split up and not to allow a fine to be split up, is to incorporate imagination into the language used by the Legislature. However, the following paragraph in Section 93 does make provision to give a man, who has been committed to jail in lieu of a fine, credit in the amount of \$1.00 for each day he has spent in jail; so that if a man is committed in lieu of a \$100.00 fine and has

spent five days in jail, he should be credited to the extent of \$5.00, and if he pays the other \$95.00, he should be released.

It must be kept in mind, however, that even though a sentence such as a fine must be considered as an inseparable unity, and a sentence such as a jail term must be looked upon as an inseparable unity, nevertheless, when a man is sentenced to pay a fine and serve a term in jail, it is within the power of the Magistrate to either suspend the fine or to suspend the jail sentence, or both. This is true because each sentence in and of itself is inseparable, yet they are separable from each other. This practice is State-wide and not contrary to any law that we have been able to find.

Nothing in this opinion is to be construed as an interpretation of Article 52, Sections 16 and 17, and similar Sections, as these Sections are designed to facilitate the administration of criminal law as administered by Trial Magistrates. In this opinion, we are dealing with traffic violations only. However, we want to emphasize the fact that even in the exercise of criminal jurisdiction, neither portions of fines nor portions of jail sentences may be suspended.

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

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

UNIVERSITY OF MARYLAND

UNIVERSITY OF MARYLAND—BOARD OF REGENTS MAY NOT
BE REQUIRED TO MAKE PUBLIC A REPORT ON THE EDU-
CATIONAL STANDARDS OF THE UNIVERSITY.

September 30, 1954.

Hon. Theodore R. McKeldin,
Governor of Maryland.

In November of 1953, the Middle States Association of Colleges and Secondary Schools conducted a study of the educational standards of the University of Maryland and the findings of this study were embodied in a report which was forwarded to the Board of Regents of the University. The Board of Regents has determined that it is to the best interest of the University not to make the report public. You request an opinion as to whether you, as Governor of the State, have the authority to require the Board of Regents to make the report public.

Your question arises by reason of Chapter 14 of the Acts of 1952, now codified as Section 241(e) of Article 77 of the Annotated Code of Maryland (1951 Ed.), which has come to be known as the University's Autonomy Act. That Section, in part, is as follows:

“(e) Notwithstanding any other provision of law to the contrary, the Board of Regents shall exercise with reference to the University of Maryland, and with reference to every department of same, all the powers, rights, and privileges that go with the responsibility of management, including the power to conduct or maintain such departments or schools in said university and in such localities as they from time to time may deem wise; and said board shall not be superseded in authority by any other State board, bureau, department or commission, in the management of the University's affairs, * * *”

At the time of the adoption of this provision, it was the subject of considerable discussion. Its purpose, as the plain language reveals, was to give the Board of Regents complete freedom in the management of the University, with certain exceptions which are not relevant to the present problem. This office has consistently interpreted the Section to mean exactly what it says. In 37 Opinions of the Attorney General, 473, this office ruled that the Autonomy Act prevailed over the requirement of Chapter 15 of the Acts of 1952, that the detailed working budget of the University of Maryland be submitted to the Board of Public Works for its approval. It was ruled also in that opinion that the proceeds of the sale of bonds authorized by Acts prior to Chapter 14 of the Acts of 1952 may be expended by the Board of Regents of the University without the approval of the Board of Public Works. In 37 Opinions of the Attorney General, 479, it was held that Chapter 14 of the Acts of 1952 empowers the Regents of the University of Maryland to make leases without obtaining the approval of the Board of Public Works. As you are aware, all other State agencies must obtain such approval.

I understand that the purpose of the survey upon which the report is based was the scholastic accreditation of the University of Maryland with the Middle States Association of Colleges and Secondary Schools. The accreditation of the University is obviously a matter which is a part of "the responsibility of management", and we believe, therefore, that the report is entirely within the control of the Board of Regents of the University. It is my opinion, therefore, that the freedom of action which is bestowed upon the Board of Regents of the University of Maryland by the 1952 Act, includes the right to determine whether it is to the best interest of the University and its management to make public the contents of the report in question.

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

UPPER POTOMAC RIVER COMMISSION

UPPER POTOMAC RIVER COMMISSION—NOT RESPONSIBLE FOR
MAINTENANCE OF ROADS AROUND POOL OF SAVAGE
RIVER DAM.

December 9, 1954.

*Mr. Owen E. Hitchins, Chairman,
The Special Commission to
Study Problems of the
Savage River Dam.*

I have before me your letter of December 6, 1954, inquiring whether the language employed in Section 6 of Chapter 409 of the Acts of 1935, to wit:

“The County Commissioners of Allegany County shall, in the event the Commission succeeds in obtaining the things necessary to properly control the flow of the waters contemplated by this Act, annually levy upon the assessed property of said County a tax sufficient for maintaining and operating said dams, reservoirs, etc., and at least thirty days prior to the date of the making of the annual levy in said Allegany County, the said Commission shall certify under oath to the County Commissioners of Allegany County, the total amount of its outstanding monetary obligations as well as the estimated amount of money necessary to continue the operation and maintenance of said dams, reservoirs, etc., for the following fiscal year, and the said County Commissioners shall pay unto the Treasurer of the Commission the amount so levied in the same manner as the other expenses of said County are usually paid. In the event that the said Commission shall begin the operation and maintenance of said dams, reservoirs, etc., at a time after the signing of the levy for that particular year, the County Commissioners of Allegany County shall pay in like manner from their

contingent fund, sums of money sufficient for the maintenance and operation for the balance of that fiscal year.”

embraces a duty upon the Upper Potomac River Commission to maintain and improve roads around the pool of the Savage River Dam.

Section 6 must, of course, be construed in conjunction with the other portions of Chapter 409. It is to be noted that Section 3 provides specifically for problems arising in connection with public roads which are affected by the operations of the Upper Potomac River Commission. This portion of the statute provides, in part:

“* * * but, if the Commission in the exercise of its powers as aforesaid, permanently interferes with the use of any public road or roads and bridges as the same are now located, it will, in that event, at its own expense, provide such new road or roads and bridges as may be necessary at new locations to take the place of any of those whose use is permanently interfered with.”

It is a standard rule of statutory construction that a specific provision supersedes a general rule. *Mertens v. Moore*, 108 Md. 636. The Court said at p. 639 of its opinion:

“* * * This interpretation is in accordance with the familiar rule of statutory construction ‘that when a general intention is expressed in a statute, and the Act also expresses a particular intention, incompatible with the general intention, the particular intention is to be considered in the nature of an exception.’ *Dwarris on Statutes*, 765.”

Thus, in the instant case, where the General Assembly has clearly spelled out the Commission’s responsibility with respect to “any public road or roads and bridges”, in

Section 3, it is not possible to read a further implied responsibility for roads into the general language of Section 6. Furthermore, under the familiar rule of *eiusdem generis*, it is doubtful that roads might be included in the same general classification as the "dams, reservoirs, etc." mentioned in Section 6. *Smith v. Higinbothom*, 187 Md. 115, at 130 states:

"* * * under the established rule of *eiusdem generis* * * * where general words in a statute follow the designation of particular things or classes of subjects or persons, the general words will usually be construed to include only those things or persons of the same class or general nature as those specifically mentioned.* * *"

It is my opinion, therefore, that the Upper Potomac River Commission is not responsible for the maintenance and improvement of roads around the pool of the Savage River Dam, whether they were originally constructed subject to the provisions of Section 3 or otherwise.

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

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