Blood Test to Determine Intoxication, 24 Iowa Law Review 191 (1939).

No useful purpose would be served by reviewing the numerous cases and authorities cited and quoted in the decisions hereinbefore cited. Suffice it to say that they support the conclusions reached herein. At the same time, cognizance is taken of the fact that on January 3, 1940, the Attorney General of Illinois ruled that a person accused of causing the death of another cannot lawfully be compelled to submit to a blood test for the purpose of ascertaining whether he was intoxicated at the time he is supposed to have caused such death.

Both on reason and authority, it would be a strained construction of Article I, Section 9, of the Pennsylvania Constitution, to hold that a compulsory medical examination of a person accused of driving a motor vehicle while under the influence of intoxicating liquor, is forbidden by it; and, in our opinion, such examination is not so prohibited. The rights, constitutional or otherwise, of the thousands of motorists lawfully using our highways, to be secure in their persons and property, and the enjoyment thereof, from the menace of the drunken driver, certainly transcend the right, constitutional or otherwise, of the drunken driver, not to be compelled to testify against himself.

It should be noted, of course, that this opinion does not comprehend, nor rule upon, the question of whether evidence obtained by compulsory examination, as herein discussed, is admissible in the courts.

It is the opinion of this department, that compulsory examination by a physician of a person accused of operating a motor vehicle while under the influence of intoxicating liquor, is not a violation of such person's rights under Article I, Section 9, of the Constitution of the Commonwealth of Pennsylvania.

Very truly yours,

DEPARTMENT OF JUSTICE,
CLAUDE T. RENO,
Attorney General.

WILLIAM M. RUTTER,
Deputy Attorney General.

OPINION No. 326

State Government—Members of General Assembly—Exemption from arrest—Constitution, art. II, sec. 15—Applicability to criminal proceedings.

1. Members of the General Assembly have no privilege from arrest on sight

or from service of summons for violations of The Vehicle Code of May 1, 1929, P. L. 905, as amended, at any time.

2. Article II, sec. 15, of the Constitution, providing that members of the General Assembly shall, in certain cases, be privileged from arrest during attendance at the sessions of their respective houses and in going to and returning from the same, does not apply to criminal proceedings.

Harrisburg, Pa., March 5, 1940.

Honorable Lynn G. Adams, Commissioner, Pennsylvania Motor Police, Harrisburg, Pennsylvania.

Sir: By your communication of August 12, 1938, you ask us to advise you of the answers to three questions relating to Article II, Section 15, of the Constitution of the Commonwealth of Pennsylvania. These questions are:

> 1. Are members of the General Assembly exempt from arrest on sight and exempt from service of summons for violation of The Vehicle Code during that period between the opening of the General Assembly and final adjournment, with a reasonable period of time for each member to reach his home?
>
> 2. Should a violation of The Vehicle Code be noted during such period, should prosecution be properly entered and warrant or summons be held in abeyance pending final adjournment or should there be no prosecution during the period indicated?
>
> 3. No immunity from arrest is afforded by the Constitution in cases of felony, treason, breach or surety of the peace. Should any of the violations of The Vehicle Code be construed as a breach or surety of the peace?

Article II, Section 15, of the Constitution of the Commonwealth is, in part, as follows:

> The members of the general assembly shall in all cases, except treason, felony, violation of their oath of office, and breach or surety of the peace, be privileged from arrest during their attendance at the sessions of their respective houses and in going to and returning from the same; * * *

The privilege from arrest accorded members of the Congress by the Federal Constitution, Article I, Section 6, Clause 1, is almost identical in wording. In part it reads:

> * * * They [members of Congress] shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; * * *

Shortly after the adoption (1873) and effective date (1874) of the Constitution of the Commonwealth, the foregoing section 15 of article II thereof came under the scrutiny of the Delaware County Court in Commonwealth ex rel. O. F. Bullard *v.* The Keeper of the Jail, 1 Del. 215, 4 W. N. C. 540 (1877). That court held that the privilege extended to members of the General Assembly could be claimed only in cases of civil restraint, where no crime is charged; and that "breach or surety of the peace" included all indictable crimes.

The subject privilege is but the written expression of an ancient parliamentary immunity which existed in England. The privilege, as there enjoyed, applied only to prosecutions of a civil nature, and excluded all crimes. And, as used in the Constitution of the United States, supra, the words "treason, felony and breach of the peace," except from the privilege *all criminal offenses.* Williamson *v.* United States, 207 U. S. 425, 28 S. Ct. 163, 52 L. ed. 278 (1908).

In a report to the House of Representatives of the General Assembly on January 29, 1878, the Committee on Judiciary General reported, inter alia:

* * * * *

> We are therefore of opinion that the words "breach or surety of the peace" in the fifteenth section of the second article of our Constitution are used in the same sense, and must receive the same construction as that given to a similar clause in the Federal Constitution, and to the same words as they are used in limiting the personal privileges of members of the English Parliament, and that against any indictable offence privilege cannot be pleaded. * * * The fact that the offences charged are criminal in their nature is an end of the matter with us, * * * House of Representatives, Case of F. O. Bullard, 1 Del. 218, 221, 222.

We are not unmindful that the Court of Common Pleas of Erie County decided on April 2, 1883, that a State Senator was privileged, under the subject provision of the Constitution of the Commonwealth, from service upon him of a writ of assumpsit, while home on a leave of absence from the Senate, then sitting. But that was all that case could decide, for that was the only issue therein. The process involved was civil, not criminal. Gray *v.* Sill, 13 W. N. C. 59 (1883).

In 1889, the Dauphin County Court decided that a State Representative was privileged from service of civil process within twenty-four hours after the House adjourned, the summons there being one in assumpsit. Ross *v.* Brown, 7 C. C. 142 (1889); Gyer's Lessee *v.* Irwin (Sup. Ct. Pa.), 4 Dallas 107, 1 L. ed. 762 (1790) (by implication).

In an ably argued and carefully considered case before the Common Pleas of Philadelphia County in 1788, that court held that a member of the convention assembled at Philadelphia to consider the adoption or rejection of the proposed Federal Constitution, was privileged from service of a summons in a civil suit. Bolton *v.* Martin, 1 Dallas 296, 1 L. ed. 144 (1788). The court, in the Bolton case, went on to say by way of dicta that a member of our Assembly was not subject to arrest while the Assembly sat.

To recapitulate: Gray *v.* Sill, supra, involved only service of a writ in a civil suit; to the same effect was Ross *v.* Brown, supra. The case of Gyer's Lessee *v.* Irwin, supra, decided by the Pennsylvania Supreme Court, actually held that the defendant had waived any privilege he might have had; and in any event, the case (to paraphrase Shippen, President, in Bolton *v.* Martin, supra, at page 148 of 1 L. ed.), decided at so early a period, when the rights and privileges of the General Assembly were so little ascertained and defined, cannot have the same weight as more modern authorities. The Bolton case, supra, related to the Pennsylvania convention held to consider the proposed Federal Constitution, and did not involve either the Constitution of the Commonwealth or of the United States; and it too, as to age, falls into the class of Gyer's Lessee *v.* Irwin.

In our opinion, also, the early cases were decided at a time when arrest, as for debt, was a common incident of civil process. It no longer is. Consequently, the reasons then necessitating the protection of members of legislative bodies such as Parliament, the constitutional convention at Philadelphia, and the Assembly of Pennsylvania, from arrest, no longer obtain. And, no one, then or now, should be exempt from criminal process.

That our view is the more modern and practical one, and that it has the support of public policy as expounded by the courts, is borne out by the Bullard case, supra, and by the Supreme Court of the United States in the Williamson case, supra. Also, and of acute importance, is the report of a committee of the House of Representatives of the Commonwealth, to the House itself, *which committee was investigating the Bullard incident*, that the proper interpretation of the constitutional privilege of House members was that pronounced by the Federal courts. No one is more jealous of a privilege or of an immunity than the one who enjoys it.

We are of the opinion, therefore, and you are accordingly advised, that members of the General Assembly have no privilege from

arrest on sight, or from service of summons, for violations of The Vehicle Code, at any time.

Very truly yours,

DEPARTMENT OF JUSTICE,
CLAUDE T. RENO,
Attorney General.

WILLIAM M. RUTTER,
Deputy Attorney General.

OPINION No. 327

Architects—State Board of Examiners of Architects—Limitation of expenditures—Amount allocated by Department of Public Instruction—Sums received by Commonwealth in fees for examinations, registrations, and renewals—Act of June 27, 1939, sec. 3—Preparation of plans or specifications for occasional or incidental erection without compensation—Act of June 27, 1939, sec. 13.

1. The State Board of Examiners of Architects, in the administration of its duties, is restricted to the expenditure of that amount of money allocated to it by the Department of Public Instruction for the biennium, which amount may not, under the provisions of the Act of June 27, 1939, P. L. 1188, sec. 3, exceed the sum received by the Commonwealth in fees for examinations, registrations, and renewals, and cannot incur expenses which exceed this allocation even though they do not exceed the sum so received by the Commonwealth.

2. Any resident of this Commonwealth may prepare plans or specifications for the occasional or incidental erection or construction of any of the four types of buildings or constructions specified in section 13 of the Act of June 27, 1939, P. L. 1188, provided that he receives no compensation as the author thereof.

Harrisburg, Pa., March 5, 1940.

Honorable Francis B. Haas, Superintendent of Public Instruction
Harrisburg, Pennsylvania.

Sir: In your memorandum of September 13, 1939, you asked for an interpretation of certain sections hereinafter stated of Act No. 402, approved June 27, 1939, P. L. 1188.

Your first question is "whether the Board [The State Board of Examiners of Architects] is restricted to the amount of moneys allocated by the Department of Public Instruction for the biennium, or whether the board can, under the provisions of the act, incur such expenses as shall be necessary, not exceeding the sums received by the Commonwealth by fees for examinations, registrations and renewals."

The original and basic Act of July 12, 1919. P. L. 933 (71 PS §1181 et seq.), as amended, governs the licensing and practice of architects.