It is a fact that the compensation of these attorneys is paid out of the estates of the banks held in possession by your Department, but it is also a fact which cannot be ignored that when a bank is taken into possession its continuance or liquidation is under the supervision of your Department acting as an agency of the Commonwealth. Depositors and stockholders have a right to expect that the Commonwealth will jealously protect them against any unnecessary expense or excessive charge of any character whatsoever.

While it is not possible to establish any uniform standard or fix any iron-clad limitation, nevertheless, in our judgment, Twenty Thousand Dollars ($20,000) should be regarded as the maximum compensation for legal services rendered to the Commonwealth in connection with any closed bank, unless the services extended over a period exceeding a year, or unless counsel was required to conduct litigation for the recovery of large sums of money and brought such litigation to a successful conclusion.

The ordinary foreclosure of mortgages and the institution of ordinary lawsuits for reducing to judgment claims against debtors clearly do not justify exceptionally large fees.

We have indicated what the maximum compensation should be, unless the circumstances are extraordinary. It is only proper to say that in our judgment there are very few instances in which a fee of this size would be proper. In the large majority of cases the services rendered are certainly no more important than those rendered by the regular deputies of this Department, and the basis of compensation should be substantially the same.

Very truly yours,

DEPARTMENT OF JUSTICE,

WM. A. SCHNADER,

Attorney General.

OPINION NO. 17

Elections—Nomination Petitions—Judges—"Profession, Business or Occupation" of Candidate—Duty of Secy. of Commonwealth—Acts of 1851, P. L. 648; 1911, P. L. 198, Sec. 2; 1931, Act No. 106; Art. V, Sec. 5 of the Constitution.

The Secretary of the Commonwealth may decline to file nomination petitions of candidates for the office of judge, whose stated "profession, business or occupation" is other than that of attorney or counselor at law, as provided for in the Acts of 1851, P. L. 648; 1911, P. L. 198, Sec. 2; 1931, No. 106; Art. V, Sec. 5 of the Constitution.

Department of Justice,
Harrisburg, Pa., July 30, 1931.

Honorable Richard J. Beamish, Secretary of the Commonwealth, Harrisburg, Pennsylvania.

Sir: We have your request to be advised whether it is your duty to accept and file nomination petitions designating as candidates for the office of judge of the Supreme Court of Pennsylvania, judge of the Court of Common Pleas of Allegheny County, or judge of the County Court of Allegheny County, persons whose occupations are stated to be either carpenter, or welder, or salesman, or housewife, or machinist, or journalist, or plumber.

We understand that nomination petitions have been proffered in which it is stated that the "profession, business or occupation" of the candidate is one of those specified.

Under the Act of April 15, 1851, P. L. 648, judges of the Supreme Court must be "learned in the law."

Under Article V, Section 5, of the Constitution, and the Act of May 21, 1931 (Act No. 106), judges of the Court of Common Pleas of Allegheny County must be learned in the law.

Under Section 2 of the Act of May 5, 1911, P. L. 198, as amended, judges of the County Court of Allegheny County must, likewise, be learned in the law.

The expression "learned in the law" has a well known and well understood meaning. To be learned in the law a person must be an attorney or counselor at law.

In *Freiler v. Schuylkill County,* 46 Pa. Sup. Ct. 58, in an opinion by Judge Orlady, our Superior Court interpreted this expression. Judge Orlady said, at page 62:

> "It has been held that the term 'learned in the law' means that the person is 'either admitted or entitled to be admitted without examination to practice as an attorney at law in the state.' The term 'learned in the law' clearly indicates an intention to prescribe some sort of an educational qualification, and should be given some practical effect; and therefore no one is eligible as a judge who is not, when elected, either admitted or entitled to be admitted, without examination, to practice as an attorney at law. To be learned in the law means that the person must have been ascertained by a competent tribunal prior to his election or appointment: *Jamieson v. Wiggin,* 12 S. D. 16, 80 N. W. Repr. 137, 46 L. R. A. 317, 76 Am. St. Rep. 585; *Howard v. Burns,* 14 S. D. 383, 85 N. W. Repr. 920."

Our Primary Act requires that every candidate must make an affidavit, "stating his residence with street and number, if any, and his post office address, his election district, the name of the office for which he consents to be a candidate, *that he is eligible for such office,* that he will not knowingly violate any election law * * *:" Section 6 (b) of the Act of July 12, 1913, P. L. 719, as amended.

On the face of the petitions out of which your inquiry arises, the affidavits of the candidates that they are eligible to the offices respectively of judge of the Supreme Court, judge of the Court of Common Pleas of Allegheny County and judge of the County Court of Allegheny County, are false affidavits. A carpenter is not eligible for election to any of the offices mentioned. Neither is a salesman, a welder, a machinist, a journalist, a plumber, or a housewife. To be eligible the candidate must be a lawyer.

Under these circumstances, the nomination petitions on their face are defective in that the proposed candidates are ineligible to the offices for which they aspire. Were the nomination petitions to be accepted and the candidates nominated and elected, it would clearly be the duty of the Attorney General forthwith to institute quo warranto proceedings to have the persons elected ousted from office because of their ineligibility.

It is our opinion that the nomination petitions in question should be refused. It is true that the acceptance of nomination petitions is a matter in which the Secretary of the Commonwealth acts as a ministerial and not as a discretionary officer, but in the exercise of his ministerial duties he does have the right to decline to receive a petition which is defective on its face: *Hamilton v. Johnson,* 293 Pa. 136. Thus, in the case cited, the Supreme Court sustained the right of the Secretary of the Commonwealth to refuse to receive a nomination petition which had an inadequate number of signatures giving the names and addresses of the signers. If a petition filed on behalf of an eligible candidate may be rejected because of defects in its execution which appear on the face of the petition, we entertain no doubt of your right to reject a petition when it appears upon the face of the petition that the candidate is ineligible, under the Constitution and laws of this Commonwealth, to the office which he seeks. See *Beaver's Petition,* 29 Dist. 245, and *Robert's Petition,* 2 D. and C. 236.

A question almost identical to that which you raise was decided by the Supreme Court of Minnesota in *State v. Schmahl* et al., 125 Minn. 533, in which a layman filed a nomination petition for judge of one of the district courts of Minnesota. The statute authorized only eligible persons to file as candidates, and the Constitution required judges of the district courts to be "learned in the law."

The Supreme Court of Minnesota, in holding that the name of the layman could not be placed on the ballot as a candidate, said:

> "Beyond question the framers of the Constitution used the last five words quoted in the sense of attorneys at law, and this view has since been uniformly accepted. The few authorities on the subject are to the same effect. See *Jamieson v. Wiggin*, 12 S. D. 16; *Freiler v. Schuylkill County*, 46 Pa. Superior Ct. 58. The matter does not merit further discussion."

Accordingly, you are advised that you may decline to file the nomination petitions in question.

Very truly yours,

DEPARTMENT OF JUSTICE,
WM. A. SCHNADER,
Attorney General.

OPINION NO. 18

School Treasurers—School Depositories—Bonds—Substitution of Collateral Securities for Surety Bonds—School Code Sections 326 and 509.

School treasurers and school depositories may not post collateral securities in place of furnishing the bonds with sureties required by sections 326 and 509 of the School Code of 1911, P. L. 309.

Department of Justice,
Harrisburg, Pa., July 30, 1931.

Honorable James N. Rule, Superintendent of Public Instruction, Harrisburg, Pennsylvania.

Sir: You have asked to be advised whether treasurers of school districts and depositories of school funds may be permitted to post collateral security to insure faithful performance of their duties and protection of the public moneys, instead of furnishing bonds with individual or corporate sureties.

Section 326 of the School Code of May 18, 1911, P. L. 309, 24 P. S. 303, requires that:

> "Every person elected treasurer of any school district * * * shall before entering upon the duties of his office furnish to the school district a proper bond, in such amount and with such surety or sureties as the board of