the Governor's supplemental proclamation, and would be constitutional, if enacted.

House Bill No. 61, Authorizing the Use of a Million Dollars ($1,000,000) of the Motor License Fund for Township Reward. This bill would be of doubtful constitutionality. It could be sustained only upon the theory that it is an additional appropriation to the Department of Highways "to enable additional projects to be undertaken which will give work to the unemployed," thus bringing it within Subject No. 4 of the Governor's supplemental proclamation. However, as all of the moneys in the Motor License Fund have already been appropriated and as I understand can be expended during the present biennium, it is difficult to see how this appropriation could be construed as authorizing "additional projects to be undertaken." If it could be shown to have this effect, it would come within the call for the Special Session; otherwise it would not.

House Bill No. 64, Appropriating One Hundred Million Dollars out of the State Treasury to the Counties of the Commonwealth in Proportion to Their Population. This bill would, in my opinion, necessarily be held to be in violation of Article III, Section 18, of the Constitution, and could not be sustained, if enacted.

House Bill No. 65. This bill is identical with House Bill No. 61.

House Bill No. 66, Providing for Preference to Citizens of Pennsylvania in Employment in Public Works of the State. This bill does not come within any of the subjects specified by the Governor in his proclamation and could not validly be enacted.

House Bill No. 67, Making an Appropriation to the Department of Property and Supplies for the Erection of Armories. This bill comes within Subject No. 4 of the Governor's supplemental proclamation and would, in my opinion, be constitutional, if passed.

House Bill No. 68, Authorizing a County Tax on Billboards and Outdoor Advertising. In my opinion, this bill comes within Subject No. 15 of the Governor's original proclamation and would be valid, if enacted.

Very truly yours,

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

OPINION NO. 32-D

Legislature—House of Representatives—Constitutionality of House Bills Nos. 69 to 76 inclusive, Extraordinary Session of 1931.

The Attorney General advises the Speaker of the House of Representatives regarding the constitutionality of House Bills Nos. 69 to 76 inclusive. Extraordinary Session of 1931.

Department of Justice,
Harrisburg, Pa., December 7, 1931.

Honorable C. J. Goodnough, Speaker of the House of Representatives,
Harrisburg, Pennsylvania.

Sir: In accordance with the resolution of the House adopted November 10, I shall give you my opinion regarding the constitutionality of the bills introduced in the House last week.

House Bill No. 69, Providing for the Quarterly Collection of Taxes by City Treasurers in Cities of the Third Class. In my opinion this bill does not come within any of the subjects stated by the Governor in his proclamation convening this Session, and would be unconstitutional if enacted.

House Bill No. 70, Making An Appropriation to the Department of Welfare "for State Aid to Political Subdivisions Charged by Law with the Care of the Poor." It is impossible to discuss the constitutionality of this measure without first stating in detail, what it provides.

Section 1 of the bill provides, "That in the exercise of the police power for the protection of the public health safety morals and welfare threatened by existing conditions of unemployment the sum of ten million dollars is hereby specifically appropriated to the Department of Welfare for payment to political subdivisions charged by law with the care of the poor which appropriation shall be allocated as hereinafter provided * * *."

Section 2 provides that the money appropriated to the Department of Welfare shall be allocated the several counties of the Commonwealth "* * * on a ratio that the estimated number of unemployed persons in a county bears to the estimated number of unemployed persons in the entire Commonwealth * * *."

Section 3 provides that where a political subdivision charged with the care of the poor, is coextensive with a county the amount allocated to the county shall be paid to such political subdivision; that where political subdivisions charged with the care of the poor and counties are not coextensive, the county's share of the appropriation shall be paid into the county treasury and be allocated among the political subdivisions of the county by the county commissioners, with the approval of the court, "* * * on the basis of unemployed persons resident within the several subdivisions as ascertained from the best sources of information obtainable * * *;" and that in counties coextensive with cities the county's share of the State appropriation shall be paid into the city treasury, and allocated by the Department

of Welfare of the city among the various political subdivisions charged with the care of the poor, also "* * * on the basis of unemployed persons within the respective subdivisions as ascertained from the best sources of information obtainable * * *."

Section 4 provides that each political subdivision charged by law with the care of the poor "* * * shall have authority under the provisions of this act any law to the contrary notwithstanding to expend the moneys received from the appropriation made by this act for the purpose of providing food clothing fuel and shelter for residents within their districts who are in need of the same. In no case shall any of said appropriation be used for paying cash commonly known as a 'dole' to persons entitled to relief."

Section 5 provides that the amounts allocated to political subdivisions of the State, under this bill, and expended by them shall be audited by their own auditors "* * * in the same manner and with like effect as other moneys expended by such subdivisions."

It will be observed that the bill does not specify how the State's money shall be expended by any poor district; it merely renders it permissive for poor districts to purchase food, clothing, fuel, and shelter for residents "who are in need of the same." Nor does the bill give to the State any right whatever to supervise, or even inquire into, the manner in which the State funds which it appropriates are to be used.

In a word, the appropriation made by this bill would be in relief of the taxpayers of the poor districts, and not necessarily in relief of the unemployed.

It is apparent on the face of the bill that it was conceived and prepared upon the theory that it could be sustained as constitutional because the appropriation purports to be made "* * * in the exercise of the police power for the protection of the public health safety morals and welfare threatened by existing conditions of unemployment * * *"

Whether this is so, is the first question which must be considered.

Article III, Section 18 of the Constitution provides that "No appropriations, except for pensions or gratuities for military services, shall be made for charitable, educational or benevolent purposes, to any person or community, * * *."

An appropriation made to the Department of Welfare for the single purpose of being by it allocated among and paid to the counties of the State is, in law, an appropriation to such counties or cities. No other conclusion is possible under the Supreme Court's decision in the St. Agnes Hospital Case (*Collins v. Martin,* 290 Pa. 388).

If there were in the bill a requirement that the money should be used for unemployment relief, the appropriation would clearly be for

a "charitable purpose." As stated by the present Chief Justice in *Taylor v. Hoag,* 273 Pa. 194, at page 196, "* * * The word 'charitable,' in a legal sense, includes every gift for a general public use, to be applied, consistent with existing laws, for the benefit of an indefinite number of persons, and designed to benefit them from an educational, religious, moral, physical or social standpoint. * * *" In the St. Agnes Hospital Case, already cited, the Court held definitely that an appropriation for the care and treatment of indigent persons in hospitals was an appropriation for a charitable or benevolent purpose.

There can be no doubt that a county, a city, or a poor district is a "community." The dictionary definition of this word is, "The people who reside in one locality and are subject to the same laws, or have the same interests, etc.; a body politic, whether village, town, city, or state * * *;" and our Supreme Court in *Busser v. Snyder,* 282 Pa. 440, held that "person" and "community," as used in Article III, Section 18, are "* * * not limited to the idea of a single person or place where persons are located; * * *." These words in this section, according to the Court "* * * are used in an exclusive sense, relating to an individual or a group or class of persons, wherever situated, in any part or all of the Commonwealth. * * *" It was said that the constitutional prohibition "* * * applies to persons, kind, class and place, without qualification. The language of the Constitution is an absolute and general prohibition. * * *"

The Supreme Court in the case last cited also held that the system in effect when our Constitution was adopted " '* * * provided for poor districts, poor directors and overseers, and for the relief of paupers as a matter of local concern. Those who framed the Constitution understood it, * * * The system was left untouched. * * * The conclusion is therefore irresistible that a direct appropriation from the State Treasury to any person or class of persons cannot be sustained on the theory that it is a discharge of the inherent obligation of the State to take care of its paupers.' "

Therefore, we begin with the clear proposition that if the present bill contemplated (which it does not) an appropriation out of the State Treasury to counties, cities, and poor districts which must be used *for unemployment relief,* it would be an appropriation to communities for charitable purposes and would thus come within the prohibition of Article III, Section 18.

As former Chief Justice von Moschzisker said in *Collins v. Kephart,* 271 Pa. 428, "When simple words are used in writing the fundamental law, they must be read according to their plan, generally understood, or popular, meaning: * * *."

The appropriation contemplated by this bill, if it became a law, would transfer money from the State Treasury to the treasuries of

counties, cities, and poor districts without any mandatory specification of the purpose for which the money must be used and without any State supervision or audit of the use to which the money was actually applied. Such an appropriation would be a gift to the political subdivisions receiving it, and as such would be for "benevolent purposes." See the language of the Supreme Court in *Commonwealth v. Alden Coal Company*, 251 Pa. 134, at page 146, where the Court held unconstitutional an attempt by the Legislature to return to the anthracite producing counties to be used in their discretion, one-half of the tax on anthracite coal.

As it stands, the bill would be a clear violation of the plain and readily understood language of Article III, Section 18.

Can a bill which would otherwise be unconstitutional, be made constitutional by the simple device of declaring that it is passed "in the exercise of the police power?"

"Police power is the power inherent in a government to enact laws, *within constitutional limits*, to promote the order, safety, health, morals, and general welfare of society * * *." 12 Corpus Juris, page 904. This power is always "* * * subject to the limitations imposed by the Federal and State Constitution upon every power of government, * * *." Cooley's Constitution Limitations, (8th ed.), page 1229.

In *Commonwealth v. Vrooman*, 164 Pa. 306, at page 316, our Supreme Court said "* * * It (the police power) is therefore a power inherent in all forms of government. Its exercise may be limited by the frame or constitution of a particular government, but its natural limitations, *in the absence of a written constitution*, are found in the situation and necessities of the state * * *."

Our Constitution contains a number of limitations upon the power of the Legislature. We have already discussed Article III, Section 18, forbidding appropriations for charitable and benevolent appropriations to any person or community. Another limitation is contained in Article IX, Section 4, and is as follows: "* * * No debt shall be created * * * except to supply casual deficiencies of revenue, repel invasion, suppress insurrection, defend the State in war, or to pay existing debt; * * *." If by a mere recital that a bill is passed in the exercise of the police power, the Legislature can nullify Article III, Section 18, it must necessarily be able also by the same means to nullify Article IX, Section 4. The same reasoning which would sustain the present bill would, therefore, sustain a bill borrowing unlimited sums of money "* * * in the exercise of police power for the protection of the public health safety morals and welfare threatened by existing conditions of unemployment * * *."

Such a proposition is too absurd to merit serious consideration.

The Legislature does have the right in the exercise of the police power to enact any measure calculated to promote the health, safety, morals or general welfare of the public, which is not expressly forbidden by the Constitution; but it cannot, by the mere recital that it is exercising the police power, wipe out a constitutional provision and thus in effect amend the Constitution.

It may be that there are dicta of judges of this and other states, contrary to the opinion here expressed; but I have not been able to find any decision in which any court ignored an express prohibition contained in a written constitution on the theory that the constitutional provision was void if the Legislature elected to declare that it was exercising the police power. Our Constitution can be amended only in the method prescribed by Section 18. Amendments require action by two Legislatures and a vote of the people. They cannot be made by the "say-so" of a court or judge, any more than by an act of the Legislature.

I cannot escape the conclusion that House Bill No. 70 is unconstitutional.

I may add in conclusion that this bill furnishes ample proof of the wisdom of those who framed Article III, Section 18, of our Constitution. The bill is a "wolf in sheep's clothing." It uses the cloak of the present unemployment situation to cover what would be in essence a "dole" from the State to counties, cities and poor districts,—a payment from the State Treasury to local treasuries to be used in the discretion of local authorities. It would, if enacted and sustained, establish a precedent which would haunt Legislatures for many years to come.

If the bill were a sincere effort to afford direct relief to the unemployed, through a State appropriation to be used, supervised and audited for relief purposes, it would be a very unpleasant duty to hold it unconstitutional, just as it was to write my opinion of October 27 to the Governor, with which you are familiar. But as Attorney General it is my duty to advise State officers according to the Constitution and laws as I find them. It is not my duty to guess whether our courts, by strained constructions, would endeavor to circumvent constitutional provisions. Nor can I, under my oath of office, advise that because certain appropriations in the past have been made in disregard of a constitutional limitation without being attacked in the courts, the Legislature can now disregard the plain and unambiguous language of the Constitution.

For many years the Legislature made appropriations to sectarian institutions, but when, after millions of dollars had been thus expended, the courts were called upon to interfere, they did not hesitate, in *Collins v. Kephart*, 271 Pa. 428, to apply the constitutional

prohibition against the practice, however distasteful it may have been to deprive worthy institutions of State aid which they had been receiving for many years.

Finally, it would be impossible under any reasoning to bring the bill within any of the subjects stated by the Governor in his proclamations. It cannot, therefore, be validly enacted at this Session.

House Bill No. 71, Providing for the Imposition of an Income Tax. I have already advised you that in my opinion an income tax does not come within any of the subjects stated by the Governor in his proclamations and would be unconstitutional if enacted at this Session.

House Bill No. 72, Imposing a Tax on Admission to Concerts and Other Public Performances. This bill does not come within any of the subjects specified by the Governor in his proclamation and cannot, in my opinion, be validly enacted at this Session.

House Bill No. 73, Proposes a Constitutional Amendment, and can validly be enacted.

House Bills Nos. 74 and 75, Making Appropriations to the Department of Welfare in Aid of Certain Hospitals Not Owned by the Commonwealth. These bills come within Subject No. 1 of the Governor's supplemental proclamation and would, in my opinion, be constitutional if enacted.

House Bill No. 76, Proposing a Tax upon Malt. For the reasons stated in discussing House Bills Nos. 71 and 72, this bill could not, in my opinion, be sustained if enacted at this Session.

Very truly yours,

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

OPINION NO. 32-E

Legislature—House of Representatives—Constitutionality of House Bills Nos. 77 to 86 inclusive, Extraordinary Session of 1931.

The Attorney General advises the Speaker of the House of Representatives regarding the constitutionality of House Bills Nos. 77 to 86 inclusive. Extraordinary Session of 1931.

Department of Justice,
Harrisburg, Pa., December 14, 1931.

Honorable C. J. Goodnough, Speaker of the House of Representatives,
Harrisburg, Pennsylvania.

Sir: In accordance with the resolution of the House of Representatives adopted November 10, 1931, I shall give you my opinion re-