to award a contract on behalf of the county of Philadelphia, as per the Voting Machine Act of 1929 and its amendments.

It is very doubtful whether, under the Act of 1895 as amended, the city comptroller can lawfully refuse to advertise for proposals for voting machines as per the directions of the county commissioners. See the decision of the Supreme Court in *Commonwealth v. Wertz,* 251 Pa. 241, and also the decision of the Court of Common Pleas of Luzerne County in *Commonwealth v. Hendershot,* 21 Luzerne 1.

But however that may be, it is perfectly clear that under the Voting Machine Act it is your absolute duty under the circumstances above outlined to proceed with the award and execution of a contract for the purchase of additional voting machines necessary to supply all of the wards of Philadelphia. That act expressly provides that:

> "* * * the cost of such voting machines, including the delivery thereof, and of making and entering into the said contract or contracts, including the preparation and printing of specifications and all other necessary expense incidental thereto, shall be the debt of the said county, and, upon the certificate of the Secretary of the Commonwealth, it shall be the duty of the controller, if any, to allow, and of the treasurer of the county to pay, the sum out of any appropriation available therefor, or out of the first unappropriated moneys that come into the treasury of the county."

The fact that the money expressly borrowed by Philadelphia for the purchase of voting machines has been diverted to other uses cannot defeat the expressed will of the electors or the plain mandatory provisions of the Voting Machine Act.

Accordingly, we advise you that it is your duty to proceed with the course of action which you have outlined in your notice to the county commissioners of Philadelphia County.

Very truly yours,

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

OPINION NO. 37

Unemployment Relief—Extraordinary Session of 1931—Constitutionality of Act No. 7E—Appropriation—Duty of Secretary of Welfare. Art. III, Sec. 18 of the Constitution.

The Secretary of Welfare is advised that she may not draw any requisitions against an appropriation for unemployment relief, made by Act No. 7E, Extra-

ordinary Session of 1931, which became a law without the Governor's signature, and was declared by the Attorney General to be in violation of Art. III, Sec. 18 of the Constitution.

Department of Justice,
Harrisburg, Pa., January 8, 1932.

Honorable Alice F. Liveright, Secretary of Welfare, Harrisburg, Pennsylvania.

Madam: We have your request to be advised what action, if any, you shall take under the provisions of Act No. 7E which became a law without the Governor's signature, on December 26, 1931.

Under date of October 27, 1931, we issued to the Governor Formal Opinion No. 30, advising that the Legislature cannot under Article III, Section 18 of the Constitution of Pennsylvania, make direct appropriations for unemployment relief. Under date of December 7, 1931, we advised the House of Representatives, in Formal Opinion No. 32D, that House Bill No. 70, which with certain minor amendments has become Act No. 7E, was unconstitutional. We took the view that it would, if passed, be in violation not only of Article III, Section 18, but also of Article III, Section 25 of the Constitution.

Under date of December 22, 1931, we advised the Governor that the bill,—then before him,—was unconstitutional, as in violation of the sections already mentioned and also of Article III, Section 3 and Article IX, Section 4.

We are attaching copies of these opinions. The first of them was issued after it had been submitted to the Auditor General and State Treasurer, both of whom approved its conclusions.

It would serve no useful purpose here to repeat at length what has been stated in our previous opinions. We believe that the act is unconstitutional and void.

Accordingly, we advise you that you cannot lawfully draw any requisitions as provided in the act.

Very truly yours,

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

Enclosures

Department of Justice,

Formal Opinion No. 30. Harrisburg, Pa., October 27, 1931.

Honorable Gifford Pinchot, Governor of Pennsylvania, Harrisburg, Pennsylvania.

Sir: You have asked to be advised what measures the Legislature of Pennsylvania may take under our Constitution to relieve the distress resulting from unemployment during the forthcoming winter. Specifically, you wish to know:

First: Whether the Legislature can make appropriations for the payment of money or the furnishing of food, clothing and shelter to unemployed persons and their families;

Second: Whether the Legislature can make an appropriation to a State agency for these purposes;

Third: Whether the Legislature can appropriate money to political subdivisions of the State for these purposes; and,

Fourth: Whether the Legislature can make appropriations to incorporated or unincorporated welfare agencies, the money to be used for these purposes.

The constitutional provision which immediately comes to mind in considering the Legislature's ability to appropriate money for unemployment relief is Article III, Section 18, which reads as follows:

> "No appropriations, except for pensions or gratuities for military services, shall be made for charitable, educational or benevolent purposes, to any person or community, nor to any denominational or sectorian institution, corporation or association."

In *Busser et al. Snyder,* 282 Pa. 440 (1925) the Supreme Court held that this section had been violated in the passage of the "Old Age Pension Act" of May 10, 1923, P. L. 189.

The Act created an Old Age Assistance Commission and county old age assistance boards which were to administer its provisions. It provided that assistance might be granted only to persons seventy years of age or upwards who had been residents of the United States and of this Commonwealth for certain periods prior to their application for aid, who had no children or other persons responsible for their support and able to support them, who had property of the value of less than three thousand dollars ($3,000), and who had an income of less than one dollar ($1.00) per day. The amount of assistance was to be such that when added to the income of the applicant from all other sources it would not exceed a total of one dollar ($1.00) a day.

In attempting to sustain the Act, the Attorney General sought to have the Court take the view that the words "person" and "community" as used in Article III, Section 18 of the Constitution have a restricted meaning. He argued that in view of the fact that old age assistance was to be granted by an administrative agency and that money for assistance had been and was to be appropriated to this agency, the constitutional provision was not applicable. In disposing of this argument, Mr. Justice Kephart said, at page 451:

> "* * * This contention is not sound; 'person' and 'community' are not limited to the idea of a single person or place where persons are located; they are used in an inclusive sense, relating to an individual or a group or class of persons, wherever situated, in any part or all of the Commonwealth. It applies to persons, kind, class and place, without qualification. The language of the Constitution is an absolute and general prohibition. Nor does the fact that the appropriation is made to an agency (the intermediate and practical step by which public money is distributed to citizens) aid appellant's case. The gift is not to the commission, but to the particular persons selected by the legislature to receive it. The commission cannot use the money: it merely passes it on to the selected class. It is none the less a gift directly to the individual, even though it pauses for a moment on its way thither in the hands of the agency. Nor can the act be sustained because the appropriation is to an agency as an arm of the government, working out a governmental policy. What the Constitution prohibits is the establishment of any such policy which causes an appropriation of state moneys for benevolent purposes to a particular class of its citizens, whether under the guise of an agency, as an arm of the government through which a system is created, or directly to the individual. * * *"

The Attorney General also argued that if the Old Age Pension Act were held unconstitutional, by the same reasoning grants of public money for the care and maintenance of indigent, infirm and mentally deficient persons without ability or means to sustain themselves must be stricken down as unconstitutional. Answering this proposition, Mr. Justice Kephart said, at page 453:

> "* * * To provide institutions, or to compensate such institutions for the care and maintenance of this class of persons, has for a long time been recognized as a governmental duty, and where institutions are compensated (except as hereinafter noted) for the care of indigent, infirm and mentally defective, including certain physically defective, persons, such appropriations may well be sustained on this theory. The expenditure of money for such purposes is and long has been recognized as a func-

> tion of government, and the manner of its administration is restricted only by section 18 of article III. * * *''

It was also argued that if this act were held void, the various State retirement acts must also fall. This the Court said was not sound because the retirement acts do not appropriate money for charitable or benevolent purposes. They provide compensation for the hazard of long continued public employment.

Finally, the Attorney General sought to sustain the Act on the ground that it was a "poor law" and that there is no constitutional inhibition against State aid for poor relief. This contention was discussed at length. At page 457, Judge Kephart said:

> "As said by Mr. Justice Brewer in *Griffith v. Osawkee Twp.*, 14 Kans. 418, 422, 27 Pac. St. Rep. 322, 324, 'Cold and harsh as the statement may seem, it is nevertheless true that the obligation of the state to help is limited to those who are unable to help themselves.' We agree with what the court below says on this question: 'That system 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, and no word is contained in the Constitution with reference to it. The system was left untouched. If there had been any purpose to change that system, some word indicating that purpose would have been found in the Constitution * * * 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.' ''

This decision necessarily leads us to the conclusion that an appropriation enabling cash, food, clothing or shelter to be supplied to those who are unemployed because of economic depression would be treated as a charitable appropriation to "persons" and, therefore, unconstitutional. Clearly, if a person is an object of charity when unable to support himself by reason of advanced age and lack of sufficient income, then a person is likewise an object of charity when unable to support himself because of temporary unemployment due to economic depression; and if it is not a governmental duty but a charity for the State to provide for the care of indigent sick and injured, it must necessarily follow that it is not a governmental duty but a charity to care for persons temporarily indigent because of economic depression.

Another Supreme Court decision which requires consideration is *Collins v. Martin et al.*, 290 Pa. 388 (1927).

The Legislature had appropriated a million dollars to the Department of Welfare for the care and treatment of indigent sick and

injured persons in hospitals not owned by the Commonwealth. The Department contracted with certain hospitals to furnish medical and surgical treatment to such persons, at a per diem rate. One of these hospitals was St. Agnes Hospital in Philadelphia, which the Court found to be a sectarian institution. The question was whether the State Treasurer could lawfully pay to St. Agnes Hospital the amount which the Department of Welfare had contracted to pay it for the treatment of indigent persons cared for in the hospital.

The Attorney General argued that the payment could be made because under the contract the Department of Welfare was purchasing service for indigent persons and was not giving money to the hospital except as compensation for services rendered; that (as indicated by the Supreme Court in the Old Age Pension Case) the treatment of indigent sick and injured persons is not a charity but a governmental duty; and that it is not unconstitutional for a sectarian institution to receive money not appropriated to it, to compensate it for services rendered or materials furnished.

All of these contentions were rejected by the Court, which held that payment could not be made to the hospital under its contract with the Department of Welfare.

Mr. Justice Kephart, speaking for the Court, at page 395, disposed of the State's contention that the care of indigent sick and injured persons is not a charity but the performance of a governmental duty. He said:

> "* * * While such activities may, because of their number and importance to the recipients, assume the form of a governmental function or duty, * * * they do not lose their chief character, viz, the State's work of charity. * * *"

The Court distinguished between governmental care of the poor, as carried on during the entire history of the State, and the care of persons who are temporarily in need of financial assistance. It had been argued that the language used by Mr. Justice Kephart in the Busser case supported the proposition that any appropriation to care for indigent persons is made in the performance of a governmental duty. This contention was answered, at page 397, as follows:

> "* * * It is argued that the effect of this decision (the Old Age Pension decision) should be applied to the case of the needy poor contemplated by the Act of 1925, and the various direct appropriations to hospitals. But the difference between the two classes is manifest; it lies in the words 'without ability or means to sustain themselves.' On the one hand there are persons totally indigent, as opposed to persons being generally able to take care of themselves, yet when sickness or injury over-

> takes them they are unable to provide proper treatment, and as to that they are indigent."

The Court took the position that an appropriation to a State department, to be used for paying a sectarian institution for services rendered, is equivalent to an appropriation made directly to the sectarian institution. That being so, an appropriation to a State department for feeding or clothing persons or communities must be regarded as equivalent to an appropriation directly to the persons or communities to be benefited.

Under this decision, an appropriation for unemployment relief made to a department, commission or other agency created by law would be just as objectionable as appropriations made directly to the beneficiaries whom the Legislature desires to aid.

A political subdivision of the Commonwealth, whether it be a county, a city, a borough, a township, or a poor district, must necessarily be regarded as a "community" within the meaning of Article III, Section 18 of the Constitution as interpreted by the Supreme Court in the Busser case. Therefore, the Legislature could not make an appropriation for any charitable purpose to any such political subdivision.

Accordingly, we are compelled to answer your first three questions in the negative. The Legislature cannot make appropriations for the payment of money or the furnishing of food, clothing and shelter to unemployed persons and their families either directly or through a State agency or to political subdivisions of the State.

The question remains, could the Legislature appropriate money for unemployment relief to a nonsectarian institution, corporation or association?

It is true that the Supreme Court in the Busser case indicated that by forbidding charitable appropriations to be made to denominational or sectarian institutions, corporations or associations, the people in the Constitution had recognized the right of the Legislature to make such appropriations to nondenominational or nonsectarian institutions, corporations and associations.

However, in considering the Legislature's right to make such appropriations, we cannot ignore the inhibition against appropriations for charitable purposes "to any person or community"; and, if an appropriation were made to a nonsectarian corporation for purposes incident to unemployment relief, the effect would be indirectly to aid a person or group of persons by supplying them with money or its equivalent in food, clothing or shelter. This would be no different from a similar appropriation made to a department or commission of the State government. The real purpose of the appropriation would

be to extend financial aid to those who, for lack of employment, must be given assistance.

Let us suppose, for example, that a corporation were formed to administer an old age pension system. Would the Supreme Court sustain an appropriation to such a corporation "for maintenance?" Obviously, it could not, under the reasoning applied in the St. Agnes Hospital case. Consistently with that decision, the court would look through the form of the appropriation and find that it was in fact an appropriation for old age pensions "to persons," and, therefore. invalid.

But, it may be asked, how then can maintenance appropriations to hospital corporations be sustained? The answer is clear. These appropriations are made for institutional service; and such appropriations are recognized both in Sections 17 and 18 of Article III of the Constitution.

We cannot escape the conclusion that under the cases cited, the Legislature could not, without violating the Constitution, make appropriations for unemployment relief to any charitable corporation or association.

Very truly yours,

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

Formal Opinion No. 32-D.

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 proclamations 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 among 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 inclusive 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 Articles 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 plain, 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 limitation imposed by the Federal and State Constitutions upon every power of government, * * *." Cooley's Constitutional 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, repeal 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 proclamations 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.

HOUSE BILL NO. 70

Harrisburg, Pa., December 22, 1931.

To the Governor:

This bill makes an appropriation to the Department of Welfare in the amount of ten million dollars ($10,000,000). According to the title of the bill the appropriation is "for State-aid to political subdivisions charged by law with the care of the poor."

In my opinion the bill is vicious, fraudulent and unconstitutional.

It is vicious because if sustained it will be a precedent for taking out of the State Treasury money contributed by State taxpayers and transferring it to the treasuries of political subdivisions of the Commonwealth.

The bill is fraudulent because it has been misrepresented as an appropriation for unemployment relief, when in fact it does not require a penny of the money appropriated to be expended for this purpose. The money can be expended for any purpose which appeals to the authorities of the political subdivisions into whose treasuries it will be paid.

The bill is unconstitutional because:

1. It violates Article III, Section 18 of the Constitution which prohibits appropriations for charitable or benevolent purposes to persons or communities, and the Supreme Court in the St. Agnes Hospital Case (Collins *v.* Martin, 290 Pa. 388) held that an appropriation to the Department of Welfare which merely flows through it to a spending agency is an indirect appropriation to such agency.

2. It violates Article III, Section 3, which requires the subject of every bill to be clearly stated in its title. This bill imposes duties with regard to the distribution of money upon county commissioners, courts of common pleas and certain officers of cities and counties of the first class. It gives no intimation in its title that duties are imposed upon any of these officers.

3. It violates Article III, Section 25, which prohibits the Legislature at a Special Session from enacting legislation "upon subjects other than those designated in the proclamation of the Governor calling such session." This bill is not upon any subject designated by you in your proclamations.

4. It violates Article IX, Section 4, which forbids any debt from being created by or on behalf of the State except for certain stated purposes. Due to the failure to provide revenue and the fact that the Legislature has already appropriated the full limit of estimated revenue for the biennium, this bill would result in an indebtedness equal to the amount appropriated; and the debt would not be for any of the purposes specified in Article IX, Section 4.

In view of the objections cited, I cannot recommend that you sign the bill, and under ordinary circumstances I should recommend emphatically that it be vetoed.

However, after the Legislature has been in Session for six weeks, this bill is its only product which even resembles a relief measure. Members of both houses and certain lawyers have taken the position that my views regarding the validity of the bill are not correct. I do not retract in the slightest anything I have said about the bill. I cannot read the Constitution or the decisions of the Supreme Court without being convinced that the bill is void. On the other hand, I have no desire to stand between the needy and relief, even to the extent to which this inadequate measure would afford it. In the last analysis, it is for the courts to say what the Constitution and their former decisions mean. My conclusion, if correct, will be sustained by the courts. If it is not correct, I shall cheerfully bow to the courts' final interpretation.

So that there may be a decision by the courts rather than an empty debate regarding the constitutionality of the bill and the responsibility for its failure, I recommend that you neither approve nor veto it but permit it to become a law at the expiration of ten days without action on your part.

Very truly yours,

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

OPINION NO. 38

Highways—State-aid highways in boroughs—Act of 1931, No. 340.

Under the Act of June 25, 1931, P. L. 1369, the Department of Highways no longer has the duty of maintenance, at the expense of the Commonwealth, of