

**DIGEST OF THE OPINIONS AND  
BRIEFS OF THE SOLICITOR  
OF THE TREASURY, JANUARY  
1, 1911 TO DECEMBER 31, 1912**

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Digest of the Opinions and Briefs of the Solicitor of the Treasury, January 1, 1911 to December 31, 1912 by Robert J. Mawhinney

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**ROBERT J. MAWHINNEY**

**DIGEST OF THE OPINIONS AND  
BRIEFS OF THE SOLICITOR  
OF THE TREASURY, JANUARY  
1, 1911 TO DECEMBER 31, 1912**



United States. Solicitor of the  
Treasury.

**DIGEST**

OF THE

**OPINIONS AND BRIEFS OF THE SOLICITOR  
OF THE TREASURY**

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JANUARY 1, 1911  
TO  
DECEMBER 31, 1912

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PREPARED BY

**ROBERT J. MAWHINNEY**  
*Of the District of Columbia Bar*



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**DIGEST**  
**OF THE**  
**OPINIONS AND BRIEFS OF THE SOLICITOR OF**  
**THE TREASURY.**

**ABSENCE.**

*See* Leave of Absence; Public Officers and Employees.

**ACKNOWLEDGMENTS.**

**Extent of Powers of Customs Notary.**—The appointment by the Secretary of the Treasury of persons as customs notaries would not authorize their taking acknowledgments generally, and as they also hold commissions from their States as notaries their power to so act would depend on State laws.  
(12770.) Apr. 14, 1911.

**ACTIONS.** *See* Suits and Proceedings.

**ADULTERATION.** *See* Pure-Food Law.

**ADVERTISING.** *See* Supplies and Services.

**ADVERTISEMENTS.**

**Flag.**—There is no law which prohibits the stamping or printing of the national flag on merchandise or manufactured articles.

(13698—To Wilson.) Aug. 31, 1912.

**AGENTS.**

**Practicing Before Departments—Disbarment.**—The act of December 22, 1911 (37 Stat., 49), providing that attorneys shall be disbarred for demanding or accepting fees in certain war claims is as effectual to prevent an attorney from representing any and all other claimants as the more comprehensive act of July 7, 1884 (23 Stat., 258), and in fact the head of a department has the right to disbar without express legislative authority.  
(6194.) Apr. 11, 1912.

**Same.—Rules.**—Under the act of July 7, 1884 (23 Stat., 258), and by virtue of his executive authority the Secretary of the Treasury may prescribe rules and regulations governing the practice of attorneys and agents before the Customs Division.  
(10352.) Dec. 26, 1911

**Process Agents.** *See* Suretyship.

*See also* Attorneys; Claims.

**ALASKA.**

**Contagious Diseases in—Prevention.**—The acts of March 27, 1890 (26 Stat., 31), and February 15, 1893 (27 Stat., 449), for the prevention of the introduction and spread of contagious diseases, apply to the Territory of Alaska as well as to other Territories of the United States; and the appropriation act is sufficient for the preparation of regulations applicable thereto.  
(13070.) Sept. 20, 1911.

**Fines—Disposition.**—A fine imposed in Alaska on a vessel not having a bill of health as required by act of February 15, 1893 (27 Stat., 449), should be covered into the fund for court expenses in Alaska under the act of March 3, 1909 (35 Stat., 840).  
(4380—To Attorney General.) Jan. 5, 1912.

**License Money—Disposition.**—Where there are no town officers to receive license money collected within the municipality (33 Stat., 533), it would be proper to bring an action against the town to have such money turned into the Treasury,

**ALASKA—Continued.****License Money—Disposition—Continued.**

or at the end of five years they might be treated as unclaimed moneys in the registry of the court and turned into the Treasury in accordance with section 996, R. S., as amended (36 Stat., 1083).

(12727—To Attorney General.) Jan. 5, 1912.

**Liquor Licenses—Disposition of Forfeited Moneys.**—Moneys forfeited through the revocation of a liquor license outside of incorporated towns in Alaska should be treated as within the exception of the act of March 3, 1909 (35 Stat., 840), and deposited in the Treasury to the credit of the "Alaska fund."

(13053.) Sept. 11, 1911.

**Territory.**—While Alaska is not mentioned in the statutes relating to the prevention of contagious diseases, yet it can not be believed that Congress intended that the word "Territory" should not include Alaska.

(13070.) Sept. 20, 1911.

**ALCOHOL.**

**Free of Tax.** See Internal Revenue.

**AMERICAN.**

**Dying Abroad—Recovery of Assets.** See Estates.

**ANTITETANIC SERUM.** See Public Health Service.

**ANTITOXIN.** See Public Health Service.

**APPEAL AND ERROR.**

**Appeal From State to Supreme Court.—Taxation of United States Bonds.**—A case in a State court involving the taxation of United States bonds may be reviewed in the Supreme Court of the United States upon writ of error.

(11375.) May 24, 1911.

**APPEARANCE BOND.** See Bail.

**APPOINTMENTS.**

**Designation by "Chief Clerk and Chief Executive Officer."**—Neither the Secretary of the Interior nor the Acting Secretary can delegate to the chief clerk and chief executive officer of that department the authority to appoint or designate a disbursing officer, it being a matter of discretion not within the authority "to sign official papers and documents during the temporary absence of the Secretary and assistant secretaries of the department."

(13091.) Oct. 2, 1911.

See also Civil Service; Public Officers and Employees.

**APPORTIONMENT OF APPROPRIATIONS.** See Appropriations.

**APPROPRIATIONS.**

**Army—Wharves.**—The act of June 12, 1906 (34 Stat., 240), authorizing the Secretary of War to contract for the construction of wharves, building, etc., is not an appropriation "to raise and support armies" and subject to the limitation of two years in section 8 of the Constitution.

(10713.) Feb. 17, 1912.

**Available Until Expended.**—Where an appropriation, in an appropriation act for a particular fiscal year, is made for a specific object requiring several years to complete, it must be presumed that the appropriation should be available until the object can be executed.

(10713.) Apr. 30, 1912.

**Contingent Funds—Apportionment—Use.**—The act of August 23, 1912 (37 Stat., 414), requires that the general contingent funds appropriated for the department for each fiscal year shall be apportioned to each office or bureau, etc., but the act does not apply to separate specific appropriations for various purposes, and a specific appropriation can not be used to purchase any other article; and where an article could be purchased out of the regular contingent funds, it can not be purchased out of any other.

(13763.) Oct. 29, 1912.

**Contracts Dependent on Appropriations.** See Contracts.

**APPROPRIATIONS—Continued.**

**Contracts Terminate When Appropriation Exhausted.**—A contract (for coal) is terminated when the appropriation on which it is based is exhausted; that is, fully expended and no longer available. (11532.) Mar. 19, 1912.  
For the Blind. See Blind.

**ARMY.**

**Commissary and Treasurer at West Point—Liability on Bond.**—The bond of the treasurer and commissary at West Point is liable for moneys appropriated for the subsistence of the cadets coming into his hands and embezzled by him. (11530.) Sept. 28, 1911.

**ASSETS.**

Surety Companies. See Suretyship.

**ASSIGNMENTS.**

**Contracts—Financing Company.**—Section 3477, R. S., prohibits the assignment of all claims against the United States, and a company financing a contractor will only be given the pay warrants in favor of the contractor upon the latter's direction. (12079.) Dec. 13, 1912.

**Same—Payment Under Power of Attorney.**—Where a Government contractor gave a power of attorney to his subcontractor to indorse and collect checks but later attempted to revoke such power over the protest of the agent, the assistant treasurer should not make further payments until the parties have settled their differences. (12577.) Feb. 13, 1911.

**Same—Same.**—An assistant treasurer may make payment to a contractor if he is satisfied that the check does not represent the value of goods furnished the Government through another contractor to whom he had given a power of attorney to collect, and which he had attempted to revoke. (12577.) July 25, 1911.

**ASSISTANT TREASURERS OF THE UNITED STATES.**

**Bond—Examination of Office.**—There is no legal objection to the approval of a bond of an assistant treasurer without an examination of the subtreasury, such examination being an administrative question only. (12422.) Jan. 10, 1911.  
Control of Subtreasuries. See Subtreasuries.

**ASSUMPSIT. See Suits and Proceedings.****ATTACHMENT.**

**Collection of a Judgment Against Nonresident.**—An attachment in the Federal courts is not an available remedy to enforce collection of a judgment against a defendant not to be found in the jurisdiction. (11773.) Apr. 15, 1911.

**Same—Fine.**—There being some doubt of the right to issue an execution in Virginia to be levied on real property in Washington, a transcript of the judgment or fine may be sent for the purpose of attachment proceedings. (11773.) Apr. 21, 1911.

**Jurisdiction of Foreign.**—United States courts have no jurisdiction under section 915, R. S., to entertain suits by process of foreign attachment. (11773.) Mar. 30, 1911.

**Nonresident's Property.**—It is doubtful if attachment will lie under section 915, R. S., against the property of a nonresident who has not been served with process, and said section should be amended.

(To Atty. Gen.) (12246.) Jan. 19, 1911.

(To Sec. Treas.) Feb. 17, 1911.

**Value of Importations Gone Into Consumption.**—It is doubted whether, under the phraseology of the laws of some of the States, an attachment may be sued out by the United States in a suit brought by them for the value of goods imported and passed into consumption without the payment of duties.

(To Atty. Gen.) (12246.) Jan. 19, 1911.

(To Sec. Treas.) Feb. 17, 1911.



**ATTORNEY GENERAL.**

**Opinions—Advisory Only.**—The opinions of the Attorney General are only advisory, and not necessarily binding on another department. (12278.) Apr. 20, 1911.

**Power to Compromise Penalties for Violations of Safety Appliance Laws.** *See* *Compromise.*

**ATTORNEYS.**

**Disbarment.**—The act of December 22, 1911 (37 Stat., 49), providing that attorneys shall be disbarred for demanding or accepting fees in certain war claims, is as effectual to prevent an attorney from representing any and all other claimants as the more comprehensive act of July 7, 1884 (23 Stat., 258), and in fact the head of a department has the right to disbar without express legislative authority.

(6194.) Apr. 11, 1912.

**Practicing Before Treasury Department—Rules.**—Under the act of July 7, 1884 (23 Stat., 253), and by virtue of his executive authority the Secretary of the Treasury may prescribe rules and regulations governing the practice of attorneys and agents before the Customs Division.

(10352.) Dec. 26, 1911.

**AWARD.** *See* *Contracts; Supplies and Services.*

**BAIL.**

**Forfeiture—Remission.**—The courts under section 1020, R. S., have authority to set aside judgment on forfeited recognizances at succeeding terms of courts.

(12499.) Jan. 26, 1911.

**Same—Same.**—The courts have power by virtue of section 1020, R. S., to reopen, modify, or set aside judgments on forfeited recognizances at any time.

(12926—To U. S. Atty. E. Pa.) Jan. 13, 1912.

**Same—Same—District of Columbia.**—There may be some doubt since the codification of the laws relating to the District of Columbia whether the President has power to remit forfeitures of recognizances in said District, but the practice to so remit still prevails.

(12547.) Mar. 4, 1911.

**Judgment—Interest.**—A judgment upon a forfeited appearance bond is a judgment at law, and the statutes in relation to interest apply thereto.

(7077, 5837.) Aug. 22, 1911.

**BANKS.**

**Use of Word "National" by a Savings Bank.**—The National Savings Bank of the city of Albany, N. Y., having been incorporated and given its name by a special State act before and permitted to continue the name by the Comptrollers of the Currency since the enactment of the national banking law, no action therefor against it is now advised.

(6608—To Comp. Currency.) Nov. 1, 1911.

*See also* *National Banks.*

**BIDDERS.**

**Defaulting—Subsequent Bids.**—There is no statute which requires the exclusion of defaulting parties from the list of eligible bidders; the practice seems to be founded upon a mere rule or regulation of the department.

(11400.) Aug. 4, 1911.

**BIDS.**

*See* *Bidders; Contracts; Proposals; Supplies and Services.*

**BILLS AND NOTES.**

**Acceptance and Certification Distinguished.**—A distinction is clearly made in the textbooks and repeated with approbation by the Supreme Court between the acceptance of a bill of exchange and the certification of a check.

(12278.) Apr. 20, 1911.

**Checks—"Certified Check" defined.**

(12278.) Nov. 26, 1912.

**BILLS AND NOTES—Continued.**

**Checks—Certified—In Payment of Customs Duties.**—Travelers' checks issued by the American Bankers' Association and accepted by the Bankers' Trust Co. are not certified checks within the act of March 2, 1911 (36 Stat., 965) receivable for duties or taxes; otherwise if certified by the trust company.

(12278.) Mar. 15, 1911.

Apr. 20, 1911.

Mar. 22, 1911.

**Same—Same—Same.**—The acceptance of the instrument as a bill of exchange would fall short of a compliance with the terms of the statute authorizing the acceptance of "certified checks" in payment of customs dues.

(12278.) Apr. 20, 1911.

**Same—Same—Same.**—A contract or guarantee of the Bankers' Trust Co. to pay travelers' checks of the American Bankers' Association would not make such checks "certified" within the act of March 2, 1911 (36 Stat., 965) and receivable for duties.

(12278.) May 5, 1911.

**Same—Same—Same.**—If the travelers' checks issued by the American Bankers' Association bear the acceptance of the Bankers' Trust Co. "We hereby accept and certify the foregoing order, and will pay same," they will come within the act (36 Stat., 965), providing for the acceptance of certified checks in payment of customs duties.

(12278.) May 11, 1911.

**Same—Same—Same.**—It would require a strained construction to hold that the "travelers'" check submitted was a "certified" check, acceptable in payment of customs dues under the act of March 2, 1911 (36 Stat., 965.)

(12278.) Nov. 26, 1912.

Nov. 30, 1912.

**Same—Same—Same—Payment of Duties.**—The Secretary of the Treasury has no authority to take a bond from a bank issuing travelers' checks to guarantee their payment and to direct a collector to receive them in payment of duties. Suggests change of form of checks.

(12278.) Nov. 30, 1912.

**Same—Same—In Payment of Head Tax.**—The head money tax is not embraced in the words "duties on imports" in the act of March 2, 1911 (36 Stat., 965) authorizing the receipt of certified checks in payment thereof.

(12278.) Mar. 23, 1911.

**Same—Indorsement and Collection After Attempted Revocation of Power of Attorney.**—Where a Government contractor attempts to revoke a power of attorney given his subcontractor to indorse and collect checks, and the subcontractor after due notice fails to protest, the assistant treasurer may pay the contractor or a subsequently authorized attorney in fact.

(12577.) Apr. 29, 1911.

**Same—Indorsement and Collection by an Attorney in Fact.**—Where a Government contractor gave a power of attorney to his subcontractor to indorse and collect checks but later attempted to revoke such power over the protest of the agent, the assistant treasurer should not make further payments until the parties have settled their differences.

(12577.) Feb. 13, 1911.

**Same—Lost—Payment by Drawee of Certified.**—A suit may be maintained by the payee or indorsee of a certified check against the drawee bank to compel payment thereof, if refused, upon tendering proper indemnity.

(13023—Treasurer U. S.) Aug. 11, 1911.

**Same—Pension—Repayment to Bank Which Refunded by Mistake.**—According to a well-established rule that moneys paid in mistake of legal rights can not be recovered, repayment should not be made to a bank which had refunded the amount of a pension check issued on a false certificate.

(9618.) Apr. 5, 1911.

**BILLS AND NOTES—Continued.**

**Checks—Reclamation for Letter Carriers on Account of Failure of Bank—Trust Fund.**—Reclamation can not be made in behalf of letter carriers who deposited their pay checks in a bank which failed two days thereafter, payment having been made at a subtreasury to bona fide holders on genuine indorsements of the payees, but if the checks were deposited for collection only, the proceeds would be impressed with a trust in favor of the depositors, and the receiver of the insolvent bank would be accountable accordingly.

(13276.) Nov. 23, 1911.

**Payment of Lost Certified.** See Checks, this title.

**Pay Checks of Letter Carriers.** See Checks, this title.

**Reclamation for Letter Carriers.** See Checks, this title.

**BILLS OF EXCHANGE.**

See Bills and Notes.

**BILLS OF HEALTH.**

**Disposition of Fine in Alaska.**—A fine imposed in Alaska on a vessel not having a bill of health as required by the act of February 15, 1893 (27 Stat., 449) should be covered into the fund for court expenses in Alaska under the act of March 3, 1909 (35 Stat., 840). (4380—To Attorney General.) Jan. 5, 1912.

**Supplemental—Intermediate Ports.**—Vessels which do not procure supplemental bills of health at intermediate ports at which they stop but do not enter or clear are not subject to the pecuniary penalties imposed by the acts of February 15, 1893 (27 Stat., 449), and August 18, 1894 (28 Stat., 372), on vessels failing to procure bills of health at foreign ports from which they clear and sail, although the Treasury regulation requires such supplemental bills of health. The regulation, however, has the force of law to the extent that the collector of customs may refuse entry to any such vessel. (4380.) Sept. 2, 1911.

**Same—Same—Port of Departure.**—The "Port of departure" in the act of February 15, 1893 (27 Stat., 449), requiring bills of health is not the last port at which a ship may stop while bound for the United States, but the port from which she clears. (4380.) Sept. 2, 1911.

**Same—Same—Regulations.**—Where vessels enter intermediate ports to discharge or take on cargo they should procure bills of health as required by regulation authorized by section 3, act of February 15, 1893 (27 Stat., 450), but in the absence of express statutory authority the Secretary of the Treasury can not impose a penalty by regulation. (4380.) Nov. 4, 1911.

**BENDING.** See Bookbinding.

**BLIND.**

**Application of Fund to Public Schools.**—The blind children classified in connection with the public schools of New York City are entitled to share in the free distribution of books and apparatus for the blind provided by the act of March 3, 1879, and June 25, 1906. (8396.) Sept. 21, 1912.

**Same.**—The public day schools for the blind, conducted in the city of Milwaukee, are entitled to share in the free distribution of embossed books for the blind, as provided for by the acts of March 3, 1879 (20 Stat., 467), and June 25, 1906 (34 Stat., 460). (8396.) Jan. 30, 1912.

**"Public Institutions for the Education of the Blind."**—It would be difficult to differentiate public schools which are created and exist by legislative or public authority from public educational institutions designated in the act of June 15, 1906 (34 Stat., 460). (8396.) Jan. 30, 1912.

**BOARD.** See Commissions.

**BOARD OF GENERAL APPRAISERS.** See Customs Laws.

**BOND SECTION.** See Treasury Department.