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### Abstracts of Recent Opinions of the Attorney-General of the State of New York

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## ABSTRACTS OF RECENT OPINIONS OF THE ATTORNEY-GENERAL OF THE STATE OF NEW YORK <sup>1</sup>

### AGRICULTURE AND MARKETS LAW, Art. 20-B (5/17/43).

An interpretation was given by the Attorney General in an opinion given in 1934, wherein he ruled that a "canning factory" under above article was not meant to apply to establishments engaged primarily in bottling grape juice and cider. As such ruling has been in effect over nine years although there have been changes in the industry since that time, it rests with the Legislature to effect any conforming change in law. Until such change is made, grape juice and cider operations are not regulated by the Bonding Law.

### LABOR LAW (UNEMPLOYMENT INSURANCE); Par. 521, subd. 2 (5/18/43).

Where an employer fails to comply with a demand of the Commissioner to furnish a required statement within twenty days, no penalty may be imposed, if such failure to furnish is caused by sickness of employer, destruction of records or books by fire, or other causes not attributable to employer's own fault.

### REAL PROPERTY LAW, Par. 312; EXECUTIVE LAW, §§ 102, 108 (5/19/43).

In order that a deed may be read in evidence and recorded in New York State it must bear a certificate of authenticity which complies in detail with requirements of Section 312 of the Real Property Law and Sections 102 and 108 of the Executive Law. None other or different will suffice.

### CORRECTION LAW, Par. 386 (5/24/43).

A prisoner committed to Dannemora State Hospital by other than a state prison, must be returned to the same institution from which he was received, and may not be sent directly to a state prison.

### VEHICLE AND TRAFFIC LAW, Par. 94-B (5/24/43).

Where the judgment under above law is a sum in excess of \$25.00, the operator or chauffeur who fails to satisfy the judgment is to be dealt with as described in statute. This is true also, in any case where costs have been added to bring a sum above \$25.00.

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<sup>1</sup> Opinions rendered by Hon. Nathaniel L. Goldstein, Attorney-General of the State of New York.

**REAL PROPERTY LAW, Art. 9-A (5/24/43).**

The intent of above article is to prevent fraud and other abuses in the sale of lands on the installment plan. It is broad enough to include the regulation of sale of cemetery lots.

**LABOR LAW, Par. 523-A (10/16/43).**

If an employer had only three employees when the Unemployment Insurance Law became effective, but later hired an additional employee bringing him then under law's provision and making him subject to unemployment insurance contributions, he is liable to the penalty provided by the above section. Even though it was an inadvertence or oversight on the employer's part, the statute allows no discretion in fixing the penalty.

**SOCIAL WELFARE LAW, Pars. 168.1, 169 (10/18/43).**

A "veteran" under the above law is entitled to assistance if he has served in the military or naval service and has been furloughed to the reserve. For purposes of the above law, he is considered honorably discharged.

**MILITARY LAW, Par. 246, subs. 4, 15; Par. 246-A (10/23/43).**

The above law provides for continuance in the Retirement System of employees on leave in military or naval service. Nowhere is it provided that the municipality shall pay the employee's contribution to the system, and it may not do so.

**DOMESTIC RELATIONS LAW, Par. 7, subd. 4 (10/27/43).**

While fraud is a ground for annulment of a marriage in New York State, the mere concealment by a woman that she had theretofore given birth to an illegitimate child is not such fraud as to be ground for annulment, unless she has made an affirmative statement that such a situation did not exist.

**ELECTION LAW, Pars. 150, 151 (10/29/43).**

One who removes from one election district to another within the same political subdivision and within thirty days prior to an election, loses his right to vote in the first district and does not gain the right to vote in the second. One who removed from one county to another within four months prior to election, also loses his right to vote, and doesn't gain right in the second. If, however, one in the armed forces leaves his home, he still retains his right to vote. War workers employed directly by the U. S. government, likewise retain right to vote if required to leave home.

NEW YORK STATE CONSTITUTION, Art VIII, § 4; LOCAL FINANCE LAW, § 200, subd. 7 (1/26/44).

"Completed Assessment Rolls", as used in our constitution, Article VIII, paragraph 4, means original rolls, before reduction because of court decisions and certiorari negotiations or cancellations. The words in the statute could not have been intended otherwise, since these proceedings remain undisposed for an extended period.

SOCIAL WELFARE LAW, Par. 168 (1/19/44).

A veteran who has three times enlisted in the armed forces, but who upon his last enlistment was dishonorably discharged, is not entitled to assistance under above law, even though previous enlistments terminated honorably. An honorable discharge under above law means the most recent status. If in need, he may be entitled to other forms of public assistance, but not under provisions of above law.

ELECTION LAW, Par. 200; PENAL LAW, Par. 759 (1/5/44).

Any employee who desires to vote in a public election, must notify his employer before election day. The employer must then designate two successive hours during which employee may be absent for that purpose. If time is not so designated, employee may absent himself for any two successive hours while polls are open. No salary deduction may be made for such absence.

If the employee's day is for a ten-hour day and such time taken by employee is during an overtime period wherein he is entitled to time and a half, employer may not take anything from wages, when he has neglected to set aside voting time so that the employee selects his own two successive hours.

TOWN LAW, Par. 64(11) (1/7/44).

The place of publication of a newspaper is the place where the paper is first given to the public for circulation. It may be printed in one town but "published" in another.

SOCIAL WELFARE LAW, Par. 104 (2/14/44).

Welfare officials may bring an action to reimburse cost of public assistance against recipients of such assistance, who have real or personal property. Future earnings may not be garnisheed however, and mere earning capacity does not prove possession of real or personal property.

HARRY B. AHRENS.