Attorney General of P.R.
Correspondence, 9 June 1914-
5 March 1919.

Office of the Attorney General,

San Juan, June 9, 1914.

The Governor of Porto Rico,

San Juan, P. R.

Sir:-

I have the honor to acknowledge receipt of your letter of March 7, 1914, in which you request an opinion as to the date on which salary of Hon. Peter J. Hamilton, Judge of the District Court of the United States for Porto Rico, began to accrue. From the file which you enclose the following facts appear: Judge Hamilton's commission bears date of March 17, 1913. It gives evidence of his appointment "by and with the advice and consent of the Senate," and authorizes him "to Have and to Hold the said Office, with all the powers, privileges and emoluments to the same of right appertaining, unto Him, the said Peter J. Hamilton, for the term of four years commencing with the date hereof, subject to the provisions of law." Upon receipt of the commission Judge Hamilton gave up all private business, and devoted himself to that connected with his office. He took oath of office at Mobile, Ala., on March 26, 1913. Upon his arrival in San Juan on April 10, 1913, he took a further oath of office. Although precisely what claim was made by Judge Hamilton for salary, and when such claim was made, nowhere appears from the file, I gather from certain indirect statements therein that salary was claimed from March

26, 1913, and reimbursement for travel expenses incurred after that date, but prior to April 10, 1913; that these claims were disapproved by the Auditor; that the Auditor allowed salary from April 10, 1913; and that from the ruling of the Auditor, disallowing claims for salary from March 26, 1913, to April 10, 1913, and for travel expenses, Judge Hamilton has appealed to you for final decision, in accordance with section 118 of the Political Code of 1902.

The question is a difficult one, and has been the subject of contrary rulings in this office. On August 4, 1904, the then Attorney General of Porto Rico rendered an opinion to the Auditor that Justice Adolph G. Wolf, of the Supreme Court of Porto Rico, and Hon. Chas. F. McKenna, United States District Judge for the District of Porto Rico, were entitled to salary from the date of the acceptance of their appointments by taking oath of office in Washington, D. C., prior to arrival in Porto Rico. On the contrary, in Vol. 3, Opin. Atty. Gen. P. R., p. 439, an opinion of the former Attorney General, dated February 16, 1912, is set forth which does not refer to the prior opinion cited, and rules that by virtue of an Act of Congress of May 1, 1876, 19 Stat. 43, the Treasurer of Porto Rico, appointed by the President, was not entitled to compensation from the date of his appointment, May 7, 1907, but only from July 1, 1907, the date upon which oath of office was taken in Porto Rico. As further sustaining the Auditor in his ruling, the Comptroller of the Treasury of the United

States has held that the Act of May 1, 1876, prohibits the payment of salaries of territorial officers for any period prior to the time when oath of office is taken in the Territory, in one case the officer concerned being the Judge of the District Court of the United States for Hawaii. 16 Compt. Dec. p. 447.

In absence of express statutory provision, the right to salary of appointive officers begins to accrue from the time at which the appointment is complete. Marbury v. Madison, 1 Cranch, 137, 161 (1803); Ball v. Kenfield, 55 Cal. 320 (1880). This general rule follows from the nature of the right to salary of a public officer. Such right is a matter dependent upon the statute law. It attaches to an office as an incident thereto. It is not a matter of contract, and does not depend upon an implied obligation to reimburse for services rendered. If no salary is provided by the statutory provisions, none can be recovered, regardless of the value of official services performed. Locke v. City of Central , 4 Colo. 65, 34 Am. Rep. 66 (1887). But if salary is provided by the statute, the officer is entitled to it, even though he perform no official duties. Vol. 3, Opin. Atty. Gen. P. R. 447; Opin. Atty. Gen. P. R. Jan. 9, 1913. Thus, in Bates v. St. Louis, 153 Mo. 18, 54 S. W. 439 (1899), the court held that no deduction should be made from the salary of the mayor for a period during which he was absent from the city on personal business, saying:

"The right of the officer to his office emoluments or salary is such only as is prescribed by statute, and while he holds the office such right is in no way impaired by his occasional or protracted absence from his post or neglect of his duties. Such derelictions find their corrections in the power of removal, impeachment, and punishment provided by law. The compensations for official services are not fixed upon any mere principle of quantum meruit, but upon the judgment and consideration of the legislature as a just medium for the services which the office may be called upon to perform . . . . . The fees or salary of office are quidquid honorarium, and accrue from mere possession of the office."

The de jure holder of office has the right to the salary attached thereto, just as he has the right to use the official seal. As said by the court in City of Chicago v. Luthardt, 191 Ill. 516, 61 N. E. 410, 412 (1901):

"The legal right to office carries with it the right to salary and emoluments of the office. The salary follows the legal title."

In absence of express statutory provision, the term of office of an appointive officer begins to run at the time when the appointment is complete. Marbury v. Madison, 1 Cranch 137, 161 (1803); Yerger v. State, 91 Miss. 802, 45 So. 849 (1908); State v. Wentworth, 55 Kas. 298, 40 Pac. 648 (1895); State v. Bridenthal, 55 Kas. 308, 40 Pac. 651 (1895); Hale v. Bischoff, 53 Kas. 301, 36 Pac. 752 (1894); State v. Duffield, 50 N. J. L. 43, 13 Atl. 30 (1888); Verner v. Seibels, 60 S. C. 572, 39 S. E. 274 (1901); State v. Williams, 222 Mo. 268, 121 S. W. 64, 17 A. & E. Anno. Cas. 1006 (1909); Mechem Public Officers, secs. 114, 386. The appointment is complete when the last act of the appointing power is performed. State v. Barbour, 53 Conn. 76, 22 Atl. 686, 55 Am. Rep. 65 (1885). Re-

quirements as to acts of outside persons to be thereafter performed, do not postpone the commencement of the term. Thus, in considering the commencement of the term, the time when the appointment is accepted by the appointee, and when he begins to perform his official duties, are unimportant dates. The appointee can accept only that office which is granted. The term of the office granted is fixed by the law, and its commencement cannot be deferred by delay in acceptance. Since the title to the office on the date of appointment is complete, the appointment cannot be revoked, although the appointee has not even been notified, and revocation is attempted within a few minutes after the appointment is made. State v. Barbour, supra. Thus it is that, as Chief Justice Marshall said, in Marbury v. Madison, supra, "When a person appointed to any office refuses to accept that office, the successor is nominated in the place of the person who has declined to accept, and not in the place of the person who had previously been in office, and had created the original vacancy." In accordance with these principles, requirements as to taking of oath and giving of bond are usually regarded as directory, and are held not to postpone the vesting of title to office. United States v. Flanders, 112 U. S. 88 (1884); United States v. Eaton, 169 U.S. 331 (1898); United States v. Glavey, 182 U. S. 595 (1901); 17 Compt. Dec. 95 (1910); Ball v. Kenfield, supra. In Ball v. Kenfield, the court said that the statute requiring oath to be taken within thirty days after appointment, was in the nature

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of a condition subsequent, and squarely held that the appointee had a right to full salary from the date of appointment.

The statutory provisions of the Organic Act and the laws of Porto Rico applicable in this case follow. Section 34 of the Organic Act provides:

> "That Porto Rico shall constitute a judicial district to be called 'The District of Porto Rico.' The President, by and with the advice and consent of the Senate, shall appoint a district judge, a district attorney, and a marshal for said district, each for a term of four years, unless sooner removed by the President."

Section 36 provides:

> ". . .The annual salaries of the officials appointed by the President, and so to be paid, shall be as follows: . . .The United States district judge - five thousand dollars."

Section 16 provides:

> ". . .And all officers authorized by this Act shall before entering upon the duties of their respective offices, take an oath to support the Constitution of the United States and the laws of Porto Rico."

Section 186 of the Political Code of 1902 prescribes the form of oath.

Since no express provision is made in the Organic Act as to when the term of office shall commence, it is clear that by virtue of the quoted provisions of the Organic Act, the term of office of Judge Hamilton began on March 17, 1913, the date upon which the appointment had been completed by the action of the President and the Senate. That term runs until March 17, 1917, unless sooner terminated by the President. Verner v. Seibels, 60 S. C. 572, 39 S. E. 274 (1901). By virtue of the Organic Act,

therefore, unless its provisions are modified by other controlling legislation, he is entitled to the $5,000 attached to the office for each of the four years that he holds it, and no less.

But the Act of May 1, 1876, 19 Stat. at Large 43 (Supp. Rev. Stat. 2nd Ed., Vol. 1 p. 100), is said to be a limitation upon these terms of the Organic Act, and to provide that the salary shall not be $5,000 for the first year following the date of appointment, but only at the rate of $5,000 for so much of the first year which follows after the oath of office is taken in the Territory. The Act of May 1, 1876, provides:

> "And hereafter payment of salaries of all officers of the Territories of the United States appointed by the President shall commence only when the person appointed to any such office shall take the proper oath and shall enter upon the duties of such office in such Territory; And said oath shall hereafter be administered in the Territory in which said office is held."

It is probable that the United States District Judge for the District of Porto Rico is included in the language "all officers of the Territories of the United States." Porto Rico has been called not only a Territory, but an organized Territory. Kopel v. Bingham, 211 U. S. 468, 476 (1909); Am. R. R. Co. v. Didricksen, 227 U. S. 145, 148 (1913); People of Porto Rico v. Rosaly, 227 U. S. 270, 274 (1913). The United States District Judge is not an officer of the United States as distinguished from an officer of the Territory. Judges of the United States courts are appointed for life, or during good

behavior, and can be removed only by impeachment. The Judge of the District Court of the United States for Porto Rico is appointed for four years unless sooner removed. His salary comes from revenues of the Insular Government and the expenses of the District Court are met from insular revenues. 29 Opin. Atty. Gen. U. S. 553. The District Court is established by Congress by virtue of its sovereign power over Territories, and not by virtue of the judicial clause of the Constitution, Art. III, sec. 1. As the Auditor in his very able opinion in this case points out, the United States District Judge in Porto Rico must be regarded as a territorial officer. Amer. Ins. Co. v. Canter, 1 Pet. 511 (1828); Clinton v. Englebrecht, 13 Wall. 434 (1871); McAllister v. United States, 141 U. S. 174 (1891).

Passing for the moment the question whether the Act of 1876 is in force in Porto Rico or whether it is locally inapplicable, I am of opinion that that Act, even if in force in Porto Rico and applicable to the office in question, would not authorize the Auditor to disallow a claim for salary for the period prior to the taking of oath in Porto Rico. The controlling authorities require me to hold that the effect of the Act of May 1, 1876, if applicable, is not to reduce the amount of compensation to which the District Judge is ultimately entitled, but to postpone payment thereof until the proper oath of office is taken. The United States Supreme Court cases are binding upon me. They support the opinion

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of this office of August 4, 1904, and sustain Judge Hamilton's claim for salary.

In United States v. Flanders, 112 U. S. 88 (1884), an internal revenue collector was appointed by commission dated March 14, 1863. He took oath of office on May 15, 1863. A statute in force at the time provided that every person appointed to any office of profit under the Government, should "before entering upon the duties of such office, and before being entitled to any of the salary or other emoluments thereof, take and subscribe" an oath or affirmation. The compensation of the collector in that case was by a percentage commission computed upon moneys collected. It was contended that the statute prohibited payment of compensation for the period prior to the taking of oath. But the United States Supreme Court held the contrary, and said:

> "(112 U.S. 91) We are of opinion that the statute is satisfied by holding that his title to receive or retain or hold or appropriate the commissions as compensation, does not arise until he takes and subscribes the oath or affirmation, but that when he does so his compensation is to be computed on moneys collected by him, from the date when he began to perform services as collector, which the Government accepted, provided he has paid over and accounted for such moneys."

This case is approved in United States v. Eaton, 169 U. S. 331 (1898), where a statute provided that before a vice consul could enter upon the execution of his trust, he should give bond. The bond was not executed until several months after Eaton had been appointed and had been acting as

vice consul. It was held that the requirement as to giving bond was directory only, that salary be allowed prior thereto, and that "official rights and duties attached upon his appointment." (See Clavey v. United States, supra; Ball v. Kenfield, supra; 17 Compt. Dec. 95.)

These cases dispose of the contention that section 16 of the Organic Act and section 186 of the Political Code, which require an oath to be taken, in themselves prevent the payment of salary for periods before the taking of such an oath. Being in conflict with, they dispose of any opinions of administrative officers, which hold that the general rule is that similar statutory provisions prevent payment of salary for periods prior to the date upon which oath is taken.

But the principle in United States v. Flanders is broader. It is that a statute like the Act of 1876, which expressly requires an oath to be taken before an officer is entitled to payment of salary is to be construed not in conflict with another statute providing compensation for the office at a definite rate. The Act of 1876, if in force, may be construed not in conflict with the provisions of the Organic Act. It does not, of course, expressly reduce the annual salary of $5,000 fixed by the Organic Act. Indeed, its terms are not as strong as those of the Act considered in United States v. Flanders, supra. The statute in that case provided that oath should be taken by the officer "before being entitled to any of the

salary or other emoluments" of the office. The language of Act of May 1, 1876, merely is: "Payment of salaries of all officers . . . shall commence only when the person appointed to any such office shall take the proper oath . . ." In the light of the Flanders case, I am constrained to hold, therefore, that the Act of May 1, 1876, means that payment of such compensation as the officer may of right be ultimately entitled to, shall be postponed until the taking of oath in the Territory; but that when such oath is taken, the officer is to be paid full compensation from the date of appointment.

It is true that in the Flanders and Eaton cases, the officers had performed duties of the office prior to the taking of the oath. But this circumstance does not distinguish the cases. Judge Hamilton gave up all private business upon receipt of his commission, and thereupon devoted himself to preparation for the duties connected with his office as Judge of the District Court of the United States for Porto Rico. In the performance of his duties, it is not necessary that the Judge sit continuously upon the bench. Moreover, if qualification for office by taking oath is a condition precedent to the earning of the salary, the performance of official duties prior to the performance of the condition precedent, of course, gives no right to salary. It is well established that rendition of services to the Government, for which no statutory compensation is provided, is entirely gratuitous. Locke v. City of Central, 4 Colo. 65, 34 Am. Rep. 66 (1877); Stephens

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v. City of Oldtown, 102 Me. 21, 65 Atl. 115 (1906). Similarly, laying aside questions of the rights of de facto officers, performance of the duties of an office by one who has no legal right thereto, gives no right to compensation. Flanary v. Barrett, 146 Ky. 712, 143 S. W. 38 (1912). Conversely, the statutory compensation must be paid to the holder of title to the office, whether he performs his duties or not, well or ill, absent or present in office. State v. Walbridge, 153 Mo. 194, 54 S. W. 447 (1899); City of Chicago v. Luthardt, supra.

The above construction of the Act of May 1, 1876, is in accordance with the long established usage of the Federal Government with reference to the payment of salaries to territorial judges. In an opinion rendered June 30, 1855 (7 Opin. A. G. 309), the Attorney General of the United States said:

> "Thus, the judges of the United States for the Territory of Oregon are entitled to salary from the date of their appointment; but they must take their oath of office within the Territory, and cannot be actually paid before they enter on duty. IX Stat. at Large, p. 328.
>
> So, the judges for the territory of Washington are eventually entitled from the date of appointment, but cannot receive payment until they shall have entered on the duties of their office. X. Stat. at Large, p. 177. Similar provision is made in the case of the judges of Kansas and Nebraska. Ibid. p. 282."

This language covers the present case precisely. It is true that the original statutes referred to by the Attorney General, expressly state that salary is to be paid from the date of appointment, as follows:

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"The Chief Justice and associate justices shall each receive an annual salary of $2,000 . . .The said salaries shall be paid quarterly from the date of the respective appointments, from the Treasury of the United States; but no such payment shall be made until such officers shall have entered upon the duties of their respective appointments." (X Stat. at Large, p. 177; ibid, p. 282.)

But the fact that the statutes controlling in the present case do not expressly state that the right to salary commences on the date of appointment, does not make the language of the Attorney General of the United States inapplicable; for, as he himself considered, in the opinion above referred to:

(7 Opin.A.G. 307) "Whether the date of the commencement of the judicial salaries be mentioned in a statute or not, if nothing to the contrary be said, they must be held in law as commencing with the date of appointment."

Since to expressly state in the statute that salary commences from the date of appointment, adds nothing thereto, in the Revised Statutes, sec. 1941, which is a compilation of the section above quoted (X Stat. at L. 177) relating to Washington Territory and statutes relating to the Territories of Idaho and Montana, identical in effect, the unnecessary provision is omitted, as follows:

(Rev.Stat. sec.1941) "No payment of salaries shall be made to the Governor, Secretary, Chief Justice or associate justices of Washington, Idaho and Montana Territories, until such officers shall have entered upon the duties of their respective appointments."

The enactment of Rev. Stat. sec. 1941 introduced no change in the law from that expressed in X Stat. at L. 177, supra. "For it will not be inferred that Congress, in revising and consolidating the laws, intended to change their effect unless such intention is clearly expressed." Anderson v. Pac.Coast S.S. Co.,

225 U. S. 187, 199 (1912). See United States v. Ryder, 110 U.S. 729,740 (1884). As said in United States v. Lacher, 134 U.S. 624 (1890), the Revised Statutes "are merely a compilation of the statutes of the United States, revised, simplified, arranged and consolidated;" accordingly it was held that the omission from another section of the Revised Statutes, (sec. 5847), of a clause in the original, did not change the law. The analogy in the Lacher case is especially persuasive on the present point, because, as we have seen, the clause omitted in sec. 1941 under consideration is implied, if not stated expressly. "Upon a revision of statutes, a different interpretation is not to be given to them without some substantial change of phraseology - some change other than that which may have been necessary to abbreviate the form of the law." McDonald v. Hovey, 110 U. S. 619,629 (1884). Now, the custom as to payment of salaries of territorial judges was established in the acts prior to the Revised Statutes for the Territories of Oregon (IX Stat. at Large 328); Washington (X Stat. at Large 177); Kansas and Nebraska (X Stat. at Large 282); Idaho (XII Stat. at Large 812); Montana (XIII Stat. at Large 90). As clearly stated in the opinion, supra, of the Attorney General of the United States on August 30, 1855, these acts merely postponed the time when the payment of salary was due, and did not reduce the amount due. By enacting Rev. Stat. sec. 1941, Congress perpetuated the law as above stated for the territorial officers named. When, a few years later, in the Act of May 1,

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1876, under consideration, Congress used language practically identical, it obviously intended that the custom as to the payment of the salaries named should be continued, and that language must be given the same meaning previously established.

Thus far I have considered the Act of May 1, 1876, as not inconsistent with the provisions of the Foraker Act, and in force in Porto Rico. If, however, the Act of May 1, 1876, limits in amount salaries to which it applies, then the Foraker Act of 1900 was in conflict with it, and modified it pro tanto. By the terms of the Foraker Act quoted, on March 17, 1914, one year after the date of his appointment, Judge Hamilton, having qualified, was entitled to have received from The People of Porto Rico $5,000. The Act of May 1, 1876, as construed in the second opinion of the Attorney General on this subject, dated February 16, 1912, would allow a sum somewhat less than $5,000. As thus construed, the Act of May 1, 1876, is inconsistent with the Foraker Act of April 12, 1900. It is an established principle of statutory construction that "where two acts are in irreconcilable conflict the later repeals the earlier act, even though there be no express repeal." United States v. Fisher, 109 U. S. 143, 145 (1883).

The Foraker Act, considering it as a whole, as well as the particular provisions cited, precludes reference to the Act of May 1, 1876, as the measure of salary rights of presidential appointees in Porto Rico. Congress, in passing the Foraker

Act, provided a scheme for the Government of Porto Rico, anomalous in many ways, differing from that of any previous Territory, and substantially complete in itself. In 28 Opin. Atty. Gen. 491, the Attorney General of the United States held that no limitation was imposed upon the powers of the Insular Government by the provision of the Act of Congress of July 30, 1886, 24 Stat. 170, that "the legislatures of the Territories of the United States now or hereafter to be organized, shall not pass local or special laws in any of the following enumerated cases, that is to say: . . . . Granting to any corporation, association, or individual any special or exclusive privilege, immunity or franchise whatever. In all other cases where a general law can be made applicable, no special law shall be enacted in any of the Territories of the United States by the Territorial legislatures thereof." The Attorney General, discussing the inapplicability in Porto Rico of that statute, said: "(28 Opin. Atty. Gen. 494) The Foraker Act contains in itself a complete scheme for the civil government of the Territory of Porto Rico." He based his opinion largely upon the inconsistency of the specific prohibitions of the Act of July 30, 1886, read as a whole, with the general and specific grants of power in the Organic Act. Now, the Act of May 1, 1876, was placed by the compilers of the Supplement to the Revised Statutes in connection with sec. 1845 of the Revised Statutes (Vol. 1, Supp. Rev. Stat., 2nd Ed., p. 100), and in line with other general and specific provisions relating to Territories. But those other

provisions are either completely covered by, or clearly inconsistent with the provisions of the Foraker Act, and therefore could by no possibility be held to apply. Thus, sec. 1845 of the Rev. Stat. provides:

> "From and after the first day of July, 1873, the annual salaries of the Governors of the several Territories shall be $3,500 and the salaries of the Secretaries shall be $2,000 each."

The Organic Act provides different salaries for the Governor and Secretary of Porto Rico. Of course, the Organic Act governs, and the Revised Statutes, sec. 1845, is not in force in Porto Rico. Similarly, sec. 1841 of the Rev. Stat. provides for the powers of the Governors in Territories. Sec. 1842 provides for the exercise of the veto power of Territorial Governors. Secs. 1843 and 1844 provide for the Secretaries of Territories and the duties of the Secretaries. Sec. 1846 provides for the legislative power, and sec. 1850 requires all laws passed by the legislative assemblies of Territories to be submitted to Congress. Sec. 1852 provides: "The sessions of the legislative assemblies of the several Territories of the United States shall be limited to forty days duration." The very oath itself, which was required to be taken on May 1, 1876, (Rev.Stat. sec. 1758) is "to support the Constitution of the United States and faithfully to discharge the duties of their respective offices," and is superseded by the Foraker Act, sec. 16, requiring an "oath to support the Constitution of the United

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States and the laws of Porto Rico." From a recital of these various provisions of the Revised Statutes, which though not in fact, are in terms quite as applicable to Porto Rico as the Act of May 1, 1876, in question, it seems to follow that the earlier statutory provision is one of those statutes "locally inapplicable" in Porto Rico; and that the measure of the rights of officers appointed under the Foraker Act is to be found in the Foraker Act alone.

It is worthy of note that the Act of May 1, 1876, was part of a deficiency appropriation bill passed by Congress at a time when Congress was making appropriations from United States revenues for the territorial governments. The clause of the Act under consideration was part of a paragraph appropriating United States moneys for the payment of salaries of justices of the Supreme Court of the Territory of Wyoming. Although from what has already been said, it is unnecessary to express any opinion upon this point, the Act was doubtless intended to be only a limitation upon the expenditures of national revenue. It was passed long prior to the acquisition of Porto Rico, and seems not to have been intended to govern as to payment of salaries out of revenues of Territories such as Porto Rico, which is upon a financially independent local basis. The clause is not a part of the official Revised Statutes, a revision and compilation of the general legislation of Congress as it stood on December 1, 1873. The Supplement to the Revised Statutes, in

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which is found the provision in question, is only a compilation by private authors "neither a revision nor a consolidation of the statutes." The Supplement does "not change nor alter any existing law nor preclude reference to nor control in case of any discrepancy, the effect of any original act passed by Congress." Act Apr. 9, 1890, 26 Stat. 50. The Comptroller of the Treasury in the opinion referred to supra seems to have been in error in regarding the Supplement as the official controlling expression of the law. Perhaps this error led him to the opinion that the Act of May 1, 1876, because printed in the Supplement, was general legislation and prevented payment of the salary of the United States District Judge for Hawaii prior to his taking oath in Hawaii. The Hawaian case is distinguishable, in any event, on the ground that the salary of the United States District Judge for the District of Hawaii was payable out of United States revenues. See 16 Compt. Dec. 447 (1910).

As sustaining the Auditor in his ruling, certain statements concerning the supposed policy of the Act of March 1, 1876, have been cited. It is said that if a presidential appointee may draw salary for two weeks prior to assumption of duties in Porto Rico, he may for twenty weeks, and such possibilities of abuse require denial of salary prior to assumption of duties in the Territory. But Congress has provided precaution against abuse, in the grant of power of removal to the President. The same considerations of policy may be urged against the general rule of law, and custom of the Government, that salary be paid to an

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appointive officer beginning from the date of appointment. Salary of a public officer is not quid pro quo. Rather is it quid-quid honorarium. The legislature provides such emolument as incident to the office, that proper men may be induced to perform the government services. Congress in this case may well have considered that certain stated definite amounts must be paid without deductions, before officials of the high type necessary for the proper administration of governmental affairs in Porto Rico could be induced to take up abode in the distant island. In any event, the legislative intent on this matter is expressed in the Foraker Act, and must be followed.

An incidental question of jurisdiction arises. Section 118 of the Political Code provides that appeal from the ruling of the Auditor must be made in writing, within ninety days from the date of the Auditor's certificate. The terms of section 118 are specific:

> "No appeal shall be considered unless the same shall be taken and transmitted to the Governor within the time herein prescribed; and after the expiration thereof, if no appeal within the prescribed time shall have been taken, the action of the Auditor shall stand as conclusive."

Nowhere in the file which you transmitted to me does it appear when the Auditor's certificate was made nor when the claimant's appeal was first perfected. But since your question assumes that you have jurisdiction to entertain the appeal, I answer your question, assuming on my part that you would not have considered the question in the first place, unless you had juris-

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diction so to do.

As before stated, I am of opinion, upon the whole question, that the date upon which the salary of the United States District Judge commenced to accrue was March 17, 1913, the date when his appointment was completed, and that the claim of Judge Hamilton for salary from March 26, 1913, to April 10, 1913, and for reimbursement for necessary travel expenses incurred between those dates, should be allowed.

Respectfully,

WOLCOTT H. PITKIN, JR.

Attorney General.

c 16 Sept. 1914]

THE ASSOCIATION OF THE BAR
OF THE CITY OF NEW YORK
42 WEST 44TH STREET

My dear Governor

By way of a change from the meat factory half things one does in New York, I put in a few hours the other day on the Porto Rico bill. The thing is still in wretched shape and will need a deal of painstaking frotheing. If

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it is to be a credit to
anyone and to work
smoothly after its
passage. In a few days
I shall send you a
memorandum suggesting
some of the difficulties
So far I have not had
much of a vacation as
I have not been able to
get away from New York.
It has been cold, however,

which helped me to keep
fairly warm. Have a very pleasant time.
With best wishes, I am
Sincerely
Woodrow Wilson

Appointment 16

and that fact in itself has been quietly getting in its good work

It was a real pleasure to have the opportunity to get better acquainted with Miss Diana on the boat, an opportunity which I improved and which helped make my boat trip a very pleasant one.

With best wishes, I am
Sincerely
September 16 W. H. H. Atkins

it is to be a credit to
anyone and to work
smoothly after its
passage. In a few d
I shall need you
memorandum sugge
once the difficult
So far I have cu
much by a vacation
I have not been a
get away from there
It has been cold, ho

September 25, 1914.

Hon. Wolcott H. Pitkin, Jr.,
c/o The Association of the
Bar of the City of New York,
42 West 44th Street,
New York City.

My dear Pitkin:

It was with real pleasure that I received your brief letter of the 16th instant, and I am especially interested to know that you are doing some work on the Porto Rico bill. I would be glad if you could find time to send me the memorandum concerning it which you promised by the next boat. There is now a possibility that Congress will remain in session until December, and, if so, we can probably get the bill through the House at least and maybe through the Senate also. So I desire to get all changes in proper shape and send to Washington to be suggested to the Senate Committee after the bill has passed the House. I do not think it wise to try to secure any modifications until it has passed the House, because it stands in such a position before that body that it can be easily passed in its present shape.

I am glad you are finding plenty to do, and yet I know you should have a rest.

I appreciate very much your kind reference to Miss Diana. She is of ccurse quite young but she is to

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me and always has been a great comfort and pleasure.

Remember me most cordially to Mr. Walton when you see him, and also to Mr. Stimson, both of whom were exceedingly kind to me when I was in New York.

We are going on about as usual. Szold and Sifre are in Mayaguez trying the Mateo Fajardo case which began yesterday, but I suppose you get all the the news from other correspondence. Mr. Richardson left Wednesday for his vacation, as Mr. Domenech has qualified for his seat in the Council, and Mr. Travieso is due to arrive next Monday.

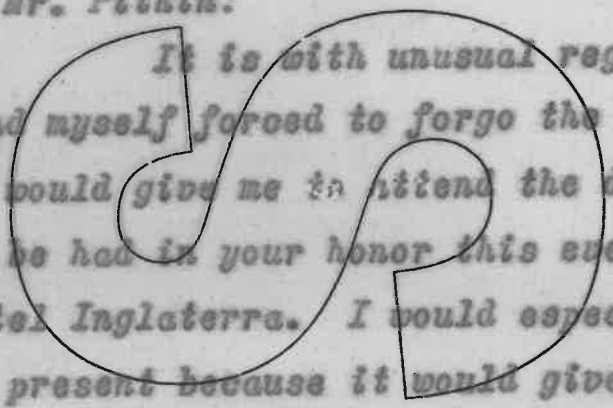
With best wishes for you, I am,

Sincerely your friend,

Governor.

November 14, 1914.

My dear Mr. Pitkin:



It is with unusual regret that I find myself forced to forgo the pleasure that it would give me to attend the dinner which is to be had in your honor this evening at the Hotel Inglaterra. I could especially like to be present because it would give me an opportunity to express in a semipublic way my appreciation of the good judgment, fidelity and ability with which you have performed the duties of your office, especially during the year in which you and I have worked together in Porto Rico; but you know that I am and shall always be ready to give expression to my feeling in this matter.

I greatly regret your leaving your office at this interesting moment in the history of Porto Rico, but I wish for you great pleasure and success in the new field of work to which you have been called.

With the highest personal regard, I am

Sincerely your friend,

Governor.

Honorable Wolcott H. Pitkin, Jr.,
Attorney General of Porto Rico,
San Juan, Porto Rico.

11X 78

SAM'L J. GRAHAM,
ASSISTANT ATTORNEY GENERAL.

P. F.

SJG-G

Department of Justice,
Washington.

February 23, 1915.

Hon. Arthur Yager,
Governor of Porto Rico,
San Juan, P. R.

My dear Governor Yager:

Please permit me to acknowledge the receipt of your letter of February 13, 1915, commending Mr. Robert Szold for appointment as United States Attorney for the District of Porto Rico. The Attorney General has lately decided, for satisfactory reasons, that he cannot appoint Mr. Szold. I have read with interest what you have to say about the situation, and your suggestions will, of course, receive special consideration. What the ultimate outcome of the matter will be it is difficult to state at this time. I regret that I am not in a position to give you something more definite with regard to the matter.

I hope you are quite well. With very kind regards, and renewed expressions of highest esteem, believe me to be,

Sincerely and cordially,

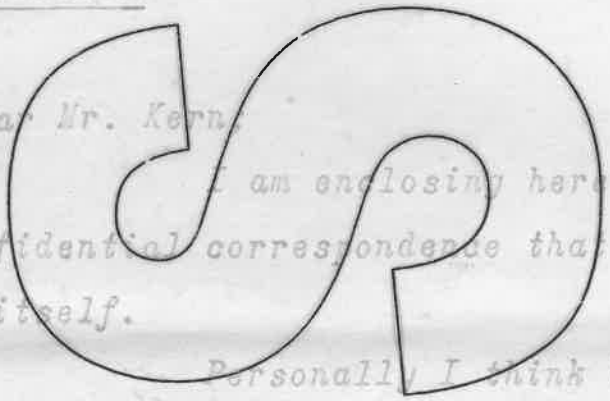
Sam'l J. Graham

Assistant Attorney General.

GOVERNMENT HOUSE
PORTO RICO

December 23, 1915.

CONFIDENTIAL



My dear Mr. Kern:

I am enclosing herein some confidential correspondence that explains itself.

Personally I think both of the writers are mistaken in their judgment of the two men to whom they refer and with both of whom you and I have had personal conferences. Nevertheless, I think it well enough for you to examine these letters and form your own conclusions.

In haste,

Yours sincerely,

Arthur Yager
Governor.

Honorable Howard L. Kern,
Attorney General of Porto Rico,
San Juan, Porto Rico.

(2 encls.)

11x98

GOVERNMENT OF PORTO RICO

SANITATION SERVICE

OFFICE OF THE DIRECTOR

ADDRESS ALL COMMUNICATIONS TO THE DIRECTOR OF SANITATION

San Juan, P. R., December 19th, 1915

CONFIDENTIAL.

Hon. Arthur Yager,
Governor of Porto Rico,
San Juan, P. R.

My dear Governor:

I am sending you herewith a note which I have just received from Mr. Odell. As this is in exact accordance with the information that I gave you myself about this matter and as Mr. Odell says that he himself saw the letter and that the letter was in the hand writing of Don Paco Quiñones, a man who has not taken this step without consultation with others, I believe that it is so important that it should be brought to your attention.

I think like Mr. Odell that without any question the Roman Catholic Priest is trying to run the town of Hormigueros and when such action is taken by that Church, I, like all other Americans not Roman Catholics believe that the time has come to interfere.

Very sincerely,

WFL/fm.

W. F. Leopitt

86 XII

Mayaguez, P.R.
Dec.17,'15.

Dr.W.F.Lippitt,
San Juan, P.R.

Dear Doctor; There is a little side-light on the Hormigueros affair that I want to tell you about. I am writing this to you because I know the Governor asked you to look into it. I saw a letter last night written by Don Paco Quiñones, delegate from this district to the Camara, I am sure you know him, to Cuerda the Practicante who was thrown out of his job in Hormigueros. This was written in his own hand not type-written and he told Cuerda to come to San Juan today implying that if he would he might get his job back. He mentioned the fact that Cuerda had left the Catholic church and made it very clear that this was the only difficulty in the wy of his getting his old place back. Not only that he asked him to come to San Juan with a man from out there by the name of Felipe Cruz Irryzarry. This young man is about the finest instrument Padre Antonio has. Cuerda, of course, did not go to San Juan. But the fact remains that Don Paco Quinoñes thought he could offer him his place back and did not make any bones of stating the reason he had lost it.

I also understand they want to make this man Felipe Cruz Irryzarry Juez de Paz out there. If they accomplish that we might as well pull out. I wish you would take a few minutes of your time and I know how busy you are, and say a word on this subject to the Gov. It means a lot to us over here. If a man cannot become a Protestant and hold his job you can see where that puts our good old flag and I am not very easily excited over such matters either. I am a little afraid the Governor will not get around to this before he leaves. It is being very carefully watched from Añasco to San German and if justice is done in this case it will help many an honest hearted young fellow who is afraid to be honest or rather afraid not to serve the machine for that is what it amounts to. If the Governor knew Don Paco was on this job and how, I would have no fear of the outcome.

Cordially yours,

Edw. A. Odell.

December 23, 1915.

CONFIDENTIAL

My dear Mr. Kern:

I am enclosing herein some confidential correspondence that explains itself.

Personally I think both of the writers are mistaken in their judgment of the two men to whom they refer and with both of whom you and I have had personal conferences. Nevertheless, I think it well enough for you to examine these letters and form your own conclusions.

In haste.

Yours sincerely,

Governor.

Honorable Howard L. Kern,
Attorney General of Porto Rico,
San Juan, Porto Rico.

(2 encls.)

Letter from Rev. Odell re Hormiguero situation.
" " Dr. Lapp re "

DEPARTMENT OF JUSTICE OF PORTO RICO
OFFICE OF THE ATTORNEY GENERAL
SAN JUAN

Address communications to
the Attorney General
Diríjase la correspondencia al
Attorney General

March 5, 1919.

The Acting Governor of Porto Rico,
San Juan, P. R.

S i r :

I have the honor to forward to you with this letter two copies of Vol. 7 of the Opinions of the Attorney General.

Respectfully,
Ferdinand Tannenbaum
Assistant Attorney
General.

THE TIMES

[illegible] DAILY EXCEPT SUNDAYS.

[illegible] 1907, as second class matter at the Post Office San Juan [illegible] Act of Congress of March 3, 1879.

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EDITORIAL

"THE ATTORNEY GENERAL ACTS".

Below we reproduce a circular issued by Attorney-General Kern, addressed to the judges and district attorneys of Porto Rico. "The Police Women's Reserve Corps" think the paper "should be widely read," and the publication of the document in these columns is at the request of the President of the above mentioned Corps, under the title they give it, and with their introductory paragraph. They follow:

"Howard L. Kern takes a brilliant stand against vice. Anxious that the wise words of the Attorney General, addressed "To the Judges and District Attorneys of Porto Rico" in the foreword of his recent publication, "Laws of Porto Rico in Regard to Prostitution, Adultery, Sale of Intoxicating Liguors, etc." should be widely read, the Police Women's Reserve Corps, request that publicity be given to the major portion of the foreword that may be addressed with equal fairness "to the People of Porto Rico." This organization thanks the Attorney General for this promise of law enforcement."

The mobilization of nearly 13,000 of the best men of Porto Rico has just been completed and every loyal American citizen looks with pride at the efficient organization and management of that great training station of these National Army Men at Camp Las Casas. We have reason to be proud of the splendid spirit with which the people of Porto Rico have responded to the nation's call for this selected body of young men of the finest manhood of Porto Rico.

Their task and that of their officers is to prepare them to take part in the great fight for civilization, liberty and democracy. One of the most important parts of this preparation is the maintenance and improvement of their moral and physical condition. In this task we now have the opportunity to co-operate and render a service of inestimable value in the suppression of vice and prostitution, not only in San Juan, but in all parts of Porto Rico. It is well known that prostitution is the greatest producer of ineffectiveness in a military camp for the training of soldiers. Our lawmakers have done their part in making possible the effective control of this evil. We are now called upon to do ours. It is with great confidence that I issue this appeal to you to place Porto Rico in the front rank in overcoming this great evil. You have repeatedly responded in the most patriotic manner to the many calls for service that have been made upon you. Many of your associates have responded with the offer of their lives. You have aided beyond estimation in the work of the selection of these men. You have served on local boards, as representatives of the Provost Marshall General, or Legal Advisors, and in every possible way. You have responded magnificently to the calls made by the Red Cross, and for Liberty Loans, and have aided in the detection and prosecution of our enemies. I know that you will not now fail in the great task before you of protecting the health and morals of our soldiers.

"The benefit of a successful campaign against vice will accrue not only to the soldiers but to the whole population of Porto Rico, and not only for the present, but for many future years. You will have the co-operation of all loyal and patriotic citizens. Facilities will be provided so that the women engaged in this nefarious traffic will be benefited by its suppression. We have facilities in our district jails to properly and comfortably confine hundreds of them, if necessary, and they will be provided with proper food and medical treatment. We can count upon the assistance of the Department of Sanitation, the Red Cross, the Army, and other organizations, in the proper care of these unfortunates, should the resources already provided for, prove insufficient.

This is not a campaign in which we can wait for the other fellow to take the first step. We should seek to promote the success of the campaign by publicity and by engaging the practical co-operation of every available force. It is the duty of the District Attorney and committing magistrates to help

tone of healthy optimism pervades the words of wisdom of the attorney general, but in no mild terms does he close his ultimatum. Let those to whom these words apply, take heed and mend their ways.

"The limit of the law is none too severe for those who violate it when the consequences of the violation are so great, and especially is this true of those who profit by the exploitation of others in the organization of vice and who profit by their consent thereto, and in the letting of rooms, apartments and houses for immoral purposes."

We cannot say that we are in accord with the tone of the Attorney General's letter, in-so-far as it deals with the officials of the department, although its actual purpose is worthy of public approval and support. We distinctly disapprove of that feature of the letter which treats the judges and fiscals either as incompetent, indifferent, or dishonest. If there are such officials, they should be removed without waiting to see whether "any such official fails to do his duty." First, these officials are given a recital of their official acts that should entitle them to a medal worthy of great achievements; and then they are threatened with removal if they do not "do their duty." Is it not rather boyish to threaten old and tried officials in advance in such a manner? Is it not out of place to threaten such officials at all? And who is to be their judge?

Then, the limit of the law is suggested to [illegible] judges in advance of all trials as being "none to severe for those who violate it." How can a judge tell what a sentence ought to be before knowing the facts and circumstances surrounding a case? If the courts are not to be courts, if the judges are not to be judges, why not do away with the expense, delay, and the empty ceremonies of trials? All that is needed are detectives, constables, and jails.

Again, it is not the business of district attorneys, nor yet their duty, to abandon their profession and become "pica pleitos" in working up evidence. Such work would be degrading to their profession, their office and their department.

It is right, proper, and we think necessary, for the Attorney General to advise the officers generally of the necessity of meeting the requirements of the National government with reference to purifying the moral atmosphere and surrounding of all cantonements. The diseases that follow in the wake of immorality must be made impossible. Then go to work; and it is all that need be said to the experienced and competent officers having in charge the administration and enforcement of the law. In this work, THE TIMES is earnestly with Mr. Kern.

But there is danger in the Attorney-General's letter if the letter is justified at all. If the officials mentioned will not do their duty without being lectured and threatened, then they are unsafe and there is no telling what they may do to the end that they please those who hold the power to promote or remove them.

We have confidence, as ever, in the fine corps of officials constituting the "judges and district attorneys". If not, we should fear another *componte*. The aggreived are notified that now is their chance to get even. Anonymous letters will come, and backmail is likely to be attempted. Who is to judge? And who knows best? It is for many such reasons that we regret portions of the letter, because one mistake or wrong does not justify another. So let us hope that the work will be done thoroughly, but with caution, cool judgment, and by fearless officials.

But how about the men who are as guilty as the women who are to be hunted down? We do not hear one single note of pity for these "unfortunate women," although no doubt seven out of ten are what they are because in the first instance they were lied to, deceived, betrayed and forsaken by some man whose crime is greater than theirs.

There is a story of old of a "woman who was taken in adultery," and a number of men accused her as follows:

"They say unto Him, Master, this woman was taken in adultery, in the very act.

"Now Moses in the law commanded us that such should be stoned; but what sayest thou?"

* * * *

"So when they continued asking Him, He lifted up Himself and said unto them: He that is without sin among you, let him first cast a stone at her,"

And then, one by one, her accusers sneaked out of the Temple.

"When Jesus had lifted up Himself and saw none but the woman, He unto her, Woman, where are those thine accusers? Hath no man condemned thee?"

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This is not a campaign in which we can wait for the other fellow to take the first step. We should seek to promote the success of the campaign by publicity and by engaging the practical co-operation of every available force. It is the duty of the District Attorney and committing magistrates to help the military and the civil police and the detectives, and every person who is willing to aid in this work, by pointing out the Laws and preparing the informations and indicating the kind of evidence that will be necessary for convictions. The District Attorneys will have to go further and aid in securing the evidence and in preparing the cases. The trial Judges will be able to do their part in their sentences. If there is any weak link in the chain, report it in order that it may be corrected. If any official fails to do his duty, report him and he will be removed and a more efficient and patriotic man will be appointed in his place! We must face conditions as they are. It is not our task to ask or reason why, but to do. Prostitution exists in every district and it is taking its terrible toll of diseased victims already among our soldiers as well as in the civil population. The problem is not confined to San Juan, Bayamón, Río Piedras and other cities near the cantonment. Our soldiers will be on leave in other communities.

Our next draft will be called from every town and barrio. If any community or town fails to rid itself of these sources of infection that community or town will probably be barred by the military authorities to soldiers and the innocent will suffer more than the guilty! Patriotic organizations and people are preparing wholesome amusements and diversions for the boys on leave. We do not need to overlook these activities and can lend them every aid, but the officials of the Department of Justice of Porto Rico will be held responsible for the suppression of the illegal conditions of vice."

Here follows some special instructions to the men of law and order, and a *recital* of the convictions already secured. A case? If the courts are not to be judges, why not do away with the expense, delay, and not to be judges, why not do away with the empty ceremonies of trials? All that is needed are detectives, constables, and jails.

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Our Magdalenes cannot be dealt with under the Mosaic law, nor may they be dismissed with the admonition not to violate the law any more. We seem to have the spirit of the old law. but the power to send them away to "sin no more" is not yet vested in our courts; so we must deal with the persons and the subjects of to-day under the laws and necessities of to-day, regretting only that so little progress has been made.

Another thing we do not like about the Attorney General's letter and the war-like attitude of the good women who are so violent, is that the conduct of the men who really are as much or more responsible for the situation than the victims do not seem even to arouse the indignation of the law-officers or the "Police Women's Reserve."

Such was the practice in the old days, for the Scribes and Pharisees knew the guilty man, as well as the woman, but there was no call for his punishment. Are we returning to the Mosaic law?

We have our local laws, and we have the National Edmunds-Tucker law, who are as much sinned against as sinning, let us have just a touch of the pity shown by the Master in the Temple when He told the "Unfortunate" woman to "go and sin no more". Let us not be so fierce in words, but just and energetic in deeds, and occasionally, when the situation justifies it, it might be well to call for the accomplice, to the end that justice be done.