Hon. Frank G. Allen, President of the Senate.

Dear Sir: — I have the honor to acknowledge receipt of a copy of an order passed by the Honorable Senate on February 2, 1922, which is as follows:

"Ordered, That the Senate request the opinion of the attorney general as to whether the subject matter of Senate Bill No. 74, providing for the reimbursement of the recorder and assistant recorders of the land court for the premiums on their official bonds, is not already covered by the general law."

Senate Bill No. 74, referred to in the order, reads as follows:

"... Section 11. The recorder and all assistant recorders shall be sworn before the judge of the land court, and a record thereof shall be made. They shall give bond in a sum to be fixed by the court, for the faithful performance of their official duties, before entering upon the same, and for all premiums paid to surety companies becoming sureties thereon they shall be reimbursed by the commonwealth, upon certification by the judge. They may administer oaths to persons appearing before them in matters pertaining to the registration of land, if an oath is required. They shall keep accurate accounts of all money received as fees or otherwise, which shall be subject to examination by the controller of county accounts, in the same manner as accounts of registers of deeds. The recorder shall pay over quarterly to the state treasurer all such money received by him either directly or through the assistant recorders. In case of the absence of an assistant recorder, the assistant register for the district, or if there is no assistant register, the person acting as clerk in the office of the register of deeds, shall perform the duties of the assistant recorder, who shall be responsible for him."
G. L., c. 30, § 17, provides that,—

“If an official having custody of property of the commonwealth, or charged with the duty of receiving or disbursing money, is required to give bond to the commonwealth for the faithful discharge of his duty, the commonwealth shall reimburse him for the amount paid by him to a surety company for becoming surety on his official bond. Premiums on all surety bonds paid by the commonwealth shall be paid out of the appropriations for expenses of the several officers and departments.”

It is therefore clear that if the recorder and assistant recorders of the land court are officials having custody of property of the Commonwealth, or charged with the duty of receiving or disbursing money, and are required to give bond to the Commonwealth for the faithful discharge of their duties, they should be reimbursed by the Commonwealth under existing law for the premiums on their official bonds.

The land court is a court for the entire Commonwealth. G. L., c. 185, provides that certain fees shall be paid to the recorder, that the recorder and assistant recorders shall keep accurate accounts of all money received as fees and otherwise and shall pay over all such money to the State Treasurer, and that they shall give bond for the faithful performance of their official duties. While the act does not specifically require that they shall give bond to the Commonwealth, it is obvious, since the money received must be paid over to the State Treasurer and since the land court is a court for the entire Commonwealth, that the act properly construed requires that the bonds be given to the Commonwealth, and in fact all such bonds do run to the Commonwealth.

I am therefore of the opinion that the recorder and assistant recorders of the land court come within the purview of G. L., c. 30, § 17, and that they should be reimbursed by the Commonwealth for premiums paid by them to surety companies which become sureties on their official bonds.

I am not unmindful of the fact that two former attorneys general have given contrary opinions. Under date of February 15, 1910, Hon. Dana Malone, in construing St. 1908, c. 469 (now in substance G. L., c. 30, § 17), rendered an opinion to the effect that assistant recorders of the land
court should not be reimbursed by the Commonwealth for the payment by them of such premiums. The sole basis for his opinion was that the appropriation to carry out the provisions of the act was insufficient and that, therefore, the Legislature did not intend to include such payments. I cannot agree either with the reasoning or the conclusion. I am constrained to hold that the size of the appropriation cannot affect or control the clear meaning of the statute.

In construing the same act, in an opinion rendered under date of January 25, 1919, the then Attorney General stated that he was "not disposed to construe the statute otherwise" in view of the construction placed upon the act by former Attorney General Malone, and in further view of subsequent legislation which provided that the act should apply to district attorneys (St. 1912, c. 66) and to the sheriffs of the various counties (St. 1914, c. 615). Subsequent legislation does not operate to render doubtful a prior statute which is devoid of ambiguity, nor to deprive such prior statute of its definite meaning. It may well be that the two statutes were enacted because of the opinion previously given by Hon. Dana Malone. In any event, it does not follow from the mere enactment of a statute conferring the same benefits in particular instances that the prior statute of general application did not confer such benefits.

I am therefore of the opinion that the subject matter of Senate Bill No. 74 is already covered by the general law.

Very truly yours,

J. WESTON ALLEN,
Attorney General.