The Commonwealth of Massachusetts.

DEPARTMENT OF THE ATTORNEY-GENERAL,
BOSTON, Feb. 18, 1916.

Hon. Henry G. Wells, President of the Senate.

Dear Sir: — I have the honor to acknowledge a copy of an order passed by the Honorable Senate on February 9, 1916, which is as follows:

Ordered, That the opinion of the attorney-general be requested by the Senate upon the constitutionality, if enacted, of the bill, known as Senate Document No. 184, entitled, "An Act to make Salisbury Beach a public reservation and to establish the Salisbury Beach Reservation Commission," now under consideration by a committee of the General Court, and that a copy of said bill be transmitted to the attorney-general by the clerk of the Senate.

Upon examination the proposed bill accompanying this order appears to be identical with chapter 715 of the Acts of 1912. On June 19, 1913, that statute was held to be unconstitutional by the Supreme Judicial Court on the ground that it was an attempt to authorize the exercise of the right of eminent domain in part for a private use. Salisbury Land and Improvement Co. v. Commonwealth, 215 Mass. 371. This decision has not been overruled and, so far as I am aware, has never been questioned by the court.

An amendment to the Constitution was adopted by the people at the election in November 1915, and is now in force in the following form:

The general court shall have power to authorize the commonwealth to take land and to hold, improve, sub-divide, build upon and sell the
same, for the purpose of relieving congestion of population and providing homes for citizens: provided, however, that this amendment shall not be deemed to authorize the sale of such land or buildings at less than the cost thereof.

No other change in the Constitution since the decision of the Supreme Judicial Court has been called to my attention which can, by any possibility, have any bearing upon the question submitted by the order of the Senate.

The article of amendment just referred to empowers the General Court to authorize the exercise of the right of eminent domain only "for the purpose of relieving congestion of population and providing homes for citizens." The bill submitted with the order appears to have no such purpose. It is entitled, "An Act to make Salisbury Beach a public reservation and to establish the Salisbury Beach Reservation Commission." Section 4 authorizes the Commission created by the bill to acquire, by right of eminent domain, "and thereafter to maintain and make available for the inhabitants of the commonwealth as a public reservation for the use, exercise and recreation of the inhabitants of the commonwealth" certain land particularly described. The proposed bill, therefore, so far as its purpose is a public one, is a bill for the creation of a public reservation or park. No part of its avowed purpose is the relieving of congested population or the providing of homes for citizens. By section 10 the Commission is authorized to sell or lease lands taken by it, "which are not needed as a public reservation"; but there is no requirement that such sales or leases shall be made to effectuate the purpose stated in this amendment to the Constitution or any other specific purpose.

No conditions have been called to my attention in any of the cities and towns specified in the third section of the proposed bill calling for legislation under this amendment. It is obvious that if such conditions exist it can only be in one or more of the cities mentioned, and not in the various small towns included in the so-called Salisbury Beach Reservation District. I am unable to find any connection between the provisions of the bill and the relief of congestion of population.
In my opinion the proposed bill does not come within the power granted to the General Court by this amendment to the Constitution, and, therefore, if enacted, would be unconstitutional upon the grounds stated by the Supreme Judicial Court in declaring unconstitutional the same bill enacted in 1912.

Yours very truly,

HENRY C. ATTWILL,
Attorney-General.