gardens, and do things of a like nature which would tend to adorn and make the place more attractive. But here the question presented is whether or not they can devote this property thus set apart for the purpose of the erection of a reservoir to be used as a part of the water system of the District of Columbia. In other words, has the board of control the power to take this property, designated and set apart by the act of Congress as a pleasure resort for all the people of the United States who desire to come and enjoy it, and devote it, in part, to the municipal uses of the District of Columbia by the erection of a reservoir to be used in connection with the water system of the said District? The question does not seem to admit of argument, and I unhesitatingly say that there is no such power vested in the board of control. It would, in my opinion, be an entire perversion of the purposes of the dedication.

If the board of control has the power, under the act, to authorize the water department of the District of Columbia to construct a reservoir within the limits of the park for the use of the District, then it would follow that the board has the right to authorize the use of the park for any other public purpose demanded by the District authorities, and thus this tract of land, which was condemned under an act of Congress and dedicated as a public park for the benefit of the whole people of the United States, might eventually be devoted entirely to the necessities of the District of Columbia and the object of the dedication defeated.

Very respectfully,

JOSEPH McKENNA.

The SECRETARY OF WAR.

ATTORNEY-GENERAL—DESERTER FROM THE ARMY.

The cases in which the Attorney-General is authorized to give opinions to the heads of Executive Departments are such as are actually pending in such Departments and involving the legal questions submitted. A convicted deserter from the Army, undergoing sentence, must become the recipient of Executive clemency and must make application for reenlistment before the question of the effect of the President's pardon upon his right to reenlist can arise.
SIR: I have the honor to acknowledge the receipt of your communication of May 25, 1897, in re Thomas Buchanan, a convicted deserter now undergoing a sentence and who has on file an application for a pardon.

The facts in this case, as set forth in your letter, are as follows: Thomas Buchanan is now a general prisoner at Fort Columbus, N. Y. He enlisted in Company H, Tenth Infantry, United States Army, October 5, 1891, and was discharged October 4, 1896, by expiration of service. He reenlisted October 8, 1896, in Battery H, Fifth Artillery; deserted at Fort Hamilton November 2, 1896; surrendered at that post February 1, 1897; was tried by court-martial, convicted of desertion, and sentenced to be dishonorably discharged, with forfeiture of all pay and allowances, and to be confined at Fort Columbus, N. Y., for eighteen months. Nine months of this sentence were remitted by the reviewing authority, and the prisoner is now serving sentence, which will expire November 16, 1897. He has recently applied to the President, through military channels, for a pardon.

In your letter you say: "To assist the Department in making a recommendation in forwarding the application to the President, I have the honor to request your opinion on the following point:

"In the event of a pardon being granted this man by the President, has the Secretary of War authority to permit him to enlist again in the Army under the present law?"

I do not deem this a case in which I am authorized to give an opinion. Cases in which the Attorney-General is authorized to give opinions to the heads of Executive Departments are such as are actually pending in such Departments and involving the legal questions submitted. Two very important contingencies must occur before the question of the effect of the President's pardon to Buchanan upon his right to reenlist can arise. In the first place, he must become the recipient of the Executive clemency, and in the second place he must make application for reenlistment. If the President should pardon Buchanan, and Buchanan in turn should
make application to reenlist, then the question as to the legal effect of the pardon upon Buchanan's disability incurred under the statutes governing the reenlistment of soldiers would be directly presented, and not until then.

I am supported in my declination to give an opinion in this matter in its present status by numerous opinions here-tofore rendered, and I cite particularly 9 Opin., 421: "The Attorney-General will not give an opinion on an important legal question when it is not practically presented by an existing case before a Department."

20 Opin., 536: "The Attorney-General is neither required nor authorized to give an opinion to the head of a Department except in cases actually pending for decision by him in such Department."

21 Opin., 109: The authority of the Attorney-General to advise the head of a Department "officially is confined to cases actually and presently arising in the administration" of his Department.

Opinion of March 25, 1897 (21 Opin., 509): "The opinion of the Attorney-General may be asked by the head of any other Executive Department 'on any question of law arising in the administration or his Department.' (Rev. Stat., 356). The inquiry must relate not to a mere moot question, but to one which requires immediate action. The answer must be necessary for the protection of the officer making the inquiry or to insure the lawfulness of the action which he is about to take."

These citations are sufficient to indicate that this is not a case in which I am authorized to give an opinion.

There is no legal principle involved in the course which you may take in forwarding Buchanan's application for a pardon to the President. You can recommend the pardon or refuse to recommend it, as you may deem consistent with the facts in the case. An opinion upon the legal effect of a pardon could have no possible bearing upon the lawfulness of the official action to be taken in forwarding Buchanan's application to the President.

Very respectfully, JOSEPH McKENNA.

The Secretary of War.