

ANNUAL REPORT

OF THE

Attorney-General

TO THE

Governor of Virginia,

FOR THE

YEAR 1900.

RICHMOND : ·  
J. H. O'BANNON, SUPERINTENDENT OF PUBLIC PRINTING ·  
1900.



# REPORT,

## COMMONWEALTH OF VIRGINIA, OFFICE OF THE ATTORNEY-GENERAL OF VIRGINIA,

RICHMOND, November 1, 1900.

To His Excellency J. HOGE TYLER,

Governor of Virginia:

SIR:

I have the honor to submit my report of the work of this office for the year ending this day:

### UNITED STATES SUPREME COURT.

There are no cases now pending in this court save that of *Tennessee v. Virginia*, which is a proceeding in equity, praying for the appointment of a commission to retrace, rerun, and re-establish the boundary line between said States. This proceeding was set on foot on the 16th day of April, 1900, and in pursuance thereof the Supreme Court appointed W. C. Hodgkins, A. H. Buchanan, and J. B. Baylor commissioners for the purpose of rerunning said boundary. The scope of the decree confines the commission purely to the locating of what is known as the "Compromise Line of 1801-'3," and in nowise empowers said commission to establish any new boundary.

No action has been had under this decree, for the reason that no funds have been provided on the part of this State, and it was hoped that inasmuch as the Federal Government is likewise interested in the establishment of said boundary an appropriation may be made therefor by Congress.

### SUPREME COURT OF APPEALS OF VIRGINIA.

1. *Commonwealth v. Johnson*.
2. *Commonwealth v. Davis*. These two cases are from Norfolk city, and involve the coupon feature of our debt contract, and have been duly dismissed in pursuance of the purpose expressed in my report of 1899. (See Report, Nos. 7 and 8, page 5.)
3. *Wise v. Commonwealth*. From the County Court of Henrico. The question involved related to the power of the County Court to fine a practising attorney for contempt for his failure to appear in behalf of his client. The lower court was reversed, the opinion holding that there was no contempt under the particular circumstances of the case.
4. *Willis' Ex'ors v. Commonwealth*. From the Hustings Court of the city of Richmond. As will be seen from my last report, this was a case of much moment, in that the question was whether or not the Commonwealth can tax what is known as "ground rent." The lower court was reversed by the Supreme Court, the opinion holding that such systems of loans, made under

the form of what are called "ground rents," are not taxable, because they are not technically loans. The result of this decision was reported by me to the Judiciary Committees of the General Assembly, and a bill was promptly reported, passed, and signed, taxing such system of rents.

5. *Robert Bundick v. Commonwealth.*

6. *Catherine Bundick v. Commonwealth.* From the county of Northampton. These two cases were joint indictments of burglary, were separately tried in the lower court, but jointly argued in this court. The lower court was reversed in an opinion which held that the evidence in each case was insufficient to warrant a verdict of guilty.

7. *Jennings v. Commonwealth.*

8. *Allen v. Commonwealth.* These two cases are from the Corporation Court of Lynchburg, and an opinion of the Supreme Court, rendered on the 1st day of February, 1900, sustained the lower court, which upheld the validity of a tax upon shares of stock. The case is one of importance.

9. *Morgan v. Commonwealth.* From the County Court of Mathews. This case involved the construction of the fishery laws and the constitutionality of the same. The Supreme Court reversed the lower court upon the facts in the case, but maintained the constitutionality of the statute imposing a tax upon pound nets.

10. *Tabb et als. v. Commonwealth.* From the Circuit Court of Henrico county. This case involves the liability of a remainderman for the tax accruing during the term of a life tenant. The opinion reversed the lower court, and holds that the land of such remainderman is not responsible for the taxes accruing during a life tenancy. This was a case of much moment, and a petition to rehear, accompanied by brief, was duly submitted, but the court overruled said motion. It is submitted that the questions involved in this case are worthy of Executive consideration, with a view as to whether or not it will be expedient to submit in your annual message any recommendations in connection with the same.

11. *Florence, Trustee, v. Morien et als.* From Henrico county. This case involves the same question as the one next preceding, but the case was dismissed upon the jurisdictional ground of insufficiency of amount.

12. *Brown v. Commonwealth.* From the Circuit Court of Henrico county. This was an indictment for feloniously obstructing a railway, with intent to derail a car, thereby imperiling the life of passengers. The case has been disposed of in an opinion reversing the lower court, upon the ground that the evidence was insufficient to maintain the charge.

13. *Reed v. Commonwealth.* From Madison county. Argued in Richmond and decided at Staunton June 14, 1900. This was a conviction of murder in the first degree. The Supreme Court sustained the conviction in an able and elaborate opinion, and in conformity thereto the unfortunate man was duly hanged.

14. *Montgomery v. Commonwealth.* From Augusta county. Argued at Richmond in May, 1900; decided at Wytheville in June following. The lower court was reversed on the ground that the evidence did not sustain the verdict.

15. *Wise v. Commonwealth.* From Washington county. This was a writ of error to a judgment upon a verdict for criminal trespass. The lower court

was reversed upon the ground that the evidence failed to show any malicious or criminal intent.

16. *Brown v. Commonwealth*. From the Corporation Court of Roanoke. The chief interest in this case was a question of tax imposed by the city for peddling. The court held that neither the Commonwealth nor the city could tax peddlers of food or farm produce.

17. *Jackson v. Commonwealth*. From Pulaski county. This was a conviction of homicide, and a writ of error was awarded to review the verdict of murder in the second degree. The opinion of the court affirmed the lower court. This case is found in my former report, therefore it will be seen that it has been twice reviewed by the Supreme Court, being reversed for errors on first trial and sustained as free from errors on second trial.

18. *McKeever v. Commonwealth*. From Augusta county. This was a conviction for the sale of liquor without license. The decision of the lower court was affirmed. Not of moment, saving as reaffirming a former decision of the court defining the sale by wholesale or by distillers of spirituous liquors.

19. *Montgomery v. Commonwealth*. From Augusta county. This is a writ of error awarded to a second conviction. (See No. 14, *supra*.) The decision of the lower court was again reversed.

20. *Marye, Auditor, v. Diggs et als.* From the Circuit Court of Patrick county. This case involves a question of taxation on a large tract of land in said county. Argued and submitted, but not yet decided.

21. *Doyle v. Commonwealth*. From the city of Lynchburg. Record not printed and case continued to next term.

22. *Southern Railway v. Commonwealth*. From the Circuit Court of Shenandoah county. This case involves the very important question as to the power of the Circuit Court, upon the application of the Railroad Commissioner, to enforce the connection of trains of the Southern Railway Company and the Baltimore and Ohio Railroad Company at the intersection at Strasburg. Argued and submitted, but not decided.

23. *W. C. Preston and others, Petitioners, v. S. B. Witt, Judge, and Robert V. Marye, Respondent*. On a petition for a writ of prohibition.

24. *W. F. Lambert v. William H. Smith, Sergeant*. On a petition for a habeas corpus.

25. *McMenamin and others v. W. H. Mann, Keeper of the Rolls, and J. H. O'Bannon, Superintendent Public Printing*. On a petition for a writ of mandamus.

26. *W. H. Sale v. A. R. Hanckel*. On a petition for a writ of mandamus. The points involved in all of these cases were heard and determined in the case of *Lambert v. Smith, supra*, which was argued March 29th, and decided March 30, 1900.

The question raised was as to the constitutionality of the act of the General Assembly, approved March 5, 1900, providing "for the appointment of commissioners of valuation, and defining their duties." The chief question in the case was that the act carried an appropriation of public moneys, and that the same was void, in that no recorded vote was had upon its passage. The Court sustained the claim of the petitioner in a simple judgment, without giving an opinion or reasons therefor.

## CIRCUIT COURT OF THE CITY OF RICHMOND—AT LAW.

1. Commonwealth v. Bennett Taylor, Clerk Albemarle county. Suit instituted June, 1881.
2. Commonwealth v. Jos. Mayo, Jr., late Treasurer, et als. Suit instituted April, 1884.
3. Commonwealth v. Jos. Mayo, Jr., late Treasurer et als. Suit instituted April, 1884.
4. Commonwealth v. Jno. F. Jones, Treasurer Craig county, et als. Suit instituted October, 1886.
5. Commonwealth v. Same. Suit instituted October, 1886.
6. Commonwealth v. Bennett Taylor, Clerk Albemarle county. Suit instituted October, 1886.
7. Commonwealth v. G. H. Baughman et als. Suit instituted November, 1886.
8. Commonwealth v. John H. Sears, Treasurer Mathews county. Suit instituted April, 1887.
9. Commonwealth v. G. R. Barr, Treasurer Washington county. Suit instituted April, 1887.
10. Commonwealth v. C. H. Ingles, Treasurer Henry county, et als. Suit instituted October, 1886.
11. Commonwealth v. Same. Suit instituted May, 1887.
12. Commonwealth v. Same. Suit instituted May, 1887.
13. Commonwealth v. O. B. Thomas, Treasurer Fluvanna county, et als. Suit instituted February, 1888.
14. Commonwealth v. W. M. Gray and J. J. Gusler, Washington county. Suit instituted February, 1889.
15. Commonwealth v. O. D. Foster and R. W. Adams. Suit instituted March, 1892.
16. Commonwealth v. A. K. Phillips et als. Suit instituted March, 1892.
17. Commonwealth v. Mary B. Randolph's Adm'r. Suit instituted March, 1893.
18. Commonwealth v. C. R. Randolph. Suit instituted March, 1893.
19. Commonwealth v. C. H. Ingles, Treasurer Henry county, et als. Suit instituted October, 1893.
20. Commonwealth v. C. I. Reynolds, Adm'r of John R. Cabell. Suit instituted July, 1894.
21. Commonwealth v. W. P. Tyree et als. Suit instituted July, 1894.
22. Commonwealth v. John M. Speece, Clerk Circuit Court Bedford county, principal and sureties. Suit instituted April, 1899; judgment rendered May, 1899, in the sum of \$728.84, with interest.
23. Commonwealth v. Board of Supervisors of Russell county. Suit instituted October, 1899.
24. Commonwealth v. Board of Supervisors of Bedford county. Suit instituted October, 1899. These two cases are still pending, and a final disposition is expected at the present term.
25. Commonwealth v. Wm. K. Perrin, Treasurer, et als. Suit to recover \$500.38 and interest. Upon the calling of the motion on October 15, 1900, the case was continued. But since such continuance the Auditor advises that the amount of the claim has been paid, and requests that the proceedings be dismissed, which has accordingly been done.

26. Commonwealth v. Same. This is a suit to recover \$5,921.93, with interest. Motion has been docketed and case continued by direction of the Auditor, and final judgment will be asked for the above amount less any payments which have been made since the institution of the suit at the present term of the court.

27. Commonwealth v. H. L. Stone and sureties. Motion for \$4,984.92 and interest, which was duly docketed on October 15, 1900. The case has been continued and will be disposed of at the present term.

28. Commonwealth v. H. L. Stone and sureties. Motion for \$13,310.01, with interest, which was likewise duly docketed, and will be disposed of at present term.

## AT EQUITY.

1. Commonwealth v. Sam'l M. Page. Suit instituted March, 1872.
2. Commonwealth v. Walter Millan. Suit instituted April, 1872.
3. Commonwealth v. P. H. Huffman et als. Suit instituted April, 1873.
4. Commonwealth v. J. W. Grantham. Suit instituted December, 1874.
5. Commonwealth v. Jas. Hilton's Adm'r. Suit instituted April, 1879.
6. Commonwealth v. Martha Goode, &c. Suit instituted April, 1879.
7. Commonwealth v. Spencer D. Ivey, &c. Suit instituted April, 1879.
8. Commonwealth v. J. T. Young. Suit instituted August, 1884.
9. Commonwealth v. A. A. Chapman. Suit instituted February, 1893.
10. Commonwealth v. Robert S. Ryland and wife et als. Suit instituted July, 1896.
11. Commonwealth v. George Dusner's Curator and Adm'r. Suit instituted March, 1897.

12. Commonwealth v. B. Vandergrift et als. Suit instituted February, 1898. The observation made in my last report is here renewed as to the long standing of these cases. It is difficult to know how to dispose of many of them, though before my term of office is concluded I hope the status of each case may be sufficiently defined to enable me to take official action in all, or nearly all, of them.

There is no need in detailing the exact purpose of each suit or cause. The litigation relates mainly to suits upon official bonds or supplemental proceedings in equity to secure satisfaction of judgments obtained thereupon. Great apprehension is felt that many of the suits or proceedings will amount to but little, as the principals and sureties of the bonds sued upon are in many instances insolvent. The purpose expressed in my last report to reduce this docket is still strongly entertained, and all practicable steps will be taken by me to effectuate it.

## UNITED STATES CIRCUIT COURT FOR THE WESTERN DISTRICT OF VIRGINIA.

1. Commonwealth v. Tyler DeHart. Removed from the County Court of Floyd and pending at Danville. Reference is made to my former report as to the nature of this case. No decision has yet been rendered by the judge upon my motion to remand the case to the State Court for trial.

2. The Douglas Company v. Commonwealth. This is a suit in equity to enjoin the collection of a tax upon a large boundary of land, the validity of

which tax was sustained by the Supreme Court of Appeals of this State in its decision rendered on the 14th day of September, 1899. The case was argued upon a demurrer at Abingdon in May, 1900, and submitted. No decision, however, has been delivered.

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA.

The Secretary of the Commonwealth, for, &c., *v.* George M. West. Reference is made to my former report as to the nature of this case. Dividends have been declared under final distribution and a check issued therefor, but the same was lost before reaching the Commonwealth, and a duplicate check will be issued, when the case will be ended so far as the Commonwealth is concerned.

UNITED STATES CIRCUIT COURT FOR THE EASTERN DISTRICT OF VIRGINIA.

1. Peoples National Bank of Lynchburg *v.* Marye, Auditor.
2. First National Bank of Lynchburg *v.* Same.
3. Lynchburg National Bank *v.* Same.
4. National Exchange Bank of Lynchburg *v.* Same.

These cases are found in my last report. They were argued by my predecessor and submitted to Judge Hughes, then District Judge. He retired from the bench before rendering an opinion, and therefore the cases had to be reargued and resubmitted to his successor, Judge Waddill, which reargument was made by me in July, 1900. The cases were then very elaborately argued, both orally and by printed brief, and submitted. No decision has yet been handed down by the court.

FOX ISLAND.

Supplemental to my two former reports as respects this matter, I beg now to report that Judge Prentis rendered an able opinion in the cause in May, 1900, which comprehensively vacated the cession or grant to Wm. Ellinger, thereby enabling the Commonwealth to resume her proper interest in the tidal water lands covered by the grant or patent of the Fish Commissioner.

I would further report that an application for an appeal has been made and granted, and therefore the case is likely to be called for argument in the Supreme Court during its present session at Richmond, when it is hoped that a final determination of the case may be had.

OFFICIAL OPINIONS.

A few official opinions are selected and appended. Requests for opinions are growing constantly. The bulk of them, however, are made by those who have no authority to do so. Yet the practice of this office has been such that in some cases in its impracticable to refuse such requests.



REPORT OF THE ATTORNEY-GENERAL.

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TERM OF OFFICE OF JUDGE OF ELECTIONS.

November 1, 1899.

Mr. TERRY R. FULTON,  
Summerfield, Va.:

DEAR SIR:

Replying to your letter of the 31st ultimo, I beg to say that I am of opinion that a judge of election holds his office for a term of one year, dating from his appointment, and that he cannot be removed from office save for failure to discharge its duties according to law.

Section 69 of the Code gives to the Electoral Board the power to remove such judge upon notice and upon failure to discharge the duties of his office as aforesaid.

Yours very truly,

A. J. MONTAGUE,  
Attorney-General.

INCOMPATIBILITY BETWEEN OFFICES OF FOURTH-CLASS POSTMASTER AND  
ELECTORAL BOARD.

November 4, 1899.

Mr. J. E. HUBBARD,  
Wilcox Wharf, Va.:

DEAR SIR:

\* \* \* \* \* Referring to your inquiry, I beg to say I do not think you can be both a fourth-class postmaster and a member of the Electoral Board. The positions are incompatible under our statutes. See Sections 163 and 164 of the Code, the latter amended by Acts 1897-'98, page 485.

Yours very truly,

A. J. MONTAGUE,  
Attorney-General.

TAX UPON TRUST DEEDS OR MORTGAGES.

December 24, 1899.

E. E. HOLLAND, Esq.,  
Suffolk, Va.:

DEAR SIR:

I regret this delay in my reply to your letter of the 16th instant, relative to the amount of tax which should be paid upon a mortgage to be recorded in this State, but my official work has been of such a character as to take precedence of your inquiry.

Referring now to the same, I beg to say that I am of opinion that the tax upon trust deeds or mortgages "shall be assessed and paid upon the amount of bonds or other obligations secured thereby."

Such seems to be the specific requirement of the statute, and if so I cannot perceive that the amount of land or property conveyed as security in anywise affects the question of the amount of tax to be paid upon the mortgage, for the tax is determined by the amount of money secured, and not by the value of the security given.

That this construction is proper I think appears from the residue of the statute changing the rate of tax upon mortgages by railroads and internal improvement companies.

Yours very truly,

A. J. MONTAGUE,  
*Attorney-General.*

#### ADMISSION OF CHILDREN TO THE PUBLIC SCHOOLS.

November 27, 1899.

Hon. JOSEPH W. SOUTHALL,

*Superintendent of Public Instruction:*

SIR:

Replying to your letter of the 23d instant, enclosing a letter and application blanks from Mr. William M. Turpin, chairman of the City School Board, and Mr. William F. Fox, Superintendent of Schools for the city of Richmond, I beg to say:

(1) That a child whose parents are non-residents, coming to the city and residing temporarily with a relative, is not, in my opinion, entitled to free tuition in the public schools of the city.

(2) The children of one living in the country, and whose wife and family reside permanently in the city, should, in my opinion, be permitted to enter the public schools free of tuition; provided, the man or his family own property within the corporate limits or otherwise contribute by taxation to the support of the city government. I cannot agree to the contention that the home of the father is in every instance the home of the child.

(3) Legal adoption is fully defined by the statute cited by Messrs. Turpin and Fox.

(4) The abandonment or desertion of children is not easily defined in general terms. Abandonment of children may be roughly defined as the act of parents in leaving their children to the enforced support of others.

(5) I am of opinion that the School Board has no power to delegate to its Committee on Teachers and Schools the final decision of questions relating to such matters as those referred to above. The committee's action should be confirmed by the Board before it can become operative.

Very respectfully,

A. J. MONTAGUE,  
*Attorney-General.*

#### STATUS OF NAVAL MILITIA.

December 7, 1899.

Adjutant-General WM. NALLE,

Richmond, Va.:

SIR:

Replying to your letter of the 21st ultimo, I beg to say that I am of opinion that the naval militia is a part of the volunteer service of this State, and if the officer of such militia is the senior officer he is eligible as a member of the Military Board, provided for in Section 377 of the Code.

I am not certain that the marine militia can share equally in the Military Fund as a general proposition, but I am clear that the Military Board has the authority to dispose or make any expenditure of said fund which is manifestly in execution of what is for the evident benefit of the volunteer service, which includes the marine militia, but such disbursements must be made only on the concurrence and the order in writing of all the members of said board.

Very respectfully,

A. J. MONTAGUE,  
*Attorney-General.*

EXPIRATION OF TERM OF OFFICE OF MANAGER OF STATE FARM.

January 5, 1900.

Mr. ALLEN W. FINCH,  
*Manager State Farm, Lassiter, Va.:*

DEAR SIR:

Replying to your letter of the 4th instant, relative to the extent of your commission of January 5, 1898, I beg to say that while the statute is not clear, yet it seems to me that your term expires with that of the Superintendent, and, therefore, it would be safer to be recommissioned for the term beginning with that of the Superintendent.

As suggested, the term of office is not clear from the statute, yet inasmuch as the appointment is to be made upon the recommendation of the Superintendent, the proper construction seems to me to be a term of office commensurate with that of the Superintendent making the appointment, which is two years.

Yours very truly,

A. J. MONTAGUE,  
*Attorney-General.*

RESIGNATION OF MEMBER OF ELECTORAL BOARD.

January 16, 1900.

HENRY W. HOLT, *Esq.*,  
*Staunton, Va.:*

DEAR SIR:

Referring to your letter of the 5th instant, I requested Lieutenant-Governor Echols to advise you of my inability just at that time to consider the question submitted by reason of my pressing duties in the Supreme Court.

I have, however, taken up the matter this morning and gone over it quite carefully. I think that "where the statute is silent on the subject, a resignation must be made to the appointing power." (Throop on Public Offices, Section 408.) Therefore, the resignation of a member of the Electoral Board should be made to the General Assembly, if in session. If this body be in session it has the appointing power; but should the resignation be made after the session has closed, then it should be made to the Electoral Board itself, as this board has the power of filling the vacancy.

Referring to Section 72 of the Code, as amended by act of March 3, 1898, I do not think the same affords any assistance in determining the question.

The judge can only appoint under this section when *all* of the members of the board have failed to qualify within the prescribed time. Furthermore, under this section I do not perceive that the board itself has a right to fill vacancies other than "as required by law," and it seems that this obtains when the authority is exercised under Section 65.

I think your suggestion as to resigning after the adjournment of the Legislature is entirely feasible and practicable.

Yours very truly,

A. J. MONTAGUE,  
*Attorney-General.*

WRIT OF ELECTION.

February 8, 1900.

W. E. NEBLETT, *Esq.*,  
*Lunenburg, Va.:*

DEAR SIR:

Your letter, respecting the writ of election issued by the Speaker of the House of Delegates to fill the vacancy occurring therein from your county, is this day received.

Replying specifically to your inquiry, it will be observed that Section 61 of the Code prescribes no time for the notice of the election. Looking at this section alone it seems that this omission was made in order that the Speaker might comply with the peculiar circumstances of each case. And in the case in question it seems impracticable to give a notice for as long a time as twenty days, as the expiration of such time would render the service of the legislator from your county practically unavailing.

On the other hand, it is plain that unless twenty days' notice is given no official ballot can be prepared under the Walton-Parker law. Nor is a member of the House of Delegates a county officer under Sub-Section 20 of Section 122 of the Code.

Therefore, inasmuch as the House of Delegates is the judge of the election and qualifications of its own members, I would advise that the election be held and that each voter supply his own ballot, just as was done before the enactment of our present official ballot law. This seems to me the only alternative resulting from the clear omissions of the statute, which alternative, I am persuaded, will bear the test of legislative sanction.

Yours very truly,

A. J. MONTAGUE,  
*Attorney-General.*

PAYMENT FOR REPAIRS TO SHIP ON PATROL DUTY.

February 20, 1900.

Col. MORTON MARYE,  
*Auditor of Public Accounts:*

SIR:

In the matter of the reference of the account of George W. Duval & Co., I beg to say that I am advised through the Adjutant-General's office that the ship "Siren" was at the time of the contracting of the account in question in

active performance of service in patrolling the harbor of Norfolk and Portsmouth, in pursuance of the order of August 4, 1899, when on the 7th of that month her engine failed to reverse, and the repairs charged in the account became necessary to be made. Such repairs were at once undertaken and continued night and day until September 13th, when completed.

It therefore seems that the repairs in question were a necessary incident of the power conferred by the order aforesaid, and that the expenses incurred are properly chargeable upon the treasury.

Very respectfully,

A. J. MONTAGUE,  
*Attorney-General.*

METHOD OF HOLDING LOCAL-OPTION ELECTION.

*February 28, 1900.*

Mr. GEORGE P. ADAMS,  
*Blackstone, Va.:*

DEAR SIR:

Replying to your letter of the 27th instant, I beg to advise that I am of opinion that the local-option election will have to be held under the Walton-Parker law, commonly called the Australian ballot system.

Such has been the practice in holding this character of elections in this State, and I cannot perceive any reason for a different construction of the law.

Very truly yours,

A. J. MONTAGUE,  
*Attorney-General.*

COMPENSATION OF TREASURERS FOR RECEIVING AND DISBURSING STATE SCHOOL FUNDS.

*March 14, 1900.*

Mr. W. J. FULTON,  
*Superintendent of Schools, Summersfield, Va.:*

DEAR SIR:

I regret this delay in replying to your letter of the 5th instant, respecting the compensation of treasurers for receiving and disbursing State school funds. My duties, however, have been so onerous and exacting that I have been unable to consider sooner your inquiry.

I am of opinion that the County School Board has no authority to allow a treasurer any commission upon the State school-tax fund. The commissions upon this fund are fixed by law under Section 613 of the Code, and are to be accounted for in the settlement with the Auditor direct.

What is commonly known as the Literary Fund, however, is subject, through the County School Board, to a compensation of not exceeding 2 per cent. on the amount apportioned to the several counties for disbursement.

The first-named fund is received by the County Superintendent in the form of a warrant from the Auditor of Public Accounts, and this fund bears no commission, and none can be allowed thereon to the Treasurer by the County School Board. But the latter fund, commonly called the Literary Fund, is

paid to the county treasurers through the Second Auditor, and on this fund alone commission can be allowed by the County Board under Section 1515 of the Code.

Very respectfully,

A. J. MONTAGUE,  
*Attorney-General.*

CONSTRUCTION OF THE PENSION ACT.

April 7, 1900.

Mr. M. B. ALLEN,  
*Mechanicsburg, Va.:*

DEAR SIR:

Replying to your letter of the 5th instant, I beg to say that I am of opinion—

(1) That the general spirit of the pension act approved March 7, 1900, does not contemplate that deserters are entitled to the pensions provided for in said act.

(2) I am also of opinion that a member of what you style the "reserve" or militia (if I am correctly advised as to the exact standing of such force) is not entitled to a pension. I am of opinion that the soldiers contemplated in the act must be those who either enlisted or actually performed regular military service.

(3) I am further of opinion that a soldier who is a native of another State and who has moved here since the war, and who did not belong to a Virginia command, is not entitled to a pension.

Very respectfully,

A. J. MONTAGUE,  
*Attorney-General.*

CONSTRUCTION OF THE PENSION ACT.

April 14, 1900.

Judge D. C. RICHARDSON,  
*Chairman of Pension Board, Richmond, Va.:*

DEAR SIR:

Replying to your inquiries of the 9th instant, I beg to answer that I am of opinion as follows:

1. That in the event of a partial disability, culminating in a total disability, the Pension Board is unauthorized to increase the pension from the class of partial to total disability. Doubtless it was the purpose of the Legislature to give such authority, but there seems to be a manifest lack of power conferred upon the board to make such increase.

2. The Pension Board has no authority to consider the status of an existing pensioner unless found upon the list in the clerk's office of the county or corporation of the board. If the name of such pensioner, although a resident of your city, is found upon a list of another city or county, then only the board of the latter is authorized to deal with that particular pensioner. And if the pensioner be a resident, yet not upon the pension list, of your city but

is upon the list of another city or county, then he must obtain his pension from the county or city having the list containing his name.

Very respectfully,

A. J. MONTAGUE,  
*Attorney-General.*

REGISTRATION OF BIRTHS, MARRIAGES, AND DEATHS.

April 23, 1900.

Mr. D. E. KEFAUVER,

*Commissioner of Revenue, Roanoke, Va.:*

DEAR SIR:

Replying to your letter of the 26th instant, I beg to say that Article V., Section 21 of the State Constitution provides that "the General Assembly shall provide for the annual registration of births, marriages, and deaths," and therefore it seems that upon the failure of the Legislature to so provide it would not be incumbent on a commissioner of revenue to execute the constitutional provision. The Constitution commands the Legislature to make provision for such registration, and in the event the Legislature fails to carry out this command it cannot be carried out, in my opinion, by any official in this Commonwealth.

There was an act of the Assembly giving you authority to make such registration, but this has been repealed. The question of the constitutionality of such repeal might be raised, in that having made provision for such registration it is incompetent for the Legislature to repeal such legislation unless it substitutes some like method. However, this is a matter for the courts to pass upon, and consequently I have no authority to give you an official opinion.

Yours very truly,

A. J. MONTAGUE,  
*Attorney-General.*

CONSTRUCTION OF THE PENSION LAW.

May 8, 1900.

Mr. WM. B. FOSTER,

*Clerk of Court, Wytheville, Va.:*

DEAR SIR:

Referring to your inquiries, which are herein enclosed, I beg to answer them numerically as follows:

1. The Pension Board has the power to swear applicants and witnesses.
2. I am of opinion the act contemplates that the board should elect its clerk from its own body, though I do not think that the record kept by a clerk elected from persons other than members of the board would thereby be invalidated.
3. If the total blindness is the result of wounds received in war, then the applicant is entitled to the same pension as if both eyes were lost in active service.
4. A widow who married after the war is disqualified from obtaining a pension under the act.

5. Every resident of this State who was a soldier, sailor, or marine of Virginia in the war between the States is entitled to a pension if the proper disability obtains; and also any native of Virginia who enlisted from another State in the military service of the Confederate States, and who is at the date of his application for pension a resident of this State, is likewise entitled to a pension.

6. A soldier or widow now upon the pension list does not have to file a new application unless stricken from the list by the board, in which event he or she can make reapplication, as provided for.

Very respectfully,

A. J. MONTAGUE,  
*Attorney-General.*

COMPETENCY OF ELECTORAL BOARD TO INQUIRE INTO CERTAIN MATTERS.

*May 10, 1900.*

*To the Electoral Board of the City of Richmond,  
Richmond, Va.:*

GENTLEMEN:

In the matter of the request of your board to inquire whether or not the notice of candidates for office is forged, I am of opinion that it is competent for the board to determine whether the provisions of the law respecting the notice of candidacy has been properly given, or given at all; and, therefore, in the case in question the board has the power to investigate as best it can whether any of said notices are forgeries. While the board is a ministerial body, yet all ministerial agents have the right to determine whether the occasion has arisen or the fact has occurred which must have arisen or have occurred as a condition precedent to their action. If, therefore, the notice is alleged to have been forged, and such allegation is made known to the board, it is authorized, if it sees fit, to investigate the truthfulness of the allegation; and if the proof conclusively shows that such paper is a forgery, the board is authorized to withhold the name thereon from the official ballot.

Section 6 of the act says that the ballots shall only contain "the names of all candidates complying with the provisions as above required." If the notice be forged, the provisions of the act are not complied with, and the board, in my judgment, has therefore the power to determine whether such notice be a genuine or a forged document. Of course, to justify the board in declaring such notice a forged or fictitious document, the proof should be so full and clear as to make their decision unquestioned. Consequently, I am of opinion that the board has authority to make the investigation in question, but whether or not it will make such investigation is purely discretionary and optional with the board. It has the authority if it chooses to exercise it.

Very respectfully,

A. J. MONTAGUE,  
*Attorney-General.*



REPORT OF THE ATTORNEY-GENERAL.

17

CONSTRUCTION OF THE PENSION LAW.

May 21, 1900.

Mr. WM. W. WHITE,

*Clerk of Pension Board, Silverton, Va.:*

DEAR SIR:

Replying to your letter of the 15th instant, I beg to say that the applicant seventy-two years of age, alluded to in your letter, is entitled to a pension of \$50 for the loss of his foot.

With respect to those who apply to your board, Sections 3 and 4 disqualify such applicants who own property of an assessed value of more than \$1,000. Section 8 only relates to the renewal of an application after being properly upon the list. I understand that your inquiry is directed to an original application; such applicant must, therefore, not have property of an assessed value of more than \$1,000.

Pensioners now upon the list do not have to make new applications to the Pension Board. If the Pension Board is advised that those upon the list are in any way disqualified, then the board has authority to take evidence, and, if they deem proper, strike the name of such pensioner from the list.

Yours very truly,

A. J. MONTAGUE,  
*Attorney-General.*

SPECIAL AGENT'S LICENSE.

June 1, 1900.

GEORGE N. CONRAD, Esq.,

*Commonwealth's Attorney, Harrisonburg, Va.:*

DEAR SIR:

Replying to your letter of the 26th ultimo, I beg to say that I am of opinion that the agents mentioned in your letter are required to take out the special agent's license prescribed in Sections 108 and 109 of the Tax Laws. The language in Section 108 should read as follows, otherwise it is unintelligible: "Any person who shall sell or offer for sale, or take orders therefor on commission or otherwise, manufactured implements or machines by retail, other than sewing machines, unless it be the owner thereof, and duly licensed as a merchant, shall be deemed to be an agent," etc. From the transposition made by me I think the difficulty suggested by you is removed. Unless such a construction is put upon the language, which this transposition makes clear, the statute is almost contradictory.

If I have not sufficiently answered your inquiries call upon me again.

Very truly yours,

A. J. MONTAGUE,  
*Attorney-General.*

## REPORT OF THE ATTORNEY-GENERAL.

## COMPENSATION TO MEMBERS OF ELECTORAL BOARD.

August 17, 1900.

Judge N. P. OGLESBY,  
Hillsville, Va.:

DEAR SIR:

I am of opinion that each member of the Electoral Board is entitled to receive \$2.00 for each day of actual service, provided that such member shall not receive more than \$10.00 in any one year. Therefore, whenever his services at \$2.00 a day amount to more than \$10.00 in any one year he is entitled to receive from the State only the latter sum.

I am further of opinion that no fees whatever are to be paid to county judges, although there may be additional duties imposed by the election laws; his salary, and his salary alone, is all the compensation provided.

Very truly yours,

A. J. MONTAGUE,  
Attorney-General.

## EXEMPTION FROM TAXATION.

August 24, 1900.

R. L. JORDAN, Esq.,  
Clerk City Council, East Radford, Va.:

DEAR SIR:

Replying to your letter of the 17th instant, I beg to say that I cannot find any statutes which will exempt the taxation of a deed conveying real estate to a city to be used for the purpose of a school-house and court-house combined, nor an exemption covering a trust deed upon the same property to secure the unpaid purchase price thereof.

Section 457 of the Code may exempt the land in question from taxation, but not the tax upon the deed conveying the same. And I do not think Section 590 clearly covers the case, as the exemption therein alluded to only seems to afford a continuance of the time within which this tax should be paid. Upon the general policy of the law I should say this exemption should be made, yet the whole matter being one of statutory requirement, and no exceptions being found therein, it seems that the city should pay the tax.

Yours very truly,

A. J. MONTAGUE,  
Attorney-General.

## RECORDATION OF COPY OF NOTICE.

August 31, 1900.

Mr. A. T. WIATT,  
Clerk of Court, Gloucester, Va.:

DEAR SIR:

Replying to your letter of the 30th instant, as to the recordation of copy of notice of motion sent you in the matter of *The Commonwealth v.*

Perrin, Treasurer, and sureties, I beg to say that Section 615 of the Code, as amended by act approved January 21, 1896, in terms provides that "the clerk to whom such copy is so sent shall record it as a deed is required by law to be recorded, and index the same as well in the name of the Commonwealth as the Treasurer and his sureties, each respectively." Therefore, your inquiry seems to be affirmatively answered by the statute in that the latter prescribes the recordation to be made as a deed, which would seem to be in your deed book, as it would be manifestly improper to record a deed in the judgment lien book.

Yours very truly,

A. J. MONTAGUE,  
*Attorney-General.*

NON-RESIDENT CORPORATION CHARTER TAX.

September 19, 1900.

JAMES D. JOHNSTON, Jr., Esq.,

*Attorney at Law, Roanoke, Va.:*

DEAR SIR:

Replying to your letter of the 6th instant, I beg to say that non-resident corporations doing business in this State should pay the same tax upon recorded charters which is paid upon court charters granted in this State. In other words, the rate of tax is that imposed upon court charters in this State, and not upon charters granted by the Legislature.

Yours very truly,

A. J. MONTAGUE,  
*Attorney-General.*

TAX UPON SEALS.

September 27, 1900.

Mr. SAMUEL L. BOLLING,

*Bedford City, Va.:*

DEAR SIR:

Replying to your letter of the 19th instant, I beg to answer as follows:

1. I am of opinion that a tax will be required upon the seal affixed to a deed made by the Board of Supervisors of your county. I cannot find any exception made in behalf of counties in the matter of taxes prescribed upon seals. Therefore, it seems to me the tax should be paid.

2. I cannot advise whether the Board of Supervisors of your county has a corporate seal. It, however, is clearly authorized to have such a seal under Section 825 of the Code. Nor can I say that the seal enclosed me is the seal of said board. It seems to me that the board is competent to adopt this seal, provided this is not the seal of your court, for I do not think the court seal could be used as the seal of the board. In other words, if this is not the court seal it could be adopted by the board as its seal. But if it be the seal of the court the clerk of the board is unauthorized to affix such a seal as the seal of the supervisors.

3. I am also of opinion that the trust deed mentioned by you will have to pay a tax upon the face value of the amount of bonds or other obligations secured. I do not think you as clerk will have to take cognizance of or be bound by any prior lien upon the property. *Non constat* such prior deed might be legally and wholly unavailing as a security.

I might cite other reasons, but am forced to content myself now with observing that I know of no safe guide save the face amounts of the bonds or obligations mentioned in the deed itself. While this may be a hardship in many cases, and doubtless is in the one in question, yet I do not know how you are to charge otherwise than as directed by the terms of the statute.

Very respectfully,

A. J. MONTAGUE,  
*Attorney-General.*

SUPREME COURT OF APPEALS.

It is a matter of profound regret that no tabulated statement can be made of the work of the various courts of the Commonwealth, and especially of this work as respects cases in which the Commonwealth is a party. In my judgment it would be a distinct step forward could this office be supplied with such data by the Commonwealth's attorneys of the several counties and cities. This system has long since been adopted by the United States Government with most satisfactory results. However, in my last annual report I undertook to submit a statement showing the volume of business done in the Supreme Court of Appeals, and I now repeat the same for the current year.

*At Richmond—November Term, 1899; January and March Terms, 1900.*

Cases on the docket.....	100	...
Final judgments or decrees.....	...	91
Cases not ready and continued.....	...	9
	<hr/> 100	<hr/> 100

*At Wytheville—June Term, 1900.*

Cases on the docket.....	48	...
Final judgments and decrees.....	...	38
Cases continued .....	...	10
	<hr/> 48	<hr/> 48

*At Staunton—September Term, 1900.*

Cases on the docket.....	47	...
Final judgments and decrees.....	...	27
Cases continued .....	...	11
Cases removed to Richmond.....	...	9
	<hr/> 47	<hr/> 47

*Summary.*

Total number of cases.....	195	...
Total number final judgments or decrees.....	...	156
Total continuances .....	...	30
Total removals .....	...	9
	<hr/> 195	<hr/> 195
Applications for writs of error and appeals from		
November 1, 1899, to November 1, 1900.....	239	...
Writs of error and appeals granted.....	...	164
Writs of error and appeals refused.....	...	75
	<hr/> 239	<hr/> 239
Applicants examined for admission to bar.....		
Applicants who passed examination.....	105	...
Applicants who failed to pass.....	...	79
	<hr/> 105	<hr/> 105

This compilation sufficiently evidences the volume and character of the work done by the court, which has been more onerous than usual by reason of the long illness and death of Judge Riely. This distinguished jurist was taken ill in May last, and departed this life August 19, 1900, thus forever suspending his superb contributions to the administration of justice by this bench.

Very respectfully,

A. J. MONTAGUE,  
*Attorney-General.*

