

ANNUAL REPORT

OF THE

ATTORNEY-GENERAL

TO THE

GOVERNOR OF VIRGINIA

FOR THE

YEAR 1903

RICHMOND
J. H. O'BANNON, SUPERINTENDENT OF PUBLIC PRINTING
1903

REPORT

COMMONWEALTH OF VIRGINIA,
OFFICE OF ATTORNEY-GENERAL,
November, 1903.

*To His Excellency A. J. MONTAGUE,
Governor of Virginia:*

SIR:

I have the honor to submit my report covering the transactions of this office during the year ending October 31, 1903.

The cases in which it is made the duty of the Attorney-General to represent the Commonwealth, pending or disposed of during that period, are mentioned under the titles of the courts in which said suits were pending.

CASES IN SUPREME COURT OF THE UNITED STATES.

1. The case of *State of Tennessee vs. State of Virginia* was submitted to the Supreme Court of the United States in May, 1903.

By the decree entered on the 17th day of April, 1900, that court, following its decision in *Virginia vs. Tennessee*, 148 U. S., 503, had established and adopted what is known as the "five chops," or "diamond marked" line, also called the "compact line of 1801-'3," and appointed a commission, consisting of W. C. Hodgkins, A. H. Buchanan, and J. B. Baylor, who were directed to ascertain, retrace, remark, and re-establish said "diamond marked" line. This was done by said commissioners, a careful survey made by them, and their report filed on the 5th day of January, 1903.

The commissioners ascertained and reported that said "diamond marked" line, at the eastern end thereof, terminated on a low eminence, known as "Burnt Hill," situated southwesterly from the actual summit of White Top Mountain, and on a line between that summit and the corner of the State of North Carolina, on the top of Pond Mountain.

They found no marked line between the end of said "diamond marked" line and the North Carolina corner, and they recommended that a straight line between those two points be declared to be the boundary between the State of Virginia and the State of Tennessee. This was necessary in order that the survey might be closed and the entire boundary line between Virginia and Tennessee delineated and established.

A majority of the commissioners reported that the original "diamond marked" line through the city of Bristol passed on the north line of Main street, in said city, from Monument No. 25 to Monument No. 26. Commissioner Baylor found in favor of a straight line from Monument No. 25 to Monument No. 27, on the middle of Main street, and a straight line along the middle of said street to Monument No. 28, which was the line estab-

lished by the compact of 1901, adopted by the Legislatures of the two States and approved by the act of Congress of March 3, 1901.

Some differences arose between Hon. Charles T. Cates, Jr., Attorney-General of Tennessee, and myself, as to the terms of the decree to be entered, he considering it sufficient to confirm the report, and the undersigned insisting that the question presented in the report of the commission and submitted to the court thereby, in respect to the location of the line through the city of Bristol, and also as to the establishment of a new line from the eastern end of the marked line on "Burnt Hill" to the North Carolina corner, on the top of Pond Mountain, should be affirmatively and definitively settled by the decree, so that there could be no possible question upon that subject.

I deemed this especially important, in view of the fact that the representatives of Tennessee had insisted that the "diamond marked" line should be extended easterly to the top of the dividing ridge between the waters of the Holstein and the waters of New river, and thence along said ridge to the North Carolina corner, thus taking an additional area from the State of Virginia and assigning it to the State of Tennessee.

It was important that the location of this line should be finally and distinctly determined, not only so as to determine the rights of Virginia and of Tennessee, and of their citizens, respectively, in reference to the territory involved, but also for the purpose of absolutely and clearly fixing the precise boundary line between the two States, so as to avoid any possible confusion or controversy in reference to the jurisdiction of the two Commonwealths in respect to said territory.

Each of us presented a draft of decree to the court, that which I prepared being accompanied by a memorandum of objections to the draft presented by the Attorney-General of Tennessee. After consideration, the decree, as presented by me, was entered by the court, which decree is in the words and figures following:

This cause came on to be heard on May 18, 1903, on the proceedings heretofore had herein, and upon the report of William C. Hodgkins, James B. Baylor, and Andrew H. Buchanan, commissioners appointed by the decretal order herein of April 30, 1900, to ascertain, retrace, remark, and re-establish the real, certain, and true boundary line between the States of Tennessee and Virginia, as actually run and located from White Top Mountain to Cumberland Gap, under proceedings had between the two States in 1801-1803, and as adjudged and decreed by this court in its decree of April 3, 1893, in a certain original case in equity, wherein the State of Virginia was complainant and the State of Tennessee was defendant, which report is annexed hereto and made part hereof.

And it appearing to the court that said report was filed in this court on the 5th day of January, 1903, and that the same is unexcepted to by either party in any respect; therefore, upon the motion of the State of Tennessee, by her Attorney-General, and

of the State of Virginia, by her Attorney-General, it is ordered that said report be, and the same is, hereby in all things confirmed.

It is thereupon ordered, adjudged, and decreed that the real, certain, and true boundary line between the States of Tennessee and Virginia, as actually run and located under the compact and proceedings had between the two States in 1801-1803, and as adjudged by this court on the third day of April, 1893, in said original cause in equity, wherein the State of Virginia was complainant and the State of Tennessee was defendant as aforesaid, was at the institution of this suit, and now is, except as hereinafter shown, as described and delineated in said report filed herein on January 5, 1903, as aforesaid.

And it further appearing to the court, and it being so admitted by both parties, that since the institution of this suit and the decretal order of April 30, 1900, as aforesaid, a compact was entered into by the States of Tennessee and Virginia, expressed in the concurrent laws of said States—namely, the act of the General Assembly of Tennessee, approved January 28, 1901, entitled “An act to cede to the State of Virginia a certain narrow strip of territory belonging to the State of Tennessee, lying between the northern boundary line of the city of Bristol, in the county of Sullivan, and the southern boundary line of the city of Bristol, in the county of Washington, State of Virginia, being the northern half of Main street, of the said two cities,” and the reciprocal act of the General Assembly of Virginia, approved February 9, 1901, entitled “An act to accept the cession by the State of Tennessee to the State of Virginia of a certain narrow strip of territory claimed as belonging to the State of Tennessee, and described as lying between the northern boundary line of the city of Bristol, in the county of Sullivan, State of Tennessee, and the southern boundary line of the city of Bristol, in the county of Washington, State of Virginia, being the northern half of the Main street of the said two cities.”

And it further appearing that said compact received the consent of the Congress of the United States by joint resolution, approved March 3, 1901, as follows:

“Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That a recent compact or agreement having been made by and between the States of Tennessee and Virginia, whereby the State of Tennessee, by an act of its Legislature, approved January twenty-eighth, nineteen hundred and one, ceded to the State of Virginia certain territory specifically described in said act, and being the northern half of the main street between the cities of Bristol, Virginia, and Bristol, Tennessee, and the State of Virginia, by act of its General Assembly, approved February ninth, nineteen

hundred and one, having accepted said cession of the State of Tennessee, the consent of Congress is hereby given to said contract or agreement between said States fixing the boundary line between said States, as shown by said acts referred to, and the same is hereby ratified."

And said commissioners, in their said report, having ascertained and recommended the straight line from the end of the "diamond marked" or compact line of 1801-1803 to the corner of the States of North Carolina and Tennessee as the true boundary line between the States of Virginia and Tennessee between those two points, the court, approving said recommendation and finding of said commissioners, doth adopt the same.

And the court, being of opinion that it is proper to recognize the line so established by said last-mentioned compact of 1901 as the real, certain, and true interstate boundary line within and between said two cities, and to definitely determine and fix in this cause what is the real, true, and certain boundary line between said States throughout the entire length thereof from the corner of the States of North Carolina and Tennessee, on Pond Mountain, to the corner of Virginia and Kentucky, at Cumberland Gap, doth therefore adjudge, order, and decree that the entire real, certain, and true boundary line between the States of Tennessee and Virginia is the line described and delineated in said report filed herein on January 5, 1903, modified as to so much of said line as lies between the two cities of Bristol, by the aforesaid compact of 1901 between the two States, and as so described, delineated, and modified said boundary line from the said North Carolina corner to the eastern end of the compact line of 1801-1803, known as the "diamond marked" line, and thence to Cumberland Gap, is hereby determined, fixed, and established.

It is further ordered, adjudged, and decreed that the compensation and expenses of the commissioners and the expenditures attendant upon the discharge of their duties be, and they are, hereby allowed at the several sums set forth in their report, as hereinbefore confirmed, and that said charges and expenses, together with all the costs of this suit to be taxed, be equally divided between the parties hereto.

It is further ordered that the clerk of this court do, at the proper charges of the parties to this cause, deliver fifty printed copies of this decree, including said report, to the Attorney-General of each of said States.

Printed copies of this decree and of the report of the said Boundary Line Commission have been filed by me with the Secretary of the Commonwealth and the Register of the Land Office, and have been forwarded to the clerks of the county courts, respectively, of the counties of Lee, Scott, Washington, and Grayson, and of the Corporation Court of the city of Bristol.

I have also procured from the United States Coast and Geodetic Survey, and paid for out of a small fund of twelve dollars and sixty-five cents remaining out of the deposit of the State of Virginia on account of her costs in the case, six (6) full sets of blue-print copies of the survey or maps returned by the said commission with their report, showing precisely the State line as established by said court. One full set of these blue-print maps will be sent to each of the above-mentioned county courts, and one copy will be filed with the Secretary of the Commonwealth, and the other with the Register of the Land Office.

Thus has been finally ended a controversy of long standing and of very considerable interest to the Commonwealth. The result is by no means satisfactory, for in many respects it has worked injury to the State, and to persons claiming under her grants; but, in so far as this is the case, it is the result of the action of the Legislatures of 1801-'3, in giving the assent of Virginia to a compact which deprived her of a large and valuable portion of her territory, to which her title prior to that transaction could not have been successfully attacked. And the main question involved was finally settled adversely to the State of Virginia by the decision of the Supreme Court of the United States in the suit of *Virginia vs. Tennessee*, 148 U. S., 503.

2. The next case argued in this court was the case of *The Douglas Company vs. Stone*, late Treasurer of Smyth county, involving the right of the Treasurer of Smyth county to sell the timber on a tract of land claimed by the appellant, to satisfy certain unpaid State and county taxes for which the land was returned delinquent. This case was fully argued by counsel for the appellant and by the undersigned for the Commonwealth, on the 13th day of October, 1903. As yet, no decision has been handed down.

3. The next case argued in the said court was that of *The People's National Bank of Lynchburg vs. Morton Marye*, Auditor of Public Accounts of Virginia.

This case is one of great interest and importance to the State, as it involves the validity of her taxation of the shares of stock of national banks, under her tax laws, from 1890 to 1903. A number of banks in the State have withheld such taxes, by reason of the injunction awarded in this suit and in similar suits brought by three other banks, all of which await the decision in this test case.

This case was fully argued in printed briefs by counsel on each side, and also orally on the 14th day of October, 1903. A decision will probably be handed down within the next few weeks.

EXTRAORDINARY LITIGATION IN THE UNITED STATES COURTS.

CASES PENDING IN THE SUPREME COURT OF THE UNITED STATES.

1. *William H. Jones and others vs. A. J. Montague*, Governor of Virginia, and others, constituting the Virginia State Board of Canvassers. Action at law for a writ of prohibition.

2. *William S. Selden and others vs. Same Defendants*. Suit in equity for an injunction.

These two suits were instituted for the purpose of having Article II. (the suffrage article) of the Constitution of the State adopted by the Convention of 1901-'2, and the whole of said Constitution and Registration Ordinance adjudged to be invalid and void, and, for this purpose, among other things, to prohibit and enjoin the Virginia State Board of Canvassers from canvassing the returns of the election for Congressmen, held on the 4th day of November, 1902, and issuing certificates to the candidates who were then elected.

The services of Frank W. Christian, Esq., of the Richmond Bar, were engaged by the State Board of Canvassers as counsel for the said board and for the Commonwealth with me in these cases.

The cases were set for hearing at Richmond on the 29th day of November, 1902, before the Chief Justice of the United States and the Hon. Edmund Waddill, Jr., United States District Judge for the Eastern District of Virginia, upon an application for a writ of prohibition in the one case and an injunction in the other, and were argued by counsel for the complainants and by Mr. Christian and myself. Whereupon, for reasons stated in the record by the learned judges, the applications of the complainants were denied and both suits dismissed. An appeal was thereupon taken by the complainants, in both cases, to the Supreme Court of the United States, where both suits are now pending, and will be submitted and argued at the earliest date practicable.

CASES PENDING IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

1. Edgar Poe Lee *vs.* A. J. Montague, Governor of Virginia; John S. Barbour and other members of the late Constitutional Convention, residing in the said Eastern District of Virginia, who voted to promulgate the Constitution, and James H. Bradley and others, registration officers of Jackson Ward, in the city of Richmond, defendants.

This is an action at law, pending in the said court at Richmond, the plaintiff claiming \$5,000 damages, and alleging a conspiracy between the defendants to deprive the plaintiff and other citizens of the State of their right to vote, by the adoption and promulgation of the Constitution and Registration Ordinance, which are claimed to be invalid and void acts.

2. Anthony S. Pinner *vs.* A. J. Montague, Governor of Virginia, the same members of the Constitutional Convention, and J. Frank Coleman and others, Judges of Election for Huntersville Precinct, in Norfolk county, defendants.

This is a suit similar to the one just described, but is pending at Norfolk.

Both cases were brought to test the validity of the Constitution and of the suffrage article thereof.

3. John E. Brickhouse *vs.* Gallup and others, Judges of Election. Action at law for damages, pending at Norfolk.

This is an action brought by the plaintiff against the defendants upon the averment that he was a duly registered voter of the State, and was wrongfully deprived of his right to vote by the defendants at the election held for Congressmen on the 4th day of November, 1902; and the suit is

based upon the allegation that the Constitution and Registration Ordinance, under which the defendants acted in conducting said election, are void instruments.

In all of these cases, pursuant to the acts of the General Assembly, approved December 20, 1902, and April 30, 1903, Frank W. Christian, Esq., has been retained as counsel with me for the defendants, and R. C. Marshall, Esq., Commonwealth's Attorney of Norfolk county, was retained by me as local counsel in the last-named suit, the defendants in which are citizens of that county.

Demurrers and pleas have been filed to the declarations in these cases, the issues presented by the pleadings which will be argued, and the decision of which will probably be a final determination of the cases, though some of them will almost certainly, and all of them probably, be ultimately carried to the Supreme Court of the United States.

In this connection, I desire to acknowledge the exceedingly valuable services rendered by my associate, Mr. Christian, in the preparation of the pleadings in all of these cases, and in the argument of those which have already been heard.

OTHER CASES PENDING IN THE UNITED STATES COURTS.

1. The case of Commonwealth of Virginia *vs.* Thomas L. Felts, indicted in the County Court of Wythe for the murder of Walter L. Vaughan. The case was removed to the United States Circuit Court at Lynchburg, under section 643 of the U. S. Rev. Stat., as amended by the act of February 8, 1894.

This case, and several other like cases still pending in the United States Circuit Court for the Western District of Virginia, were fully discussed in my last annual report. The difficulties and embarrassments, preventing any fair trial of these cases in the United States courts, I have fully presented in that report.

By chapter 67 of the Acts of the General Assembly of Virginia, 1902-'3, it was made the duty of the Attorney for the Commonwealth for the county or city from which any such case was removed into the United States courts to follow and prosecute the case before the Federal tribunal, and the Attorney-General was authorized to appear with the Commonwealth's Attorney, if he could do so without interfering with the discharge of other duties imposed upon him by law.

I was unable to be present at the last two terms of the United States Circuit Court at Lynchburg; but the Commonwealth was efficiently represented in the Felts case by H. M. Heuser, Esq., Commonwealth's Attorney for Wythe county. The Commonwealth was ready, and pressed for trial at the September term of the United States Circuit Court at Lynchburg; but, by reason of the absence of some of his witnesses, the defendant obtained a continuance. This is not remarkable, in view of the fact that Felts had summoned seventy-two witnesses, some of them living in parts of the United States remote from the place of trial.

2. In the case of Commonwealth of Virginia *vs.* A. H. Staples and others,

removed from the County Court of Patrick to the United States Circuit Court at Danville, J. M. Hooker, Esq., Commonwealth's Attorney for Patrick county, has represented the Commonwealth with fidelity and ability.

CASES IN THE STATE COURTS.

SUPREME COURT OF APPEALS OF VIRGINIA.

The following cases have been argued and submitted:

1. *Anderson vs. Commonwealth*. From County Court of Campbell. Argued at the November term, 1902. Reversed.

2. *Goldman vs. Commonwealth*. From Corporation Court of Roanoke city. Argued at November term, 1902. Reversed.

3. *Adams, Treasurer vs. John Stewart Walker & Co.* From Corporation Court of Lynchburg city. The case was submitted on brief at the November term, 1902, and was decided in favor of the Commonwealth, and reversed.

4. *Curtis, Sheriff vs. Morton Marye, Auditor of Public Accounts of Virginia*. Petition for mandamus. Submitted on petition and answer, March 16, 1903. Mandamus refused.

5. *The City of Petersburg vs. The Board of Public Works*. Petition for mandamus. Submitted on petition and answer in February, 1903. This case has never been decided, because The Board of Public Works, pursuant to the new Constitution, went out of existence on the 1st day of March, 1903.

6. *John Taylor vs. Commonwealth*. From County Court of Augusta. This case involved the validity of the Constitution, which was promulgated by the Convention of 1901-'2, and was submitted on the brief of Hon. A. C. Braxton and myself at Wytheville on June 2, 1903. The case was affirmed, the court deciding that said Constitution is the fundamental law of this Commonwealth. I beg here to make my acknowledgments of the very valuable services which were rendered in this case by Hon. A. C. Braxton, of Staunton, and which were freely and generously given to the State.

7. *Litton vs. Commonwealth*. From County Court of Washington. Argued June 2, 1903. Affirmed.

8. *William Jones vs. Commonwealth*. From Corporation Court of Danville city. Error was confessed by me on behalf of the Commonwealth on June 2, 1903, and request was made that the judgment of the lower court be reversed and the case remanded for a new trial. Reversed.

9. *Albert B. Young vs. Commonwealth*. From the County Court of Clarke. This case involved the validity of the act of the General Assembly prohibiting the use of "trading stamps," &c. Submitted on briefs at September term, 1903. The act was declared invalid, and the case reversed.

The cases now pending in this court are:

1. *Ellinger vs. Commonwealth*. From Circuit Court of Accomack county. To be argued at the November term, 1903.

2. *Commonwealth of Virginia and County of Amherst vs. Indiana F. Williams' Executor*. From Circuit Court of Amherst county. To be argued either in January or March, 1904.

3. *Lewis vs. Commonwealth*. From Corporation Court of Norfolk city. To be argued at November term, 1903.

4. *Atlantic Coast Line R. Co. and others vs. Commonwealth*. From the State Corporation Commission. To be argued in March, 1904. This case involves questions of novelty and of very great importance to the State. The appellants are seeking relief from the order entered by the State Corporation Commission, fixing demurrage rates, and are represented by many of the ablest lawyers in the Commonwealth. The case will probably go to the Supreme Court of the United States.

5. *Taylor vs. Commonwealth of Virginia and Colonial Water Company*. From Circuit of Richmond city. To be argued in March, 1904.

6. *City of Petersburg vs. State Corporation Commission*, defendant substituted in the place of The Board of Public Works. Petition for mandamus as set forth in No. 5 of cases "argued and submitted."

CIRCUIT COURT OF CITY OF RICHMOND.

AT LAW.

1. *Commonwealth vs. Bennett Taylor*, Clerk Albemarle county. Suit instituted June, 1881.

2. *Commonwealth vs. Joseph Mayo, Jr.*, late Treasurer, et als. Suit instituted April, 1884.

3. *Commonwealth vs. Same*. Another suit instituted April, 1884.

4. *Commonwealth vs. John F. Jones*, Treasurer Craig county, et als. Suit instituted October, 1886.

5. *Commonwealth vs. Same*. Another suit instituted October, 1886.

6. *Commonwealth vs. Bennett Taylor*, Clerk Albemarle county. Suit instituted October, 1886.

7. *Commonwealth vs. G. H. Baughman et als*. Suit instituted November, 1886.

8. *Commonwealth vs. John H. Sears*, Treasurer Mathews county. Suit instituted April, 1887.

9. *Commonwealth vs. G. R. Barr*, Treasurer Washington county. Suit instituted April, 1887.

10. *Commonwealth vs. C. H. Ingles*, Treasurer Henry county, et als. Suit instituted October, 1886.

11. *Commonwealth vs. Same*. Instituted May, 1887.

12. *Commonwealth vs. Same*. Instituted also May, 1887.

13. *Commonwealth vs. O. B. Thomas*, Treasurer Fluvanna county, et als. Suit instituted February, 1888.

14. *Commonwealth vs. W. M. Gray and J. J. Gusler*, Washington county. Suit instituted February, 1889.

15. *Commonwealth vs. O. D. Foster and R. W. Adams*. Suit instituted March, 1892.

16. *Commonwealth vs. A. K. Phillips et als*. Suit instituted March, 1892.

17. *Commonwealth vs. Mary B. Randolph's Adm'x*. Suit instituted March, 1893.

18. *Commonwealth vs. C. R. Randolph*. Suit instituted March, 1893.
19. *Commonwealth vs. C. H. Ingles*, Treasurer Henry county, et als. Suit instituted October, 1893.
20. *Commonwealth vs. Board of Supervisors of Russell county*. Suit instituted October, 1899.
21. *Commonwealth vs. Board of Supervisors of Bedford county*. Suit instituted October, 1899.
22. *Commonwealth vs. H. L. Stone and sureties*. Motion for judgment, which was duly docketed October 15, 1900.

AT EQUITY.

1. *Commonwealth vs. Samuel M. Page*. Suit instituted March, 1872.
2. *Commonwealth vs. Walter Millan*. Suit instituted April, 1872.
3. *Commonwealth vs. P. H. Huffman et als.* Suit instituted April, 1873.
4. *Commonwealth vs. J. W. Grantham*. Suit instituted December, 1874.
5. *Commonwealth vs. James Hilton's Adm'r.* Suit instituted April, 1879.
6. *Commonwealth vs. Martha Goode, &c.* Suit instituted April, 1879.
7. *Commonwealth vs. Spencer D. Ivey, &c.* Suit instituted April, 1879.
8. *Commonwealth vs. J. T. Young*. Suit instituted August, 1884.
9. *Commonwealth vs. A. A. Chapman*. Suit instituted February, 1893.
10. *Commonwealth vs. George Dusner's Curator and Adm'r.* Suit instituted March, 1897.
11. *Commonwealth vs. B. Vandegrift et als.* Suit instituted February, 1898.
12. *T. H. Martin vs. Commonwealth et als.* Suit instituted January, 1902.
13. *George B. Stone, Adm'r of Bernard P. Green, and Frank D. Wynn, Adm'r of John A. Parker vs. Commonwealth.* Suit instituted August, 1903, to recover \$172,358.26 from the Commonwealth on account of commissions claimed to be due the complainants in the matter of the settlement of the debt due the State of Virginia by the United States.

The foregoing are the cases now pending in the Circuit Court of the city of Richmond, in which the Commonwealth is represented by the Attorney-General.

Many of these cases have been pending for years, as may be seen. Most of them involve matters of no great moment—some of them of no interest whatever—to the Commonwealth. I shall seek to have a great number of these cases either pressed for hearing or stricken from the docket at some early date.

The following embrace the more important opinions on questions of general or special interest, given in writing during the year. They do not embrace a much larger number of opinions given to the Auditor of Public Accounts and other officers of the State government and to many citizens and local officials—most of them given orally, from day to day, as the questions passed upon from time to time arose:

I. OPINIONS RELATING TO THE REGISTRATION ORDINANCE AND THE SUFFRAGE
ARTICLE OF THE CONSTITUTION.

LEXINGTON, VA., July 8, 1903.

Hon. E. H. LOVELL,

Locust Dale, Madison County, Va.:

MY DEAR SIR:

Yours of the 4th this instant received here. Your construction of the provisions of the Registration Ordinance and the Constitution referred to is, I think, clearly right. Section 31 of the Constitution refers and applies only to election officers appointed after January 1, 1904. A supervisor or other district officer can hold the office of member of a board of registration appointed under the Registration Ordinance.

While this is the case, I deem it proper to say that as a matter of propriety, no one who is a candidate for any office to be filled at the next November election should, in my opinion, act as a member of the Board of Registrars who will, prior to said election, make up the roll of voters who are to vote at such election.

While I know of no law which renders a candidate for office ineligible for service as a member of Board of Registrars, any man who acts in such a capacity, after he becomes a candidate for an office which is to be filled in large measure by the citizens whose names are registered by the board of which he is a member, will be apt to subject himself to just and severe criticism.

Thanking you for your kind expressions as to my health, which I am glad to say is much better, I am,

Very sincerely yours,

WILLIAM A. ANDERSON.

LEXINGTON, VA., July 14, 1903.

Mr. S. T. THOMAS,

*Member of Board of Registrars,**Long Branch Magisterial District, Snead, Va.:*

DEAR SIR:

The question as to what is a man's legal residence is one of intention; but it is also a question of fact. If the men you refer to left their homes in your county to go to West Virginia for a temporary purpose, with the fixed intention to return to their homes in Virginia after that purpose was accomplished, they did not lose their citizenship in Virginia, and would have now a right to be registered, provided they are otherwise qualified as voters under Article II. of the Constitution.

If, however, they left Virginia without the purpose of returning, and for any reason abandoned their homes in Virginia, going to West Virginia for the purpose of residing there indefinitely, they have lost their citizenship in Virginia, and will have to live in this State two years before they would be entitled to vote.

It is difficult to decide a question such as you submit without a fuller

statement of the facts than you have given me. Each case has to be decided according to the facts, and ought to be decided according to the right of the individual case, and the Boards of Registration are vested with a proper discretion for this purpose.

Very truly yours,

WILLIAM A. ANDERSON.

LEXINGTON, VA., August 3, 1903.

GEORGE N. CONRAD, *Esq.*,

Commonwealth's Attorney, Harrisonburg, Va.:

DEAR SIR:

Your favor of the 29th ultimo, forwarded from Richmond, has been received here. I am at a loss to know how I could be credited with an opinion so contrary to the express provisions of the Registration Ordinance as the one reported to you. That does not require the Boards of Registrars to sit for ten days during the year 1903. It merely requires each board to sit at least one day in *each precinct*, and *not exceeding* in the aggregate ten days in each magisterial district or ward.

If the registration can be completed by a session of one day in each precinct in the district or ward, that will suffice. Of course, the time may be extended by the Judge of the County or Corporation Court on application by the Board of Registrars.

Section 2 of the Registration Ordinance is so clear in its provisions as to the time when the Boards of Registrars must sit, and the time during which they may sit, as to require no interpretation.

Very truly yours,

WILLIAM A. ANDERSON.

LEXINGTON, VA., August 13, 1903.

WALTER U. VARNEY, *Esq.*,

Secretary Alexandria County Democratic Committee,

Alexandria, Va.:

DEAR SIR:

It gives me pleasure, as far as it is proper for me to do so, and as a matter of courtesy, to give your committee any assistance I can in reaching a correct answer to the questions you propound.

I could not, of course, undertake to decide as to the right of any citizen to vote in any particular case. That is the duty of the officers of election under the control of the courts.

I will, however, state the principles and the law which controls in the decision of these questions:

1st. Residence is a question of *intention*, but is also a question of *fact*. As a rule, a man's legal residence is where his home is. He does not lose his legal domicile by going away from his home, or place of residence, for the purpose of living in some other place *temporarily*, and with the intention of returning to and resuming his residence at his home as soon as the purpose of such temporary absence has been accomplished. If he leaves his

home and goes to reside indefinitely in another place, without any intention of returning to his former home, and he acquires a residence in the place to which he removes, he loses his right to vote in the place from which he has removed, and should register and vote in that in which he made his residence. The fact that he still owns property in the place from which he has removed, or that he stays there for a month or two each year, will not give him a right to vote there. The question is, Did he give up his residence there *temporarily* or *indefinitely*? If he gave it up merely temporarily, with the fixed purpose at the time of resuming his residence there at some future period, when the purpose of the temporary absence should have been accomplished, then he has not lost his legal domicil and right to vote in the place from which he has thus temporarily removed. The absence may be for a year, or several years, if there is the fixed intention of returning. For instance, a man may go on a trip to Europe, or accept an office or employment for a term of years outside of his city or county, and take his family with him, with the intention of going back to his home after the journey or the term of employment shall be ended, and he will not lose his citizenship or right to vote in the place from which he has so removed for such temporary purpose. The question of residence is one of the most fruitful sources of controversy and discussion. In every instance it has to be settled according to the facts and circumstances of each particular case. It is the duty of the election officers to decide each case according to the very right of that case, in discharging which duty they are vested under the law with a just discretion. It would be impossible for any one to properly decide a case like that of A. S. D. without examining him in person as to the facts of his case, or having a much fuller statement of those facts than could be well gotten by correspondence.

2d. The above principles apply also to the case of W. P. V., though I will say as to his case that, *unless there are some material facts to vary his status not mentioned by you*, he is clearly entitled to vote at the precinct in which he resided in Alexandria county, *provided his residence in Alexandria city is temporary and was begun with the fixed purpose of returning to the county*. A subsequent declaration of an intention to retain his domicil in Alexandria county will not suffice. He must have had the definite intention of returning there to live at the time he leaves the county.

3d. I know of no provision in the Constitution, Registration Ordinance, or statutes of the State which renders A. B. ineligible for office, even at the election to be held in November. It would, of course, be improper for a man who is a candidate for an office to be filled by the votes of the electorate whose enrolment is in part determined by himself to be a candidate for an office to be filled by that electorate, particularly in the case of a contest for the office; and such a candidate would render himself obnoxious to severe criticism; but this would not apply to a member of a Board of Registrars who, *in good faith*, did not decide to become a candidate until after the registration was finally closed, and then for the first time determined to stand for

office to be filled at the next election. Whatever the facts may be as to this, he is under no legal disability.

Very truly and respectfully yours,

WILLIAM A. ANDERSON.

LEXINGTON, VA., August 13, 1903.

WALTER E. BEARD, *Esq.*,

Moffatt's Creek, Augusta County, Va.:

DEAR SIR:

Replying to your inquiries, in due order, I beg leave to say that:

1. Any registered voter who moves from one county to another county is entitled to be registered in the county to which he moves, provided that at the next general election he will have resided for twelve months in the county to which he removes. For instance, a registered voter of Rockbridge county, who moved to Augusta on or before November 3, 1902, will be entitled, upon a proper transfer, to be registered in Augusta county, and to vote at the election to be held on Tuesday, the 3d of November, 1903. See section 26 of the Constitution.

2. By section 35 of the Constitution, no person can vote at any "*legalized* primary election" for the nomination of any candidate for office unless he is at the time of such election registered and qualified to vote at the next succeeding election.

If the primary you refer to is a legalized primary, the registered voter moving from one precinct to another at any time more than thirty days before the regular election must have been transferred and registered in his new precinct before he can vote at such legalized primary.

If it is not a legalized primary, but a party primary, as is, I presume, the case, the question would be determined by the regulations and plan of primary election adopted by the party conducting it. I am not the person to decide the question in such case; but I know of no regulation of the Democratic or of the Republican party of Virginia which would deprive such a voter of his vote at a party *unlegalized* primary. He is a qualified voter, and all that is needed to entitle him to vote is to have his name transferred in due time before the next election.

Very truly yours,

WILLIAM A. ANDERSON.

In the second case you mention, I presume the local party committee would be the proper tribunal to decide the question, and if there is objection to their decision, appeal could be taken to the State committee of the political party. It is a question, I think, of party law—not of State, statutory or common law.

W. A. A.

LEXINGTON, VA., September 14, 1903.

GEORGE N. CONRAD, *Esq.*,

Commonwealth's Attorney for Rockingham County.

Harrisonburg, Virginia:

DEAR SIR:

In reply to your letter of the 10th instant, I beg leave to say that the

several Boards of Registrars organized under the Registration ordinance are practically *functus officio* after they shall have sat for the appointed time for the registration of voters in their respective districts or wards prior to the 15th of October, 1903, and shall have closed such registration as prescribed in the ordinance, unless their sitting shall be renewed and extended by an order of the judge of the county or city court in the manner provided in said ordinance.

Said boards are not empowered to register voters except when sitting as a board, and are certainly not authorized to add to the rolls of voters registered by them any names, either upon transfers or otherwise, after the registration of voters has been completed and certified by them.

The matter of the enactment of a law governing in all its necessary details the subject of the transfer of voters whose names have been registered upon the permanent rolls was left by the Convention and the registration ordinance to the General Assembly, but so far no act in regard thereto has been, so far as I can discover, passed by the Legislature.

It is clear that under the registration ordinance the Boards of Registrars cannot register any voter upon a transfer when such boards are not sitting in regular session.

Any person who loses his vote on this account, will, as so often occurs, lose it because he has been too late in making his application.

I am glad to know that in this conclusion I am supported by the views so clearly and strongly presented in your letter.

Very truly yours,

WILLIAM A. ANDERSON.

October 9, 1903.

Hon. D. Q. EGGLESTON,

Secretary of the Commonwealth,

Richmond, Virginia:

DEAR SIR:

In reference to the lists to be furnished by county and city treasurers, after January 1, 1904, of the persons who have paid State poll taxes in their respective counties and cities—

In response to the enquiry submitted on behalf of the county and city treasurers and clerks of the circuit and corporation courts of the Commonwealth, I beg to say:

By Section 38 of the Constitution each of these treasurers is required, after the first day of January, 1904, and at least five months before each regular election thereafter held in his county or city, to file with the clerk of the circuit court of his county, or of the corporation court of his city, "a list of all persons in his county or city who have paid, not later than six months prior to such election, the State poll taxes *required by this Constitution* during the three years next preceding that in which such election is held."

The first State poll tax required by the present Constitution is that levied for the year 1903. So that the only poll taxes to be included in the lists to

be furnished by said treasurers in 1904 will be the State poll tax levied and payable in 1903.

The lists to be so furnished in the year 1905, at least five months prior to the general election to be held in that year, must embrace the State poll taxes for 1903 and 1904.

The lists to be so furnished in 1906 must embrace the State poll taxes for 1903, 1904, and 1905.

And after 1906 each of said lists must embrace the State poll taxes paid for the next preceding three years.

Hoping that I have made myself clearly understood as to what is the plain meaning and effect of this provision of the Constitution, I am

Very truly yours,

WILLIAM A. ANDERSON,
Attorney-General.

II. OPINIONS RELATING TO OTHER PROVISIONS OF THE CONSTITUTION.

November 26, 1902.

Hon. JOSEPH E. WILLARD,

President of the Senate:

SIR:

The resolution adopted by your honorable body on the 25th instant has just reached me, and in response thereto I beg leave to say:

The matter of the mileage of members and officers of the General Assembly is not affected by the new Constitution, but is controlled by the laws in force prior to its adoption.

The Constitution is silent upon the subject of the mileage of the members of the General Assembly, though Section 45 prescribes the mode in which their compensation shall be fixed.

Section 20 of the Schedule expressly fixes the compensation of the members and officers of the General Assembly during your present extraordinary session, and sanctions the payment to them of "the mileage provided by law."

Section 1 of the Schedule continues in force all of the statute laws of the State in operation at the time that the Constitution went into effect, "so far as not repugnant thereto or repealed thereby."

The second subdivision of Section 184 of the Code provides that "the members of the General Assembly shall each" receive "ten cents per mile for every mile of necessary travel to and from the place of meeting of the General Assembly, to be computed according to the nearest mail route." This statute is neither repealed by nor repugnant to any provision of the Constitution, and therefore is still in force.

As the General Assembly possesses all legislative powers which are not expressly or by implication denied to it by the provisions of the Constitution, and as the Constitution is silent in reference to the mileage to be paid to the members and officers of the General Assembly, it is evident that the Legis-

lature has the same power over that subject that it had prior to the adoption of the new Constitution.

Respectfully submitted,

WILLIAM A. ANDERSON,
Attorney-General.

November 26, 1902.

Hon. JOSEPH E. WILLARD,

President of the Senate:

SIR:

The questions submitted in the following resolution adopted by the Senate on the 20th instant have been considered:

SENATE RESOLUTION.

Whereas, section 189 of the Constitution of Virginia, among other things, provides, "but the General Assembly, during such period of four years, in addition to making annually an appropriation for pensions not to exceed the last appropriation made for such purpose prior to September 30, 1901, may levy annually a special tax for pensions on such real and personal property of not exceeding five cents on the hundred dollars of the assessed value thereof;"

And whereas, the last appropriation made for such purpose prior to September 30, 1901, was the amount of \$135,000;

Now, therefore, be it resolved, That the Attorney-General of this Commonwealth, be, and he is hereby, requested to furnish to the Senate, as soon as may be, his opinion in writing as to the true interpretation and meaning of the clause above recited, and especially,

(1) Whether the authority given to levy the special tax aforesaid is general or for only such sum in excess of \$135,000 as may be appropriated, within the limitation of five cents;

(2) Whether the General Assembly has the power to devote any part of the funds raised by said special tax to the amount appropriated for pensions last prior to September 30, 1901, to-wit, \$135,000; and

(3) Whether the true intent and meaning was a constitutional appropriation of \$135,000 for pensions, with power to the General Assembly to increase that amount from the proceeds of a special tax.

And I have the honor to submit the following answers to the enquiries propounded:

Response to Question 1.—It is clear that the authority given to levy a special annual tax of not exceeding five cents on the hundred dollars of taxable property in the State is specific, and can only be exercised for the purpose of raising a fund in excess of the sum of \$135,000 (which latter sum is to be raised from the other sources of revenue of the State). The effect of this clause of the Constitution is to limit this tax to the specific purpose expressed.

Response to Question 2.—The provisions of the section now being considered appear to me to be entirely prospective in their operation, and not to authorize the General Assembly to levy this special tax for the purpose of

paying pensions which may have accrued in the past and under former legislation. This seems to be a fair construction of the language used in this section.

Response to Question 3.—The meaning and effect of this provision is not, in my opinion, to make a constitutional appropriation of any specific sum whatever, but to empower the General Assembly to annually levy a special tax of not exceeding five cents on the hundred dollars of taxable values for the exclusive purpose of meeting such appropriations to pensions as the General Assembly may make in excess of \$135,000 per annum.

Respectfully submitted,

WILLIAM A. ANDERSON,
Attorney-General.

December 22, 1902.

W. H. POWER, *Esq.*,

Attorney for the Town of Phoebus, Virginia:

DEAR SIR:

At your request, I have examined your opinion, dated December 12, 1902 (a copy of which you have shown me), in the matter of the application of the Hampton Roads Railway and Electric Company for an extension of their franchise for one year from January 1, 1903, to January 1, 1904.

I agree with you that such an ordinance would be a violation of the requirements of section 125 of the Constitution of Virginia, which prohibits any municipality from granting any such franchise or privilege (except for a trunk railway) "for a term of years," except after due advertisement and receiving public bids therefor in such manner as may be prescribed by law, and provides that after such advertisement and so receiving such bids the municipality shall then act as may be required by law.

No law has yet been enacted, prescribing in what manner such advertisement shall be made, such bids received, and what action shall be taken thereupon in order to enable the proper authorities of any municipality to make a valid grant of a franchise, and until some such statute shall be adopted by the General Assembly it will not, in my opinion, be competent for the authorities of any town or city in the State to grant any franchise, lease or right of any kind to use the public property of such municipality (except for a trunk railway) for any term of years, and the period of one year is within the language and meaning of the section referred to.

Questions similar to the one you present have been submitted to me on behalf of the representatives of other cities and towns in the State, and, being questions of public and general interest, I have, in respect to them, departed from the rule adopted by my predecessors and myself,—not to give opinions upon the questions affecting the duties and powers of municipal officers or the rights of municipalities. It is to be observed, however, that the opinion of the Attorney-General in such cases is merely advisory, is not binding on anybody, and that, after all, questions of this kind are questions which can only be decided by the courts.

Very truly yours,

WILLIAM A. ANDERSON.

January 8, 1903.

*Hon. JOSEPH E. WILLARD,**President of the Senate:*

SIR:

In response to the resolution adopted by the Senate on the 5th, and communicated to me on the 6th instant, I have the honor to say that, by section 110 of the Constitution (not Section 119, as recited in the resolution), commissioners of the revenue are made county officers.

They are to be elected or appointed in such manner as the General Assembly may provide.

There is no doubt but that it is competent for the General Assembly to require that these officers shall be chosen by the qualified voters of each county.

I am strongly inclined to the opinion that in case the General Assembly shall provide that they shall be chosen by election by the people, then they must be elected by the qualified voters of each county.

There is no suggestion or intimation in this section that they may be chosen by the qualified voters of a district, or of any other political subdivision of a county.

This question, however, is not entirely free from difficulty, and is one which can, perhaps, only be finally settled by the courts.

Very truly and respectfully,

WILLIAM A. ANDERSON,
Attorney-General.

January 8, 1903.

*Doctor H. B. FRISSELL,**Secretary Board of Trustees.**Hampton Normal and Agricultural Institute, Hampton. Va.:*

DEAR SIR:

Your favor of the 3rd instant received.

Responding to the request of your board, I take pleasure in giving my construction of the last sentence of sub-section (d) of section 183 of the Constitution, in the particulars which you mention.

1. The word "community" as used in that section I think is about equivalent to the word "neighborhood." It would, I think, include the town of Hampton and the country in the immediate vicinity of your school. I do not think that it would include the city of Newport News, or any locality outside of Elizabeth City county. Indeed, I do not think that it would include any part of Elizabeth City county except that in the vicinity, or say within two or three miles of your school. In other words, in my opinion, this section ought to be construed liberally, and the word "community" when used in the connection in which it is used in this section would be given a limited and restricted meaning. In a densely populated locality like Elizabeth City county, the word "community" would, as a rule, embrace a much smaller area than would be the case in a more sparsely settled region.

2. I do not think that the "*manufactured articles*" mentioned in this sec-

tion include, or were designed to include, farm or dairy products, such as eggs, milk, and butter.

3. The business of keeping a boarding-house or hotel does not come within the meaning of this section at all, though, if such a business is conducted upon your premises, it will probably be liable to pay the ordinary license tax imposed by the tax laws of the State upon that business. Whether it is so liable or not, is a question, however, which will be decided by the Auditor of Public Accounts, and I would not be prepared to advise him without further investigation as to whether there be such liability or not. I only mean to say that the business of keeping a boarding-house or hotel upon the property of your school is not affected in any way by the new Constitution.

4. I do not think that publishing your school paper, "The Southern Workman," and receiving advertisements and subscriptions from parties residing or doing business in the community, comes within the meaning of the language used in said subdivision (d) of section 183.

I have the honor to be, with my very best wishes for the success of your school and for your personal welfare in the new year,

Yours very truly,

WILLIAM A. ANDERSON,
Attorney-General.

March 24, 1903.

To Hon. JOSEPH E. WILLARD.

President of the Senate of Virginia:

SIR:

The following resolution of the Senate has been submitted to me:

"Whereas, there is a doubt upon the minds of many citizens of this State as to the right of the registration boards appointed by the Constitutional Convention to register voters at this time; and whereas, it is desirable that all such doubts shall be settled:

Therefore, be it resolved by the Senate of Virginia, That the Attorney-General of the Commonwealth be, and he is hereby, requested to investigate the question and submit his opinion to the Senate."

In response thereto, I have the honor to say that, in my opinion, a legal registration of the qualified voters of the Commonwealth can be made under the Registration Ordinance adopted by the Constitutional Convention at any time prior to October 15th during the year 1903, provided the notice of the times and places where each registration board will open the books of registration is given, and the registrations conducted in the manner prescribed in said ordinance. Said boards are expressly authorized and required to sit consecutively, or at such intervals of time as they may prescribe, and may sit for as many as ten days during the year 1903, and on such additional days as they may be expressly authorized to sit by the judge of the county court of their county, or of the corporation court of their city; but they are directed to complete each registration by the 15th of October, and must deliver one of the duplicate copies of the registration books, in which they are required to

enroll the voters registered by them, to the judges of election for the appropriate precinct, a reasonable time before the election to be held in 1903.

The registration for 1903 may, subject to the foregoing limitations, be lawfully made at such times as the respective boards of registration may fix.

Respectfully submitted,

WILLIAM A. ANDERSON,

March 27, 1903.

Opinion of the Attorney-General, in response to resolution of the Senate, in regard to the terms of office and election of school trustees.

Hon. JOSEPH E. WILLARD,

President of the Senate of Virginia:

SIR:

The resolution of the Senate, of which the following is a copy, has reached me:

Be it resolved by the Senate of Virginia, That the Attorney-General be, and he is hereby, directed to inquire, ascertain and report to this body, whether, under section 11 of the Schedule of the new Constitution, school trustees now in office will remain in office until the General Assembly has provided by law for their election or appointment, or, without such action, whether, upon the expiration of the terms of trustees in office when the Constitution took effect, such trustees should be elected under the law in force prior to the day on which the Constitution went into effect.

By section 11 of the Schedule to the Constitution, it is provided that,—“School trustees now in office, or their successors, shall remain in office until otherwise provided by law.”

Section 133 of the Constitution provides that,—“In each school district there shall be three school trustees, selected in the manner and for the term of office prescribed by law.”

Section 1 of the Schedule enacts that,—“The common law and the statute laws in force at the time this Constitution goes into effect, so far as not repugnant thereto or repealed thereby, shall remain in force until they expire by their own limitation, or are altered or repealed by the General Assembly.”

Section 11 of the Schedule merely continues in office the school trustees in office when the Constitution was adopted, and their successors. It does not declare how vacancies in the office of school trustees shall be filled, or how their successors shall be chosen.

The statute law of the State did plainly provide for filling vacancies in those offices, and for the selection of the successors thereto upon the expiration of existing terms.

This statute is not repealed by, nor repugnant to, any provision of the Constitution, and is, therefore, continued in force by Section 1 of the Schedule until altered or repealed by the General Assembly.

From which it follows that vacancies in the office of school trustees are

filled, and their successors at the end of their present terms of office will be chosen, in the manner provided by the laws in force at the date of the adoption of the present Constitution, unless and until those laws shall be "altered or repealed by the General Assembly."

While such is, I think, a reasonable conclusion as to the true intent, meaning and effect of the several provisions of the Constitution and Schedule referred to, when construed together, yet the sentence quoted from section 11 of the Schedule, taken by itself, is readily susceptible of a different construction.

Any doubt or uncertainty upon such a subject would be unfortunate, and can, and I respectfully suggest should, be removed by the enactment of a law expressly prescribing when the term of office of school trustees in office when the Constitution took effect shall expire and that of their successors shall begin.

Respectfully submitted,

WILLIAM A. ANDERSON,
Attorney-General.

CHASE CITY, VA., April 15, 1903.

Opinion as to constitutionality of House bill 62, entitled "A bill for a relief fund for disabled firemen and families of deceased firemen."

Hon. JOSEPH E. WILLARD,

President of the Senate of Virginia:

SIR:

The question submitted for my opinion by the resolution adopted by the Senate on the 7th instant has been considered.

After an examination of House bill 62 of the Constitution and By-Laws of the Virginia State Firemen's Association, and of the Constitution of the State of Virginia in connection therewith, I have reached the following conclusions:

If the Virginia State Firemen's Association must be regarded as a "charitable institution," then any donation of the public funds to it is prohibited by section 67 of the State Constitution, which declares that the General Assembly shall make no such appropriation "to any charitable institution which is not owned or controlled by the State."

But it may be fairly claimed that, within the meaning of section 67 of the Constitution, the Virginia State Firemen's Association is not an "institution," and that its purposes, and especially the motive and object of said proposed appropriation are not "charitable," but that it is in the nature of a provision for a just recompense for gallant and meritorious services rendered by members of this Association in efforts to protect the property of citizens and tax-payers of the Commonwealth.

Such is the view expressed by the Supreme Court of New York in deciding the leading case of Exempt Firemen's Benevolent Fund Trustees *vs.* Roome, 93 N. Y. 313, in which decision that learned court (after the argument of the case by two of the ablest counsel in America—Messrs. Joseph H. Choate and

J. C. Carter—) unanimously held that such an appropriation of public funds is not a charitable donation, nor for a charitable object, but should be regarded as a proper and just return for valuable services rendered to the public.

A more serious objection to the proposed appropriation might be suggested by section 188 of the Virginia Constitution, which declares that "no other or greater amount of tax or revenue shall, at any time, be levied than may be required for the necessary expenses of the government, or to pay the indebtedness of the State."

It must be conceded that the General Assembly has no power to appropriate the public revenue for any purpose for which it is not empowered to levy a tax, but the discretion and power of the Legislature in this regard are very wide indeed; and if the members of the General Assembly, acting upon the responsibility of the oaths which they have taken, are satisfied that any such expenditure is a just and proper appropriation of the money of the State, I am strongly inclined to the opinion that their action would be final. Certainly the courts would not, except in a plain and flagrant case of a violation of this constitutional inhibition, undertake to interfere with such an exercise of the legislative discretion, and of one of the most necessary and important of all the powers with which the people of Virginia have clothed their Legislature.

I have, therefore, to say that I do not find in the Constitution of the State, read in the light of the cases and precedents by which it must be interpreted, any inhibition against the appropriation in question, if the General Assembly shall be satisfied that it is a just and proper disposition of the revenues of the Commonwealth, a question which, subject only to the explicit limitations of the Constitution, it is the supreme province of the Legislature to decide.

Respectfully submitted,

WILLIAM A. ANDERSON,
Attorney-General.

CHASE CITY, VA., April 21, 1903.

Opinion of the Attorney-General in response to House resolution as to the duties and powers of the State Board of Education in reference to the selection of text-books for use in the public schools.

Hon. J. F. RYAN,

Speaker of House of Delegates of Virginia:

SIR:

The resolution adopted by the House of Delegates on the 9th instant calls for my opinion upon the two questions following:

"First. Whether the new Constitution requires the adoption of a uniform system of text-books for use in the public schools of the counties of the Commonwealth.

"Second. If the new Constitution does not require the adoption of a

uniform system of text-books, as aforesaid, whether it is competent for the General Assembly to require the State Board of Education to adopt such system."

In response thereto I have the honor to say that a complete answer to both inquiries is furnished by the language of the fourth subsection of section 132 of our State Constitution, which is as follows:

"Fourth. It (the State Board of Education) shall select text-books and educational appliances for use in the schools of the State, exercising such discretion as it may see fit in the selection of books suitable for schools of cities and counties, respectively."

This clause, in explicit but comprehensive terms which require no interpretation, devolves upon the State Board of Education the power, and makes it *its* duty, to select the text-books and educational appliances for use in the schools of the State.

Replying more fully, and in order to the interrogatories propounded, my answer to them is:

First. The mandate of the Constitution quoted above makes it the duty of the State Board of Education, and clothes that Board with plenary powers, to make these selections and to do whatever is necessary to attain the best results, and, therefore, to determine the manner in which the selections shall be made.

As far as practicable and expedient, the Board will doubtless adopt the principle of uniformity in making its selection of text-books; but it is not required to adopt a single list. The whole subject is left to its discretion. It must select the text-books for use in the public schools; but it may, in my opinion, in the exercise of the discretion with which it is invested, select alternative or multiple lists for use in the schools under such regulations as the Board may prescribe.

The previous Constitution of the State contained a provision which expressly provided for uniformity in text-books. Section 6 of Article VIII. of that Constitution provided as follows:

"Sec. 6. The Board of Education shall provide for uniformity of text-books and the furnishing of school-houses with such apparatus and library as may be necessary, under such regulations as may be provided by law."

It can be, and has been, argued that this language required the Board to adopt a single list of books, though such was not the construction placed upon it by the officers of the government who directed the public-school system of the State for thirty years under the former Constitution, for they adopted multiple or alternative lists of text-books in numerous instances.

The members of the Convention of 1901-'02 had this provision of the prior Constitution before them, and they not only declined to embody it in the instrument which they framed; but, to prevent any possible doubt or

question as to the powers to be conferred on the State Board of Education by the new Constitution, they omitted any such limitation whatever upon the powers of that Board.

Second. Responding to the second enquiry, I have to say that the powers, duties, and responsibilities conferred on the State Board of Education by the fourth subsection of Section 132 of the Constitution are plenary and exclusive, and that the exercise of these powers, and the discharge of these duties and this responsibility, cannot be shared or controlled by the General Assembly, or any other department of the State government. This mandate of the Constitution of course imports an honest, conscientious, and patriotic discharge of the duty it prescribes, and the members of the State Board of Education would be liable to such penalties as may be prescribed by law for any malfeasance or misfeasance in connection with the discharge of these, or any other duties of their office; but the powers and duties of the Board in this regard cannot be abrogated or abridged by statute. I conclude, therefore, that it is not competent for the General Assembly to require the State Board of Education to adopt a uniform system of text-books for use in the schools of the State.

Very respectfully,

WILLIAM A. ANDERSON,
Attorney-General.

CHASE CITY, VA., May 4, 1903.

To Hon. J. F. RYAN.

Speaker of the House of Delegates of Virginia:

SIR:

I have the honor to submit my response to the resolution adopted by the House of Delegates, calling for my opinion as to the proper construction of the Constitution of the State "relative to the payment of poll-taxes as a prerequisite to the right to vote after January 1, 1904," in the particulars mentioned in the resolution.

Before considering the several inquiries propounded, it will be well to remember that by the terms of section 18 of the Constitution no person can vote in Virginia unless he shall be first registered as a voter in accordance with the provisions of the Constitution. It is necessary also to distinguish the requirements as to the payment of poll-taxes as a prerequisite to the right to register and to vote prescribed as to the voters registered after January 1, 1904, from the the requirement in that regard as to the voters enrolled prior to that date.

The only persons to whom the prepayment of any poll-taxes applies as a prerequisite to the *right to register* are those who apply for registration after January 1, 1904. There is no such requirement as to the *registration* of those who are entitled to be registered upon the permanent rolls during the years 1902 and 1903, under the Registration Ordinance adopted by the Convention.

Bearing in mind these features of the suffrage plan embodied in the Constitution, and having especial reference to sections 20 and 21 of that instrument, my answers to the several inquiries propounded will be better

understood. I now proceed to restate these inquiries and to answer them in their order:

1. "When does the poll-tax, as a prerequisite to the right to *vote*, begin to accrue?"

To this my answer is as follows:

(a) As to a person applying for registration after January 1, 1904, it begins with the poll-tax which was assessed or assessable in 1901; for by section 20 he is required, before he is entitled to be *registered*, to have "paid to the proper officer all State poll-taxes assessed or assessable against him *under this or the former Constitution* for the three years next preceding that in which he offers to register." A person applying to *register* during the year 1904 must have paid the State poll-tax of \$1.00 for each of the years 1901 and 1902 assessed or assessable against him under the former Constitution, and the State poll-tax of \$1.50 for the year 1903, assessed or assessable under section 173 of the present Constitution. Of course this requirement does not apply to the poll-taxes for any year in which the applicant was not, by reason of age or residence, legally liable to be assessed.

(b) As to a person *registered* in 1902 or 1903 on the permanent roll, this requirement begins with the poll-tax of \$1.50 for the year 1903, assessable under the present Constitution, section 21, prescribing the prepayment of capitation taxes assessed under *the present Constitution only* as a prerequisite to the *right to vote*, before he is allowed to vote at any election.

In 1905 the voter *registered* after January 1, 1904, must have paid the poll-taxes assessable against him for the years 1902, 1903, and 1904. Before being allowed to *vote* at any election in 1905, the voter registered in 1902 or 1903 must have paid the poll-taxes assessable against him under the *present Constitution*—namely, those for the years 1903 and 1904.

After 1905 the requirements in respect to the prepayment of poll-taxes will be the same as to the voters registered before January 1, 1904, that they are as to those registered after that date.

2. "Is it necessary that poll-taxes for the three years preceding 1904 be paid to entitle an elector to the right to vote in 1904?"

This inquiry has already been answered in my response to the preceding question.

A person not registered in 1902 or 1903, desiring to vote in 1904, must have paid all State poll-taxes assessed or assessable against him for the three years prior to 1904 before he can be registered, and he must be registered before he is entitled to vote.

A person registered in 1902 or 1903 must pay the State capitation tax of \$1.50 for the year 1903 assessed or assessable against him under the present Constitution before he can vote in 1904.

3. "If the poll-tax becomes effective on and after January, 1904, at what time is the poll-tax, as a prerequisite to the right to vote, due and payable, that the right of suffrage shall not be abridged?"

My answer to this inquiry is, that by the provision of section 21 the person offering to vote at any election after January 1, 1904, must have paid all

State poll-taxes assessed or assessable against him *under the present Constitution* during the preceding three years at least six months before the election; and if he was not registered in 1902 or 1903, by the terms of section 20, he must at some time, *before he can be registered*, have paid all State poll-taxes assessed or assessable against him under the former Constitution, as well as the present Constitution, during the three preceding years.

It must be observed, however, that by section 22 of the Constitution all soldiers who served in the war between the States are exempted from the payment of any poll-taxes as a prerequisite to the right to vote.

Respectfully submitted,

WILLIAM A. ANDERSON,
Attorney-General.

AUGUST 21, 1903.

Opinion concerning validity of any capitation taxes levied by counties, cities or towns since the new Constitution became effective.

Hon. MORTON MARYE,

Auditor of Public Accounts:

DEAR SIR:

The power heretofore vested in the authorities of counties and corporations to impose a capitation tax of not exceeding fifty cents per annum was derived from section 5 of Article X. of what is commonly known as the "Underwood Constitution." That Constitution was abrogated by the adoption of the present Constitution, Article XIII. of which defines and limits the powers of taxation both by the State and local authorities, and no taxes could or can be lawfully levied after the present Constitution of the State went into effect, except in accordance with its provisions. Of course, taxes lawfully levied prior to July 10, 1902, can be collected in accordance with the laws regulating the collection of taxes; but since July 10, 1902, when the present Constitution went into effect, its provisions are supreme.

The only capitation tax which, by the terms of section 173 of the Constitution, could be lawfully levied after July 10, 1902, is the State capitation tax of \$1.50 per annum, "one dollar of which shall be applied exclusively in aid of the public free schools, in proportion to the school population, and the residue shall be returned and paid by the State into the treasury of the county or city in which it was collected, to be appropriated by the proper county or city authorities to such county or city purposes as they shall respectively determine."

The General Assembly is empowered by the same section to "authorize the Board of Supervisors of any county, or the council of any city or town, to levy an additional capitation tax not exceeding one dollar per annum on every such resident within its limits, which shall be applied in aid of the public schools of such county, city or town, or for such other county, city or town purposes as they shall determine."

I am therefore of opinion that any levy of a capitation tax by the Board of Supervisors of any county, or the council of any city or town, after July

10, 1902, would be invalid until and unless the General Assembly shall by law expressly authorize such levy in respect to the particular county, city or town making the same.

Yours very truly,

WILLIAM A. ANDERSON,
Attorney-General.

III. OPINIONS RELATING TO MISCELLANEOUS SUBJECTS OF GENERAL OR SPECIAL
INTEREST.

DECEMBER 22, 1902.

Major GEORGE M. HELMS,

Superintendent of the Penitentiary, Richmond Va.:

DEAR SIR:

The record of the conviction of Tom Wilkins in the County Court of Sussex, with the note at the foot thereof from the Clerk of said court, has been submitted to me. As the prisoner has been convicted and *sentenced* in the County Court of Sussex, I do not think he can be tried for any other offence until he has served out his term in the penitentiary. This man should be brought to the penitentiary at once, and, after he has served the term for which he was convicted, as appears from this record, he can be returned to Brunswick county for trial upon the indictment now pending there.

Very truly yours,

WILLIAM A. ANDERSON,
Attorney-General.

JUNE 25, 1903

Hon. MORTON MARYE,

Auditor of Public Accounts:

DEAR SIR:

In response to your favor of the 23d instant, I beg leave to say that Title 8 of Chapter 14 of the Code, re-enacted by the act "to amend and re-enact Title 8 of the Code of Virginia," approved February 7, 1903, clearly fixes the salaries, mileage, and other allowances of the officers and employees of the State named in said act from the date when said act went into force, which was, by its terms, the date of its passage; and that it is manifest, from the language of the said act introducing section 183, on page 48, and from section 188 and section 192, as embodied therein, that it authorizes and directs the payment of such salaries, &c., and that no further specific appropriation is necessary to authorize you to pay the same.

If any specific appropriation were necessary, it is amply provided for by the general appropriation act passed at the session of 1901-'2, which, by its terms, was made operative for two years.

Very truly yours,

WILLIAM A. ANDERSON,
Attorney-General.

*Opinion in the Matter of the Liability of The Lake Drummond Canal and
Water Company to Taxation.*

To the Board of Public Works of Virginia:

GENTLEMEN:

Before stating the conclusion to which I have come upon the question submitted to me by your honorable board as to whether the property of The Lake Drummond Canal and Water Company is liable to taxation under the Constitution and laws of Virginia and the Constitution of the United States, it will be well to briefly review the history of that company from the creation of the Dismal Swamp Canal Company, which was its predecessor, to the present time.

The Dismal Swamp Company was incorporated by the act passed December 1, 1787, chapter 13, page 15 (12 Hening's Statutes at Large, page 478), for the purpose of cutting a navigable canal from the waters of Elizabeth River, in this State, to the waters of the Pasquotank River, in the State of North Carolina.

The 9th section of this act contains the only provision which I have been able to find in any of the legislation in regard to this company which conferred upon it any immunity from taxation; and this exemption was granted in the following terms:

"9. And be it further enacted, That for and in consideration of the expenses the said proprietors will be at, not only in cutting the said canal, erecting locks, making causeways, and performing other works necessary for this navigation, but in maintaining and keeping the same in repair, the said canal, locks, causeways, and other works, with all their profits, shall be, and the same are hereby, vested in the said proprietors, their heirs and assigns forever, as tenants in common in proportion to their respective shares, and the same shall be deemed real estate, and be forever exempt from the payment of any tax, imposition or assessment whatsoever." * * * *

By act of the General Assembly of Virginia, passed December 6, 1866, and act of the General Assembly of North Carolina, ratified the 11th day of December, 1866, the Dismal Swamp Canal Company was authorized to issue, sell, and dispose of not exceeding \$200,000 of coupon eight per cent. bonds, "and to give such security for the punctual payment of said bonds as they may deem expedient."

On the 1st day of July, 1867, said company executed a deed of trust, placing the same upon record in the clerk's office of the County Court of Norfolk, to James Cornick, Cincinnatus W. Newton and William H. C. Ellis, trustees, conveying to said grantees, "all and singular, that work of internal improvement, the property of the said company, known as and called by the name of the Dismal Swamp Canal, with, all and singular, the lands, tenements, hereditaments and appurtenances adjoining, belonging to or connected with the said canal or belonging to the said company, lying, situate, and being in the County of Norfolk, in the State of Virginia, and in the County of Camden, in the State of North Carolina," to secure the payment of two hundred \$1,000

bonds issued in pursuance of the said act of Assembly and described in said deed of trust.

On the 10th day of February, 1869, said company executed a supplemental deed of trust to the grantees in the deed of July 1, 1867, modifying or explaining the terms of the first deed in particulars of little interest to our present enquiry, except that the deed now mentioned incorrectly recites that, by the deed of July 1, 1867, said company had granted to said trustees, "all and singular, the lands, tenements, hereditaments, franchises, privileges and appurtenances adjoining, belonging to or connected with the said canal, or belonging to said company;" and thereafter in said deed it is covenanted that said company (described as the *parties* of the first part), "their successors and assigns, shall and will, at any time and from time to time hereafter, upon request made, do execute and deliver all such further and other acts, deeds, and things as shall be reasonably desired or required, to effectuate the intention of these presents, and to assure and confirm to the said parties of the second part, and the survivors or survivor of them, or their successor, all and singular, the property and estate hereinbefore referred to, and to render the same available for the security and satisfaction of, all and singular, the said bonds, according to the intent and purpose hereinbefore expressed."

The inaccuracy in the recital is in stating that the "franchises" and "privileges" had been conveyed in the deed of July 1, 1867.

The latter clause (extract from said deed of February 10, 1869) is merely a covenant or executory agreement that the company will confirm to the parties of the second part the property and estate hereinbefore referred to, and this covenant does not, it will be seen, embrace either *privileges* or *franchises*.

From the deed dated January 15, 1880, from the said Newton and Ellis, two of the trustees in the deed first above mentioned, to H. G. Onderdonk and others, it appears that there had been a foreclosure and sale for the default of the said company in paying the bonds secured by the first named mortgage, which sale was made to the said Onderdonk and his associates, who had formed themselves into a company known as the Dismal Swamp Canal Company, which we will call Dismal Swamp Company (No. 2), and that said surviving trustees did, by the last mentioned deed, convey to said last-named company "the Dismal Swamp Canal, with, all and singular, the lands, tenements, hereditaments, franchises, privileges and appurtenances adjoining, belonging to or connected with the said canal, or lately belonging to the said company." It appears from the recitals in this deed that the foreclosure sale was made on the 15th of January, 1880.

By deed dated July 1, 1882, the Dismal Swamp Canal Company granted to George M. Bain, Jr., and Alfred P. Thom, trustees, "all and singular, that certain work of internal improvement known as and called by the name of the Dismal Swamp Canal, with, all and singular, the lands, tenements, hereditaments, franchises, privileges and appurtenances adjoining, belonging or appertaining to or connected with the said canal, and belonging to the said

company," in trust to secure the payment of \$50,000 of coupon bonds described in said last mentioned deed.

By deed dated November 25, 1889, Alfred P. Thom and William H. White, trustees (the latter being substituted trustee for George M. Bain, Jr.), granted to Eugene T. Lynch and John C. Short, by the name of the Norfolk and North Carolina Canal Company, "all and singular, that certain work of internal improvement known and called by the name of the Dismal Swamp Canal, with, all and singular, the lands, tenements, hereditaments, franchises, privileges and appurtenances adjoining, belonging or appertaining to or connected with the said canal, and belonging to the said company, * * * being the same property that by deed dated the 15th of January, 1880, was conveyed to H. G. Onderdonk, &c., * * * by the name of the Dismal Swamp Canal Company."

From the recitals in this deed, it appears that there had been a foreclosure sale under the deed of trust of July 1, 1882, and that the conveyance of November 25, 1889, was made in pursuance to decree of court in the suit in which said foreclosure proceedings were conducted.

By deed dated November 25, 1889, said Eugene T. Lynch and John C. Short, by the name of the Norfolk and North Carolina Canal Company, granted to Theodore S. Garnett, trustee, the property, franchises and privileges described in the conveyance to them by Thom & White, trustees, in trust to secure a debt of \$75,000 therein described.

By deed dated July 30, 1892, the said Theodore S. Garnett, trustee, granted to Alexander Brown and others, by the name of "The Lake Drummond Canal and Water Company," the property, franchises, privileges and appurtenances which were conveyed to the said Dismal Swamp Canal Company (No. 2) by deed dated the 15th day of January, 1880.

The Lake Drummond Canal and Water Company now owns the said canal and its appurtenances, and the foregoing is the chain of its title to the same.

It must be conceded that the Lake Drummond Canal and Water Company took under the deed from Garnett, trustee, only such property and rights as had been effectually granted by the Dismal Swamp Canal Company to Cornick, Newton & Ellis, trustees, by the deed of July 1, 1867, except such additions and accretions as were added to the property of the original and the immediate companies after July 1, 1867.

Neither the trustees in the initial conveyance of July 1, 1867, nor any subsequent grantor claiming under that deed, could convey any of the franchises and privileges of the old Dismal Swamp Canal Company which did not pass to Cornick, Newton & Ellis, trustees, by that conveyance or by operation of law. An examination of the deed of trust of July 1, 1867, shows that it contains no apt words adequate to convey in terms any privileges whatever.

The supplemental deed of trust of February 10, 1869, recites the fact that the privileges belonging to or connected with said canal or belonging to said company had been conveyed to the trustees by the deed of July 1, 1867, and the subsequent deeds of January 15, 1880, July 1, 1882, and November 25, 1889. And, again, the second deed of November 25, 1889, and the last conveyance

in the chain of title, dated July 30, 1892, all purport to convey to the grantees in said several deeds the privileges to which the precedent companies were entitled.

The general rule, as now settled by the courts of last resort in this country, is that an exemption from taxation, granted by a State to an individual or to a corporation, either as a provision in its charter or by an independent act, is a personal privilege, and is not vendable or assignable, and does not pass either by direct conveyance or by sale to the purchaser of the property of such individual or company; nor does it pass to a purchaser in foreclosure proceedings under a mortgage or deed of trust, unless the sanction of the State is expressly granted that such immunity shall pass to and be enjoyed by such vendee or grantee. *Morgan v. Louisiana*, 3 Otto, 217; *R. R. Co. v. Hamblen County*, 102 U. S., 273; *Wilson, Rec'r., v. Gaines*, 103 U. S., 421; *R. R., &c., Co. v. District of Columbia*, 1 Mackey, 217; 4 *Thomp. Cor.*, Sec. 5576; *I. Dosty Taxn.*, p. 124; *Memphis and Little Rock R. R. Co. v. Berry*, 112 U. S., 609; *Cooley Taxn.*, p. 212.

It is conclusively established by these authorities as law that where the grant of immunity from taxation is conferred upon the corporation, as would seem to be the case here, and not attached to specific property, so as to be in the nature of "a covenant running with the land," that such immunity is a personal privilege, and cannot be assigned, and will not pass to a vendee or a grantee of the precedent company, except with the express sanction of the State which originally granted the privilege.

It is manifest, therefore, that neither the Lake Drummond Canal and Water Company, nor any of its predecessors, acquired this privilege of immunity from taxation under the several conveyances above recited, unless the power and right to take and enjoy the same has been conferred by some statute of the State, either special or general.

None of the acts relating to the Dismal Swamp Canal Company, or its successors, confers any such power or right. But the question arises,—which seems to me to be the only real question in the case,—whether, under the provisions of the statutes embodied in Sections 1233 and 1234 of our present Code, and particularly those of the last-named section, the Lake Drummond Canal and Water Company has not lawfully succeeded to all the rights and privileges, including immunity from taxation, of the old Dismal Swamp Canal Company. The statutes now constituting Sections 1233 and 1234 of the present Code, Sections 44 and 45 of Chapter 61 of the Code of 1873, and Sections 28 and 29 of Chapter 61 of the Code of 1860, and Sections 27 and 28 of Chapter 61 of the Code of 1849, have been, in respect to the matter now under consideration, the law of the State—the first of said sections since 1847, and the second since 1841.

By the express terms of Section 28 of Chapter 61 of the Code of 1849, embodied in Section 1234 of the present Code, the Dismal Swamp Canal Company No. 2), the purchaser at the foreclosure sale of January 15, 1880, succeeded "to all such franchises, rights, and privileges * * * * as would have been had" by its predecessor company; and immunity from taxation is held

to be a "*privilege*." *Desty on Taxn.*, p. 122; *Morgan v. Louisiana*, 93 U. S., 217.

We find, however, that before the passage of the act of December 6, 1866, and before the making of the mortgage of July 1, 1867, by the Dismal Swamp Canal Company (No. 1), under that act, the following provision had been embodied in the Constitution of the State. (See Section 23 of Article IV. of the Alexandria Constitution of 1864, which is the same in effect as Section 22 of Article IV. of the Constitution of 1851):

"23. Taxation shall be equal and uniform throughout the Commonwealth, and all property shall be taxed in proportion to its value, which shall be ascertained in such manner as may be prescribed by law."

This mandate of the Constitutions of 1851 and 1864, which was the paramount law of the Commonwealth from 1851 to 1869, in unmistakable terms made it the duty of the General Assembly to tax all property equally and uniformly throughout the Commonwealth. It could not, of course, operate to deprive a corporation of any immunity from taxation to which it had acquired a vested right, and it did not, and could not, take from the Dismal Swamp Canal Company (No. 1) the right to exemption from taxation of its works conferred by its charter.

But no right had been acquired or vested in any company which might purchase the works, property and franchises of the original Dismal Swamp Company under foreclosure.

The acts of 1841 and 1847, carried forward in Sections 1233 and 1234 of the present Code, constituted merely a voluntary offer by the Commonwealth, under which no rights vested until the terms of those statutes had been accepted, acted upon and complied with; and the Commonwealth had a perfect right to amend or repeal those statutes, and to withdraw the proposal therein made, at any time before the acceptance of those terms.

In my opinion, the clause in the Constitutions of 1851 and 1864 just quoted can be fairly construed as in effect amending Sections 27 and 28 of Chapter 61 of the Code of 1849, and creating a limitation upon the power of the General Assembly, directly or indirectly, to exempt from taxation any property *not already irrevocably exempt* under antecedent law and vested right.

The provision of these statutes, in so far as they extend exemption from taxation and confer this immunity upon persons not entitled to it prior to the adoption of the Constitutions of 1851 and 1864, appear to be in conflict with the broad and comprehensive requirement of those Constitutions that all property shall be taxed.

If I am correct in this view, it necessarily follows that the Lake Drummond Canal and Water Company is liable to taxation, local and State, upon all of its works and property.

So far as I can find, the identical question here presented is of first impression in this State, and has not been directly adjudicated elsewhere in this country. But the conclusion which I have reached, not entirely without some misgivings, seems to me to be consonant with the established rules governing the question of exemption from taxation. An immunity of this character

has been held to be one contrary to common right, and which should be construed with the utmost strictness, and never carried beyond the plain intentment and necessary effect of the act conferring it.

It has been gravely questioned, indeed, whether any legislature can legitimately exercise the power of conferring such an immunity, except as to property belonging to the State or used exclusively for eleemosynary purposes. *I. Desty Taxn.*, p. 128.

But the settled rule in this country is that the Legislature of a State does possess such power, unless denied or restricted in its exercise by the organic law of the State. *I. Desty Taxn.*, p. 124; *Cooley Taxn.*, pp. 200-201.

But, being in derogation of common right (*I. Desty Taxn.*, p. 130), such an exemption will be rigidly construed, and will never be allowed unless the right to it exists beyond question. If there is a fair and reasonable doubt as to whether the person claiming the exemption is entitled to it under the law, it will be the duty of the court, I respectfully submit, to give to the State the benefit of such doubt, and to deny the exemption.

The conclusion to which the above considerations bring me is strongly reinforced by the provisions of the Constitution of 1869, Section 1, Article X., of which Constitution reads as follows:

"Section 1. Taxation, except as hereinafter provided, whether imposed by the State, county, or corporate bodies, shall be equal and uniform, and all property, both real and personal, shall be taxed in proportion to its value, to be ascertained as prescribed by law. No one species of property from which a tax may be collected shall be taxed higher than any other species of property of equal value."

And Section 3 of the same Article confines the power of the Legislature, in granting exemptions, to "property used exclusively for State, county, municipal, benevolent, charitable, educational and religious purposes."

This Constitution went into effect on the 6th day of July, 1869,—long before the foreclosure sale and conveyance of the property, &c., of the Dismal Swamp Canal Company, which took place on the 15th day of January, 1880.

It is proper to observe that the exemption from taxation granted by the charter of the Dismal Swamp Canal Company (Act of December 1, 1787) only extends to the canal and works of that company. It did not attach to the canal-boats or other personal property of the company, nor to the franchises of the company; and there can be no question as to the liability of the succeeding company to taxation upon such property and upon its franchise.

Very respectfully,

WILLIAM A. ANDERSON,
Attorney-General.

NOTE:

Among a large number of cases examined, I found the following to be of special interest in connection with the consideration of the questions involved in the above inquiry:

State v. Wilson, 7 Cr. 164.

Morgan v. Louisiana, 93 U. S., 217.

City of St. Louis v. Missouri R. R. Co., 13 Missouri Appeal Reports, 530-1.

Humphreys v. Pegues, 16 Wall., 244.

Trask v. McGuire, 85 U. S., 391.

Stein v. Bienville Water Supply Co., 141 U. S., 67.

In addition to Mr. Cooley's and Mr. Desty's discussion of these questions, in their works on taxation, and cases cited by them, please read Sections 5560 to 5572 and Sections 5573 and 5576, Volume IV., of Thompson on Corporations.

July 1, 1903.

To the State Corporation Commission,

Richmond, Va.:

GENTLEMEN:

The question discussed by the above opinion in respect to the exemption from taxation of the Lake Drummond Canal and Water Company was submitted to me by the Board of Public Works, and was carefully considered by me during the fall of 1902. The opinion embodying the conclusions reached by me was in a large measure prepared before I was compelled, by reason of physical disability, to temporarily abstain from active duty in my office.

As your honorable body has succeeded to the powers and duties of the Board of Public Works in respect to the matter involved in this inquiry, I have the honor now to submit to you my opinion upon the question presented.

Very truly,

WILLIAM A. ANDERSON,
Attorney-General.

N. B.—Copies of the several deeds of conveyance mentioned are herewith filed.

RICHMOND, VA., Sept 19, 1903.

To the State Corporation Commission,

Richmond, Va.:

GENTLEMEN:

In confirmation of the conclusion expressed in my opinion in reference to the liability of the Lake Drummond Canal and Water Company to taxation upon all of its property, I beg leave to refer you to the following authorities:

State v. Northern Central R. R. Co., 44 Md., 131.

St. Paul v. St. P. & S. C. R. R. Co., 23 Minn., 469.

Merchants Insurance Co. v. Newark 54 N. J. L., 138.

State Newark and S. O. Horse Car R. R. Co., Prosecutor, v. Clark, 54 N. J. L., 332.

Newport v. Masonic Temple Ass'n, 103 Ky., 592.

Louisville & Nashville R. R. Co. v. Palmer, 109 U. S., 244.

Bloxham v. Florida C. & P. R. R. Co., 35 Fla., 625.

Keokuk & W. R. R. Co. v. Missouri, 152 U. S., 301.

Keoduk & W. R. R. Co. v. Scotland Co. Ct., 152 U. S., 317.

Gulf & S. I. R. R. Co. *v.* Hewes, 183 U. S., 66.

State *v.* Southern Bank, 31 La. Annotated.

New Orleans *v.* N. O. Canal & Bkg. Co., 32 La. Annotated, 104.

Very respectfully,

WILLIAM A. ANDERSON,

Attorney-General.

July 2, 1903.

Messrs. FROEHLING & ROBERTSON,

Richmond, Va.:

GENTLEMEN:

In response to your inquiry as to whether the provision in the Constitution of Virginia prohibiting a railroad company from issuing a pass to any State, county, district or municipal officer, applies to yourselves, I beg leave to say that I have examined the correspondence between you and the Virginia Commission to the Louisiana Purchase Exposition, and find that you have been employed as mineral experts, to collect and prepare for exhibition representative samples of the minerals found in this State, and to compile a book descriptive of the mineral resources of Virginia.

Under the arrangement and agreement between yourselves and the Commission you are in no sense officers, but merely employees of the State or of said Commission, and the provision of the Constitution referred to does not apply to you.

Very truly yours,

WILLIAM A. ANDERSON,

Attorney-General.

LEXINGTON, VA., July 8, 1903.

Hon. JOSEPH E. WILLARD,

Richmond, Va.:

DEAR SIR:

In reply to your note of inquiry of the 6th instant, I have the honor to say that in my opinion an act of the General Assembly, passed during the extra session of 1902-3, which omits to prescribe at what time it shall take effect, went into effect upon the 1st of July, 1903.

Section 19 of the Schedule takes all acts of the General Assembly at said extraordinary session out of the operation of section 53 of the Constitution as to the time at which such acts shall take effect, and leaves them to be controlled in that regard by the will of the General Assembly, as expressed in each act, or by the provisions of the general law, Va. Code of 1887, Section 4.

Very truly yours,

WILLIAM A. ANDERSON,

Attorney-General.

LEXINGTON, VA., July 10, 1903.

JOHN GARST, SR., *Esq.*,*P. O. Box 292, Salem, Va.:*

DEAR SIR:

Your favor of the 29th ult. has been forwarded to me here.

Except where otherwise provided by special road laws enacted for particular counties, Section 963 of the Code of 1887 is still in force.

The terms of office of all State, county and district officers (not otherwise specifically provided for) were extended by Section 11 of the Schedule to the Constitution until January 1, 1904, and I take it that a road overseer is a district officer. But it was provided by Section 17 of the Schedule that all bonded officers whose terms were so extended should give a new bond before the end of the term for which they were elected.

If any road surveyor whose term of office expired on the 1st instant failed to comply with this requirement before that date, his office was thereby vacated, and his successor for the extended term should be appointed in the manner provided in Section 963 of the Code. Such successor will, I take it, hold until July 1, 1904, when the term of the road surveyor who should be regularly appointed under Section 964 of the Code will begin. By general law all officers not removed, or vacated, hold until their successors are duly appointed and have qualified.

I think the above is a correct statement of the law in response to your inquiry. The whole matter has, however, been thrown into something of a muddle by the remarkable piece of legislation which you will find in Chapter 515 of the Acts of 1889-90, entitled an "Act to amend and re-enact Sections 956, 963, 967, 978 and 980 of Chapter 43 of the Code of Virginia, in regard to county roads, &c., as far as the same applies to the county of Dinwiddie." It may be questioned whether that act did not exclude all of the counties except Dinwiddie from the operation of the Sections of the Code therein amended and re-enacted.

Your letter reached my office in Richmond after the date when any road overseer could have given bond under Section 17 of the Schedule.

Very truly yours,

WILLIAM A. ANDERSON,

July 25, 1903.

*General WILLIAM NALLE,**Adjutant-General of Virginia:*

SIR:

The question submitted in your letter (No. 1) of the 24th instant, received to-day, has been carefully considered.

By the terms of the Virginia statute governing this subject, the pay and allowances of officers of the Virginia volunteers are fixed at what are "prescribed for officers of like rank in the United States Army." (See Section 304 of the Code, as embodied in the act approved March 7, 1900.)

Under the laws of the United States, as I understand, officers of the

United States Army are *not entitled to receive commutation of quarters "under any circumstances when on duty with troops."*

The inevitable and necessary answer to your inquiry, therefore, is that "the officers of the Virginia Volunteers lately on duty with troops in the actual service of the State, in the cities of Richmond and Manchester, and in the counties of Henrico and Chesterfield," and who occupied "quarters which were inadequate, and which were furnished without cost to the State," are not entitled to receive commutation of quarters for time during which they were on such duty, or for any part of such time.

By Section 305 of the Code ample provisions is made for the payment of the necessary expenses of quartering troops whenever called out in aid of the civil authorities; but no provision is made by the State (or, as I understand the communication of the Paymaster-General of the United States Army, by the United States) for the allowance of any commutation of quarters to officers serving with troops, when from any cause no quarters, or inadequate quarters, have been provided for such officers.

Respectfully submitted,

WILLIAM A. ANDERSON, •
Attorney-General.

July 27, 1903.

General WILLIAM NALLE,

Adjutant-General of Virginia:

SIR:

Your letter of the 24th instant (No. 2), with its seven enclosures, has been received.

The answer to the question which you submit is determined by the provisions of Section 304 of the Code of Virginia, as amended and re-enacted in Chapter 1131 of the Acts of the General Assembly of Virginia, session 1899-1900, and by the laws and regulations for the Army of the United States, which regulations have the force of laws.

By the terms of said section of the Code, officers of the Virginia Volunteers, when called into the service of the State, are entitled to receive precisely the same pay and allowances which are "prescribed for officers of like rank in the United States Army."

The United States Army Regulations prescribe the cases in which officers of the army are entitled to commutation of quarters, and by those regulations such commutation of quarters is only allowed officers on duty at an army post or station where there are no public quarters, or the public quarters are inadequate, or when officers are directed to await orders for a limited period at a point where there are no public quarters. (See U. S. Army Regulations, paragraphs 1336 and 1341, and 984 to 991.)

Under the U. S. Army Regulations, no allowance of commutation of quarters to officers *serving with troops* is authorized to be made under any circumstances.

When serving with troops, I take it that the quartermaster of the command, under the direction of the commanding officer, would be empowered to

provide such quarters *with the troops* as it might be practicable to provide under the circumstances of the particular case; and the necessary expenses thus incurred would be paid as provided for in Section 305 of the Code.

It may be readily conceived, however, that when troops are called into actual service to meet a sudden emergency, or when in active service in the field, it would be impracticable to provide "adequate" or comfortable quarters either for the troops or for the officers serving with them. So far as I have been able to ascertain, the United States Government allows no commutation of quarters to officers serving with troops *in any such case, or indeed in any case.*

My response to your inquiry is, therefore, that there are no circumstances under which officers of the Virginia Volunteers on duty with troops in actual service are entitled to receive commutation of quarters.

Respectfully submitted,

WILLIAM A. ANDERSON,

Attorney-General.

NOTE: Enclosures from 1 to 6 are herewith returned. Enclosure No. 7, being a copy of the Act of March 7th, 1900, is retained by me.

July 28, 1903.

J. A. MASSIE, *Esq.*,

City Attorney, Newport News, Va.:

DEAR SIR:

Your letter of the 23d instant has been received.

Section 1015 b, as enacted in Chapter 269 of the Acts of Extra Session of 1902-3, following the requirement of Section 121 of the Constitution, makes it the duty of the council of each city to reapportion the representation in the council among the wards in the year 1903, and every tenth year thereafter, and whenever the boundaries of such wards are changed.

This statute provides that the council shall do this "by ordinance,"—language which has some significance in reference to the question which you submit for my opinion; though the council must necessarily express its will and judgment in such case either by an ordinance or by a resolution having like force and effect.

In my opinion, such an ordinance must receive the approval of the mayor, or be passed over his veto in the manner prescribed in Section 1033 c of said statute, which in its provisions in this regard conforms to Section 123 of the Constitution.

By the terms of both Section 123 of the Constitution, and of the statute enacted in effectuation thereof, "*every* ordinance or resolution having the effect of an ordinance shall, before it becomes operative, be presented to the mayor" for his approval or disapproval.

Although this is not a question upon which the Attorney-General is au-

thorized to give his official opinion, it gives me pleasure, as a matter of personal and professional courtesy, to respond to your inquiry.

Very truly yours,

WILLIAM A. ANDERSON,

Attorney-General.

July 28, 1903.

WALTER E. JOHNSTON, *Esq.*,

*Secretary of the Special Board of Directors, The Southwestern State
Hospital, Marion, Va.:*

DEAR SIR:

In response to the resolution of inquiry adopted by the Special Board of Directors of The Southwestern State Hospital, communicated by you to me, I have the honor to say that:

By Section 1662 of the Code, as amended and re-enacted by Chapter 139 of the Acts of the General Assembly of Virginia, Extra Session of 1902-3, and by Sections 149 and 150 of the Constitution, which that statute was designated to effectuate, the control and management of all of the State hospitals is vested, primarily, in the general Board of Directors, appointed and organized pursuant to those sections of the Constitution; and, secondarily, and subject and subordinate to the supervision and control of this general board, the management of each hospital is entrusted to the special Board of Directors appointed for such hospital.

In the absence of any express statutory provision on the subject, it will, I think, be competent for the special board for The Southwestern State Hospital, subject to the paramount authority of the general board, to prescribe what officer of the board or of the asylum shall execute and sign any legal papers proper to be executed and signed on behalf of said hospital.

The general board may, by a regulation applicable to all or any of the State hospitals, prescribe what officer of each shall sign such papers; but, until such general regulation shall have been adopted, and subject to the superior authority of the general board, the special boards are, I think, authorized to act in the premises.

As to the execution of deeds of conveyance, however, it is proper that I should say that I am at a loss to know how any question can at present arise, as I know of no law which authorizes either the general or special boards to dispose of the land on which the respective hospitals are built, or used in connection therewith, or any part thereof. I would say that such a power could not be exercised by any board or officer without an express authority from the General Assembly.

Very respectfully,

WILLIAM A. ANDERSON,

Attorney-General.

July 30, 1903.

HON. J. W. SOUTHALL,

Superintendent of Public Instruction:

DEAR SIR:

Your letter dated the 22d instant, with the accompanying letters to you of Mr. Wm. F. Fox, Superintendent of Schools for Richmond city, dated the 21st and 22d instant, reached me on the 27th.

By the charter of the city of Richmond, the City Council is vested with very large powers in respect to all property, real and personal, belonging to the city, and also in the matter of opening and extending streets and alleys.

I find no provision in the statutes of the State in respect to the title and control of public school property in cities similar to Section 1447 of the Code, relating to such property in the several counties of the State set apart for school purposes.

In the counties, such property and the control thereof is vested in the several county school boards and in the respective district school boards.

In Richmond city, the title to the school buildings and the lots on which they are built is vested in the city; and while by Section 1538 city school boards in all cities of the first class are empowered "to make and carry out regulations for the management of public school property and funds in the city, the location, renting, enlarging, repairing, erection and furnishing of school houses, and the proper care of the same," the *title* to the public school houses and the lots appurtenant thereto in the city of Richmond is vested in said city, and the power of disposing of the same and of making such ordinances and by-laws relating thereto "as it may deem proper" is conferred upon the Council.

I am of opinion, therefore, that it is competent for the Council of the city of Richmond to appropriate or set apart a strip of the yard attached to one of the public school buildings of the city as a public alley under the broad powers conferred upon the Council by the city charter.

Respectfully submitted,

WILLIAM A. ANDERSON,

Attorney-General.

LEXINGTON, VA., August 5, 1903.

S. S. P. PATTESON, *Esq.*,*Richmond, Va.:*

DEAR SIR:

Your letter of the 31st ultimo reached me to-day.

I know of no law which makes the Attorney-General the official adviser of the Police Justice of the city of Richmond, or the umpire in any case of difference of opinion between that officer and the Judge of the Corporation Court of said city; and my respect for the knowledge of the law, strong common sense, and good judgment of each of those experienced judicial offi-

cers, is such that I would with diffidence undertake to review any opinion or decision which either might render.

As a rule, it is the province of the courts to construe the laws.

However, since the Police Justice has, as I understand from your letter, indicated his desire that I shall pass upon the question you present, I will, as a matter of personal and professional courtesy, answer your inquiry as best I can.

As I understand that inquiry, it is: Whether Chapter 591 of the Acts of 1901-2, approved April 2, 1902, operates as an amendment and repeal of so much of Chapter 137, passed at the same session and approved March 10, 1902, as vests in the Justices of the Peace and the Police Justices of the State jurisdiction and authority to bring children of the class and description defined in the act before them by appropriate process, and upon proper proofs, as prescribed in the act, to commit such children to the "Children's Home Society of Virginia."

The two statutes are *in pari materia*, and were enacted by the same Legislature. The one first passed is a special, the one last passed a general, act. Where there is an *irreconcilable* difference and conflict between two such statutes, the rule is, of course, that the act last passed will prevail. *Winn v. Jones*, 6 Leigh, 74; *Fox's Admr. v. Commonwealth*, 16 Gratt. 9.

The conflict between two such statutes, particularly when they have been enacted by the same Legislature and at the same session, must be irreconcilable to justify the conclusion that the later act was intended to abrogate the former. "The law does not favor a repeal by implication, unless the repugnance be quite plain, and then only to the extent of the repugnance." (Judge Moncure, in opinion of the court in *Fox's Admr. v. Commonwealth*, 16 Gratt. 8.)

If the two statutes can be reasonably and fairly construed so that both will stand, this should be done.

If the second statute was manifestly intended to embrace the whole subject-matter of the first, and to practically supplant the first enactment, the later act will, in such case, operate as a repeal of the first, or of such provisions embodied in the first as are covered by the provisions of the later act. In such cases, the doctrine of "*Expressio unius, exclusio alterius*," will, I would say, control. *Hogan v. Guigon*, 29 Gratt. 705; *Somers v. Commonwealth*, 97 Va. 759.

An examination of Chapter 591 of Acts of 1901-2 will, I think, produce the impression that it was probably intended to embrace the whole subject, so far as it could be covered by *general* legislation embodied in one act; and, if this were all, we might possibly be constrained to say that the Police Justice is probably right in his view as to its effect. But this is not all that must be considered in order to reach a proper decision of the question. There is another rule of construction that we must observe—namely, that "laws special and local in their application are not deemed repealed by general legislation, except upon the clearest manifestation of the intent by the Legislature to effect such repeal, and ordinarily an express repeal by some intelligible

reference to the special act is necessary to accomplish that end." *Commonwealth v. R. & P. R. R. Co.*, 81 Va. 367, and cases cited.

Here, there are no words in the general law, embodied in Chapter 591, which were manifestly designed to amend or repeal any of the provisions of Chapter 137, the special act amending the charter of the "Children's Home Society of Virginia;" but, on the contrary, it is expressly provided, in the fourth subsection of Section 4 of Chapter 591, that "the foregoing provisions are not to be understood to * * * abridge or affect the corporate rights of any institution."

This language was not aptly chosen to effect the purpose which it was, doubtless, intended to accomplish—namely, to continue in force the provisions of the act amending the charter of the "Children's Home Society of Virginia;" but it is evident, from a comparison of the two acts, that it must have been used to accomplish that result. However, even had these words been omitted from the later act, I do not think it ought to be construed to repeal the provisions of the earlier special act as to the duties and jurisdiction of justices of the peace and police justices; for the provisions of the later are not necessarily repugnant to those of the earlier act, but may be fairly interpreted as providing an alternative or cumulative procedure or remedy.

In my opinion, Chapter 137 of the Acts of 1901-2 is, in all of its provisions, still in force, notwithstanding the subsequent enactment of Chapter 591 by the same Legislature; and Chapter 591 is also in full force as to all of its provisions, notwithstanding the prior enactment by the same General Assembly of the special act expressed in Chapter 137.

Very respectfully and truly,

WILLIAM A. ANDERSON,
Attorney-General.

LEXINGTON, VA., August 13, 1903.

GEO. N. CONRAD, *Esq.*,

Harrisonburg, Va.:

DEAR SIR:

The village of Dayton has certainly been thrown into a muddle in the matter of the recent election there. Upon the statement which you give me the first question would be whether there has been any legal election; but that is a question as to which it would not be proper for me, as Attorney-General of the State, to express an opinion.

Indeed the Attorney-General is not authorized by law to give an official opinion upon any question touching the acts of municipal or other local officers; and in many cases it would, as you will readily see, be an intrusion, and an improper intrusion, for him to undertake to give an opinion upon such questions. As a matter of personal courtesy, it gives me pleasure to answer your inquiries unofficially as far and as best I can.

1. The Council in office at the time of the town election is the one charged with the duty of canvassing the returns of the election, and ascer-

taining what candidates received the highest votes, and were, therefore, elected. In discharging this duty it exercises ministerial functions similar to those of a county board of election commissioners.

2. The new Council elected at any legal election is the one which is the judge of the qualification returns and election of its members.

3. The facts you state, present a case of failures, omissions and complications not contemplated by the law, or provided for by any express statute, and I am not in position upon that statement of facts, without probable mistake or injustice to some one, so say what is best to be done under the circumstances. If I could talk the whole subject over with you, I might be prepared to suggest some satisfactory way to unravel the tangled skein. I have answered your inquiries as far as I could respond with certainty that I am right.

Very sincerely yours,

WILLIAM A. ANDERSON,
Attorney-General.

LEXINGTON, Sept. 12, 1903.

In the matter of the compensation of the Clerk of the Senate and the Clerk of the House of Delegates during the recess of the General Assembly.

Hon. MORTON MARYE,

Auditor of Public Accounts:

DEAR SIR:

The answer to the questions which you submitted to me in the above matter is largely determined by Section 21 of the Schedule and Section 66 of the Constitution.

Section 21 of the Schedule expressly commands that, after the first day of January, 1903, the compensation of the Clerk of the House of Delegates and of the Clerk of the Senate shall be as prescribed in Section 66 of the Constitution.

Section 66 of the Constitution commands that the General Assembly shall, by general law, "prescribe the number of employees of the Senate and House of Delegates, *including the clerks thereof*, and fix their compensation at a *per diem* for the time actually employed in the discharge of their duties."

These provisions of the Constitution must control in the consideration and construction of the third subdivision of Section 184 of the Code, as amended by the act approved February 7, 1903, (Acts of Extra Session of 1902-3, p. 52.)

The language of that statute must be construed as coming within the express limitations of the provisions of the fundamental law just referred to.

The purpose and effect of Section 66 of the Constitution was to prohibit and prevent compensation being paid to any employees of the General Assembly, including the clerks of the two Houses, during any recess of the General Assembly, or at any other time upon a *constructive* computation or

allowance of per diem, and to limit that compensation absolutely to the time *actually* employed in the discharge of their duties.

My response to your inquiries, therefore, is:

First, That, by the terms of the statute referred to, said officers cannot be allowed compensation during any recess of the General Assembly, except for the days when they were actually and necessarily employed in the discharge of their respective offices:

Second, That the time when said clerks were so employed can only be determined in some manner to be prescribed by law, and that, until this shall be done by appropriate enactment by the General Assembly, you will not be warranted in paying anything for any time during said recess.

The General Assembly, by the Act of February 7, 1903 (Acts of Extra Session of 1902-3, p. 52), has prescribed and limited the periods before the beginning and after the close of its sessions, during which the employment of said clerks is considered necessary, at ten days before the opening and sixty days after the close of a regular session, and thirty days after the close of an extra session, except that of 1902-3, from the close of which latter extra session such employment and compensation therefor is limited to sixty days.

In this act, there is no provision for the employment and allowance of a *per diem* to those clerks during the recess of the General Assembly, or for any part thereof.

Without some such definite legislative provision, it seems to me that there is no authority under the Constitution and laws for any compensation to these officers during such recess. When authorized by law, it must, of course, be limited to the time when they are necessarily and actually employed in the discharge of the duties of their respective offices.

Respectfully submitted,

WILLIAM A. ANDERSON,
Attorney-General.

Sept. 25, 1903.

In the matter of compensation of C. V. Meredith, Esq., who represented certain enlisted men on military duty, in aid of the civil authorities, in the city of Manchester, in the month of July, 1903, charged with the killing of Luther Taylor while acting under the orders of their superior officers.

To Hon. MORTON MARYE,

Auditor of Public Accounts of Virginia:

SIR:

The question submitted to me is, whether the fee due C. V. Meredith, Esq., who was engaged by the Governor of the Commonwealth to represent the soldiers charged with the killing of said Taylor, should be paid; and, if so, out of what fund.

There are three funds out of which the necessary and proper expenses incurred in executing the laws for the preservation of peace and the sup-

pression of riot and lawlessness may be paid, under Chapter 21 of the Code, or under the general law.

1. "The necessary expenses incurred in subsisting, quartering and transporting troops shall be paid by the treasurer of the State out of any moneys not otherwise appropriated," upon warrants drawn by the Auditor of Public Accounts, under Section 305; but the expenses which may be so paid out of the general treasury of the State are here limited specifically to "subsisting, quartering and transporting troops." It is evident that the compensation of counsel, for defending soldiers charged with an offence against the laws of the State because of acts done while in discharge of their duty under orders of their superior officers, is not embraced in the provision just quoted.

2. "Expenditures not specially provided for in the chapter, but manifestly in execution of its general purpose and for the evident benefit of the volunteer service, may be made" by the Military Board, "but only on the concurrence and the order in writing of all of the members." If Mr. Meredith's account for professional services is approved by the Military Board, and the order sanctioning its payment is signed by all of the members of said board, such expenditure, being manifestly incurred in execution of the general purpose of Chapter 21 of the Code and for the evident benefit of the volunteer service, could be paid out of the Military Fund.

3. If, from any cause, it was impracticable to provide for the payment of the account out of the Military Fund, it could be paid out of the Civil Contingent Fund under the control of the Governor, under Section 218 of the Code.

Respectfully submitted,

WILLIAM A. ANDERSON,

Attorney-General.

September 26, 1903.

Gen. W. NALLE,

Adjutant-General of Virginia:

SIR:

Replying to your letter of inquiry of this date, I beg to say that:

Under existing laws, governing the matter of furnishing subsistence for any troops of this State while on duty in aid of the civil authorities, there is no authority for the payment by the State of any bill or claim for any expenses incurred for or on account of subsistence furnished such troops while so on duty, when such expense is in addition to or in excess of the sum allowable as commutation of rations.

Under Chapter 21 of the Code of Virginia, as amended by the Act approved March 7, 1900, the value of such commutation must be ascertained by the Adjutant-General, and the amount so ascertained paid to the enlisted men in lieu of such rations.

The only provision made by law for the subsistence of troops on such service is either that they shall be furnished rations, or that they shall be

paid the commuted value thereof, ascertained as above indicated, if rations are not issued to them.

Very respectfully,

WILLIAM A. ANDERSON,
Attorney-General.

Oct. 9, 1903.

Hon. A. J. MONTAGUE,

Governor of Virginia:

DEAR SIR:

Referring to the letter of Mr. William A. Blankingship, secretary of the Electoral Board of Chesterfield county, herewith returned to you,

I beg leave to say that, by Section 9 of the "Walton-Parker Law," as amended by the Act of 1897-8, p. 857, any county judge may discharge the duties imposed upon the county judge of the particular county by that act, in the event of his inability, through sickness or incapacity, to discharge the duties required of him by said act.

The former county judge has become incapacitated from discharging such duties, by reason of his resignation, and acceptance of another office.

Under the circumstances, it seems to me to be entirely competent for Judge Farrar to act in his room and stead, if designated by you to act as the county judge for said county.

Very truly yours,

WILLIAM A. ANDERSON,
Attorney-General.

Oct. 17, 1903.

Hon. JOSEPH W. SOUTHALL,

Superintendent of Public Instruction:

MY DEAR SIR:

The letter of G. G. Joynes, Esq., Superintendent of Schools for Accomac county, addressed to you and bearing date the 13th instant, and referred by you to me, was received on yesterday.

Section 161 of the Constitution prohibits any State, county, district or municipal officer from receiving any free pass from any transportation company, or any rebate or reduction in the rates charged by such company to the general public, under a penalty of forfeiture of his office and such other penalties as may be prescribed by law.

Under the comprehensive, and yet explicit, provisions of this section of the Constitution, a county superintendent would be prohibited from accepting a free pass over the lines of any transportation company.

I do not, however, understand that this prohibition of the Constitution would make it unlawful for a railroad company to make any donation that it chooses to make in aid of the public school system of Accomac county, so that the same is not in the shape of rebates or free passes granted to any State, county, district or municipal officer.

As I understand from Mr. Joynes' letter, the generous donation of Mr. Rogers to the public schools of Accomac county was "the amount of County Superintendent's traveling expenses" over the N. Y., P. & N. Railroad, in said county; and this donation, as I infer, was made in money. If this is correct, I cannot see that there is any possible objection to a transaction so manifestly in the interest of the public schools, which latter would have to bear this expense; provided, as above stated, the transaction does not involve the issuance of free passes or granting of rebates.

I herewith return the letter of Mr. Joynes.

Very truly yours,

WILLIAM A. ANDERSON,
Attorney-General.

Oct. 19, 1903.

W. A. ROBINS, *Esq.*,

Member of Electoral Board of Gloucester County, Money, Va.:

DEAR SIR:

I am in receipt of your favor of the 16th instant, in which you request my opinion as to whether or not "a candidate who filed his notice of candidacy on the 14th instant is in time to have his name on the ticket."

By Sub-Section 5, Section 122 *a*, Supplement to the Code, it is provided that any person who intends to be a candidate shall give notice *at least twenty days before the election* in which he will be a candidate for any office.

By Sub-Division 8, Section 5, Code of 1887, it is provided:

"Eighth. Computation of Time.—Where a statute requires a notice to be given, or any other act to be done, a certain time before any motion or proceeding, there must be that time exclusive of the day for such motion or proceeding, but the day on which such notice is given or such act is done may be counted as part of the time."

Following the rule thus clearly stated, and counting the 14th as one of the twenty days, I am of opinion that a man who, on the 14th of October, files notice that he will be a candidate at the election to be held on November 3d, has given the requisite notice, and is entitled to have his name printed on the ballot.

Yours very truly,

WILLIAM A. ANDERSON,
Attorney-General.

Oct. 20, 1903.

Hon. A. J. MONTAGUE,

Governor of Virginia:

MY DEAR SIR:

Referring to the letters of Judge Wm. M. Smith, County Judge of Cumberland county to you, of the 6th and 18th instant, I beg to say that Section

9 of the Virginia Election Law (Section 122 *a*, Pollard's Supplement) provides that, in the event of the inability, "through sickness or other incapacity," of the Judge of the County Court to discharge the duties imposed by that act, it shall be lawful for said duties to be performed by the judge of some other county.

The act fails to provide in what manner the judge of some other county shall be designated.

Neither this statute, nor Section 3049 of the Code, as amended by the Act of March 20, 1903 (Acts of 1902-3, p. 534), makes it the duty of the Governor to designate a judge of the County Court for this purpose.

Under the circumstances, it is clear to me that it will be competent for the judge of any other county to discharge these duties, and it seems to me it would be entirely proper for the Electoral Board of the county to select the judge for this purpose, and invite him to be present.

Very truly and respectfully yours,

WILLIAM A. ANDERSON,
Attorney-General.

Oct. 29, 1903.

W. P. DUKE, *Esq.*,

Hadensville, Goochland County, Va.:

DEAR SIR:

Your favor of the 27th instant was received on my return here to-day from Norfolk.

By Sections 162, 163, and 164 of the Code (the latter section being amended by Chapter 61 of the Acts of 1901-2), it is provided that the acceptance of any post or of any emolument whatever from the government of the United States shall, in all cases other than those excepted in said Chapter 61 of Acts of 1901-2, vacate any office or post of profit, trust or emolument under the government of this Commonwealth, or any county, city or town thereof.

From this, it is clear that a postmaster is disqualified from accepting the post or office of judge of election.

Very truly yours,

WILLIAM A. ANDERSON,
Attorney-General.

In concluding this report, I deem it proper to call attention to the great increase during the past few years in the duties and work devolved upon this office.

Owing to the greater variety and complexity of the transactions of the various executive offices of the State, and particularly to the office of the Auditor of Public Accounts, the questions requiring prompt decision have been greatly multiplied; and this is, to a less extent, true of other departments of the State government.

Many questions have arisen, and must necessarily arise, in connection

with the inauguration of the new Constitution and the construction of the laws enacted for the purpose of giving effect to its provisions.

The duties, work and responsibility of the Law Department of the State, in connection with or growing out of the rulings and orders of the State Corporation Commission, appeals from the decisions of that Commission, and suits to correct assessments of the property of public service companies made by it, have, as of the date of this report, begun to make themselves apparent; and it is manifest, from what has been already done and from the number of prospective suits and appeals of which information has come to this office, that the work growing out of the rulings and decisions of that Commission, already devolved by the Constitution or by statute upon the Attorney-General will alone be at least equal in amount and in difficulty to all of the work which in former years was, as a rule, imposed upon the Attorney-General.

Respectfully submitted,

WILLIAM A. ANDERSON

Attorney-General.