ANNUAL REPORT

OF THE

ATTORNEY GENERAL

TO THE

GOVERNOR OF VIRGINIA

FOR THE

YEAR 1907

RICHMOND:
DAVIS BOTTOM, SUPERINTENDENT OF PUBLIC PRINTING
1907

ATTORNEYS GENERAL OF VIRGINIA.

FROM 1775 TO 1907.

Edmund Randolph	1776-1786.
James Innes	1786-1796.
Robert Brooke	1796-1799.
Philip Norborne Nicholas	1799-1819.
John Robertson	1819-1834
Sidney S. Baxter	1834-1852.
Willis P. Bocock	1852-1860.
John Randolph Tucker	1860-1866.
Thomas Russell Bowden	1866-1869.
Charles Whittlesey (Military Appointee)	1869-1870.
James C. Taylor	1870-1874.
Raleigh T. Daniel	1874-1877.
James G. Field	1877-1882.
Frank S. Blair	1882-1886.
Rufus A. Ayers	1886-1890.
R. Taylor Scott	1890-1897.
R. Carter Scott	1897-1898.
A. J. Montague	1898-1902.
William A. Anderson	1902-1906.
William A. Anderson	1906-

Robert Catlett, Assistant to the Attorney General, 1906.
T. Gray Haddon, Clerk.

REPORT.

COMMONWEALTH OF VIRGINIA.
OFFICE OF THE ATTORNEY GENERAL.

To His Excellency, CLAUDE A. SWANSON,
Governor of Virginia.

SIR:

As required by law, I submit my annual report embracing the transactions of this office for the year ending October 31, 1907.

The cases in which the Attorney General, or his assistant, appear as counsel for the Commonwealth, which have been disposed of during the year, or which are undisposed of, are mentioned under the titles of the several courts in which those suits have been pending.

IN THE SUPREME COURT OF THE UNITED STATES.

1. Virginia *v.* West Virginia: The circumstances which made the institution of this suit necessary for the protection of the interests of the Commonwealth, and a history of the events which led up to the bringing of the suit, are set out in my annual reports for 1905 and 1906.

The case was argued upon the questions raised by the demurrer on the 11th of March, 1907, by Messrs. John G. Carlisle and Charles E. Hogg for West Virginia, and by Major Holmes Conrad and myself for Virginia, and was also fully argued by the counsel on each side in printed briefs.

As the demurrer raised the principal grounds of defense relied upon by West Virginia, the decision was awaited with much interest.

It was rendered on the 27th of May last, when the court in an unanimous opinion delivered by the Chief Justice, overruled the demurrer, and gave the defendant until the October term to answer.

The answer of West Virginia was filed at the beginning of the October term of the court. It controverts material allegations of the bill, and denies the liability of that State on account of the Virginia debt, as charged in the bill, and the right of Virginia to maintain the suit; but presents no grounds of defense which cannot, it is believed, be met upon the proofs.

A general replication to this answer was filed on behalf of the Commonwealth, and the case will now be submitted to the court upon motion by Virginia for a decree referring the cause to a special master to ascertain what amount of the debt of the undivided State, and of the interest thereon, it would be equitable and just for West Virginia to assume and pay.

All that Virginia desires is a just, and equitable, and a final settlement of the important matter presented in this suit—the last question connected with the *ante bellum* debt of the Commonwealth which remains unsettled.

While the Commonwealth has a considerable direct interest in the suit on account of the large sums which she has paid in full discharge of obligations of the undivided State, she has a still larger interest in the litigation, as the creditors whose claims are

represented by the large amount of Virginia deferred certificates, which, under the contract with the Virginia Debt Commission, have been deposited with or under the contract of that Commission, have agreed to accept *any adjudication* of the court against the State of West Virginia in full discharge and acquittance of any and all claims against the State of Virginia.

This agreement on the part of the common creditors seems to be just and reasonable, in view of the great sacrifices Virginia has already made, and the large sums which she has already paid, or assumed and given her new bonds for, in discharge of her liability on account of this indebtedness—sums which, including the obligations which she has retired or paid off, and the interest she has paid, aggregate as of this date, more than $72,000,000.00.

I here give a statement showing the total amounts of deferred Virginia certificates, which have been already deposited with or under the control of the Virginia Debt Commission, under the contract between that Commonwealth and the depositing committee.

	Virginia Deferred.	Amounts deposited.	Total amount issued to holders other than Virginia.
Issue of 1871.			
Principal	$11,123,649 65		
Scrip	40,907 00		
Sterling scrip	10,716 66		
		$11,175,273 31	$12,703,451 79
Issue of 1879.			
Principal	$ 443,556 79		
Scrip	40,183 32		
Sterling scrip	5,239 16		
		488,979 27	564,258 87
Issue of 1882.			
Principal	$ 781,228 03		
Scrip	566,933 02		
		1,348,161 05	1,608,660 15
Issue of 1892.			
Principal	$ 261,899 05		
Scrip	287,883 56	549,782 61	605,320 78
		$13,562,196 24	$15,481,691 59

October 31, 1907.

2. The Cosmopolitan Club *v.* the Commonwealth: The Cosmopolitan Club is a "Social Club" domiciled in the city of Norfolk under a charter granted prior to April 16, 1903, by the corporation court of that city.

That club was proceeded against under section 142 of the revenue law, as amended by the Act of March 12, 1904 (Acts of 1904, p. 214), upon the charge that it was being conducted "for the purpose of violating or evading the laws of this State regulating the licensing and sale of liquors," and the court decided and adjudged that said club had been so conducted.

The statute provides that upon such a judgment by the trial court, "the chartered rights and franchises of such corporation shall cease and be void without further proceedings."

The case has been carried to the supreme court of the United States by writ of error to the supreme court of appeals of Virginia, upon the contention that the Act of March 12,

1904, violates the contract rights of the Cosmopolitan Club under its charter and is therefore in conflict with section 10 of article I. of the Federal Constitution, which declares that no State shall pass any law impairing the obligation of contracts.

This case has been fully argued in printed briefs and will be reached for oral argument and submitted to the court for decision during its present term.

As will be seen, it involves an important question as to the power of the State to thus summarily deal with so called social clubs, engaged in the liquor traffic in flagrant violation of the temperance and revenue laws of the State.

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

1. John E. Brickhouse *v.* Gallup and others, judges of election: This is an action brought by the plaintiff against the defendants upon the averment that he was a duly registered voter of the State prior to the adoption of the present Constitution, and was wrongfully denied by the defendants his right to vote at the election for congressmen held November 4, 1902.

The case, as it now stands, turns on the issues made by the demurrer to the declaration, by the special plea filed by the defendants, the demurrer of the plaintiffs to that plea, and the joinder of the defendants in that demurrer.

These pleadings squarely present the issue of the validity of the Virginia Constitution, the alleged invalidity of which appears to be the principal ground relied on by the counsel for the plaintiff.

If the defendants' demurrer to the declaration shall be sustained, or the plaintiff's demurrer to the defendants' special plea overruled, the decision of the United States circuit court must be for the defendants.

This case was fully argued by Mr. Frank W. Christian and myself for the defendants and the Commonwealth, and by Mr. John S. Wise for the plaintiff, before the circuit court of the United States for the eastern district of Virginia, Judge Goff sitting, in February last, and submitted; but no decision has as yet been handed down by the learned judge.

Owing to the lapse of time, and changed conditions under the operation of the provisions of the Constitution itself, this case has long since lost any special significance and importance which it ever possessed, and the questions which it presents have, in any event, now become largely moot questions.

2. Edgar Poe Lee *v.* A. J. Montague, Governor of Virginia, John S. Barbour, and other members of the Virginia Constitutional Convention who voted to adopt the Constitution without submitting it to the vote of the people, and

3. Anthony S. Pinner *v.* Same, and others.

These suits were brought to test the validity of the Virginia Constitution and the suffrage article thereof. The defendants have demurred to the declaration in each case, and they are likely to be disposed of upon the objections thus raised, and to be dismissed. The plaintiffs seem disposed to let them sleep. It may be as well perhaps to let them die a natural death.

The Virginia Passenger Rate Cases.

4. The Southern Railway Company *v.* The Members of the State Corporation Commission, and others.

5. The Atlantic Coast Line Railroad Company *v.* Same.

6. The Chesapeake and Ohio Railway Company *v.* Same

7. The Norfolk and Western Railway Company *v.* Same.

8. The Louisville and Nashville Railroad Company *v.* Same.

9. The Chesapeake and Western Railroad Company *v.* Same.

These six cases were brought for the purpose of perpetually enjoining the corporation commission from putting into effect its judgment and order April 27, 1907, prescribing a two cent passenger rate for the transportation of passengers upon the principal railroads in the State, and rates varying from $2\frac{1}{2}$ cents to 3 and $3\frac{1}{2}$ cents per mile upon certain branch roads, or new and short line railroads, upon which the transportation was necessarily conducted at a heavier cost per passenger carried.

The principal grounds relied upon by the plaintiffs in these suits for attacking the judgment and order of the corporation commission are that said order is unconstitutional and void.

1. Because the Virginia State Corporation Commission is, as constituted by the organic and statute law of the State, an unconstitutional and invalid tribunal, for the reason that powers belonging to the three great departments of government, the legislative, executive and judicial departments, are all conferred upon and exercised by it, which operates, as is alleged, to deny to the plaintiffs and others in like position due process of law.

2. Because the plaintiffs and other transportation or transmission companies, alone of all the persons or corporations transacting business in the State are made subject to the jurisdiction, and more or less summary procedure of this commission, and in respect to a large part of their rights and duties, are not allowed to avail themselves of the jurisdiction and protection of the ordinary courts of the country, which they allege operates to deny them the equal protection of the laws.

3. That the rates prescribed in said order are confiscatory.

The judgment or order thus attempted to be nullified was rendered by the commission after a protracted and most thorough, patient, and exhaustive trial and hearing by the commission sitting as a court continued through many months, in which the railroad companies were represented by very able counsel, introduced a great mass of testimony of expert witnesses and documentary evidence, and were fully heard upon the issues involved, and the conclusions of the commission were reached after the most careful consideration.

Before the order of the commission could be published as required by the Constitution, the Honorable Jeter C. Pritchard, United States circuit judge for this judicial circuit, at the suit of the plaintiffs, on the 8th of May, 1907, entered a temporary restraining order in each of the cases, restraining and enjoining the State corporation commissioners and their clerk, their servants, agents and employees from publishing said order, or taking any steps to enforce said order, and citing the defendants to appear before him on the 27th of June at Asheville, North Carolina, and show cause why a *pendente lite* injunction should not be awarded in each case.

The litigation thus precipitated upon the State involved questions of momentous importance to the Commonwealth. These suits not only operated to peremptorily stop a very important department of the State government in the exercise of the powers and discharge of the duties devolved upon it by the Constitution and laws of the Commonwealth, but they threatened the very existence of that department of the government, treated its solemn acts and adjudications as a nullity, and proposed, after a matter had been litigated to a finish in the State tribunal, to require the Commonwealth or its official representatives to litigate the whole matter over again in the United States circuit court, and not only to meet the cases already made up, but to allow the plaintiffs to introduce new and additional evidence, and to make up new cases and to require the Commonwealth or its official representatives to meet the new cases thus made up.

It is manifest that this substantially involved the right of the State to exercise one of the necessary and most important attributes and functions of sovereignty and government essential to the protection of society—the police power of regulating transporta-

tion companies operating important highways within her jurisdiction; for if the State cannot justly regulate such public service companies, through tribunals like the corporation commission, specially created, and endowed for the purpose, it will be impossible for her to efficiently regulate them at all.

It is manifest also that however valid and legal such a tribunal may be, its acts and adjudications would go for nothing if they could at any time be in any such fashion treated as a nullity by any judge, State or Federal, however exalted. If the judgment of any tribunal may be thus disregarded, and not only set at nought, but treated as void *ab initio* in an original suit, or by collateral attack in any other court or tribunal, the efficiency, and any power for good, of such emasculated tribunal are at an end.

The rule of English and of American law is that when two parties have litigated a matter of difference between them, before a tribunal of competent jurisdiction, however lowly, or however high, and that case has been decided by that tribunal, that decision stands until lawfully reversed upon appeal. Of course, it may and should be reversible, for error, upon appeal to a higher court; but it cannot be lawfully or rightfully attacked or brought in question in any other proceeding. Particularly cannot the losing litigant, after a decision with which he is dissatisfied has been rendered against him, be allowed to drag the other party into another court, and to litigate the whole case over.

The successful party has a vested right in the judgment in his favor, of which he cannot be deprived except upon appeal.

To deprive him of this right by any collateral attack, or original suit, in any other court, if not denying him due process of law, is to wrongfully deprive him of his rights, in violation of the "law of the land," and of an essential principle of Anglo Saxon and of American liberty.

Great injustice would be done the State, if, under such circumstances, she should be required to try these cases over again, and also to meet the new cases which the plaintiffs would under their bills, make up and press against her.

A serious, though one of the least important grounds of objection to such an attack upon this department of the State government and its judicial and its legislative acts, is, that to litigate these six suits in the Federal courts so as to fully present Virginia's case upon the merits in each cause, would involve a cost to the Commonwealth of probably a good deal more than $100,000.00.

It is to be remembered that the plaintiffs in these suits, under the Constitution and laws of Virginia, had an appeal *of right* to the supreme court of appeals of Virginia from any judgment or order of the corporation commission. There is no question raised, and no ground of attack asserted against the State corporation commission, or its order and judgment, in these suits in the Federal court, which could not have been raised and asserted upon appeal to the highest court of the State; and if any wrong should be done the railroad companies by the decision of that court, they could have carried the cases to the supreme court of the United States, and there obtained any redress to which they might be entitled.

All the questions they raise could have thus been settled and put to rest by the decision of the highest courts of the land, without friction, without making an attack upon, and in effect, suing the State; and with less delay and at much less cost to both parties than will be necessitated if these new collateral suits are fought out in the Federal courts to a final decision upon the merits.

These suits therefore involve matters of vastly greater moment to the Commonwealth than any mere question of a two cent or a three cent rate per mile for passenger transportation.

They involve:

1. The existence of the State corporation commission as an integral and efficient department of the State government.

2. The right of the State by such a tribunal of its own creation, wisely designed for the purpose, to justly and effectively regulate public service companies within its jurisdiction—a right which Virginia and the government of England, from which our institutions are largely derived, have exercised from time immemorial.

3. The right of any United States district or circuit judge to enjoin, hold up, and treat as a nullity the judgments of a constitutional and lawful State court: for the State corporation commission in rendering the judgment enjoined, acted judicially, accorded due process of law to the parties litigant before it, acted as a court, and was to all intents and purposes, in fact and in law, a court.

Such being the character of the litigation, it was important that the rights and interests of the Commonwealth so directly involved should be adequately represented by counsel.

The six litigating railway companies were each represented by one or more counsel embracing some of the ablest lawyers in the country, and these as to most of the companies, were aided by a staff of trained and experienced assistants.

Realizing that it would be impossible for myself and my assistant, without assistance, to present the cases for the defendants and for the Commonwealth as they should be presented, and to meet as they should be met this great array of learned and skilful counsel, even if our time and attention had not been largely engrossed by the other important duties devolved upon us by law, I brought the matter to your attention, and after conferences with the members of the State corporation commission, it was, with your and their approval, determined, if practicable, to secure the services of Mr. A. Caperton Braxton as special counsel with me for the defendants.

Accordingly, his services were secured under an arrangement most fortunate and advantageous for the State, and for a compensation entirely contingent upon the action of the General Assembly, which is moderate and reasonable, having reference to the magnitude of the litigation, and the character and value of the services which he and his associate, Mr. John S. Eggleston, have rendered and will continue to render.

Mr. Braxton prepared the answers of the defendants to the rule to show cause against the award of the injunctions—in which the grounds of defense relied upon are clearly and strongly presented.

The cases were fully argued orally by counsel for the plaintiffs and by Mr. Braxton and myself before Judge Pritchard at Asheville in the early part of July last, the argument consuming the greater part of a week. Besides the oral argument, Mr. Braxton and the undersigned filed elaborate printed arguments in the suits.

After several weeks' consideration, Judge Pritchard decided to retain jurisdiction of the cases, and awarded the injunction asked for by the plaintiffs.

Deeply sensible of the actual and the threatened wrong to the Commonwealth from this action of the learned judge, you as her chief executive, the members of the State corporation commission, and the counsel representing them in these suits, were considering measures for the protection and vindication of the rights and the essential authority of the State, when negotiations were entered into with the counsel representing the four leading railroad companies (all of the litigating companies except the Louisville and Nashville and the Chesapeake and Western) looking to some agreement which would diminish the friction and allay the excitement and resentment which the threatened action of the United States circuit court would very naturally arouse in the minds of the people of Virginia, when the meaning and effect of that action came to be fully understood and realized.

A fortunate arrangement was the result of this negotiation, which is fully set forth in the correspondence between yourself and the counsel for the litigating railroad companies, which is as follows:

August 3, 1907.

HON. ALFRED P. THOM, *Counsel for Southern Railway Company.*
HON. HENRY T. WICKHAM, *Counsel for Chesapeake and Ohio Railway Company.*
HON. ALEXANDER HAMILTON, *Counsel for Atlantic Coast Line Railroad.*
HONS. JOSEPH I. DORAN AND LUCIAN H. COCKE, *Counsel for Norfolk and Western Railway Company.*

MY DEAR SIRS:

As governor of Virginia, and as such interested in all that appertains to the best interests of the State, I have been very much concerned in the pending suits and controversies affecting the establishment of passenger rates in the State of Virginia. The welfare of all would, in my opinion, be subserved by a satisfactory and amicable arrangement pending the litigation.

I realize that the material interests of Virginia and the well-being of her people are largely dependent upon the development and efficiency of her transportation lines.

The railroad companies and their interests are entitled to the same rights and the same consideration that other persons and their property are entitled to; no more and no less. The people of Virginia, as I am confident, concur with me in thinking that these companies are entitled to be given no special privileges, and that they should not be subjected to any unjust burdens and discriminations.

Feeling this, and as Governor of Virginia interested in all of her varied interests, it is my earnest hope that this controversy may reach such a prompt and satisfactory solution as will be beneficial to all parties.

I have cordially co-operated with the corporation commission and their counsel in this matter, and am frank to say am in thorough accord with the commission with respect to their authority and their action in the rate cases.

With the approval of the corporation commission, I tender the following proposal for your consideration, and regard it as a fair arrangement pending the final adjudication of the controversy by the supreme court of the United States:

1. The passenger rates, rules and regulations with respect thereto, ordered by the corporation commission on April 27, 1907, shall be put into operation not later than the 1st of October, 1907, and continued until the pending cases are finally adjudicated by the supreme court of the United States, both as to jurisdiction and merits.

2. That the cases in the circuit court of the United States shall be hastened for decision in the supreme court of the United States as speedily as possible.

3. That the evidence that has already been introduced in the cases before the corporation commission shall be used as the evidence in the litigation in the circuit court of the United States, if and when heard on its merits, each party having the right to supplement it with additional evidence as to fact subsequently arising.

4. That counsel representing the State and counsel representing the railroads shall agree upon a method of procedure and proper details necessary to carry these suggestions into effect, and to more accurately and carefully define and protect the rights of the parties.

I feel sure the acceptance of these suggestions will be regarded by the people of Virginia as an evidence of a disposition on the part of the railroads to have a speedy determination of this question, and to respect the wishes and judgment of the people of Virginia and her constituted authorities in this matter.

Very respectfully yours,

CLAUDE A. SWANSON,
Governor of Virginia.

To this letter the railway attorneys replied as follows:

RICHMOND, VA., *August 3, 1907.*

To the Honorable CLAUDE A. SWANSON,
Governor of Virginia.

DEAR SIR:

We beg to acknowledge your letter of this date bearing upon a proposed adjustment, *pendente lite*, of the controversy over the passenger rates adopted by the State corporation commission of Virginia.

The spirit of your letter is appreciated by us, and in a similar spirit we accept your suggestions, subject, however, as to your first suggestion, to the necessity for us first to obtain the approval of the circuit court of the United States for the eastern district of Virginia, to a modification of the interlocutory injunction awarded it in our several cases. We will, however, make early application for such modification and, as these injunctions were granted on our motion, we anticipate no difficulty in having the rates in effect by the first of October, as mentioned by you.

We note and have acted upon what you say in respect to an arrangement as to the method of procedure and as to the details of carrying this adjustment into effect.

Yours respectfully,

ALEXANDER HAMILTON,
H. T. WICKHAM,
JOS. I. DORAN,
LUCIEN H. COCKE,
(*by Jos. I. Doran*),
ALFRED P. THOM.

It will be seen that the agreement expressed in this correspondence does not dispose of the great questions at issue in this litigation. It merely provides for a *modus vivendi* pending the final decision of the suits upon the merits, under which the litigation will be prosecuted to a finality, while at the same time, and until the questions presented shall be finally decided *upon their merits*, the order of the State corporation commission and the rates it prescribed would be practically put into effect. Those important questions remain yet to be determined, as they can only be finally and definitively by the supreme court of the United States, whose plenary jurisdiction it is the purpose of the counsel for the members of the State corporation commission, and of the State, to invoke as soon as the appeals to that tribunal from the decrees of the circuit court of the United States for the eastern district of Virginia can be perfected.

Realizing the gravity of the situation, the magnitude of the interests involved, and the number, the talent, and the great ability of the counsel representing the railroad companies, you deemed it advisable to secure the services of the Hon. John W. Daniel as additional counsel for the defendants and the State; and this was, with the hearty approval of defendants' counsel, fortunately accomplished in the month of July last. I wish to make acknowledgement for the valuable assistance rendered by him in connection with the negotiations conducted under your auspices to a successful conclusion as above outlined, and in the farther consideration and preparation of the case for the defendants.

While this litigation, particularly in the form which it has assumed, is greatly to be deplored, it has been relieved in large measure of acrimony by the considerate action of the four leading railroad companies, in putting into effect, *pendente lite*, the rates prescribed by the order of the State corporation commission.

In the end, it is to be hoped, that these suits will result in a lasting benefit to the Commonwealth and to the country, for they afford an opportunity to have a final determi-

nation of the question whether the States have the right through impartial tribunals acting judicially, according to the parties a full hearing, a fair trial, and all due process of law, to justly and effectively regulate and control transportation and other public service companies, in respect to the discharge of their duties to the public, and the rates and charges they may reasonably and justly make for the services which they render.

If Virginia has parted with, or lost, this necessary prerogative of a free government, the sooner we know it the better, so that she may, in co-operation with her sister States of the American Union, by securing appropriate amendments to the Federal Constitution or laws, regain a power so necessary for the protection of her people, and for the exercise of that local self government which we and our fathers have heretofore believed to be an essential part of our heritage of liberty

CASES DECIDED IN THE SUPREME COURT OF APPEALS OF VIRGINIA.

1. Fletcher *v.* Commonwealth. Appeal from the circuit court of Warren county, on conviction for violation of the local option law. Fine $3,200.00. Affirmed.

2. Rose *v.* Commonwealth. Appeal from the circuit court of Warren county, on conviction for the violation of the local option law. Fine $2,160.00. Affirmed.

3. Jeremy Improvement Company *v.* Commonwealth. Appeal from the circuit court of Charlotte county, on conviction for maintaining a nuisance. Argued by Judge W. H. Mann and the Attorney General. Reversed.

4. Commonwealth *v.* Hampton Normal and Agricultural Institute. Appeal from the circuit court of Elizabeth City county, for correction of assessment of taxes. Argued by Messrs. B. A. Lewis for Elizabeth City county and by the Attorney General for Commonwealth. Affirmed in part and reversed in part.

5. Watts *v.* Commonwealth. Appeal from the corporation court of the city of Danville, on conviction for doing business as labor agent without a license. Reversed.

6. Southern Railway Company *v.* Commonwealth. Appeal from the judgment of a justice of the peace for the city of Danville, imposing a fine of $9.00 for violation of Rule II. of the demurrage and car service rules, enacted by the State corporation commission. Affirmed.

7. Plavinic *v.* Commonwealth. Appeal from the circuit court of Elizabeth City county, on conviction of felony. Error confessed.

8. Wright *v.* Commonwealth. Appeal from the circuit court of Alexandria county, on conviction of a capital felony. Affirmed.

9. Yoder *v.* Commonwealth. Appeal from the corporation court of the city of Lynchburg, on conviction for contempt of court. Argued by Mr. Catlett and J. T. Coleman, Esq. Reversed.

10. Jake Wells *v.* Commonwealth. Appeal from the circuit court of Henrico county, on conviction for violation of the Sunday law. Argued by Mr. Catlett. Reversed.

11. Puckett *v.* Commonwealth. Appeal from the circuit court of Henrico county, on conviction for violation of the Sunday law. Argued by Mr. Catlett. Reversed.

12. Winchester and Strasburg Railroad Company *v.* Commonwealth. Appeal from the State corporation commission. Reversed in part and remanded.

13. Barbour *v.* Grimsley, Judge. Petition for writ of prohibition, to test the constitutionality of the Act of Assembly for the appointment of commissioners of the revenue by the circuit courts. Writ refused.

14. Barbara Pope *v.* Commonwealth. Appeal from the circuit court of Alexandria county, on conviction for a misdemeanor. Error confessed.

It will be seen from the foregoing schedule, that error was confessed in the cases of Pavlinic *v.* Commonwealth and Barbara Pope *v.* Commonwealth.

I am slow to confess error in any case, but where it is manifest from the record that some reversible error has been committed, it is useless to subject the plaintiff in error or the Commonwealth to unnecessary delay and to the cost and trouble of printing the record and briefs and trying the case; and in such cases I deem it my duty, with the sanction and approval of the court, to confess error.

The grounds of such confession in the two cases referred to are stated in the following memoranda thereof.

IN THE SUPREME COURT OF APPEALS OF VIRGINIA.

Pavlinic *v.* Commonwealth. *Confession of Error.*

One of the grounds of error alleged by the plaintiff in error in this case is, that the list of *veniremen* was not *drawn* and made up in the manner required by section 4018 of the Code of 1904, but that said list consisted of twenty names selected by the trial judge from the bystanders, and not drawn by the clerk as required by said section; and the record, pages 12 and 13, shows that said list was selected by the judge in the manner stated.

The record, pages 13 and 14, shows that the plaintiff in error moved to quash the list of *veniremen* and the writ of *venire facias* for the errors apparent on the face thereof.

Under the decisions in Jones' case, 100 Va., pp. 842-848, and Hoback's case, 104 Va., p. 871, and the judgment of this court sustaining the confession of error in Oliver's case in January, 1905, the above was plainly reversible error.

I deem it my duty, therefore, in order to save unnecessary costs and delay, to confess error in this case, subject to the judgment of the court.

It is proper, I should add, that the Commonwealth's attorney of Elizabeth City county who tried the case, concurs in the above conclusion.

WILLIAM A. ANDERSON,
Attorney General.

IN THE SUPREME COURT OF APPEALS OF VIRGINIA AT RICHMOND.

Barbara Pope *v.* The Commonwealth. Confession of error for the Commonwealth.

I can find no law under which the plaintiff in error could be convicted and fined for the offense with which she was charged in this case.

It will be seen that clause 44 of section 1294 d, Code of 1904, under which the accused was probably tried, refers only to trains, cars, or coaches operated by electricity.

It does not refer to or embrace steam railroads or trains or cars operated by steam, as is shown to be the case as to the Southern Railway Company's road, on a train of which the plaintiff in error was a passenger at the time she refused to take a seat in the compartment provided for passengers of her race and color.

Clauses 28, 29, 30, 31, 32, 33, 34 and 35 of section 1294 d, which contains the statute provided for separate cars or compartments for white and colored passengers upon railways operated by steam, contain no provision under which the plaintiff in error could be tried or fined for violating the requirements of that statute.

It is proper, therefore, that I should confess error in this case, which I accordingly do.

WILLIAM A. ANDERSON,
Attorney General.

ORIGINAL SUITS DECIDED IN THE SUPREME COURT OF VIRGINIA.

1. The Commonwealth at the relation of the General Board of Directors of State Hospitals *v.* D. Gardiner Tyler, Judge, and L. S. Foster. Prohibition.

2. Same *v.* Same and others. Prohibition.

In the fall of 1906, and in January, 1907, there was a clash of authority at the eastern State hospital between the general board of directors of State hospitals and Doctor L. S. Foster, prior to that time superintendent of that hospital, growing out of the removal of said superintendent, by an order of the general board, and the election of Doctor O. C. Brunk as his successor.

One or two suits had been instituted in the circuit court of the city of Williamsburg and James City county for the purpose of enjoining or preventing the superintendent elect from acting as such.

As a result of this a condition of things existed at the hospital seriously prejudicial to the well being of the institution, and of its unfortunate inmates.

Under these circumstances, and with your full sanction and approval, I deemed it proper that the Commonwealth should intervene.

Accordingly, for the purpose of securing proper recognition of the constituted authority of the general board of directors of hospitals, and at the relation of a majority of the members of that board, I authorized petitions to be filed, and united with the special counsel employed by the general board in filing said petitions to the supreme court of appeals of Virginia in the name of the Commonwealth, but at the relation of said general board for the State hospitals, for writs of prohibition against the Hon. D. Gardiner Tyler, judge of said circuit court of Williamsburg and James City county, and against said L. S. Foster, prohibiting them from proceeding farther in two suits or preceedings then pending in said circuit court, one a suit in equity and the other called a *scire facias*, instituted at the instance of Doctor L. S. Foster, for the purpose of keeping Doctor Foster in office, and preventing the superintendent elect from taking charge of the hospital, and the general board from taking any action in the matter of the removal of Doctor Foster, or the election or installation of his successor.

The supreme court of appeals sustained the contention for the Commonwealth, that the said circuit court was without jurisdiction of the subject, or the parties, in the chancery suit in which its injunction against the general board and Doctor Brunk had been issued, or in the proceding in the nature of a *scire facias* against the general board, and after argument and consideration granted the writ of prohibition in each case.

Whereupon Doctor Foster surrendered the possession and control of the hospital to Doctor Brunk, whereby peace and order were restored in the institution and in its management.

CASES PENDING IN THE SUPREME COURT OF APPEALS.

To be heard at the next terms at Richmond, Wytheville and Staunton.

1. Hanger *v.* Commonwealth. Appeal from the hustings court of the city of Portsmouth.

2. Devine *v.* Commonwealth. Appeal from the circuit court of Mecklenburg county.

3. Crawford Social Club *v.* Commonwealth. Appeal from the hustings court of the city of Portsmouth.

4. Saunders *v.* Commonwealth. Appeal from the corporation court of the city of Norfolk.

5. Midgets *alias* Johnson *v.* Commonwealth. Appeal from the corporation court of the city of Alexandria.

6. Woodson *v.* Commonwealth. Appeal from the circuit court of Buckingham county.

7. Fields *v.* Commonwealth. Appeal from the circuit court of Brunswick county.

8. White *v.* Commonwealth. Appeal from the circuit court of Mathews county.

9. Schermerhorn's Ex. *v.* Commonwealth. Appeal from the circuit court of Elizabeth City county.

10. Hunter *v.* Commonwealth. Appeal from the circuit court of King George county.

11. Thurman *alias* Gould *v.* Commonwealth. Appeal from the corporation court of the city of Norfolk.

12. Lockley *v.* Commonwealth. Appeal from the circuit court of King and Queen county.

13. Richards *v.* Commonwealth. Appeal from the circuit court of Floyd county.

14. Commonwealth *v.* Pocahontas Coal and Coke Company. Appeal from the circuit court of Tazewell county.

15. Boer War Spectacle *v.* Commonwealth. Appeal from the circuit court of Henrico county.

16. Southern Railway Company *v.* Commonwealth. Appeal from the corporation commission.

17. Commonwealth *v.* J. S. McCue's Ex's. Appeal from the corporation court of the city of Charlottesville.

CIRCUIT COURT OF THE CITY OF RICHMOND.

At Law.

1. Commonwealth *v.* Bennett Taylor, clerk Albemarle county. Suit instituted June, 1881.

2. Commonwealth *v.* Joseph Mayo, Jr., late treasurer, *et al.* Suit instituted April, 1884.

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

4. Commonwealth *v.* John F. Jones, treasurer Craig county, *et al.* Suit instituted October, 1886.

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

6. Commonwealth *v.* Bennett Taylor, clerk Albemarle county. Suit instituted October, 1886.

7. Commonwealth *v.* G. H. Baughman, *et al.* Suit instituted November, 1886.

8. Commonwealth *v.* John H. Sears, treasurer Mathews county. Suit instituted April, 1887.

9. Commonwealth *v.* G. R. Barr, treasurer Washington county. Suit instituted April, 1887.

10. Commonwealth *v.* C. H. Ingles, treasurer Henry county, *et al.* Suit instituted October, 1886.

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

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

13. Commonwealth *v.* O. B. Thomas, treasurer Fluvanna county, *et al.* Suit instituted February, 1888.

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

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

16. Commonwealth *v.* A. K. Phillips, *et al.* Suit instituted March, 1892.

17. Commonwealth *v.* Mary B. Randolph's Administratrix. Suit instituted March, 1893.

18. Commonwealth *v.* C. R. Randolph. Suit instituted March, 1893.

19. Commonwealth *v.* C. H. Ingles, treasurer Henry county, *et al.* Suit instituted October, 1893.

20. Commonwealth *v.* Board of Supervisors of Russell county. Suit instituted October, 1899.

21. Commonwealth *v.* Board of Supervisors of Bedford county. Suit instituted October, 1899.

22. Commonwealth *v.* H. L. Stone and sureties. Motion for judgment, which was duly docketed October 15, 1900.

NOTE.—Nearly all of these cases have been pending for years. Most of them involve matters of little or no moment—some of them of no interest whatever to the Commonwealth; and in some of the cases the papers have been long since lost or misplaced and cannot be found. I will endeavor to have all of them in which the State has any interest disposed of at the earliest day practicable.

The following cases have been instituted since July, 1903.

23, 24, 25 and 26. Richmond, Frdericksburg and Potomac Railroad Company *v.* Marye, auditor. Four cases. Brought to set aside the assessment of franchise taxes made by the corporation commission, on the ground that the company is exempt from all taxation.

These cases were long since fully argued upon the demurrers filed for the Commonwealth, which demurrers were overruled; and thereupon I filed answers for the defendant setting up grounds upon which it was claimed for the State that the company by accepting certain amendments to its charter had lost any exemption from taxation which it ever possessed. The cases were argued upon the facts and proofs. A reargument was asked for by the plaintiff before the court had made its decision. They will be submitted again upon this reargument, as soon as I can prepare and file my reply brief.

27. John A. Parker and Bernard P. Greens, administrators *v.* Morton Marye, auditor.

The plaintiffs finished taking their evidence several months since. As soon as I can give the matter my attention, the depositions of the witnesses for the Commonwealth will be taken and the case will be tried.

It is a suit to recover over $172,000.00 claimed to be due the plaintiffs for services rendered by their intestates in the matter of the settlement of the claim of Virginia *v.* the United States for advances made the latter during the War of 1812.

28. Richmond Traction Company *v.* Commonwealth.

29. Richmond Passenger and Power Company *v.* same, and

30. Virginia Passenger and Power Company *v.* Same.

Suits for correction of alleged erroneous assessments of plaintiff's property by the State corporation commission. A basis of settlement has been, with the approval of the State corporation commission, reached in these cases, and they will be disposed of accordingly.

31. John Bailey, Jr. *v.* Commonwealth.

Suit under section 746 of the Code to recover back the amount of a fine imposed by, and paid to, a justice of the peace of Charlotte county, upon the alleged ground that the justice had no jurisdiction to try the case. A demurrer has been filed, upon which it is believed the case will be decided.

32. Commonwealth *v.* J. Samuel McCue's executors.

Suit dismissed by the court on the ground that it did not have jurisdiction, but that the proper forum in which to litigate the claim was the corporation court of the city of Charlottesville. The claim has been asserted in the latter court by counsel retained by the auditor of public accounts to represent the Commonwealth, and there has been a decision adverse to the Commonwealth, from which an appeal has been taken to the supreme court of appeals.

In Equity.

1. Commonwealth *v.* Samuel M. Page. Suit instituted March, 1872.
2. Commonwealth *v.* Walter Millian. Suit instituted April, 1872.
3. Commonwealth *v.* P. H. Huffman, *et al.* Suit instituted April, 1873.
4. Commonwealth *v.* J. W. Grantham. Suit instituted December, 1874.

5. Commonwealth *v.* James Hilton's administrator. Suit instituted April, 1879.

6. Commonwealth *v.* Martha Goode, etc. Suit instituted April, 1879.

7. Commonwealth *v.* Spencer D. Ivey, etc. Suit instituted April, 1879.

8. Commonwealth *v.* J. T. Young. Suit instituted August, 1884.

9. Commonwealth *v.* A. A. Chapman. Suit instituted February, 1893.

10. Commonwealth *v.* George Dusner's curator and administrator. Suit instituted March, 1897.

11. Commonwealth *v.* B. Vandegrift, *et al.* Suit instituted February, 1898.

12. T. H. Martin *v.* Commonwealth, *et al.* Suit instituted January, 1902.

NOTE.—The same remark may be made as to these cases which was made as to certain of the cases at law which have been pending in this court for so long a time, and in which the State generally has little interest.

13, 14, 15 and 16. Four cases. Richmond, Fredericksburg and Potomac Railroad Company *v.* Morton Marye, auditor. The decision of these cases will follow that of Nos. 23, 24, 25 and 26, on the law side of the court.

IN THE STATE CORPORATION COMMISSION.

1. The freight rate cases.

After hearings and arguments which extended over more than twelve months, and involved the examination of a large number of witnesses, a great mass of documentary evidence, and tabulated statements, these cases were disposed of by the order entered by the commission on the 27th of April, 1907, by which the commission adopted the Virginia freight classification, entitled Virginia Classification No. 1, to which charges for freight transportation in Virginia are to be thereafter adjusted.

The effect of this action of the commission will be to get rid of a number of inequalities and discriminations in the charges of railroad companies, and to make those charges as equal and uniform as is practicable.

2. The passenger rate case.

This was a proceeding in the name of the Commonwealth against all of the steam railroad companies operating lines in Virginia, to show cause why a two cent rate for passenger transportation should not be prescribed by the commission.

It was thoroughly and fully heard by the commission at hearings extending over months, and all of the evidence introduced on behalf of the several companies in the freight rate case was also put into the passenger rate case, so far as any party desired to rely upon it.

After patient and careful consideration, the commission, on the 27th of April, 1907, decided that the schedule of rates prescribed in their order, ranging from two cents a mile on the principal lines of road to 3 1-2 cents a mile on some of the small or branch roads, would be just and reasonable under all of the circumstances, and entered up their judgment and order accordingly.

Before this order could be made effective, by the publication thereof required by the Constitution, it was enjoined by the order of the Honorable Jeter C. Pritchard, United States circuit judge of this circuit, as already mentioned.

There were a number of other matters before the corporation commission which received my attention during the past year, but with the exception of the assessment of the property of railroad companies they need not be specifically mentioned here.

ASSESSMENT OF THE PROPERTY OF RAILROAD COMPANIES FOR TAXATION.

It was developed upon the trial of the freight rate and the passenger rate cases before the commission, that the property of the railroad companies of the State was worth

generally very much more than the sums at which they were respectively assessed for taxation, both as indicated by the capital invested, by the aggregate market value of the bonds and stocks, representing the ownership of these Virginia properties, and by the net earnings of the several companies.

These latter as ascertained by the commission in the findings expressed in its opinion in the passenger rate case, showed the net earnings per mile, after providing for all costs and expenses of maintaining and operating their respective properties, including taxes, to be for the year ending June 30, 1905:

For the Norfolk and Western Railway Company $5,879.68, or say 5 87% on $100,000.00 per mile for its 1,054 miles of main and branch lines in Virginia;

For the Chesapeake and Ohio Railway Company $4,933.33 per mile, or 4.93% upon $100,000.00 per mile for its 736 miles of main and branch lines in Virginia, including 85 miles on which it had merely trackage rights;

For the Atlantic Coast Line Railroad Company $5,115.91, or 5.11% on $100,000.00 per mile for its 137 miles in Virginia;

For the Seaboard Air Line Railway Company $3,718.33, or 3.71% on $100,000.00 per mile for its 157 miles in Virginia;

For the Southern Railway Company $2,649.76, or 2.64% on $100,000.00 per mile for its 965 miles in Virginia, of which the cost of 75 miles from Orange to Alexandria is partly borne by the Chesapeake and Ohio Railway, and a large proportion of the residue consists of its Atlantic and Danville and other branches;

For the Richmond, Fredericksburg and Potomac Railroad Company $7,640.10, or 7.64% on $100,000.00 per mile for its 83 miles;

For the Washington-Southern Railway Company $5,387.40, or 5.38% on $100,000.00 per mile of its 36 miles in Virginia;

For the New York, Philadelphia and Norfolk Railroad Company $5,192.37, or 5.19% upon $100,000.00 per mile for its 95 miles in Virginia.

The property of these companies was not assessed as a whole.

1. The roadbeds, tracks and other real estate were assessed.
2. The terminals, piers, and other fixed terminal property.
3. The rolling stock, equipment and other personal property.

In addition to this, a franchise tax of 1% of the gross revenue assignable to Virginia is levied upon these companies, as required by the State Constitution.

The total amounts, even at the low rate of assessment heretofore adopted, amounted to a large sum.

The Constitution contemplates that the value of the franchise of such companies shall not be brought into the account in ascertaining the value of their real and personal property for taxation.

The ascertainment of the taxable values under such circumstances is not a very easy problem to solve.

The State clearly reserves for herself the exclusive right to tax their franchises, and requires whatever element of value is represented by that intangible entity to be eliminated in fixing the value for taxation of the residue of the properties of these companies.

After making a just deduction on account of the value of the franchises, by commuting them into a capitalized sum, upon the basis of the average rate of taxation in the State on other property, State and local, which the commission had estimated to be $1.25 per $100.00 of value (and which appeared to me to be an equitable method for ascertaining the value of taxable entity represented by these franchises, the exclusive right to tax which was reserved to the State), my view was that the assessment of from say $12,700.00 a mile of single track for the mileage of the Southern Railway Company to $16,000.00

a mile for that of the Chesapeake and Ohio and Norfolk and Western Railway companies, was too low.

It seemed to me that to double the assessment for the main lines of the principal railways, leaving the assessment of their branches unchanged, would be a reasonable and moderate assessment, after making a full allowance for the taxable value of their franchises, and for the fact that the average assessment of property in the State is quite low.

I therefore considered it my duty to bring the matter to the attention of the State corporation commission, and a hearing upon the matter was given me, on behalf of the Commonwealth, and the counsel for the several steam railway companies, on behalf of those companies, at which various statements were submitted, and the question was pretty fully argued.

Upon careful consideration, the commission did not consider that it would be justified in raising its mileage assessment, though it increased the aggregate of its total assessment by embracing in it valuable additions to the properties of several of the companies.

The commission's order in the premises was entered on the 23d of October, 1907, though the hearing and argument took place several weeks before that date.

In the mean time, grave financial troubles have become acute in the country, seriously affecting the value of the securities which represent the ownership of these companies, and diminishing the market value of their properties to such an extent, that I have not considered that the interests of the State required that an application should be made to the courts in the manner prescribed by law, for the correction of any errors which may have been made by the commission in its assessment of these properties.

Opinions given from November First 1906 to November First 1907.

The following are some of the opinions which have been sent out from this office during the past year.

Many others were given in writing, and many more orally, to the auditor of public accounts, and other officers of the State government; and a large number in writing to the superintendent of public instruction as to the title to school house lots in school districts which desired to borrow money from the literary fund under the statute authorizing such loans to be made for the building of school houses.

TO THE GOVERNOR.

December 17, 1906.

To His Excellency, CLAUDE A. SWANSON,
Governor of Virginia, Richmond.

DEAR SIR:

I am this instant in receipt of your favor of the 14th enclosing the letter of the Hon. H. L. Maynard to you of the 13th instant.

I have considered the question submitted by Mr. Maynard and have the honor to make the following reply thereto:

As I gather from Mr. Maynard's letter, it is proposed by the Unitd States government to fortify the entrance to the Chesapeake Bay, by creating an artificial island on the middle ground between the two channels at that place and erecting fortifications thereon. The question which he submits, as I understand his letter, is whether the title to the soil under the Chesapeake Bay at that point is vested in the commonwealth, and if so, how that title can be transferred to the United States?

Mr. Maynard does not indicate the precise location of the proposed fortification, but I infer from his letter that it is unquestionably within the territorial limits of Virginia.

The tide-waters and the soil under those waters within her territorial limits are the property of the commonwealth, subject only to the paramount authority of the United States government in the matter of the regulation of commerce and navigation.

This was settled by the supreme court of appeals of Virginia in McCready *v.* Commonwealth, 27 Gratt., 985, and by the affirmance of that decision by the supreme court of the United States in 94 U. S. 391; and the doctrine has been reaffirmed in Taylor *v.* Commonwealth, 102 Va., 759.

In delivering the opinion of the court in McCready *v.* Commonwealth, 94 U. S., 391, Chief Justice Waite, among other things, lays down the rule as follows:

> " * * * * each State owns the beds of all tide-waters within its jurisdiction, unless they have been granted away. In like manner the States own the tide-waters themselves, and the fish in them, so far as they are capable of ownership while running. For this purpose the State represents its people, and the ownership is that of the people in their united sovereignty. The title thus held is subject to the paramount right of navigation, the regulation of which, in respect to foreign and interstate commerce, has been granted to the United States."

From this it will be seen that the title and ownership of the beds of all the tide-waters of Virginia are vested in the Commonwealth, except that the United States has a paramount jurisdiction over those waters for the purposes of navigation.

The bed of the Chesapeake bay within the territorial limits of Virginia therefore belongs to the State, and can only be acquired by the United States by cession from the State.

Fortunately for the present exigency, I find that by an act approved March 4, 1890, (acts of 1889-90, chapter 214, page 164), an authentic copy of which will be annexed to this opinion, the Commonwealth has ceded to the government of the United States all lawful power and control over such lands as it may be desirable for the United States to acquire for the purpose of erecting fortifications for defense of the entrance into Chesapeake bay, and has empowered the governor of the Commonwealth to convey the proposed site of such fortifications to the United States and to cede jurisdiction to the United States over the same, subject only to the qualification that not more than five hundred acres at any point or site shall be granted for the purpose aforesaid, and the usual reservation of jurisdiction by the State over the same in all matters relating to violations of the laws of the State and the execution and service of all processes issued by or from the courts, magistrates or other State officers in pursuance of law, and in all other matters not incompatible with the consent given by the Act and with the rightful authority of the United States thereby acquired or to be acquired under said Act.

The Act just referred to seems to entirely meet the situation mentioned in the letter of Mr. Maynard, and to remove any difficulty in the way of any action which the United States government may desire to take in the premises.

Very respectfully,

WILLIAM A. ANDERSON.

Chapt. 214.—An ACT to authorize the United States government to acquire title and jurisdiction to lands at the mouth of Chesapeake Bay for sites for fortifications for defense thereof. Approved March 4, 1890.

Whereas it has been represented to the General Assembly of Virginia, that it may be desirable for the United States to purchase certain lands in the counties of Northampton, Princess Anne, and Norfolk, at the mouth of Chesapeake Bay, and to acquire title to land of the State in the vicinity thereof for the purpose of erecting fortifications for defense of the entrance into the Chesapeake Bay.

1. Be it enacted by the General Assembly of Virginia, That the consent of this Commonwealth be, and is hereby given to said purchase, and when the same shall have been made, jurisdiction is hereby ceded to the government of the United States, so that Congress and the authorities of the Federal government shall have all lawful power and control over and in the same, as is specified in the seventeenth clause of the eighth section of the first article of the constitution of the United States; and whenever the United States desires also to acquire title to land belonging to the State in the waters at or near the entrance to Chesapeake Bay for the purpose aforesaid, and application is made by a duly authorized agent of the United States, describing the site and sites required for the purposes aforesaid, then the governor is authorized and empowered to convey the site to the United States, and to cede jurisdiction to the said United States over the same; provided, however, that the consent herein given shall not extend to the purchase or acquisition of more than five hundred acres at any one point or site for the purpose aforesaid, and provided further, that the State retains jurisdiction over the same in all matters relating to the violation of the law of the State, to the execution and service of all processes issued by or from the courts, magistrates, or other state officers in pursuance of law, and in all other matters not incompatible with the consent herein given and the rightful authority of the United States thereby acquired or to be acquired under this act.

In reference to the troubles at The Eastern State Hospital.

RICHMOND, VA., *January 30, 1907.*

To His Excellency, CLAUDE A. SWANSON,

Governor of Virginia, Richmond, Virginia.

MY DEAR SIR:

I beg leave to submit to you the accompanying letter of this instant, received from Messrs. Munford, Hunton, Williams and Anderson, together with copy of bill in chancery,

which they desire your consent to file in the name of the Commonwealth, at the relation of a majority of the members of the general board of directors of State hospitals for the insane, against L. S. Foster, lately superintendent of the eastern State hospital at Williamsburg, praying an injunction against him prohibiting said Foster from interfering in any way with O. C. Brunk, who has been elected by the said general board, superintendent of said hospital for the unexpired term of said Foster.

As you will see from the allegations in said bill, Dr. Foster has this day been removed from the position of superintendent of the eastern State hospital by the said general board, and, as the members of said general board constituting a majority thereof, are informed, it is his purpose, notwithstanding this action of the general board, to refuse to recognize Doctor Brunk as the superintendent of said hospital, but to insist upon remaining in said office and discharging the duties thereof in defiance of the action of said general board.

The general board of directors of the hospitals for the insane is an agency of the State government, charged by the Constitution and the laws with the duty of controlling all of the State hospitals for the insane, and clothed with full power for this purpose.

It is manifestly of great importance that the deplorable condition of things existing at the eastern State hospital, as disclosed in the bill, shall be terminated as soon as possible, that the lawful authority of the constituted authorities of the State shall be sustained, and any conflict of authority between the superintendent elect and the superintendent who has been removed, prevented by the interposition of an injunction, such as is asked for in this bill.

I therefore deem it my duty to concur in the request made by the counsel for the relators in the proposed suit, that they be allowed to use the name of the Commonwealth in the institution and prosecution of that suit, which consent can only be properly given, it seems to me, under the circumstances, by the governor.

If the suit is instituted in the name of the Commonwealth it will be proper, in view of the important public interests involved, for me to subscribe the bill in my official capacity.

All of which is respectfully submitted for your consideration and action.

Very truly yours,

WILLIAM A. ANDERSON,
Attorney General.

January 30, 1907.

COL. L. W. LANE,
Chairman General Board of Directors for State Hospitals for the Insane,
Richmond, Virginia.

DEAR SIR:

I have considered the question submitted in your favor of this instant as to the nature and effect of the paper purporting to be a writ issued from the clerk's office of the city of Williamsburg, a copy of which has been this day served in the city of Richmond upon each of the members of said board now in this city.

Upon examining said paper I find that it is in part a writ of *certiorari*, and in part, and in so far as it undertakes to stay any farther proceeding by said board in the matter referred to therein in effect a writ of prohibition.

In either aspect the paper was, it seems to me, issued without any authority of law and in respect to officers and a proceeding not within the jurisdiction of the circuit court of the city of Williamsburg.

Very truly yours,

WILLIAM A. ANDERSON.

RICHMOND, VA., *January 30, 1907.*

GENERAL WILLIAM A. ANDERSON, *Attorney General,*
Richmond, Va.

MY DEAR SIR:

We enclose you a bill in the name of the Commonwealth of Virginia, at the relation of certain members of the general board of directors of State hospitals for the insane, constituting a majority thereof, addressed to the judge of the circuit court of the city of Richmond, praying that Dr. L. S. Foster, who has this day been removed as superintendent of the eastern State hospital, be enjoined and restrained from in any way interfering with the orders and directions of the general board of directors of State hospitals for the insane, or L. W. Lane, commissioner of state hospitals for the insane; from in any way preventing O. C. Brunk, who has this day been appointed superintendent of the eastern State hospital, from the discharge of his duties as superintendent as aforesaid; from in any way interfering with the officers or employees of the eastern State hospital or its property, and from exercising any of the duties of the said office; from instituting any suit at law or in equity against the general board of directors of State hospitals for the insane, or the members thereof, as such, or L. W. Lane, commissioner of State hospitals for the insane, or O. C. Brunk, superintendent of the eastern State hospital, which will in any way interfere with the management of the eastern State hospital or the discharge of their official duties with reference thereto, by the aforesaid members or any of them, except a suit to test the validity of the removal of the said Foster from the position of superintendent of the eastern State hospital, or to establish the title of the said Foster to said position.

The bill further prays that the said Foster be directed to immediately turn over to the said O. C. Brunk, superintendent of the eastern State hospital, all of the records of the said hospital and all of the property of the said hospital now in the possession of the said Foster.

We respectfully ask that we be authorized by the governor and the attorney general to use the name of the Commonwealth to file this bill, and that you will sign the same as the attorney general of the State.

We write this letter as counsel for the general board of directors of State hospitals for the insane.

Respectfully,

MUNFORD, HUNTON, WILLIAMS AND ANDERSON.

RICHMOND, VA. *January 30, 1907.*

HON. WILLIAM A. ANDERSON,
Attorney-General of Virginia, Richmond, Virginia.

MY DEAR SIR:

I am just in receipt of your letter of this date, conveying to me the request of the general board of directors of State hospitals for the insane, to be permitted to bring suit in the name of the Commonwealth of Virginia to enjoin Dr. L. S. Foster from exercising in the future any authority as superintendent of the eastern State hospital; the said general board having removed him by a resolution, a copy of which is enclosed in your letter. I note that you express the opinion that it is both advisable and legal for me to grant this permission.

As governor of the State of Virginia, and as such its chief executive officer, I conceive it to be my duty to enforce, as far as possible, without fear or favor, the action of the lawful authorities of the State. Believing that this board has full authority to act in the premises, and that its action when legally exercised should be respected and obeyed, as

governor of this State, I hereby give consent for the use of the name of the Commonwealth of Virginia for the institution of the proceedings indicated in your letter and the correspondence and papers enclosed.

With regard and esteem, I am,

Very truly yours,

CLAUDE A. SWANSON,
Governor of Virginia.

RICHMOND, VA., *January 30, 1907.*

MESSRS. MUNFORD, HUNTON, WILLIAMS AND ANDERSON,
Special Counsel for the General Board of Directors of State Hospitals for the Insane,
Richmond, Virginia.

GENTLEMEN:

Your favor of this instant, enclosing copy of the bill of injunction which the majority of the members of the general board of directors of State hospitals desire shall be filed in the name of the Commonwealth against Doctor L. S. Foster, who has to-day, after hearing and trial, been removed by said board from the office of superintendent of the eastern State hospital, has been received. I have presented the matter to Governor Swanson in a letter, a copy of which I enclose, and I beg leave to hand you herewith a copy of his reply, from which you will see that the governor approves the institution and prosecution of such suit, and consents that the name of the Commonwealth, in whose interest it is to be brought shall be used for this purpose.

I will accordingly with yourselves, subscribe the bill as attorney-general for the Commonwealth, and unite with you in moving the court to grant the injunctions prayed for and upon the hearing to make them perpetual.

Very truly yours,

WILLIAM A. ANDERSON,
Attorney General.

February 1, 1907.

To His Excellency, CLAUDE A. SWANSON,
Governor of Virginia, Richmond, Virginia.

MY DEAR SIR:

Your favor of this instant in reference to the situation at the eastern State hospital has just reached me.

I fully appreciate the unfortunate condition of affairs in which that institution has been involved, and for several days have been giving my most earnest attention and consideration to the subject.

Proceedings, as you are aware, have already been instituted in the name of the State in two cases, for the purpose of maintaining the authority of the general State board of hospitals for the insane.

That board is made, by the Constitution and laws of the Commonwealth, one of the agencies of the State government, and is clothed with full power and control of all the hospitals of the State, and of all of the employees and officers of those hospitals, and there is no appeal from the acts and orders of this general board within the scope of the powers thus conferred upon it.

Owing to the complication which have been occasioned by the litigation pending in Williamsburg it has been made necessary to make application, in the name of the Commonwealth, to the supreme court of appeals of Virginia for a second writ of prohibition against the judge of the circuit court of the city of Williamsburg and James City county, and against the late superintendent of the eastern State hospital, who, in defiance of the

action of the general board of State hospitals for the insane removing him from office, still persists and insists upon discharging the duties of the office from which he has been lawfully removed by said board, after due notice, hearing, and trial of the charges against him.

If further resistance shall be made to the lawful authority of the courts and constituted authorities of the State, I hope it will be demonstrated in these proceedings that ample power is vested in the courts of the Commonwealth to adequately punish unwarranted and lawless acts in defiance of their lawful authority.

I agree with you, that the questions involved rise far above any consideration of any personal or private interest.

I will do all that is in my power to see that the laws are enforced, and that constituted authority is respected.

Very truly yours,

WILLIAM A. ANDERSON.

Attorney General.

RICHMOND, VA., *February 1, 1907.*

HONORABLE WILLIAM A. ANDERSON,

Attorney General of Virginia, Richmond, Virginia.

MY DEAR SIR:

The situation at the eastern State hospital for the insane is occasioning great detriment to the interest of the State. If continued much longer there will exist there perfect disorder and chaos. The best interest of the State and the poor inmates of this hospital demand that this matter should be adjudicated and definitely settled at an early date. The controversy has now reached an acute stage where the public interest far overshadows that of any individual. I think the time has arrived for the Commonwealth to do all it can to end this matter speedily and to see that the officials, who, under the law, have control of this institution are sustained in their legal action and authority.

I, therefore, as governor of Virginia, do authorize you to take all proper legal proceedings that may seem to you advisable to remedy this deplorable situation, and will concur with you in using the name of the Commonwealth in prosecution of such proceedings.

I am

Very truly yours,

CLAUDE A. SWANSON,

Governor of Virginia.

In reference to the power of the Governor to direct a fine which has been paid into the treasury, to be refunded to the petitioner.

February 21, 1907.

To His Excellency, CLAUDE A. SWANSON,

Governor of Virginia, Richmond, Virginia.

MY DEAR SIR:

Responding to the question submitted in your favor of the 18th instant, I have the honor to say that, under sections 738-743, inclusive, of the Code of 1904, which embody the law of this State in regard to the remission of fines, while the governor is empowered to remit a fine where the conditions prescribed in the statute are complied with, no authority is given him, or any other officer of the State, to refund a fine which has been paid into the treasury.

It will be seen, upon examination of section 738 of the Code, that the governor is not authorized to remit a fine imposed upon any person "for contempt of court, for non-performance of or disobedience to some order, decree, or judgment of said court."

It would seem from the petition of H. Lee Brown asking that the fine of fifty dollars imposed upon him on the 4th day of July last, by the circuit court of Tazewell county shall be remitted, (upon consideration of which application this question has arisen) that said fine was imposed for contempt of court because of the failure of said Brown to obey a subpoena of the court.

Such appearing to be the case from the petition which you submit to me, it is evident that the fine is not one which the governor is authorized to remit.

The only authority for the remission of a fine imposed by a court for contempt, is that conferred by section 724 of the Code, by which the court is authorized to remit the fine in whole or in part "during the same term" at which the fine is imposed.

I will add that if the fine which the applicant in this case desires to have remitted, had not been imposed for contempt, the proceeding therefor would not at all conform to the requirements of the statute embodied in sections 739-743 of the Code.

I return Mr. Brown's petition.

Very truly yours,

WILLIAM A. ANDERSON.

As to the international extradition of criminals.

April 10, 1907.

To His Excellency, CLAUDE A. SWANSON,

Governor of Virginia, Richmond, Virginia.

DEAR SIR:

Yours of the 8th instant, enclosing letter of Mr. John G. Tilton, Commonwealth's attorney for the city of Norfolk of the 6th instant, has just reached me.

The entire matter of the international extradition of criminals is, of course, controlled by the Acts of Congress, and treaties between the United States and foreign countries.

The extradition of persons charged with murder, from any of the countries under the jurisdiction of the Kingdom of Great Britain is provided for by article X of the treaty between the United States and Great Britain, known as the Ashburton Treaty, proclaimed November 10, 1842.

That treaty provides for the mutual extradition of persons charged with murder, and other crimes enumerated therein.

Under the rules adopted by the United States department of State at Washington:

> "When an extradition is sought for an offense of which the State courts have jurisdiction, the request must come from the Governor of the State:"

and the application for the requisition should be addressed to the secretary of State at Washington.

It is stipulated in the Ashburton Treaty between the United States and Great Britain, that extradition shall only be granted on such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial if the crime had been there committed.

Under the instructions sent out by the department of State in May, 1890, a copy of which I find in 1st Moore on extradition, 335, it is stated that a properly authenticated copy of an indictment found against the fugitive by a grand jury, or of any information made before an examining magistrate, accompanied by one or more depositions setting forth as fully as possible the circumstances of the crime, will be admissible as constituting such evidence.

An indictment alone has been held to be insufficient.

By the 14th section of the English extradition act of 1870, depositions or statements on oath, taken in a foreign State, and copies of such original deposition or statements, and

foreign certificates of or judicial documents stating the fact of conviction, may, if duly authenticated, be received in evidence of proceedings under this Act.

The 15th section of the same Act provides as follows:

> "Foreign warrants and depositions or statements on oath, and copies thereof, and certificates of or judicial documents stating the fact of a conviction, shall be deemed duly authenticated for the purposes of this act if authenticated in manner provided for the time being by law or authenticated as follows: (1) If the warrant purports to be signed by a judge, magistrate, or officer of the foreign State where the same was issued; (2) if the depositions or statements or the copies thereof purport to be certified under the hand of a judge, magistrate, or officer of the foreign State where the same were taken to be the original depositions or statements, or to be true copies thereof, as the case may require; and (3) if the certificate of or judicial document stating the fact of conviction purports to be certified by a judge, magistrate, or officer of the foreign State where the conviction took place; and if in every case, the warrants, depositions, statements, copies, certificates, and judicial documents (as the case may be) are authenticated by the oath of some witnesses or by being sealed with the official seal of the minister of justice, or some other minister of State; and all courts of justice, justices, and magistrates shall take judicial notice of such official seal, and shall admit the documents so authenticated by it to be received in evidence without further proof."

It is further provided that where the requisition is made for an offence against the laws of a state or territory, the expenses attending the apprehension and delivery of the fugitive must be borne by such state or territory, the United States only paying such expenses where the offence is against its own laws.

As Mr. Tilton may not have access to any book which will furnish him a proper form for making application to your excellency, I will prepare such a form of application and send it to him, together with a copy of this letter; and when it, together with the evidence required by the treaty, and prescribed in the instructions of the State department, shall have been received by you from Mr. Tilton, I will be glad to furnish you a form of the application to be made by your excellency to the secretary of State at Washington.

Very truly yours,

WILLIAM A. ANDERSON.

Cost of printing reports of State Board of Medical Examiners, not payable out of the State treasury.

March 4, 1907.

To His Excellency, CLAUDE A. SWANSON,
Governor of Virginia, Richmond, Virginia.

DEAR SIR:

Your favor of the 2d instant, enclosing letter of Dr. R. S. Martin, secretary and treasurer of State board of medical examiners, dated the 27th ult., and addressed to you, this instant received.

In response to the inquiry submitted by you, I have the honor to say that I find no statute which authorizes the printing, at the expense of the Commonwealth, of any of the reports or other publications of the State board of medical examiners, or of the reports and other publications of any like board in the Commonwealth.

There are, as you are aware, a number of similar boards authorized by law to be established by the members of different professions in the State, with authority to examine and give certificates to persons who may desire to practice in those different professions. Among those are the boards of examiners of veterinary surgeons, of pharmacists, of dentists, and of graduate nurses.

No provision is made by law for paying any of the expenses of the associations repre-

senting those different professions, or of the said boards of examiners. While authorized by law, the members of these boards are in no sense officers of the State government.

I return Dr. Martin's letter.

Very truly yours,

WILLIAM A. ANDERSON.

As to statutes for preservation of forests.

May 8, 1907.

To His Excellency, CLAUDE A. SWANSON,
Governor of Virginia, Richmond, Virginia.

DEAR SIR:

Your favor of the 1st, enclosing letter to you of the 17th ult., from Gifford Pinchot, forester, United States department of agriculture, forest service, received on my return here to-day.

Virginia has enacted no special laws for the protection or preservation of forests.

Parties are left to their common law remedies for injury to, or destruction of, their timber by the wanton acts or negligence of others. They can be as improvident and wasteful in dealing with their own timber as they may choose to be.

The Commonwealth has enacted a number of statutes in reference to fish, found in sections 1338, 1389, 2083-2130 and 3868 of the Code of 1904 (Pollard's).

Besides these, there are some special and local statutes still in force, running through various Acts of Assembly.

These laws have never been codified and there has been no recent compilation of them.

It seems to me, however, that, in view of the courtesy of the agriculture department of the United States in furnishing to the State board of agriculture, the Virginia agricultural experiment station, the library of the Virginia Polytechnic Institute, the State normal schools, the University of Virginia, and other institutions of this State, copies of their forestry publications, it would be well, as a matter of courtesy, for the government of Virginia to furnish to the bureau of forest service for the United States government a copy of Pollard's Code of 1904, and of Pollard's Biennial Code of 1906, and copies of the Acts of Assembly hereafter enacted.

The commissioner of agriculture could probably arrange for this to be done, and paid for out of some fund under the control of that department.

I return herewith Mr. Pinchot's letter.

Very truly yours,

WILLIAM A. ANDERSON.

In reference to the power of the executive to remit certain fines.

June 6, 1907.

To His Excellency, CLAUDE A. SWANSON,
Governor of Virginia, Richmond, Virginia.

DEAR SIR:

I have examined the petition of the administrator of L. O. Magrath, deceased, and of the executrix of John R. Chesley deceased, for the remission of the fines adjudged against L. O. Magrath and John R. Chesley in their lifetime, to the corporation court of the city of Fredericksburg in June, 1886, amounting together to $360.00, and the accompanying record of the application made to the honorable judge of the corporation court of said city by said petitioners under section 738-739-740 and 741 of the Code of 1904, submitted to me by you.

It appears from these papers that Magrath and Chesley were assessed with State license taxes due by them for the years ending May 1, 1887, and May 1, 1888, respectively,

amounting to $63.00 for each year, and that they tendered payment of the same to the treasurer of said city in each of said years in coupons, alleged to be tax receivable coupons issued by the State under the Act of March 30, 1871, for the funding of the public debt, and that said treasurer refused to receive the same:

That subsequently said Magrath and Chelsey were indicted in four cases in said court for doing business without a license:

That the said cases were tried and that verdicts were found therein, by which said Magrath and Chesley were fined in the aggregate amount of $360.00; but that said judgments have not been collected, though executions were issued thereon, and levy on 50 barrels of flour and 100 kegs of nails belonging to said firm was made on the 18th of June, 1888, and that said judgments have never been satisfied and constitute now a lien upon the real estate of the defendants therein in the hands of their legal representatives.

If the said Magrath and Chesley tendered genuine coupons of the State of Virginia issued under the Act of March 30, 1871, in payment of said license taxes, they, and each of them had, according to the decision of the supreme court of the United States in Royall *v.* Virginia, 160 U. S., p. 572, and in Royall *v.* Virginia, 121 U. S., 102, a good and valid defense against the indictments and prosecutions in which said fines were adjudged against them.

It does not appear, however, from the record accompanying said petition, what defense the said Magrath and Chesley made to said indictments and prosecutions, or, indeed, that they made any defense whatever thereto.

If they had any such defense as is now assserted, and as was the case if they tendered valid tax receivable coupons, in satisfaction of said license taxes, they should have asserted that defense in said prosecutions. At all events, and whatever defenses may have been set up by them on the trial of said indictments, the judgments entered in those four cases upon the verdicts of the jury therein, are, and continue to be, valid and subsisting judgments for the fines with which the defendants were then and there amerced.

Notwithstanding the apparent validity of said judgments and of said fines so far as the record shows, the governor is given power by section 738 of the Code, as amended by the Act approved December 10, 1903, Acts of 1902-3-4, p. 606, to remit such fines, provided the applicants for relief have proceeded in the manner prescribed in sections 739-740, 742' and 743 of the Code of 1904, and "provided, in the opinion of the governor, the evidence accompanying such application warrants the granting of the relief asked for."

The applicants in this case seem to have preceeded in conformity with the requirements of the statute just cited, and the matter of granting or withholding the relief prayed for, is one entirely within the discretion of the executive.

I herewith return the petition and accompanying record.

Very truly yours,

WILLIAM A. ANDERSON.

In reference to the bonds to be given by the depositaries of the State.

June 20, 1907.

To His Excellency, CLAUDE A. SWANSON,
Governor of Virginia, Richmond, Virginia.

MY DEAR SIR:

Yours of the 18th received.

Under the law the bonds of officers of the State government, and of State depositaries are submitted to the attorney-general for examination, and to pass upon the question whether they are in proper form and have been legally executed; and to the governor, who decides as to the sufficiency of the surety or sureties who sign the same.

You are clearly right, as to all bonds executed since June 13, 1906, by a guarantee or surety company as surety, in declining to approve and accept such bonds, unless satis-

factory evidence is furnished you that the penalty of such bond does not exceed "ten per centum of the paid-up capital plus the surplus and undivided profits of such surety or guarantee company or corporation," under section 28 of chapter VIII of the Act establishing a bureau of insurance, etc., approved March 9, 1906, Acts of 1906, page 171.

Under the law each of these guarantee or surety companies doing business in this State is required to make an annual report to the commissioner of insurance, showing the capital, surplus, undivided profits, and other data in reference to the financial status of each of said companies.

I would suggest that the commissioner of insurance shall annually furnish to you, as soon as the reports are made to him, a statement showing the aggregate paid-up capital, surplus, and undivided profits of each of said surety companies doing business in this State and making reports to him.

On inquiry at the office of the commissioner of insurance I find that the paid-up capital and surplus of the Fidelity and Deposit Company of Maryland, according to the last report of that company filed with the bureau of insurance, amounted together to $4,810,-913.93, no undivided profits being reported.

Said Fidelity and Deposit Company of Maryland can therefore be accepted as sole surety upon a bond in a penalty not exceeding say $481,000.00. It will be necessary therefore for said American National Bank to give a new bond with sureties who can be accepted for $500,000.00, or else to give two new bonds aggregating together $500,000.00.

Very truly yours,

WILLIAM A. ANDERSON.

In reference to refunding a tax upon the recordation of a deed conveying land to the U. S. Government.

July 12, 1907.

To His Excellency, CLAUDE A. SWANSON,
Governor of Virginia, Richmond, Virginia.

DEAR SIR:

In the matter of the alleged erroneous payment by Captain William W. Galt, pay director, U. S. Navy, of $400.00 upon the recordation of a deed to the United States government, conveying a tract of land in Norfolk county, purchased by the United States for use in connection with its navy yard at Portsmouth, Virginia.

Copies of the letters of Captain Galt to the treasurer of Virginia, and his letter to you of May 14th last, were referred by you to this office on the 17th of May last.

It seems that Pay Director Galt on January 30, 1905, paid to Alvah H. Martin, county clerk for Norfolk county, the sum of $400.00, being the amount chargable by section 13 of the revenue law of Virginia upon the recordation of a deed made by the Portsmouth company to the United States for a tract of land adjacent to the United States navy yard, purchased by the United States government for its purposes and use in connection with said navy yard.

The money so collected by Mr. Martin was paid into the treasury of Virginia a short time after its collection, as required by law.

Immediately upon the receipt of the above correspondence, it was turned over to my assistant, Col. Robert Catlett.

Captain Galt relied upon an opinion of the attorney-general of the United States, pp. 234-238 of opinions of 1904. No copy of this opinion could be found in the city of Richmond, upon diligent inquiry here both at the State library and at the clerks' offices of the United States courts, and Col. Catlett, wrote both to Captain Galt and to the law department at Washington for copies of the opinion, but no copy of said opinion was received

at this office until the 23d ultimo, since when, because of Col. Catlett's illness, and of my engagements in connection with the railroad cases in the United States court, no attention could be given to the matter until to-day.

On examining this opinion, I find that the question discussed in it by the Honorable C. H. Robb, acting attorney general, (and which opinion is approved by the Honorable William H. Moody, then secretary of the Navy) is materially different from the question presented in the correspondence with Captain Galt.

The charge attempted to be levied in the case discussed by Mr. Robb, and which he held to be unwarranted, was a harbor charge in the harbor of Norfolk and Portsmouth upon gun powder being shipped from Iona Island, New York, by the United States through its proper officers, to officers of the United States in the harbor of Norfolk or at Portsmouth, for the use, it would seem, of vessels of the United States Navy.

Any such charge was plainly an exaction which the State authorities could not levy upon the transportation of powder consigned by the United States from one part of the country to another part of the country, for the uses of that government, because it is not competent for the states, upon well established principles, to levy a tax upon any of the instruments employed by the United States government in the execution of its powers.

The tax upon the recordation of the deed from the Portsmouth company to the United States government, was a charge made by the State against all persons for the use of its office of registration of deeds and other instruments.

It was not strictly speaking a tax upon the transfer to the United States of the title to the land which it had purchased, though the recordation of the deed was necessary for the protection of the title of the United States to that property, which title had already been transferred to it by the delivery to it of said deed.

It may be fairly questioned whether it is not competent for a state to impose such a charge even against the United States government for the use of its registry office. It may be argued that when the United States government purchases property and avails itself of the provisions made by the law of the State for protecting its title to this property, that it should be placed upon the same footing, and comply with the same requirements which will be imposed upon any other person or corporation in regard to this mattter.

The law of the State requiring the clerks, before they admit any deed to record, to require such a charge to be paid, makes no exception in favor of the United States or any other government, person, or corporation.

A city or other political corporation of the State would have to pay, under the law, a like tax upon the recordation of any deed conveying property to such municipality, although such property may have been purchased entirely for public uses.

However, as a matter of comity, if not of patriotic duty, it is more than probable that the general assembly, if its attention were called to the matter, would not exact such a charge from our national government.

In this case, the tax of $400.00 paid by the United States government has been covered into the treasury of the State, and I know of no mode by which it can be withdrawn from that treasury and refunded to the United States government, or to Pay Director Galt, except by an Act of the General Assembly authorizing such refunding and repayment of the money so paid.

As I understand the situation, this may operate a hardship upon Pay Director Galt, but I hope that this will be only temporary, for I venture the suggestion that if the attention of the General Assembly shall be drawn to the matter, it would at once authorize the refunding of the money under the circumstances

I return the correspondence which you sent me, and remain,

Very truly yours,

WILLIAM A. ANDERSON.

In reference to the power of the General Assembly to amend certain subsections of the Constitution upon the recommendation of the Corporation Commission.

August 1, 1907.

To His Excellency, CLAUDE A. SWANSON,
Governor of Virginia, Richmond, Virginia.

MY DEAR SIR:

The suggestions made in your letter of this instant to the members of the State corporation commission, a copy of which I have received with your favor of this date, are of great importance.

There is no doubt, of course, that it is competent for the General Assembly, "upon the recommendation of the State corporation commission, "to" amend sub-sections 'a' to 'i' of" section 156 of the Constitution, "or any of them," as expressly provided in sub-section "1" of section 156 of the Constitution.

Amendments could doubtless be made to some of the said sub-sections of section 156 of the Constitution, which would, as to any future order or action of the state corporation commission, get rid of some of the questions which arise in the "Virginia Passenger Rate Cases" now pending in the United States circuit court for the eastern district of Virginia; and it may be that some amendments could be made to these sub-sections which would strengthen the position of the State in that litigation.

It will give me great pleasure to give the subject my most careful consideration, and, as soon as practicable, to confer with Mr. Braxton, the members of the State corporation commission and yourself in regard thereto.

I fear that Mr. Braxton will not return to Richmond before to-morrow afternoon, and I would suggest that a conference be arranged for some hour on Saturday which will suit the convenience of the members of the corporation commission, Mr. Braxton and yourself, all of whom I hope can be present.

Very truly yours,

WILLIAM A. ANDERSON.

In reference to the commutation of the death penalty against Joseph Thomas alias John Wright.

August 1, 1907.

To His Excellency, CLAUDE A. SWANSON,
Governor of Virginia, Richmond, Virginia.

MY DEAR SIR:

Yours of the 30th ultimo in reference to the above matter, was received on my return here this afternoon.

While, upon a careful examination of the record in the case of Thomas alias Wright *v.* the Commonwealth, I was satisfied that there was ample testimony in the case to justify the verdict of the jury, there was undoubtedly a good deal of testimony admitted which would doubtless have been excluded if it had been objected to on behalf of the prisoner; but, so far as it appears from the record, that evidence was admitted without objection from the prisoner or his counsel. How far that evidence influenced the jury, I am, of course, unable to conjecture. The jury could have disregarded all of that illegal testimony entirely, and still there would have been enough in the case to justify the conviction, if the jury believed the witnesses for the Commonwealth, who were unimpeached, and whose testimony in some important particulars was strongly confirmed.

The accused, as you will see from the record, a copy of which I presume you have, was positively identified upon the trial by the young woman who was ravished, and by the young man who was her escort at the time she was assaulted.

There was some contradictory testimony as to the satisfactory character of her recognition of the accused at the time she saw him in the jail; but, under the rule long established in this State, the jury are the sole judges in such cases as to which statements or which witnesses they will believe.

It is proper that I should say in frankness, in response to your inquiry, that there were some circumstances exhibited by the record which were calculated to throw some doubt upon the question of the identity of the accused with the perpetrator of the crime; but the jury saw the witnesses when they testified, and heard their testimony, and are much more apt to have come to a correct conclusion than could be reached by the mere perusal of the evidence as certified in the record.

It was claimed by the counsel for the accused, as I understood, at the time of the argument of the case before the supreme court of appeals and afterwards, that there was some material after discovered evidence tending to establish the innocence of the accused, or to break down some of the testimony for the Commonwealth. I do not know to what extent these statements could be then, or have been since, supported.

In the absence of any such after discovered evidence, I am, from my knowledge or information in regard to the case, not prepared to say that the verdict of the jury should be interfered with, or executive clemency extended.

I had supposed, from what I had heard, that the application for the commutation of the sentence of the accused, would be based largely upon after discovered evidence.

Upon the case as presented to the appellate court, I did not think it was one for reversal by that court, and unless some evidence has been since discovered to change that conclusion, I do not think that I ought to advise that it is one for the interposition of executive clemency.

However, I would suggest that your Excellency, if you have not already done so, would communicate with, and obtain the views of, the Honorable C. E. Nicol, the learned and excellent judge before whom the case was tried, and who would be much more competent than I would be, to express an opinion, under all the circumstances, upon this subject; for he saw and heard the witnesses upon whose testimony the case was tried and the verdict found.

Very truly yours,

WILLIAM A. ANDERSON.

August 22, 1907.

To His Excellency, CLAUDE A. SWANSON,
Governor of Virginia, Richmond, Virginia.

MY DEAR SIR:

Yours of the 21st instant enclosing letter of Mr. J. T. Sharpley of Greenbackville, Virginia, addressed to you and dated the 15th instant, writing on behalf of his council of the J. O. U. A. M., this instant received.

No statute of the Commonwealth, so far as I know, or have been able to discover, prohibits such a use of a flag of Virginia, as is set out in the letter of Mr. Sharpley; nor do the laws of this State prohibit such an inscription upon a State flag, as is proposed by the council of the J. O. U. A. M. represented by Mr. Sharpley; nor can I conceive of any possible objection thereto.

I return Mr. Sharpley's letter herewith.

Very truly yours,

WILLIAM A. ANDERSON.

TO THE AUDITOR OF PUBLIC ACCOUNTS.

As to when apple cider may be considered a "farm product."

November 10, 1906.

COL. MORTON MARYE,

Auditor of Public Accounts, Richmond, Virginia.

DEAR SIR:

In reply to your letter of inquiry of this instant, I beg leave to say, that while the question is not entirely free from doubt, I have come to the conclusion, after careful consideration, that "Pure-apple cider" is, or may be, a "farm product" within the meaning of section 51 of the revenue law, as amended by the Act approved March 20, 1903, only under the conditions hereinafter mentioned.

When made on the farm on which the apples from which it is produced were grown, it is, I think, a farm product.

When manufactured at a cider mill or factory outside of the State, or within the State, not on the farm on which the apples from which it is produced were grown, I am not prepared to say that it could be regarded as a farm product within the meaning of that law.

I take it that a farm product is any article which is produced upon a farm as the result of the labor of the farmer or his employees applied to its growth, cultivation, and preparation for market on the farm, or as a part of the operations of the farm.

So hogs, cattle, and other live stock raised on a farm, hay, vegetables, fruit, eggs, milk, butter, lard and other food products, have been regarded and held to be farm products.

State *v.* Spaugh, 129 N. C., 564;

City of Philadelphia *v.* Davis, 6 Watts & S. (Pa.) 269, 279.

And yet I would take it that lard produced from a packing house would not be regarded as a farm product any more than olemargarine or butterine would be.

It has been also held that all those things should be considered farm products "which have the situs of their production upon the farm, or which are brought into condition for the uses of society by the labor of those engaged in agricultural pursuits, in contradistinction from manufacturing or other pursuits."

And so the products of the dairy and of the poultry yard, while they do not come directly out of the soil, are necessarily connected with the soil and those who are engaged in its cultivation, and have been held to be farm products.

District of Columbia *v.* Oyster, 15 D. C., 285, 286.

The situs of the production of an article seems to be a determining consideration, in ascertaining whether it is to be regarded as a farm product, or a manufactured product.

Accordingly, we find that in Getty *v.* the Barnes Milling Company, 40 Kan., 281, it was held that an agricultural product "is that which is the direct result of husbandry and culture of the soil. It embraces the product in its natural unmanufactured condition, as cotton is a product of agriculture; yet cotton cloth or other fabrics made from cotton could hardly be termed 'agricultural products'."

And it was decided in that case, that flour, being the product of manufacture, is not strictly an "agricultural product," as used in the charter of a corporation which recited that its purpose was for the conversion and disposal of "agricultural products," though in one sense it may be said that flour also is a product of agriculture.

In Davis *v.* City of Macon, 64 Ga., 128, 134, it was decided that the term "agricultural products" in ordinary usage is confined to the yield of the soil, as corn, wheat, rye, hay, etc., in its primary form; and that a statute that prohibited a municipal corpora-

tion from levying or assessing a tax on any agricultural products, did not exempt beef cattle.

It would accordingly seem from these authorities, that apple cider, when not manufactured on a farm from apples produced on that farm, or by the farmer who raised the apples, could not fairly be regarded as a farm product.

I would say therefore, that cider produced at a cider mill or factory not situated on the farm on which the apples, from which the cider was manufactured, were grown, but made from apples purchased and collected from various farms or sources of supply, would not be a farm product within the meaning of section 51 of the revenue law.

Very truly yours,

WILLIAM A. ANDERSON.

The States cannot tax the instrumentality of the United States government, and therefore cannot impose an income tax on the salaries of an officer of that government.

March 29, 1907.

COL. MORTON MARYE,

Auditor of Public Accounts, Richmond, Virginia.

DEAR SIR:

A question has arisen several times as to whether the Commonwealth can impose an income tax or any other tax upon the salary of any officer of the United States government.

This question was settled many years ago by the decision of the supreme court of the United States in Dobbins *v.* Commissioners of Erie county, 16 Pet., 435, where it was held that:

> "The States cannot without the permission of the United States tax the salaries or emoluments of United States officers."

This decision has been since affirmed in Parnell *v.* Page, 133 N. C., 126; Parnell *v.* Page, 128 Fed. Rep., 497, and in other cases.

And the doctrine was approved by the supreme court of the United States in Collector *v.* Day, 11 Wal., 122-127, where that court held that, as a State cannot impose a tax on the salary of a United States judge, so in like manner the United States cannot impose a valid tax upon the salary of a State judge.

Upon the rule established by these decisions, I have to advise that a State income tax cannot be imposed upon the salary of any officer in the service of the United States government, as the U. S. Congress has not authorized the imposition of any such State tax.

Very truly yours,

WILLIAM A. ANDERSON.

Persons conducting business, or exhibiting "shows" upon the grounds of the Jamestown Exposition Company are liable to the State license taxes, when such taxes are imposed upon such business, or exhibition.

April 6th, 1907.

COLONEL MORTON MARYE,

Auditor of Public Accounts, Richmond, Virginia.

MY DEAR SIR

I have considered the enclosed letter of S. W. Lyons, treasurer of Norfolk county, addressed to you, asking "if a circus, merchants, gypsies, pool tables, hotels, etc," are exempt from license taxes, when operated in exposition grounds.

Sections 2 and 3 of the charter of the Jamestown Exposition Company, Acts 1901 2, p. 130, give to the said company the right to hold, operate, and maintain an exposition or fair, etc., and section six of the said act exempts the real and personal property, rights, franchises and privileges of the company from city, county and State taxation, whilst the exposition is in operation. I am of opinion that this exemption *does not* extend to the operation of any of the subjects mentioned by Mr. Lyons, for the operation of which a license is required by law.

I therefore conclude that all persons holding concessions from the said Exposition Company, must pay the license taxes required by law, for doing any business, or for such games and amusements as may be lawfully conducted, within the Exposition grounds.

Very truly yours.

ROBERT CATLETT,
Asst. to Attorney General.

In reference to the payment of the current expenses of the department of education, the salaries and expenses of examiners and inspectors of schools, salaries of divison superintendents of schools, and costs of summer normal institutes.

May 16, 1907.

COLONEL MORTON MARYE,
Auditor of Public Accounts, Richmond, Virginia.

DEAR SIR:

Yours of the 15th instant, referring to the communication of the same date, received by you from the Hon. J. D. Eggleston, Jr., State superintendent of public instruction, has been received, and the question presented therein considered.

For reasons, some of which are indicated in my letter of the 14th instant to the superintendent of public instruction, a copy of which I have already furnished you, I am prepared to advise that you should comply with the request made in the communication referred to.

It is true, that by the Act approved March 9, 1906, appropriating the public revenue, the sum of $400,000.00 was appropriated

> "to be turned over to the State board of education, and by that board apportioned, as prescribed by the Constitution, to the public free schools of the several counties and cities of the Commonwealth,"

except the sum of $5,000.00 to be used in maintaining summer normal institutes.

If that was the only law upon the subject the views which you suggest would be absolutely conclusive of the proposition, that not one dollar of that $400,000.00 except the $5,000.00 for summer normals, could be used for any purpose, except for the support of the primary and grammar schools in the several counties and cities of the State, to be apportioned among them according to school population; and as a consequence, not one dollar would now be available for the payment of the current expenses of the office of the superintendent of public instruction, and of the department of education, including the monthly instalments of the salaries of all the clerks and employees therein, for the payment of the expenses and monthly instalments of the salaries of the examiners and inspectors of schools, or for the payment of the monthly instalments of the salaries of the 117 division superintendents of schools in the State, payable out of the State treasury, for I learn from the second auditor that every dollar of the revenue derived from the literary fund, applicable to these and other like purposes, has, sometime ago, been exhausted, and that there would be a deficit of over $30,000 00 during the present current year in the funds applicable, under the law, to the payment of those salaries, unless some portion of the $400,000.00 appropriation can be validly used for those purposes.

As you will see from this, unless it be true that there is some fund out of which these necessary current expenditures of the school system of the State can be regularly paid,

the school interests of the State must greatly suffer, and be greatly prejudiced, if, indeed, some important branches of that service are not stopped entirely, for the persons whose salaries are involved in this matter, cannot afford to work for the State without being paid the compensation to which they are entitled.

Fortunately, the Legislature passed another law at the session of 1906, (after the date of the Appropriation Act) approved March 15, 1906, and published as chapter 248 of the Acts of that session.

Your attention is invited to the 12th, 14th, 20th and 5th subdivisions of section 1433 of the Code, as amended by that Act, which were re-enacted after the passage of the appropriation act, and which have heretofore for years been construed, and acted upon by the department of education and the second auditor, as authorizing the payment of the expenses and salaries therein specified, in the manner prescribed in the 14th subdivision of that section, namely; by warrants on the second auditor payable out of any funds in the treasury subject to his warrant, and subject to the control of the State board of education.

Your attention is also invited to section 1438 of the Code, as amended by said Act of March 15, 1906, which largely increases the salaries of the division superintendents of schools, and, for the first time, provides that they shall be paid monthly, and requires that they shall be paid out of the "State school fund" on the warrant of the State board of education drawn upon the second auditor.

Your attention is also called to Sections 1505 and 1506 of the Code, the first of which defines the literary fund, and the second of which, section 1506, in the first division thereof, expressly defines what are "State funds," and, of course, "State school funds"; and provides that they shall "embrace the annual interest on the literary fund, all appropriations made by the General Assembly for public free school purposes," and the money derived from the State capitation tax, and the property tax levied specifically for school purposes, and commands that "these funds shall be applied exclusively to the maintenance of primary and grammar schools."

That language is as explicit as the language of the appropriation bill of 1906, in its mandate that every dollar of the income derived from the literary fund, and every dollar of every appropriation made by the General Assembly shall be applied *exclusively* of the primary and grammar schools; and section 136 of the Constitution provides that apportionment shall be made.

If that was the only law upon the subject, there would be no provision anywhere for the support of the department of education, including the expenses of the office of the superintendent of public instruction, and the salaries of the clerks and employees therein and the salaries and expenses of the examiners and inspectors of schools, and the salaries of the division superintendents. But, fortunately, by the other and later Acts to which I have already called your attention, the General Assembly has, in explicit terms, or by plain implication, qualified the language of section 1506, as well as the language of the Appropriation Act of 1906, and authorized and directed that the expenses and salaries above referred to, shall be paid upon warrants of the second auditor, out of the funds derived from the income of the literary fund, and out of the "State school fund."

As you are well aware, the only "State school fund" that could possibly be referred to by the language of sections 1433 and 1438 of the Code, as amended by the Act of March 13, 1906, is the cash fund arising from the income of the literary fund, and from the special appropriation of $400,000.00 per annum for the public schools, and which are, by section 1506 referred to above, expressly declared to constitute parts of the "State fund."

As you are well aware, there is no other cash "State fund," for the reason that, under the Grandstaff Act, embodied in section 1507 of the Code, not one dollar of the residue of

the revenue of the State for school purposes comes into the State treasury, at all, or is subject to the warrants either of the auditor of public accounts or the second auditor.

I am constrained to concede that the question is not without difficulty, but I have endeavored fairly to place such construction upon the statute, as would render the legislation upon the subject consistant with what was the evident purpose of the legislative mind.

Very truly yours,

WILLIAM A. ANDERSON.

TO THE SUPERINTENDENT OF PUBLIC INSTRUCTION.

The title to all property in a school district belonging to that district is vested in the school board.

November 12, 1906.

HON. J. D. EGGLESTON, JR.,

Superintendent of Public Instruction, Richmond, Virginia.

DEAR SIR:

Yours of the 11th instant, with accompanying correspondence between your department and Mr. W. W. Joyner, clerk of the school board of the town of Smithfield, and papers referred to in Mr. Joyner's letter to you of the 5th instant, this instant received, and to them I have given my careful consideration.

I see no reason to change the opinion expressed in reference to the school property in the city of Danville, in my letter to Governor Swanson of the 23d of July last, a copy of which was furnished by me to you. Indeed, the law more explicitly vests all the school property in a school district in the district school board of such district in the case of a town forming a separate school district, or of any other school district in a county, than it does in the case of a city; for, while, by the general school law, as found in chapter 67 of the Code, as amended by the Act approved March 17, 1906, (Acts 1906, Chapter 293), the title to all school property, both real and personal, in a city is expressly vested in the school board of such city, it is provided by section 1425, that, by the mutual consent of the council of the city and of the school board thereof, the title to such property may be vested in such city. There is no such qualification of the law in regard to the title of school property in any school district, except inthe case of school property in a city.

The provisions of Chapter 66 of the Code apply to and govern all the school districts of the State, except in so far as it is otherwise provided in chapter 67; and the provisions of chapter 67 all apply exclusively to cities, with the exception of section 1532 therein: and there is nothing in section 1522 which takes school districts in counties, or towns constituting separate school districts, out of the operation of the provisions of chapter 66. In other words, all the general provisions of chapter 66 unquestionably apply to towns which constitute separate school districts, in so far as they relate to the question submitted in your letter.

Without referring to other provisions of the general school law of the State as embodied in chapter 66 and the amendments thereto, it is only necessary, in confirmation of this view, to cite section 1482 of the school law of the State, which is as follows:

> *"Sec. 482. School property of district to vest in district school board.*—The school trustees of each district shall constitute the district school board, and shall be a body corporate under the name and style of the "school board of ———, district, number———, of the county of———, by which name it may sue and be sued, contract and be contracted with, and purchase, take, hold, lease, and convey school property, both real and personal. The title to all school property, both real and personal, belonging to the district, shall vest in the said board."

So far as it has any bearing upon the question you submit, this has been the law of the State ever since the establishment of our first public school system by the Act of July 11, 1870, (Acts 1869-70, Section 39, page 412).

I will add that, according to my information, the views I here express have been in accordance with the uniform ruling of your department under your predecessor.

There can be no doubt that it is competent for the authorities of a town to borrow money as provided in the Act approved March 10, 1906, (Acts 1906, Chapter 148) for the purpose of erecting school buildings in the manner authorized by that Act, but it seems to me just as clear that the title of any school buildings so erected, must, under the provisions of section 1482, be vested in the district school board, which, in this case, would be the district school board of the town of Smithfield, number———, of the county of Isle of Wight.

It must be remembered that the town of Smithfield, though a separate corporation for municipal purposes, continues to be an integral portion of the county of Isle of Wight, and the school district of the town of Smithfield is one of the school districts of the county of Isle of Wight. The trustees thereof are members of the county school board of that county, and said school district is under the jurisdiction of the division superintendent of schools for Isle of Wight county.

The only thing which would lead us to question the correctness of the conclusions here expressed, is that the Hon. R. E. Boykin, judge of the circuit court of Isle of Wight county, I understand, entertains a different opinion, and there is, perhaps, sufficient indefiniteness or vagueness in the statutes upon the subject to render the question possibly one as to which there may be some doubt. But taking the statutes on the subject as a whole, I am constrained to believe that the meaning, purpose, and effect of the school law of the State is that the title to all school property, real and personal, in the State shall be vested in the several school boards of the districts in which the property is located, except where, in the case of cities, by the "mutual consent" of the councils of such cities and the school boards thereof, it is agreed that the title to such property shall, in a particular case, be vested in such city.

Very truly yours,

WILLIAM A. ANDERSON.

P. S.—I return the correspondence and papers enclosed in your letter.

Section 161 of the Constitution prohibits any State, county, district, or municipal officer from accepting a free pass.

January 23, 1907.

HON. J. D. EGGLESTON, JR.,
Superintendent of public Instruction, Richmond, Virginia.

DEAR SIR:

Your favor of the 18th, enclosing letter of Governor Swanson to Mr. Willis A. Jenkins, bearing date the 14th instant, reached me on my return here yesterday.

Section 161 of the constitution, in the most explicit, comprehensive, and unqualified terms, prohibits any State, county, district, or municipal officer from accepting a free pass, or any reduction in the rates charged by a transportation company to the general public for like services; and provides that "any such officer who shall, while in office, accept any gift, privilege or benefit as is prohibited by this section, shall thereby forfeit his office."

An examiner and inspector of the public schools of the State is clearly a State officer, and so long as he remains "in office" the prohibition and penalty prescribed in Section 161 of the Constitution would, I think, apply to him.

You will see, upon reading Section 161, that there is no qualification or exception made, which would cover Mr. Jenkins' case.

Very truly yours,

WILLIAM A. ANDERSON.

As to basis on which salaries of division school superintendents are to be ascertained.

February 20, 1907.

HON. J. D. EGGLESTON, JR.,

Superintendent of Public Instruction, Richmond, Virginia.

DEAR SIR:

Your favor of the 18th, enclosing letter of Mr. Richard A. Dobie, superintendent of schools of Norfolk city, of the 12th instant, and of Mr. J. T. West, superintendent of schools of Norfolk county, of the 16th instant, addressed to you, has been received.

The question presented is one of no little difficulty.

By Section 1438 of the Code, the salaries of division superintendents of schools, payable out of the State treasury, are regulated in amount by the population of their respective school divisions, but that statute does not prescribe in what manner the population of each division shall be ascertained.

The only legal ascertainment of the population of the State, or of any sub-division thereof, authorized by law, is the last United States census, except that by Section 1013-c of the Code, a census may be taken of the population in any city in the manner therein prescribed.

It is clear to my mind that the school authorities must accept the last preceding Federal census as the only authentic enumeration and ascertainment of the population in any school division, unless there shall have been an authorized census of such population taken under the laws of the State.

In reply to the inquiry submitted, I would say therefore, that if the authorities of the city of Norfolk, have since the annexation of the territory recently taken from Norfolk county, had a census taken of the population in the ward or territory thus added to the city of Norfolk, or if the United States census of 1900 shows distinctly the population embraced in such annexed territory, then such additional population should be taken into account in fixing the salary of the superintendent of schools of Norfolk city.

If the United States census fails to show the population of such annexed territory, and if there has been no census taken by the city of Norfolk thereof, the school authorities of the State will have no authentic or authorized means of determining what is the population of such annexed territory; and until there is an authorized census taken thereof, such additional population would, I think, have to be disregarded in ascertaining the salary of the division superintendent of schools of Norfolk city.

On the other hand, I would say that, if the population of the territory which has been thus taken from Norfolk county and added to Norfolk city has been ascertained by a national or municipal census authorized by law, then it must be deducted from the population of Norfolk county in ascertaining the salary of the superintendent of schools for that county; but unless there has been such a lawful ascertainment of the population of the territory so annexed to Norfolk city, it seems to me that the school authorities of the State will be absolutely without any authentic or reliable data as to what that population is, and that it cannot be taken into account, either in increasing the salary of the superintendent of schools of Norfolk city, or diminishing the salary of the superintendent of schools of Norfolk county.

I recognize that in either case, upon the statement of facts presented by the letters of Superintendent Dobie and Superintendent West, injustice would be done, but any such result is occasioned by the failure of the law to provide for the contingency which has arisen—a contingency which it would be very difficult to provide for adequately and satisfactorily without some lawful and authentic enumeration of the population.

If it be true, as Superintendent West says, and as is, I suppose, the case that the population of Norfolk city, exclusive of Berkley and the said annexed territory, has been increased since the last census by at least 10,000 inhabitants, so that the population of

that county, since the transfer of the annexed territory to Norfolk city, is greater than the population of the whole county, including said annexed district, was in 1900, that is a condition which, under the law, does not entitle the division superintendent of schools to any increase in his compensation, just as a loss of population by reason of emigration or other cause, would not result in any diminution of such compensation.

I return the correspondence which you enclosed me.

Very truly yours,

WILLIAM A. ANDERSON.

The oaths of members of State board of education other than the ex-officio members to be recorded on the Executive Journal.

April 2, 1907.

HON. J. D. EGGLESTON, JR.,
Superintendent of Public Instruction, Richmond, Virginia.

DEAR SIR:

Yours of the 1st this instant received.

The effect of the provision of section 1489 of the Code, as amended by the Act approved March 10, 1906, (Acts of 1906, p. 226), which requires that the oaths taken by members of the State board of education (other than the *ex-officio* members of that Board) "shall be returned as required by law as to the oaths of other State officers," taken in connection with section 175 of the Code, as amended by the Act approved March 3, 1906 (Acts of 1906, p. 63), is, I think, to require that these oaths shall be recorded "on the Journal of the Executive."

Very truly yours,

WILLIAM A. ANDERSON.

As to statute against nepotism.

May 14, 1907.

HON. J. D. EGGLESTON, JR.,
Superintendent of Public Instruction, Richmond, Virginia.

DEAR SIR:

Yours of the 11th, presenting question submitted to you by division superintendent J. K. Hannah, of Appomattox county, this instant received.

The second sub-division of section 1466 of the Code, as re-enacted by the Act approved March 15, 1906, (Acts of 1906, p. 440), provides: "that no district school board shall employ or pay any teacher from the public funds if said teacher is the brother, sister, wife, son, or daughter of any member of said board."

Section 2 of the Act approved March 14, 1906, being the "Act to establish and maintain a system of public high schools and to appropriate money therefor" (Acts of 1906, p. 351) provides that: "Two or more districts in the same or adjoining counties may unite in establishing and maintaining a joint high school under the provisions of this Act, and under such rules and regulations as may be prescribed by the State board of education."

I take it, that under the language of these statutes, the teachers in a high school established by two or more school districts uniting for that purpose, should be chosen by the district school boards of the districts so uniting; and that the inhibition of the second sub-division of section 1466, quoted above, applies to such district boards, whether acting separately, or acting conjointly in the selection of teachers for such school.

It seems to me, therefore, that it would be a violation of the spirit and the letter of the provisions against nepotism contained in the second sub-division of section 1466 of the Code, for the district school boards of school districts, whatever the number of such districts so uniting in the establishment of a high school, to employ or pay any teacher from

the public funds who is the brother, sister, wife, son, or daughter of any member of any of said school boards so uniting in the establishment and maintenance of such high schools.

Very truly yours,

WILLIAM A. ANDERSON.

As to money available for paying salaries of division superintendents of schools, school inspectors and examiners, current expenses of the department of education, and the cost of summer normal institutes.

May 14, 1907.

HON. J. D. EGGLESTON, JR.,

Superintendent of Public Instruction, Richmond, Virginia.

DEAR SIR:

Your favor of the 11th instant has been received.

The language of the appropriation law, approved March 9, 1906, (Acts of 1906, page 187), under which the sum of $400,000.00, in addition to the specific property and capitation school tax, was appropriated or the fiscal year ending the 29th day of February, 1908 is as follows:

> "Such sum as will be sufficient to pay the amount required by section fifteen hundred and seven, Code of Virginia, to be applied to the support of the public free schools, and the further sum of four hundred thousand dollars, this latter sum to be turned over to the State board of education, and by that board apportioned, as prescribed by the Constitution, to the public free schools of the several counties and cities of the Commonwealth, except, however, five thousand dollars thereof, which said board is authorized to expend in the maintainence of summer normal institutes."

As you will see, all of that appropriation of $400,000.00, with the exception of $5,000.00, which is set apart for the maintenance of summer normal institutes, is required "to be applied to the support of the public free schools" and apportioned by the State board of education "to the public free schools of the several counties and cities of the Commonwealth," "as prescribed by the Constitution."

By section 1438 of the Code, as amended by the Act approved March 15, 1906, by it is provided that each division superintendent of schools in the State "shall receive, to be paid in monthly instalments out of the State school fund, on the warrant of the State board of education drawn upon the second auditor", the salary therein prescribed for said superintendents, respectively.

By the 12th, 14th and 20th subdivisions of section 1433 of the Code, as the same have been construed by the department of education and by the second auditor, all claims payable out of the literary fund and allowed by the State board of education, and the expenses of the office of superintendent of public instruction and the department of education, have been heretofore paid by warrants of the State board of education drawn on the second auditor, and by him on the treasurer, out of the State school fund in the hands of the treasurer subject to the warrant of the second auditor.

By the 12th subdivision of the last mentioned section, it is provided that: "All money belonging to the literary fund shall also be received in the treasury on the warrant of the second auditor:" and by the 11th subdivision of said section, it is made the duty of the State board of education to invest the capital and unappropriated income of the literary fund in the manner therein prescribed.

Under the constitution and laws of this State, the moneys applicable to the annual support of the public schools consist of (1) the money realized from the capitation tax levied for each year upon the male citizens of the State under section 173 of the constitution; (2) the money realized from the tax on property levied under section 135 of the constitution; (3) the annual interest derived from the literary fund; and (4) the above special appropriation of $400,000.00 per annum.

Of these several funds, the moneys derived from (1) the capitation tax, and from (2) the property tax required to be levied by the Constitution, are not actually paid into the State treasury at all, but under what was known as the Grandstaff Act, now in its amended form, embodied in section 1507 of the Code, remain in the treasuries of the several counties, and are accounted for in the settlements made between the auditor of public accounts and the several county treasurers, and adjusted by warrants, as prescribed in said last mentioned section.

It thus happens that the only annual *cash* State school fund that comes into the treasury of the State, applicable annually to the support of the public schools, consists of (3) the income derived from the literary fund, and (4) the annual specific appropriation, which, for the last two years, has been $400,000.00 per annum.

It follows, that the fund consisting of these two factors or items, constitutes the only "State school fund" payable into the treasury in cash, and the only "State school fund" out of which the salaries of division school superintendents and expenses of the department of education can be paid under sections 1433 and 1438 of the Code

It is absolutely necessary that a sufficient sum to pay the monthly instalments of the salaries of the division school superintendents, and to pay the expenses of the department of public instruction, and of the summer normal institutes, as the same shall accrue or become needed, shall be transferred by the auditor of public accounts to the second auditor.

Accordingly, I am clearly of opinion that the auditor of public accounts should, at any time after the 28th day of February, 1907, upon request, transfer to the second auditor such sum as shall be necessary to meet these charges as the same shall arise; and so, as to the residue of the specific special appropriation of $400,000.00, which is to be distributed among the primary and grammar schools of the State under section 135 of the Constitution.

Since the enactment of the appropriation law of 1904, Acts of 1904, pp. 170-191, the fiscal year of the State has been from the last day of February in one year to the last day of February in the next year, instead of, as had been previously the case, from the 1st day of October in one year to the 1st day of October in the next; and by the necessary effect of the language used in the appropriation acts passed in 1904 and 1906, the appropriations therein made are available whenever they may be needed by the different departments of government, after the date of the passage of said Acts, for the purposes in said Acts prescribed.

I am of opinion, therefore, that the auditor of public accounts should, from time to time, upon request, transfer to the second auditor, on account of the specific appropriation of $400,000.00 above mentioned, such sums as may be necessary to defray the salaries of the division superintendents of schools, the current expenses of the department of education, the $5,000.00 for the expenses of the summer normal institutes, and the apportionment to be made among the primary and grammar schools in the several counties and cities of the State under section 135 of the Constitution.

As the apportionment to be made among said schools cannot be needed until after the beginning of the school session of 1907-8, there will be no occasion, of course, for the transfer of the money needed for that purpose until after the 1st of September, 1907.

I am brought to the above conclusions by construing the various statutes above referred to together, so as, as far as practicable, to render their execution harmonious, and consistent with the manifest purpose of the General Assembly.

Very truly yours,

WILLIAM A. ANDERSON.

N. B.—It will be observed that the appropriation Act, chapter 113 of the Acts of 1906, was approved March 9, 1906, and that the act amendatory of section 1438 of the

Code, requiring the salaries of division superintendents "to be paid in monthly instalments out of the State school fund, on the warrant of the State board of education drawn upon the second auditor," was approved March 15, 1906. Under the recognized rules of statutory construction, both of these statutes having been enacted by the same Legislature, should be so construed, if reasonably possible, that both may stand together.

Section 1438, as so amended, so largely increased the salaries of division superintendents of schools, that, as I understand from the second auditor, the income derivable from the literary fund is grossly inadequate for the payment of the same, even if the income from that fund was not already charged with the payment of the expenses of the department of education, including the salaries and expenses of the school examiners and inspectors.

Unless, under the appropriation act of 1906, and under chapter 248 of the Acts of 1906, amending the general school law, such portion of the annual "State school fund" as shall be required to carry on the agencies prescribed by law for conducting the school system of the State, shall be transferred to the second auditor, not only must great inconvenience and injury to the public school system be occasioned, but the very operation of the public school system of the State may be greatly embarrassed, if not wholly interrupted.

Very truly yours,

WILLIAM A. ANDERSON.

A justice of the peace or constable eligible to the office of district school trustee.

May 16, 1907.

HON. J. D. EGGLESTON, JR.,

Superintendent of Public Instruction, Richmond, Virginia.

DEAR SIR:

Yours of the 15th, submitting an inquiry in regard to the above matter, this instant received.

The only statute which specifically prescribes what officers cannot be chosen or allowed to act as school trustees, is section 1459 of the Code, as amended by the Act of 1904, p. 153, which is as follows:

> "1459. No federal officer, except a fourth-class postmaster, and no supervisor, or county or state officer, except a notary public and commissioner in chancery, or any deputy of said officers, shall be chosen or allowed to act as district school trustee."

I do not think that either a justice of the peace or a constable is embraced within the language of this section, for each of those officers is a district and not a county officer, within the meaning of that section.

I am of opinion, therefore, that a man who holds the office of constable or justice of the peace may be chosen and may act as a district school trustee.

Very truly yours,

WILLIAM A. ANDERSON.

Who shall act as division superintendent during the total disability of a division superintendent.

May 23, 1907

HON. J. D. EGGLESTON, JR.,

Superintendent of Public Instruction, Richmond, Virginia

DEAR SIR:

Yours of the 22d received.

No express provision is made either by the Constitution or the statutes as to how, or by whom, the duties of division superintendents shall be discharged during the tempoary disability of a division superintendent.

Such a disability, of course, does not work a vacancy in the office, and the only case, the filling of which is provided for in the Constitution or laws, is that of a vacancy in the office.

If the disability mentioned by you is total, and is such as to prevent the division superintendent referred to from acting as such, and from discharging the duties of his office, it seems to me that you would be justified, under the circumstances of the case, in treating it as amounting to a *temporary* vacancy in the office, and that the only thing for you to do is, under regulation 61 adopted by the State board of education, to designate a school trustee of the division in which the disabled and incapacitated superintendent resides, to act *ad interim* until an appointment can be made by the State board of education.

Very truly yours,

WILLIAM A. ANDERSON.

As to the regulation of local election for school purposes.

June 7, 1907

HON. J. D. EGGLESTON, JR.,

Superintendent of Public Instruction, Richmond, Virginia.

DEAR SIR:

It is difficult to give a satisfactory and definite response to the inquiry made in the letter of Mr. C. G. Hardwick, division superintendent of schools for Giles county, of the 27th ultimo addressed to you, and referred to me by your favor of the 5th instant.

The only thing I suppose to be done is that the election shall be conducted in the same manner, and after the same notice, that other special elections are conducted under the general law, if the election is to be held now.

It would probably be best, however, out of abundant caution, to call the election off, and not to hold it until after the next meeting of the board of education, when a regulation can be adopted upon the subject, as I understand from you that none has yet been adopted. There is no regulation on the subject in the printed copy of the regulations which I have.

Very truly yours,

WILLIAM A. ANDERSON.

As to special election for school purposes.

LEXINGTON, VA., *July 18, 1907.*

HON. J. D. EGGLESTON,

Superintendent of Public Instruction, Richmond, Virginia.

DEAR SIR:

Yours of the 13th instant enclosing letter to you from Lucian Gregory, Esq., of Chase City, forwarded from Richmond, has reached me here.

I am at a loss to know what question Mr. Gregory desired me to pass upon which has not been covered by the opinion which I have already given you in regard to special elections held for the purpose of authorizing an increased taxation in school districts for school purposes.

I know of no law which requires special elections for school purposes to be held at the same time that a general election is held, or to be held on a different day from the day on which such an election is held.

By section 110 of the Code, special elections generally are required to be held at such time as may be designated by some special law, or as may be designated by the officer duly authorized to order such election.

By section 101 of the Code the election officers are required to conduct such elections

for public free school purposes under such regulations as shall be prescribed by the board of education.

At the last meeting of the State board of education that body adopted certain regulations in regard to conducting elections for public free school purposes, pursuant to the provisions of section 101 of the Code just referred to.

It would be well to furnish Mr. Gregory a copy of those regulations, and they should be printed and generally circulated among public school officials of the State.

As I think was plainly stated in the opinion which I gave you, I know of no law which requires a special election for public free school purposes to be held at any particular time, but such election should be held at such time as may be prescribed by the officials charged with the duty of ordering such elections.

It is a matter of the utmost importance that all such elections should be ordered, conducted and the results ascertained and certified in the manner prescribed by law; and in order that this may be done it is absolutely essential in most cases that every step should be taken and all the papers prepared by competent counsel on the spot, fully familiar with all the facts, and able therefore to give the closest supervision to the procedure from beginning to end.

As you can well understand it is absolutely impossible for the Attorney General or for any lawyer, unless he can be in close contact with the procedure to direct and advise as to all the details of a transaction of this kind, nor does the law impose any such duty upon the Attorney General.

The district school boards are authorized to employ counsel and there is scarcely any occasion on which the services of a lawyer would be needed, where it is so essential that there should be competent special and local counsel as in connection with the conduct of elections for public school purposes.

Yours very truly,

WILLIAM A. ANDERSON.

As to power and duty of the State board of education to select school furniture

August 5, 1907.

HON. J. D. EGGLESTON, JR,
Superintendent of Public Instruction, Richmond, Virginia.

DEAR SIR:

Upon the questions presented in your favor of the 1st instant, enclosing correspondence with Mr Richard A Dobie, superintendent of schools for the city of Norfolk, I beg leave to say, that by Act in force June 13, 1906 (Acts of 1906, p. 432), amending section 1433 of the Code, the following are prescribed as among the duties and powers of the State board of education:

> "Sixth. To select text-books, school furniture, and educational appliances for use in the public schools of the State of Virginia, exercising such discretion as it may see fit in the selection of books suitable for the schools in the cities and counties respectively, subject to the conditions and restrictions hereinafter set forth; but no text-books which may hereafter be adopted for use in any public free school in the State of Virginia shall be changed or substituted until the same shall have been used for a period of not less than four years."

By this language, that Board is clothed with precisely the same powers, and charged with precisely the same duties, in respect to the selection of furniture, with which it is charged and clothed by section 132 of the Constitution, and was charged and clothed by the Act approved May 15, 1903 (Acts of 1902–3–4, p 384), and again by the Act approved December 28, 1903 (Acts of 1902–3–4, p. 800), in respect to the selection of text-books.

Never since the adoption of the Constitution has any question ever been raised as to the power of the State board of education to select text-books, or as to the right of any city or district school board to select the same, in the face of the mandate of the Constitution, that the State board of education shall select the text-books which shall be used in the public schools of the State.

The mandate of the Constitution as to the selection of text-books is expressed in such general and comprehensive terms as to leave no doubt as to its purport and effect; and it unquestionably confers upon the State board of education the exclusive power and duty of doing whatever may be necessary to select the text-books, and the only text-books, which can be lawfully used in the public schools of the State.

The language of the sixth clause of section 1433 of the Code, as amended by the Act in force June 13, 1906, cited above, in like manner, and to the same extent, confers upon the State board of education the power, and devolves upon it the duty, to select the furniture which shall be used in the public schools of the State.

It cannot be gainsaid that the power and authority thus conferred upon the State board of education is absolutely exclusive of any such power or authority in the city or district boards; and if there could, by possibility, be any question as to the correctness of the proposition just stated, there can be no question whatever that the authority of the State board of education, when once exercised pursuant to the provisions of the sixth clause of section 1433 of the Code, as amended by the Act in force June 13, 1906, is absolutely paramount to any other authority in the State.

No regulation by the State board of education whatever was necessary, to give effect to its authority, when once exercised in pursuance of the powers and duties devolved upon it by the Act in force June 13, 1906; nor could any such regulation give any additional sanction to any act of the board performed in pursuance of that statute.

Another elementary proposition is, that a grant of power, particularly to a governmental body, carries with it the authority to adopt appropriate means, and to do whatever is necessary for the effective exercise of the power granted.

In this matter, one of the most important considerations which should control the board in the selection of any article of school furniture for use in the public schools of the State, would be, of course, its cost.

Just as has been the case in the selection of books for use in the public schools of the State since the establishment of the public school system of Virginia, the item of cost must be one of the most important considerations which shall determine the action of the board.

The board unquestionably has the power, and it was its duty, to determine the facts, circumstances, and conditions which would control it in the selection it would make of school furniture.

Accordingly, the board, when it came to select desks for use in the public schools in the State, followed the unbroken precedent of its predecessors in regard to the selection of text-books, of inviting proposals from manufacturers, or concerns dealing in such school furniture, to furnish desks, describing the desks that each would furnish, the price at which they would furnish them, and furnishing specimens of the same; the two things which would determine the selections being necessarily the quality and excellence of the article, and its cost.

It would be an idle and a useless thing for the board to invite such proposals, or undertake to make such selection, unless this latter could be done effectively; and it is manifest that it could not be done effectively unless a condition of awarding the selection to a particular desk would be that the manufacturer of that desk should agree to furnish it to the schools of the State, and be bound to furnish it to these schools at an agreed price.

And so, following the precedents set by its predecessors in respect to text-books under a precisely similar statute, the board required the parties whose school desks should be selected to agree to enter into such a contract, and to enter into such a contract.

I beg leave again to call attention to the circumstance that the law empowering the board to select text-books was, until 1906, in so far as it bears upon the question now under consideration, precisely the same as the Act of 1906 in reference to the selection of school furniture.

The making of a contract by which the concern whose text-books, or whose school desks were, under all the circumstances, decided by the board to be the best or the most desirable for use in the public schools of the State, was a mere incident, and yet a necessary incident to the effective selection of such text-books or school desks for use in the public schools of the State.

To make such a selection effective, it was absolutely necessary, on the one hand, that the concern whose desk was selected should be bound to furnish the same for the period covered by the selection of the board to the public schools of the State, at the price, and upon the terms specified in the proposal submitted by such concern for the consideration of the board, and upon the consideration of which the desk was selected; and upon the other hand, it was absolutely necessary that all the schools of the State should be bound to use such desks, and to use only such desks as the State board of education, in the exercise of the powers conferred upon it, had so selected for their use.

I conclude, therefore, that the act of the State board of education in selecting the school desks described in the proposal of the Virginia School Supply Company, which selection was carried into effect in the contract made by the board with said company, was a valid contract, not only binding upon the State board of education and upon the Virginia School Supply Company, but binding upon every school district in the State, and every school official in the State.

If I am mistaken in this view, then the school authorities of Virginia, and of other States, having similar laws, have been, for thirty years, doing an utterly vain thing in the matter of making contracts with school concerns for the supply of the children in the public schools of the State with text-books; for the statutes under which those boards acted were, in so far as the question now under consideration is concerned, either identical, or substantially the same with the statutes under which your board acted in its selection of school desks.

I know of no law which requires such selection to be published, though it is proper, of course, that the school authorities should be promptly informed of such selection.

Now, to come to the case presented by your correspondence with the superintendent of schools for Norfolk city.

The facts in regard to that case are as follows, as I understand them:

That the department of education, by publication and otherwise, invited proposals for school desks to be furnished to the public schools of the State; that several offers were made by responsible concerns to furnish such desks, accompanying their proposals with samples of the desks to be furnished; that among the concerns so offering to furnish such desks were not only the Virginia School Supply Company, but also, strange as it may now appear, the A. H. Andrews Company; that the board of education sought from the concerns making these proposals, or their representatives, the very lowest prices at which they would furnish such desks, and that the lowest price at which the A. H. Andrews Company would undertake to furnish the desks was twenty-five cents higher for each desk than the price at which the Virginia School Supply Company offered to furnish them; that accordingly, the desks offered by the Virginia School Supply Company were, upon fair competition, and after the fullest consideration, "selected by the board for use in the public schools of the State for a period of two years from the 29th day of May, 1907"; all of which was distinctly within the power of the board; and that thereupon, the board, following

the precedents of over thirty years in connection with the selection of text-books under similar statutes, required the Virginia School Supply Company to enter into a contract to make its proposal good to the people of the State.

Now in my opinion, not only was this a legal transaction, and one which absolutely binds all the people of the State, because it was made within the competent powers of your board, but it is a transaction which it would be a breach of faith on the part of the officials of the State not to cary out according to its letter and spirit.

I do not think, therefore, that the A. H. Andrews Company, which was fully informed that the desks offered by the Virginia School Supply Company had been selected by your board over the desks offered by them; that the contract which the A. H. Andrews Company desired to secure had been awarded to the Virginia School Supply Company which was a lower bidder; and, as I am informed by the secretary of the State board of education, were also fully informed as to the terms of "Circular Letter No. 297," of date July 5, 1906, could fairly or innocently make a proposal to the school board of Norfolk city of their desks at any price, even though greatly lower than the price at which the Virginia School Supply Company had agreed to furnish the same; nor do I think that the State or the city officials ought to sanction any such transaction.

It seems to me to be at least as incumbent upon the representatives of the State to act with the utmost good faith, as it is upon an individual, in such matters.

The school board of Norfolk city, and the world had notice of the Act in force June 13, 1906, conferring upon the State board of education the power to select school furniture, and if any such local school board should undertake to make a selection of school furniture, such board and the parties dealing with it took the risk of any contract they might make being avoided by your board's discharging the duties and exercising the powers conferred upon it by section 1433 of the Code, as amended by the Act in force June 13, 1906.

If such conduct as has characterized the A. H. Andrews Company in this matter could be sanctioned or tolerated, any effort on the part of the State through a central agency to protect its people in the matter of text-books, and school furniture and appliances against excessive charges, would be worse than useless.

In my view, therefore, the contract made by the State with the Virginia School Supply Company is a valid contract, and the contract made by the school board of Norfolk city with the A. H. Andrews Company is an illegal and invalid contract; and I think that the school authorities of the State should insist that the school board of Norfolk city should disregard a contract made by the said A. H. Andrews Company so flagrantly in violation of right and of law.

Very truly yours,

WILLIAM A. ANDERSON.

As to selection of site for a school house; who empowered to make it.

August 6, 1907.

HON. J. D. EGGLESTON, JR.,

Superintendent of Public Instruction, Richmond, Virginia.

MY DEAR SIR:

Yours of this instant addressed to the Attorney General, has been received.

I have considered the case stated therein, and in reply to your inquiry, "Will you kindly inform me if the school trustee electoral board had any authority to change the location of said school, as no school can be built until the division superintendent approves the site and location?" I beg leave to say that I am of opinion that the school trustee electoral board, acting as a board of appeal in the case cited, had no authority to select, designate, or fix another site; and could only approve or disapprove the selection of the site which had been made by the district school board, and approved by the division superintendent of schools.

As I understand from your letter, the single question before this board, on appeal, was whether the selection by the district board of the site known as "Grange Hall" should be affirmed or rejected by the board of appeal.

It seems to me perfectly plain, that the district school trustees alone are authorized to select sites for schools, and to acquire the same, in the mode provided by law; and further, that no schoolhouse shall be contracted for, or erected, until the site, location, plans, and specifications therefor shall have been submitted to and approved in writing by the division superintendent of schools.

I am, very truly yours,

ROBERT CATLETT,
Assistant to the Attorney General.

In reference to the selection of school furniture in the city of Norfolk.

Lexington, Va., August 16, 1907.

HON. J. D. EGGLESTON, JR.,
Superintendent of Public Instruction, Richmond, Virginia.

DEAR SIR:

Yours of the 14th instant with copy of correspondence between yourself and Mr. R. A. Dobie, superintendent of schools for Norfolk city, reached me yesterday, and your favor of the 15th has been this instant received.

I regret exceedingly to see from this correspondence that the Norfolk city school board will probably insist upon carrying out the contract which they have made with the Andrews Company for school desks for use in the public schools of the city, in direct violation of the provisions of the sixth clause of section 1433 of the Code as amended by the Act approved March 15, 1906, which devolves upon the State board of education the paramount power and duty of selecting school furniture for use in the public schools of the State.

As I have already indicated in the formal opinion which I gave you upon this subject, the language which confers this power and duty upon the State board of education in respect to the selection of school furniture is identically the same as that used in the Constitution and the law in regard to the selection of school books; and a local school board would have just as much right and authority to select and prescribe for use in the schools of its city, or district, school books other than those which have been slected by the State board of education, as such local board would have to select for use in the schools furniture which has not been selected by the State board of education, particularly where the State board of education has selected and prescribed for use in the public schools furniture different from that which the local board should so undertake to prescribe and select.

In this particular case, but for the selection which the State board of education made, and the contract which that board caused to be made as a condition of that selection, not only the people of Norfolk city, but all the people of the State, would have had to have paid twenty-five cents more for every desk used in the public schools of the State than they would have to pay, but for the lower bid of the Virginia School Furniture Company.

If the action of the State board of education in the matter of the selection of the school desks which shall be used in the public schools of the State can be set aside and nullified by the action of local boards, it would be an idle and useless thing for the State board of education to undertake to make selections of either school furniture or school books.

I have no doubt in the world, but that the worthy gentlemen constituting the Norfolk school board were endeavoring to do what they deemed best for the schools of that city, and it may be that they did not know that the State board of education had already, in the exercise of the powers and duties devolving upon that board by law, made a selection

of the school desks which were to be thereafter used in the schools of the State; but this does not alter the question either of right or of law; and I trust that those gentlemen will, upon further consideration, decide not to place themselves in direct conflict with the lawful authority of the State board of education and with the plain requirements of the laws of the Commonwealth.

It is not necessary that any citizen, and particularly any public officer, shall be shown to have had special and express notice of the provisions of a statute. The statutes have been published and have been open to the inspection of all the citizens of the State, and everyone is presumed to know what their provisions are.

Since the 13th day of May, 1906, when the Act of March 15, 1906, amending section 1433 of the Code went into effect, the members of the Norfolk school board and every citizen of the State is conclusively presumed to have known that the law of this State conferred upon the State board of education the sole power of selecting the school desks and other furniture which should thereafter be introduced for use into the public schools of the State; and that no local school board had the power of selecting such furniture without the approval and sanction of the board of education.

There can be no question that in this particular case the Andrews Company were fully informed that their desks had not been selected by the State board of education, but that the desks offered by the Virginia School Supply Company, at a price of twenty-five cents less than the offer of Andrews Company, had been selected; and that the contract which the Andrews Company attempted to secure from the Norfolk school board was a contract made in violaiton of the rights, not only of the people of Virginia, but in violation of the rights of the Virginia School Supply Company.

What information the Norfolk school board may have had as to the action of the State board of education is immaterial, as the Norfolk school board could not, under the law, make any valid selection of school furniture which was not selected by the State board of education, nor sanctioned by that board.

Yours truly.

WILLIAM A. ANDERSON.

As to the commissions of county treasurers for collecting and disbursing local school funds.

September 13, 1907.

HON. J. D. EGGLESTON, JR.,

Superintendent of Public Instruction, Richmond, Virginia.

DEAR SIR:

Yours of the 12th instant, enclosing letter of the 7th instant from Mr. W. M. Davidson, superintendent of schools for Lee county, addressed to you, this instant received.

The question as to the amount of the commissions to which a county treasurer is entitled for collecting and disbursing local school funds, has been repeatedly ruled upon by your department, and notably in September, 1905, at the request of the treasurer of Lee county, the very county in which the question has been now again raised.

I think you will find that the matter was fully discussed and covered by the rulings of the department at that time, as ought to appear from the letter books and letter files of the then superintendent of public instruction.

I beg leave in this connection, to call your attention to the carefully prepared opinion which I gave to your predecessor on the 16th of September, 1905, printed in my annual report for that year at pages 15 and 16, a copy of which I now enclose you.

Answering Mr. Davidson's inquiries in the order in which they are submitted, I would say:

1. A county treasurer is not in all cases entitled to 5% commission for collecting and disbursing school funds received before the 1st of December in each year. He is only "entitled to the same compensation allowed him by law for receiving, collecting, and disbursing all county levies;" and that, as will be seen from examining the law and my opinion of September 16, 1905, may sometimes be only 3 1-2%.

It would seem from the language used in section 613 of the Code, and which, by the provisions of section 614 of the Code, determines the compensation prescribed for receiving and disbursing all local levies, that in all cases where the aggregate collections for local purposes in a county in any one year do not exceed $10,000.00 in all, the treasurer's commission is 9% on all revenue remaining unpaid on December 1st, and collected by him:

That where the aggregate revenue for all local purposes exceeds $10,000.00 and does not exceed $15,000.00 in any one year, his additional commission on the aggregate amount of local taxes collected by him after the 1st day of December, is 8%.

(NOTE: For some reason which is not apparent to me, no additional compensation seems to be allowed by section 613 to treasurers for collecting State revenue received after the first day of December, in any case where his aggregate collection on State account amount to more than $15,000 a year.)

The above statement must be qualified by the language of section 614 of the Code, which expressly limits the treasurer's commission to 3 1-2% upon all amounts *in excess of $15,000.00* received by him in any one year on account of all county, school and other local purposes.

That is to say, where the aggregate collections made by the treasurer in any one year for all county and school purposes exceeds $15,000.00, the commission of the treasurer on such excess is limited to 3 1-2% no matter when the money is received, i. e. whether collected before or after the 1st of December.

2. If the county treasurer fails to pay over any money due by him to the school funds of the county, whether such money is retained by him on account of commissions not due or otherwise, one remedy for such default would be a suit against him and his sureties upon his official bond.

3. I would say that if a county treasurer has made a mistake against himself in a settlement with the school authorities of a county in one year, it is right that such error should be corrected in the succeeding settlement. It seems to me that it is just as incumbent upon the school authorities to do what is right as it is upon any one else to act honestly. An innocent mistake in stating an account, or making a settlement, should, of course, always be corrected by the party benefiting by such mistake, if in his power to do so.

4. My printed opinion of September 16, 1905, answers Mr. Davidson's fourth inquiry.

5. The compensation allowed a county treasury by section 614 is expressly "allowed for his services in receiving and disbursing the county and school levies;" and upon reading said section it is evident that he is not entitled to such compensation, except upon such sums as he shall both receive and pay out. As will be seen, there is no separation of the compensation allowed. No commission is allowed for receiving alone, and no commission is allowed for paying out alone; but his compensation is prescribed for "receiving and disbursing the county and school levies."

It is proper that I should add that during the time that I have been in this office, and an *ex officio* member of the State board of education, questions similar to those presented by Mr. Davidson have been repeatedly referred to the department of public instruction or to this office. Most of them are mere questions of accounting, and involve matters which neither the department of public instruction nor this office can properly adjust, but which should be dealt with by the local authorities upon the spot, who are charged with this duty.

Accordingly, by the fourth clause of section 1447 of the Code, each county school board is expressly authorized to employ counsel, and to provide for their reasonable compensation in all cases where the services of such counsel may be needed for the protection of the public schools of the county; and it is often absolutely necessary for the protection of the school interests of the county, to have the services of competent local counsel who are upon the spot, and who can deal with such subjects far more effectively and intelligently than either the department of education or the Attorney General.

While it always gives me pleasure to render any service I can to the public schools or school authorities of the State, it will be seen from an examination of the Code that the law does not authorize or require the Attorney General to act as counsel for, or adviser of, the local boards and local school authorities, particularly upon any local question; and for this obvious reason, among others, that it would be impossible for any one or for a dozen Attorney Generals to pass intelligently upon the thousands of questions that are annually arising in the execution of the school laws in the 100 counties, 500 magisterial and school districts, 200 or 300 towns, and 18 cities of the State. I return Mr. Davidson's letter.

Very truly yours,

WILLIAM A. ANDERSON.

Compensation of county treasurers.

September 21, 1907.

HON. J. D. EGGLESTON, JR.,

Superintendent of Public Instruction, Richmond, Virginia.

DEAR SIR:

Referring to my letter of the 13th instant, in which I passed upon the questions submitted to you by Mr. W. M. Davidson, superintendent of schools of Lee county, in his letter to you of the 7th instant, I beg leave to qualify the suggestion made in the "NOTE" on page 2 of that communication, and ask that you will kindly attach his letter to, and read it with, the letter of the 13th instant referred to.

If the last proviso of section 613 of the Code, as amended by the Act approved March 15, 1904 (Acts of 1904, p. 310), applies to county treasurers, as it probably does, then that proviso will give an additional compensation to a county treasurer of "two per centum commission on all revenue remaining unpaid the first of December and collected by him up to fifteen thousand dollars" in all cases "where the revenue exceeds fifteen thousand dollars, but is not sufficiently in excess thereof to make the treasurer's compensation as much as it would have been had such revenue been less than fifteen thousand dollars."

Very truly yours,

WILLIAM A. ANDERSON.

I beg leave to append an opinion which I gave your predecessor upon the same subject. September 10, 1905.

September 16, 1905.

HON. J. W. SOUTHALL,

Superintendent of Public Instruction, Richmond, Virginia.

DEAR SIR:

I have considered the question submitted in the letter of Mr. A. M. Ely, treasurer of Lee county, dated the 13th instant, and addressed to you, and beg leave to give you my construction of the following extract from section 1515 of the Code:

> "* * * * For receiving, collecting and disbursing levies imposed for and by counties or school districts he shall be entitled to the same compensation allowed him by law for receiving, collecting, and disbursing county levies, and for other ordinary purposes. In computing commissions for collecting and disbursing all sums levied for county, school and district purposes, the amount shall be treated as one sum, and shall not be divided for the purpose of calculating the treasurer's commissions. * * * * "

As I understand the language quoted, it requires that the compensation of county treasurers for receiving, collecting, and disbursing county and district school taxes or levies, shall be computed, ascertained, and determined as follows:

The *rate* of compensation is the same which he is allowed for receiving, collecting and disbursing county levies.

That rate is fixed by sections 613 and 614 of the Code, as amended by the Acts of 1904, pp. 310 and 311, at a commission graduated according to the aggregate of the sums collected and disbursed in any one year.

The entire amount collected by the treasurer for all county and district purposes of all and every character and description, including county and district school and road levies, and all other levies, are aggregated together and taken as one sum, for the purpose of determining the *rate* of the treasurer's compensation in each case.

This compensation thus ascertained, should be apportioned among the respective funds for which the taxes are collected in proportion to the amount of each fund, and the ratable share of the treasurer's compensation, chargeable to each specific fund, deducted therefrom before disbursement.

When the aggregates of all sums received by county treasurers on all accounts, for county or district taxes or levies of any description, do not exceed $15,000 for any one year, the problem is a very simple one, for his compensation under section 613 and 614 is the uniform commission of five per cent.

Where these totals aggregate more than $15,000 for any one year, the compensation is three and one-half per cent. on sums over $15,000.

The above is subject to these provisions: that, when the aggregate of all the above collections does not exceed $10,000, the treasurer is entitled to an additional compensation of four per centum on the taxes remaining unpaid on December 1st, and collected by him; and when the aggregate of all such levies and taxes exceeds $10,000, but does not exceed $15,000 for any one year, he is allowed three per cent. on all levies collected after December 1st.

The above is subject to the especial provision that the board of supervisors of Pittsylvania county may fix the compensation of the treasurer of that county for receiving and disbursing county and district levies.

To illustrate: If in any particular county the aggregate of all collections on account of county and district levies shall be, say $20,000, and the aggregate for school purposes $10,000, the treasurer's compensation therefor would be five per cent. on $15,000, $750; 3 1-2 per cent. on $5,000, $175. Total, $925, or an average commission of 4 5-8 per cent.

The school fund would be credited with $10,000 and charged with its aliquot share of the treasurer's commission, say 4 5-8 per cent., $462.50, leaving to the credit of the school fund this net sum, $9,537.50.

In the above illustration, I take no account of the distribution of the aggregate school fund between the county and the district, and between the several districts; but that is merely a matter of bookkeeping, and can be readily adjusted when the average rate of the treasurer's compensation has been determined.

I enter thus into details because the question has arisen repeatedly in the past, has heretofore been passed on by me more than once, and must arise in hundreds of cases in the future. I therefore desire to make this opinion as full and clear as possible.

It might be well, if you approve my views, to issue a circular to the treasurers and division superintendents containing your ruling on the question.

Very truly yours,

WILLIAM A. ANDERSON.

MISCELLANEOUS.

As to the action of the General Assembly of 1906 in reference to the proposed amendments to the Constitution.

July 24, 1907.

JOHN W. WILLIAMS, ESQ.,

Clerk of the House of Delegates and Keeper of the Rolls of Virginia, Pearisburg, Va.

DEAR SIR:

Yours of the 19th instant has been received.

It presents questions of very great importance which have not yet been decided by any competent authority in this State; and which seem to have rarely arisen in any of the other States of the American Union.

Section 196 of the Constitution of the State prescribing the manner in which amendments to the Constitution may be adopted upon legislative initiative provides that:

> "Any amendment or amendments to the Constitution may be proposed in the Senate or House of Delegates, and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their Journals with the ayes and noes taken thereon, etc."

The Journal of the Senate for March 3, 1906, pp. 474-5, contains the following minutes:

> "Mr. Mann, from the committee for courts of justice, reported, without amendment,
>
> Joint Resolution No. 447, Proposing amendment to section 50 of article IV of the Constitution of Virginia, and providing for publishing said amendment and certifying the same to the next General Assembly.
>
> He, from the same committee, reported without amendment,
>
> Joint Resolution No. 441, Proposing amendment to section 46 of article IV of the Constitution of Virginia, and providing for publishing said amendment and certifying the same to the next General Assembly.
>
> Was taken up.
>
> Mr. Machen moved to dispense with the reading of the bill, as required by section 50 of the Constitution, and the Senate being satisfied that an emergency exists, it was agreed to by the following vote—ayes, 30; noes, none.
>
> Senators who voted are:
>
> Ayes—Messrs. Anderson, Campbell, Chapman, Dickenson, Echols, W. A. Garrett, Gunter, Harman, Hobbs, Holt, Keezell, Kerns, Lassiter, Lynn ,Machen, Mann, Phlegar, Rison, Roberts, Sadler, Sale, Sears, Shackelford, Shands, Sims, St. Clair, Tavenner, Walker, Henry T. Wickham, and T. Ashley Wickham—30.
>
> Noes—None.
>
> The resolution was then ordered to be engrossed; and being forthwith engrossed, on his further motion, was passed with its title by the following vote—ayes, 29; noes, none.
>
> Senators who voted are:
>
> Ayes—Messrs. Anderson, Campbell, Chapman, Dickenson, Echols, W. A. Garrett, Gunter, Harman, Hobbs, Holt, Lassiter, Lynn, Machen, Mann, Phlegar, Rison, Roberts, Sadler, Sale, Sears, Shackelford, Shands, Sims, St. Clair, Tavenner, Turner, Walker, Henry T. Wickham, and T. Ashby Wickham—29.
>
> Noes—None."

And for March 10, 1906, p. 756, the Senate Journal contains the following minutes:

> "Senate joint resolution 447, proposing amendment to section 50 of article IV, of the Constitution of Virginia, and providing for publishing said amendment, and certifying the same to the next General Assembly.
>
> Was taken up and agreed to by the following vote—ayes, 22; noes, none.
>
> Senators who voted are:
>
> Ayes—Messrs. Anderson, Campbell, Echols, W. A. Garrett, Gunter, Harman, Hobbs, Holt, Kerns, Lynn, Machen, Mann, Niemeyer, Phlegar, Roberts, Sears, Sims, St. Clair, Strode, Thomas, Walker, and Henry T. Wickham—22.
>
> Noes—None.
>
> Mr. Machen was ordered to inform the House of Delegates thereof."

The only other references in the Journal of the Senate to the two resolutions mentioned in the minutes above quoted, are the brief statements at pages 356 and 358, that the resolutions mentioned in said minutes were presented by Senator Machen and referred to the committee for courts of justice, and the communication from the clerk of the House of Delegates on the 9th of March, 1906, Senate Journal, p. 732, to the effect that the House of Delegates:

> "have agreed to Senate joint resolution proposing amendments to section 46 of article IV of the Constitution of Virginia and providing for publishing said amendment and certifying the same to the next General Assembly;"

and a similar statement in the communication from the clerk of the House of Delegates to the Senate on March 10, 1906, Senate Journal, p. 777, that:

"They have agreed to Senate joint resolution proposing amendment to section 50 of article IV of the Constitution of Virginia and providing for publishing said amendment and certifying same to the next General Assembly."

The proposed amendments to the Constitution referred to in said minutes are nowhere copied into, or spread upon, the Journal of the Senate.

The Journal of the House of Delegates for March 9, 1906, p. 787, shows that:

"The speaker laid before the House the following Senate joint resolution proposing amendment to section 46 of article IV of the Constitution of Virginia and providing for publishing said amendment and certifying the same to the next General Assembly;"

and here follows copied and spread out in full upon the Journal of the House of Delegates the joint resolution referred to, embracing the proposed amendment.

And thereupon is entered upon the Journal of the House the recorded vote upon agreeing to said amendment, showing—ayes, 51; nays, 11.

On pages 865–868 of the Journal of the House for 1906, it appears that, at the evening session on the 10th of March, 1906,

"A message was received from the Senate by Mr. Machen, who informed the House that the Senate had agreed to Senate joint resolution proposing amendment to section 50 of article IV of the Constitution of Virginia and providing for publishing said amendment and certifying the same to the next General Assembly.

In which they requested the concurrence of the House.

The Speaker laid the joint resolution before the House as follows:"

And here is copied into, and spread upon, the House Journal the joint resolution referred to, embracing the proposed amendment to the Constitution; and the vote upon agreeing to said joint resolution is recorded in the Journal, showing that there were 51 ayes and 8 noes.

As the joint resolution proposing amendment to section 46 of article IV of the Constitution is recorded at pages 787–788 of the House Journal, it contains no provision whatever providing for publishing said amendment and certifying the same to the next General Assembly.

The joint resolution proposing an amendment to section 50 of article IV of the Constitution, as the same is recorded at pages 866–868 of the House Journal for 1906, does contain resolutions providing for the publication of the amendment and certifying the same to the next General Assembly.

In addition to the above, I have ascertained that no resolution whatever of the purport of the two Senate joint resolutions above indicated, are to be found among the enrolled bills, or enrolled joint resolutions of the session of the General Assembly of 1906.

The question submitted to me is, whether you should cause the above resolutions, and the amendments to the Constitution therein specified, to be published for three months previous to the next election for members of the General Assembly, in the manner indicated in the resolutions adopted by the House on the 10th of March, 1906, and copied on its Journal at pager 866–868.

If the essential requirements of the Constitution and the laws in reference to the adoption of such proposed amendments have been complied with, it will be your duty to so publish said resolutions and proposed amendments, although the resolution adopted by the House on the 9th of March, 1906, as found on pages 787–788 of the House Journal contains no provision for such publication.

The Constitution plainly requires that any proposed amendments shall be entered on the Journals of the two houses of the General Assembly first acting upon and proposing any such amendments.

This requirement seems to have been strictly complied with as to the entry of both of these resolutions and amendments upon the Journal of the House of Delegates. There

is no such entry of the amendments at length upon the Journal of the Senate, the only mention of them in the Journal of the Senate being the reference to them by their titles.

A substantial compliance with the requirements of the Constitution would, I think, be sufficient; but it is to be gravely questioned whether a mere mention of a resolution of so much importance by a reference to its title, would be a sufficient compliance with the provisions of the Constitution.

It is true, that in several instances where amendments were adopted to the former Constitution, they were not spread or entered at length upon the Journals of one or the other of the houses of the General Assembly; and that the amendments in these cases were afterwards submitted to the people and received the sanction of the voters at the polls, and were incorporated into, and recognized as valid amendments to the former Constitution: but it is also true that the validity of none of these amendments was ever attacked upon that ground, so that the courts of Virginia have never passed upon the question, nor, so far as I know, has it ever been raised in any tribunal, either legislative or judicial, in this State.

Again, it will be found upon examination, that in quite a number of cases in which amendments to the former Constitution have been proposed in either house of the General Assembly, such proposed amendments have been copied and spread in full upon the Journals of the respective houses. Indeed, upon a necessarily somewhat cursory examination of the Journals of the Senate and House of former Legislatures, I have found more precedents in favor of careful compliance with the requirements of the Constitution, by entering proposed amendments in full upon the Journals of each house, than I have found in favor of the looser practice of merely referring to them by their titles.

Some illustration of this will be found upon an examination of the House Journal of 1874-5, pp. 407-412; House Journal of 1891-2, p. 409; House Journal of 1893-4, pp. 480-481; and Senate Journal of 1870-71, pp. 301-303; Senate Journal of 1871-2, pp. 107-108; Senate Journal of 1872-3, pp. 265, etc; Senate Journal of 1874-5, pp. 266-267; Senate Journal of 1891-2, pp. 391-392; Senate Journal of 1893-4, pp. 274-278.

On the other hand, in some instances, the proposed amendments were not spread upon the Journals, as will be seem from the Senate Journal of 1891-2, pp. 313 and p. 390; Senate Journal of 1893-4, p. 276; and in other cases.

But it will be seen that some of the instances in which the amendments were not entered upon the Journal of the House or Senate, were cases in which the second Legislature which took action upon the proposed amendments was passing upon them; and there was no requirement in the former Constitution, as there is no requirement in the present Constitution, that the proposed amendments should be entered upon the Journal of the Senate or the House of the second Legislature which passed upon the question of their adoption.

At all events, it is exceedingly doubtful whether the courts would hold that a mere mention in the Journal of the Senate or House of the General Assembly which proposes an amendment to the Constitution, of a resolution proposing such amendment by its title, would satisfy the express requirement of the Constitution, that such proposed amendment shall be entered upon the Journal of each house.

It is manifest that the object of the framers of the constitution, in requiring that any proposed amendment should be entered upon the Journal of each of the houses of the General Assembly, was to *authenticate* the proposed amendment to the constitution, so that there could be no possible question as to its terms.

The Journal of the Senate of 1906 affords no information as to what the terms of the proposed amendments adopted by that body were.

The verb "To enter" certainly sometimes means "to record," "to enroll," particularly in connections similar to that in which it is used in section 196 of the Constitution, though that is by no means its universal meaning. In connections entirely different from that now under consideration, it may, and does sometimes mean to record a memorandum of; but its usual meaning, I take it, when used for the purpose of prescribing how a record of a public or private document shall be preserved in writing upon a minute book or Journal, is that it shall be copied in full, or spread upon such minute book or Journal. For instance, if a court should direct a decree to be entered upon its order book, such direction would require the clerk to copy the decree upon the order book of the court.

In a matter of so much importance too much particularity could not well be required or observed in entering an exact copy of the proposed constitutional amendment upon the Journal of the houses of the General Assembly which should give such amendment their sanction.

This very question arose in a case of very great importance arising under the constitution of Iowa,—the case of Kœhler and Lange *v.* Hill, reported in 60 Iowa Reps., pp. 542–704,—involving the validity of an amendment to the constitution of that State prohibitin the manufacturing and sale of intoxicating liquors.

The case seems to have been most ably argued and carefully considered, both upon the original hearing and upon a rehearing, and exhaustive opinions were filed by Judge Seevers and by Chief Justice James G. Day, in which all but one of the five judges of that court concurred, and which strongly presents the view that, under the provisions of the constitution of Iowa (which in this regard were precisely the same with those of the Constitution of Virginia), an amendment which had not been spread in full upon the Journals of both the Senate and the House which first adopted it and recommended its adoption to the succeeding legislature, was not adopted in the manner required by the constitution of that State, and did not become a part of the constitution of Iowa.

Judge Beck filed very elaborate and strong dissenting opinions, but his reasoning does not impress me as being so satisfactory and convincing as that of the majority of the court.

The State of Iowa, as will be seen from an examination of that case, had no statute, such as Virginia has, providing for the authentication, by enrollment, of the Acts and joint resolutions of the legislature of that State.

In the Iowa case the amendment in question had been published for three months before the election of the succeeding legislature, and had been agreed to by that legislature, and had been ratified by the people at the polls; and yet it was held by the supreme court of that State not to have been validly adopted, because it had not been entered *in ipsissimis verbis* upon the Journals of both the Senate and the House of Delegates.

The only other cases which I have been able to find in the time which I could devote to this subject, in which the question here presented has arisen and been decided, are Oakland Paving Company *v.* Tompkins, 70 Cal. p. 5, in which amendments to the constitution of California were sustained, which were not spread at length or at large upon the Journals of the Senate and House of the Legislature of that State which proposed them, although the constitution of California required them to be "entered" upon such Journals: and the case of Thomason *v.* Ruggles, 69 Cal., p. 464, in which a contrary view was presented, and the validity of an amendment which was not spread upon the minutes of the Senate and House of Legislature which first proposed it, was denied.

The California case which sustains amendments, notwithstanding the fact that they were not entered at length upon the Journals of the two houses of the General Assembly which first proposed them, does not seem to have been by any means so carefully and exhaustively considered as was the Iowa case above referred to.

There is another California case—People *v.* Strother, 67 Cal. p. 624—cited in Oakland Paving Company *v.* Tompkins, as confirmatory of that decision, but an examination of that case does not show what the objections to the amendment therein considered were.

But we are confronted in this matter by a difficulty which is perhaps, under the circumstances of this case, more serious than that which I have just considered—and that is, that neither of the resolutions proposing amendments to the Constitution which are referred to in the Journals of the two houses of the General Assembly of 1906, are authenticated in the manner prescribed by law.

Section 207 of the Code, which has been the law of this State for more than forty years, prescribes how Acts and joint resolutions of the General Assembly shall be authenticated.

It provides that:

> "Sec. 207. The clerk of the House of Delegates shall be the keeper of the rolls. As such, he shall cause all the acts and joint resolutions of the General Assembly to be enrolled on substantial paper, of uniform size; and after they shall have been examined by the committees on enrolled bills, and signed by the president of the Senate and speaker of the House of Delegates, he shall cause the same to be bound in one volume, in durable style. He shall have the custody of the acts and resolutions of the General Assembly, and the record and papers of the House of Delegates; and, when required, shall furnish a copy of any of them; which copy being certified by him, shall be evidence for any purpose for which the original would be received, and with as much effect. * * * * * " See also Code 1849, c. 15, § 14.

By the provisions of this statute, it is required that the clerk of the House of Delegates shall cause all Acts and joint resolutions of the General Assembly to be enrolled, and after they shall have been examined by the committee on enrolled bills, and signed by the president of the Senate and speaker of the House of Delegates, to be bound in one volume, in durable style.

It is true, that under the present Constitution, no law in its ordinary sense can be enacted by a joint resolution, but section 196 of the Constitution is silent as to the manner in which an amendment proposed by legislative initiative shall be expressed or formulated, whether by resolution or by bill. If it can be embodied in a joint resolution, as I presume it can be, such resolution is a necessary part of the enactment of such amendment, as would be a resolution or bill adopted by the succeeding General Assembly agreeing thereto; and if the General Assembly can propose an amendment to the Constitution by agreeing to a resolution to that effect, a resolution of that character would have, to the extent prescribed in section 196 of the Constitution, the force of law.

At all events, it is a joint resolution of the General Assembly within the meaning of section 207 of the Code, and should be enrolled in the manner prescribed by that section, examined by the committee on enrolled bills, and signed by the president of the Senate and the speaker of the House of Delegates, in order that it should become an authentic Act of the General Assembly.

The joint resolutions proposing the amendments to the Constitution referred to in your letter, not having been authenticated in the manner prescribed by the Constitution and laws of this State, cannot, it seems to me, be regarded as Acts of the legislature for any purpose, any more than an Act which had never been enrolled and never been examined by the committee on enrolled bills, and signed by the speaker of the House of Delegates and president of the Senate could be regarded as a statute of Virginia.

If such reasonable and salutary requirements as those of the Constitution and laws of this State in regard to the enactment and authentication of Acts of the General Assembly, could be ignored, we would be left at sea as to what are the authentic Acts of that body.

It would be worse than an idle and useless thing to go to the expense of publishing resolutions, of the adoption of which there is no legal evidence whatever, particularly in

a matter of such momentous importance as amendments to the Constitution of the State.

Very valuable, doubtless, as are the amendments mentioned in your letter, it would be far better that their enactment should be postponed for two years, than that there should be serious doubt or uncertainty as to the validity of their adoption; and still more unfortunate would it be to prosecute an abortive attempt to engraft them upon the Constitution.

The question which I have here discussed, however, is one not only for the consideration of the courts, but also of the political departments of the State government and I am not prepared to say with positiveness, that if the next General Assembly should recognize said amendments as having been validly agreed to and proposed by the last General Assembly, and if the people at the polls should ratify said amendments at an election ordered by the next General Assembly, that then, under such circumstances the courts of this State would follow the decision in the Iowa case and hold that the amendments had not been validly adopted. I can only say, that the results would be exceedingly disastrous, if the supreme court of appeals of this State should consider, as it probably would, that it was constrained to hold that said amendments had never been agreed to by the General Assembly of 1906 in the manner required by the Constitution of the State.

These are my views, upon such consideration as I have been able, in the press of other and even more important engagements, to give to the subject.

It is by no means clear to my mind that this is a case in which the opinion of the Attorney General should be accepted as conclusive.

With a full appreciation of the difficulty, importance, and novelty of the questions you present, I can only submit my views for such considertion and for such action as you may deem it proper for you to take under the circumstances.

Before finally deciding what you will do, I think it would be well for you to have a conference, if practicable, with the chairman, or such members of the committees for courts of justice of the two houses, as you can arrange to see, particularly those who will probably be members of the next General Assembly.

Very truly yours,

WILLIAM A. ANDERSON.

I am sending a copy of this letter to Senator Machen the author of the proposed amendments, and herewith enclose for your perusal a copy of a letter I have written to him.

I herewith return the correspondence which you left with me.

July 24, 1907.

HON. LEWIS H. MACHEN,

Alexandria, Virginia.

MY DEAR SENATOR:

In the urgent press of other matters I have given a great deal of time to the consideration of the question presented in the correspondence between John W. Williams, Esq., clerk of the House of Delegates and keeper of the rolls, and yourself, and between him and myself, in reference to the proposed amendments to the Constitution which you introduced during the last session of the General Assembly.

I herewith beg leave to hand you copy of an opinion which I have just given to Mr. Williams, and to which I bespeak your most careful consideration.

It is with great regret that I have been constrained to come to the conclusions expressed in this opinion, but, in my view of the case, and upon the examination which I have been able to give to it, and to the authorities which I have examined, to some of which I refer, there was no other alternative.

The amendments you proposed are exceedingly valuable and of very great importance, and no one can deplore more than I do, that there should be serious question whether

they were agreed to by the last Legislature, and their adoption authenticated in the manner required by the Constitution and laws of this State.

I feel sure that you will agree with me, that if there is a grave doubt about this, it would be better to wait for two years more before we can realize the benefit of these amendments, rather than to incur the hazard of the evils consequent upon their illegal adoption.

For instance, if the next Legislature should proceed to agree to these amendments, and should submit them to the people and they should be ratified at the polls, it might turn out, and if the Iowa decision is followed, it would ensue, that *all* of the Acts of a Legislature subsequentlyas sembling and passed in accordance with the requirements of these amendments and not in accordance with the requirements of the present Constitution, would be void: and farther, a question might be raised as to the validity of all of the Acts of such Legislature passed after the expiration of the period of sixty days, prescribed as the limit of the session under the present Constitution.

Very truly yours,

WILLIAM A. ANDERSON,

As to qualification of voters at special local elections, and when such elections had best be held.

November 2, 1906.

GEORGE PERKINS, ESQ.,
Charlottesville, Virginia.

MY DEAR MR. PERKINS:

Yours of the 1st reached me after 10 o'clock last night.

It gives me pleasure, personally, to give you my views upon the questions you present:

1. Under my construction of the Constitution, no person except a soldier of the Civil War is qualified to vote at any election at which members of the General Assembly or any officers elective by the people are to be chosen, unless he shall have paid all State poll taxes assessed or assessable against him during the three years preceding the date of the election at which he offers to vote at least six months prior to such election.

2. The Constitution is silent as to what shall be the qualification of voters at elections other than those for the choice of members of the General Assembly and officers elective by the people, and the statutes are by no means explicit in regard to this important matter.

Diverse views are held by lawyers upon the question, and while, as I am informed, Judge Grimsley, Judge E. W. Saunders and Judge Frank P. Christian of Lynchburg, have passed upon various phases of the question which have been presented in cases which have been adjudicated by them, I nevertheless regard it as still a debatable question until it shall have been finally put at rest, either by a decision of the supreme court of appeals of the State, or by an Act of the General Assembly

It is a question which I cannot, of course, *decide*, and upon which I do not think it would be proper for me to pass if I were authorized to give an official opinion upon it, in view of the fact that it is still a question in the courts, and one which may be litigated upon appeal to the supreme court of appeals in some one of the recently decided cases.

3. Fortunately, all trouble or difficulty in regard to the matter, under the circumstances under which, as I understand from your letter, the question now arises in the city of Charlottesville, can be obviated by simply having the election to take the sense of your people upon the question of the bond issue to which you refer, at any time after the regular election of the 6th of November, next, and before the 1st day of January, following.

There cannot be a shadow of a doubt as to who would constitute the legal and author-

ized electorate of the city of Charlottesville upon any day after the 6th day of November, and before the 1st day of January, 1907. That electorate would undoubtedly be composed of all voters who were qualified to vote in your city on the 6th day of November, and such additional registered voters as had not paid all capitation taxes assessed or assessable against them at least six months before the 6th day of November, but who will have paid all such taxes at least six months before the date at which such special election shall be held.

I do not mean to indicate that the prepayment of capitation taxes before a special election, such as you propose to hold in Charlottesville, is a necessary prerequisite to the right to vote therein. I am not prepared at present to express any opinion upon that question, except that I consider it a debatable question, but if there is the slightest doubt as to the regularity of the election, I should suppose it would be difficult, if not impracticable, to float the bonds issued in pursuance thereto; and when any question can be avoided by having the election on some day before the 1st day of January, next, I take it for granted that some such date will be fixed for such election.

As indicated above, it is a matter as to which the Attorney General is not authorized or required to give an official opinion, but although I have to answer your letter under great pressure of matters urgently demanding my immediate attention, it gives me pleasure, personally, to give you the benefit of my views, which I hope may be of some service to you.

Very truly yours,

WILLIAM A. ANDERSON.

Registrar cannot be compelled to furnish a copy of his registration book, or to permit any one else to make a copy thereof.

November 15, 1906.

C. RIDGEWAY MOORE, ETQ.,
Attorney at Law, Richmond, Virginia.

DEAR SIR:

Your favor of the 13th received.

For obvious reasons, the Attorney General is not authorized or required to give an official opinion to any individual in any such case as you mention.

It gives me pleasure, however, personally to answer your inquiry as best I can.

A registrar is the custodian of the registration book for his precinct, and he should never allow it to go out of his control. The law does not require him to make a copy of such registration book, though he *may* do so, of course, or he may allow it to be done, provided it is done in his presence, but he should not allow it to go out of his custody.

It is an office which it is difficult to get competent men to take now, and it would be impossible to find fit men who would accept such an office, if they were required to make copies of the registration book for every citizen who mightt apply for a copy.

If one citizen has a right to demand a copy, every citizen has the same right.

The question you submit, however, has been decided by the supreme court of this State in the case of Keller *v.* Stone, 96 Va., 667, where the court decided that a registrar could not be required to furnish a copy of the registration book, or be compelled to permit some one else to make a copy, for the reason that there was no law requiring this to be done, or providing for any compensation for any such service.

Very truly yours,

WILLIAM A. ANDERSON.

In reference to the list required by section 38 of the Constitution to be furnished by the treasurers of each county and city.

November 16, 1906.

JOHN P. LEARY, ESQ.,
Judge of Election First Clay Precinct, and
JOSEPH C. TAYLOR, ESQ.,
Judge of Election First Henry Precinct, Richmond, Virginia.

GENTLEMEN:

Your favor of the 15th this instant received.

The following is my reply to the inquiries you submit:

The Act of the General Assembly of Virginia approved March 10, 1904 (Acts 1904, page 1311), is as follows:

1. Be it enacted by the General Assembly of Virginia, That the treasurer of each county and city shall, at least five months before each regular election, file with 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 the Constitution of this State during the three years next preceding that in which such election is held; which list shall be arranged alphabetically by magisterial districts or wards, shall state the white and colored persons separately, and shall be verified by the oath of the treasurer. The clerk, within ten days from the receipt of the list, shall make and certify a sufficient number of copies thereof, and shall deliver one copy for each voting place in his county or city to the sheriff of the county or sergeant of the city, whose duty it shall be to post one copy, without delay, at each of the voting places, and, within ten days from the receipt thereof, to make return on oath to the clerk as to the places where and dates at which said copies were respectively posted; which return the clerk shall record in a book kept in his office for the purpose; and he shall keep in his office for public inspection, for at least sixty days after receiving the list, not less than ten certified copies thereof.

2. Within thirty days after the list has been so posted any person who shall have paid his capitation tax, but whose name is omitted from the certified list may, after five days' written notice to the treasurer, apply to the circuit court of his county, or corporation court of his city, or to the judge thereof in vacation, to have the same corrected and his name entered thereon, which application the court or judge shall promptly hear and decide.

3. The clerk shall deliver, or cause to be delivered, with the poll-books, at a reasonable time before every election, to one of the judges of election of each precinct of his county or city, a like certified copy of the list, which shall be conclusive evidence of the facts therein stated for the purpose of voting. The clerk shall also, within sixty days after the filing of the list by the treasurer, forward a certified copy thereof, with such corrections as may have been made by order of the court or judge, to the auditor of public accounts, who shall charge the amount of the poll taxes stated therein to such treasurer unless previously accounted for.

4. For making and certifying such lists, the treasurer shall be allowed three cents for each ten words, counting initials as words, and the clerk for copying and certifying the same shall be allowed two cents for each ten words, counting initials as words, for the first copy, and the actual reasonable costs of printing, or of otherwise making in the cheapest way obtainable, the other copies which he is required to make. The sheriff or sergeant posting the lists shall receive twenty-five cents for each list which he posts. These fees shall be paid out of the treasury of the county or corporation wherever such lists are made.

5. Any treasurer, clerk or sheriff failing or refusing to comply with the provisions of this Act shall, upon conviction, be deemed guilty of a misdemeanor, and be punished by a fine not less than fifty and not exceeding one thousand dollars.

6. In view of the fact that the duties herein required must be at once performed, an emergency exists and this act shall be in force from its passage.

The first three sections of that Act are taken verbatim from section 38 of the Constitution.

Section 38 of the Constitution, in addition to what is taken therefrom in the first, second and third sections of the Act of March 10, 1904, contains the following provision:

> "Further evidence of the prepayment of the capitation taxes required by the constitution, as a prerequsite to the right to register and vote, may be prescribed by law."

The law, as thus expressed, in unmistakable terms, makes it the imperative duty of each city and county treasurer in the Commonwealth, at least five months before each regular election in such city or county, to file with the clerk of the circuit court of his county, or corporation court of his city, a list of all persons in his county or city who have not later than six months prior to such election paid the State poll taxes required by this Constitution *during the three years next preceding that in which such election is held*, in manner and form as in said enactments specifically prescribed.

This law unquestionably requires each treasurer to make up a complete list, at least five months before each regular election, of all voters who have paid the capitation taxes payable by them for the three years next preceding that in which the election is held.

It is evident that the requirements of the law will not be satisfied by the treasurer, if he shall make up three separate and distinct lists, one for each of the preceding years.

It is made the treasurer's duty to make up one single list upon which he shall record the name of every voter who has paid the poll taxes due to the State for said three preceding years.

Section 4 of the above cited Act, as will be seen, fixes the compensation which the treasurer shall receive for preparing these lists.

By the second section of the Act, any person whose name shall be omitted from such certified list may, after five days written notice to the treasurer, apply to the circuit court of his county, or corporation court of his city, or to the judge thereof in vacation, to have the same corrected, and his name entered thereon, within thirty days after the list has been posted.

By the third section of that Act, the said clerk is required to cause to be delivered, with the poll-books, at a reasonable time before every election, to one of the judges of election of each precinct in his county or city, a like certified copy of the list, which it is declared "shall be conclusive evidence of the facts therein stated for the purpose of voting."

By the fifth section of the Act, the failure or refusal of any treasurer, clerk or sheriff to comply with the requirements of the Act, is declared to be a misdemeanor, punishable by fine of not less than fifty nor more than one thousand dollars.

The above statute is so clear and explicit in its provisions as to need no interpretation, and under severe penalties makes it the duty of the treasurers and clerks to prepare, file and furnish the lists or copies of lists therein mentioned.

Both the Constitution and the statutes make such lists, and the certified copies thereof, conclusive evidence of the facts which they show for the purpose of voting.

It is manifest, therefore, that any voter not exempt from the payment of capitation taxes as a prerequisite to the right to vote (and only veterans of the Civil War are so exempted), whose name may be omitted from that list, can only supply each omission by applying to the court or judge to correct the list in the manner prescribed in section 2 of the Act.

If a citizen fails to avail himself of this remedy he will thereby be deprived of the right to vote at the election held after such lists are made up, filed and posted.

In other words, no person who is required to pay poll taxes as a prerequisite to vote, can be allowed to vote in any election unless his name is upon said authentic list as furnished by the treasurer and certified by the clerk.

No more important duties are devolved by law upon the city and county treasurers, clerks of courts, and sheriffs, than those thus defined; for any substantial failure on the part of any of these officers to promptly and efficiently perform any of these duties would operate to deprive citizens of their right to vote.

This doubtless explains why severe penalties were imposed by the statute for any failure on the part of these officers to discharge these duties.

Fortunately, these officers, so far as the information which has come to this office affords any data on the subject, have generally performed these important duties with fidelity and efficiency.

It is proper to call attention to the Act of March 15, 1904, chapter 193, of the Acts of that year, which prescribes the manner in which a voter who moves from the county or city to another may show that he has paid the required poll taxes in the county or city of his former residence, and which is as follows:

> "1. Be it enacted by the General Assembly of Virginia, That in any case where a voter has been transferred from one city or county to another city or county, and has paid his State poll taxes for the three years next preceding that in which he offers to vote, or for any of said years, in any county or city in this State, such voter may exhibit to the judges of election the certificate of the treasurer of the city or county wherein the said taxes were paid, showing such payment, and that the same was made at least six months prior to the election by the person offering to vote. Such certificate shall be conclusive evidence of the facts therein stated for the purpose of voting. The treasurer of any county or city, upon the application of any such voters, shall furnish the certificate herein required. Any treasurer who shall give a false certificate under this act so as to show that the taxes have been paid six months before an election, when, in fact, they have not been so paid, shall be guilty of a misdemeanor, and, upon conviction thereof, be subject to a fine of not less than twenty-five, nor more than five hundred dollars, and by imprisonment in the county jail not less than one month nor more than twelve months. The granting of each false certificate shall constitute a separate offence."

The importance of the subject has prompted me to thus fully respond to your inquiries.

Very truly yours,

WILLIAM A. ANDERSON.

What poll taxes must be paid by a person other than a veteran of the Civil War to entitle him to vote.

March 25, 1907.

HON. JAMES B. DOHERTY,

Commissioner, Bureau of Labor and Industiral Statistics, Richmond, Virginia.

DEAR SIR:

Yours of the 25th this instant received.

Under article II (the suffrage article of the Constitution), it is a necessary prerequisite to the right of any person, except a veteran of the Civil War, to vote, that he shall have paid all State poll taxes assessed or assessable against him for the three years next preceding that in which he shall offer to vote, six months before the election at which he shall offer to vote.

You will observe that he must have paid not only the poll taxes assessed against him, but those with which he was assessable for each of these three years; but it is only required that he shall have paid such taxes as he was lawfully assessable with. For instance, if he has only been of age during one or two or those three years, he would be assessable with the taxes for one or two years as the case may be; and so, if a person moving into Virginia

from another State, has been a resident of this State for only two years, he would only be required to pay his capitation taxes for such two years.

Any male citizen of the State who, on or before the 5th day of May, 1907, shall have paid his State poll tax for the year 1906, for the year 1905, and for the year 1904, or for such of said years as he may have been assessable with such taxes, and who is otherwise qualified by residence, etc., will be entitled to be registered, and to vote at the general election to be held on Tuesday, the 5th day of November, 1907; and unless he be a veteran of the Civil War, he must have paid all of such taxes by or before the 5th day of May, 1907.

If, by any omission or accident, any such citizen has not been assessed with his State poll tax of $1.50 per year for such years or either of them, then under section 508 of the Code, he has a right now to have himself assessed by the commissioner of the revenue for the city or district in which he lives, and thereupon to pay the same to the treasurer of his city or county.

Very truly yours,

WILLIAM A. ANDERSON.

As to lists of voters who have paid poll taxes, which treasurers must make up under section 38 of Constitution.

April 6, 1907.

J. M. PARSONS, ESQ.,

Commonwealth's Attorney, Independence, Grayson county, Virginia.

DEAR SIR:

Your favor of the 1st instant has been received.

The duties of the county treasurers as to furnishing lists of voters who have paid their capitation taxes are prescribed by the Act approved March 10, 1904 (Acts of 1904, p. 131); and that required each treasurer, at least five months prior to each regular election, to furnish the clerk of the circuit court of his county a list of all persons in his county who have paid, not later than six months prior to such election, the State poll taxes required by the Constitution of this State during the three years next preceding that in which such election is held, arranged alphabetically by magisterial districts, and stating the white and colored persons separately.

In my opinion, that Act requires the treasurer to include upon that list all persons who have paid any capitation taxes during any one of said three years; and the list should show for what years any capitation taxes were so paid by each person.

A requirement of this statute, which is precisely the same prescribed in section 38 of the Constitution, is that the list shall include the names of all persons who have paid the capitation taxes required by the Constitution of the State "during the three years next preceding that in which such election is held."

The Constitution requires the tax to be paid for each one of said preceding years, and the list furnished by each treasurer should show precisely what taxes have been so paid.

You will observe that it is necessary that the list to be furnished by the treasurer shall show accurately and with particularity the facts here indicated, for the reason that some voters (for instance, those who have recently reached 21 years of age, or those who have recently become residents of the county or of the State) may not be assessed or assessable in the county, under the Constitution, with poll taxes for more than one or two of said preceding years, as the case may be.

Very truly yours,

WILLIAM A. ANDERSON.

1. A citizen of Virginia, who enlists in United the States army does not lose his domicil necessarily by absence in service in the army, but must pay his capitation taxes as required of citizens generally, in order to vote.

2. As to assessment of omitted capitation taxes under section 508 of Code.

April 29, 1907.

J. C. HUTCHESON, ESQ.,

Treasurer of Shenandoah county, Woodstock, Virginia.

DEAR SIR:

The following is my reply to the inquiries submitted in your favor of the 24th instant:

(1) A citizen of Shenandoah county who enlists in the army of the United States for a fixed term, with the purpose of returning after his enlistment to his home in that county does not lose his domicile in Shenanhoah county, but is entitled to vote in that county upon his return to his home there, and upon being registered and paying his State capitation taxes, if otherwise qualified; but before he can vote he must have paid, at least six months before the election at which he shall offer to vote, all State capitation taxes assessed or assessable against him for the three years preceding that in which he offers to vote; that is to say, if he was 21 years of age when he enlisted in the army, he will have to pay, before the 6th day of May next, the State capitation tax of $1.50 for each of the years 1906, 1905 and 1904.

If he was not assessed with such State capitation taxes for those three years, by reason of his temporary absence in the army, he has a right to be assessed with them under section 508 of the Code, by the commissioner of the revenue of the district in which he resides as omitted taxes, and upon presenting to the treasurer of the county a certificate of the commissioner of the revenue to that affect, to pay the same, and thereupon to be entered by such treasurer upon the list this year of those who have paid those taxes six months before the election, if he so pays them, and will thereupon be entitled to vote, if otherwise qualified, at the election to be held on the 5th day of November next.

Or course, he would only have to be assessed with, and pay, such State capitation taxes for those years in which he was at least 21 years old on the 1st of February, in said years respectively.

As you will see from section 22 of the Constitution, the only soldiers who are exempted from the prepayment of poll taxes as a prerequisite to the right to vote, are those who were veterans of the Civil War from 1861–1865.

(2) The only way in which a young man, who has always lived in Virginia, though he has lived until the current year in a county different from that in which he now resides, but who has not been heretofore assessed with, or paid any State capitation taxes, can now qualify himself to vote by the prepayment of the required State capitation taxes, is now to be assessed with his omitted State capitation taxes for such years as he was by law assessable with such taxes, and to pay the same in the manner mentioned in No. 1; and upon so paying the same to the treasurer before the 5th day of May, 1907, and being put upon the official list required by section 38 of the Constitution to be furnished by the treasurer to the clerk of the circuit court of the county, such young man, if otherwise qualified, will be entitled to vote at the election to be held on the 5th day of November next.

You will see from the above that the persons referred to by you have no time to lose.

Very truly yours,

WILLIAM A. ANDERSON.

HON. R. S. PARKS, *May 5, 1907.*
Luray, Virginia,

MY DEAR SIR:

Yours of the 7th this instant received.

It is clear that under the provisions of sections 21 and 22 of the Virginia Constitution, no person, except veterans of the Civil War, is entitled to vote in Virginia unless he shall have, at least six months prior to the election at which he shall offer to vote, "*personally*" paid all State poll taxes assessed or assessable against him for the three years preceding that in which he shall offer to vote. My construction of this language is that such taxes must have been paid out of the means of such person, and not with anybody else's money, or by anybody else with the money of anyone else for such person. The test is, I think, whether the State poll taxes were paid out of the means of, or with the money of, the person assessed or assessable therewith.

While a treasurer cannot, I think, refuse to receive payment of any capitation or other taxes, payment of which may be tendered to him by any person, whether the party owing the same or not, it is only personal payment by the person who owes a capitation tax which will entitle him to vote. That is to say, payment with his money, and not with the money of anybody else. The payment of capitation taxes by another person, and with the means of any person other than the person who owes the same, for the purpose of qualifying such person to vote, is in fraud of the law, and would not entitle the citizen whose taxes were so paid to vote.

A payment made by any other person than the citizen offering to vote, of his capitation taxes, is just ground for challenge of his vote, and under article II of the Constitution, and particularly under sections 126 and 127 of the Code of 1904, the vote of any person whose capitation taxes have not been paid personally by himself (that is, out of his own means), may be challenged, and the person offering to vote may be examined by the judges of election as to that matter, and if it be shown upon his examination, or by any other competent evidence that his capitation taxes have been paid by somebody else or with the money of any other person than the citizen offering to vote, it would be the duty of the judges of election to reject his vote.

The question in this case can, I think, be raised by challenge of the right of such person to vote, and if the judges of election have any reason to suspect that the capitation taxes of any elector have been paid by any other person than himself, it would be their duty to challenge his vote, under section 126 of the Code, and to examine him, and to hear any other evidence that may be adduced before them upon that question, and if it be shown that such capitation taxes were paid with the means of any person other than such elector, to reject his vote.

But, as stated above, the treasurer cannot refuse to accept payment of any taxe s which may be tendered to him.

I beg leave to refer you to an opinion given by me to the secretary of the Commonwealth, involving the main question above considered, and found at page 13 of my report for 1904, a copy of which I am now sending you.

Very truly yours,

WILLIAM A. ANDERSON.

As to the list which a treasurer must make up under section 38 of the Constitution, of persons who have paid State poll taxes.

JOHN R. TURNER, ESQ., *May 21, 1907.*
Clerk Fauquier county, Warrenton, Virginia.

DEAR SIR:

A reply to yours of the 30th ult. has been delayed by my successive absences, and other causes.

The list which the treasurer is required to make up at least five months before each regular election and file with the clerk of the circuit court of his county, is defined by section 38 of the Constitution, namely; as

> "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."

Any list which furnishes the information prescribed in this language of the Constitution will satisfy its requirements.

If practicable, of course, the list should be so framed and tabulated as to show opposite the name of each citizen the State poll taxes paid by him, and the years for which they were so respectively paid.

If, however, the treasurer cannot identify the name of a citizen so as to be certain that he is the one who paid the capitation tax for each of these years, then it would be necessary and proper for the treasurer to enter the name of such citizen separately for each year for which he had paid a State poll tax.

The purpose of the law, as embodied in the Constitution, was unquestionably to furnish evidence (which by the terms of the Constitution is made conclusive) as to what citizens have paid State poll taxes for the three years preceding each election; and if the books, records, and other data in the treasurer's office, or facts within the treasurer's knowledge, show, for instance, that a certain John Jones paid his State poll taxes for 1906, 1905 and 1904 more than six months before the November election of 1907; that is to say, by or before the 5th day of May, 1907, then the list furnished by the treasurer to the clerk of the county should unquestionably show that fact. Otherwise, John Jones may be disfranchised by the failure of the treasurer to enter that fact upon such list.

If it should appear from the books, records and other data in the treasurer's office, or from facts within his knowledge, that the State poll tax was paid by John Jones for 1906, and that the State poll tax for 1905 was paid by John Jones, and that the State poll tax for 1904 was paid by John Jones, and the treasurer should be unable to say that these several poll taxes were paid by the same John Jones, then, and in that instance, he would be justified, I think, in entering the taxes separately; that is, entering John Jones's name three times, once opposite the entry of the payment for each separate year, and then it would be for the judges of election to determine whether it was the same John Jones.

But where it is possible for the treasurer to state distinctly and certainly what State poll taxes have been paid by any particular individual, it is his duty, in my opinion, so to do; for, as you will readily see, unless the list which he gives to the clerk accurately shows such facts, it may operate to disfranchise a man who is entitled to vote, and who is entitled to the certificate of the treasurer to the effect that he has paid his State poll taxes for the requisite years.

Of course, the treasurer's list is only required to show what State poll taxes have been paid.

He cannot pass upon the question whether the persons whose names are entered therein have paid all the capitation taxes with which they were respectively assessed or assessable.

In other words, the list which he is required to furnish must conform to the truth, within the knowledge or official information of the treasurer. He is only required to enter upon the list the names of all persons who have paid any State poll taxes during the three preceding years, and this necessarily imports that the list shall show for what years any such taxes were so paid by each person; and that, I think, is all that is required of the treasurer.

Very truly yours,

WILLIAM A. ANDERSON.

As to what and when a young man reaching twenty-one years of age must pay to entitle him to register and vote.

May 23, 1907.

GEORGE H. RUCKER, ESQ.,
R. F. D. No. 1, Rosslyn, Virginia.

MY DEAR SIR:

Yours of the 21st received, and it gives me pleasure to answer your inquiry.

A young man who reaches the age of 21 years after the 1st day of February, *1906*, and by or before the 5th day of November, *1907*, and who has resided in the State of Virginia for two years, and in the county in which he offers to vote for twelve months, and who shall have paid the sum of $1.50 to the treasurer of the county, in satisfaction of the first year's State poll tax assessable against him, (which will be, of course, the State poll tax for 1908) and is not disqualified under section 23 of the Constitution, is entitled to be registered as a voter at any time prior to thirty days before the date of the next election, and to vote at said election, under section 20 of the Constitution.

A young man arriving at the age of 21 at such time that no poll tax shall have been assessable against him for the year preceding the year in which he offers to register, is not required to pay the $1.50 (which it is prescribed that he shall pay under the first subdivision of section 20 of the Constitution as a prerequisite to the right to vote) *six months before the election at which he shall offer to vote.* He can pay that $1.50 at any time before he has registered, and he is entitled to be registered at any time after he has paid the $1.50, and before the registration books are closed thirty days prior to the election.

Very truly yours,

WILLIAM A. ANDERSON.

Another phase of same subject.

July 9, 1907.

R. R. SEYMOUR, ESQ.,
Brodnax, Virginia.

DEAR SIR:

Your favor of June 22d has been received.

The law laid down in the 2d sub-section of section 20 of the Constitution is explicit in authorizing any young man to vote, who is otherwise qualified, who reaches the age of 21 at such time that he was not assessable with a State poll tax for the year before that in which he offers to vote, upon paying the sum of $1.50 to the State, which sum when so paid will be in full of the first State poll tax assessable against him.

If a young man reaches 21 after the 1st of February, 1907, but on or before the election day in 1907 at which he proposed to vote, he will, upon paying the treasurer of his county the sum of $1.50, be entitled, if otherwise qualified, to be registered, and to vote at any general, special, or party primary election held after he shall have been so registered in his county in such year.

The $1.50 so paid would, in this case, be in lieu of his State poll tax for 1908.

He does not have to pay such State capitation tax six months before the election, but may pay it at any time before he is registered.

The law requires the treasurer of each county, at least five months before each regular election, to file with the clerk of the circuit court thereof a list of all persons in his county who have paid, not later than six months prior to any general election, the State poll taxes required by this Constitution to be paid during the three years next preceding that in which such election is held.

The clerk, within ten days from the receipt of the list, is required to certify a sufficient number of copies thereof, and deliver one of these copies for each voting place in his

county to the sheriff thereof, and it is the duty of the sheriff to post one copy without delay at each voting place in his county, and within ten days after the receipt of such list to make return on oath to the clerk as to the places where and dates at which said copies were respectively posted; but you had better see section 38 of the Constitution, which contains the law on the subject, and which you ought to find in the clerk's office of your county, or in the office of any justice of the peace.

Very truly yours,

WILLIAM A. ANDERSON.

1. *As to time when registration of votes must be closed:* 2. *As to transfers and registration upon transfers.*

October 18, 1907.

C. H. KEYSER, ESQ.,

Washington, Rappahannock county, Virginia.

DEAR SIR:

Yours of the 15th instant received, and it gives me pleasure to answer your inquiries as well as I can.

1. The statutes in reference to the time at, and the period for, which the registration of voters shall be closed, particularly section 78 of the Code, are not as specific or definite as would be desirable.

Taking the law altogether, however, it seems to have been the purpose of the Legislature, that the registration books should be closed between the thirtieth day before any general election and the day on which such election shall be held; and such, I think, has been the construction generally put upon the present law, as it was the construction which was placed upon the law in force prior to the adoption of the present Constitution, which former statute was construed to require the registration to be closed from ten days before any general election up to, and including, the day of election; and this view is amply confirmed by the language of section 80.

2. The answer to your second inquiry is furnished by section 80 of the Code. As you will see from examining that section, a registered voter who changes his place of residence, can only obtain a certificate for the transfer of his registration to the precinct to which he has removed, as therein provided, at some time prior to, and including, the regular days of registration.

As I understand that statute, a transfer cannot be obtained, nor can a voter be registered thereon by the registrar of the precinct into which he has removed, during the period when registration is closed, that is, from the thirtieth day before any general election; but by section 125, it is distinctly provided that where a registered voter has changed his place of residence from one election district to another *in the same county*, and has resided for 30 days in the election district in which he offers to vote, he shall be entitled to be registered upon the registration books of such election district on the day of election, and to vote upon such transfer and registration. As you will see, the law provides that he may be then registered in the registration books by the registrar if he is present, or by one of the judges of election if the registrar is not present.

But this section also provides that no person who removes from one city or county to another city or county in this State shall be allowed to vote at any election therein without first having been registered upon his transfer at the time, and in the modes prescribed in sections 78 and 80 of the Code of 1887.

There may be a grave question as to whether the provisions of sections 78 and 80 of the Code, as embodied in the Code of 1887, will control, or whether sections 78 and 80 of that Code, as now amended, will control, under the language of section 125, which,

unfortunately, instead of referring simply to "the Code," (which would certainly mean the Code as it stood on the day on which this amendatory statute was passed) refers distinctly to the Code of 1887.

I am inclined to think, however, that although sections 78 and 80 of the Code of 1887 are referred to, the courts would construe the Legislature to have meant those sections of that Code as they had been amended at the date of the passage of the Act of 1902-3-4, amending section 125. (Acts of 1902-3-4, p. 933.)

Answering your second inquiry, therefore, I would say that no voter can be registered either upon his original application, or upon a transfer, during the period from the thirtieth day before an election up to, and including, the day of election; except that a voter otherwise qualified, who has removed from one precinct in the same county to another precinct in that county, and has resided in the latter precinct for 30 days, may be registered and vote upon the day of election, upon a proper transfer obtained by him at least 30 days before such election.

Very truly yours,

WILLIAM A. ANDERSON.

The period between the 30th day before a general or regular election and such an election a "closed period" during which no transfer can be issued by registrars.

October 22, 1907.

A. O. WOOD, ESQ.,

Registrar, Bell's Cross Roads, Virginia.

DEAR SIR:

Yours of the 21st this instant received.

It is quite clear to my mind that, under the provisions of sections 80, 78 and 125 of the Code, considered together, a registrar is not authorized to issue a transfer during the period between the thirtieth day before a general election up to and including the day of such election.

That is made by the law, I think, a "closed period," during which no transfer can be issued, nor can the name of any one be put upon the registration books, except that where a registered voter has changed his place of residence from one election district to another in the same county, and has resided for 30 days in the election district in which he offers to vote, he shall be entitled to be registered upon the registration books of such election district on the day of election, and to vote, if otherwise qualified, on that day.

I hand you copy of an opinion which I gave Mr. C. H. Keyser on the 18th instant, which may be of some interest to you in this connection.

Very truly yours,

WILLIAM A. ANDERSON.

1. *How a voter whose name is omitted from the treasurer's list may have it entered thereon.*
2. *As to what such lists must show and how a voter moving from one county or city to another county or city may show that he has paid his poll taxes.*

October 23, 1907.

J. H. NICKELL, ESQ.,

Clifton Forge, Virginia.

DEAR SIR:

Yours of the 22d this instant received.

1. By section 86b of the Code, which follows section 38 of the Constitution, the treasurer's list of voters who have paid their poll taxes as required by the Constitution, "is made conclusive evidence of the facts therein stated for the purpose of voting."

If any man's name is improperly or erroneously omitted from such list, he is given a remedy by said Act, namely, that he may apply to the circuit court of his county, or the corporation court of his city, or to the judge thereof in vacation, to have the list corrected, and his name entered thereon; but the law requires this application to be made within 30 days after the list has been posted, and to be made after 5 days written notice to the treasurer of the county or city who made the list.

This is the only remedy given by the law for the correction of such an omission.

2. The list required by section 38 of the Constitution, and section 86b of the Code, to be prepared by each treasurer, plainly makes it the duty of each county and city treasurer to include in the list all the State poll taxes which any voter living in such county or city has paid during the three years preceding that in which such list is made up.

It isn't for the treasurer to decide whether the voter has paid all the poll taxes with which he has been assessed, or is assessable.

A man may be liable only for capitation taxes for one, or for two years of that period, and if the treasurer would omit his name because he hadn't paid for three years, when he only owed for one year, he would do the man a wrong and an injustice, which the law does not sanction.

In order to insure compliance with the requirements of the law it provides that any treasurer, clerk, or sheriff *failing* or refusing to comply with the provisions of the Act, shall, upon conviction, be deemed guilty of a misdemeanor and be punished by a fine of not less than $50.00 nor exceeding $1,000.00.

It occurs to me, as barely possible that section 86d of the Code may afford a satisfactory solution of the question you present, so that the voters you refer to may not be deprived of the right to vote at the fall election; but that section applies only to voters who have been transferred from a city or county to a city or county.

If the voters you refer to have been transferred from Alleghany county to the city of Clifton Forge, section 86d would apply, and all they would have to do, in order to be entitled to vote at the next November election in your city, would be to obtain from the treasurer of Alleghany county the certificate provided for by section 86d of the Code, showing the payment by the voter, at least six months prior to the election, of any poll taxes which may have been paid by him to that treasurer during the preceding three years.

Very truly yours,

WILLIAM A. ANDERSON.

As to the claims due by a lunatic for his support in a hospital for the insane.

November 15, 1906.

DR. A. S. PRIDDY,

Superintendent Southwestern State Hospital, Marion, Virginia.

MY DEAR SIR:

In reply to your favor of the 14th instant, I beg leave to say that the Act approved March 8, 1894, (Acts 1893,-94, page 959) for the relief of the estate of William A. Jones, a lunatic, in my opinion, only operates to release such claims as were in existence at the time of the passage of that Act, and that it does not release any liability or indebtedness of said Jones which may be contracted after the date of that Act. In other words, it has no prospective operation.

It is proper, however, that I should say that the Act approved March 10, 1906, (Acts 1906, pages 189–190) as you will observe from reading it, provides that no citizen of the State of Virginia who shall be committed to an insane asylum of the State, nor the estate or personal representative of such citizen "shall be charged with any of the expenses attendant therewith, where the estate or effects of such insane person is less than the

amount sufficient to support his or her family (where said family is primarily dependent upon such insane person for support), or where said estate is of less value than the sum of two thousand dollars."

The second section of that Act provides a mode in which any unpaid debts, claims or judgments, due and to become due, to the various insane hospitals of the State, for the maintenance of inmates thereof, may be collected; and taking the two sections together it has been contended that the exemption in the Act prescribed in the first section applies to all such claims and liabilities, whether heretofore or hereafter contracted.

The second section of the Act of March 10, 1906, unquestionably embraces claims, whether due or "*to become due,*" but I do not think that it is clear, that the meaning and effect of the first section is to limit a recovery upon such claims as may become due prior to the 10th day of March, 1906, to cases in which the estate of the lunatic is less than an amount sufficient to suppport his dependent family, or less than the sum of $2,000.00.

This is a question, however, which can only be decided by the courts. I am informed that Judge Blackstone of the eleventh circuit has recently decided in one of the courts of his circuit in a case therein pending, that the said Act of March 10, 1906, is retroactive, and that the exemption therein prescribed applies to claims due before, as well as subsequently to, its enactment.

This decision of Judge Blackstone was doubtless rendered after hearing argument for and against the proposition, and after mature consideration, and should be given great weight.

The question, however, can only be finally determined by the supreme court of the State.

Very truly yours,

WILLIAM A. ANDERSON.

As to the charges which may be collected from aliens as costs of proceedings for their naturalization under the Act of Congress.

November 15, 1906.

THOMAS H. GEDDY, ESQ.,

Clerk Circuit Courts of city of Williamsburg, and county of James City, Williamsburg, Virginia.

DEAR SIR:

Your favor of the 14th instant just received.

Enclosed please find copy of letter which I have addressed to the Hon. P. P. Sargent, commissioner-general of the bureau of immigration and naturalization.

I also enclose you copy of the rules and regulations relative to the enforcement of the naturalization laws.

I regret that I cannot send you a copy of the Act of June 29, 1906, but I hope that the commissioner-general will furnish you a copy of that Act also, as he will undoubtedly furnish you all the blank forms which you will need in that connection.

It is proper that I should call your attention to the fact that the Act of Congress prescribes precisely the charges which may be made to aliens in connection with applications under the naturalization act, and that it is made an offense punishable with heavy penalties, for a clerk to receive or take anything more than is therein specifically prescribed and authorized.

An Act of Congress within its jurisdiction is the supreme law of the land, any Act of a State Legislature to the contrary notwithstanding.

The bureau of immigration and naturalization has ruled that it would be a violation of the Act of Congress referred to, for a clerk to exact or receive from an alien applying

under the Act the tax imposed by the law of Virginia upon the seal of the court to the certificate of naturalization, and the clerks would therefore either have to pay the $1.00 out of their own pockets, or else attach the seal without the adhesive stamp provided for by law.

It was certainly not contemplated that the clerks would, in any case, have to pay for a court seal out of their own means, and as the Act of Congress prohibits any charge in any such case, and is paramount to any statute of the State, I have advised that it would be proper, under the circumstances, for the clerks to affix the seal to the certificate of registration without using an adhesive stamp, and to make no charge therefor.

The auditor of public accounts has adopted this view and has ruled accordingly.

In my view of the matter, the exercise of jurisdiction under the Act of Congress of June 29, 1906, by any State court is entirely voluntary, but if a State court takes jurisdiction in any such case it, and its officers, must conform to the Act of Congress, which is a supreme regulation of the subject.

Very truly yours,

WILLIAM A. ANDERSON.

As to compensation of a city treasurer for collecting and distributing school funds.

January 2, 1907.

REV. L. W. IRWIN,

Superintendent of Schools of Radford, Radford, Virginia.

DEAR SIR:

In reply to your favor of the 19th ult. which I take up as soon as I can give the matter my attention, I beg leave to say that the statute is quite explicit as to what shall be the compensation of a city treasurer for receiving and disbursing the city school taxes.

Section 614 of the Code as amended by the Act approved March 15, 1904 (Acts 1904, p. 310), expressly provides that the compensation of a city treasurer shall be the same rate allowed by section 613 for receiving and paying over the public revenues, and that is 5% on all amounts received and disbursed in any one year up to $15,000.00. Of course he is only entitled to one commission of 5% for receiving and disbursing the school fund.

By section 1522 the provisions of chapter 66, except as provided in chapter 67, are made applicable to cities and towns in like manner as to counties, and city and town treasurers are made subject to the same limitation, and charged with the same duties, that are imposed upon similar officers by chapter 66.

1. Section 1515 of chapter 66, as amended by the Act of 1904 (Acts of 1904, p. 155), prescribes the compensation of county treasurers, and under the provisions of section 1522 may be construed, probably, to also prescribe the compensation of city treasurers; but as section 614 of the Code also prescribes the compensation of city treasurers for collecting and disbursing the school funds, and was enacted subsequently to the enactment of section 1515, I am of opinion that section 614 controls in that matter, and that city treasurers are entitled to 5% for collecting and distributing school funds up to $15,000.00, and 3 1-2% over that sum except in Pittsylvania county. There is some conflict in the law upon this subject, however, which can only be settled by the courts. I think, however, that the courts would decide in accordance with the view which I here express.

I am sending you a copy of my report for 1905, containing some of the opinions given during the year ending November 1, 1905, on page 15 of which you will find an opinion as to the proper ascertainment of compensation of county treasurers for receiving and handling school funds.

2. A treasurer is entitled to only one commission of 5% for handling the revenues

derived from the city school tax in a city. It cannot be treated both as a city revenue and as a school revenue, so as to give him a double commission—or 10%.

3. The maximum commission allowed a city or county treasurer for disbursing State school funds apportioned to a city from State funds, is, I think, 1%; and that can only be allowed him by the county school board.

His maximum compensation for disbursing State school funds was reduced from 2% to 1% by the Act approved March 11, 1904 (Acts 1904, p. 156); but he cannot be allowed that, or any portion of it, except by the school board.

As you will see from chapter 155, and for obvious and controling reasons, the Attorney General is not authorized to give an opinion to any district or county officer. The department of public instruction should rule upon all questions in reference to the public administration of the school laws of the State in the first instance, and the superintendent of public instruction alone can call upon the Attorney General for advice upon any such questions. Your inquiries, therefore, upon any such matters should hereafter be addressed to the superintendent of public instruction.

It gives me pleasure, however, as a matter of courtesy, in this instance to answer your inquiry.

Wishing you a happy and prosperous new year,

Very truly yours,

WILLIAM A. ANDERSON.

As to the inclusion of the cost of the jury in the statement clerks are regained to make up and file in criminal cases.

January 16, 1907.

N. T. GREEN, ESQ.,

Attorney at Law, Norfolk, Virginia.

MY DEAR SIR:

Yours of the 14th instant, covering letter of the auditor, has been received.

The matter of costs in criminal cases which you submit, and as to which you ask my opinion, is not such a question as the Attorney General is required to answer, or to give an official opinion upon.

Wishing, however, to make courteous reply to your request for my construction of the law, I will say, unofficially, that I think it is the duty of the clerk, under section 4087 of the Code of 1887, to *include the costs of the jury* in the statement of "all the expenses incident to the prosecution" in every criminal case prosecuted to conviction, whether the prosecution is for a felony or a misdemeanor.

I have no means of knowing what the practice of clerks is throughout the State; but I think it is clearly the duty of clerks, and it should be their uniform practice, to include all the expenses incident to prosecutions which are payable out of the State treasury, *including the cost of the jury*, in the statement of expenses required by section 4087 of the Code of 1887.

Anglea's case, 10th Gratt. 696, has always been considered authority, and followed by the courts, as to costs in criminal cases.

The expenses of prosecutions have been enlarged since that time, by making certain fees, etc., payable out of the treasury now, which were then not so payable; but the principle of that case is still in full force. But leaving this case entirely out of consideration, I think the question is clearly settled by section 4087; and that this section is not affected by section 4049, to which you refer.

I am,

Very truly yours,

WILLIAM A. ANDERSON.

As to the title of the State to the beds of navigable waters, and the title of riparian proprietors thereon.

January 24, 1907.

HON. ROBERT H. MCCARTER,
Attorney General, Trenton, New Jersey.

DEAR SIR:

Your favor of the 21st instant received.

Under the Virginia statutes the title of riparian proprietors of lands upon the tidal waters of the State extends to low water mark; and the beds of the bays, rivers, creeks and the shores of the sea within the jurisdiction of this Commonwealth, not conveyed by special grant or contact according to law, remain the property of the Commonwealth, and are held as a common for all the people of the State.

This reservation in our statutes is subject to the following exception and qualification, and, so far as I know, to no other, and that is, that under the oyster laws of the State, oyster bottoms or the beds of the tidal waters, *except the natural oyster beds, rocks and shoals therein*, are authorized to be leased, and large areas thereof have been leased, in accordance with the provisions of said statutes.

By the Constitution of the State, the natural oyster beds, rocks and shoals in the waters of the Commonwealth are prohibited from being leased, rented or sold, but must be held in trust for the benefit of the people of the State.

The policy of the State, as thus embodied in its laws, has been, and is, to retain the title and ownership of the beds of all of the tidal waters in the Commonwealth for the benefit of all of the people of the State; and the only departure from this policy has been made by our oyster statutes, under which the oyster grounds, other than natural oyster beds, rocks and shoals, are authorized to be leased, and have been largely leased.

As to the precise character and status of the title and ownership by the State, of the beds of these public waters, I beg leave to refer you to McCready *v.* Commonwealth, 27 Gratt. 985; 94 U. S. 391, 24 L. Ed. 248; and Taylor *v.* Commonwealth, 102 Va. 769.

Very truly yours,

WILLIAM A. ANDERSON,
Attorney General.

As to requirements of surgeons and physicians that they shall stand the examination required by law and the application of the statute to chiropodists and manicures, if they are surgeons or are practicing surgery, but not otherwise.

March 7, 1907.

DR. R. S. MARTIN,
Secretary and Treasurer State Board of Medical Examiners, Stuart, Virginia.

DEAR SIR:

Yours of the 4th instant, enclosing letters of Dr. B. H. Baker, which I herewith return, this instant received.

The word "chiropodist" is not found in the laws of Virginia, so far as I know.

No man can practice any kind of surgery or medicine in Virginia without having stood the examination prescribed in chapter 77 of the Code of 1904 (Pollard's Code).

The only exceptions made in the statute are those of a midwife, dentist, or commissioned officer or contract surgeon of the United States Army, Navy or Marine Hospital service in the performance of his duties as such.

Whether one who practices the profession of a surgeon chiropodist and manicure practices medicine or surgery is a question which you and your board will have to decide, and which you are far more competent to decide than I am.

No mention is made of any such calling in the law, and no definition of the practice of surgery or medicine is given, except that given in chapter 77 of the Code, which you doubtless have.

Very truly yours,
WILLIAM A. ANDERSON.

As to the taking of clams by patent tongs.

W. McDONALD LEE, ESQ., *March 22, 1907.*
Chairman State Board of Fisheries, Irvington, Virginia.

MY DEAR SIR:

Referring to your inquiry of this instant, as to taking clams with patent or other tongs in the waters of the State, I beg leave to say that I have considered the question presented, and it seems to me that the Act of February 3, 1900 (Acts of 1899-1900, 272), is still in force; and that under the provisions thereof clams may be taken with patent or other tongs all the year, by any resident of Virginia who has paid the tax, and complied with the other requirements of the Act of March 28, 1902 (Acts of 1901-2, 381).

The Act of March 10, 1906, as to the taking of oysters with patent tongs, does not effect or limit the time in which clams may be tonged. The Attorney General concurs in this view.

I am,

Very truly yours,
ROBERT CATLETT,
Assistant to the Attorney General.

As to the penalties for violating the statute in regulation of fishing in the waters of the Commonwealth. The necessity for the revision of those statutes.

COL. W. McDONALD LEE, *April 24, 1907.*
Chairman State Board of Fisheries, Irvington, Virginia.

DEAR SIR:

The question submitted in your favor of the 13th instant has been carefully considered.

I know of no provision in any statute of the State which authorizes the collection, from parties engaged in fishing in violation of section 2086 of Pollard's Code, of the expenses incurred by the State board of fisheries in sending one of the boats under its control to seize the nets or seines which are being used in fishing in the waters of the Commonwealth without a license, as required by said section, or which requires persons violating the provisions of that section of Pollard's Code to pay any part of the costs of seizing their nets or other fishing devices.

The penalty imposed by that statute, as it now stands, for any violation of its provisions, is entirely inadequate, and the procedure so cumbrous that it would seem to encourage, rather than repress, unlawful fishing.

So far as I can see, there is no help for this, except by amendment of the statute by the Legislature.

Indeed, there ought to be a careful and painstaking revision of all the statutes in reference to the oyster and fish interests of the Commonwealth.

There are so much confusion and conflict in the laws as they are now expressed in the statutes of the State, and so many exceptions and qualifications, and special and local statutes, that it must be not only exceedingly difficult, but impossible for you and your board and your subordinates to intelligently and efficiently enforce and administer their provisions.

Very truly yours,
WILLIAM A. ANDERSON.

As to the statutes in reference to social clubs.

April 24, 1907.

HON. ALBERT B. WHITE,
State Tax Commissioner, Charleston, West Virginia.

DEAR SIR:

It gives me pleasure to reply to the inquiry made in your favor of the 20th instant, as fully as I can.

The principal Virginia statute in reference to social clubs, section 142 of the revenue law, has never been construed by the supreme court of this State.

I am sending you a copy of the present revenue laws of the State, compiled by the auditor of public accounts, on pages 77-80 of which you will find the law in reference to social clubs, embodied in the general revenue law as section 142.

On page 78 you will find the following: "provided, however, no such club shall hereafter be permitted or chartered in any county or district where local option prevails."

This has been construed by the local authorities, and I think by the circuit courts generally, to prohibit any license to a social club which would empower it to distribute or dispense intoxicating liquors among its members, in any county or district which has voted "no license" in a local-option election; and it seems to me that this construction is correct.

You will observe that there are two classes of social clubs defined in this statute: first, those chartered and organized before the 16th day of April, 1903; and secondly, those chartered and organized since the 16th day of April, 1903.

I am inclined to the view that the prohibition against permitting or chartering social clubs with the privilege of dispensing intoxicating liquors among its members in a local-option county or district, applies to both classes of clubs; that is to say, that it applies to any corporation chartered and organized as a social club.

I do not think, therefore, that under our statute a social club can secure a license to keep, distribute, and dispense intoxicating liquors among its members in dry counties.

Very truly yours,

WILLIAM A. ANDERSON,
Attorney General.

As to the separate assessment of standing timber.

May 18, 1907.

R. E. WILLIAMS, ESQ.,
Commonwealth's Attorney, Grundy, Virginia.

DEAR SIR:

The matter of the separate assessment of standing timber mentioned in your favor of the 24th ult. had, before the receipt of your letter, received my most careful consideration, and since the receipt of the letter referred to, I have taken the matter up again, as soon as I could give it my attention, and gone into it with the greatest care.

I had no question but that, under the rules of construction established in Fox's Administrators *v.* the Commonwealth, 16 Gratt. p. 1, (since affirmed and reaffirmed by the supreme court of appeals of Virginia) the Act amending section 437a of Pollard's Code, approved February 21, 1906 (Acts of 1906, p. 38), was repealed by the amendment and re-enactment of that section of Pollard's Code by the Act approved March 17, 1906, Acts of 1906, p. 555.

The only question which I have had, is whether, as the result of the repeal by the last mentioned Act, section 472 of the Code, as amended by the Acts of 1889-90, p. 97, was not reinstated.

Although there is doubt whether that section was validly repealed by the Act of March 10, 1903 (Acts of 1902-3-4, pp. 643, 651), for the reason that this last mentioned Act did not, upon its passage in the Senate, receive the constitutional vote, there is so much question and uncertainty as to what is the purpose, meaning, and effect of the legislation on the subject, that the auditor is not prepared to rule, nor am I prepared to advise him, that there is any statute now in force in the Commonwealth for the separate assessment of timber.

The auditor, prior to the receipt of your letter, had already sent out instructions to the commissioners of the revenue of the State, and it only remains for those officers to carry out those instructions.

I take it for granted, that standing timber cannot, and will not, escape the taxation to which it is justly subject; but if, for any reason, it should temporarily escape for last year and for the present year, I feel sure that the General Assembly will correct the omission by appropriate legislation at the next session, providing for the assessment of the omitted taxes upon this property, as it is clearly competent for the Legislature to do.

Very truly yours,

WILLIAM A. ANDERSON.

A convict becoming insane while in the penitentiary must be removed to an insane hospital.

June 25, 1907.

DR. J. S. DE JARNETTE,

Superintendent Western State Hospital, Staunton, Virginia.

DEAR SIR:

Yours of the 22d instant to Governor Swanson has been referred by him to me.

As you state, section 1682 of the Code, as amended and re-enacted by the Act approved April 7, 1903 (Acts of 1902-3-4, p. 129), and section 4123 of the Code, as amended by the Act approved May 5, 1903 (Acts of 1902-3-4, p. 297), are directly in conflict: but the Act amending and re-enacting section 4123 was passed after the Act amending and re-enacting section 1682, and the second section of the Act amending section 4123 expressly repeals all Acts and parts of Acts inconsistent with this latter Act.

Upon the well established rule in regard to the construction of statutes in a case where there is an irreconcilable conflict between the two statutes, the latest enactment will prevail, though both will be given effect as far as that is practicable. This rule is settled by Warder *v.* Arrell, 2 Wash., p. 282, and Fox's Administrators *v.* Commonwealth, 16 Gratt., p. 1.

Applying this rule to the two Acts in question, a person convicted of crime and sentenced to confinement in the penitentiary, who becomes insane during the term of his sentence, should be confined and treated in a special ward in the penitentiary to be set aside and reserved for such insane criminals until he can be removed to a State hospital for the insane in the manner expressly required by section 4123 of the Code, as now amended, and then he should be removed to the hospital as therein directed.

Section 4123 of the Code of 1904 is the last enactment, and is the law.

Very truly yours,

WILLIAM A. ANDERSON.

As to the sale of cocaine.

DR. T. A. MILLER, *July 9, 1907.*

Secretary State Board of Pharmacy, Richmond, Virginia.

DEAR SIR:

A reply to your favor of the 20th of June has been delayed by the press of other matters, and particularly by my necessary absence for 12 days in connection with the

argument of cases of great importance to the Commonwealth before the judge of the United States circuit court at Asheville, North Carolina.

The statutes regulating the sale of medicines and poisons are found in section 1763 of the Code of Virginia, as amended by the Act of 1893-4, p. 719, and in section 1764 of that Code, as amended by the Act of 1904, p. 296.

Cocaine is not mentioned among the poisons specified in schedule "A" and in schedule "B" of section 1763, nor is it mentioned among the poisons specified in schedule "A" and in schedule "B" of section 1764, as amended; but, by the provisions of section 1764, as amended by the Act of March 14, 1904, which is the last statute upon the subject, it is provided:

> "that no cocaine shall be sold in this State by any person other than a regular druggist or pharmacist. No druggist or pharmacist shall sell or furnish cocaine to any person other than a licensed physician, surgeon, dentist, druggist or pharmacist. Any such druggist violating this act shall be fined not less than twenty-five nor more than one hundred dollars for each offence."

The language of this statute is broad enough to cover and to prohibit any sale of cocaine, except in accordance with its terms, and it seems to me prohibits the sale of any preparation which contains cocaine in appreciable quantities.

It expressly prohibits any sale of cocaine, except upon the terms and conditions which it prescribes, and its provisions would, I think, be violated by the sale of cocaine, whether it be sold as a separate drug or in admixture with some other medicine or substance, unless such sale shall be made to a licensed physician, surgeon, dentist, druggist or pharmacist.

Very truly yours,
WILLIAM A. ANDERSON.

As to authority of the superintendent of grounds and buildings with approval of the Governor to sanction changes in location of the enclosure around Lee Monument.

August 8, 1907.

COLONEL JOHN W. RICHARDSON,
Register of the Land Office, Richmond, Virginia.

MY DEAR SIR:

Yours of the 5th instant addressed to the Attorney General enclosing communication from Honorable Carlton McCarthy with reference to the Lee Monument, has been received.

I find from examination of the records in the clerk's office of Henrico county, that on March 17, 1892, the Lee Monument Association, Otway S. Allen, and others, conveyed to the State of Virginia what is known as "Lee Circle," having a radius of 100 feet. The only condition imposed upon the State by said conveyance, the State's acceptance of which was evidenced by the Governor's signing the deed on behalf of the State, is as follows:

> "The State of Virginia, party of the third part, acting by and through the Governor of the Commonwealth, and pursuant to the terms and provisions of the special statute hereinbefore mentioned, executes this instrument in token of her acceptance of the gift, and of her guarantee that she will hold said statue and pedestal and circle of ground perpetually sacred to the monumental purposes to which they have been devoted, and that she will faithfully guard it and affectionately protect it."

The authority for the Governor to accept the gift of the monument was conferred by a joint resolution of the General Assembly approved December 19, 1889, (Acts of 1889-90, p. 32 of private Acts and joint resolutions).

I also find that by Act approved March 4, 1896 (Acts of 1895-6, p. 772), the sum of $500.00 was appropriated to make a granolithic curbing, etc., around the base of the Lee Monument, such appropriation to be expended under the direction of the Governor.

I also find that by Act approved December 31, 1903 (Acts of 1902-3-4, p. 797), the sum of $1,000.00 was appropriated for the purpose of, and the register of the land office directed to, erect an iron or steel fence around the circle surrounding the Lee Monument.

By section 288 of the Code of 1904, the register of the land office, as superintendent of grounds and public buildings, is given the care of the capitol and other buildings, public grounds, and all other public property at the seat of government not placed in charge of others, and shall protect the same from depredation and injury. This same section provides that the superintendent of grounds and buildings shall be subject to the control and direction of the Governor.

It seems to me, in view of the foregoing, that the superintendent of grounds and buildings, with the approval of the Governor, could give authority to the city to remove the fence around the monument back for a reasonable distance, and allow the city to lay the proposed granolithic walk around and upon the circle; but neither he nor the Governor, nor both acting conjointly, can make any cession to the city of the land so used. This can only be done by the General Assembly.

While I am of opinion, as hereinbefore expressed, that such permission may now be given by the officers aforesaid; yet in so doing, they will assume some measure of responsibility, and it may be best to wait for authority from the General Assembly before such permission is given.

I am,

Very truly yours,

ROBERT CATLETT,
Assistant to the Attorney General.

P. S.—Mr. Waddill tells me that the original deed to this property has not been withdrawn from his office, and that he will deliver the same to you, if you will write him asking that the same be sent you.

As to eligibility of the mayor of a town to the office of a member of the General Assembly.

August 9, 1907.

T. MORRIS WAMPLER, ESQ.,
Attorney at Law, Culpeper, Virginia.

MY DEAR SIR.

Your very courteous letter of August 7th addressed to the Attorney General, has been received.

Mr. Anderson is now out of town for a short vacation, and will not return for some days yet; hence, I take the liberty of writing you on the subject mentioned.

The Attorney General is not authorized by law to give official opinions to others than certain officers and boards at the seat of government; therefore, when answering such inquiries as you make, his opinion, if given at all, is purely personal.

In his absence, I beg leave to say, that I have considered the question submitted, and I am of opinion that the mayor of an incorporated town who discharges such official duties as you mention, is clearly eligible as a member of the General Assembly; and further, that his election and qualification as a member of the General Assembly will not vacate his office as mayor, *ipso facto*.

Careful consideration of section 44 of article IV of the Constitution of 1902, leads me to this conclusion; and I may add that I find nothing in the statute law which prohibits the mayor of an incorporated ta own from serving as member of the General Assembly.

If you desire an expression of his personal opinion by Mr. Anderson, please write me, and I will submit your letter to him immediately on his return.

I am,

Very truly yours,

ROBERT CATLETT,
Assistant to the Attorney General.

The mayor of a town not a judge of any court nor a State officer.

August 12, 1907.

T. MORRIS WAMPLER, ESQ.,
Attorney at Law, Culpeper, Virginia.

MY DEAR SIR:

Yours of the 10th instant just received.

I beg leave to say in reply thereto, that I am of opinion that the mayor of a town, although made by its charter a police justice in express terms, is not such a "judge of any court" as is contemplated by section 44 of article IV of the Constitution; and further, that he is clearly not a salaried officer under the State government.

With these exceptions, the section of the Constitution referred to is free from ambiguity; and I repeat that after consideration of the whole section, I have reached the conclusion set forth in my former letter.

I will show this correspondence to the Attorney General on his return, and should his view not accord with mine, will advise you promptly. I am,

Very truly yours,

ROBERT CATLETT,
Assistant to the Attorney General.

As to the fertilizers which fail to stand the test prescribed by law.

RICHMOND, VA., *October 16, 1907.*

G. W. KOINER, ESQ.,
Commissioner of Agriculture and Immigration, Richmond, Virginia.

DEAR SIR:

Yours of this instant received.

In response thereto I ask leave to say that it is provided in section 5 of the Act regulating the sale and purity of commercial fertilizer, approved December 28, 1899, and published as clause 5 of section 1738 d, of Pollard's Code as follows:

> "If the analysis of any fertilizer obtained through an inspector, or in the manner above provided, shall fall ten per centum in value below the value of the manufacturer's guaranteed analysis, the commissioner of agriculture shall forbid the further sale in this State of said fertilizer."

The question you submit is whether, in a case where a lot or consignment of a fertilizer is found upon inspection to fall ten per centum in value below the value of the manufacturer's guaranteed analysis, the commissioner of agriculture is authorized and required by the above statute to forbid the further sale in this State of any fertilizer of the same brand and manufacture as that found to be so deficient in value, or whether his authority to so forbid the further sale of said fertilizer is not confined to the lot or consignment found by inspection not to come up to the requirements of the law.

Taking the whole statute together it is evident to my mind that the penalty imposed by the statute applies only to such fertilizer as has not been found to come up to the prescribed standard, and that it would not apply to other lots or consignments of fertilizer of the same brand and manufacture as that so condemned, unless such other lots of

said fertilizer had been inspected and found to be so deficient in value.

It may very well be true that by some carelessness or mishap or by loss of some of its required constituent elements after it was manufactured, a particular lot or consignment of a commercial fertilizer might run ten per centum below the statutory requirements, while all of the other fertilizer manufactured by such establishment would come up to or exceed the standard prescribed by law.

I do not think that the meaning or effect of the legislation on this subject is to outlaw all of the fertilizer manufactured by a particular factory, or by any one firm or corporation because one lot of fertilizer put on the market by that corporation or company was found to be defective.

Very truly yours,

WILLIAM A. ANDERSON.

A GENERAL REVIEW OF THE WORK OF THE YEAR.

This report necessarily gives an inadequate idea of the nature and importance of the duties with which this office is now charged.

I am safely within limits when I say that its work has quite doubled since the year 1902, the first year of my service here.

What may be called the routine work of the office, and the number, the novelty, and more particularly the difficulty and the importance of the litigated cases have been largely increased.

The suit against West Virginia alone has necessarily demanded a great deal of my time and attention, and will doubtless require more assiduous attention during the coming year.

Besides the services of her Attorney General, West Virginia has engaged five or six other able counsel to assist him, among them Mr. John G. Carlisle, now of New York, formerly of Kentucky, and Mr. John C. Spooner, lately United States senator from Wisconsin.

The State and the public creditors have been fortunate in having the benefit of the services of Major Holmes Conrad, as associate counsel, and in reference to important matters connected with the conduct of the suit, we have had the benefit of the counsels of Messrs. John B. Moon and Randolph Harrison of the Virginia debt commission.

The Constitution and laws make it the duty of the Attorney General to appear for the Commonwealth in the supreme court of appeals in all cases for or against her which are carried to that court upon appeal, from any order of the State corporation commission; and in all applications to the circuit court for the city of Richmond for the correction of any assessment for taxation made by that commission.

The statute makes it his duty, upon the request of the commission, to appear as counsel in any proceeding before the commission sitting as a court of record.

There have been a number of appeals from orders of the commission to the supreme court of appeals of Virginia, involving questions of great importance, in which I have represented the Commonwealth, and which have occupied a great deal of time and attention. There have also been a number of applications to the circuit court of the city of Richmond for the correction of alleged erroneous assessments; but so far, with the exception of the important cases brought there by the Richmond, Fredericksburg and Potomac Railroad Company, these have not occupied much of my time.

The corporation commission, realizing that the other and far more numerous and very important duties of this office fully occupy the time and attention of my assistant and myself, has been exceedingly considerate in making requests that either of us shall appear in cases before that tribunal, in which the presence of counsel representing the State is proper and often necessary.

In a very large number of cases where it was appropriate and sometimes important that such counsel should be present upon the hearings before the commission, they have made no requisition upon Mr. Catlett or myself, and we could not, in most cases, without neglecting imperative duties which required our presence elsewhere, have attended those hearings.

And yet, during the past and the preceding year, the time and attention of myself and the assistant Attorney General have been occupied for more than one hundred and fifty days in attendance upon the commission, or in work connected with the cases before the commission, these engagements often necessitating the postponement of important matters more or less urgently demanding our attention.

Besides the other ordinary and extraordinary litigation already referred to, the passenger rate cases in the United States circuit court, and soon to be carried to the supreme court of the United States, have demanded and received, and will in future require many days of earnest and laborious attention.

The Commonwealth is perhaps more prosperous than she has ever been in all of her history, and with her growth and development, the affairs of the body politic are becoming more complex.

New conditions and new questions are constantly arising to be dealt with by the officers of the State, resulting in the reference of new questions to this office for solution.

Nevertheless, with the valuable assistance of Mr. Catlett, the important work of the office has been generally promptly disposed of, and where matters have had to be delayed, or cases continuted, this so far has been done, it is hoped, without detriment to the State

All of which is respectfully submitted,

WILLIAM A. ANDERSON.

Statement

Showing the Current Expenses of the Office of the Attorney General from November 1, 1906, to November 1, 1907.

1906				
Nov. 1.	Balance to credit of contingent fund			$192 09
Nov. 19.	Warrant on auditor for L. D. Powell Company, law book publishers, for Volumes 8 and 9 of Encyclopædia of Evidence		$12 00	
Nov. 19.	Warrant on auditor to cover items paid for by William A. Anderson, as follows:			
	100 paper wrappers	$ 1 06		
	C. W. Morrisett for stenographic work	18 00		
	Dietz Printing Company	1 50		
	Telegram	31		
	Postage	20 00		
	T. Gray Haddon, for working at night and Sunday writing injunction bill	10 00		
			50 87	
Nov. 22.	Warrant on auditor for West Publishing Company for Volumes 2 and 3 of Virginia and West Virginia Digest		12 00	
Feb. 18.	Warrant on auditor for Lawyers Co-operative Publishing Company for Volume 50 United States Republic		5 00	
Feb. 23.	Warrant on auditor for Everett Waddey Company for sundries furnished this office		16 30	
Feb. 23.	Warrant on auditor to cover items paid for by William A. Anderson as follows:			
	Postage	$10 50		
	Typewriter ribbon	75		
			11 25	
Feb. 26.	Warrant on auditor for George M. West, in part payment for one set of Lawyer's Reports, Annotated		75 00	
Feb. 26.	Warrant on auditor for George M. West, for Pollard's Code Biennial		3 00	
Feb. 27.	Warrant on auditor to cover items paid for by William A. Anderson, as follows:			
	Telegram to Guthrie, Oklahoma	$ 1 24		
	Postage	5 43		
			6 67	
				192 09
1907				
March 1.	Appropriation to defray current expenses to March 1, 1908			$400 00
March 11.	Warrant on auditor for The Williams Printing Company for 200 extra copies, cloth binding, of 1906 Annual Report		$23 20	
April 2.	Warrant on auditor for M. B. Watts, Publisher, for 1 year's subscription to Virginia Appeals		5 00	

April 9.	Warrant on auditor to cover items paid for by William A. Anderson, as follows:		
	Expressage	$1 00	
	Postage	7 50	
	Typewriter ribbon	75	
			$ 9 25
May 9.	Warrant on auditor for George M. West, balance on one set of Lawyers' Reports, Annotated		155 00
May 22.	Warrant on auditor for West Publishing Company for Vols. 4 and 5 of the Virginia and West Virginia Digest		12 00
May 22.	Warrant on auditor for W. H. Adams for one copy Virginia Corporation Digest		7 50
May 25.	Warrant on auditor for Hill Directory Company for Richmond and Manchester Directory		5 00
June 7.	Warrant on auditor to cover items paid for by William A. Anderson, as follows:		
	Beaufont Lithia Water Company for 60 gallons of water for office	$ 5 00	
	Telegram	50	
	Typewriter ribbon	75	
	Postage	5 00	
			11 25
July 10.	Warrant on auditor for the Michie Company, for one year's subscription to the Virginia Law Register		5 00
July 10.	Warrant on auditor to cover items paid by William A. Anderson, as follows:		
	Paid sergeant of city of Alexandria for serving notices on Modern Workmen of the World and on the Old Dominion Protective Association	$ 1 28	
	Telegram to Asheville, North Carolina	92	
	Expressage on book to Asheville, North Carolina	45	
	Postage stamps	11 00	
			13 65
July 17.	Warrant on auditor for Gallaghan & Co. for Rose's Code of Federal Procedure, 3 volumes		18 00
Aug. 5.	Warrant on auditor for Rochester Carbon Company (Baltimore Branch) for 100 sheets Red Seal carbon paper		3 50
Aug. 20.	Warrant on auditor to cover items paid for by William A. Anderson, as follows:		
	Expressage on Volume 1, Virginia and West Virginia and other papers, etc	$ 3 01	
	Telegrams	1 18	
	Postage stamps	10 00	
	Typewriter ribbon	75	
			14 94
Aug. 21.	Warrant on auditor for Everett Waddey Company, for sundries furnished this office		9 90

Sept. 12.	Warrant on auditor to cover items paid for by William A. Anderson, as follows:			
	W. H. Witt and Miss Mary Barclay for stenographic work and typewriting	$11 50		
	Telegram	75		
			$12 25	
Oct. 16.	Warrant on auditor for F. R. Woodson, for two day's stenographic and clerical work in this office		6 00	
Oct. 18.	Warrant on auditor for Beaufont Lithia Water Company for 60 gallons of water for office		5 00	
Oct. 18.	Warrant on auditor for Lawyers' Co-operative Publishing Company for Volumes 5, 6, 7 and 8 of Lawyers' Reports, Annotated, (N. S.), and also Volumes 1, 2 and 3 of L. R. A. Digest		31 00	$347 44
1907				
Nov. 1.	Balance to credit of contingent fund			$ 52 56

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