

ANNUAL REPORT

OF THE

ATTORNEY GENERAL

TO THE

GOVERNOR OF VIRGINIA

FOR THE

YEAR 1908

RICHMOND:
DAVIS BOTTOM, SUPERINTENDENT OF PUBLIC PRINTING
1908

ATTORNEYS GENERAL OF VIRGINIA

FROM 1775 TO 1908

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. Bocoek.	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.	1866-1890.
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, 1908.

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, are as follows:

In the Supreme Court of the United States.

1. VIRGINIA *v.* WEST VIRGINIA.—The occasion, if not the necessity, for the institution of this suit has been shown in my reports for 1906 and 1907.

Subsequent developments demonstrate the importance of the litigation, and the impossibility of avoiding it without detriment to the Commonwealth.

As indicated in former reports, after the bill was filed in March, 1906, West Virginia was given until the following October to plead, answer, or demur.

At the October term, 1906, the counsel for West Virginia filed a demurrer and afterwards an amended demurrer to the bill.

The cause was argued fully in print and orally upon the demurrer, and on May 27, 1907, the court decided the demurrer in favor of Virginia, its unanimous opinion overruling the demurrer being delivered by the Chief Justice.

The effect of this decision was to hold that the Commonwealth had presented a cause of action by her bill, of which the United States Supreme Court had jurisdiction, and upon which she was entitled to recover if the facts alleged in her bill should be established by proofs, though this decision was "without prejudice."

West Virginia was thereupon given till the October term, 1907, to answer the bill.

Her answer was filed in October, 1907, and issue was taken upon it.

Thereupon there were various proposals for a decree, directing the accounts necessary to determine the nature and extent of West Virginia's liability, submitted to the court by opposing counsel, and the case was again fully argued by counsel in print and orally in support of their respective contentions.

On the 4th of May, 1908, the court entered its decree referring the cause to a special master to be thereafter designated, to take the accounts deemed neces-

sary or proper for the decision of the cause. The counsel for West Virginia thereupon applied to the court to make a number of modifications in this decree, one only of which requests, and that in no aspect prejudicial to Virginia, was granted by the court.

Thereupon, after nominations by the respective counsel, the court appointed Hon. Charles E. Littlefield, formerly of Maine, but now a member of the Bar of the city of New York, to take the accounts ordered in the decree of reference.

Mr. Littlefield's selection was entirely satisfactory to the representatives of both litigants.

The special master gave a preliminary hearing on the 29th of June last in the city of Washington at which time, Monday the 9th of November was designated as the day, and the city of Richmond as the place, for beginning his regular hearings under the decree.

In anticipation of the decree of reference, and with a view to getting the case ready for the master, and to save some months of time by such preparation, a large force of expert accountants have been diligently employed for several months before, as well as steadily since the appointment of the master, in the examination of the public acts, records, documents, and books of account of the Commonwealth, between the years 1819 and 1861, which furnish the history of the creation and show the amount of the debt of the Commonwealth existing on the 31st of December, 1860, and in making up from these original authentic sources of information statements from which the proportion of the debt justly payable by West Virginia can be computed.

That day—the 31st of December, 1860—was the arbitrary period prescribed by the declaration known as the “Wheeling Ordinance” (and also by the first Constitution of West Virginia, upon the provisions of which the Legislature of the “Wheeling” or “Restored Government of Virginia” gave its consent to the formation of the new State, and under which West Virginia was admitted into the Union), as the date as of which the liability to rest upon West Virginia on account of the public debt of the undivided State, was to be determined.

At the same time a large force of expert accountants, aided by lawyers representing West Virginia, have been making similar investigations, and making up statements from the records of Virginia, on behalf of that State.

The statements and schedules prepared with very great labor, and with infinite pains on behalf of Virginia, have been completed, and will be ready to be laid before the master on the 9th of November, and to be then supported by proofs.

These statements show a large sum to be due by West Virginia upon any one of the bases of accounting directed by the decree of the court.

The preparation of the case has involved a great deal of time and labor, and has received diligent attention; and its hearing and decision will be expedited by the counsel for Virginia in every practicable way consistent with the fair presentation and a fair trial of the cause.

2-7. THE VIRGINIA CORPORATION COMMISSION CASES. Also known as the Virginia Passenger Rate Cases. The members of the State Corporation Commission, etc., appellants *v.* Atlantic Coast Line R. R. Co., Appellee; Same Appellants *v.* Chesapeake and Ohio Rwy. Co., appellee; Same, appellants *v.* Chesapeake and Western Rwy. Co., appellee; Same, appellants *v.* Louisville and Nashville R. R. Co., appellee; Same, appellants *v.* Norfolk and Western Railway Co., appellee; and Same, appellants *v.* Southern Railway Co., appellee.

These six cases had been argued and submitted for decision in the circuit court of the United States for the eastern district of Virginia before my last annual report was filed. The defendants in that court declined to answer, and the cases were submitted upon a demurrer, a special plea to the jurisdiction of the court, and upon the plea of *res adjudicata* filed in each case. In other words the counsel on behalf of Virginia declined to recognize the jurisdiction of the United States circuit court, and made only such defenses as it was necessary to make to fairly present that question.

On the 26th of December, 1907, the Honorable Judge of the United States circuit court (Judge Pritchard) entered a decree in each of these causes overruling the demurrer, and the pleas to the jurisdiction, and of *res adjudicata*, taking the bills for confessed, and awarding a perpetual injunction against the members of the State Corporation Commission, inhibiting them from enforcing its order of April 27, 1906, by which it had prescribed certain rates, (ranging from 2c per mile, for certain principal lines of railway, to 3½c. per mile, for certain branch roads), to be charged by the steam railroads of the State for the transportation of passengers, and directing the defendants to pay the costs of the suits.

The General Assembly meeting soon afterwards, in response to a message from your Excellency which presented the facts of the situation, passed an act providing for appeals from this decree, and such appeals were allowed to the Supreme Court of the United States.

Upon motion of the counsel on both sides the cases were advanced upon the docket of the court, and came on for final hearing on the 10th, 12th and 13th of October when they were fully argued by elaborate printed briefs, and by oral arguments, Senator Daniel and Mr. Braxton appearing with me for the appellants and Mr. Braxton closing the argument.

The importance of the questions presented by these suits not only to Virginia, but to the people of all the States of the American Union, is pointed out in my report for 1907.

If the Supreme Court of the United States shall sustain the contentions of the appellees in these cases, and affirm the decree of the learned Judge of the United States circuit court, it will be then necessary and proper for the authorities of the State to consider what measures they may adopt, without transcending such powers as still remain in the States, to safeguard the rights of the people of Virginia in the premises, by such amendment of section 156 of the State Constitution as may be made by the General Assembly upon the initiative of the State Corporation Commission, and as will not conflict with any provision of the Federal Constitution, or with any adjudication of the United States Supreme Court.

Of course, Congress can, by appropriate amendments of the judiciary act, so fairly define and justly limit the jurisdiction of the subordinate courts of the United States, and of the judges of those courts, as to protect the just powers of the governments, and particularly of the courts and lawfully constituted judicial tribunals, of the States from being paralyzed, and those tribunals from being humiliated and brought into contempt by the use by the United States circuit courts of the summary writ of injunction, or by any other species of collateral attack upon the orders or judgments of the State tribunals entered within the scope of their rightful jurisdiction, touching subjects which unquestionably come within the domain of State adjudication regulation, an

It may be that the States will have to look to Congress for complete and effective relief against abuses of Federal power; but it will nevertheless be worth while for the representatives of Virginia to take counsel and consider well whether such measures cannot be devised as, without depriving any citizen or corporation of any right under the Constitution and laws of the United States or of Virginia, will guard against unseemly conflicts between the subordinate courts of the United States and the Courts of the State, and prevent unwarranted or unwise encroachments upon the rightful jurisdiction of the States over their own domestic affairs.

8. **THE COSMOPOLITAN CLUB v. THE COMMONWEALTH.** This case was carried to the United States Supreme Court upon writ of error to the Supreme Court of Appeals of Virginia.

The appellant a "Social Club" domiciled in the city of Norfolk, was proceeded against under section 142 of the revenue law, as amended by the act of March 12, 1904 (Acts 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 liquor," and the corporation court of Norfolk had decided that this club had been so conducted.

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

The contention of the Cosmopolitan Club was that the act of March 12, 1904, violated its charter, or contract rights, and was, therefore, in conflict with section 10 of article 1 of the Federal Constitution, which prohibits the States from passing any law impairing the obligation of contracts.

The case involved the important question, whether the State can in the exercise of the police power deal thus summarily with so called social clubs, engaged in the liquor traffic in flagrant violation of the temperance and revenue laws of the Commonwealth.

The case was fully argued in printed briefs, at the October term, 1907, and orally January 23, 1908, and was decided in favor of the Commonwealth February 24, 1908, the court fully sustaining the validity of the State law, and its enforcement in the particular case.

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, 1907, and submitted; but no decision has as yet been handed down by the learned judge, whose protracted illness has delayed the decision of the case.

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. (Note)

2. *Edgar P. 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.

In the Supreme Court of Virginia.

1. *Hanger v. Commonwealth*. Appeal from the hustings court of the city of Portsmouth, on conviction for violation of the Sunday law. Argued by Mr. Catlett. Reversed.

2. *Devine v. Commonwealth*. Appeal from the circuit court of Mecklenburg county, on conviction for violation of local option law. Argued by the Attorney General. Reversed.

3. *Crawford Social Club v. Commonwealth*. Appeal from the hustings court of the city of Portsmouth—from judgement revoking charter. Argued by Mr. Catlett. Affirmed.

4. *Saunders v. Commonwealth*. Appeal from the corporation court of the city of Norfolk—on conviction of criminal libel. Error confessed. Reversed.

5. *Midgets alias Johnson v. Commonwealth*. Appeal from the corporation court of the city of Alexandria—on conviction of murder in first degree. Argued by the Attorney General. Affirmed.

6. *Woodson v. Commonwealth*. Appeal from the circuit court of Buckingham—on conviction of felony. Argued by Mr. Catlett and Sands Gayle, Esq. Reversed.

7. *Fields v. Commonwealth*. Appeal from the circuit court of Brunswick county—on conviction of felony. Argued by Mr. Catlett. Reversed.

8. *White v. Commonwealth*. Appeal from the circuit court of Mathews county—on conviction of violation of local option law. Argued by Mr. Catlett. Reversed.

9. *Schermerhorn's Express v. Commonwealth*. Appeal from the circuit court of Elizabeth City county—correction of assessment for taxes. Argued by the Attorney General. Reversed in part, and affirmed in part.

10. *Hunter v. Commonwealth*. Appeal from the circuit court of King George county—on judgment for a fine, for failure to maintain a public wharf. Argued by Mr. Catlett. Reversed.

NOTE.—Pending the printing of this report, Judge Goff has handed down a decision deciding the case upon the demurrer in favor of the validity of the Constitution of Virginia.

11. *Thurman alias Gould v. Commonwealth.* Appeal from the Corporation court of the city of Norfolk—on conviction of murder in first degree. Argued by the Attorney General. Affirmed.

12. *Lockley v. Commonwealth.* Appeal from the circuit court of King and Queen county—on conviction for a felony. Error confessed. Reversed.

13. *Richards v. Commonwealth.* Appeal from the circuit court of Floyd county—on conviction of murder in first degree. Argued by the Attorney General. Reversed.

14. *Commonwealth v. Pocahontas Coal and Coke Co.* Appeal from the circuit court of Tazewell county—on erroneous assessments of coal lands. Argued by the Attorney General. Affirmed.

15. *Boer War Spectacle v. Commonwealth.* Appeal from the circuit court of Henrico county—on erroneous assessment of license tax. Reversed.

16. *Southern Railway Co., v. Commonwealth.* Appeal from the Corporation Commission,—demurrage case. Argued by the Attorney General. Reversed.

17. *Uzzle v. Commonwealth.* Appeal from the circuit court of Accomac county—on conviction of felony. Argued by the Attorney General. Reversed.

18. *Burton and Conquest v. Commonwealth.* Appeal from circuit court of Accomac county—on conviction of felony. Argued by Mr. Catlett and S. James Turlington, Esq'r. Reversed.

19. *Ashlock v. Commonwealth.* Appeal from the circuit court of James City county—on conviction of felony. Argued by Mr. Catlett. Reversed.

20. *Burton and Conquest v. Commonwealth.* Appeal from the corporation court of the city of Norfolk—on conviction of felony. Argued by the Attorney General and S. J. Turlington, Esq. Reversed.

21. *O'Donnell v. Commonwealth.* Appeal from the circuit court of Rockingham county—on conviction for violation of local option law. Argued by the Attorney General. Affirmed.

22. *Vansant, Kitchen and Co. v. Commonwealth.* Appeal from the circuit court of Dickenson county—correction of erroneous assessment of taxes. Argued by Mr. Catlett. Reversed in part, and affirmed in part.

23. *Runde v. Commonwealth.* Appeal from the circuit court of Lancaster county—on conviction of violation of local option law. Argued by Mr. Catlett. Affirmed.

Cases pending in the Supreme Court of Appeals.

(To be heard at Richmond, Wytheville and Staunton.)

1. *Commonwealth at rel. of et als. v. School Board of Norfolk City.* Appeal from the law and chancery court of Norfolk City.

2. *Stanley v. Commonwealth.* Appeal from the circuit court of Franklin county.

3. *Burton v. Commonwealth.* Appeal from the hustings court of the city of Richmond.

4. *Commonwealth et. al. v. Camp Manufacturing Co.* Appeal from the circuit court of Brunswick county.

5. *Commonwealth v. Goodwin.* Appeal from the circuit court of Prince William county.

6. *Commonwealth v. McCue's Executors.* Appeal from the corporation court of the city of Charlottesville.

Cases pending in the Circuit Court of the City of Richmond.*At Law.*

1. Commonwealth *v.* Bennett Taylor, clerk Albermarle 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 in October, 1886.
6. Commonwealth *v.* Bennet 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, Fredericksburg and Potomac Railroad Company *v.* Marye, auditor. Five 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.

These cases have been again fully argued by Messrs. Braxton, Williams, and Eggleston for the plaintiff, and by myself for the Commonwealth, in printed or type-written briefs, and were submitted to the court for decision in the Spring of 1908.

27. John A. Parker and Bernard P. Green's Administrators *v.* Morton Marye, auditor.

The plaintiffs finished taking their evidence, and the depositions for the Commonwealth were finished some months since. The case is to be tried during the next February term of the court.

This 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.

Opinions Given from November First, 1907, to November First, 1908.

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 very 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, which are not printed.

To the Governor.

RICHMOND, VA., December 9, 1907.

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

MY DEAR SIR:—

Your favor of the 29th ultimo, enclosing letter of Mr. W. Terry Bowling to you of November 28th, and petition of a large number of the citizens of the Town of Norton asking that you release John P. Tilton from his liability upon a bond or recognizance given by him as bail or surety for his son, Enis Hilton, and for a certain Jefferson Johnston mentioned in said petition, has been received, and the question you submit considered.

I beg leave in response thereto, to respectfully advise you that, under the Constitution and laws of this State, the Governor is not authorized to give relief in any such case.

The only tribunal or official of the Commonwealth authorized to remit the penalty in such a case, is the court in which the proceeding for a judgment upon the recognizance or forfeited bail bond has been instituted, which may, on the application of the defendant, remit the penalty or any part of it, and render judgment on such terms and conditions as it deems reasonable: But this relief can only be given before judgment rendered.

After judgment rendered on such a bond, I know of no authority in the Commonwealth which can grant any relief against it, See section 4099 of the Code.

I have the honor to be,

Very truly yours,

WILLIAM A. ANDERSON.

P. S. I herewith return Mr. Bowling's letter, together with the petition.

RICHMOND, VA., December 18, 1907.

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

MY DEAR SIR:

Your favor of the 12th inst, enclosing letter of the Hon. Robert Shaw Oliver, acting secretary of war, of the 7th inst, addressed to you, preferring the request that the title to certain submerged lands in the vicinity of Fort Monroe, belonging to the Commonwealth, therein described, shall be conveyed to the Government of the United States "for the enlargement of the military reservation of Fort Monroe, Virginia, required by the great importance of that post in the approved scheme of sea-coast defenses for the Chesapeake Bay and its tributary waters," with accompanying map, was duly received, and I reply now as soon as I could give the matter my attention.

I regret to find no law of the Commonwealth authorizing you, on her behalf, to transfer to the United States her title to the lands which the United States desires to acquire, or authorizing the cession to the United States of jurisdiction over any such lands.

The powers conferred upon the Governor by chapters 185 and 214 of the general laws of the Commonwealth, session of 1889-90, were limited by their provisions, to lands lying in the counties of Northampton, Princess Anne, and Norfolk, while the land in the vicinity of Fort Monroe now desired by the United States government is situated in Elizabeth City county.

In order to authorize the cession of these lands to the United States, it will be necessary, therefore, to obtain authority for the purpose from the General Assembly.

I have therefore prepared the draft of an act which will accomplish this purpose, which I have the honor herewith to enclose for your consideration, and if you approve it, for submission to the General Assembly.

I am,

Very truly and respectfully yours,

WILLIAM A. ANDERSON.

RICHMOND, VA., January 16, 1908.

Southern Railway Company *v.* the members and the clerk of the Virginia State Corporation Commission.

Chesapeake and Ohio Railway Company *v.* Same.

Norfolk and Western Railway Company *v.* Same.

Atlantic Coast Line Railroad Company *v.* Same.

Louisville and Nashville Railroad Company *v.* Same.

Chesapeake and Western Railroad Company *v.* Same.

Virginia Passenger Rate cases in the United States Courts.

To His Excellency, CLAUDE A. SWANSON.

Governor of Virginia.

DEAR SIR:

The litigation in which the State has been involved in the above mentioned six suits against the members of the State Corporation Commission, and the clerk of that tribunal, have necessitated, and will necessitate, a considerable expenditure of money in the payment of fees of counsel, and of costs.

While these suits are nominally against the members of the State Corpora-

tion Commission, they are really against the Commonwealth, and the officials who constitute that tribunal cannot, of course, be expected to defray the expenses of the litigation, or to incur any personal liability in defending the important public interests involved.

Besides the necessary expenses and cost of such litigation, it was, for obvious reasons, necessary to the due representation of the rights and interests of the State in litigation of such magnitude, novelty, and importance, that the services of special counsel should be engaged to assist the Attorney-General in these six suits.

One purpose of these suits, or the necessary effect of them if the contention of the plaintiffs should be sustained by the courts, was to practically break down and destroy one of the great departments of the State government, and to deprive the Commonwealth of the power of effectively regulating public service companies, within her jurisdiction, an essential attribute of government, which in one form or another Virginia has exercised as a colony and as a State, almost from the first establishment of free representative government at Jamestown.

In these suits the litigating railroad companies were represented by their leading counsel, embracing a number of the ablest lawyers in the country, and these were in turn, as to the larger companies, aided by a staff of trained and accomplished assistants.

Recognizing this, and that an emergency existed which required prompt action on the part of the representatives of the Commonwealth, you cooperated with me in securing the services of Mr. A. C. Braxton as special counsel in the case.

Mr. Braxton agreed to take an active part in the preparation of the pleadings, and in the argument of the questions of law which should arise, and to represent the State in the circuit court of the United States for the eastern district of Virginia upon these questions, and in the Supreme Court of the United States upon any appeal to that court in the six cases, whether taken by the defendants or by the plaintiffs, for a fee of five thousand dollars and the payment of traveling or other expenses of printing, etc., incurred in connection with the litigation.

Mr. Braxton and his partner, Mr. John S. Eggleston, (the benefit of whose assistance the State has enjoyed without additional compensation) have already rendered laborious and valuable services in connection with the preparation of the elaborate pleadings and in the argument of these cases before Judge Pritchard of the United States court at Asheville, North Carolina, in July last, and also in connection with the negotiations hereinafter mentioned.

Mr. Braxton was retained by you and myself after conference with the members of the State Corporation Commission, and with their cordial concurrence and approval, as counsel for the Commission, and for the Commonwealth, in the litigation, for the purposes indicated, but with the understanding expressed in our letter to him of the 7th of June last, that we had "no authority to engage for the payment of any compensation to counsel in such case, but that we would unite in recommending to the General Assembly of Virginia, when it shall meet in regular session in 1908, that it make an appropriation for the payment of his compensation and expenses."

Subsequently, in August last, at your instance, and with my hearty concurrence, the services of Senator John W. Daniel were fortunately secured as associate counsel for the defendants and the State, particularly upon the argument of the cases in the Supreme Court of the United States, to which it was

then evident that they would have to be carried upon appeal by the defendants, his compensation to be hereafter fixed and provided for as might be deemed just and be satisfactory to the representatives of the Commonwealth.

The State had already had the benefit of Senator Daniel's valuable counsel and assistance in connection with the fortunate *pendente lite* adjustment made under your direction and auspices with the principal litigating railroad companies, by which they agreed to put the reduced passenger rates prescribed by the Corporation Commission in effect from October 1, 1907, until the litigating shall have been finally decided upon its merits, and also in connection with various abortive negotiations looking to some adjustment of the suits.

In these negotiations the counsel and services of Mr. Braxton have also been exceedingly valuable to the State.

The negotiations for a settlement having failed, final decrees have been entered in each of the cases by which the State Corporation Commission is enjoined from putting in effect and enforcing the passenger rates which it prescribed in its order of April 27, 1907, and from these decrees the counsel for the defendants have taken appeals to the Supreme Court of the United States where the cases will be pressed to as early a decision as will be practicable.

A bond with security had to be given by one of the defendants in each case to answer for any costs or damages which may be adjudged against the defendants, in the event that the decree of the United States circuit court shall be affirmed.

Certain costs of printing the records, briefs of counsel, and other expenses will be incurred and must be provided for if these appeals are to be efficiently and vigorously prosecuted.

It is important therefore that prompt provision shall be made by the General Assembly now in session for the indemnity of the officers of the State who stand for the Commonwealth in these suits, and for defraying the necessary and proper costs of this litigation in which the Commonwealth has a stake, the value of which cannot be estimated in money.

The fees and expenses of the special counsel, and the necessary costs of the litigation in these six suits, may amount to fifteen or twenty thousand dollars, or more.

The litigation is of a costly character, and just what it will cost cannot now be accurately stated in advance.

Ample provision should be now made, for the General Assembly will probably not be in session again for two years, and in the meantime exigencies may arise, which cannot be now anticipated, in which the interests of the State might be seriously prejudiced if there should be no money available for properly presenting her case.

As in duty bound, I beg leave therefore through you to present the facts here stated for the careful consideration of the General Assembly, and to request that the engagement of the services of Mr. Braxton and of Senator Daniel shall receive the sanction of the legislature, and an appropriation be made for their compensation, and for the indemnity of the members and clerk of the State Corporation Commission, by providing for the payment of any costs or damages for which they may by possibility, become liable, by reason of the defense of the rights and interests of the Commonwealth which is being made in their names.

All of which is respectfully submitted,

WILLIAM A. ANDERSON.

RICHMOND, VA., *February 25, 1908.*

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

DEAR SIR:

As requested by you, I briefly state some of the reasons why it is important that there shall be a special attorney for the State Corporation Commission.

A great number of cases and matters come before that Commission which require the services of a trained lawyer representing the Commonwealth, and the public interests concerned.

I. As to unlitigated matters:

(1) In connection with the issuing of charters; many questions arise as to whether applicants for charters have complied with the requirements of the law in the papers which they submit. A competent attorney could be of great assistance to the Commission and greatly facilitate the public service if such questions, as they arise, could be referred to and passed upon by such counsel.

(2) In connection with the ascertainment, valuation, and assessment of the property of corporations, questions of law and fact often arise, as to which a competent attorney could render valuable assistance to the Commission, and very valuable services to the State.

In connection with the above, and other matters as to which the functions of the Commission are chiefly executive, the services of a trained lawyer would, it seems to me, be worth a great deal more to the Commonwealth than any compensation which would probably have to be paid him.

II. As to matters which either are, or may be, litigated, and in the hearing and decision of which the Commission sits and acts as a court:

Under the Constitution and laws, the Commission is charged with the duty of supervising and regulating the public service corporations of the State in respect to their duties to the public, and their charges therefor.

(1) As to complaints by bodies of citizens, or the people of particular sub-divisions of the State, or commercial bodies, such as the chambers of commerce of the cities and towns of the State, or other commercial associations, of infractions of the law, or of the rules and regulations adopted by the Commission, by the public service corporations of the State. And also as to proceedings for the imposition of penalties for violation of orders of the commission.

No provision whatever is made by law for counsel to prepare, present, or represent the Commonwealth before the State Corporation Commission, in reference to any such complaints. Either the representative of such bodies or associations, or the Commission itself, has to take the initiative, formulate and prosecute such complaints, and the Commission, of course, has to try them.

This places the Commission in an attitude towards litigation of this kind, and towards litigants before it, which no judicial tribunal should be permitted to occupy, and one which is embarrassing and unjust to the Commission, and unfair to the Commonwealth, and to parties litigant. This condition of things can only be remedied by the Commonwealth providing an attorney who can devote his time diligently and exclusively, as far as is necessary, to the preparation and trial of cases of this kind arising before the Commission.

(2) When the commission comes to deal with larger and more important matters, such as the adoption of general rules and regulations for the government of the public service corporations of the Commonwealth, or the determina-

tion of the rates and charges for transportation which may be made by such corporations, it is exceedingly important that the Commonwealth shall be represented by counsel who can give his exclusive attention to those matters. In such cases, as practically in all cases, the railroad companies are generally represented by lawyers embracing the very ablest counsel to be found in the Commonwealth, and these lawyers have the benefit of the aid of trained assistants, of expert accountants, and of the able and experienced officers of their respective companies.

In these cases, there are great masses of facts, often of a more or less technical character, with which it is important that the counsel representing the Commonwealth shall be familiar. They are sometimes cases of great complexity and difficulty, and it is impossible that the public interests concerned can be fairly presented, or adequately represented, except by trained and experienced counsel who can give as much of his time as is necessary exclusively to the preparation and trial of such cases.

Here, again, though it is necessary often that the Commission itself shall take the initiative, it is essential that the Commission shall not be put in the position of the prosecutor, and be expected to conduct the examination of witnesses, and the preparation of the cases for trial in all their details.

The Constitution devolves upon the Attorney General the duty and responsibility of representing the Commonwealth in all appeals which may be taken to the circuit court of the city of Richmond from any order of the State Corporation Commission assessing the property of any public-service corporation for taxation.

It also makes it the duty of the Attorney General to represent the Commonwealth in all appeals from any order of the State Corporation Commission to the Supreme Court of Appeals of Virginia, or to the Supreme Court of the United States.

It is also the duty of the Attorney General to represent the Commonwealth in all litigation in reference to the orders of the State Corporation Commission which may be instituted in any other court of the United States.

These are new duties which have been devolved upon the office of the Attorney General under the new Constitution. There have been a number of cases of the character indicated, in which it has been my pleasure and duty to appear in the circuit court of the city of Richmond, in the Supreme Court of Virginia, in the Supreme Court of the United States, and in the circuit court of the United States for the eastern district of Virginia; and these cases have necessarily required a very large portion of my time. In addition to this, at the request of the State Corporation Commission, and under the statute making it my duty to do so, I and my assistant have repeatedly appeared before the State Corporation Commission when that commission was sitting as a court; but the experience of myself and my assistant has convinced us of not only the importance, but of the necessity of having special counsel for the commission, for the reason that it was impossible for either my assistant or myself, without neglecting the great mass of duties which are devolved upon us by law as the representatives of the Commonwealth, to give the required attention, either to the preparation, or to the intelligent trial of these cases before the State Corporation Commission. It results that, unless there is some special counsel provided, there will be no one to prepare these cases for a hearing, unless the members of the Corporation Commission shall undertake, not only to try the cases that

are brought before them, but to prepare those cases actually for a hearing and trial, and often to discharge the duties of counsel upon their hearing.

The Corporation Commission has been exceedingly considerate in calling upon this office for services of this kind. When these have been rendered, they have generally been rendered not only with great inconvenience, but have necessitated the postponement of other important matters requiring the attention of my assistant and myself.

I am convinced that, as a measure of economy, and for the purpose of not only saving time and money, but actually increasing the public revenues which come largely within the jurisdiction of the Corporation Commission, the services of a competent and faithful attorney to the Commission would result in gain to the Commonwealth.

I have the honor to be,

Very truly yours,

WILLIAM A. ANDERSON.

RICHMOND, VA., *September 8, 1908.*

HON. CLAUDE A. SWANSON.

Governor of Virginia, Richmond, Va.

MY DEAR SIR:

In reply to the letter of Dr. A. S. Priddy, superintendent of the Southwestern State Hospital for the insane, bearing date on the 2d. inst, bringing to your attention the case of W. W. Pendleton, an escaped lunatic, I beg leave to say that I can find no authority for the issue of a requisition by the Governor of this State, on the Governor of another State, for the apprehension and return of an escaped lunatic to the authorities of this State charged with his legal custody.

Section 5278 of the Compiled Statutes of the United States, provides that fugitives from justice—persons charged with certain crimes shall be delivered by the executive of any State or Territory to the authorities of any other State or Territory on the requisition of the executive thereof; but in my opinion this section cannot be construed so as to apply to, or cover, the case of an escaped lunatic; and again, I find that the rules for requisitions adopted by the Governors of many of the States, and now in use in this State, provide only for the forms to be followed in the issue of requisitions for the surrender and return of persons charged with the commission of crime—which is in accord with the requirements of the Federal statute.

The law of this State—section 1686 of the Code of 1904—provides for the arrest of escaped lunatics anywhere in this State; but I fail to find any statute providing for, or even suggesting a way in which the return of a lunatic may be secured from another State; nor indeed would such a statute be effective if we had one.

I have therefore reached the conclusion, that you, as Governor of this State, cannot demand of the executive of another State, the return of an escaped lunatic to the authorities of this State, as a matter of legal right.

This opinion is based on the assumption that Pendleton was duly *acquitted* of the crime with which he was charged, on the ground of insanity, and was committed to the hospital by the trial court under section 4035 of the Code of 1904. If the record of his trial shows a different state of facts, the case may be different.

It seems to me that if Pendleton can be located, it may be that some arrangement can be made to secure his return from the State where he may be found. In any event, it is a case in which every means should be exhausted to secure his re-capture.

I am,

Very truly yours,

ROBERT CATLETT,
Assistant to the Attorney General.

RICHMOND, VA., *September 30, 1908.*

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

DEAR SIR:

I have considered the question you submitted to me arising upon the application for a requisition upon the Governor of California for Thomas Powell, a fugitive from justice, who has been indicted in the circuit court of Roanoke county in a number of cases for selling liquor in violation of the Revenue and Local option laws of Virginia.

It appears that said Powell has been convicted in a number of these cases, but that there is one indictment still pending against him for one of said offenses, upon which he has not been tried; that said Powell was bailed at the November term, 1907, of said court in said cases with certain sureties, in the sum of \$800.00 to appear at the next succeeding term thereof; that he failed to appear at the next succeeding term of said court and thereby forfeited said bail and fled from the Commonwealth and is now alleged to be a fugitive from justice in the State of California.

While the statutes of the United States and of Virginia impose certain definite duties upon the Governor of the Commonwealth in the matter of the rendition of fugitives from justice who have fled to this State from other States, in response to a requisition from the Governor of the State against whose laws such fugitive has offended, both the laws of the United States and the laws of Virginia (which State alone would have jurisdiction of that subject) are silent as to the duties of the executive in regard to the issuing of any requisition upon the Governor of another State for a fugitive from justice from this State who has fled beyond its confines and taken refuge within the limits of such other State.

While such a duty is doubtless devolved upon the Governor of the Commonwealth, its exercise in any particular case is left entirely to his discretion, and I do not think that he is called upon to issue such a requisition, particularly in a case of mere misdemeanor in which he is satisfied that the awarding of the writ is not demanded by the best interests of the Commonwealth, and is not required in order to subserve the ends of justice. A requisition may be awarded by the Governor for a fugitive from justice charged with any "crime" under the laws of the State in which the offence charged against him was committed, and any offence which is made by the laws of the State a misdemeanor is technically a crime.

The fugitive from justice here has been convicted, whether regularly or not I am not prepared to say, of a number of misdemeanors, and is charged with another misdemeanor of the same description,—all statutory offenses which are made misdemeanors by the laws of Virginia.

The executive would have a right, if satisfied that it was a proper case fo

issuing a requisition, to issue it in this case, although it would not have been a crime at common law.

While, according to the best authorities upon the subject which I have been able to examine, it would be the duty of the Governor of California to recognize and respect such a requisition, such an obligation is generally regarded as a voluntary obligation,—one not enforceable by an application to the courts, and which the Governor of California might, for reasons satisfactory to himself, decline to recognize, as has been done in a number of cases by the executives of other States in respect to requisitions for offences which were more serious and heinous than those charged against the fugitive from justice here.

The question your excellency has to decide is, whether you would be justified in this instance in awarding a writ, and sending an agent of the government of Virginia nearly 3,000 miles across the continent at a very heavy cost, upon what would probably be an uncertain pursuit of this fugitive from justice, upon the chance of his being arrested in California, and if arrested there, upon the chance of the Governor of that State recognizing a requisition for his rendition to the authorities of Virginia upon a charge of the unlawful sale of ardent spirits in violation of the laws of Virginia regulating the sale of intoxicating liquors.

This man seems to have been a flagrant violator of the laws of Virginia upon this subject, and if the Governor would be justified in any case of this character, in issuing a requisition for a fugitive from justice in such a distant State, who is charged with an offense of this kind, such justification would probably be found in the facts of this case; but under all the circumstances, it seems to me that the case is an extraordinary one for the issuing of such a writ.

As stated, however, the matter is entirely within your discretion, to be exercised according to your view of the best interests of the Commonwealth, and what you consider to be the demands of justice in the premises.

The decision of that matter is left by the law entirely with you.

Very truly yours,

WILLIAM A. ANDERSON.

RICHMOND, VA., *October 3, 1908.*

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

DEAR GOVERNOR:

The letter of Messrs. Robert Johnston, H. Hodges, and N. Purdie, members of the board of control of the city of Norfolk, of the 15th ultimo, addressed to you in reference to the status of a certain Albert Gadbout, an insane person who is now confined in jail in the city of Norfolk, and whom Dr. Brunk, the superintendent of the Eastern State Hospital, has declined to receive in that Hospital on the ground that he is a resident of Indiana, has been found on my desk.

No letter of inquiry or message in regard to the communication has reached me, but I presume you wish to know what the law requires to be done in such a case.

It appears from this correspondence, (which is herewith returned to you) that this unfortunate man was, on the 9th of March last, discharged from the United States Navy because of some physical infirmity, and that insanity was subsequently developed; that he had enlisted in the navy in Indiana, but that there was no accurate information as to where his residence was, such evidence as the board of control have indicating that he was a resident of either Connecticut or Maine.

It thus appears that he is a stranger domiciled, though perhaps temporarily domiciled, in Virginia for several months prior to the inquest upon his case in which it was ascertained that he was a lunatic; and it would seem that he belongs about as much to Virginia, as far as his residence can be located, as to any other State.

By section 1676 of the Code, Acts of 1899-00, p. 1041, the authorities of a hospital to whom such insane person shall be committed are authorized to receive him, and it is made the duty of the board of such hospital in such case; as soon as practicable, to cause him to be returned to his friends, if known, or to the proper authorities of the State or country from which he came, if ascertained, if such return be deemed by the board of such hospital to be expedient or practicable; and it is provided that, "in all cases such insane person shall be otherwise treated and cared for as if he were a resident of this State and subject to the provisions" of the law in regard to lunatics, and subject further to the provisions contained in section 1678.

By section 1678, it is provided that:

"No non-resident insane person shall be admitted or retained in any hospital under any contract with the board except when there is a vacancy therein not applied for on behalf of any person residing in the State," &c.

The provisions of section 1678, as will be seen upon reading them, evidently apply only to the case of a non-resident insane person who has been received into a hospital under a contract, and not to a non-resident insane person who because of poverty or otherwise has been committed to such hospital under section 1676, and the preceding sections of that chapter, just as any permanent resident of the State might be who was unable to pay for his support therein.

It seems to me that under all the circumstances of the case presented here, humanity requires that this man be received into the Eastern State Hospital, if it is possible to make a place for him there; or if he cannot be received there, because there is no room for him, that he ought to be received into any other State Hospital of the Commonwealth in which a place can be provided for him.

The language of Section 1676 will be found upon examining it to place such a lunatic upon the same terms substantially as though he were an actual permanent resident and citizen of the Commonwealth, except that it is made the duty of the board of the hospital as soon as practicable, to cause him to be returned to his friends if known, or to the proper authorities of the State or country from which he came if ascertained, and such return be by said board deemed expedient or practicable.

Very truly yours,

WILLIAM A. ANDERSON.

To the Superintendent of Public Instruction.

RICHMOND, VA., December 30, 1907.

HON. J. D. EGGLESTON, JR.,

*Superintendent of Public Instruction,
Richmond, Va.*

MY DEAR SIR:

The question submitted in your favor of this instant as to what commission, if any, the treasurer of Henrico county is entitled to for receiving and disbursing

the sum of \$32,800, paid to him as the treasurer of said county under the order of the circuit court of the county of Henrico in the suit lately pending therein, in which the city of Richmond was plaintiff and the county of Henrico was defendant and in which suit a considerable part of the territory of Henrico county was annexed to the city of Richmond, has been considered by me.

I do not find any statute which certainly fixes the compensation of a county treasurer in any such case.

Section 614 of the Code prescribes the compensation which he shall receive for "receiving and disbursing the county and school levies, including all moneys collected by order of the county authorities for any purpose." The fund mentioned by you was not, as I learn from your letter, collected by the treasurer of Henrico county by order of the authorities of that county, but was received by him, by order of the court. I think it is extremely doubtful whether the circuit court of Henrico county could be regarded as one of the county authorities contemplated by the language of the statute just quoted. That statute seems to refer, as appears not only from its title but from its terms, to moneys which are collected by the county treasurer, such as school levies or other funds raised for school purposes by order of the constituted authorities of the county; that is to say either school levies or funds of the same general description.

As I understand from your letter, the fund was directed by the order of the court to be paid directly to the county of Henrico and not to any school district or school districts of that county.

I am strongly inclined to the view that the case presented in your letter is one for which no provisions has been made in the statutes and may be regarded as a *casus omissus* in the laws.

It would seem to be fair that the county treasurer should receive some just compensation for his services in receiving and disbursing these funds.

If the fund can be fairly regarded or treated as under the control of the county school board, then section 1449 would probably furnish a solution to the question.

Yours very truly,

WILLIAM A. ANDERSON.

RICHMOND, VA., January 27, 1908.

HON. J. D. EGGLESTON, JR.,

*Superintendent of Public Instruction,
Richmond, Virginia.*

DEAR SIR:

Yours of the 23rd instant submits the following inquiry:

"Has a district school board the right to let children under seven years of age come to the public schools, provided they pay tuition?"

Section 83 of the school law, (Section 1492 of the Code), limits the free use of the public schools "to all persons between the ages of seven and twenty years residing within the school district," subject to the qualifications expressed in sections 84 and 85 of the school law (sections 1493 and 1494 of the Code), none of which authorize the admission into the schools of children under seven years of age.

Section 85 of the school law, (section 1494 of the Code), provides that:

"Any board of district school trustees may, in its discretion, admit as pupils into any of the public free schools of its district persons between

the ages of twenty and twenty-five years on the prepayment of tuition fees, under regulations to be prescribed by the State board of education: provided, the admission of such pupils will not, in the opinion of the district board, impair the usefulness and efficiency of such school."

It will be observed that the permission given by the section just quoted, is limited to pupils above the age of twenty, and under the age of twenty-five years.

Under the accepted rules of statutory construction, this legislation precludes the idea that it was the purpose of the General Assembly to permit pupils under seven years of age to be admitted into the public schools.

It may be and probably would be, advisable to allow children under seven years of age, under certain conditions, to be admitted into the public schools. and particularly into kindergartens.

If your department is prepared to recommend this, it is important that legislation should be had during the present session of the General Assembly to carry such recommendation into effect.

Very truly yours.

WILLIAM A. ANDERSON.

RICHMOND, VA., March 11, 1908.

Subject: In reference to the construction of the statute in regard to school district bonds issued for building and furnishing schoolhouses.

HON. J. D. EGGLESTON, JR.,

*Superintendent of Public Instruction,
Richmond, Virginia.*

DEAR SIR:

Yours of the 10th this instant received.

I. It is evident that it was the purpose of the General Assembly, in the language used in section 59, p. 44, of the school law, to define the bonds which were authorized to be issued by that act, and to prescribe that the minimum period of redemption *to be expressed in the bonds* should be five years and the maximum thirty years. The effect of this is, I think, to require that the bonds shall be, say, either 5-20s, 5-25s, or 5-30s, that is, that the minimum period should be five years, and the maximum period not exceeding thirty years.

I do not think that these terms should be changed without an amendment of the law.

The bonds should, as to their terms, conform substantially, if not strictly, to the requirements of the statute.

If it would induce a sale at a larger price, the board of supervisors and the district school board concerned, might adopt a concurrent resolution, agreeing that the bonds should not be redeemed, say, for a period of ten or fifteen years, as the case might be. While such a resolution might not bind succeeding boards, it would doubtless be complied with by such boards, and it could not be possibility affect the validity of the bonds, not being made a part of the bonds.

II. The act referred to evidently requires such bonds to be sold, and that the proceeds from their sale shall be used exclusively for the purpose contemplated by their issue. The statute does not prescribe how they shall be sold. It was doubtless expected that they would be sold for money, and that the cash would be used to pay for the erection and furnishing of the school building.

There is nothing in the law, however, to prohibit the local authorities having charge of the subject from selling such bonds to the contractor, provided they are sold to him at not less than par.

Very truly yours,

WILLIAM A. ANDERSON.

RICHMOND, VA., May 23, 1908.

HON. J. D. EGGLESTON, JR.,
Superintendent of Public Instruction,
and

R. C. STEARNES, ESQ.,
Secretary State Board of Education,
Richmond, Virginia.

GENTLEMEN:

The annexed letter from E. V. Barley, Esq., attorney for the treasurer of Botetourt county, is respectfully referred to you.

The question submitted must have arisen, and, been decided one way or the other, thousands of times since section 1449 of the Code was enacted in 1872 in terms which, for the purposes of this inquiry, are not affected by any subsequent amendment.

The question has arisen annually in every county and school division of the State, whenever the annual settlement with the county or city treasurer thereof has been made.

It is important, therefore, to know what has been the practice and construction which has been placed upon the law in the thousands of instances in which this question has arisen during the last thirty-six years.

Without ever before having had my attention called to this precise question, I was under the impression that the entire compensation to which county treasurers were entitled for receiving and disbursing county and district school funds was fixed by, and limited to that prescribed by, section 1515 of the Code.

Before replying to this communication, I will be obliged to you if you will carefully examine my correspondence with the Superintendent of Public Instruction in reference to the compensation to which county treasurers are entitled for receiving and disbursing local school funds, and the opinions then given by me, which you will find on pages 52-55 of my report for 1907, a copy of which I am sending you.

The question is an important one, and should be passed upon advisedly.

Very truly yours,

WILLIAM A. ANDERSON.

RICHMOND, VA., July 23, 1908.

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

MY DEAR SIR:

Yours of the 10th instant, referring to my letter of the 8th instant, has been received.

In reply to your inquiry for my opinion as to the commissions due an outgoing treasurer, I beg leave to say that it seems to me the outgoing treasurer is entitled to full commissions on all levies actually collected and disbursed by

him, treating the funds turned over to the incoming treasurer as a disbursement. It follows from this, that my conclusion is, that the incoming treasurer receives the full commission allowed by law on all levies actually collected by him, and 2 per cent on all moneys received from the outgoing treasurer.

This is the rule followed by the Auditor of Public Accounts in settlement with outgoing and incoming treasurers as to State taxes, with the exception, however, that no question is presented there of commission on moneys turned over by the outgoing treasurer to his successor; and having reached the conclusion that the law allows two per cent additional commission to the incoming treasurer on all county and school levies received by him from the outgoing treasurer, I see no reason why this basic rule should not obtain in both cases.

I am,

Very truly yours,

ROBERT CATLETT.

Assistant to the Attorney General.

RICHMOND, VA., September 3, 1908.

HON. J. D. EGGLESTON, JR.,

*Superintendent of Public Instruction,
Richmond, Va.*

DEAR SIR:

Yours of the 31st ultimo, enclosing letter of Mr. J. Toomer Garrow addressed to you, has been received.

Section 1459 of the Code, as amended by the act of March 5, 1908, acts of 1908, p. 188, prohibits any county officer, except a county superintendent of the poor or a commissioner of accounts, from being chosen, or being allowed to act, as a district school trustee.

Chapter 36, page 43, acts of 1899-'00, creates the office of chief of police for the county of Warwick, and authorizes him to be chosen by the board of supervisors of that county.

Such officer is manifestly a county officer. And the incumbent of any such office is prohibited from being chosen, or from acting if he has already been chosen, as a school trustee.

This is a matter, however, which does not come within the jurisdiction of the Superintendent of Public Instruction, or of the State board of education. Neither the Superintendent of Public Instruction nor the State board of education are authorized to remove a school trustee or to declare the office of school trustee vacant.

That power is probably vested in the school trustee electoral board in a case such as is presented in your letter, under section 1455 of the Code, section 23, page 27, of your compilation of the school laws.

If the school trustee electoral board should refuse to act, any party in interest and having a status to prosecute such a case could have the question determined by *quo warranto*.

I return Mr. Garrow's letter.

Very truly yours,

WILLIAM A. ANDERSON.

RICHMOND, VA., October 2, 1908.

Subject:—In the matter of the petition of citizens of Beaver Dam district, Hanover county, in the nature of an appeal from the order and action of the school trustee electoral board of said county, by which action said electoral board on appeal from the district school board for said district adopted, and selected the "E. C. Terrell site" for the new central school and high school building proposed to be erected in said district. Said petition may also be treated as in the nature of an appeal from the action and order of Mr. R. Carter Redd, division superintendent of schools for said county, approving said site for the location of said school building.

TO HON. J. D. EGGLESTON, JR.,
Superintendent of Public Instruction,

State Capitol, Richmond, Va.

DEAR SIR:

The request made in your favor of the 30th ultimo, enclosing the above mentioned petition, and copy of record of the proceedings of the school trustee electoral board of Hanover county in the premises, that I would advise you as to the legal effect of the said proceedings and orders, and as to your duties in the premises, has received my careful consideration as soon as I could give the matter the requisite attention.

From the not very clear statement furnished by the record of the proceedings in this case, it appears that the district school board had selected a site "near Beaver Dam station" for said building, and that a complaint was made and an appeal from that action was taken by five or more citizens residents of the district, under sections 1487 and 1455 of the Code, (pp. 27 and 28 of your compilation of the school laws.)

The division superintendent being unable satisfactorily to adjust the matters complained of, an appeal was allowed to the school trustee electoral board.

The record does not show that the complainants, as required by section 1487, were "interested heads of families," but as the superintendent and the electoral board made no objection to the complaint on that ground, it may be perhaps fairly assumed that they were such heads of families.

The school trustee electoral board, after two hearings in the district, not only overruled and set aside the action of the district board in selecting the site near Beaver Dam depot, but undertook to adopt and select another and a different site, namely, what is described as the E. E. Terrell site.

To this action of the school trustee electoral board various objections are urged in the petition of C. T. Johnson and six other "citizens of said district and prospective patrons of said high school" in the petition dated September 28, 1908, which they by their counsel have presented to you.

I. As to the legal effect of said proceedings and orders:

By the terms of section 1487, the decision of the said school trustee electoral board is final as to all questions at issue upon the appeal taken to that board, but it is only final as to the issues which were presented upon that appeal.

By the terms of the statute (clause 9 of section 1466) it is made the duty of the district board of school trustees to provide school houses.

This grant of power by a positive rule sanctioned by our highest courts, involves the power to do whatever is necessary to give effect to the general

power granted, and the selection of a site is a necessary prerequisite to the providing of a school house.

The duty and responsibility of choosing the site of such school house is thus primarily devolved upon such district board, subject to the approval of such site by the division superintendent.

From an action of the district board in the matter of establishing a school upon a particular site, an appeal is allowed to the school trustee electoral board of the county.

The only issue involved in such appeal, is whether such order of the local board shall be affirmed or shall be reversed. No power is given to the appellate board to select another or a different site from that chosen by the district board, the body which has been alone entrusted with the duty and the power of making such selection in the first instance; for no general jurisdiction is given to the electoral board to enter such order as the district board should have entered.

All that this appellate board is empowered to do is, either to affirm the action and selection by the local board, or to set it aside, and in the latter case the entire subject is remanded to the district board to make some selection of some site other than that rejected by the appellate board.

The electoral board distinctly has not, in my opinion, the power to select any site in the place of the one chosen by the local board and rejected by the electoral board, for that is not involved in the issue presented by such appeal, which issue plainly is—shall the order of the district board and the selection of a site made by that local board stand; or shall it be set aside.

These views and others suggested by them, which I have not time to present, bring me to the conclusion that the action of the school trustee electoral board of Hanover county in undertaking to select a site other than that previously chosen by the local board, and rejected by such appellate board, was an unauthorized exercise of power, an encroachment upon the primary and exclusive original jurisdiction of the district board, and therefore an *ultra vires* and a void act.

Under the law, as I understand it, the district school board of Beaver Dam district of Hanover county alone can make a legal and valid selection of the site upon which the proposed school building shall be erected, in the place of the site rejected by the school trustee electoral board.

From any action of such district board in the selection of such new site, an appeal would lie to the school trustee electoral board on the terms prescribed in section 1487 of the Code.

My conviction, upon the most careful consideration that I have been able to give the subject, is, that it was never the design of the law, nor the purpose of the law makers of the Commonwealth to take the power and duty of selecting the sites, for the school houses to be erected by the taxes and contributions of the people of each school district, out of the hands of the local school authorities of such district, who are in intimate touch with the subject, and presumably more accurately informed as to the facts upon which an intelligent judgment would depend, and deeply interested in such decision of it as shall be the very best for the welfare of the district, and to vest it in a county board of appeal, which, however intelligent and competent its members may be, cannot, as a rule, be so well qualified for making such selection as the local school authorities of the district.

The powers of such appellate board are therefore confined by the law to

deciding the issue presented upon the appeal taken to it; and that issue in case of an appeal of the character here presented, is confined to either affirming or rejecting the selection already made by the local board.

II. What is your duty in the premises?

By the terms of regulation one of the State board of education prescribing your official duties and powers, which, under the Constitution and laws of the Commonwealth, has all the force and effect of a law, it is among other things provided as to the Superintendent of Public Instruction as follows:

First. He shall take care that the school laws and regulations be faithfully executed, and shall use all proper means to promote an appreciation and desire of education among the people.

"Second. It shall be his duty to determine the true intent and meaning of the school laws and regulations, and to explain to the county superintendents and other school officers the several duties enjoined thereby upon them, and his decision shall be final, unless and until reversed by the board of education."

These clauses give you a broad supervisory, directory, and appellate jurisdiction over all of the school officials of the State, and empower you and make it your duty to interpret and determine the true intent and meaning of the school laws and regulations.

I have to advise you, therefore, that it is within your official power and duty to rule upon the question presented by the petition in this case, and to determine what are the rights of the petitioners, and of the district school board, and more particularly what are the rights of the people of Beaver Dam school district in the premises.

While you have, in my opinion, the right, and are charged with the duty of ruling upon the question presented by this petition and the accompanying record, that right and duty exist because the action and order of the said school trustee electoral board in the premises were *ultra vires* and void.

Had that board confined its action to the limits of its appellate jurisdiction no appeal would have laid from its decision to you, or to any other official or tribunal, for the statute makes its decision of "all questions at issue" upon such appeal final.

Its decision of a question not at issue, or within the scope of its appellate jurisdiction, is not only not such a final decision, but was, as we have seen, a void act and order of that appellate board, and it is, in my judgment, within your province to rule as to what is the effect of such a void act, and what is the status of the public school interests involved.

A similar question has heretofore arisen in a case which arose in Lunenburg county, and was then ruled on by my assistant, Col. Catlett, in my absence, and his opinion, which will be found at pages 50-51 of the report of this office for 1907, is in accord with the conclusions here expressed.

Respectfully submitted,

WILLIAM A. ANDERSON.

RICHMOND, VA., October 10, 1908.

HON. J. D. EGGLESTON, JR.,

*Superintendent of Public Instruction,
Richmond, Virginia.*

DEAR SIR:

Your favor of the 9th, enclosing your correspondence with Judge W. S.

Gooch, agent for the Macmillan Company, in reference to the use of Hyde's Grammars in the schools of the city of Hampton, this instant received.

The question presented is one which it is impossible to answer off-hand.

Hampton is, in form at least, a city under the law, but the act approved January 25, 1908, is a mixed up piece of legislation.

I beg leave to call your attention to the singular provisions of section 15, which seem, in effect, to provide that it shall continue to be an integral part of the county; for by the language of this section the new city is distinctly made and constituted a separate magisterial district and a separate school district of the county in which it is located; and it is further provided that:

"the school trustees and other school officers of such school district, whether elected or appointed, shall bear the same relation to the county schools as that existing before the city is declared to be such. There shall be but one superintendent of schools for such city and the county in which such city is located."

And there are other provisions of this statute which make such new city a city in name and in form, while it continues to be to all intents and purposes a constituent part of the county in which it is situated.

Under these circumstances, I am not prepared to advise that Hampton is a city within the meaning of the order of the State board of education under which Hyde's Grammars were selected for use in the schools of the counties of the State, and Emmerson & Bender's Grammars were selected for use in the schools of the cities of the State.

Indeed, I have not, as yet, come to any definite conclusion upon the subject, and desire to give it further consideration.

In connection with further consideration of the question, I would like to see the exact text of the order adopted by the board in the matter of the selection of these books, and also to have a copy of the contract made with the Macmillan Company and with the D. C. Heath Company.

Very truly yours,

WILLIAM A. ANDERSON.

RICHMOND, VA., *October 17, 1908.*

HON. J. D. EGGLESTON, JR.,

*Superintendent of Public Instruction,
Richmond, Virginia.*

DEAR SIR:

Responding to your favor of the 15th inst, enclosing the letter of Mr. D. C. Pulliam, division superintendent of schools for the city of Manchester, of the 10th instant, addressed to you, which submits the inquiry, whether "the school board of that city can support or partly support a kindergarten school that is not connected with, nor a part of the public school system of that city," I beg leave to say that by section 141 of the Constitution of Virginia it is provided that:

"No appropriation of public funds shall be made to any school or institution of learning not owned or exclusively controlled by the State or some political subdivision thereof."

As I learn from this letter, and from the accompanying letter of Mr. Wm. M. Lipscomb, clerk of the school board of the city of Manchester, the kindergarten school of that city to which this inquiry refers, is controlled by the

"Kindergarten Association," and is supported by tuition fees payable by each pupil in stated sums per month.

I have to say that upon the facts stated here, no part of the public school fund of the city of Manchester can be applied to the support of this kindergarten school, either by way of supplying free fuel and janitor's service, or otherwise.

The public funds of the city of Manchester, which is a political sub-division of the Commonwealth, cannot be appropriated to the support of any kindergarten or other school which is not owned or exclusively controlled by the State or by said city.

I return the letters referred to.

Very truly yours,

WILLIAM A. ANDERSON.

RICHMOND, VA., *October 29, 1908.*

HON. J.D. EGGLESTON, JR.,

*Superintendent of Public Instruction,
Richmond, Virginia.*

MY DEAR MR. EGGLESTON:

As you will see from the 2nd paragraph of the regulations adopted by the State board of education, pursuant to the provisions of section 132 of the Constitution, prescribing the duties of the Superintendent of Public Instruction, it is made the duty of this officer "to determine the true intent and meaning of the school laws and regulations, and to explain to the county superintendents and other school officers the several duties enjoined thereby upon them, and his decision shall be final unless and until reversed by the board of education."

By virtue of the constitutional provision, this regulation has the force and effect of a law.

As is manifest from reading it, the duty of determining the true intent and meaning of the school laws and regulations of the Commonwealth is distinctly devolved upon the Superintendent of Public Instruction. He can, of course, call upon the Attorney General for advice, and it is needless for me to say that it always gives me pleasure to respond to any such request as bes. I can. But, as is evident from the regulation referred to, it is incumbent upon the Superintendent of Public Instruction, with or without the advice of the Attorney General, himself to substantively rule upon every question submitted to him as to the true intent and meaning of the school laws and regulations.

He may adopt the opinion of the Attorney General as his own, and make it his ruling, but to make it his own he *must* adopt it. The responsibility of deciding such questions rests with the Superintendent of Public Instruction, or with the State board of education upon review by that board of any ruling of the Superintendent of Public Instruction.

This letter is suggested by what I infer, from information which has reached me, was the course pursued by your office in reference to the question which arose in regard to the location of the new high school to be erected in Beaver Dam district in Hanover county. I infer from what I have learned that in that case my opinion to you was sent to the local school board. Whether it was adopted by you and made your ruling, or whether you made any decision at all in that case, I am not informed.

Of course, you may assign the advice or opinion of the Attorney General

in support of any ruling that you may make under the regulation above referred to, but in order that there shall be any determination of any such question by any officer authorized to determine the same, it is necessary that you shall decide the question and give your decision upon it.

You may possibly have done this in the case referred to, but I infer from what I have learned that your action in that matter did not amount to a determination of the true intent and meaning of the school law which controls the decision of that matter.

Whenever you make such a determination it is binding upon the local authorities until reversed by the State board of education.

Very truly yours,

WILLIAM A. ANDERSON.

RICHMOND, VA., *October 29, 1908.*

HON. J. D. EGGLESTON, JR.,

*Superintendent of Public Instruction,
Richmond, Virginia.*

DEAR SIR:

Replying to your favor of the 24th instant, enclosing copy of a letter of Miss M. E. Trice to you of the 9th instant (which letter is herewith returned to you) I beg leave to say that:

While the pensions provided for teachers in the public schools by chapter 313 of the acts of 1908 can, by the terms of that act, be awarded only to teachers who have been retired from service in the public schools of the State, I find nothing in the act which expressly or by implication inhibits the persons receiving such pensions from engaging in any other avocation which they may be able to follow.

It cannot be supposed that it was the purpose of the General Assembly to require the recipients of those pensions to live lives of absolute idleness and uselessness. If they are able to do any kind of work other than teaching in the public schools, I think that they are at liberty to do so.

As I understand Miss Trice's letter, she desires to know whether she can render service and take employment as a teacher in a private kindergarten. Such kindergarten would be, as I gather from her letter, in no way connected with the public free school system of the city or of the State.

Under these circumstances, it is clear to my mind that the acceptance of such service by Miss Trice would not affect her right to receive a pension under chapter 313 of the Acts of 1908.

Very truly yours,

WILLIAM A. ANDERSON.

RICHMOND, VA., *October 30, 1908.*

HON. J. D. EGGLESTON, JR.,

*Superintendent of Public Instruction,
Richmond, Virginia.*

DEAR SIR:

The enclosed letter from Mr. James S. Walter, just received, is respectfully referred to you with the following comment, as you alone have the right to rule in the first instance upon the question he submits.

By section 1492 of the Code (Virginia school laws, p. 66) it is provided that:

"The public free schools shall be free to all persons between the ages of seven and twenty years residing within the school district."

This seems to limit the right of children to enter the public schools, to the age of seven years; and I do not find any provision in the Constitution or the laws for the admission of children below seven years of age into the public schools.

It would seem, therefore, that a child cannot enter the public schools, under the laws, until he has reached the age of seven years.

As to a pupil over twenty years of age, no matter when he reaches his twentieth year, I would say that by the provisions of section 1494 of the Code (Virginia school laws, p. 67.), such pupil cannot be allowed to attend the public schools without the consent of the district school board, and the prepayment of the prescribed tuition fees,

Very truly yours,

WILLIAM A. ANDERSON.

RICHMOND, VA., *October 29, 1908.*

In re: Application of C. Y. Chapman, of Wise county, for a pension.

R. C. STEARNES, Esq.,

*Secretary State Board of Education,
Richmond, Virginia.*

DEAR SIR:

In reference to the application of Mr C. Y. Chapman for a pension, referred to me by your letter of the 22nd instant, I beg leave to say that I have examined the correspondence and papers enclosed in that letter.

Under the act providing pensions for school teachers (chapter 313 of the Acts of 1908) as construed by the State board of education, no pension can be allowed to any existing applicant, unless his application therefor was filed during the school year ending July 31, 1908.

If the letters of Mr. C. Y. Chapman to you, dated respectively June 6 and June 18, 1908, can be accepted and regarded as an application for a pension under the act referred to, then I think his right to a pension could be recognized by the board, and a pension paid to him accordingly.

I am inclined to think that under the circumstances of this case, those letters should be accepted and treated by the board as an application for a pension, as it is apparent from reading them that they were intended by Mr. Chapman as a declaration on his part of a desire to receive such pension, and to avail himself of the act of the General Assembly for that purpose; though it is difficult to understand why he rested upon those letters and did not give his diligent attention to the matter, after receiving your letters in regard to the matter, and make a formal application during the month of July.

The matter, however, is one rather for the executive discretion of the State board of education, and which I think that board should pass upon positively one way or the other before the pension can be paid.

I return the papers you sent me to you.

Very truly yours,

WILLIAM A. ANDERSON.

To the Auditor of Public Accounts.RICHMOND, VA., *December 13, 1907.*

COL. MORTON MARYE,
Auditor of Public Accounts,
Richmond, Va.

MY DEAR SIR:

Your inquiry as to your authority to pay an account against the Commonwealth presented by Mr. T. H. Dickinson, sheriff of Prince Edward county, for expenses incurred by him in going to Ashville, N. C., without a requisition from the Governor, and bringing to this State for trial one Otis Taylor, charged with a felony, and subsequently convicted thereof, has been received.

In reply thereto I beg leave to repeat, what I have heretofore said to you in person, that in my opinion you have no authority to pay such claim. Charges by officers for services rendered, and expenses incurred in criminal cases, must be under authority of legal process, which it is the duty of an officer to execute, or which he is authorized by law to execute. In this case, it seems that the accused was indicted for felony in Prince Edward county, and not being in custody, a *capias* was issued by the court and placed in the Sheriff's hands for his arrest. This process the sheriff could have executed anywhere in this State. but it gave him no authority *to go out of the State* for the accused, even though he was willing to come, and did come with the officer, without a requisition from the Governor.

It seems to me, therefore, that the claim for the expense thus incurred cannot be legally allowed and paid out of the State treasury, although the Commonwealth has been saved expense, and the claim is ever so meritorious, as it appears to be in this case.

I would call your attention to a letter written by the Attorney General to the Governor, on April 22, 1906, found in the report of Attorney General for 1906, on page 30, a copy of which I think was sent you at that time. The occasion for this opinion, as I now recall it, was the rejection of a similar claim by you; and the question considered was the authority of the Auditor, with the approval of the Governor, to pay it under section 767 of the Code of 1887.

That opinion, it seems to me, covers the case presented here.

I am,

Yours very truly,

ROBERT CATLETT,
Assistant to the Attorney General.

RICHMOND, VA., *December 20, 1907.*

COL. MORTON MARYE,
Auditor of Public Accounts,
Richmond, Va.

MY DEAR SIR:

Replying to your inquiry as to the claim presented by H. E. Strudwick, for refunding a part of the license tax paid by him as a liquor dealer, based upon the certificate of the clerk of Clarke county, made under section 587b, of the Code of 1904 (act of March 14, 1904), I beg leave to say, that I am of opinion that the ninety days allowed a dealer in liquors to dispose of his stock, after the adoption of local option, must be deducted from the time the license runs, after an election has been held, and license for the sale of liquor prohibited. In other words,

a license is not revoked by operation of law until the expiration of ninety days, from the day the election is held. If the dealer stops business within the ninety days following such election, he *does so voluntarily*; but he is not deprived of his license by law until the end of that time, and he is only entitled to a rebate for the time *he is deprived of his license by operation of law*. Applying this rule to the case presented, Mr. Strudwick is entitled to a rebate for one and a half months, instead of for four and one half, as certified by the clerk.

I am,

Very truly yours,

ROBERT CATLETT,
Assisant to the Attorney General.

RICHMOND, VA., April 27, 1908.

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

MY DEAR SIR:

At the request of Mr. W. R. Parr, of your office, I beg leave to repeat in writing what I have repeatedly stated to you orally as to the manner in which a citizen of Virginia assessable with a capitation tax for some previous year, but who has not been assessed with such tax, may pay the same so as to qualify him to vote.

The proper course for him to pursue is plainly indicated by section 508 of the code.

By that section, it is made the duty of every commissioner of the revenue to assess any *person*, or any property, or income, or salary, which he may ascertain not to have been assessed for any cause with any taxes for any year, with such omitted tax or taxes, with interest added thereto unless the same were omitted by no fault of the person charged with the taxes.

Upon being informed that any person has not been assessed with any capitation taxes with which such person was assessable, it would, of course, be the duty of the commissioner of the revenue to assess such person with such omitted taxes.

And so, if a citizen informs a commissioner of the revenue that he has not been assessed with any capitation tax for any previous year, with which such citizen was legally assessable, it would be the duty of the commissioner of the revenue at once to assess such person with such omitted tax or taxes for the current year. If the commissioner should refuse to assess him, the citizen could compel him to assess him by obtaining a mandamus from any court having jurisdiction.

Upon being so assessed, such person should obtain from the commissioner of the revenue who has so assessed him a certified copy of such assessment showing with what omitted poll taxes such citizen has been so assessed, and the amount thereof; and on taking such copy or certificate of such assessment to the treasurer, the treasurer should receive the same at once, and give the voter a receipt therefor; and if paid six months before a general election in the county or city of such treasurer, such voter's name should be placed by the treasurer upon the list which the treasurer is required to certify to the clerk under section 38 of the Constitution.

Very truly yours,

WILLIAM A. ANDERSON.

RICHMOND, VA., June 17, 1908.

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

MY DEAR SIR:

Yours of this instant, enclosing form of warrant submitted by the Dairy and Food Commissioner, has been received.

In reply to your inquiry as to the form and sufficiency of this warrant, I beg leave to say that I am of opinion that it is in proper form, and when signed by the Dairy and Food Commissioner should be paid by you out of the appropriation made to carry into effect the law creating a Dairy and Food Commissioner.

The act of March 11, 1908, concerning the appointment of a Dairy and Food Commissioner provides that:

"The salaries and actual and necessary expenses of the said commissioner, deputy commissioner and assistants, in the performance of their official duties, shall be audited by the State board of agriculture and immigration, and paid upon warrants issued by the Dairy and Food Commissioner upon the State Auditor."

I do not think that it was the intention of the General Assembly to require the audit of such claims by the board of agriculture as precedent to the payment thereof. It would be impossible for the board of agriculture to audit all of these expenditures before payment thereof was actually made; and I am sure that the true meaning of the said law is that such expenditures should be audited by the board of agriculture after payment.

I am of opinion, therefore, that you are fully warranted in paying the salaries and expenses of the Dairy and Food Commissioner, and of his department, on warrants signed by him as in the form submitted, without evidence that such expenditures have been audited or approved by the board of agriculture and immigration.

Very truly yours,

ROBERT CATLETT,
Assistant to the Attorney General.

RICHMOND, VA., September 5, 1908.

COL. MORTON MARYE,
Auditor of Public Accounts,
Richmond, Va.

MY DEAR SIR:

Replying to your inquiry of this instant, I beg to say that, by section 4087 of the Code, a judgment in favor of the Commonwealth for costs in a criminal case, is collectable by the same proceeding, and in the same manner, as a judgment for a fine.

By the terms of section 744, and the sections hereinafter mentioned, the mode of issuing, levying and enforcing the collection of such an execution, is prescribed by sections 687 to 701, of the Code.

If the execution cannot be levied by the officer in whose hands it is placed, because of a prior incumbrance on the land, he should make the return prescribed by section 701 of the Code, which provides specifically for that contingency.

I would suggest also that the commonwealth's attorney of the proper county see that the judgment is docketed on the judgment lien book of his county.

Unless the judgment is promptly paid, a suit can be brought by the Commonwealth in the circuit court of the city of Richmond to collect it, or you may appoint the commonwealth's attorney of the county in which the judgment is recovered as the agent of the Commonwealth to collect it under section 703, and to prosecute a chancery suit for that purpose in the circuit court of that county.

Very truly yours,

WILLIAM A. ANDERSON.

RICHMOND, VA., *September, 30, 1908.*

HON. MORTON MARYE,

*Auditor of Public Accounts,
Richmond, Virginia.*

MY DEAR SIR:

Your inquiry as to the proper tax to be paid on the recordation of the deed of lease from the Alleghany Ore and Iron Company to Taylor and Parrish, submitted in your favor of the 28th instant, has been carefully considered as soon as I could give the matter my attention.

The question is a very important one, not only because of the amount of the public revenue, but on account of the private interest involved in its decision.

Prior to April 3, 1872, the only tax imposed on the recordation of writings was \$1.00, and was limited to contracts relating to real estate, whether it be a deed or not. See Acts of 1865-6 and 1866-7, p. 863.

This was first changed by the revenue law approved April 3, 1872, Acts of 1871-2, p. 475, section 13 of which provides as follows:

"On every deed not exempt by law admitted to record, and on every contract relating to real estate, whether it be a deed or not, which is admitted to record, the tax shall be one dollar, when the consideration of such deed or contract does not exceed one thousand dollars; and where the consideration of the deed or value of the property conveyed shall exceed one thousand dollars, an additional tax of ten cents on every hundred dollars, or fraction of one hundred dollars, of such consideration or the value of the property in excess of one thousand dollars."

And for the purposes of this inquiry, this remained the law until the passage of the revenue law approved April 16, 1903, Acts of 1902-3-4, p. 161, amending section 13 of that act so as to impose the minimum tax on the recordation of contracts relating to personal property, as well as contracts relating to real estate.

The minimum tax had been already reduced by a previous amendment from \$1.00 to 50 cents.

The law as it at present stands, and as it has stood for many years, provides that;

"where the consideration of the deed or value of the property conveyed exceeds three hundred dollars, and does not exceed one thousand dollars, the tax shall be one dollar; and where the same exceeds one thousand dollars, an additional tax of ten cents on every hundred dollars, or fraction of one hundred dollars, of such consideration, of the value of the property in excess of one thousand dollars;"

The question you submit is; Whether this graduated tax should be imposed

upon a contract or deed of lease of real estate, or a contract or deed for the hire of personal property.

After carefully considering the matter, I am strongly inclined to the view that this graduated tax was not intended to be imposed upon the recordation of a contract for the lease of lands, or for the hire of personal property.

It certainly would not apply to such a contract if it is not under seal, and therefore not a deed.

After considering the provisions of the various acts which have been passed by the General Assembly upon this subject from 1867 to the present time, I am not at all prepared to say that this graduated tax upon the recordation of a "deed" was, in view of the language used from the time that this graduated tax was first provided for in the statutes, designed to apply to any deed except the deed of conveyance, formerly of real estate, and now to deeds of conveyance either of real estate or of personal property.

The measure of this graduated tax, it will be observed, is determined, in the language of the statute, by either the "consideration of the deed or value of the property conveyed." That has always been construed by you (and in this construction you have been supported by the advice of this office) to require that the tax shall be fixed by the amount of the consideration specified in the deed, or if that be less than the value of the property conveyed, that then the value of the property conveyed should determine what the recordation fee should be.

This construction seems to assume what may be at least plausibly contended to be the effect of the language used, that the deed referred to thereby is a deed *of conveyance*.

The language of the statute is by no means clear upon the subject, however and I would hesitate to advise you to rule that only the minimum tax could be collected upon a deed or contract of lease of lands, or for the hire of personal property, were it not for the fact that, as I am informed, it has for years been the practice of experienced and accomplished clerks of courts of recordation of the Commonwealth, never to charge anything but the minimum tax upon the recordation of such instruments. Such, I learn, has been the practice for many years in the clerk's office of the county of Henrico, and in the clerk's office of the chancery court of the city of Richmond, and my information is that a similar practice has prevailed in other counties.

A doctrine well established by the decision of the courts is, that great weight will be attached to the construction given to a statute in practice by the administrative and executive officers of the State charged with its execution, and acquiesced in by the people and by the General Assembly, through a long course of years.

Under these circumstances, I feel that you would be justified in instructing the clerk of Alleghany county to charge the minimum tax upon the recordation of the lease referred to.

Very truly yours,

WILLIAM A. ANDERSON.

RICHMOND, VA., October 25, 1908.

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

MY DEAR SIR:

In reply to your inquiry relative to the question presented by the letter of C. A. Sinclair, mayor of the town of Manassas, I beg leave to say that I am of opinion that the fines of \$50.00 each imposed by the said mayor on Lynch and Goodwin for selling liquor to minors, were properly paid into the State treasury by the clerk of the county of Prince William, and that the same should not and cannot be refunded by you to the town of Manassas.

I assume from Mr. Sinclair's letter, that these fines were imposed by the mayor of the said town, acting as *ex officio* justice of the peace, for violation of the State law prohibiting the sale of liquors to minors.

The charter of the town of Manassas (section 14) does not give to the council of the said town authority to legislate on this subject, or to pass an ordinance making this an offence against the town; and if the council has passed any such ordinance it is an *ultra vires* act. It is true that section 10 of the charter of the town provides that:

"When by the provisions of this act, or the general laws of this State, the council have authority to pass ordinances on any subject, they may prescribe any penalty not exceeding one hundred dollars, and may imprison offenders in the county jail for a term not exceeding ninety days, which fines and costs shall be prosecuted in the name of the town of Manassas, or the offenders may be compelled to work on the streets or other public improvements of the town, until the fine and costs shall be paid."

As I have said before, I do not think that the council of the said town, under either the provisions of its charter or the general law, have authority to pass ordinances making this offence an offence against the town so as to impose penalties therefor, and collect and receive the same.

I am further of opinion that section 27 of the charter of the town was intended to apply only to fines imposed for violations of town ordinances passed by legal authority, and not to fines imposed by the mayor for violations of State laws. You will note that section 27 applies in express terms to "all fines *heretofore* imposed," and "which may hereafter be imposed by the mayor, shall be for the benefit of the said town."

It is clear to me that if the legislature intended by this section to give to the town fines for violations of State laws, imposed before the passage of the act, the said section is unconstitutional under section 134 of the Constitution, which provides that, "The General Assembly shall set apart as a permanent literary fund * * * * all fines collected for offenses committed against the State;" and I am inclined to the further opinion that the said section is also repugnant to this section of the Constitution as to fines imposed for violations of the State laws even after the passage of the said charter.

For the reasons above briefly given, I am of opinion that the State is entitled to the fines referred to in Mr. Sinclair's letter, and that the same cannot be refunded out of the public treasury.

But should I be mistaken in this view, and should the town be entitled to

the fines, there is no provision of law by which you can refund the same to the town. The legislature alone can give such authority.

I am,

Very truly yours,

ROBERT CATLETT,
Assistant to the Attorney General.

RICHMOND, VA., October 27, 1908.

COL. MORTON MARYE,
*Auditor of Public Accounts,
Richmond, Virginia.*

DEAR SIR:

The accounts of Thomas Holbrook, James Poe, Ben Taylor, and Mahala Moss for the keeping of certain lunatics, certified by the clerk of Grayson county as having been allowed by the court, referred to this office, have been examined.

It may be gravely questioned whether section 1693 of the Code, as amended by the act of March 7, 1900, (Acts of 1900, p. 1044), has not been repealed by implication, by the act of April 7, 1903, (Acts of 1902-3-4, p. 121), and particularly by the enactment of section 1679 as now expressed in that act, and which is now the law of this State upon that subject (Acts of 1902-3-4, p. 128); but whether this be so or not, these accounts and the certificate accompanying the same, do not comply with the requirements of the statute.

The statute as embodied in Section 1693 of the act of March 7, 1900, is plainly intended to provide for a *temporary* emergency only, and not for any permanent support of lunatics under contracts of the kind authorized in that act; and then only until it was practicable to move them to some one of the State hospitals.

The order of the court, as certified, does not show that all three of the asylums for white lunatics were so crowded that these lunatics could not be received into any of them.

Taking the whole of chapter 75 of the Code, it was evidently the purpose of the legislation upon that subject, that lunatics should be removed to some one of the State hospitals as soon as practicable after their insanity had been determined in the manner prescribed by law, and not that they should be quartered or let out to board permanently in the counties in which they reside.

The present law as found in chapter 75 of the Code of 1904, devolves important duties upon the Commissioner of Hospitals in regard to this matter, as will be seen from sections 1679 and 1680 of the Code, as amended by the act of 1902-3-4, p. 121.

I would suggest that these accounts be referred to Hon. J. M. Bauserman, Commissioner of Hospitals, to report as to the status of those persons, and the facts as to the inability to find a place for them in any of the white hospitals of the State during the past four months.

Very truly yours,

WILLIAM A. ANDERSON.

To the Second Auditor.RICHMOND, VA., *November 16, 1907.*

HON. JOHN G. DEW,
*Second Auditor of Virginia,
Richmond, Virginia.*

DEAR SIR:

I understand from you that one or more national banks in the Commonwealth desire to effect a loan of some thousands of dollars of the Virginia State bonds belonging to the literary fund of the Commonwealth, under a contract, with some solvent trust or guarantee company as surety for its faithful performance, by which contract the bank receiving said Virginia bonds will bind itself to return the same, or bonds of the same denomination and description, at any time upon 30 days notice, and to pay into the literary fund all interest accruing on said bonds while in its possession, and in addition thereto, to pay into the literary fund at the rate of $1\frac{1}{2}$ per cent. per annum, for the use of said bonds.

You desire to know of me whether, in my opinion, the State board of education, or you acting by the authority of, and under the direction of said board, would have authority under the law to enter into an arrangement and contract of the character indicated.

The duties and powers of the State board of education, and of the Second Auditor, in regard to the investment and custody of the literary fund, are defined by the 11th clause of section 1433 of the Code, as amended by the act in force June 13, 1906; and the powers of that board, and of the Second Auditor, in reference to such investment and custody, are limited by the terms of that statute.

The only authority conferred upon the board by that act is:

"To invest the capital and unappropriated income of the literary fund in bonds of this State, or of the United States, or in bonds of railroad companies secured by first mortgage whose market value for six months preceeding the investment has not been less than ninety cents on the dollar, or in bonds made by the district school boards of the different school districts in this State, constituting a lien on the district funds in the different districts, secured by deed of trust on the school property in said districts in which said bonds are invested. The said board may call in any such investment, or any heretofore made, and reinvest the same as aforesaid whenever deemed proper for the preservation, security, or improvement of the said fund. * * * * * All securities for money belonging to the literary fund shall be deposited with the Second Auditor for safe keeping, who shall return with his annual report a list thereof with a statement of their value."

Note.—In addition to the above subjects of investment, the State board of education is authorized by chapter 252 of the Acts of 1906, to make investments out of the literary fund in bonds of school districts, for the purpose of erecting school houses in such districts, on the terms and conditions set forth in that act.

In response to your inquiry, I have to say, that I do not find any authority conferred by the statutes of the Commonwealth upon the State board of education to make a loan of any of the securities in which the literary fund is

invested upon any terms or conditions whatever, however remunerative any such contract might promise to be.

I herewith return to you the papers which you submitted to me.

Very truly yours,

WILLIAM A. ANDERSON.

To the State Corporation Commission.

RICHMOND, VA., *May 15, 1908.*

Subject: In the matter of the application of T. C. Bowen, Esq., commonwealth's attorney of Tazewell county, for compensation for services rendered in connection with the correction of the assessment of mineral lands in Tazewell county.

HON. WM. F. RHEA,
*State Corporation Commission,
Richmond, Va.*

MY DEAR SIR:

Your favor of the 14th instant, in reference to the above matter, has just reached me.

I have no doubt that Mr. Bowen has rendered very valuable services on behalf of the Commonwealth, and of the county of Tazewell, in connection with the proceedings for the correction of the assessment of mineral lands in Tazewell county, instituted and conducted by him at the instance of the State Corporation Commission acting under section 437-8 of this Code.

I happen to know something of the character of the services he rendered in an important case which was carried to the Supreme Court of Appeals from that county.

Unfortunately, however, I know of no statute which authorizes any compensation to be made to the commonwealth's attorneys for any such services. This is not an exceptional case, for in a number of instances no provision is made by law for the compensation of the commonwealth's attorneys and other officers of the State for special services to the Commonwealth, often involving great responsibility and great labor.

The general rule, of course, is that no money can be paid out of the State treasury to anyone, upon any account whatever, whether for services or otherwise, unless such payment has been authorized by law.

The General Assembly seems to have been particularly careful to prevent any possible misunderstanding as to the application of this rule to commonwealth's attorneys, for there is a special inhibition in the statutes against paying them anything, unless expressly sanctioned by law.

Section 4089 of the Code provides that:

"No fee to an attorney for the Commonwealth shall be payable out of the treasury, unless it is expressly so provided."

I return to you the letter of Mr. Bowen and accompanying affidavit, and remain,

Very truly yours,

WILLIAM A. ANDERSON.

RICHMOND, VA., *March 31, 1908.*

R. T. WILSON, Esq.,
*Clerk of the Corporation Commission,
Richmond, Virginia.*

MY DEAR SIR:

Yours of this instant, asking for my opinion as to the power of the Corporation Commission to grant a charter of incorporation to the Bank of Fluvanna, incorporated, has been received.

I note that the application for this charter, fixes the minimum capital stock at \$5,000.00, and I also note that the act of assembly, approved on March 12, 1908, provides that:

"after the passage of this act the State Corporation Commission shall not have the power to issue a charter to a bank, savings bank, trust company or other institution of like kind, the minimum capital stock of which is stated in its application for such charter to be less than ten thousand dollars."

This act has no emergency clause.

I am of opinion that the Corporation Commission HAS the power to grant this charter, and similar charters, until the act approved on March 12, 1908, quoted above, becomes effective, to-wit; ninety days after the final adjournment of the legislature.

To construe the said act otherwise, would be to give effect to a law at a time when by the express terms of the Constitution, it shall not be effective. I am therefore of the opinion expressed above.

I am,

Very truly yours,

WILLIAM A. ANDERSON.

RICHMOND, VA., *June 22, 1908.*

Subject: As to right of the State to collect a franchise tax from receiver of a bankrupt corporation.

R. T. WILSON, Esq.,
*Clerk State Corporation Commission,
Richmond, Virginia.*

DEAR SIR:

Your favor of the 19th instant, enclosing copy of the letter of Mr. George S. Bernard, referee, to you, dated the 17th instant, has been received.

As I understand from this correspondence, the Lawrenceville Manufacturing Company was adjudicated a bankrupt on the 27th day of March, 1907.

Its liability for the franchise tax prescribed by the Constitution and laws of Virginia for the then current tax year had already accrued, and under section 64 of the United States bankrupt law constituted a preferred claim against the bankrupt company and its property.

As I understand the provisions of the United States bankrupt law, an adjudication in bankruptcy does not operate as a dissolution of a bankrupt company. Such corporation may be discharged from its debts, except taxes and the other liabilities mentioned in section 17 of the bankrupt law, and thereafter resume and conduct its business under its charter.

The effect of an adjudication in bankruptcy is to set apart and assign all of the property of the bankrupt for the payment of the debts existing at the time of such adjudication, in the order prescribed by the United States statute, or determined by law, after paying the costs and charges of the proceedings in bankruptcy.

The franchise tax assessed against this corporation prior to the 27th day of March, 1907, the date of its adjudication as a bankrupt, constituted a prior charge upon the assets of the company,

Any franchise taxes chargeable against such company after its adjudication in bankruptcy would not be a charge upon the assets of such company in the hands of the receiver or trustee thereof.

The franchise tax and registration fee accruing after its adjudication in bankruptcy should be regularly assessed or charged up against such company, until the company shall either be dissolved or until its charter shall be annulled by reason of the non-payment of such registration fee for two successive years, in accordance with the provisions of section 41 of the revenue law of Virginia. But there would be no claim against the property and assets of the bankrupt company in the hands of the trustee or receiver thereof for any registration fee or franchise tax accruing subsequently to the adjudication of bankruptcy.

The liability of such company for such franchise tax would not be discharged by its bankruptcy, and any property or assets which the company should acquire after its discharge in bankruptcy would be liable for the payment of such franchise tax.

As to the registration fee which accrued before the adjudication in bankruptcy:

I do not find that the liability of the bankrupt company on account of the registration fee prescribed by the Constitution and laws of Virginia is given any priority by the bankrupt law of the United States as a charge against the assets and property of such company; nor do I find that any priority or any lien is given by the laws of Virginia for such registration fee. The default of the company for two successive years in the payment of such registration fee, whether it be prior or subsequent to its bankruptcy, will, by section 41 of the Virginia revenue law, when such failure shall have continued for ninety days after the expiration of such two years, operate as a revocation and annulment of the charter of such corporation.

While the claim of the Commonwealth against a bankrupt corporation on account of an unpaid registration fee, may not be a prior charge upon the property and assets of the company, it is possible that the receiver or trustee of such company might be authorized by the United States court to pay such registration fee, in order to preserve the charter of the company from forfeiture.

Very truly yours,

WILLIAM A. ANDERSON.

RICHMOND, VA., August 10, 1908.

R. T. WILSON, ESQ.,
Clerk Corporation Commission,
Richmond, Virginia.

MY DEAR SIR:

Yours of the 6th instant, addressed to the Attorney General, has been received.

In the absence of the Attorney General, I beg leave to say, that I have carefully considered your inquiry as to "what period is covered by the assessment of property tax made against public service corporations based upon the reports made by these corporations to the Commission as of June 30, 1907; the payment of the tax so assessed being required to be paid into the treasury, on or before the first day of December following," and I have reached the conclusion that the tax year for this class of corporations is from June 30th of one year to June 30th of the next year, and NOT the calendar year.

In other words the tax assessed in 1907, based on the reports made as of June 30th of 1907, covers the period from June 30, 1907, to June 30, 1908.

The tax law does not make this as clear as it should be; but tracing back and finding that the tax law was passed in April, 1903; the first reports made to the Commission as of June 30, 1903, and the first assessment made by it paid in that year, I reached the conclusion that the tax first assessed covered the period between June 30, 1903, and June 30, 1904, and so on to the present time.

I am,

Very truly yours,

ROBERT CATLETT,

Assistant to the Attorney General.

To the Superintendent of the Penitentiary.

RICHMOND, VA., *November 29, 1907.*

CAPTAIN E. F. MORGAN.

*Superintendent State Penitentiary,
Richmond, Virginia.*

DEAR SIR:

In response to the inquiry you have just submitted to me, in connection with the letter of Dr. W. F. Drewry, superintendent of the Central State Hospital to you of the 25th instant, in regard to George McGraw, a convict in the penitentiary who became insane, and was sent to said hospital as required by the statute, I beg leave to advise you that there is no provision made by the statutes of this State as they now stand, for the confinement of a dangerous lunatic, or any other lunatic in the penitentiary of the State, except temporarily, or until he can be transferred to the appropriate insane hospital.

Section 4123 of the Code distinctly provides for the transfer of any convict who may be found to be insane, to a State hospital, in the manner therein prescribed.

Its provisions are in some respects apparently in conflict with the provisions of section 1682; but the statute as embodied in section 4123 of Pollard's Code is the last enactment of the legislature upon the subject, and to the extent that it is in conflict with section 1682, or any previous enactment, being the last expression of the will of the General Assembly, it will prevail.

Very truly yours,

WILLIAM A. ANDERSON.

RICHMOND, VA., April 30, 1908.

MAJOR E. F. MORGAN,
*Superintendent of Penitentiary,
Richmond, Virginia.*

DEAR SIR:

Yours of the 27th instant duly received.

Section 4075 of the Code seems to be still in force and unaffected by any subsequent legislation which I have been able to find, in so far as it relates to prisoners in jail.

I have not yet seen all of the acts of 1908, nor have the sheet acts which I have received been indexed; but after a careful examination of those sheet acts down to and including page 688, I have been unable to find any act which authorizes the substitution of a sentence to work on the roads *for a jail sentence*.

The act approved February 8, 1908, Acts of 1908, p. 35, authorizes a person convicted of a felony, for a term not exceeding five years, to be sentenced to work on the public roads instead of being sentenced to the penitentiary.

The act approved March 6, 1906, Acts of 1906, chapter 74, p. 74, is still in force, but that act does not provide for any sentence to work on public roads "in lieu of a jail sentence." It merely empowers the judges of the circuit and corporation courts, upon your request, to order persons confined in jail and liable to work on chain gangs or on the public roads, to be delivered upon your order to work in the nearest State convict road force needing such convicts. Such prisoners in jail must have been already sentenced to imprisonment in jail.

But neither this act of March 6, 1906, nor any other act yet furnished to me, provides for a sentence by any court of a person convicted of a misdemeanor to work on public roads in lieu of a jail sentence.

The act approved February 8, 1908, Acts of 1908, chapter 28, p. 35, amending the act approved February 27, 1906, does authorize a direct sentence by a court to hard labor on the public roads for a period of time not exceeding the term of confinement in the penitentiary, in lieu of confinement in the penitentiary, provided the punishment fixed does not exceed five years in the penitentiary; but that, of course, only applies to persons who have been convicted of felonies.

Persons confined in jail for the non-payment of a fine may, under certain circumstances, be ordered to work upon the public roads under the act of March 6, 1906, referred to above.

Under section 4075 of the Code, such persons cannot be confined in jail, for more than ten days where the fine is less than \$5.00, more than twenty days where it is less than \$10.00, more than one month where it is less than \$25.00 more than two months where it is less than \$50.00, or more than three months in any case.

It would be a violent supposition to conclude that the General Assembly intended, by the act of March 14, 1908, Acts of 1908, chapter 354, p. 628, to repeal section 4075 of the Code, and to require a man who is sent to jail for the failure to pay a fine, to work on the public roads for six months, if that fine was not sooner paid, when section 4075 of the Code *limits his confinement in jail to three months*.

If the legislature had intended to make such a radical amendment in section 4075 of the Code, it could have accomplished its purpose unmistakably,

and much more satisfactorily, by amending section 4075 of the Code: But that section is allowed to stand, and this act approved March 14, 1908, is passed which seems to allow a man sent to jail for the non-payment of a fine to be kept at hard work on the public roads for six months, when under the law as it then stood, and now stands, he could not be kept in jail for more than three months.

As to what is the effect of this conflict of enactments, the courts only can decide.

Whether the courts will hold that a man cannot be kept at hard labor on the public roads for a longer time than he could be kept in confinement in jail, if not ordered to work on the roads, I am unable to say.

But as indicated, the question is one which the courts alone can settle, unless the General Assembly shall get rid of it by farther legislation.

Very truly yours,

WILLIAM A. ANDERSON.

RICHMOND, VA., *September 8, 1908.*

CAPTAIN E. F. MORGAN,

*Superintendent of the State Penitentiary,
Richmond, Virginia.*

DEAR SIR:

I beg leave to submit the following in response to the inquiries submitted to me by you today:

1. As to whether the authorities of the penitentiary would be authorized to keep a night watch over prisoners under sentence of death and confined in the penitentiary pending their execution under the provisions of the act approved March 16, 1908, Acts of 1908, p. 685, changing "the mode of execution so that the death sentence shall be by electricity," and shall be executed in the penitentiary;

This act places a felon condemned to death in your custody as Superintendent of the Penitentiary. It must be read in the light of the other statutes in regard to the penitentiary.

So construed, it plainly requires that such prisoner shall, while in your custody, be safely and securely guarded so as to prevent the possibility of his escape.

It has been heretofore, when prisoners were under sentence of death in the county jails, the invariable practice, as I am informed, from time immemorial, to establish what is known as a death watch over such prisoners, until the sentence of death upon them should be executed.

This would indicate that it was deemed necessary by the authorities of the State, in order to provide for the secure custody of such a criminal, to establish such an extraordinary guard over him.

Under the circumstances, it seems to me not only to be proper, but to be the duty of the authorities of the penitentiary to provide an adequate guard to prevent the escape of any felon under sentence of death while in your custody under the law, and if the establishment of a death watch is considered by you and the penitentiary board to be a necessary precaution, such a watch should be established.

2. As to the circumstances under which you may call upon the sheriff of any county or the sergeant of any corporation to deliver such felon to your authorized agent or guard:

Section 3 of the act approved March 16, 1908, providing for the removal to the penitentiary of felons condemned to death, provides that:

"the Superintendent of the Penitentiary shall cause to be conveyed to the said penitentiary such condemned felon in the manner now prescribed by law for the conveyance of felons sentenced to confinement in the penitentiary" * * * * *

The act of 1895-6, published at section 4120-a of the Code of 1904, provides that:

"* * * * * the Superintendent (of the Penitentiary) may in any proper case require the sheriff of any county or the sergeant of any corporation to deliver such convict at a railway station designated by the Superintendent, to be there delivered to his authorized agent" * * * * *

It is manifest from the provisions of these statutes, that the Superintendent of the Penitentiary is given the same power and discretion, and that the same duties are imposed upon the sheriffs of counties and the sergeants of corporations in reference to the removal of felons condemned to death from the county jails to a railway station and there delivered to the agent of the Superintendent of the Penitentiary, which are conferred and imposed by the said act of 1895-6, in reference to other convicts sentenced to the penitentiary.

It seems to me, therefore, that you may, in your discretion, in a proper case require the sheriff of any county or the sergeant of any corporation to deliver a felon sentenced to death, and who is to be removed to the penitentiary, at such railway station as you may designate.

Very respectfully yours,

WILLIAM A. ANDERSON.

To the State Board of Charities and Corrections.

LEXINGTON, VA., August 11, 1908.

DR. GEORGE H. DENNY,

*Chairman State Board of Charities and Corrections,
Lexington, Virginia.*

MY DEAR SIR:

Your favor of the 4th instant was received on my return here several days since.

After careful examination of the act establishing the Board of Charities and Corrections, printed as chapter 276 of the Acts of 1908, I regret to say that I am unable to find any provision in that act which authorizes or requires the expenses of printing to be done for your board, to be paid for out of the general appropriation made to defray the costs of public printing.

It is true that it is provided by section 15 that:

"the salaries of the secretary, assistant secretary, and other necessary expenses incurred by the said board shall be paid out of the public treasury, upon the order of the chairman, and all necessary printing for said board shall be done by and under the direction of the Superintendent of Public Printing, upon the order of the chairman."

But by section 6 it is provided that:

"6. The sum of five thousand dollars annually, or so much thereof as may be necessary, is hereby appropriated for the maintenance of the office of said board, including the salaries and traveling expenses of the members of the board, its paid employees, and other expenses necessary to carry out the purposes of this act, to be paid out of any funds in the treasury of the Commonwealth not otherwise appropriated."

It is evident from reading this section, that it was the purpose of the General Assembly that the expenses of the board upon all accounts should not exceed \$5,000.00 per annum, as that is the only sum which has been appropriated to cover such expenses.

It is to be hoped that the General Assembly will hereafter make adequate appropriations for the efficient conduct of the important work entrusted to your board. For the present, the only provision made to cover the expenses incurred in discharging the duties devolved upon it, is the appropriation of \$5,000.00 per annum.

With my cordial regards,

Very sincerely yours,

WILLIAM A. ANDERSON.

RICHMOND, VA., *September 18, 1908.*

J. T. MASTIN, Esq.,

*Secretary State Board of Charities and Corrections,
Richmond, Virginia.*

DEAR SIR:

Your favor of the 17th this instant received.

Your inquiry is: Whether section 14 of chapter 276 of the Acts of 1908 establishing your board and prescribing its powers and duties, applies to institutions and societies which are chartered by the State, but to which the State makes no appropriation?

As will be seen from section 8 of that chapter, the visitorial and advisory powers of your board apply not only to State, county, and municipal, but to private institutions of an eleemosynary, charitable, correctional or reformatory character, or which are for the care, custody or training of the defective, dependent, delinquent or criminal classes.

Your board as a whole, or by a committee of its members, or by its secretary, or assistant secretary, is empowered to inspect and report upon the workings and results of chartered institutions or associations engaged in the care and protection of the homeless, dependent, defective, and delinquent adults or children, and is required to make reports regarding the same, as in section 8 prescribed.

The officers and all other persons in charge of, or connected in any way with, the administration or management of such *public* institutions, are required to furnish to the board, or its committee, secretary, or assistant secretary, or other agents of the board, such information and statistics as may be required, and to allow the board, its committee, or secretary, or assistant secretary, or other agents of the board, full and free access to all inmates and departments of such institutions, and to all their records, for the purposes of this act.

As will be seen from an examination of section 8 and other sections of the act, a distinction is clearly drawn in the act between private and public institutions.

The peremptory requirement that the officers and other persons in charge of, or connected in any way with, the administration or management of public institutions, shall furnish to the board, or its representatives, such information and statistics as may be required, and allow the agents of the board full and free access to all inmates and departments of such institutions, and to their records, for the purposes of the act, is confined to *public* institutions.

While the right of visitation is given to the board as to private institutions, I am not at all prepared to advise you that section 14, and the penalties therein prescribed, apply to the persons in charge of such private institutions.

The affairs of such private eleemosynary institutions are usually, by the terms of their charters, managed by trustees or other officials designated in their charters, and they are corporations whose rights and powers, and the rights and powers of whose officials, are usually prescribed and determined by their charters.

The provisions of a penal statute must plainly and unequivocally apply to a particular person or to a particular case in order to bring such person or such case within its operation.

It is gravely to be questioned whether section 14 applies to, or was intended to apply to, any except public officers, or officers of public institutions, as to whom it would be entirely competent for the State to provide the summary mode of removal prescribed in section 14, though this section was probably not designed to apply to State or other public institutions *in all cases*.

If there is a reasonable doubt as to whether the provisions of this section apply to the persons in charge of private incorporated eleemosynary institutions, that doubt would be sufficient to take them out of the operation of this section.

For illustration: The Retreat for the Sick and the Home for Incurables in the city of Richmond, are each of them private eleemosynary institutions, to which the State makes no appropriation, and which owe nothing whatever to the State, but have been endowed and are sustained by private charity and the philanthropic gifts of individual citizens. Each of these institutions is a corporation having chartered rights, and whose authorities have been vested by the Commonwealth with the power of administering their affairs in the way prescribed in their respective charters. They have no connection whatever with the State, and while the State would doubtless have the power to adopt remedial legislation for the purpose of eradicating or preventing abuses, if abuses existed in the management of such institutions, a statute which would provide for the summary removal of any or all of the officers of these institutions because they failed or refused to answer certain inquiries, or give certain information called for by an agent of your board, would have to be, to say the least, absolutely distinct and explicit and unequivocal in its terms, before it could be construed to be intended to have any such effect.

The question is not free from difficulty, and the foregoing is as definite a response as I can make to it.

Very truly yours,

WILLIAM A. ANDERSON.

To the State Highway Commissioner.RICHMOND, VA., *June 4, 1908.*

CAPTAIN P. ST. J. WILSON,
State Highway Commissioner,
Richmond, Virginia.

DEAR SIR:

The questions submitted in your favor of the 29th ultimo have been considered.

1. The first: As to what counties are entitled to receive aid for permanent bridge building in such counties, being those whose share in the apportionment of the fund for permanent road improvement shall not exceed the sum of \$2,500.00?

That question can't be answered until you come to make the apportionment on the 1st of March next, as the fund to be apportioned will not be available except for the year beginning on that date. The counties entitled to use this money for permanent bridge building will be determined by their status on that date; and what their status will be on that date can only be then ascertained. It will be those counties whose dividend in the apportionment then to be made will not exceed the sum of \$2,500.00. The fund to be then apportioned will, as I understand, be \$250,000.00, and that fund will be divided among all the counties of the State, excluding and excepting such counties as shall at that time be receiving and availing themselves of the State convict road force. If the quota of any particular county in that fund, apportioning the fund in the manner prescribed in the act, shall exceed the sum of \$2,500.00, then such county will not be entitled to receive any share of such apportionment as a contribution made by the State to permanent bridge building in such county.

It would be, of course, premature to attempt to make any apportionment of the fund now, or at any time prior to March 1, 1909, when it will become available, for the reason that it would be impossible to know definitely what counties will be entitled to participate in it. At any rate, it will be impossible to make such apportionment until it can be definitely determined what counties will, at the time that the fund becomes available, be furnished a State convict road force.

2. It is impossible for me to answer your inquiry in reference to the Northwestern Turnpike Company in Frederick county, until I know precisely the relations of that Turnpike Company to the county of Frederick.

Col. Catlett and I have searched the acts in vain to find the statute under which the authorities of Frederick county, as I understand from you, exercise control over that turnpike. Several acts were passed under which they might have acquired control, or, indeed, the county of Frederick the ownership, of the road, but we, of course, will be left entirely to wild conjecture as to which one of those acts was availed of by that county. We have been unable to find any special act upon the subject. There may have been such an act, and yet we might not be able to find it after hours, or even days, of unavailing search, because of the inadequate indexes to the Acts of Assembly. We have searched through all the volumes of the acts during the forty-three years since the close of the war, without finding any which would enable a satisfactory reply to be made to your inquiry.

Very truly yours,

WILLIAM A. ANDERSON.

To the Dairy and Food Commissioner.RICHMOND, VA., *May 22, 1908.*

PROFESSOR WILLIAM D. SAUNDERS,
Dairy and Food Commissioner,
Blacksburg, Virginia.

MY DEAR SIR:

Since our interview yesterday, I have considered more carefully the act concerning the appointment of a Dairy and Food Commissioner, particularly with reference to the provision in the 4th section that:

“The salaries and expenses authorized by this section shall be for the unexpired part of the fiscal year ending nineteen hundred and eight, and each fiscal year thereafter.”

The only fiscal year ending nineteen hundred and eight is the fiscal year which ended on the 28th of February, 1908, before the enactment of this statute. This provision in the act is therefore meaningless.

I do not think it can be construed to authorize the payment of full salaries for a fraction of a year. It is not reasonable to suppose that the General Assembly intended that the salaries of the officers provided for by this act, should be larger for the first year than for subsequent years of their service; but if such was its purpose, it has not been expressed in this language.

I have also gone over the subject with my assistant, Col. Catlett, and he concurs entirely in the views here expressed.

Very truly yours,

WILLIAM A. ANDERSON.

RICHMOND, VA., *July 2, 1908.*

MR. W. D. SAUNDERS,
Dairy and Food Commissioner,
Richmond, Virginia.

MY DEAR SIR:

Your letter of the 26th ultimo, submitting to me the question whether, under the provisions of section 15 of chapter 188 of the Acts of the General Assembly of Virginia of 1908, establishing the office of Dairy and Food Commissioner, and prescribing his duties, wheat bran is to be considered as one of the “concentrated commercial feeding stuffs” which, by the provisions of that act, can only be sold in Virginia by a manufacturer or dealer after complying with the requirements of that act and paying inspection fee of 15 cents a ton as therein prescribed, has been received.

According to popular usage, wheat bran and other mill offal would doubtless not be regarded as “concentrated commercial feeding stuffs”, and but for the fact that the General Assembly has in this act expressly given a most comprehensive definition to those terms, I would not consider that they ought to be construed to embrace bran or other mill offal.

But the General Assembly in paragraph (a) of section 15 has expressly given a definition of those terms as used in the act, as follows:

“(a) The term concentrated commercial feeding stuffs as used in this act shall include linseed meal, cotton seed meal, pea meals, coconut meals, gluten meals, maize foods, starch feeds, mixed sugar, hominy feeds, rice meals, oat feeds, corn and oat feeds, meat meals, dried blood, clover meals, mixed feeds of all kinds, slaughter house waste products; also all condimental stock feeds, patented and proprietary stock foods,

claimed to possess nutritive properties, and all other materials intended for feeding to domestic animals."

As will be seen, this statutory definition of the words "concentrated commercial feeding stuffs" plainly declares that they shall include all of the commodities therein mentioned, "*and all other materials intended for feeding to domestic animals,*" except certain commodities that are expressly excepted from the operation of the act by the language of that paragraph, following that above quoted.

Now bran, is unquestionably material intended for feeding to domestic animals, nor is it mentioned or included among the articles excepted from the provisions of the act.

It follows from this that, taking the act as it stands upon the statute book, it plainly embraces bran as one of the "concentrated commercial feeding stuffs" which cannot be sold or offered for sale for distribution in this State, except upon the terms prescribed in the act.

This would be the conclusion to which I would be constrained to come from a consideration of the language of the act considered by itself; but when we come to consider the history of the act, such a construction is unavoidable.

On inquiry and investigation, I find that section 15 was copied almost verbatim from the law of 1905 of the State of Michigan on this subject, however with this significant difference, that the Michigan law, as will be seen, expressly excepted from its operation, wheat, rye and buckwheat brans and middlings, etc.

Section "(a)" of the Michigan law is as follows:

"(a). The term concentrated commercial feeding stuffs as used in this act shall include linseed meal, cotton seed meal, pea meals, cocoa-nut meals, gluten meals, oil meals, of all kinds gluten feeds, maize feeds, starch feeds, mixed sugar feeds, hominy feeds, rice meals, oat feeds, corn and oat feeds, meat meals, dried blood, clover meals, mixed feeds of all kinds, slaughter house waste products; also all condimental stock foods, patented and proprietary stock foods, claimed to possess nutritive properties and all other materials intended for feeding to domestic animals: Provided, That such feeding stuffs, as defined above, shall not include hays, straws, fodders, ensilage, the whole seeds nor the unmixed meals made directly from the entire grains of wheat, rye, barley, oats, flax-seed, maize, buckwheat, wet brewers' grains, malt sprouts, wet or dried pulp, when unmixed with other materials. Neither shall it include *wheat, rye and buckwheat brans* or middlings not mixed with other substances, but sold separately as distinct articles of commerce, nor pure grains ground together."

As will be seen, the legislature of Michigan, from whose statute the Virginia law was, in this particular, borrowed, found it necessary to provide, and did provide that:

"Neither shall it (that is the term 'concentrated commercial feeding stuffs') include *wheat, rye and buckwheat brans* or middlings not mixed with other substances, but sold separately as distinct articles of commerce, nor pure grains ground together."

Our General Assembly saw proper not to include this exception, the effect of which was unquestionably to require that bran should be regarded and treated as a "concentrated commercial feeding stuff," within the meaning of the act.

I also find that by the laws of Connecticut, Kentucky, and Ohio, as the Ohio law formerly stood, wheat bran is expressly declared to be a "concentrated commercial feeding stuff."

I infer from a memorandum which I have seen, that wheat bran has been by a subsequent act, expressly excepted from the operation of the Ohio law.

It has been suggested that the purpose of the legislature was only to impose this inspection fee upon adulterated foods. The act will not sustain any such theory. The 15 cents a ton is in the nature of a license or inspection fee, and attaches only to pure feeding stuffs. It was designed to provide a fund to pay the expenses of operating the Department of the Dairy and Food Commissioner, which was created for the purpose of protecting the people of the State against adulterated foods.

It cannot be that the General Assembly intended to license the sale of adulterated foods by this act, when the sale of any adulterated foods is made a crime by other statutes of the Commonwealth.

But the language of the act negatives the idea that it was ever intended to license the sale of adulterated foods, or to sanction their sale by imposing an inspection fee thereon. Adulterated foods are required to be confiscated, and those who sell them are punished.

Under all of the circumstances, I see no alternative but that you shall take the law as it is written, and carry out its plain provisions.

These may be onerous, and possibly in some of their features oppressive in their operation, but that is a matter with which you, as a sworn officer of the law, have nothing to do, and which can only be remedied by the General Assembly.

No officer in Virginia is clothed with any authority to suspend the operation of such a statute; still less can the officer who is charged with the execution of the statute, refuse or fail to carry out its provisions because it may be considered by others, or by himself to be unreasonable, or even oppressive in its operation.

Regretting very much that the act will not permit of any other interpretation, I am,

Very truly yours,

WILLIAM A. ANDERSON.

RICHMOND, VA., *July 7, 1908.*

BENJ. L. PURCELL, ESQ.,

*Deputy Dairy and Food Commissioner,
Richmond, Virginia.*

MY DEAR SIR:

Yours of the 6th instant, addressed to the Attorney General, has been received.

In reply to your inquiry whether or not the license fee of \$20.00 required to be paid annually by the manufacturer, dealer or agent for each and every brand of condimental, patented, proprietary, trade mark, stock or poultry foods and condition powders, he or they offer or expose for sale in this State, is subject to abatement or rebate, I beg leave to say that, after careful consideration of section 15 of the act approved March 11, 1908, concerning the appointment of a Dairy and Food Commissioner, I am of opinion that such license fee cannot be apportioned, abated, or rebated, and must be paid for each and every calendar year, or any part thereof, in which the articles named above are sold, or exposed for sale in this State.

I am,

Very truly yours,

ROBERT CATLETT,

Assistant to the Attorney General.

To the State Health Commissioner.RICHMOND, VA., *September 22, 1908.*

DR. ENNION G. WILLIAMS,
Health Commissioner,
Richmond, Virginia.

MY DEAR SIR:

Yours of the 21st instant, addressed to the Attorney General, enclosing letter of Dr. A. C. Fisher, of the 18th instant, has been received.

In reply to your inquiry, and also to the letter of Dr. Fisher, in both of which inquiry has been made, as to the authority of boards of health, both local and State, to order vaccination of school children without ordering a general vaccination, I would say that under section 1496 of the Code of 1904, county school boards have no authority to *suspend vaccination*, or to *order vaccination*, of school children, or of any one else; they may only suspend the operation of that section as to *attendance in the schools*, so far as it requires certificate of vaccination, etc. Hence there is no conflict of authority between the county school boards, and the boards of health, either local or State.

As to the power of the local or State boards of health, to order and enforce vaccination of school children without ordering a general compulsory vaccination, a more difficult question arises.

Section 1733 of the Code gives very broad authority to councils of cities and towns, and to boards of supervisors, to cause persons residing in cities, towns, or counties to be vaccinated; to provide for the enforcement of its orders, and for payment for the same in certain cases, by the city, town or county. But nothing in this section segregates school children from other persons.

Section 1713-d of the Code of 1904, (section 5 of the act of 1904) gives very broad powers to the local boards of health, one of which is: "*may provide for compulsory vaccination*," etc., and further provides: "They shall likewise have the power to adopt and enforce such *reasonable* rules and regulations as they may deem necessary to attain these ends."

It must be noted that section 1733 authorizes boards of supervisors to "cause persons residing, etc.," to be vaccinated; while section 1713-d, says boards of health may "provide for compulsory vaccination," and "shall with the consent of the board of supervisors of the county, or the council of the city or town, as the case may be, fix the compensation of the officers or agents employed, etc." There is no *necessary* conflict between the powers given these several authorities; and I think the law makers intended that they should, and doubtless would, work together in harmony; and I am further strongly inclined to think that neither the boards of supervisors, councils or boards of health can order or enforce compulsory vaccination, unless small pox is prevalent in the locality, or its spread thereto apparently threatened. This seems to me to be the true spirit and intention of the laws, gathered from the whole of the legislation on the subject.

Subject to the above limitation, it seems to me, that boards of supervisors and boards of health, in the exercise of such powers as are given them, may direct compulsory vaccination of a family; of a community, or of the whole county, as the exigency of the case may demand; and if this is a correct view of the law, may direct the compulsory vaccination of the children in a community

attending a designated school; and if the emergency demands, may even suspend a school in cases where the county school board has *suspended* the requirements of section 1496, or fail to see that the provisions of that section are complied with. Section 1733 and 1713-d should more clearly define the concurrent functions of boards of supervisors, and boards of health, if intended to be concurrent; or invest the one or the other with exclusive control, and thereby avoid possible conflict of authority.

As the law now stands, it seems to me that boards of supervisors may order and enforce compulsory vaccination, *without* the concurrence of the boards of health; but I am inclined to the opinion that boards of health cannot so order, and enforce such order, without the approval of the board of supervisors, who are to supply the funds needed for the work.

Very truly yours,

ROBERT CATLETT,
Assistant to the Attorney General.

RICHMOND, VA., October 28, 1908.

DR. ENNION G. WILLIAMS,
Health Officer,
Richmond, Virginia.

MY DEAR SIR:

Yours of the 27th instant, addressed to the Attorney General, together with the correspondence accompanying the same, has been received and carefully noted.

In reply to your inquiries:

1. "Who would be authorized to sign permits in the absence of a health officer?" and
2. "Has the health officer the legal right to charge a fee for signing this permit?"

I would say, that I find no provision in the act regulating the shipment of dead bodies, or in the act creating boards of health, specifically designated who shall sign permits for the transportation of dead bodies. The first act speaks of the signature of "health officers," and the form prescribed by this act, seems to contemplate that the president of board of health shall sign the permit.

Sub-section 8 of the act creating a State board of health and local boards, provides that the secretary of the local board shall be the executive or health officer; whilst the form prescribed seems to at least imply that permits shall be signed by the president of the local board of health.

I think therefore, that the permits may be signed by either the "health officer" (or secretary) or by the president of the local board.

It seems to me that the evident purpose of the law is to give notice to the board of health, of the shipment of a body, and thereby afford opportunity for investigation of the cause of death in each case, and also opportunity to see that the law is complied with.

Boards of health must from necessity rely upon the certificate of the physician as to the cause of death, and must judge therefrom to what class, as defined by the statute, a given case belongs. I think that the permit of the board of health is more a matter of form than of substance, in most cases; and the law will be substantially complied with by getting the signature of either the president or secretary and health officer to the permit; or if both of these

are absent, the signature of some member of the board authorized by the board to sign the permit.

To hold otherwise will work great hardship in cases where death has resulted from non-infectious diseases; and in the absence of more specific provisions in the law, I do not hesitate to advise the acceptance by your department, as well as by the transportation companies, of permits signed as above indicated.

In reply to your second inquiry, I find nothing in either statute authorizing any charge by any one for the issuing of a transportation permit, and I therefore conclude that there is no legal authority for making the charge of fifty cents for such permit, as is referred to in the letter of Dr. Gorman.

If the charter of the city of Alexandria allows such a charge to be made by a board of health created under its charter, I cannot find it.

I am,

Very truly yours,

ROBERT CATLETT,

Assistant to the Attorney General.

Miscellaneous.

RICHMOND, VA., September 11, 1908.

GENERAL CHAS. J. ANDERSON,

Adjutant General of Virginia,

Richmond, Virginia.

MY DEAR SIR:

In response to your request for an opinion from the Attorney General, upon the questions presented in the letter of John B. Lightfoot, Jr., wherein he asks, "whether under the present status of the Federal and State statutes, the provisions of chapter 21 of the Code of 1904, as amended, will prevail over the provisions of either the Federal statutes, or the regulations issued by the war department of the United States, when the provisions of the said chapter 21 of the Code of Virginia, conflicts with either the provisions of the Federal statutes of the said regulations," I would say, that I have considered the question in the light of the statutes cited by Mr. Lightfoot, and the documents submitted by you, and I am of opinion that the act of January 16, 1908, Acts of 1908, chapter 1, page 3, amending section 306 of the Code of Virginia, *does not repeal* the other sections of chapter 21 of the Code of Virginia, except where the provisions of the other sections of this chapter, are in direct conflict with the provisions, object and manifest purpose of section 306, as amended by the act of January 16, 1908.

As to the question of when there is such conflict, I can only say, that must be determined in the consideration of each case as it arises. I will further say, that the act of January, 1908, gives to the Governor very broad authority to promulgate and put into effect, such rules and regulations as he may deem advisable in order to make the organization, armament and discipline of the State militia or volunteers, accord with those prescribed by law for the regular and volunteer armies of the United States; and it seems to me that such apparent conflicts, may for all practical purposes, be adjusted by the exercise of this authority.

I am of opinion that in time of peace, the provisions of chapter 21 of the Code of Virginia, and such rules and regulations as shall be promulgated and

put into effect by the Governor of Virginia, constitute the paramount law, for the government of Virginia militia, when not in the service of the United States.

Very truly yours,

ROBERT CATLETT,

Assistant to the Attorney General.

RICHMOND, VA., March 26, 1908.

HON. EUGENE C. MASSIE,

Chairman of Committee on Courts of Justice,

Richmond, Virginia.

MY DEAR SIR:

The question submitted in your favor of the 12th instant has been carefully considered.

The act making the appropriation of \$4,000.00 to pay the expenses of the Blackstone investigation has not yet, so far as I know, been printed, at least, I have not been furnished, or been able to see, a copy of it, but from what you told me as to its provisions, it does not authorize the payment of any special or extra compensation to the sergeant-at-arms, or clerk of your committee for services rendered in connection with said investigation.

I know of no statute which gives any authority whatever for the payment of any compensation either to the acting sergeant-at-arms, or to the clerk of your committee, for any services they may render in connection with said investigation, other than the compensation provided for by chapter 4 of the Acts of 1908, approved January 24, 1908, (Acts of 1908, p. 11).

Just as is the case with the members of the General Assembly who served upon said committee, it seems to me that the acting sergeant-at-arms, and the clerk of your committee are entitled to the regular *per diem* compensation prescribed by law, and to nothing in addition thereto. The compensation of the acting sergeant-at-arms of your committee, is that, of course, to which he is entitled as one of the doorkeepers of the house.

Any travelling or other necessary expenses incurred by the sergeant-at-arms, or any one else, in the discharge of their duties in connection with the investigation, in the summoning of witnesses or otherwise, would, of course, be expenses which would be payable out of the fund appropriated by the act referred to, upon your order as chairman of the committee.

The fact that the services were some of them rendered at night, does not, in my view, entitle the officer rendering such services to additional compensation, any more than the members of the committee, or other members of the General Assembly, would be entitled to additional compensation, because a large portion of the service which they rendered, was rendered during the night time.

It is clear to my mind, that the compensation of \$6.00 a day prescribed by law, was intended to be in full for the services of clerks of committees, and for the sergeant-at-arms and doorkeepers of the house of delegates, just as the compensation allowed by law to the speaker and the members of the house, was intended to cover all the compensation to which they would be entitled for their services during a session of the General Assembly, whether rendered during the day or night.

I have the honor to be,

Very truly and respectfully yours,

WILLIAM A. ANDERSON.

RICHMOND, VA., *November 21, 1907.*

WILLIAM H. WERTH, ESQ.,

Tazewell, Virginia.

MY DEAR SIR:

As you will see from chapter 155 of the Code, the Attorney General is not authorized or required to give an official opinion in any such case as is presented in your favor of the 2nd, postmarked the 10th instant.

Your letter, however, would have received sooner acknowledgment, but for the fact that it was impossible for me to give it my attention at the time it was received. Besides other urgent matters in my office which could not be postponed, there were some twelve or fifteen Commonwealth's cases upon the argument docket of the court of appeals, some of them of great importance; which required my diligent attention.

I enclose you the envelope, that you may see the extraordinary delay in mailing your letter.

However it gives me pleasure to answer your inquiry as best I can, as it always will to serve you in any way in my power.

Section 122-k, as it appears in the act approved January 11, 1904, Acts of 1902-3-4, p. 931, carried into Pollard's Code as section 122-kk, defines the only cases in which a person offering to vote may be assisted in the preparation of his ballot.

By the terms of that section:

(a). "Any person registered prior to the 1st of January, 1904, shall be assisted in the preparation of his ballot by one of the officers of election designated by himself";

and

(b). The only persons registered after the 1st day of January, 1904, who may be lawfully assisted by any of the judges of election, are such voters as may be physically unable to prepare their ballots; and in such cases, by the express mandate of the statute, the judge of election who can give such assistance to any voter registered since the 1st day of January, 1904, is not to be designated by the voter to be assisted, but must be designated by the judges of election themselves.

In my opinion, this statute is, in the particulars indicated, mandatory, and must be obeyed, and I would say that the ballot of any voter registered after the first day of January, 1904, who was not physically disabled, in the preparation of which such voter received any assistance whatever from any judge of election, would be an illegal ballot, whether the judge of election who assisted such voter was designated by the voter, or was designated by the judges of election.

If I have not answered your inquiry as fully as you desire, I shall be glad to do so, if in my power, upon having my attention called to the omission.

Very truly yours,

WILLIAM A. ANDERSON.

RICHMOND, VA., *December 9, 1907.*

D. S. LEWIS, ESQ.,

Harrisonburg, Virginia.

DEAR SIR:

Your letter of the 6th instant came to my office on Saturday last at a time when I could not give the matter my attention.

I telegraphed you this morning as follows:

“Payment of poll tax to-day, qualifies registered voter for June ninth election,”

which I now confirm.

To this I beg leave to add that, poll taxes may be paid at any time on Monday, December 9th, in order to qualify a registered voter to vote in the election to be held on Tuesday, June 9th, next.

The Constitution requires such taxes to be paid six months before the election at which the citizen shall offer to vote. If paid on Monday, the 9th of December, 1907, they will be paid six months before the 9th of June, 1908.

Under the Statute law of the State, 8th clause of section 5 of the Code, you cannot include both the initial and the terminal day in computing the time within which an act must be done in order to perfect a right or a remedy.

One of these days must be excluded. Excluding the initial day, the six months will not expire until June 9, 1908.

Very truly yours,

WILLIAM A. ANDERSON.

RICHMOND, VA., *January 14, 1908.*

HON. JOHN W. WILLIAMS.

*Clerk of the House of Delegates,
Richmond, Virginia.*

MY DEAR SIR:

Replying to your inquiry received on Saturday, as to whether a commonwealth's attorney is eligible to be appointed to the office of examiner of records. I beg leave to say:

That if otherwise eligible, a commonwealth's attorney could not be appointed examiner of records unless he was a commissioner in chancery. The statute creating the office of examiner of records, section 3326-a of the Code, requires that he shall be one of the commissioners in chancery of one of the courts of the judge who shall appoint him.

It seems, to me, however, that there is such an incompatibility between the duties of the office of examiner of records and of commonwealth's attorney as to render the incumbent of one of these offices ineligible to appointment to the other, for the following reason, if for no other:

By section 3326-b of the Code, an application to correct an erroneous assessment made by an examiner of records is governed by the provisions of sections 567 and 568 of the Code; and by section 567 of the Code, it is made the duty of the attorney for the commonwealth to defend any such application; and by section 3326-b, the examiner of records is required also to be duly sworn as a witness in the case.

If the same individual could be both examiner of records and attorney for the commonwealth in such a case, we would have the same person making an assessment of property for taxation, acting as the attorney for the State on the trial of a case for the correction of such assessment, and testifying as a witness upon the trial of that case; duties and functions, the incompatibility of which will be apparent upon stating them.

Very truly yours,

WILLIAM A. ANDERSON.

RICHMOND, VA., *December 10, 1907.*

JUDGE J. F. WEST,

Waverly, Virginia.

MY DEAR JUDGE.:

Yours of the 7th instant, and copy of Attorney General Montague's opinion to the Auditor of Public Accounts of September 27, 1901, were received yesterday.

After considering the question presented, I would not be prepared, if I had any authority whatever to do so, to overrule the Auditor of Public Accounts, and to advise a change in the long established practice of his office, sanctioned by my predecessor.

But, on examining the statute as expressed in section 530 of the Code, I really think that the rule adopted by the Auditor is in accordance with its provisions, and that the identical account upon which the Auditor is authorized to issue his warrant, must be authenticated by "the certificate of the judge of the court allowing the account, that he has actually examined the papers on which the account is founded and is satisfied that the warrant was issued and the trial or examination had or made."

The judge is only required to give one certificate, and that must be upon the account or statement of the fees or allowance sent to the Auditor.

The statute does not require him to append his certificate to the account filed before the court or upon which the allowance is made, but upon the account or statement that comes to the Auditor, and I think that the certificate which comes to the Auditor must be the original certificate, and not a copy certified by the clerk.

The statute referred to, upon first examination, relating as it does only to the fees of justices of the peace in criminal cases; strikes one as a remarkable enactment.

My recollection of the history of this particular law in its present shape is, that it was passed in an effort on the part of the General Assembly to protect the State against raids upon the treasury made by justices of the peace in a few counties of the State, but amounting to many thousand dollars annually.

Upon an examination made by a committee of the legislature, it was found that fraudulent accounts of fees and costs to the amount of many thousand dollars were annually presented to the Auditor of Public Accounts, and under the law as it then stood, he had no discretion but to pay them.

It was believed that the judges of the State could be trusted to protect the Commonwealth from such unconscionable depredations upon her treasury, and therefore it was provided that no account for the fees or costs of a justice of the peace in criminal cases should be paid unless the claim, as it came to the Auditor, was supported by the certificate of the judge in the terms of the statute. This, of course, necessitated a careful examination by the judge of the papers on which all such accounts were founded.

The Auditor of Public Accounts is satisfied from the experience of his office, that even the guard which this statute was intended to provide has not sufficed to protect the treasury.

I am glad to say, that so far as I have learned, there never has been any complaint in this regard from such accounts which have come up from your circuit.

I return you Mr. Montague's opinion.

Very sincerely yours,

WILLIAM A. ANDERSON.

RICHMOND, VA., *December 12, 1907.*

W. W. BRENNEMAN, ESQ.,
Pocahontas, Virginia.

DEAR SIR:

Yours of the 9th instant received.

There can be no question, but that, under the Constitution and laws of the Commonwealth, any man who was qualified to vote at the election held on the 5th day of November last, would undoubtedly be a qualified voter, if he is still a resident of the Town of Pocahontas, at the special election to be held therein on the 17th instant.

Some of the circuit judges of the State, and Judge Frank P. Christian of Lynchburg, have held that it is not necessary for a registered voter at a special election, for instance at a local option election, to have paid his State capitation taxes six months before such election; but that is a question which can be decided by the courts, and as to which I do not think it would be proper for me under existing circumstances, to express an opinion.

As your election is to be held in the same year and after the November election, 1907, it is not likely to arise as to any large number of voters of your town, as about all who would be qualified to vote on the 17th of December, would have been qualified to vote on the 5th of November last, and all who were qualified to vote on the 5th day of November, will be qualified to vote, of course, on the 17th of December, if still a resident of your town.

Very truly yours,

WILLIAM A. ANDERSON.

RICHMOND, VA., *February 8, 1908.*

J. E. THRIFT, ESQ.,
Member House of Delegates,
Richmond, Virginia.

MY DEAR SIR:

I return you Senate Bill No. 109, and the two letters of Messrs. Roller and Martz, which you handed me yesterday, with a memorandum in regard to that bill.

You will, on reflection, readily see that the question presented as to this bill is one for the committee for courts of justice, and not for the Attorney General, to pass upon officially.

The law does not make the Attorney General the adviser of the General Assembly, for reasons, the soundness of which the experience of this office has repeatedly demonstrated.

It is his duty to defend the validity of legislation which involves the interests of the State, and he might be greatly embarrassed if, in giving an *ex parte* opinion as to the validity of a proposed act, he should have committed himself adversely to the constitutionality of such act, when, upon further consideration and investigation, and perhaps hearing what might be said for or against the proposition, he would find that his first opinion was erroneous.

The committees for courts of justice of each house, embracing learned lawyers, are the proper advisers of their respective houses in matters of this kind.

And yet, it is my pleasure to render any service I can to the members of the General Assembly in the discharge of the important duties devolved upon

them; but I think that opinions of the kind indicated by me here should be regarded as *personal* to the member to whom it is given, and not be made in any way a part of the record of your committee, or of the General Assembly.

Very truly yours,

WILLIAM A. ANDERSON.

Memorandum.

Senate Bill No. 109, entitled a bill "To quiet the title to a lot known as the 'Methodist Church lot' conveyed by M. M. Sibert and wife to Right Rev. Jas. Gibbons, bishop of Richmond, by deed dated December 14, 1875, and to validate any conveyance of said lot by said Jas. Gibbons, or his successor in office," has been referred to me by Mr. J. E. Thrift, a member of the committee for courts of justice of the house of delegates.

In so far as this is a bill to quiet the title to the lot of land referred to, it is in conflict with section 63 of the Constitution, which provides that the General Assembly "shall not, by special legislation, grant relief in * * * cases of which the courts or other tribunals may have jurisdiction."

The matter of quieting the title to land, is one which comes distinctly within the jurisdiction of the courts of the Commonwealth.

It would perhaps be entirely competent for the General Assembly, by a proper law having a title correctly disclosing its object, to release any right, title or interest which the Commonwealth might have to the lot of land in question; but I am unable to discover from the facts stated in the preamble to the bill, or from the letters of Messrs. Roller and Martz accompanying the same, that the Commonwealth can have any right, title or interest in the lot of land referred to. If the deed from M. M. Sibert and wife to Bishop Gibbons and his successors in office was void, the title to the lot referred to must still, of course, remain in M. M. Sibert and wife, or their heirs or assigns, provided the title was in the grantors in said deed at the time they executed the same.

However, in no view of the case upon the facts presented, can I see that the lot referred to has escheated to the Commonwealth. It would escheat to the Commonwealth only in case there are no known heirs or other legal representatives of the person last entitled to the same; and there is no suggestion here that either M. M. Sibert and wife or Bishop James Gibbons have died intestate and without known heirs.

The case of *Kain v. Gibboney*, 101 United States, 362, was not a case of a conveyance of land by deed, but was a case of a charitable bequest, which the court held to be void for uncertainty, under *Gallego v. Attorney General*, 3 Leigh, 487.

I cannot see that that case rules the question presented here.

Respectfully submitted,

WILLIAM A. ANDERSON.

Attorney General.

RICHMOND, VA., *February 17, 1908.*

J. C. O'CONOR, ESQ.,
Counsellor at Law,
New York City.

MY DEAR SIR:

Yours of the 3rd instant, addressed to the Attorney General, was duly received; but owing to pressing demands on his time he has been unable to make reply thereto. At his request, I now endeavor to do so.

The whole of our game laws may be found in the Acts of Assembly of 1902-3-4, pages 331-339, and an act of 1904, page 371. These acts may also be found in the Virginia Code of 1904, as chapter 95, to all of which I presume you have access.

It seems to me that under the provisions of the act of 1904, the possession of wild water fowl, for the purpose of propagation, is allowed, or at least shall not be *prima facie* evidence of the violation of the game laws, and I do not think a conviction could be had, when such fowl were held in good faith for the purpose of propagation.

Section 1 of the act of 1902, seems to inhibit the capture of such fowl by nets, etc., *at any time*, and this provision might defeat the purpose you have in view; but if the "stock" is brought from without the State, the mere possession in the close season or at any time, for the purpose of propagation, will not violate the law, as stated above.

I think the views given above are sound; but "propagation" is not very clearly exempted from the operation of the laws, as you will see from inspection of the acts referred to.

If the attention of the legislature, now in session, had been called to the subject, I am sure amendments of the law on the lines suggested, could have been readily secured.

I am,

Very truly yours,

ROBERT CATLETT,
Assistant to the Attorney General.

RICHMOND, VA., *March 11, 1908.*

HON. W. J. HENSON,
Pearisburg, Virginia.

MY DEAR JUDGE:

Yours of the 10th this instant received.

My correspondence with Rev. Samuel W. Moore and others in reference to the local option election in the town of Pocahontas last December, evidences the wisdom of the law in that it does not require or authorize the Attorney General to pass upon any such question.

The letters of inquiry of Mr. Moore and others came to me when my mind was engrossed by other duties which the law devolves upon me. The question was peculiarly one which could be decided only by the courts. I should have declined to indicate a personal opinion upon it. In my desire to be courteous, and, if possible, to aid the good people of Pocahontas in reaching a conclusion. I departed from the rule which I and my predecessors have found it wisest to adhere to, namely, not to undertake to give advice upon matters not within the jurisdiction of this office, and particularly upon municipal, county, or other local questions.

As you will see from my letter to Mr. Moore, it was not intended to be official, but *personal*, and the opinion indicated was somewhat qualified, for I recognized that the question was a debatable one, though, very naturally, by no means all that could be said upon either side of it occurred to me; nor was it possible for me, without neglecting other duties, to give the subject the investigation, and the consideration which it deserved, nor have I the time at my command now to do this.

The arguments presented by the counsel for the opponents of local option, as stated by you, are very strong; and I am free to say that had they been presented to my mind before I wrote my letter of November 8 last, to Rev. Samuel W. Moore, I would have suggested that the safest course to pursue, would be to call the proposed local option election off, and have it at a time when there could be no question as to its validity upon that account. (See Note.)

However, after considering all the arguments for the opponents of local option, as stated by you, and recognizing that the question is by no means free from difficulty, I am not prepared to say that the word "national" as used in section 586 of the Code, is equivalent to, or synonymous with, the word "federal." A *special* congressional election is undoubtedly a Federal election, but it is not, it seems to me, a "national" election.

The words used in this statute must be given their reasonable and natural meaning. The elections, within thirty days of which a local option election is prohibited from being held, are, any county election, any corporation election, any State election, or any national election.

The words in each case used to define the election, within thirty days of which no local option election can be held, refer to and describe geographical and political sub-divisions of the country, and the whole country.

If it had been the purpose of the legislature to prohibit a local option election from being held within thirty days from any election at which any officers were to be chosen; or within thirty days of any special congressional election, it would have been easy to have said so.

This result would have been accomplished by any of the provisions following:

(1). "No election under this chapter shall be held within thirty days of any election for officers elective by the people."

or

(2). "No election under this chapter shall be held within thirty days of any county, corporation, State or federal election."

or

(3). "No election under this chapter shall be held within thirty days of any county, State, corporation, or congressional election."

This last inhibition would have had the same effect as No. (2), for there is no federal election, national, or congressional, which is not also a congressional election, in Virginia.

I appreciate the force of the arguments which are being urged against this view; but plausible, indeed strong, as those arguments are, they are not conclusive to my mind, upon the case as it stands.

If the legislature intended to invalidate any local option election, held in thirty days of *any* congressional election, it should have said so.

Very sincerely yours,

WILLIAM A. ANDERSON.

Note: There would as the law then stood, if that course had been pursued, have been another grave question; namely, as to who would be legal

voters at such an election, unless, indeed, the election should be postponed until December, 1908; for it had never been as yet determined by any positive statute, nor by any decision of the court of last resort, who would be legal voters at a local option election. That is whether only such persons shall vote as shall have paid their poll taxes six months before such election. That question has been adjudicated by circuit courts and by a city court, but not as yet by the Court of Appeals. Lawyers differ upon it.

In an election in December, of course its importance is minimized, because the number of voters who have paid their poll taxes for the three preceding years six months before such election is larger as to an election held in December, than as to one held in any other month in any year.

Very sincerely yours,

WILLIAM A. ANDERSON.

RICHMOND, VA., *March 30, 1908.*

J. P. CARICO, Esq.,
Galax, Virginia.

MY DEAR SIR:

Your favor of the — instant, addressed to the Attorney General, has been received and noted.

Owing to his many pressing engagements, your letter has been referred to me for reply.

The question presented is by no means free from difficulty; but I am inclined to think that a school district may be formed in each county, embracing such part of the town as lies in each county, and such adjacent territory as may be desired. If this is done, the town would have no voice in the conduct of the school other than through the trustees of the districts so formed. I do not know whether your town now forms a separate school district or not, but I assume that it does not. I find no provision of law for the formation of districts from parts of different counties, indeed I think the law only contemplates that districts shall be formed entirely within a county.

Nor do I find any provision for the formation of a separate district within the limits of a town, where the territory within the town limits lies in different counties; but I think the board of education may probably authorize the conversion of your town into a separate school district, although a part of its territory lies in two counties.

As this subject properly belongs to the department of public instruction, I have taken the liberty of referring your letter to that department, with the request that the superintendent advise you of the time of meeting of the board of education, and also of the steps necessary to be taken, should you wish to bring the matter before the said board. I trust that you will hear from him without delay, and that a satisfactory solution of the question may be reached.

I am,

Very truly yours,

ROBERT CATLETT,

Assistant to the Attorney General.

P. S. Since writing the foregoing, I notice that you use the term "sub-division" in your letter.

I had assumed that your question was directed to the formation of school

districts under the general law regulating schools; but if you mean "sub-districts," as provided for in the act of March 15, 1906, there is no question about forming one sub-school district out of parts of different districts or counties. See Acts of the General Assembly for 1906, p. 14, section 3.

Very truly yours,

ROBERT CATLETT,
Assistant to the Attorney General.

RICHMOND, VA., April 6, 1908.

RALEIGH T. GREEN, ESQ.,
Culpeper, Virginia.

MY DEAR SIR:

Referring to our conversation over the phone, and to your letter of March 31st, addressed to the Attorney General, I beg leave to say, that, as you may already know, the Attorney General is not authorized by law to give official opinions to others than certain officers and boards at the seat of government. But, knowing that he would certainly make a personal answer to your inquiry if here, I will do so as best I can.

It seems to me very clear that the Constitutional Convention intended by the provisions of section 38 of the Constitution, to make the certified list of voters by the treasury, the *only* evidence of the payment of capitation taxes assessed or assessable for the three years next preceding the year in which the election is held, and such certificate is made. The concluding paragraph of that section (38) begins "Further evidence of the prepayment of the capitation taxes required by this Constitution," etc. If this certificate was not intended to be the only evidence, it seems to me this provision just quoted would have used the word "other" instead of "further."

Now, as to a voter who became of age since the 1st day of February, 1907, and who during that year paid his capitation tax in advance for the first year in which it was assessable against him, to-wit, 1908. I am strongly inclined to the opinion that he can vote upon his registration and showing to the judges of election the treasurer's receipt for the capitation tax paid by him in advance. It seems to me that this case is not within the provisions of section 38 of the Constitution. The Constitution confers the right to vote upon one who becomes of age at such time that he could not have been assessed with a poll tax, and the payment of which cannot be certified by the treasurer, because it was not for one of the three years next preceding the year in which the election is held. I think, therefore, that a young man who became of age after February 1, 1907; prepaid a capitation tax for 1908; and has been duly registered, is entitled to vote at all elections held during the year 1908, upon exhibiting to the judges of election his receipt for the payment of such tax.

Whilst the list above referred to is, in my opinion, exclusive evidence as to voters who were assessed or assessable with a capitation tax for one or more of the three years next preceding the year in which an election is held, it is not the case with one who has become of age at such time as he could not have been assessed with a capitation tax; and a receipt showing the payment of a capitation in advance, is sufficient evidence to entitle him to vote.

I am,

Very truly yours,

ROBERT CATLETT,
Assistant to the Attorney General.

RICHMOND, VA., *April 10, 1908.*

E. L. C. SCOTT, Esq.,
Pension Clerk, Auditor's Office,
Richmond, Virginia.

MY DEAR SIR:

In reply to your request for construction of the act of March 11, 1908, providing for the payment of the funeral expenses of Confederate soldiers, or widows, who are now, or hereafter may be, enrolled on the pension roll of this State, I beg leave to say:

1. If the pensioner dies after March 11, 1908, and before a jurat has been filed for the year 1908, the Auditor must pay funeral expenses not exceeding the amount of the pension to which the pensioner was entitled, or in any case over \$25.00, to the duly qualified personal representative of the pensioner.

2. If the pensioner dies after jurat is filed, funeral expenses may be paid out of the pension for that year, subject to the limitations above expressed, and the balance of pension, if any, also paid to the personal representative.

3. If the pensioner dies in any year after receiving pension, and before the next payment becomes due, funeral expenses must be paid, subject to the above limitations as to amount, at the time when the next ensuing pension would have been due, not exceeding, however, the amount which pensioner was receiving at the time of his death, and not exceeding \$25.00.

These principles, of course, are applicable to the years succeeding the present year.

It seems to me that the practical operation of this law is, that, where a pensioner dies in any calendar year before jurat is filed, the amount of \$25.00 shall be paid for the funeral expenses, provided that amount does not exceed the amount of pension received, and if he dies after he has received his pension in any calendar year, funeral expenses shall be paid on the same basis. If he dies after jurat has been filed, the whole amount of the pension to which he was entitled, should be paid to his personal representative.

I am,

Very truly yours,

WILLIAM A. ANDERSON.

RICHMOND, VA., *May 1, 1908.*

DR. H. R. MCILWAINE,
State Librarian,
Richmond, Virginia.

DEAR SIR:

Your favor of the 30th ultimo, enclosing resolution adopted by the State library board on the 24th ultimo, submitting certain questions to me, has been this instant received.

In response thereto, permit me to say that;

1. The only statute, known to me, providing for travelling *school* libraries is that found in section 10 of the supplemental appropriation act approved March 10, 1906, and which made an appropriation for travelling libraries, but seemed to contemplate that some of the travelling libraries should be travelling school libraries, and provided that, in the selection of the books for the school libraries, the list adopted must be approved by the State library board, and also by the State board of education. That appropriation has not been

continued, so far as I have been able to ascertain, in any of the appropriation acts, or by any law, passed by the General Assembly during the session of 1908. I take it, therefore, that section 10 of the supplemental appropriation act approved March 10, 1906, Acts of 1906, p. 211, is *functus officio*, and no longer in effect. I would say, therefore, that there is no provision of law now whatever for travelling school libraries.

2. The only provisions of any statute known to me, and now in force, in reference to travelling libraries, are those contained in section 254 of the Code of 1904, and in the appropriation act of 1908, at pages 424 and 436 of the Acts of 1908, which speak for themselves.

It will be seen from section 254 of the Code, that the State library board is given entire control of the travelling libraries therein mentioned. The State board of education has nothing to do with them, and cannot, under the law, be called upon for any contribution towards defraying the expenses incurred in connection with them; nor has the State board of education anything to do with the selection of the books to be used in such travelling libraries.

In the exercise of the powers conferred upon it, the State library board can, of course, in its discretion, assign travelling libraries to public schools in the State; but that is a matter which is left entirely to the judgment and action of the State library board.

Very truly yours,

WILLIAM A. ANDERSON.

RICHMOND, VA., July 10, 1908.

DR. H. R. McILWAINE,
State Librarian,
Richmond, Virginia.

MY DEAR SIR:

In response to your inquiry as to the present status of the board or directors of the State library, owing to the expiration of the term of A. C. Gordon, Esq., president of the board, and the failure of the board of education to elect his successor prior to the first day of July last, I would say that it seems to me, first, that the case presented is covered by the last clause of section 33 of the Constitution, which provides as follows: "All officers, elected or appointed, shall continue to discharge the duties of their offices after their terms of service have expired until their successors have qualified." This provision continues Mr. Gordon as a member of the library board until his successor is appointed and qualifies.

2. As Mr. Gordon has been the president of the board, and as such is authorized by law to sign, as chairman, the board's warrants drawn on the library fund, that his continuance in office carries with it his authority to act as president until a change in that office is made by the board.

I therefore conclude that the Auditor of Public Accounts may properly honor all warrants drawn on the library fund signed by Mr. Gordon as provided by law, until the board of education has elected his successor, and until the library board has elected another president.

I am,

Very truly yours,

ROBERT CATLETT,

Assistant to the Attorney General.

RICHMOND, VA., *September 5, 1908.*

DR. HENRY R. MCILWAINE,
*Librarian State Library,
Richmond, Virginia.*

DEAR SIR:

You have requested me to advise you whether, under the statutes of the Commonwealth, the State library must be closed on labor day, the first Monday in September.

While labor day is made, by section 2084 of the Code, a public holiday, there is no provision in the law regulating the State library which requires the library to be closed on any public holiday.

By section 258 of the Code, as re-enacted by the act approved March 8, 1904, Acts of 1904, p. 95, it is provided that:

"The library shall be kept open every day in the year (except Sundays) from nine o'clock ante-meridian until five o'clock post meridian, and such other hours as the library board may direct. But the board may, in its discretion, name certain days on which the library may be closed."

This is the statute which controls this subject, and unless the library board has prescribed that the library shall be closed on any particular day (except Sunday) it cannot be lawfully closed, even if such day is a public holiday.

Very truly yours,

WILLIAM A. ANDERSON.

P. S. The Governor's proclamation in reference to the observance of labor day distinctly applies to the public offices. It does not apply to the State library.

The General Assembly and constituted authorities of the State seem to have considered that it is proper for the library to be kept open on some holidays, so that the people might have an opportunity of visiting it on such days.

Very truly yours,

WILLIAM A. ANDERSON.

RICHMOND, VA., *May 5, 1908.*

W. J. LINKOUS, ESQ., *Mayor,
Radford, Virginia.*

DEAR SIR:

Your favor of the 4th instant received.

A number of questions have, and will arise under the Byrd liquor law, which can only be decided by the courts.

The questions which you submit seem to be answered by the language of section 14 of that law, which,

(1). Operates to prohibit the sale of any cider anywhere in the State, except such as is the "pure juice of the apple without any addition of alcohol, distilled spirits, wine or other intoxicating liquor, or any other mixture whatever except preservatives not prohibited by United States law;"

(2) Prohibits the sale even of any such cider that will produce intoxication "in quantities of less than five gallons in local option territory, or in territory in which license to sell ardent spirits at retail has not been granted, except by the person growing the fruit from which the cider is made;" and

(3) Prohibits the sale in local option territory, or in territory where license to sell ardent spirits at retail has not been granted, of any cider (even such as is the pure juice of the apple without any addition of alcohol, etc.,) containing more than six per cent. of alcohol at the time of the sale, whether in quantities of five gallons or less than five gallons.

As indicated, these are questions, however, which can only be decided by the courts, and what I have here written is by way of suggestion, and is advisory only; but I think the views expressed here are strictly in accordance with the text of the act.

Very truly yours,

WILLIAM A. ANDERSON.

RICHMOND, VA., May 6, 1908.

J. L. PHILLIPS, Esq.,

State Entomologist,

Blacksburg, Virginia.

DEAR SIR:

In reference to the questions you submitted to me orally to-day, I beg leave to say that:

(1) I do not find that the law of the Commonwealth establishing the board of crop pest commissioners and defining their powers and duties, would authorize that board to expend any money in the investigation of the bee keeping industry of the State, or of the diseases to which bees are subject, anywhere in Virginia, or in gathering information in regard to the best means of further increasing that industry.

(2) Under sections 162 and 163 of the Code, no person can hold any office or post of honor, profit, or trust under the Constitution of Virginia, who holds any office or post of profit, trust, or emolument, civil or military, legislative, executive, or judicial, under the government of the United States, or who is in the employment of such government, or who receives from it in any way any emolument whatever.

If you were to accept an appointment as collaborator under the department of agriculture of the United States, with or without compensation, I apprehend that it would operate to vacate your office of State entomologist.

Very truly yours,

WILLIAM A. ANDERSON.

RICHMOND, VA., May 21, 1908.

J. F. WYSOR, Esq.,

Treasurer of Pulaski County,

Pulaski City, Virginia.

DEAR SIR:

Yours of the 20th instant received.

For obvious reasons, the Attorney General is not authorized by law to pass upon any local or other municipal question which may arise in the 200 towns and cities, and 100 counties of the State. He has as you will see from the statutes which prescribe his duties and define his powers, no more right to pass upon such questions, than has the Governor, or the Auditor, or any other officer of the State government.

I have not then any right to give an official opinion in any such matter.

It is my pleasure always to be of any service that I can to the local authorities, and as a purely personal matter, I will venture to give you my views unofficially upon the question you submit.

My decided opinion is, that it is the duty of the registrar appointed in each town of the State under section 1022 of the Code, to enter upon the registration books for such town, the names of such voters, and only such voters, as shall have been previously registered as voters of the county in which said town is situated, and who reside in such town, and are otherwise qualified voters thereof. It is clear to my mind that it is the duty of such registrar to do this when applied to by any such voter to so register him upon the town registration books, at any time up to, and prior to the day of election. If the construction which you say the registrar for the town of Pulaski City has placed upon section 1022, of the Code, is given to that section, it might disfranchise all the citizens of every town in the State in which a registrar is appointed under section 1022 of the Code fifteen days before a town election. I have no idea that the provision of section 78 of the Code, which requires the registrar to close his books thirty days before an election, applies to, or was ever intended to apply to, the registrars appointed for the towns of the State under section 1022 of the Code.

Very truly yours,

WILLIAM A. ANDERSON.

RICHMOND, VA., May 21, 1908.

GEORGE EMORY PFLASTER, JR., ESQ.,

Bluemont, Virginia.

DEAR SIR:

Yours of the 19th this instant received.

The Attorney General, for obvious reasons, is not authorized, and has no right, to pass upon the right of any particular citizen to vote. That is a question which is left entirely to the local authorities. All that the Attorney General can do is to lay down the general rules by which such questions can be decided.

Below please find extract from an opinion given by me on the 13th of August, 1903, which you will find in my report for that year, pp. 14-15, which seems to cover the question involved in the case of the citizen you mention.

"Residence is a question of *intention*, but is also a question of *fact*. As a rule a man's legal residence is where his home is; he does not lose his legal domicile by going away from his home, or place of residence, for the purpose of living in some other place *temporarily*, and with the intention of returning to and resuming his residence at his home as soon as the purpose of such temporary absence has been accomplished. If he leaves his home and goes to reside indefinitely in another place, without any intention of returning to his former home, and he acquires a residence in the place to which he removes, he loses his right to vote in the place from which he has removed, and should register and vote in that in which he made his residence. The fact that he still owns property in the place from which he has removed, or that he stays there for a month or two each year, will not give him a right to vote there. The question is, Did he give up his residence there *temporarily* or *indefinitely*? If he gave it up merely temporarily, with the fixed purpose at the time of resuming his residence there at some future period, when the purpose of the temporary absence should have been accomplished, then he has not lost his legal domicile and right

to vote in the place from which he has thus temporarily removed. The absence may be for a year, or several years, if there is the fixed intention of returning. For instance, a man may go on a trip to Europe, or accept an office or employment for a term of years outside of his city or county, and take his family with him, with the intention of going back to his home after the journey or the term of employment shall be ended, and he will not lose his citizenship or right to vote in the place from which he has so removed for such temporary purpose. The question of residence is one of the most fruitful sources of controversy and discussion. In every instance it has to be settled according to the facts and circumstances of each particular case. It is the duty of the election officers to decide each case according to the very right of that case, in discharging which duty they are vested under the law with a just discretion. It would be impossible for any one to properly decide a case like that of A. S. D. without examining him in person as to the facts of his case, or having a much fuller statement of those facts than could be well gotten by correspondence.

In addition to what is said above, I will add that the District of Columbia being common to the whole country, is resorted to by a great number of Federal officeholders, and other citizens of the different States, as a place of more or less temporary residence, though many of them remain there for years. The general rule as to such residence in the District, though it may continue for a great number of years, is that a citizen does not thereby lose his legal domicile in the State from which he removes into the District, if he goes into the District with the purpose of returning ultimately to his home in the State from which he has so removed.

Hoping that these suggestions may be of service to you, I am,

Very truly yours,

WILLIAM A. ANDERSON.

RICHMOND, VA., *June 6, 1908.*

JUDGE F. B. HUTTON,
Abingdon, Virginia.

MY DEAR JUDGE:

Your favor of the 5th this instant received.

The letter from me to you, to which you refer was written in response to what I understood from Mr. L. P. Summers, whose letter to me of the 4th ultimo I herewith enclose, to be your request.

Mr Summers' letter does not show whether the citizen referred to by you was a registered voter or not, and I inferred that he was not a registered voter. If he was a registered voter, he would have a right to pay all capitation taxes with which he had not been assessed, but with which he was assessable, at any time to the clerk of his county, or to the clerk of the corporation or husting court of his city, under section 86-e of the Code of 1904.

If he was not a registered voter and desired to pay capitation taxes with which he had not been assessed, but with which he was assessable, it would be necessary for him to be assessed with such taxes; and under the express provisions of section 508 of the Code. It would seem to be the plain duty of the commissioner of the revenue to assess such citizen with such omitted capitation taxes immediately upon ascertaining that such assessment had been omitted, and to charge the citizen with interest upon such taxes, unless the omission was without any fault of his.

Such assessment of course, would be extended by the commissioner of the revenue upon his personal property book for the current year, just as other assessments of capitation taxes are entered, and the treasurer would thereby be not only given the amplest authority to collect the same, but would be charged therewith, unless he could show a legal excuse for his failure to collect the same.

By section 20 of the Constitution, every male citizen, otherwise qualified is entitled to be registered, and to vote, who has paid six months before an election all the capitation taxes with which he is assessed or assessable during the preceding three years.

By section 73 of the Code, every male citizen, otherwise qualified, is entitled to be registered, who at least six months prior to the election has paid to the proper officer all State poll taxes assessed or assessable against him for the three years next preceding that in which he offers to register.

The proper officer to whom an unregistered voter is authorized to pay his capitation taxes, the payment of which six months before the election is prescribed by the Constitution as an essential prerequisite to the right to vote, is the treasurer of this county or city. Now, I have been unwilling to believe that under the law, a county treasurer could disfranchise a citizen who had been lawfully assessed with his omitted capitation taxes, by refusing to receive the capitation taxes, because he had not received copies of the commissioner's books as provided in section 603 of the Code, when he had received a certificate from the commissioner of the revenue showing that the omitted capitation taxes had been lawfully assessed against such citizen; nor do I believe that it would be in the power of the legislature to disfranchise the citizens by failing to provide a mode in which they could pay capitation taxes with which they had been lawfully assessed under the law.

It is certainly the duty of the General Assembly to provide a mode in which capitation taxes can be paid, and such a mode has been provided by law; and I have been unable to find any statute anywhere which prohibits the treasurer from receiving a capitation tax which has been duly assessed against a citizen, and the treasurer furnished evidence of such assessment, whenever payment thereof shall be tendered to him.

If such a statute had been passed by the legislature prohibiting the treasurer from receiving the payment of capitation taxes under such circumstances, I think a grave question would arise as to its constitutionality, because its only purpose and effect would be to disfranchise a citizen who the Constitution plainly intended should have the right to vote.

The Constitution certainly contemplates that a reasonable opportunity shall be given to each citizen to pay the capitation taxes assessed or assessable against him, and in my judgment confers upon the citizen the right to pay such taxes at any time to qualify himself to vote.

As already indicated, there is nothing in the law to prohibit the treasurer, under such circumstances, from receiving capitation taxes duly assessed, the payment of which is tendered, and I am satisfied that it is his duty to receive them when so tendered.

The question is one of no little importance. It has arisen again and again and again in the counties and cities of the State, and I think the uniform practice has been for the treasurers to receive payment of any omitted capitation taxes which have been assessed in the manner provided by law, upon being furnished a certified copy of such assessment.

A question indetical with this in principle has repeatedly arisen in respect to young men coming of age at such time that they were not assessable with capitation tax, and who had not been assessed with such a capitation tax. The legislature had failed to make any provision requiring the treasurers to receive payment in such cases, nor had any provision been made anywhere for the assessment of the \$1.50 which such young man was required by section 20 of the Constitution to pay in anticipation of the first year's poll tax assessable against him, in order to entitle himself to vote.

At least two of the judges of the State, as I am reliably informed, (Judge Witt of the city of Richmond, and Judge Crocker of the city of Portsmouth), decided that it was the duty of the treasurers of those cities to receive payment from every young man so situated, of this \$1.50, even though there was no assessment of the tax against the young man, and no express provision in any statute requiring the treasurer to receive such payment.

These judges held that a young man, under such circumstances, could not be disfranchised by the failure of the legislature to provide a mode in which he could pay the \$1.50, and that it was the duty of the officers of the State authorized to receive payment of public funds, and of taxes generally, to receive the payment of the capitation taxes, and that they would compel them to receive payment under such circumstances.

This case is a much stronger one than that, because here the law provides for the assessment, the assessment has been made, and there can be no possible loss of revenue by the Commonwealth, by reason of the treasurers receiving payment of the omitted capitation taxes so assessed.

So far as my observation or information extend, (and as I have stated, the question has arisen in a great number of instances which have been brought to my attention), had any other rule been adopted than the one which it seems to me is sustained by the Constitution and the law, a large number of most worthy citizens would be deprived of their right to vote; but whether in other respects worthy voters or not, it has appeared to me that they have a right, which the legislature has not taken from them, and which it is gravely to be questioned whether it would be competent for the legislature to take from them, to pay the taxes which they are authorized by the Constitution to pay as the only qualification in that regard for the exercise of the right to vote.

It is true, that there is no express mandate in the laws to the treasurer to receive payment of such capitation taxes; but I know of no authority which would justify him in refusing to receive them, and no prejudice which would come to the Commonwealth, or to any one from his receiving them.

While my consideration of this subject has been largely *ex parte* it has been as careful and thorough as I could give to it, and my conclusions have been reached after discussion of the question with the Auditor, and others familiar with the law: Nevertheless, I have long since realized that my judgment is by no means infallible, and have, not infrequently, after fuller consideration, and particularly after hearing the question discussed, been constrained to reverse my first impressions and conclusions.

In this matter, I can see no reason, after mature consideration, to alter the views which, with the greatest deference, I have expressed to you.

With cordial regards,

Most sincerely yours,

WILLIAM A. ANDERSON.

P. S. Please return me Mr. Summers' letter after you have read it, as I desire to keep it for my files.

RICHMOND, VA., *June 20, 1908.*GEORGE N. CONRAD, ESQ.,
Harrisonburg, Virginia.

MY DEAR SIR:

It gives me pleasure to reply to your favor of the 19th instant just received.

As I understand from your letter, agents from some Chicago house are canvassing your county soliciting orders for pictures to be enlarged. When the orders are taken, they are forwarded to Chicago, and later on the enlarged pictures are sent to Virginia and another agent of the Chicago house delivers the enlarged pictures and collects the price. Your inquiry is: "Whether this business is subject to a license tax under sections 121 and 122 of the revenue law.

In cases identical with the one you mention, and in a number of similar cases, the Auditor of Public Accounts, acting under my advice, has ruled that it was not competent for the State, under the decisions of the Supreme Court of the United States, to levy a tax upon such a transaction or business.

See *Leisy v. Hardin*, 135 U. S., p. 100, and *Caldwell v. North Carolina*, 187 U. S., p. 622.

The case last cited is, as you will see, a case directly in point.

In a similar case which has arisen during my incumbency in office, the United States Court interfered by injunction, and the injunction was made perpetual.

I would advise, therefore, that, under the adjudications referred to, and others cited in the opinions in those cases, the business which you have described cannot be reached by any license tax levied by this State.

Very sincerely yours,

WILLIAM A. ANDERSON.

RICHMOND, VA., *July 1, 1908.*CHARLES A. JOHNSTON, ESQ.,
Christiansburg, Virginia.

MY DEAR SIR:

Your favor of the 27th ultimo reached me yesterday.

Mr. Saunders has been very much troubled, as I have been also, by the language of section 15 of chapter 188 of the Acts of 1908 establishing the office of Dairy and Food Commissioner, and prescribing his duties and powers.

Unfortunately, as you will see from reading that act, the legislature undertook in it to state just what commodities should be regarded as coming within its provisions, and what should be excepted from its operation, in terms apparently broad enough to cover every kind of food for live stock, except what was expressly excluded.

Construed literally, all "materials intended for feeding to domestic animals," except those expressly excepted from its operation, appear to be brought within the requirements of the act.

I have been surprised to hear that some of the members of the legislature claim that the fee of 15 cents a ton for inspection was only intended to be imposed upon *adulterated feeding stuff*. Not only is the sale of adulterated feeding stuff not countenanced by permitting it to be licensed, but its sale, or the sale of any other adulterated food for man or beast, is made a criminal offence by the act of February 27, 1900, and also by the act amendatory of that act approved March 14, 1908.

Unless it can be fairly shown that bran, shorts, or middlings are not "concentrated commercial feeding stuff," they plainly come within the provisions of paragraph (a) of section 15 of chapter 188.

I would have no difficulty about this, but for the declaration in paragraph (a) that: "the term concentrated commercial feeding stuffs as used in this act shall include linseed meal, etc., etc., * * * * and all other materials intended for feeding to domestic animals."

I think what the legislature intended was that all other "concentrated commercial feeding stuffs" should be included in operation of the act.

Mr. Saunders, the Dairy and Food Commissioner, assures me that bran and other mill offal are "concentrated commercial feeding stuffs," and he shows me the authority of a text-book which he has in his library for this definition. The definition, however, seems to me to be purely technical and arbitrary, (though perhaps entirely a scientific one), and not the meaning which the man of average intelligence would give to those terms.

I have had a good deal to do with farming and handling such commodities as wheat flour, corn meal, and ship stuff, and other mill offal, and it never would occur to me that bran, or shorts, or middlings are "concentrates."

If it could be shown, as I hope it can be, that I am right in this suggestion, it may furnish a way by which, by construction and interpretation, these commodities may be taken out of the operation of this law.

You will observe that the charge of 15 cents on every ton of "concentrated commercial feeding stuff" offered for sale in Virginia is not a tax, but it is in the nature of a charge for inspection, a charge made for giving the vendor of such a commodity a bill of health for his commodity; and it was evidently prescribed by the legislature in order to provide a fund to defray the expenses of executing the law and keeping up the office of Dairy and Food Commissioner.

I have not given the commissioner a definite opinion as yet, and I will be greatly obliged to you if you will kindly give me any views or suggestions which may aid me in reaching a satisfactory conclusion.

With cordial regards,

Very sincerely yours,

WILLIAM A. ANDERSON.

RICHMOND, VA., July 28, 1908.

CRANDAL MACKEY, ESQ.,

Columbian Building,

416 Fifth Street., N. W.,

Washington, D. C.

DEAR SIR:

Your favor in regard to the above case, with accompanying documents, was forwarded to me here, and various causes have prevented my making an earlier reply.

Under the statutes of the State, the Attorney General is not authorized to incur any costs in connection with any appeal or litigation of the character here presented.

In important instances in which the interests of the Commonwealth were considered to be directly or indirectly involved, special acts have been passed providing for the payment of the costs of such litigation, or appeals to the United States Supreme Court, notably in the coupon cases, in the litigation involving

the suffrage article of the Constitution, and in litigation involving the validity of the Corporation Commission, and its acts prescribing the rates and charges to be made by railroad companies.

In all of these cases, although large interests of the State were directly involved, it became necessary to obtain special legislation in order to provide for proper representation of the State in the litigation, and for the payment of the costs and expenses thereof. There is no statute which would authorize me to incur an outlay of \$150.00, or any other sum, in any such litigation; nor could the Auditor pay such a bill if it were presented.

I recognize that important interests of people of the State are involved in the above case, and if an appeal shall be perfected, I will endeavor to co-operate with the counsel for the plaintiff in error in the trial of the case in the United States Supreme Court, if this shall be then deemed desirable.

I have read with much interest the argument of yourself and associates, and the dissenting opinions of Chief Justice Shepherd.

Very truly yours,

WILLIAM A. ANDERSON.

RICHMOND, VA., August 8, 1908.

MISS E. D. THOMAS:

*Fork Union, Fluvanna County,
Virginia.*

DEAR MISS THOMAS,—

The views expressed in your favor of the 3d instant have my entire sympathy. The trouble is not with the State board of education, but with the law, which beyond a shadow of doubt, limits the payment of pensions provided for by the last General Assembly for school teachers, to those who are in service at the time their applications are filed, and cannot be changed by the State board of education. As the contract of each teacher is for the current school year, the board construed this act to apply to teachers whose applications were filed during that current school year, though their schools may not be in session at the very moment when the petitions were filed; but by the terms of the act, the payment of pensions under it is expressly confined to those then in service.

In order to avail themselves of the benefit of this act, it will be necessary, therefore, for any teacher who has taught for twenty years or more, to be engaged in teaching during the next session, unless such teacher was engaged in teaching last session and filed an application then.

There are many meritorious cases to which the act does not apply, and to which it can only be made to apply by an amendment by the legislature. The State board of education has no power to make or amend this law.

When the law is amended, it will be necessary for the legislature to state expressly how far back the board of education can go in allowing pensions; for, if that board is authorized and required to go back indefinitely, the appropriation would have to be doubled, trebled, or possibly quadrupled, in order to meet all of the cases.

The teachers of the class that you mention will have to look to the legislature for relief.

Very truly yours,

WILLIAM A. ANDERSON.

RICHMOND, VA., *August 11, 1908.*

E. LEE TRINKLE, ESQ.,
Wytheville, Virginia.

MY DEAR MR. TRINKLE:

Yours of the 4th instant, forwarded from Richmond, has been received here.

A number of questions have arisen, or will arise, under the Byrd liquor law which it is very difficult to determine, and which can only be settled by the courts.

The question which you submit is perhaps one of that character. At any rate, I would not like to undertake to give a definitive answer to it.

I think you will find that the Supreme Court of the United States has distinctly recognized that the police power of the States may be exercised in the regulation or in the prohibition of the sale of alcoholic beverages, to a far greater extent than in respect to articles of commerce generally, and that particularly since the passage of the Wilson act, that court has given great latitude to acts of the State governments upon that subject.

As you are doubtless aware, the Wilson Act, 26 U. S. Statutes at Large, p. 313, Chapter 728, enacted that all distilled or other intoxicating liquor, or liquors, "transported into any State or territory, or remaining therein for use, consumption, sale, or storage therein, shall, upon arrival in such State or territory, be subject to the operation and effect of the laws of such State or territory."

In the *Delamater* case, 205 U. S., p. 93, decided March 11, 1907, by the United States Supreme Court, it was expressly held that the States could regulate and license the business of canvassing by an agent of a non-resident company or manufacturer for the sale of intoxicating beverages.

I am not prepared to say that "malt beverage," or the provisions of section 23½ of the Byrd liquor law, would come within the scope of that decision.

I suppose that that section was embodied in the act for the purpose of preventing evasions of the revenue and local option laws of the State.

The courts have gone very far in sustaining the power of the State legislatures to enact laws for the regulation of the sale of alcoholic beverages of any kind. Whether they would sustain such an exercise of legislative power as that to which you call my attention can only be determined when the question shall be presented and passed upon by the courts in some case in which it shall arise.

Regretting that I cannot make a more positive response to your inquiry, I am,

Very truly yours,

WILLIAM A. ANDERSON.

RICHMOND, VA., *August 11, 1908.*

T. M. SMILEY, ESQ.,
*Moffatts Creek, Augusta County,
Virginia.*

DEAR SIR:

Your favor of the 7th instant has been received.

Commissioners of the revenue are allowed no compensation by the *State* for assessing the property of railroads for State taxation. That assessment, under the Constitution and statutes, can be made only by the State Corporation Commission.

Under the law, the Attorney General is not authorized to give official advice to boards of supervisors of counties, or to any other local officers, upon any question of a local character. The commonwealths attorney of each county is the only authorized legal advisor of the board of supervisors of such county, and his advice should be taken and followed by them.

By section 28 of the revenue law, Acts of 1902-3-4, p. 170, it is provided that the real and personal property of each railroad company, other than its franchises, "shall be assessed on the valuation fixed by the State Corporation Commission with county, city, town, district, and road levies, at the same rate as real and personal property of natural persons are assessed with such levies."

As the commissioners of the revenue are required by chapter 24 of the Code to assess all property within their respective districts liable to taxation, it would, seem to be their duty to assess the property of railroad companies in their respective districts for county and district taxation. They have nothing to do, of course, with the assessment of the property of railroad companies for State taxation, as that is assessed by the State Corporation Commission, and paid directly in the State treasury by the respective companies.

I understand that this is the practice in the county of Rockbridge, and the the commissioners of the revenue are allowed a commission for extending the property of railroad companies upon their books for local taxation.

I am not aware of any law which expressly gives them such compensation, but it would seem that they are entitled to compensation upon all assessments extended upon their books.

But, as stated, the question you submit is one for your commonwealths attorney, and what I say here, I hope will be regarded as said merely by way of suggestion.

Very sincerely yours,

WILLIAM A. ANDERSON.

RICHMOND, VA., August 17, 1908.

E. L. C. SCOTT, Esq.,
Sec'y Com'n of Fisheries,
Richmond, Va.

MY DEAR SIR:

In reply to the inquiry made of you, by Mr. W. F. Lawson, in his letter of 15th instant, I beg leave to say, that I am of opinion that the oyster inspector can only charge a fee of fifty cents for *each boat* registered, for taking oysters with tongs, either ordinary or patent. When a boat is so registered, any number of licensed tongers may use it, without paying any additional fee for the registration of the boat; in other words, the boat and the persons using it are separate and apart.

Under section 5 of the oyster laws, as compiled for 1906, on pages 17-18, any resident of the State, who desires to catch or take oysters from the natural beds, etc., with either ordinary or patent tongs, must apply to the oyster inspector for registration, and pay to the inspector the license for tonging prescribed by that section. A tonger can only be charged with the license, and pays no fee for registration or license.

To sum up: Under section 3 of the compiled laws, the owner of each boat, used in tonging oysters, must pay a fee of fifty cents for registering the boat; and this is the only charge for registration, regardless of the number of persons using the boat; and under section 5 of the said laws, the tonger pays his license

for tonging, and *no fee* for registration of the boat he may use; (unless he uses his own boat.)

Very truly yours,

ROBERT CATLETT,
Asst. to Attorney General.

RICHMOND, VA., August 14, 1908.

GENERAL E. W. NICHOLS,
*Superintendent Virginia Military Institute,
Lexington, Virginia.*

MY DEAR SIR:—

The inquiry submitted to me by you, pursuant to the resolution of the board of visitors of the Virginia Military Institute, as to whether there is anything to prevent the Virginia Military Institute from lawfully availing itself of the benefits which will be provided for, should the bill, entitled: "A BILL to promote military training in civil educational institutions in the United States," pending in the United States Congress, become a law, has received my careful consideration.

I have examined the provisions of the bill referred to, and also the legislation of Virginia in reference to the Virginia Military Institute.

The chief legislation in reference to the Virginia Military Institute is found in chapter 69 of the Code of Virginia, as amended by chapter 264 of the Acts of 1902-3-4.

That chapter does not very definitely define the purposes for which the institution was established, nor the powers which are conferred upon its board of visitors, which is made its governing body, and, in the language of section 1566, is empowered to "make by-laws and regulations for their own government and the management of the affairs of the institute."

As to the purposes for which the institution has been created, they are inferable from the language of the statutes in reference to the institute, and are made still more manifest by the organization, and system of instruction and discipline, established by the board of visitors, which have been well known to the people of Virginia and to the members of successive General Assemblies during the sixty-eight years of its history, and have received the tacit sanction of the people of the State and their representatives.

I do not find anything in the legislation of the Commonwealth in reference to the institute, which prohibits it from availing itself of any benefaction which may be tendered to the institution, or to the cadets, or to the graduates, thereof, by the National Government, or by any individual or corporation, provided the acceptance of such benefaction will not conflict with the purposes for which the institution was created.

On examination of the bill pending in Congress, I have been unable to discover anything in the benefits which it confers, or in its provisions, which would be inconsistent with any of the purposes for which the Virginia Military Institute was founded, so far as those purposes are disclosed by the acts of the General Assembly.

While it is apparent from the text of the bill, that its leading object was one beneficial to the United States, namely, to secure trained and efficient officers for the United States Army from among the graduates of the institutions which should receive the sums to be appropriated by the United States Government under the provisions of the bill, it is evident also that important

benefits would result to the institutions receiving such annuities, and to the graduates of such institutions whose names should be put upon the eligible list of candidates for commissions in the United States Army provided for by the act of Congress of January 21, 1903, provided they obligated themselves to serve in the official grade for which they had been recommended by the authorities of the institute, in the event of war occurring within a period of five years after their graduation.

While the bill, if its provisions be availed of, would clearly establish new relations between the Virginia Military Institute and the United States Government not provided for by any statute of the Commonwealth, it will be observed that these relations would be voluntary as to the graduates of the institute.

The conditions upon which the grant to each institution is to be given are, as I understand, already in large measure satisfied by the by-laws, regulations, system of instruction and discipline, and curriculum of the Virginia Military Institute; and such conditions as are not already so complied with can be, in my opinion, lawfully provided for by the board of visitors under the broad powers conferred upon it by the legislation of the State in reference to the Virginia Military Institute.

While I am, for the considerations above suggested, strongly inclined to the view that it would be competent for the board of visitors of the institute, under the existing legislation of the State, to take such action, and make such changes in the organization and system of instruction in the institution as would be necessary to comply with the requirements of the bill referred to, the change in the relations between the institution and the United States Government, and the changes in the institution itself, which the acceptance of the provisions of this bill would necessitate, are of such a character and importance, that, although not essential, it would, out of abundant caution, if practicable, be better for the board of visitors to obtain the express sanction of the General Assembly, by legislation to that end, before adopting the regulations necessary to conform the institution to the requirements of the proposed act of Congress.

I have the honor to be, with great respect,

Very truly yours,

WILLIAM A. ANDERSON.

RICHMOND, VA., *August* 20, 1908.

J. G. L. HASH, ESQ'R.,

Endicott, Va.

MY DEAR SIR:

Yours of the 13th instant, addressed to the Attorney General, has been received and noted.

The Attorney General is not authorized by law, to advise officially, any one except certain officers at the seat of government; but wishing to serve you as best I can, I will say personally and un-officially, that in my opinion a rural letter carrier, in the employ of the United States, cannot legally hold the office of notary public in this State.

Sections 162-3-4, of the Code of Virginia, cover the subject, and under section 163, no person shall be capable of holding any State, county, city or town office "who is in the employment of such government, or who receives from it in any way any emolument whatever."

Section 164, makes some exceptions to the above, but does not exempt letter carriers from the operation of section 163.

I see no reason why letter carriers should not be exempt, as well as fourth class post masters; but the legislature has not made such exception.

Very truly yours,

ROBERT CATLETT,
Assistant to Attorney General.

RICHMOND, VA., *September 15, 1908.*

W. L. HEWSEY, ESQ'R.,
Haymarket, Va.

MY DEAR SIR:

Yours of the 14th instant has been received. The State Highway Commissioner, Capt. P. St. J. Wilson, is the official charged with the construction and administration of the laws relating to State aid to roads; and in the regular course, your inquiry should have been addressed to him. But wishing to serve you as best I can, without conflict with that department; I will say that the Highway Commissioner has heretofore ruled that money contributed by individuals, and paid into the county treasury for road improvement, will be taken as a part of the amount to be raised by the local authorities to meet the requirements of the law extending money aid by the State, for such purposes. If your county, and individuals, have raised for road improvement, a sum greater than the amount apportioned to your county from the present appropriation by the State of \$250,000 and the same is actually expended on roads, the difference may be made up to you hereafter, if the next legislature continues the general appropriation for roads. The present appropriation is only for the year 1909; and of course the continued execution of the law, depends upon further appropriations.

Presently speaking, your county can only get the amount which has been apportioned, or which may come from a further distribution of the fund, arising from a possible failure of some of the counties to apply for such aid. I do not understand that this law *binds* the State to meet dollar for dollar raised and expended by the localities on roads, and the provisions of the law may become wholly inoperative, should future legislatures fail or refuse to make further appropriations for such aid.

Should you wish further and more definite information on this subject it may be best to write directly to the State Highway Commissioner.

I am,

Very truly yours,

WILLIAM A. ANDERSON.

RICHMOND, VA., *September 16, 1906.*

MESSRS. HARRISON & LONG,
Krise Building, Lynchburg, Virginia.

GENTLEMEN:

In response to the inquiry submitted in your favor of the 15th instant on behalf of Dr. Rawley W. Martin, president of the State board of medical examiners, whether he as such president is authorized to grant a special permit to an applicant therefor to practice medicine or surgery, who has already stood an examination before said board and failed to pass a satisfactory exami-

nation, under the proviso found in section 1747 of the Code in the language following:

"and provided, further, that when in the opinion of the president of the board any applicant has been prevented by good cause from appearing before the board, he shall have authority, in his discretion, to grant a special permit to such applicant to practice medicine or surgery until the examination, which said special permit shall be revocable at the discretion of the president";

I beg leave to say that it is entirely clear from the language of section 1747 of the Code, as amended by the Acts of 1902-3-4, p. 244, that the authority to grant such permit is given to the president of the board to be exercised in his discretion, and then only in a case in which the applicant has been prevented by good cause from appearing before the board.

In the hypothetical case stated by you, the applicant has not only not been prevented by good cause from appearing before the State board of medical examiners, but has actually appeared before the said board and failed to pass a satisfactory examination.

Very truly yours,

WILLIAM A. ANDERSON.

RICHMOND, VA., *September 25, 1908.*

HON. TIMOTHY RIVES,

Petersburg, Va.

MY DEAR SIR:

Yours of the 24th instant, addressed to the Attorney General, has been received and noted.

As every moment of the time of the Attorney General is occupied with pressing matters of very great importance to the State, he has directed me to reply thereto.

I have carefully considered the act of March 14th, 1908, to which you refer, and I am of opinion that that act *assumes* that courts, and probably justices, have the power to sentence persons, presumably convicted of misdemeanors to work on the public roads in lieu of jail sentences; but it does not undertake to *confer* such power on either the courts, or on justices of the peace; nor can I find any other statute giving such authority. The apparent purpose of this act, was to give "jail birds" credit for good behavior, and a further credit of fifty cents per day for such days as he should labor on the roads; and I have thought it doubtful if it is effective, even for that purpose, as there is no such class of convicts—viz: "sentenced by the courts * * * * in lieu of a jail sentence"—to whom it may be applied. However this may be, I am strongly of opinion that this act does not confer upon courts or justices power to sentence persons convicted of misdemeanor, to work on the roads in lieu of a jail sentence, as punishment for crime or for the non-payment of a fine. Courts and justices can only commit persons convicted of misdemeanor to *jail* as a punishment, or for non-payment of a fine; and when they are so committed, they can only be put to work on the roads, under the provisions of section 3 of an act of March 6, 1906, as amended by an act of February 25, 1908 (chapter 84, p. 108). by order of the circuit court or the judge of such court.

The Attorney General has personally given an opinion, on the law as it stood prior to the Acts of 1908, that *courts* had no such power or authority to sentence persons convicted of misdemeanor, or for default in payment of fine to work on the roads; and as I have said above, I do not think such authority

has been given either courts or justices, by the act of March 14, 1908, or any other act of that session.

Very truly yours,

ROBERT CATLETT,
Assistant to Attorney General.

RICHMOND, VA., *September 28, 1908.*

JAS. A. SPENCER, ESQ'R.,
Farmville, Va.

MY DEAR SIR:

Yours of the 26th instant, addressed to the Attorney General, has been received.

In response to your request for a construction of section 2070a of the Code as amended by the Acts of 1908—I beg leave to say that I am of opinion that the privilege of killing hares, *at any time*, given by this act to resident land owners *on their own land*, is a *personal* privilege and cannot be extended or delegated by the land owner, to any other person. The law is for the *protection of the game*, (hares) and *not* for the protection of the land owner; if the latter, he might waive it; but as it is for the protection of game, the exception in favor of the land owner, is personal privilege, and cannot be delegated by him to another person.

I deem it proper to say, that the Attorney General is not authorized by law to give official opinions on such subjects, nor to any officials except certain officers at the seat of government; hence the view of the law given above is not intended to be official, and is given for what it may be worth.

I am,

Very truly yours,

ROBERT CATLETT,
Assistant to Attorney General.

RICHMOND, VA., *October 7, 1908.*

O. Z. FITZSIMONS & Co.,
Strasburg, Va.,

MY DEAR SIR:

Yours of the 1st instant, addressed to the Attorney General, has been referred to me for reply.

The Attorney General is not authorized by law to give opinions on questions affecting the revenue laws, except to the Auditor of Public Accounts, who is the official charged with the construction and enforcement of these laws.

Wishing to serve you if we can do so with propriety, I would say personally and unofficially, that if you serve oysters at your place of business, to be eaten there, I think you must have an eating house license, as required by sections 96-97 of the revenue laws for 1908, which your county clerk, treasurer or commissioner of the revenue can show you, as all of them should have it.

There is no special license prescribed for keeping a restaurant, but the license to keep an eating house, is I think, necessary for keeping what is commonly called a restaurant; and the sections referred to above, cover both cases. I see no difference between them,

Very truly yours,

ROBERT CATLETT,
Assistant to Attorney General.

RICHMOND, VA., *October 21, 1908.*

HON. B. J. EPPS,

Commonwealth's Attorney, Dinwiddie, Va.

MY DEAR JUDGE:

Yours of the 17th instant received on my return from Washington.

Of course, you will understand that the Attorney General is not authorized to pass on a question involving the compensation of county officers for service rendered the county, or on any other local question.

I will say, however, personally and unofficially, that it is clear to my mind that the treasurer who collects a tax ticket is the one entitled to the full commission for such collection. In other words, an outgoing treasurer is not entitled to any commission whatever on uncollected tax tickets which he turns over to his successor. The incoming treasurer would be entitled to full commission for collecting the tax tickets so turned over to him.

It is provided at the end of section 614 of the Code as amended by the act of March 13, 1908, page 363, as follows:

"But upon all funds turned over by any outgoing county treasurer, his successor for receiving and disbursing said funds shall have not more than two per centum of commission."

That language applies clearly to money which the outgoing treasurer had already collected prior to the end of his term of office which he turned over to his successor. Upon those funds the new treasurer will be entitled to not over two per cent. commission for receiving and disbursing them, the amount of his commission to be determined, I take it, by the board of supervisors of his county. * * * * *

Very truly yours,

WILLIAM A. ANDERSON.

RICHMOND, VA., *October 21, 1908.*

MR. W. D. MARTIN,

Rocky Mount, Va.

DEAR SIR:

Yours without date, postmarked the 19th instant, received. Neither the Secretary of the Commonwealth nor any election officer of the State has a right to keep the name of any candidate for Congress off of the official ballot if he has complied with the requirements of the law in regard to the notice which he shall give and requests his name to be placed there.

No such officer has a right to decide whether a candidate is crazy or not, if so, more than one of the present aspirants for office in the United States might possibly be excluded from the ballot by some local or other officer.

Under such circumstances, the only way a candidate's name could be excluded from the ballot would be by the order of some court of competent jurisdiction.

No merely ministerial officer, (and election officers are purely ministerial officers) would have any authority to exclude anyone's name from the ballot because he considered him insane.

Very truly yours,

WILLIAM A. ANDERSON.

RICHMOND, VA., *October 23, 1908.*

HON. M. L. WALTON,
Woodstock, Virginia.

MY DEAR SIR:

The joint letter of yourself and Mr. Williamson of the 15th instant, addressed to the Attorney General, came during his absence in Washington and, owing to his continued absence there, could not receive his personal attention. On his return day before yesterday he referred your letter to me with request that I reply thereto, as he was obliged to leave at once, and may not return for some days.

The construction and enforcement of the revenue laws is left with the Auditor of Public Accounts, and the Attorney General has no authority to give an official opinion on such matters that can bind any one. However, I take the liberty of giving you briefly such views as I may have on the subject.

I enclose you herein a copy of a letter addressed by the auditor's first clerk to Mr. Burner, your commissioner of the revenue, which speaks for itself.

It seems to me that under a fair construction of the law, a person who raises cattle and butchers the same, may sell and deliver the meat either in the country or town without a State license.

A butcher who buys cattle from others, and does not raise them himself, may sell meat in the country without a State license; but if he sells in a town or city, and delivers at the same time, he must pay the State license of \$50.00 for each wagon used. If a butcher resides in a town he may sell meat from cattle bought by him from others, at his place of business under a merchant's license, and deliver the same by his wagons, either in town or country, without an additional license, but if he sells from house to house and delivers at the same time in a town, he must pay the State license of \$50.00 for each wagon employed. The sections of the revenue law referred to are somewhat involved but it seems to me that the view I have tried to express is a reasonable and proper construction of the law.

I am,

Very truly yours,

ROBERT CATLETT,

*Assistant to Attorney General.*RICHMOND, VA., *October 31, 1908.*

W. ROY STEPHENSON, ESQ'R.,
Attorney at Law,
Winchester, Va.

MY DEAR SIR:

As I am about to leave my office for several days, I have had but little time to consider the question submitted in your letter of the 30th instant. Having, however, given the matter such consideration as the time therefor has allowed, I would say, that I am strongly inclined to the view that you, as trustee, even though executing the trust under a decree of court, cannot legally sell the liquors mentioned in no license or local option territory.

The laws of this State absolutely prohibit the sale of liquors *by any one* without a license and in local option territory.

The law makes no exception in favor of trustees or officers executing legal process; hence it seems to me, that a sale of the liquor by you, either as trus-

tee or as special receiver of the circuit court, *in bulk* or otherwise, will be to say the least, a technical violation of the law. I am, therefore, not prepared to advise that you do so. I cannot find any case reported in this State, passing on the question; but in some other jurisdictions it has been held, that where the laws regulating the sale of liquors, make no exception as to sales by trustees or under legal process, such sale cannot be lawfully made.

I regret that other demands upon my time at this moment will not allow me to give the matter a more exhaustive examination.

I am,

Very truly yours,

WILLIAM A. ANDERSON.

General Review. .

There have been a number of important suits in the State and Federal courts, and before the State Corporation Commission, in which my assistant and myself have represented the Commonwealth.

The most notable of these, as well as the most important, have been the six Virginia passenger rate cases, and the suit of Virginia *v.* West Virginia, pending in the United States Supreme Court.

Important as are the duties devolved upon the Attorney General and his assistant in connection with the trial of litigated cases in court, it is probable that their most important duties are connected with what may be termed the routine or bureau work of the office, the daily consultations sought by executive officers and boards of the State government, and the advice given to them upon the large number of questions which are constantly arising in connection with the administration of the laws.

In the discharge of those duties, as well as in the argument of a number of cases in the courts, I have been very ably and efficiently aided by my assistant, Mr. Catlett.

I wish also to acknowledge my own and the public indebtedness to Mr. T. Gray Haddon, the clerk in the Attorney General's office, for diligent, faithful, and efficient service.

Respectfully submitted,

WILLIAM A. ANDERSON.

Statement.

Showing the Current Expenses of the Office of the Attorney General from November 1, 1907, to November 1, 1908.

1907.	
Nov. 1.	Balance to credit of contingent fund. \$52 56
9.	Warrant on Auditor to cover items paid for by William A. Anderson, as follows:
	500 2-cent stamps. \$10 00
	100 1-cent stamps. 1 00
	————\$11 00
1908	
Jan. 13.	Warrant on Auditor to cover items paid for by William A. Anderson, as follows:
	Southern Bell Telephone and Telegraph Co. . . \$ 75
	Western Union Telegraph Company 99
	F. M. Gibson for stenographic services during sickness of regular stenographer. 2 25
	Large envelopes. 3 00
	500 2-cent stamps. 10 00
	100 1-cent stamps. 1 00
	————\$17 99
Feb. 21.	Warrant on Auditor for Everett Waddey Company for sundries furnished this office 22 69
	———— \$ 51 68
Mar. 1.	Remaining in treasury \$ 88
1908	
Mar. 1.	Appropriation to defray current expenses to March 1, 1909. \$500 00
Apr. 13.	Warrant on Auditor for M. B. Watts, publisher, for one year's subscription to Virginia Appeals. \$ 5 00
14.	Warrant on Auditor for Beaufont Lithia Water Com- pany for 100 gallons of water. 5 00
21.	Warrant on Auditor for Griffith L. Johnson, steno- graphic reporter, Washington, D. C., for report of oral arguments of Mr. Randolph Harrison and the Attorney General on the 9th and 10th of April, 1908, in the United States Supreme Court, in case of Virginia v. West Virginia. 50 00
23.	Warrant on Auditor for Rochester Carbon Manufac- turing Company for 100 sheets of carbon paper . . . 3 50

Apr. 23.	Warrant on Auditor to cover items paid for by William A. Anderson, as follows:	
	Souther Bell Telephone and Telegraph Co. . . .	\$ 1 50
	500 2-cent stamps.	10 00
	200 1-cent stamps.	2 00
		—————\$13 ⁵⁰
	Warrant on Auditor for Richmond Press, Inc., for printing petition for re-hearing in Tazewell et als. v. Herman, treasurer, a case in which the Common- wealth was interested	13 00
May 1.	Warrant on Auditor for Remington Typewriter Com- pany for one new Remington typewriter, and one set of cushion keys therefor.	68 50
7.	Warrant on Auditor for Michie Company, publishers, for one year's subscription to the Virginia Law Reg- ister.	5 00
June 16.	Warrant on Auditor for Remington Typewriter Com- pany, for one-half dozen Paragon Ribbons for Type- writer.	3 50
30.	Warrant on Auditor for Everett Waddey Company, for sundries furnished this office.	16 20
	Warrant on Auditor to cover items paid for by William A. Anderson, as follows:	
	500 2-cent stamps.	\$10 00
	100 1-cent stamps.	1 00
		————— 11 00
Sept. 8.	Warrant to T. Gray Haddon, expenses to Lexing- ton, Va., to act as stenographer to Attorney General	18 85
16.	Warrant on Auditor to cover items paid for by William A. Anderson, as follows:	
	Expressage on records in the Virginia passenger rate cases, pending in the United States Su- preme Court	\$ 2 40
	Expressage on box of stationery, etc., to Lex- ington, Va.	75
	To laundrying towels for use in the Attorney General's office.	25
	Expressage on Vol. II. of the record in the Vir- ginia-West Virginia suit, from Charleston, West Virginia	1 50
	500 2-cent stamps.	10 00
	100 1-cent stamps.	1 00
		————— 15.90
	Warrant on Auditor to Rochester Manufacturing Com- pany for 100 sheets of carbon paper.	3 50
	Warrant on Auditor for Columbia Typewriter Com- pany for repairing Bar Lock typewriter	5 60

Oct. 14.	Warrant on Auditor to cover item paid for by William A. Anderson, as follows:	
	Western Union Telegraph Company.....	\$ 1 55
	Southern Bell Telephone and Telegraph Co. . .	4 08
	150 5-cent stamps.	7 50
	500 2-cent stamps.	10 00
	200 1-cent stamps.	2 00
		—————\$25 13
31.	Warrant to Lawyer's Co-operative Publishing Com- pany for books as follows: Volumes 9-14, inclu- sive, L. R. A. (N. S.); Digest of Vols. 1-12, inclusive, L. R. A. (N. S.); Vol. 51, United States Reports; and Vols. 1-4, inclusive, Supreme Court Report Digest.	55 00
	Warrant on Auditor to William A. Anderson, for amount paid by him to Thos. M. Gibson for steno- graphic services.	5 00
		————— \$323 18
Nov. 1.	Balance to credit of contingent fund.	\$176 82

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