

ANNUAL REPORT

OF THE

ATTORNEY GENERAL

TO THE

GOVERNOR OF VIRGINIA

FOR THE

YEAR 1910

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RICHMOND:  
DAVIS BOTTOM, SUPERINTENDENT PUBLIC PRINTING.  
1911.



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# ATTORNEYS GENERAL OF VIRGINIA

FROM 1775 TO 1910.

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Edmund Randolph .....	1776-1786.
James Innes .....	1786-1796.
Robert Brooke .....	1796-1799.
Philip Norborne Nicholas .....	1799-1819.
John Robertson .....	1819-1834.
Sidney S. Baxter .....	1834-1852.
Willis P. Bocock .....	1852-1860.
John Randolph Tucker .....	1860-1866.
Thomas Russell Bowden .....	1866-1869.
Charles Whittlesey (military appointee) .....	1869-1870.
James C. Taylor .....	1870-1874.
Raleigh T. Daniel .....	1874-1877.
James G. Field .....	1877-1882.
Frank S. Blair .....	1882-1886.
Rufus A. Ayers .....	1886-1890.
R. Taylor Scott .....	1890-1897.
R. Carter Scott .....	1897-1898.
A. J. Montague .....	1898-1902.
William A. Anderson .....	1902-1906.
William A. Anderson .....	1906-1910.
Samuel W. Williams .....	1910—

William E. Bibb, Assistant Attorney General, 1910.

T. Gray Haddon, Clerk.



# REPORT.

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

*To His Excellency, WM. HODGES MANN,  
Governor of Virginia.*

SIR:

As required by law, I submit herewith my annual report embracing the work of this office for the year ending October 31, 1910.

The cases in which the Attorney General, or his assistant, have appeared, and which have been disposed of during the year, are mentioned under the titles of the several courts in which those suits have been pending.

### Cases in the Supreme Court of the United States.

1. *VIRGINIA v. WEST VIRGINIA*.—The circumstances which made the institution of this suit necessary for the protection of the interests of the Commonwealth, and the history of the events which led up to bringing the suit, are set forth in the annual reports of the former Attorney General, Honorable William A. Anderson, and I will not repeat them here.

As stated in Major Anderson's report for 1909, the case was submitted to Honorable Charles E. Littlefield, special master, and was fully and exhaustively argued before him. The special master made his report to the Supreme Court of the United States on the 17th day of March, 1910. The counsel for Virginia filed several exceptions to the master's report, as also did the counsel for West Virginia. The exceptions so filed have been set down for argument in the Supreme Court of the United States on the 16th day of January, 1911: and it is hoped that a final decree will be rendered within the next year.

2. *ROSELLE v. COMMONWEALTH*.—This case was appealed from a final decision of the Supreme Court of Appeals of Virginia. Roselle, who was the agent of the Chicago Portrait Company, was fined by the police justice of the city of Charlottesville for peddling picture frames without a license. He took an appeal from the decision of the police justice to the corporation court of Charlottesville, and from that court to the Court of Appeals of Virginia, which said last named court sustained the decision of the corporation court of Charlottesville, and from the Court of Appeals of Virginia he took an appeal to the United States Supreme Court, where the case is now pending.

### Cases Before the State Corporation Commission.

There have been a number of hearings before the State Corporation Commission since I came into this office on February 1st of this year, in which the Attorney General has felt it his duty to represent the Commonwealth.

### Cases Decided in the Supreme Court of Appeals of Virginia.

1. *Commonwealth v. Gleason, et als.* Appeal from the circuit court of of city of Clifton Forge. Writ of *quo warranto*. Affirmed.
2. *Hardy v. Commonwealth.* On conviction of murder. Appeal from the circuit court of Nansemond county. Affirmed.
3. *Dir v. Commonwealth.* Violation of the local option law. Appeal from the circuit court of Lancaster county. Affirmed.
4. *Myers, Receiver v. Commonwealth.* Tax case. Appeal from the hustings court of the city of Richmond. Affirmed.
5. *Commonwealth v. Virginia Bank and Trust Company.* Tax case. Appeal from the corporation court of the city of Norfolk. Reversed.

### Cases Pending in the Supreme Court of Appeals of Virginia.

1. *Robinson v. Commonwealth.* Misdemeanor. Appeal from the hustings court of the city of Richmond.
2. *Cates v. Commonwealth.* On conviction of rape. From the hustings court of the city of Portsmouth.
3. *Jones v. Commonwealth.* On conviction of murder. Appeal from the circuit court of the county of Buckingham.
4. *Perkins v. Commonwealth.* On conviction of murder. From the circuit court of the county of Buckingham.
5. *Wright v. Commonwealth.* On conviction of murder. Appeal from the circuit court of the county of Buckingham.
6. *Williams v. Commonwealth.* On conviction of selling liquor unlawfully. Appeal from the circuit court of Gloucester county.
7. *Johnson v. Commonwealth.* On conviction of murder. Appeal from the circuit court of Westmoreland county.
8. *Thornton v. Commonwealth.* Felony. From the circuit court of Charlotte county.
10. *Wright v. Commonwealth.* Misdemeanor. Appeal from the corporation court of the city of Roanoke.
11. *Washington-Southern Railway Company v. Commonwealth.* Appeal from the State Corporation Commission from an order prescribing a passenger rate of two and one-half cents per mile.
12. *Green's and Parker's Administrators v. Marye, Auditor.* This is a suit brought by the plaintiffs to collect \$172,358.26 commissions due by the State of Virginia in connection with the settlement of the old Revolutionary claims against the United States Government. Appeal from the circuit court of the city of Richmond.
13. *Western State Hospital v. General Board of State Hospitals.* Appeal from the circuit court of the city of Richmond. This is a suit brought by the Western State Hospital to have the will of the late Sydney Murkland construed. This suit was dismissed by the circuit court of the city of Richmond for want of jurisdiction.
14. *Commonwealth v. Richmond, Fredericksburg and Potomac Railroad Company.* Appeal from the circuit court of the city of Richmond. For the correction of an erroneous assessment of taxes.

This case involves the question of the liability of the Richmond Fredericksburg and Potomac Railroad Company to pay the State franchise tax,

and in one aspect of the case the question whether that company is not now generally liable to taxation, State, county and municipal. It has already been argued once, but the court has asked for a reargument, which will be had at the November term of the court, at which time the point will be pressed that even if it be conceded that the railroad company ever rightfully enjoyed immunity from State taxation, this privilege has been waived by the company having accepted amendments to its charter as provided in section 158 of the Constitution.

#### Cases Decided in the Circuit Court of the City of Richmond.

1. *Commonwealth v. Bennett Taylor, clerk Albemarle county.* Suit instituted June, 1881. Dismissed June 15, 1910.
2. *Western State Hospital v. General Board of State Hospitals.* This was a suit brought by the Western State Hospital against the general board of State hospitals to construe the will of the late Sydney Murkland devising certain property to the Western State Hospital. On behalf of the general board the Attorney General filed a demurrer to the bill, on the ground that the circuit court had no jurisdiction to try the case, which demurrer was sustained and the suit dismissed.
3. *Pocahontas Consolidated Collieries Company v. Morton Mayre, Auditor.* This case involves the validity of the tax imposed by section 13 of the Virginia revenue law upon the recordation of a mortgage upon lands in Virginia and also upon lands in West Virginia, to secure an ultimate issue of \$20,000,000.00 of bonds issued, or to be issued, by the petitioner. The case was decided in favor of the Commonwealth.
4. *Virginia-Carolina Chemical Company v. Mayre, Auditor.* This case involved questions similar to those presented in No. 3.

#### Cases Pending in the Circuit Court of the City of Richmond.

##### AT LAW.

1. *Commonwealth v. Joseph Mayor, Jr., late treasurer, et al.* Suit instituted April, 1884.
2. *Commonwealth v. Same.* Another suit instituted April, 1884.
3. *Commonwealth v. John F. Jones, treasurer Craig county, et al.* Suit instituted October, 1886.
4. *Commonwealth v. A. G. Cleek, clerk, etc., of Bath county.* Suit instituted October, 1886.
5. *Commonwealth v. Same.* Another suit instituted in October, 1886.
6. *Commonwealth v. G. H. Baughman, et al.* Suit instituted November, 1886.
7. *Commonwealth v. John H. Sears, treasurer Mathews county.* Suit instituted April, 1887.
8. *Commonwealth v. G. R. Barr, treasurer Washington county.* Suit instituted April, 1887.
9. *Commonwealth v. C. H. Ingles, treasurer Henry county, et al.* Suit instituted October, 1886.
10. *Commonwealth v. Same.* Suit instituted May, 1887.
11. *Commonwealth v. Same.* Suit instituted May, 1887.

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

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

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

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

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

17. *Commonwealth v. H. L. Stone and sureties.* Motion for judgment, which was duly docketed October 15, 1910.

18. *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.

#### IN EQUITY.

1. *Commonwealth v. Samuel M. Page.* Suit instituted March, 1872.

2. *Commonwealth v. Walter Millian.* Suit instituted April, 1872.

3. *Commonwealth v. P. H. Huffman, et al.* Suit instituted April, 1873.

4. *Commonwealth v. J. W. Grantham.* Suit instituted December, 1874.

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

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

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

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

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

10. *Commonwealth v. George Dusner's Curator and Admr.* Suit instituted March, 1897.

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

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

In my judgment the interest of the State will be best subserved by diligent prosecution of these cases to a determination. I shall pursue this course and dismiss such of the cases as promise no likelihood of ultimate recovery in favor of the State, and where reasonable compromises are offered, I shall adjust these cases upon equitable terms, with the approval of the auditor and the judge of the circuit court of the city of Richmond. The continuance of these cases upon the docket imposes annually considerable cost upon the Commonwealth, and in my judgment they should be promptly prosecuted and disposed of.

## OPINIONS GIVEN

*From November, 1909, to November, 1910.*

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

A great many others were given in writing, and many more orally, to the Auditor of Public Accounts, and other officers of the State government; and a large number in writing and orally 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.

It is the custom of the people of this State to write a great many letters to this office asking for opinions upon various questions arising under the laws of the Commonwealth, to which the Attorney General is neither required, authorized nor warranted in giving official opinions, but in all cases I have acted upon the theory that all letters received at this office from citizens of this State or elsewhere are entitled to a prompt and courteous reply, and this course has been pursued, and often unofficial opinions have been expressed in reply to such letters. This has imposed upon this office and its force a very heavy burden, but I see no other way of properly meeting the situation, than the course pursued.

**To the Governor.**

RICHMOND, VA. *February 22, 1910.*

*To His Excellency, WM. HODGES MANN,*

*Governor of Virginia, Richmond.*

DEAR GOVERNOR:

Replying to your communication of February 21, 1910, which is as follows:

*Hon. SAMUEL W. WILLIAMS,*

*Attorney General of Virginia*

*Richmond, Virginia.*

MY DEAR SIR:

I send you copy of Senate bill No. 60, which has passed both branches of the legislature, and to-day was presented to me for my approval.

I will be glad to have your opinion as to whether the third section of this bill can be regarded as class legislation, and whether in your judgment the bill as it stands is in accordance with the Constitution of the Commonwealth of Virginia.

Please let me have your answer as soon as you can, as I have only five days in which to consider this measure.

WM. HODGES MANN,

*Governor.*

I have given the subject such careful consideration as its importance deserves.

The principle is well settled that the legislature of Virginia is omnipotent in making laws unless restrained by the express or implied provisions of the State or Federal Constitution. This principle is familiar, and has been repeatedly laid down by our courts, both State and Federal.

The last expression by the Virginia Court of Appeals on this subject is to be found in a very able and well considered opinion of that court, delivered, by President Keith, in the case of *Willis v. Kalmbach*, reported in 109 Va., p. 475, wherein he has laid the rule down as follows:

"To pass upon the power of the legislature and determine whether a statute which it has enacted is a valid exercise of its power, or is to be deemed null and void on account of its repugnancy to the Constitution, is a duty of the utmost delicacy. From the earliest exercise of this power by the courts, down to the latest expression upon the subject, they have with one voice declared, that while the power was essential in a government in which the people, who are the source of all power, have seen fit to restrain the various governmental agencies, which they have established, by an organic act of Constitution emanating directly from themselves, nothing short of a plain and palpable repugnancy to the Constitution of the statute whose validity is called in question can warrant a court in holding a statute to be null and void.

"Another principle of equal authority is that 'as to matters not ceded to the Federal government, the legislative powers of the General Assembly are without limit, except so far as restrictions are imposed by the Constitution of the State in express terms, or by strong implication. The State Constitution is a restraining instrument only, and every presumption is made in favor of the constitutionality of a State statute. No stronger presumption is known to the law. In order to warrant the courts to declare a State statute unconstitutional, the infraction must be clear and palpable.' *Whitlock v. Hawkins*, 105 Va. 242, 53 S. E. 401.

"As is said in *Prison Association of Virginia v. Ashby*, 92 Va. 667, 25 S. E. 893, 'the legislature of the State has plenary legislative power, except where it is restricted by the Constitution of the State, or of the United States, and the courts have no power to declare its acts invalid merely because they regard the legislation as unwise or vicious.'

"And in *Button v. State Corporation Commission*, 105 Va. 634, 54 S. E. 769, it is said that acts of the legislature 'are always presumed to be constitutional, and can never be declared otherwise, except where they clearly and plainly violate the Constitution. All doubts are resolved in favor of their validity, and, in resolving doubts, the legislative construction put upon the Constitution is entitled to great consideration, though it will not be given a controlling effect.' See also *Eyre v. Jacob*, 14 Gratt. 422, 73 Am. Dec. 367.

The principles enunciated in these decisions are fully recognized and firmly established."

I know of no provision of the Constitution of Virginia which is violated by section 3 of Senate bill No. 60, referred to in your communication above, and in my judgment it is clearly within the power and competency of the legislature to enact.

The rule seems to be well settled by the decisions of the courts that "class legislation" to be unconstitutional must be such kind or character of legislation as is in violation of the constitutional guaranty of equal protection of the law. This constitutional guaranty is not to be found in that provision of the Bill of Rights of Virginia, section 11, which provides "That no person shall be deprived of his property without due process of law," nor in the similar provision contained in the Fourteenth Amendment to the Constitution of the United States, which is as follows: "Nor shall any State deprive any person of life, liberty or property without due process of law."

The act proposed (section 3) does not violate either of these constitutional provisions. There is no question of due process of law involved.

Aside from the provision of the Virginia Constitution that taxation shall be equal and uniform, the only other constitutional guaranty against "class legislation" is to be found in the concluding paragraph of section 1 of the Fourteenth Amendment to the Constitution of the United States, which is in the following words:

"Nor shall any State deny to any person within its jurisdiction the equal protection of the laws."

Waiving the question as to which the courts do not seem to be in entire accord, as to whether this provision of the Federal Constitution does or does not apply to domestic corporations, and conceding for the sake of argument that such corporations are embraced within the words "any person," and are therefore entitled to the full benefit of this constitutional guaranty against the denial of equal protection of the laws, I cannot conclude that section 3 of the act referred to does in any way deny to any railroad corporation in the State full and equal protection under the said law.

The act referred to does not in terms, or by necessary intendment or operation, deprive any railroad corporation of any existing right. The option or privilege mentioned in the act is, by the express terms thereof, applied and given to all railroads alike, and any railroad corporation of its own violation can elect to take, or decline to take, advantage of the provisions of the act. If any railroad so acting, elects to take advantage of the act, then in that event such railroad would voluntarily give up and surrender any exemption from taxation which had theretofore been enjoyed by such railroad prior to the date of such voluntary election on its part, and there is no constitutional provision, State or Federal, which is violated either by the act of the legislature in passing the law and in extending or giving this option or privilege to the railroads, or by the voluntary act of the railroad in accepting or rejecting the option or privilege contained in section 3 of the act referred to.

My conclusion and opinion, therefore, is that the act referred to is not such "class legislation" as is prohibited by the Constitution of Virginia,

or by the Constitution of the United States, and that the said act "is in accordance with the Constitution of the Commonwealth of Virginia" for the reasons stated above, namely that the said act is clearly within the power and competency of the legislature of Virginia to enact.

I have the honor to be,

Yours very respectfully,

SAML. W. WILLIAMS,  
*Attorney General of Virginia.*

RICHMOND, VA., March 5, 1910.

To His Excellency, WM. HODGES MANN,  
*Governor of Virginia, Richmond.*

MY DEAR SIR:

I have before me your communication of this date in which you state:

"I have before me for approval the charter of a city which authorizes the council to exempt manufacturing enterprises from city taxes for a period of five years. Is such a provision constitutional?"

Section 1 of article X of the former Constitution provided:

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

Under this provision of the Constitution a *quære* was suggested in *Whiting et als. v. Town of West Point*, 88 Va., 905, whether "it would be competent for the legislature to authorize municipal corporations to make exemptions," but upon that question Judge Lewis in delivering the opinion of the court expressed no opinion. And the Court of Appeals of Virginia in *Thomas v. Snead, Commissioner*, 99 Va., p. 613, reaches the conclusion that under our former Constitution, "A municipal corporation possesses no inherent power to create exemptions from taxation, nor can such a power be implied from a delegation of the power to tax, but it exists only where the legislature has expressly granted it, and can be exercised only within the limits of such grant."

The present constitutional provisions upon the subject are found in section 168 of the Constitution, which is as follows:

"Sec. 168. All property, except as hereinafter provided, shall be taxed; all taxes, whether State, local or municipal, shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws."

And in section 128, which is as follows:

Sec. 128. In cities and towns the assessment of real estate and personal property for the purpose of municipal taxation, shall be the same as the assessment thereof for the purpose of State taxation, whenever there shall be a State assessment of such property."

Notwithstanding the provisions contained in section 65 of the Constitution which confers upon the General Assembly power to pass general laws conferring upon the councils of cities and towns such powers of local and special legislation as the legislature may deem expedient, not inconsistent with limitations contained in the Constitution, yet when all of the constitutional provisions and limitations on the subject are construed together, and after applying thereto well settled general principles, I very seriously doubt whether the legislature, even by general law, could confer upon a municipal corporation the power to exempt any property from taxation which would under the Constitution and laws of the State be the subjects of taxation.

Section 117 of the Constitution provides that the legislature shall pass general laws for the government of cities and towns, and under section 63, sub-section 7, when construed in connection with section 117, there can be no doubt of the fact that the General Assembly of Virginia cannot enact "any local, special or private law exempting property from taxation," and this inhibition applies whether the taxation is for State, county or municipal purposes.

I therefore conclude, and am of the opinion, that the provision contained in the charter now before you for approval which authorizes the council of a city "to exempt manufacturing enterprises from city taxes for a period of five years," is unconstitutional.

Yours very truly,

SAML. W. WILLIAMS,  
*Attorney General of Virginia.*

RICHMOND, VA., March 15, 1910.

To His Excellency, WM. HODGES MANN,  
*Governor of Virginia, Richmond.*

MY DEAR SIR:

Your communication of March 14th to hand, in which you ask my opinion on the proposition contained in the following paragraph of your letter, to-wit:

"From the bill for the establishment of a dispensary in the towns of South Boston and Houston, in Bannister district, Halifax county, I quote so much of the eleventh section as may be necessary to enable you to understand the question I propose to ask: 'The council of said respective towns shall appropriate from the treasury of such towns a sufficient amount to establish the dispensary, which amount shall be paid into the town treasury from the profits arising from such dispensary as they shall accrue, and no profits shall be paid out in any other direction until said amount is so repaid, and thereafter said dispensary shall be supported and maintained out of the profits accruing therefrom.'"

The case referred to, *Farmville v. Walker*, 101 Va., 323, settles the proposition that the legislature in the exercise of the police power of the State "may authorize a municipal corporation to establish a dispensary for the sale of such intoxicating liquors, although in doing so it may render necessary the expenditure of money, and ultimately the imposition of a tax. The object is a public one, in the promotion of which public money may be expended," and in the course of the opinion the court lays down the rule as follows:

"If the statute, the validity of which is attacked, is not in conflict with the State or Federal Constitution, the courts have no power to declare it invalid, however well satisfied they may be that it is unwise or vicious legislation."

And the court further says:

"The dispensary law is a recent innovation. It may yet be considered as in its experimental stage. It may result in profit or loss according as it is discreetly or unwisely enforced. But with that the court has nothing to do. The end being legitimate, the legislature is left to choose the means."

It is well settled that the legislature can grant a municipal corporation power to levy taxes and to contract debts, and it is equally well settled that having once granted this power to a municipal corporation the legislature can exercise no sort of control over either the collection, disbursement or disposition of the money collected as corporation or municipal taxes, and if the bill in question, fairly construed, is in effect an appropriation of the corporation funds by positive act of the legislature, then it is clearly not within the power of the legislature to pass such law, as it would be in contravention of the rights vested in the corporation by its charter; but if the act under consideration, when fairly construed, simply is intended to authorize the council of the town to carry out the previously expressed will of the voters voting in a local option election, and is nothing more or less than a means to an end, and amounts to nothing more than lending the money of the corporation to aid in establishing the dispensary, and that the provision for the repayment of the money into the treasury is to be considered reasonable, ample and satisfactory for the purpose, then it seems to me that the act can be construed as not violating any of the charter rights of the town, but simply as an enlargement of its powers to enable it to embark in the enterprise of running a dispensary, which, as was held in the case of *Farmville v. Walker*, is legitimate under the Constitution and laws of this State; and whilst entertaining some doubt on the subject and confessing my diffidence in the opinion expressed, yet in view of the well settled rule that no act of the legislature should be declared unconstitutional unless it is clearly so, and is clearly in conflict with some provision of the Constitution to which attention can be directly called, I cannot say that the act in question is, in my opinion, so clearly in excess of the broad and well known powers of the legislature as to say that

it is unconstitutional, or is beyond the power of the legislature to enact.  
I am,

Yours very truly,

SAMUEL W. WILLIAMS,  
*Attorney General of Virginia.*

RICHMOND, VA., March 16, 1910.

*To His Excellency, WM. HODGES MANN,  
Governor of Virginia, Richmond.*

MY DEAR GOVERNOR:

Replying to your communication of this date, in which you ask my opinion as to the constitutionality of House bill No. 281, a copy of which you enclose in your letter, I have the honor to reply as follows:

The Constitution of Virginia, section 52, provides that "No law shall embrace more than one object, which shall be expressed in its title"; \* \* \*

This constitutional provision has passed under the review of our Court of Appeals repeatedly, and the latest expression of that court on the subject is to be found in the opinion of the court delivered by Judge Cardwell in the case of *Couk v. Skeen*, reported in 109 Va., p. 11, where the rule is laid down as follows:

"In the case of *Ingles v. Straus*, 91 Va., 209, practically the same question here presented was considered and determined. It was there held that if the subjects embraced in the act, but not specified in the title, have congruity, or natural connection with the subject stated in the title, or are cognate or germane thereto, the requirement of the Constitution, that 'no law shall embrace more than one subject, which shall be expressed in its title,' is satisfied."

Now applying this rule to the bill under consideration, and applying the test laid down by the Court of Appeals, the question is, is there anything in the act which violates this rule?

The title to the bill refers to operatives and laborers engaged in and about coal mines, manufactories of iron and steel, and all other manufactories. In the body of the bill is embraced all persons, firms, companies, corporations or associations engaged in building or operating railroads.

The objects sought to be accomplished, and the subjects embraced in the bill, as set forth in the title, even under the most liberal construction, cannot, in my opinion, be held to embrace, or to cover, either the building or operating of railroads. I can see no such congruity or natural connection existing between the building or operating of railroads and mining coal and manufacturing iron and steel as to make these operatives or these different corporations so identical in their aims, objects or purposes as to hold that the naming of the one embraces the other within the meaning of the Constitution. In other words, the subject of building and operating railroads is so entirely foreign to, and different from, the mining of coal, manufacturing iron and steel, and engaging in other manufactories, that the two subjects cannot be held to have any necessary or natural congruity or connection. That is to say, the two subjects are entirely independent and separate one from the other.

For this reason I conclude that the bill, so far as it applies to persons engaged in building or operating railroads is not embraced in, or covered by, the title, and to this extent that the law is unconstitutional.

There are other provisions of the bill which do not appear to be entirely free from objection, but I do not think that they are so entirely foreign to the objects sought to be accomplished by the bill as to warrant the conclusion that they are unconstitutional.

I therefore am of opinion that for the reasons stated above, and to the extent stated above, the bill is unconstitutional.

Yours very truly,

SAMUEL W. WILLIAMS,  
*Attorney General of Virginia.*

RICHMOND, VA., March 17, 1910,

*To His Excellency, WM. HODGES MANN,  
Governor of Virginia, Richmond.*

DEAR GOVERNOR:

Your communication to hand in which you ask my opinion as to the constitutionality of House bill No. 425, and referred to in your said communication of this date. I have the honor to reply as follows:

The bill provides for the payment out of the public treasury of Virginia of three separate and distinct items, which may be dealt with first separately, and then collectively.

Assuming the facts recited in the bill to be true, the first item is based upon an alleged mistake in the insolvent list for the year 1906, and the fact is stated that the circuit court of Elizabeth City county entered an order correcting this mistake, which was forwarded to the Auditor of Public Accounts, and the Auditor refused to pay the same—that is, refused to allow the treasurer credit therefor in his settlement for the taxes for the year 1906. This state of facts is made the basis for directing payment out of the treasury of \$225.23.

The next item is a claim for \$45.24, the amount of certain jury and witness tickets paid by the said treasurer to the holders thereof, and for which the Auditor refused to allow credit to the said treasurer in his settlement, and the further fact is stated that the treasurer was unable to collect this claim because it is now barred by the statute of limitations.

And the next item is based upon certain alleged errors in certain orders of the circuit court of Elizabeth City county correcting erroneous assessments paid by the treasurer, and which the Auditor of Public Accounts refused to give credit for to the treasurer in his settlement, and both of which said last named claims are barred by the statute of limitations.

The bill then provides for the payment out of the public treasury of the first of the above named claims, to-wit, \$225.23, and for the payment of the two last named claims aggregating \$105.96, or so much thereof as may be due after correcting any clerical errors which may exist in said jury tickets and orders correcting erroneous assessments.

I am of opinion that all of the items of this bill are covered by general laws now in force. As to the item of \$225.23, on the facts stated the

treasurer has his remedy under section 746 of the Code, which provides that when the Auditor of Public Accounts shall disallow any claim against the Commonwealth, such as is mentioned in this bill, suit can be brought therefor in the circuit court of the city of Richmond. This statute is a general statute, and applies to all cases of this character, and if this claim is one of the claims barred by the statute of limitations, then the effect of this bill may be to repeal the statute of limitations as to this claim.

On the facts stated, each of the other two claims or items in the bill mentioned can be made the subject of a similar suit under section 746 of the Code, and these two claims are admittedly barred by the statute of limitations; and this bill repeals, in effect, two general statutes, to-wit, section 746 of the Code referred to above, and also the general statute of limitations.

In *Higginbotham's Executors v. Commonwealth*, 25 Gratt., 627, it was held that: "Under this section (746) the State may be sued for any debt or claim due whether liquidated or unliquidated."

#### *Constitution.*

Section 64 provides that in all cases enumerated in section 63, and in every other case which in its judgment may be provided for by general law, the General Assembly shall enact general laws.

"The requirement of general laws, and that they have a uniform operation, is an implied prohibition of special or local laws; so the express prohibition of local or special laws is an implied requirement that legislation shall be general."

Lewis Sutherland Statutory Construction, Vol. 1, p. 357.

The authorities hold that if a general law exists which is applicable to a given subject, the question whether a general law can be made applicable to the subject is thereby resolved. The legislature by the enactment of a general law covering the subject has practically decided the question, and if such general law is in force, a special or local law affecting the same subject and modifying the general law will be held invalid. The general law being in existence, it is no longer an open question as to whether such general law can be made applicable. *Ib.*, section 191, notes.

And a constitutional injunction to pass general laws when they can be made applicable is imperative as to all subjects of a general nature, and where special legislation is prohibited by the Constitution in regard to a given subject no other than general laws can be passed which will be valid. *Ib.*, section 191.

The General Assembly of Virginia, as above stated, has passed a general law on the subject of the enforcement of claims against the Commonwealth of the character and kind mentioned in said bill, and has provided the forum in which such suits can be maintained, to-wit, the circuit court of the city of Richmond; and the General Assembly has also by general law provided for a general statute of limitations as to the time within which claims of the character mentioned in this bill must be asserted against the Commonwealth. This being true, these general laws of themselves, when

construed in connection with the positive mandate of the Constitution, that general and not special laws must be passed on all subjects which can be reached by general law, is an implied prohibition on the power of the General Assembly to pass a special law; and for this reason the act submitted to me is unconstitutional, and for the further reason that the Constitution in the same section (64) provides that: "No private corporation, association or individual shall be specially exempted from the operation of any general law, nor shall its operation be suspended for the benefit of any private corporation, association or individual."

Under this provision of the Constitution legislation of the character contained in this bill is also prohibited by the express terms of the Constitution.

I therefore conclude that the act in question is unconstitutional for two reasons: first, it contravenes the implied inhibition against the passage of special laws, where a general law will reach the subject, and secondly, because it is in violation of the positive inhibition against exempting any individual from the operation of a general law, for to allow the money mentioned in this bill to be paid out of the public treasury would be to exempt the treasurer of Elizabeth City county from the operation and effect of the two general laws hereinbefore mentioned and referred to.

For the reasons stated, I am of opinion that the bill submitted to me by you, and referred to in your communication, to-wit, House bill No. 425, is unconstitutional.

Yours respectfully,

SAMUEL W. WILLIAMS,  
*Attorney General of Virginia.*

RICHMOND, VA., March 17, 1910,

*To His Excellency, WM. HODGES MANN.*

*Governor of Virginia, Richmond.*

MY DEAR GOVERNOR:

Your communication to hand relative to House bill No. 281, in regard to which I had the honor of rendering you an opinion on March 16th.

My attention is called by you to the fact that the words "building or" in line 2 of section 1 of the bill are not in the enrolled bill, and my attention is also called to the fact that the argument is made that as this bill was an amendment to an act passed March 23, 1887, it was not necessary to enlarge the title of the bill so as to make it applicable to employees of corporations operating railroads.

After due consideration I have the honor to state as follows:

The fact that the bill in question was an amendment to a former act can have no material bearing upon the question, for in any event the title of every bill must conform to the requirements of the Constitution.

In *Iverson Brown's case*, 91 Va., 775, the court says:

"It is not necessary, therefore, to do more, if so much, in amending and re-enacting or repealing any part of the Code or adding thereto, than refer to the proper chapter and section thereof to be amended or repealed or added to, and adopt and express in the title of the amendatory act the number and subject of such chapter if

the provision of such amendment by re-enactment or by additional section or sections is germane to the subject of the chapter."

This rule, however, has no application whatever to the bill under investigation, for the simple reason that the bill does not purport to amend the Code of Virginia or any section thereof. It is true that the original bill sought to be amended is to be found in Pollard's Code, Volume 2, section 3657-d. I express no opinion on the point as to whether the rule laid down in Brown's case referred to above does or does not apply to Pollard's Code. It is sufficient to say on this point that the act in question, neither in the title nor in the body thereof, purports to amend either the Code of Virginia of 1887, or to amend Pollard's Code. On the contrary, the bill under consideration, in express terms, purports to amend the act referred to therein, which was approved May 23, 1887.

In *Ellinger v. Commonwealth*, 102 Va., 103, the act of the legislature under consideration contained the following title: "To define and establish by straight lines the low watermark lines for the riparian owner of Fox Island or Fox Islands, in the county of Accomac."

In the body of the act power was conferred upon the Fish Commissioner to settle and arbitrate the controversy between Ellinger, the owner of the land, and the Commonwealth, and the commissioner proceeded to make his award fixing the lines as provided for in the bill, and the Court of Appeals held that the bill, so far as it conferred the said power upon the Fish Commissioner, was unconstitutional. The court says:

"We cannot think that the title to this act is a compliance with the Constitution. It is true that the Constitution is, in this respect, to be liberally construed and the law upheld, if practicable, but if the act embraces more than one object while the title to the act embraces but one, the courts have no discretion in the matter. The Constitution in such case is imperative and must be obeyed."

In *Board of Supervisors of Henrico County v. McGruder*, 84 Va., 831, the court held the act there referred to to be unconstitutional, on the ground that the title of the act referred to the treasurer of Henrico county and the body of the bill referred to the late treasurer of Henrico county.

In *Martin v. South Salem Land Company*, 94 Va., 37, Judge Buchanan, delivering the opinion of the court, lays down the rule as follows:

"The Constitution has made the title of an act the conclusive index of the intention of the legislature as to what shall have operation, and if the title is so framed as to include only certain matters, other legislation beyond the matters is inoperative, although it might with entire propriety have been embraced in the same statute with the matters indicated by the title, if the title had been more comprehensive. Cooley's Const. Lim. (6th ed.), pp. 177 to 179."

In *Board of Supervisors of Alexandria County v. City Council of Alexandria*, 96 Va., 469, the court held:

"The title of an act of Assembly entitled 'An act to authorize the qualified voters of Alexandria county to vote on the question of the

removal of the courthouse from Alexandria city to some point within Alexandria county' is not sufficiently broad to authorize provisions in the act for the partition or sale of the courthouse and jail properties held for the use of the county and city. Those provisions are in conflict with Article V., section 15 of the Constitution, which provides that 'no law shall embrace more than one object, which shall be expressed in its title.'"

These authorities and the principles they announce confirm my former opinion, and the striking out of the words "building or" in the bill, so far from having a tendency to strengthen the bill, in my view rather tends to weaken it, because the building of a railroad may be said to be more closely allied to, and connected with, the idea of a manufactory, than does the operation of a railroad.

If the words contained in the title of this bill can be held to include laborers engaged in operating railroads, then there is no necessity for resorting to further legislation on the subject, except simply to have amended section 2 of the act approved May 23. 1887, by striking out the word "once" and inserting the word "twice," because under the same line of reasoning laborers engaged in operating railroads would be covered by the provisions of the original statute which is sought to be amended, the first section of which reads as follows:

"All persons, firms, companies, corporations, or associations in this Commonwealth engaged in mining coal, ore, or other minerals, or mining and manufacturing them or either of them, or manufacturing iron or steel, or both, or any other kind of manufacturing shall pay their employees as provided in this act."

If the words "or other manufactories" contained in the title of the bill can be held to cover, or refer to, or embrace railroads, then by what line of reasoning can you exclude railroads from the operation of the provisions of the original bill which uses the words "or any other kind of manufacturing"?

Fully appreciating the importance of this legislation, both to the operatives and to the railroad companies, and keeping fully in mind the rule that every doubt as to the constitutionality of an act of the legislature should be resolved in favor of its constitutionality, and keeping fully in mind the broad powers vested in the legislature, after the most mature consideration I am compelled to adhere to my former expressed opinion that the said House bill No. 281, so far as it applies to laborers or operatives engaged in operating railroads, does not comply with the provisions of the Constitution of Virginia, section 52, and therefore to this extent the said bill is unconstitutional.

Yours very truly,

SAML. W. WILLIAMS,  
*Attorney General of Virginia.*

RICHMOND, VA., *March 19, 1910.*

*To His Excellency, WM. HODGES MANN,*

*Governor of Virginia, Richmond.*

DEAR GOVERNOR:

In your communication to me of March 18th, you submit the following proposition:

"The following section appears as a part of the charter of the town of Norton, in Wise county: 'Provided, that neither the mayor nor any member of the council of said town shall be eligible to hold any municipal office in said town either by election or appointment for one year after the expiration of his term of office as such mayor or member of said council.'

"I will be very glad for you to give me your opinion as to whether this section is contrary to any provision of the Constitution."

I have given the subject very full and careful consideration and have had very great difficulty in reaching any satisfactory conclusion on the proposition submitted. Very strong and cogent arguments suggest themselves on both sides of the proposition, but I cannot hold that the bill is so clearly beyond the power of the legislature to enact as to warrant the conclusion that it is unconstitutional; and entertaining serious doubts on the question I prefer to follow the well settled rule that all doubt as to the constitutionality of an act should be resolved in favor of its constitutionality, and submit the matter to you for your better judgment in the premises.

Yours very truly,

SAML. W. WILLIAMS,

*Attorney General of Virginia.*

RICHMOND, VA., *April 4, 1910.*

*To His Excellency, WM. HODGES MANN,*

*Governor of Virginia, as such, Commander-in-Chief of the Military Forces of the State of Virginia.*

DEAR SIR:

I have given due consideration to your communication dated April 2, 1910, and which is as follows:

"RICHMOND, VA., *April 2, 1910.*

"Respectfully referred to the Attorney General of Virginia for interpretation of paragraph 2, section 374, Code of Virginia, in connection with the Manual for Courts Martial, published by the United States Government for the regular army and used by this State in questions of military tribunals.

"Since the adoption by this State of what is known as the Dick bill (act of Congress approved January 21, 1903), the equipment, armament and organization and discipline must be similar to that of the regular service.

"By order of Wm. Hodges Mann, Governor and Commander-in Chief.

"W. W. SALE,  
"Adjutant General."

Paragraph 2 of section 374 of the Code of Virginia is still in force and has not been expressly repealed. The question suggests itself as to whether this statute has been repealed by implication by the enactment of the statute amending section 306 of the Code, which was approved January 16, 1908, (see Acts of 1908, p. 1), by reference to which it will be seen that the duty is there devolved upon the Governor 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."

I am informed by the Adjutant General of Virginia that this has not been done. This being true, no question of implied repeal can arise, the legal effect of which is to leave section 374 of the Code in full force, and I am of opinion on the facts that under clause 2 of section 374, the charge made by Edward M. Curdts, which accompanies your communication, is properly payable under the laws of this State, out of the proper fund provided by law for payment of same.

Yours very truly,

SAML. W. WILLIAMS,  
*Attorney General of Virginia.*

RICHMOND, VA., October 1, 1910.

*To His Excellency, WM. HODGES MANN,  
Governor of Virginia, Richmond.*

MY DEAR GOVERNOR:

By written communication of recent date you submit for my opinion the question as to the powers of the Governor of Virginia to call to his aid the military forces of the State in the matter referred to thereon, to-wit, the troubles relative to the respective rights of the tongers and oyster planters in regard to the natural rocks and planting grounds in the James river, and you refer to the provisions of section 368 of the Code, and in your communication you say: "I would like in your reply to this to define my powers generally and particularly as to the situation in James river."

In the Constitution which was adopted on the 29th of June, 1776, it was provided in section 9 that: "A Governor or chief magistrate shall be chosen annually by joint ballot of both houses of the General Assembly," and that "he shall with the advice of the council of State exercise the executive powers of government according to the laws of this Commonwealth." See Revised Code of 1819, Volume I, p. 35.

In section 11 of this Constitution a council of State was provided for. This Constitution remained in force until amended by the Constitution of 1830 (See Code of 1849, p. 34), in which it was provided as follows: "The chief executive power of this Commonwealth shall be vested in a Governor,

to be elected by the joint vote of the two houses of the General Assembly." And in section 4 it is provided as follows: "He shall take care that the laws be faithfully executed." In the Constitution which was adopted in 1851 this same language is used. (See Article V, section 5, of the Constitution of 1851, Code of 1860, p. 49.) In the Underwood Constitution adopted in 1869 the same language is used. In the present Constitution (see section 73), the language used is as follows: "The Governor shall take care that the laws be faithfully executed." From all of which it appears that the several Constitutions adopted by this State confer broad executive powers, functions and duties upon the Governor to see that the laws are faithfully executed, and vest in the Governor in the broadest terms the whole of the executive power of the State, except only in so far as the same may be limited by some other positive provision of the Constitution, and in the Constitution of 1776 the executive powers were exercised by the Governor by and with the advice of the Privy Council.

In the Constitution of 1830 (see Code of 1849, p. 42, section 4 of Article IV) it was provided that the Governor "shall be the Commander-in-Chief of the land and naval forces of the State. He shall have power to embody the militia when in his opinion the public safety shall require it." In the next Constitution which was adopted in 1851 (see section 5 of Article V of the Constitution of 1851, Code of 1860, p. 49), the language is as follows:

"He shall be commander-in-chief of the land and naval forces of the State; have power to embody the militia to repel invasion, suppress insurrection, and enforce the execution of the laws."

This same language has been embodied in all the subsequent Constitutions, and is contained in the present Constitution. (See section 73 thereof.)

This provision of the Constitution confers upon the Governor as full powers to "embody the militia" (that is to call to his aid the military arm of the government) "to enforce the due execution of the laws" as he has to call to his aid the militia to repel invasion or suppress insurrection, and the legislature is without power to interfere with the executive in the exercise of this broad power so conferred by the Constitution.

Section 368 of the Code, when properly constructed, does not in any way interfere with the powers of the executive, nor is it fair to presume that it was intended to do so by the legislature, and if it was so intended, then the legislature was without power to do so. This statute when properly construed only confers upon a ministerial officer the power to call on the Governor or upon the commandant of a military organization to aid him in the due execution of the law in sudden emergencies contemplated by the statute, but this in no way deprives the Governor of the right to exercise the executive power and functions conferred upon him by the Constitution itself.

This view receives strong confirmation in the history of the statute.

The statute was first passed in 1872 (see Acts of 1871-2, p. 369, sec. 33), and only conferred upon the sheriff the authority to call upon the military to aid him in the due execution of his office as therein set forth. This is the first statute on the subject ever passed in Virginia, and did not authorize the sheriff to call upon the Governor. The statute was amended

March 14, 1884, conferring upon the sheriff authority to call upon the Governor for aid in the emergencies mentioned in the statute, and this is substantially the same law which is now found in section 368 of the Code referred to in your communication.

This view finds further confirmation by reference to section 211 of the Code of 1904, which provides:

"If any combination, whether for dismembering the State or establishing in any part of it a separate government, or for any other purpose, shall become so powerful as to obstruct, in any part of this State, the due execution of the laws thereof, in the ordinary course of proceeding, the Governor may call forth the militia, or any part thereof, to suppress such combination."

The history of this statute is as follows: By act passed November 16, 1872 (see First Revised Code of 1819, p. 142), it was provided:

"That if any combination for dismembering this State, or establishing in any part of it a separate government, should become so powerful as to obstruct the due execution of the laws of this Commonwealth, in the ordinary course of proceeding, within any county or counties thereof, it shall be lawful for the Governor, with advice of council, to call out the militia of the State to suppress such combination, and to employ them in the same manner as he may do by law, in cases of invasion or insurrection."

This act was amended in the Code of 1849 (p. 103, chap. 17, sec. 2) which is as follows:

"If any combination, whether for dismembering the State or establishing in any part of it a separate government, or for any other purpose, shall become so powerful as to obstruct in any part of this State the due execution of the laws thereof, in the ordinary course of proceeding, the Governor may call forth the militia, or any part thereof, to suppress such combination."

It will be noted that by this amendment the statute was so enlarged as to authorize the Governor not only to call out the militia if a combination existed for dismembering the State, but the language "for any other purpose" was added to the statute, and the statute as it now exists is substantially the statute found in the Code of 1849, and when reduced to its last analysis, it simply means this, that if any combination exists for any purpose and shall become so powerful as to obstruct in any part of the State the due execution of the laws thereof in the ordinary course of proceeding, the Governor may call forth the militia or any part thereof to suppress such combination.

To make application of these principles to the case submitted in the communication of your excellency, it is proper to note that section 14 of the act approved March 17, 1910, to consolidate into one act the laws relating to oysters (see Acts of 1910, p. 543), makes certain things unlawful, and imposes upon the inspectors of the district and the Commission of

Fisheries and its deputies certain duties, and it will be further noted that these duties so imposed must be performed by the Commission of Fisheries, its deputies, or the inspectors of the district, and that there is no duty whatever imposed upon the sheriff unless the process is sued out on that feature of the statute which declares the acts to be misdemeanors; but the duties imposed upon the Commission of Fisheries, its deputies and the inspectors are in addition to, and independent of, the question of prosecuting parties for misdemeanors as provided in the act; and in the same act of the legislature many other important duties are imposed upon the Commission of Fisheries which it or its deputies must perform.

Now the conclusion is irresistible that if the Governor hasn't the power to call to the aid of the Commission of Fisheries, its deputies or inspectors, the military arm of the government, then both the Commission and the Governor are powerless, and whilst it may be conceded that the sheriff has the power under the statute quoted above to call on the Governor for aid, still the duties imposed by law upon the Commission of Fisheries remain to be performed by it, and the power of the Governor to call out the militia to aid the Commission of Fisheries to perform its duties and to carry out the law, if he deems it necessary to do so, is in my opinion unquestionable.

My conclusion therefore is that the Constitution itself *proprio vigore* confers on the Governor of the Commonwealth of Virginia all the executive powers which are necessary to enable him to obey the plain mandate of the Constitution to take care and to see that the laws of this Commonwealth "shall be faithfully executed," and in the exercise of this power he can also exercise in connection therewith the constitutional power conferred on him as the commander-in-chief of the land and naval forces of the State, and can call to his aid the military power of the Commonwealth, whenever in his opinion it is necessary to do so to enable him to "enforce the due execution of the law."

I have the honor to be,

Very truly yours,

SAML. W. WILLIAMS,  
*Attorney General of Virginia.*

#### To the Auditor of Public Accounts.

RICHMOND, VA., April 4, 1910.

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

DEAR SIR:

Answering your several inquiries contained in yours of February 18, 1910, I beg leave to say that:

1st. Social clubs which keep a billiard or billiard tables, pool tables, &c., at their club for the use of their members, whether a charge for use thereof is made or not, are liable to pay a license tax on the same.

2d. The Constitution recognizes only two methods of taxation, *ad valorem* and license tax. Now, under sub-section "E" of section 183, the

property, both real and personal, of Young Men's Christian Associations which are not conducted for profit, but purely and completely as charities, is exempt from taxation; hence it cannot be taxed in either way named in the Constitution, and therefore I am of opinion that such associations are exempt from a license tax upon billiard tables, pool tables, and the like.

3d. An individual who has a pool table or billiard table in his private residence is not covered by the phrase "billiard saloon," and is not subject to a license tax.

4th. A person who runs a pool table, whether a charge is made or not, in connection with his business, of whatever character that business may be, from the running of which he receives a benefit, either direct or indirect, comes within the meaning of section 100 of the tax law, and has to pay a license tax.

5th. A social club has no more right to retail tobacco without a license than a private individual, and therefore should take out a merchant's license and also a special tobacco license such as is required by sections 45, 46 and 68 of the tax law, referred to by you.

I am,

Yours truly,

SAML. W. WILLIAMS,  
*Attorney General of Virginia.*

RICHMOND, VA., April 7, 1910.

Hon. MORTON MARVE,

*Auditor of Public Accounts,*

*Richmond, Virginia.*

DEAR SIR:

Responding to the question submitted by the commissioner of revenue for the city of Richmond through your office, and by you to me, for my opinion as to what license is required to be paid for the privilege of conducting the business of a hotel keeper in Virginia, I beg leave to reply that under the law now in force in this State, every person who desires the privilege commonly exercised by hotel keepers and keepers of houses of private entertainment, must obtain a license and pay therefor the sum of \$5.00, and an additional sum equal to five per centum of the actual rent or rental value of the house and furniture, such rent or rental value to be determined by the commissioner of the revenue in the mode prescribed by law, and if the keeper of such hotel or house of entertainment desires the additional privilege of selling ardent spirits or malt liquors under any of the existing forms of license in Virginia, then he must apply therefor to the courts in the mode prescribed by the recent act of the legislature of Virginia on this subject; and it is the duty of the commissioners of the revenue of the several cities and counties of the State to make such assessments on the basis above mentioned; and the license to keep a hotel or house of entertainment should be assessed whether the keeper thereof has or has not, or shall or shall not hereafter apply for the additional privilege of selling ardent spirits or malt liquors at such place.

Yours truly,

SAML. W. WILLIAMS,  
*Attorney General of Virginia.*

RICHMOND, VA., April 7, 1910.

Hon. MORTON MARVE,

*Auditor of Public Accounts.**Richmond, Virginia.*

DEAR SIR:

Yours enclosing copy of the letter from George N. Wise, of Newport News, Virginia, dated March 30, 1910, has been duly considered, and in answer thereto will say that I know of no law that allows an assessor to enter on his books the lands and lots to one man and the improvements to another. The section (441-a) of the Code referred to by Mr. Wise with reference to ground rents has been repealed. (See Acts of 1906, p. 554.) The duty of the commissioner is set forth in section 456 of the Code, the last clause of which is as follows:

"The value of lands and lots as ascertained in pursuance of the provisions of chapter twenty-three, and the ascertained value of the new grants, which may hereafter be entered and assessed shall not be changed, except to allow the addition of the value of improvements, or a total or partial deduction of the value of such improvements."

This section clearly shows that the assessor has no power to separate the improvements from the lands and lots.

Yours very truly,

WM. E. BIBB,

*Assistant Attorney General.*

RICHMOND, VA., April 9, 1910.

E. L. C. SCOTT, Esq.,

*Pension Clerk,**Richmond, Virginia.*

DEAR SIR:

In answer to yours of the 8th instant asking the interpretation of section 17 of the pension laws in connection with funeral expenses, act approved March 11, 1908, in which you say:

"Do you consider that the clerk of the court should charge a fee of a personal representative when such representative qualifies before the clerk for the purpose of collecting the funeral expense benefits for a deceased pensioner?"

I am of opinion that the clerk can charge no fee in connection with this matter, or any other pension matter, but the tax on an administration on said estate will have to be paid where an administration is granted to any person other than a sheriff. But if the estate is committed to the hands of the sheriff no tax will be charged unless assets other than the pension claim comes into his hands. This by section 12 of the tax laws of 1908.

Yours very truly,

WM. E. BIBB,

*Assistant Attorney General.*

RICHMOND, VA., April 26, 1910.

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

DEAR SIR:

I beg to acknowledge receipt of yours of the 25th instant, enclosing two communications, one from the treasurer of the city of Manchester and the other from the treasurer of the city of Richmond. I will answer in detail the questions asked by the treasurer of the city of Richmond, which covers the same ground gone over by the treasurer of Manchester.

The questions asked were as follows:

1. Will the treasurer of Manchester have to settle and close his account with you as of April 15th last? I answer that he will.

2. Will the taxes uncollected by the treasurer of Manchester be turned over to the treasurer of the city of Richmond by him or by you? I answer by the treasurer of Manchester.

3. Should the late treasurer, who is to become the deputy to the treasurer of the city of Richmond, qualify as such deputy prior to, or after, his settlement with you? I answer it makes no difference what time he qualifies, his settlement and liability to the State will end on the 15th day of April, and his bond, and the sureties thereon, to the State will be cancelled, and he thereby relieved of all responsibility.

4. What commissions will the treasurer of the city of Richmond receive from the State on the uncollected taxes when turned over to and collected by him? I answer the same commissions that the treasurer of Manchester would have received had no consolidation taken place. This is in accordance with section 21 of the Acts of 1906, p. 381, which provides:

"That the said municipal corporation is the successor corporation in law and in fact of the cities so annexed and consolidated as afore-said, with all their lawful rights and powers and subject to all their lawful duties and obligations without diminution or enlargement, except as otherwise specially provided in said ordinance."

5. The question is asked both by the treasurer of Richmond and the treasurer of Manchester: What will be the commissions to each under the ordinances of the city of Richmond? This question can be more properly answered by the city attorney, as it is a matter that concerns the city of Richmond alone and not the State, but it looks to me as though the treasurer of Richmond would employ the treasurer of Manchester as his deputy and when he qualifies by giving bond with security to the treasurer of Richmond as his other deputies, then he would be entitled to receive the same commissions that a deputy under the treasurer of Manchester would receive for collecting these taxes, which amount, whatever it should be, will be deducted from the guaranteed salary of said treasurer by the ordinance consolidating the two cities.

I enclose you duplicate copies of this letter so that you may send the same to the treasurer of Manchester and the treasurer of the city of Richmond.

Yours truly,

WM. E. BIBB,  
Assistant Attorney General.

RICHMOND, VA., May 17, 1910.

C. LEE MOORE, *Esq.*,*Acting Auditor of Public Accounts.**Richmond, Virginia.*

DEAR SIR:

Replying to yours of this date, which is as follows:

DEAR SIR:

"At the December term of the circuit court of Lee county, an allowance was made M. G. Ely, Commonwealth's attorney, in the sum of \$75.00, for his services in criminal cases, which allowance was presented at this office and payment refused for the reason that the amount appropriated for the year to pay the fees of the Commonwealth's attorney of Lee county had been exhausted. At the May term, 1910, of the circuit court of Lee county the court again allowed this account along with his account for services since the first of January, 1910, and before paying this account, I desire to have your opinion on the following points:

"Am I authorized to pay, out of the appropriation for the ensuing year, an allowance to a Commonwealth's attorney for services in criminal cases, rendered in the preceding year; the payments to him during the preceding year having exhausted the appropriation for that year and,

"Was it the intention of the General Assembly in limiting the amount to be paid Commonwealth's attorneys in a year, to require them to serve without pay the rest of the year, after the full amount of the appropriation for the year had been paid?"

The Auditor is not authorized to pay out of the appropriation for the ensuing year an allowance to a Commonwealth's attorney for services in criminal cases rendered in the preceding year, whether the payments to him during the preceding year did or did not exhaust the limit or appropriation for that year. It was clearly the intention of the legislature that nothing should be paid out of the public treasury to attorneys for the Commonwealth in any one year in excess of the amount prescribed by law.

Applying this rule to the claim of Mr. M. G. Ely, Commonwealth's attorney for Lee county, the \$75.00 as set forth in your letter cannot, in my opinion, be lawfully paid out of the public treasury of this State.

Very truly yours,

SAML. W. WILLIAMS,

*Attorney General of Virginia.*

RICHMOND, VA., May 24, 1910.

C. LEE MOORE, *Esq.*,*Acting Auditor of Public Accounts.**Richmond, Virginia.*

DEAR SIR:

Yours of this instant received, asking for a construction of sections 19 1-2 and 20 of the act approved March 17, 1910, found in the Acts of 1910, pp. 509-510, entitled "An act to license and regulate the running of automobiles, &c.," which reads as follows:

"19 1-2. Every person who shall keep a garage for the hire, storage or sale of automobiles in the country and in towns of less than two thousand inhabitants, shall pay the sum of fifteen dollars, &c.," \* \* \* "The license to keep a garage by the proprietor of public watering places and other places of summer resort, or any person at such places for six months or less, shall be one-half of the sums hereinbefore specified."

"20. A garage, as used within the terms of this act, shall mean a place of storage for hire or a place where there is kept for hire any automobile, locomobile or any vehicle of any kind the motive power of which shall be electricity, steam, gas, gasoline or any other motive power except animals, whether such automobile, locomobile or vehicle is kept therein permanent or temporarily."

Now section 21 of the same act provides that:

"Any person, firm, association or corporation licensed under this act shall pay a license tax in the corporation or county in which such automobile, locomobile or other vehicle is, or in which such garage is located, but in no case shall any person pay a license tax in more than one city or county."

I am of opinion that the commissioner of the revenue of the corporation or county where a garage is located should assess the license tax under section 535 of the tax law for 1910, pp. 138-139, and the treasurer of the corporation or county should collect the same and pay it into the treasury of the State as he does other license taxes collected by him, which tax when so paid into the treasury should be applied as other license taxes are applied; and it is not applicable to any special road fund as are the fees collected by the Secretary of the Commonwealth under the above referred to act.

Very truly yours,

WM. E. BIEB,  
*Assistant Attorney General*

RICHMOND, VA., August 22, 1910.

C. LEE MOORE, *Esq.*

*Acting Auditor of Public Accounts.*

*Richmond, Virginia.*

DEAR SIR:

The communications from J. C. Neimeyer and E. C. Myers, addressed to yourself, and the one from J. E. Mahoney, addressed to J. C. Neimeyer, have all had my due consideration. The Byrd bill, approved March 15, 1910, section 14, provides that: "Nothing in this act shall be construed as applying to the manufacture or sale of cider which is pure juice of the apple without addition of alcohol, distilled spirits, wine or other intoxicating liquor, or any mixture whatever, except *preservatives* not prohibited by the United States law."

The Messrs. Mahoney claim that under the United States Internal Revenue Law they have a right to use coloring matter and fruit flavoring

extracts in pure apple cider. I am of opinion that under the clause of the Byrd liquor law above quoted, nothing but preservatives can be used, and that coloring and flavoring matter are not preservatives and cannot be used in pure apple cider. The word "preservatives" has a definite meaning, and covers only such things as are necessary to take care of and preserve the cider. Coloring matter and flavoring extracts are not needed for this purpose.

Very truly yours,

WM. E. BIBB,  
*Assistant Attorney General.*

RICHMOND, VA., August 27, 1910.

C. LEE MOORE, *Esq.*,  
*Acting Auditor of Public Accounts,*  
*Richmond, Virginia.*

DEAR SIR:

The letter of H. Stuart Lewis, Esq., attorney-at-law, dated the 25th instant, sent to this office for advice as to how it shall be answered, has been duly considered. The opinion asked involves the construction of section 13 of the tax laws of Virginia of 1910, which reads, so far as is necessary for the purposes of this opinion, as follows:

"On every deed, except a deed exempt from taxation by law, which is admitted to record, the tax shall be fifty cents where the consideration of the deed or the actual value of the property conveyed is three hundred dollars or less, where the consideration of the deed or the actual value of the property conveyed is over three hundred dollars and does not exceed one thousand dollars the tax shall be one dollar; where the consideration of the deed or the actual value of the property conveyed exceeds one thousand dollars there shall be paid ten cents additional on every hundred dollars or fraction thereof of such consideration or actual value; on deeds of trust or mortgage the tax shall be upon the amount of bonds or other obligations secured thereby."

Under this law the duty of the clerk is to ascertain the consideration of the deed of conveyance, either by the price named therein, or the actual value of the property conveyed. In ascertaining the price, the debt assumed in the deed, in my opinion, is a part of the price of the property, and the clerk should ascertain the tax upon said deed by including the debt assumed. On deeds of trust or mortgage the tax shall be upon the amount of bonds or other obligations secured thereby. This without reference to the deed of conveyance. It will be remembered that this law has been changed slightly from the old law, and where the consideration in either case exceeds \$1,000.00, ten cents additional shall be charged upon the entire consideration without deducting the \$1,000.00. This makes all deeds over \$1,000.00 cost \$1.00 extra over the old law. It seems that the clerk referred to by Mr. Lewis (Mr. R. R. Smith), has properly construed the law.

Very truly yours,

WM. E. BIBB,  
*Assistant Attorney General.*

RICHMOND, VA., *August 29, 1910.*

C. LEE MOORE, *Esq.*,

*Acting Auditor of Public Accounts,*

*Richmond, Virginia.*

DEAR SIR:

Yours of the 19th instant duly received, with copy of contract with reference to the mining and selling of coal, asking for an opinion as to what license should be taken out, and who should take out the same. I am of opinion that the company selling the coal in the city of Richmond on account of the shipper, and which participates in the profits ensuing from or accruing out of the sale of such coal is liable to pay a license tax as a broker under section 81 of the tax laws of 1910. If this particular section did not exist, which clearly covers the case under the contract enclosed by you, then it might be contended that such business came under the head of a commission merchant, but it seems clear that the legislature intended to cover by said section just such a case as you describe. This provides for a specific tax, and therefore no account of sales will have to be taken into consideration.

I herewith return the contract sent me, as you may have some further use for it, or may desire to return the same.

Very truly yours,

WM. E. BIBB,

*Assistant Attorney General.*

RICHMOND, VA., *September 10, 1910.*

C. LEE MOORE, *Esq.*,

*Acting Auditor,*

*Richmond, Virginia.*

DEAR SIR:

The correspondence referred to me between yourself and Mr. Wade, and the letter of the Honorable G. D. Letcher of the 7th instant, with reference to a garage license, have all been duly considered. I cannot undertake to decide specific cases based upon the circumstances named by individuals, such as are set forth in the letter of Mr. Letcher. The law defines a livery license as follows:

"Any person who keeps a stable or stalls in which horses are kept at livery or fed, or at which horses and vehicles are hired for compensation by the proprietor, shall be deemed to keep a livery stable."

The law also defines a private entertainment license as follows:

"Any person who shall furnish compensation, lodging or diet to travelers, or sojourners, or provender for horse feeding in his stable, or on his land, except a drove of live stock and persons attending the same, shall be deemed to keep a house of private entertainment."

The law defines a garage as follows:

"A garage, as used within the terms of this act, shall mean a place of storage for hire or a place where there is kept for hire any

automobile, locomobile or any vehicle of any kind, the motive power of which shall be electricity, steam, gas, gasoline or any other motive power except animals, whether such automobile, locomobile, or vehicle is kept therein permanent or temporarily."

Now it will clearly be seen that a man who has a livery license or a private entertainment license cannot keep a garage for hire, that is, any place in which an automobile is stored for compensation, either permanently or temporarily. The law can be violated in a small as well as a large degree, and if a man has no right to do a thing without license, he cannot do that thing because small, under another license which does not cover it. The party asking advice in this matter can apply the above law himself to the facts of his own case.

Very truly yours,

WM. E. BIBB,  
*Assistant Attorney General.*

**To the Superintendent of Public Instruction.**

RICHMOND, VA., *December 22, 1909.*

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

DEAR SIR:

Yours of the 20th instant, addressed to the Attorney General, enclosing letter of Mr. Rawles, has been received.

In answer to your inquiry as to the reply you should make to Mr. Rawles, I would say that it seems to me that the treasurer of a town, which is a separate school district, is allowed the same rate of compensation for collecting and disbursing school levies made by the town as is allowed to county treasurers for the same service.

The closing paragraph of section 1518 of the Code (section 95, p. 72, of the school law) reads:

"The treasurer of every town constituting a single school district may perform like duties, be subject to like fines and penalties, and be entitled to the same rate of compensation as the treasurer of a county."

The compensation of town treasurers is not fixed by general law, but is regulated by the charter and ordinances of the town; and in some cases they are paid a salary and not commissions. In the case cited by Mr. Rawles, it seems to me that the fact that the town of Smithfield pays its treasurer only five per cent. for the collection of the *town levies*, does prevent the allowance to the treasurer of the same compensation allowed county treasurers for collecting school funds, taking into account the *total revenue collected* as a basis. That is to say, the treasurer of the town of Smithfield is entitled to the same rate of compensation on school

funds that a county treasurer would receive, if the total revenues of the county were the same as the total revenues of the town.

Very truly yours,

ROBERT CATLETT,  
*Assistant Attorney General.*

RICHMOND, VA., *January 17, 1910.*

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

DEAR SIR:

In reference to the letter of Mr. G. H. Hulvey, division superintendent of schools of Rockingham county, of the 13th instant, addressed to you (herewith returned), referred to me by your favor of the 15th instant, I would say that, while I know of no law which prohibits the board of supervisors of a county from providing a suitable office for the division superintendent of schools thereof, I know of none which requires the board of supervisors to provide or furnish such an office for that officer.

The law is silent upon that subject.

I happen to know that the boards of supervisors or school boards of some counties, in supplementing the salary of the division superintendent of schools under the provisions of section 1438 of the Code, as amended by the act of March 14, 1908, p. 535, have made an allowance to the division superintendent of schools to cover his traveling and other expenses.

In at least one of the counties of the State within my knowledge the division superintendent of schools uses one of the rooms in the county courthouse as his office.

You doubtless have fuller information than I have as to the practice of other counties in this regard.

I can see no objection to the board of supervisors providing an office for the division superintendent of schools, just as such boards do for other county officers, as to whom there is no specific requirement in the statutes that they shall provide them with offices.

The Commonwealth's attorney of each county is the authorized legal adviser of the board of supervisors thereof.

The only way in which the action of the board of supervisors in disallowing any claim against the county can be reviewed or reversed is by the claimant carrying the case, by appeal, into the circuit court of the county in the manner prescribed by law. (See sections 838 and 844 of the Code.)

Very truly yours,

WM. A. ANDERSON,

RICHMOND, VA., *January 26, 1910.*

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

DEAR SIR:

Referring to your favor of the 18th instant, enclosing letter of Messrs. G. W. Balke and J. W. Burress, school trustees for Henrico county, ad-

dressed to you, I beg leave to say that I know nothing that your office or my office can do to aid in the solution of the question therein mentioned. It is one which will have to be determined either by the local school authorities, or by the courts, and one which comes within no jurisdiction or duty of your office, or this office, so far as I can see.

I would be very glad to make some suggestion which would meet the situation. It is a matter, however, for negotiation and settlement between the local authorities. All that I can say is that the questions ought to be adjusted upon equitable principles. Precisely what that adjustment should be is a matter as to which I could not speak intelligently without fuller information than this letter affords, and which, if I was authorized to decide, I ought not to pass upon without hearing both sides.

Regretting that I cannot give a more satisfactory and definite reply.

Very sincerely yours,

WM. A. ANDERSON,

RICHMOND, VA., *January 28, 1910.*

J. D. EGGLESTON, JR., *Esg.*

*Superintendent of Public Instruction.*

*Richmond, Virginia.*

DEAR SIR:

Your favor of the 26th instant, enclosing the letter of Mr. Wortley F. Rudd of the 11th instant to you, was received on yesterday.

In reply to your inquiry, I have to say that it is manifest from the terms of Regulation No. 55, as amended and re-adopted by the State board of education on the 24th day of November last, that no appeal can be taken to the State board of education directly from any action of a city school board, but that such appeal must be taken from any action of a city school board, either by some teacher or school officer of such city, or by five or more interested heads of families therein, first to the division superintendent of such city, and when he shall have tried such appeal and decided the same, then from such action of such division superintendent to the Superintendent of Public Instruction, and if he cannot satisfactorily adjust the same then, in his discretion, to the State board of education.

It is absolutely necessary, therefore, that the division superintendent of a city shall first hear and try any appeal taken from any action of a city school board in the manner authorized by said Regulation No. 55, and enter such order thereon as he may deem to be lawful and right under the circumstances of the particular case.

Until and unless the division superintendent shall have tried such an appeal, neither the State Superintendent of Public Instruction nor the State board of education can take any cognizance whatever thereof.

I return herewith Mr. Rudd's letter.

Very truly and respectfully yours,

WM. A. ANDERSON,

RICHMOND, VA., March 10, 1910.

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

MY DEAR SIR:

Yours of March 9th, with enclosures, to hand.

Referring directly to the letter of Mr. W. M. Lipscomb, clerk of the school board of Manchester, in which is copied a resolution of the school board of said city, in which there is contained a request that the Attorney General of Virginia give his opinion on the point suggested therein, and you having submitted the case to me for such action as I think best under the circumstances, in reply I have to say that the question submitted is one more of regulation than of positive law, and about which I prefer not to express a mere naked legal opinion unless called upon to do so in some actual concrete pending case. I have been informed in connection with this matter that perhaps my ruling or opinion might be expected to bear on a case which has actually arisen in the city of Manchester. This fact but gives emphasis to the conclusions at which I have arrived, that it is best for me to withhold my opinion until the case is presented.

Yours truly,

SAMUEL W. WILLIAMS,  
*Attorney General of Virginia.*

RICHMOND, VA., March 31, 1910.

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

DEAR SIR:

Yours of the 29th, enclosing letter from Superintendent J. S. Eastman, with reference to the taxation of bonds issued for the building of school houses, and referred to this office by you for answer, duly received and considered.

I would say briefly that all bonds issued for the building of school houses are subject to taxation, except those given to the Commonwealth of Virginia under the act approved March 15, 1906 (See Acts of 1906, p. 446.)

Very truly yours,

WM. E. BIBB,  
*Assistant Attorney General.*

RICHMOND, VA., April 11, 1910.

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

DEAR SIR:

Your letter of this instant to hand, in which you submit for my opinion the following proposition:

"Will you kindly inform me if I am correct in the opinion that section 115 of the school laws, 1506 of the Code, as amended by the

legislature of 1908, gives boards of supervisors the right to levy county and district school taxes aggregating fifty cents on the hundred dollars without a vote of the people?"

Section 1506 of the Code, as amended by the act in force June 26, 1908, does authorize the boards of supervisors to make the levy as indicated in your letter, provided that the aggregate of the levy does not exceed the constitutional limit of fifty cents on the hundred dollars. The board in its discretion can apportion the tax between the county and district, and in doing so is given a latitude of not less than ten nor more than forty cents on the hundred dollars for county purposes, and a tax of not less than ten or more than forty cents on the hundred dollars for district school purposes. The board within these limits can levy an amount as a district school levy or as a county levy, provided the two together do not exceed fifty cents on the hundred dollars. The question is to be submitted to the voters only in the event the board fails to make the levy in one way or the other up to the fifty cents on the hundred dollars. The statute seems clear and there should be no difficulty about its construction.

Yours truly,

WM. E. BIBB,  
*Assistant Attorney General.*

RICHMOND, VA., May 16, 1910.

J. D. EGGLESTON, JR., *Esq.*,

*Superintendent of Public Instruction.*

*Richmond, Virginia.*

MY DEAR SIR:

Yours of the 14th instant to hand, in which you enclose a letter to you from Mr. T. J. Wool and Mr. H. A. Hunt, both of Portsmouth, Virginia.

The letter of Mr. Wool is a credit both to his head and heart, and shows very clearly that he fully appreciates the importance of maintaining the high standard of official morality which should characterize all of the school officials of the State, and judging from the tone of his letter I feel perfectly sure that he will make a valuable member of the school board, and that he will fully appreciate my suggestion that he should retire from the board until the transactions referred to in his letter shall have been fully consummated. I make this suggestion merely that we may avoid an embarrassing precedent, for the reason that under the law no school trustee or other officer should be in the remotest degree interested in any property whatever, real or personal, that is being sold to and purchased by the board of which he is a member.

I feel sure that you as well as myself will regret to see Mr. Wool permanently retired from the school board, and hope that when this transaction is fully consummated he will see his way clear to again become a member of the board and give the schools of his city the benefit of his services.

I must commend the action of Mr. H. A. Hunt, division superintendent of schools, in calling your attention to the matter, and feel sure that both Mr. Wool and himself will agree with me in the conclusions I have reached

in this matter. If you choose to do so you can enclose copy of this letter with your reply to these gentlemen.

I return herewith the two letters referred to.

Very truly yours,

SAML. W. WILLIAMS,  
*Attorney General of Virginia.*

RICHMOND, VA., June 9, 1910.

J. D. EGGLESTON, JR., *Esq.*,

*Superintendent of Public Instruction.*

*Richmond, Virginia.*

MY DEAR SIR:

Replying to yours of June 3d, enclosing correspondence between Mr. S. S. Lambeth, Jr., division superintendent of schools for Bedford county, Virginia, and Judge John G. Dew, Second Auditor of Virginia, in regard to certificate No. 15, bearing date April 28, 1892, and issued to the trustees of New London Academy for \$6,500.00, I would say that after due consideration I am of opinion that the act of February 23, 1892 (see Acts of 1891-2, p. 573), under which this certificate was issued, makes these certificates non-transferable and makes them redeemable at the pleasure of the State, and the trustees of New London Academy having accepted the certificate under this act, the said trustees and their successors are bound by its provisions.

The fact that said certificate is non-transferable and is redeemable at the pleasure of the State is set forth on the face of the certificate, and of course is binding upon all persons dealing therewith.

The question thus arises whether this act of the legislature has been changed by any subsequent legislation. I am of opinion that it has not. I find nothing in the act of March 2, 1910, (Acts of 1910, pp. 114-115) which in my opinion changes the previous law upon the subject. The last named act does not repeal the former act under which the certificate was issued, either in express terms or by necessary implication.

Until there is some further legislation upon the subject, I do not think that the present character of the certificate can be changed or that it can be transferred, as the pleasure of the State can only be expressed through the medium of proper legislation.

I return you the correspondence referred to in your letter.

Very truly yours,

SAML. W. WILLIAMS,  
*Attorney General of Virginia.*

RICHMOND, VA., July 18, 1910.

J. D. EGGLESTON, JR., *Esq.*,

*Superintendent of Public Instruction.*

*Richmond, Virginia.*

DEAR SIR:

Yours of the 15th instant, requesting that answer be made to the following letter enclosed from E. E. Goodwyn, clerk Greenville county school board:

"Dear Sir:

"In making the annual settlement with the county treasurer, the question has arisen as to the compensation or commission to be allowed him on funds coming into his hands other than by levy, such as borrowed money (from banks), dispensary fund and the sale of property.

"At the request of the school board I am writing you for information and instruction.

"Is the commission fixed by law, on such funds, or is it fixed by the school board?

"If fixed by law, what is the commission?

"In either case please state where the law governing same can be found?

"We would thank you very much for this information, and would appreciate a prompt reply?"

The answer to his inquiry will be found in Acts of 1908, p. 553, amending section 1449 of Pollard's Code, under which section, as amended, the treasurer will be entitled to receive such compensation on the funds referred to in his letter as the county school board may determine; provided, that the same shall not be more than one per centum upon the amount received.

Very truly yours,

WM. E. BIBB,  
*Assistant Attorney General.*

RICHMOND, VA., August 22, 1910.

J. D. EGGLESTON, JR., *Esq.*,

*Superintendent of Public Instruction,  
Richmond, Virginia.*

DEAR SIR:

Yours of the 19th instant, enclosing a letter of the 18th instant from G. R. Huffard, division superintendent of schools, Wytheville, Virginia, has been received, with request for information as to how the same shall be answered.

Section 1482 of Pollard's Code, p. 806, referred to in Mr. Huffard's letter, constitutes the trustees of each district a body corporate with the right to sue and be sued, contract and be contracted with, and purchase, take, hold, lease and convey school property, both real and personal. The power conferred, however, under this section to deal with school property is controlled by section 1466-a, found in Pollard's Supplement of 1908, p. 171. This section provides that school property can be dealt with only under the orders of the court, upon petition filed, setting forth the facts, by the school trustees. I am of opinion that neither the school trustees nor the court have a right to borrow money or give a lien upon school property.

This opinion covers all the questions asked in the letter enclosed, which I herewith return.

Very truly yours,

WM. E. BIBB,  
*Assistant Attorney General.*

RICHMOND, VA., *September 19, 1910.*

J. D. EGGLESTON, JR., *Esq.*,

*Superintendent of Public Instruction,*

*Richmond, Virginia.*

DEAR SIR:

In a communication of recent date you submit to me the question as to what answer you should make to a letter of Mr. G. W. Effinger, superintendent of schools for Rockbridge county, in which he asks the question as to whether the State board of education will make a loan on property where the deed to the district school board reserves the right to the party making the deed to repurchase the lot for the money paid for the lot by the board. In reply thereto, I have to say that under the law the State board of education is not authorized to loan money on any school property except in cases where the school board has an unincumbered fee simple title to the property on which the loan is asked. In fact, I doubt very seriously whether the district board is even warranted in spending a dollar on a school house on a lot of land, unless the school board has a fee simple title to the property. I meet with a great many cases in which similar clauses are contained in deeds for property for school purposes to district school trustees, and I take the liberty of suggesting that some steps should be taken to put a stop to this practice as it is clearly not warranted by law.

In the same communication you refer me a letter addressed to you by Mr. D. T. Kennedy, of Kenbridge, Virginia, dated September 12, 1910, in which he asked you the question as to whether certain bonds to be issued by the town of Kenbridge are or are not taxable by the State and county. From this letter it appears that the bonds will represent the sum of \$2,500.00, which in the language of the letter, "is simply a donation from the town." I am of opinion that under section 183 of the Constitution these bonds are clearly liable to State and county taxes. The town of Kenbridge can exempt these bonds from town or municipal taxes, if the town by proper action of its town council chooses to do so.

I have the honor to be,

Yours very truly,

SAM'L W. WILLIAMS,

*Attorney General of Virginia.*

RICHMOND, VA., *September 28, 1910.*

J. D. EGGLESTON, JR., *Esq.*,

*Superintendent of Public Instruction,*

*Richmond, Virginia.*

MY DEAR SIR:

Yours of the 21st instant, enclosing a letter from Mr. Willis A. Jenkins, division superintendent of schools for Newport News, duly received and considered, and answering the questions therein asked by him, first, under the law quoted by him relative to the organization of the board of trustees, I am of opinion that it does apply to cities as well as counties.

I am further of opinion, in answer to his second question, that the superintendent has a right to attend all the meetings of the committees of the boards.

I am further of opinion, in answer to his third question, that the superintendent has no right to make a motion or to second one, but has the right to participate in all discussions of questions before the said board, but no right to vote, and it is parliamentary law, and I think held to be law in all deliberative bodies, that no man has a right to make a motion who has no right to vote.

I herewith return Mr. Jenkins' letter for your files.

Very truly yours,

WM. E. BIBB,  
*Assistant Attorney General.*

RICHMOND, VA., *September 29, 1910.*

J. D. EGGLESTON, JR., *Esq.*

*Superintendent of Public Instruction,  
Richmond, Virginia.*

DEAR SIR:

Yours enclosing letter of Mr. S. V. Daniel, superintendent of schools for Charlotte county, Virginia, received, asking whether commissioners of the revenue should assess local banks for county and district school purposes, as all other property is assessed in the county. Upon investigation, I am of opinion that these banks are subject to taxation not only for county and school purposes, but also for other taxes due to the counties, and that where they have failed to pay the same they are liable to back taxation for three years

In other words, they would be liable to be taxed for 1908, 1909 and 1910. There seems to be no specific mode provided for collecting these taxes, except in accordance with the manner of collecting the State taxes. The State taxes are collected from a list furnished the assessor by the banks and sent by him to the Auditor of Public Accounts; and then by the Auditor of Public Accounts sent to the treasurer for collection.

Following in the same manner I would say that the commissioner of the revenue should furnish the board of supervisors a copy of the same list that he sends to the Auditor of Public Accounts, and that the board should enter an order upon its record ascertaining what tax is due by said banks and turning the order over to the treasurer for collection, charging the treasurer with the same in favor of the schools, county and roads. This is done in the case of the railroad tax, and I see no reason why we should not follow the same rule with reference to the banks, as the law provides that it shall be collected in the same manner that the State collects the tax on said banks. These banks, it seems, have been doing business for many years without paying this tax, and the board of supervisors of every county should see that this is done.

Very truly yours,

WM. E. BIBB,  
*Assistant Attorney General.*

## To the Commissioner of Insurance.

RICHMOND, VA., *January 21, 1910.*

Col. JOSEPH BUTTON,  
*Commissioner of Insurance,*  
*Richmond, Virginia.*

MY DEAR SIR:

I have considered the letter of Mr. E. D. Duffield, general counsel for the Prudential Insurance Company of America, of date January 17th, and the forms of application thereto attached, and I am inclined to concur in the views taken by Mr. Duffield, as to the provisions of the law of this State, as it is found in section 39, page 29, of the compilation of the insurance laws made by your department. You will note that the law cited above, *does not require* policies to be printed in type of *any* designated size.

It simply provides that "No condition in, or endorsement on, any policy of insurance, nor any restrictive provision thereof, shall be valid unless such condition or restrictive provision is printed in type as large as long primer or ten point, etc."

This provision is manifestly for the protection and benefit of the insured, and may or may not be complied with by the insurer, as he may elect.

It seems to me that the application for insurance may be in type of any size, and that such application may be photographed on policies in either enlarged or reduced proportions, without affecting in any way, the liability of the insurance company under the law above quoted. Indeed as I see the question presented, it is a matter with which your department has no concern; nor can you require a compliance with the provisions of the law herein considered. It is a question that the insurance companies must determine for themselves, and which must be settled finally by the courts, as occasion therefor may arise.

Enclosures returned.

Very truly yours,

ROBERT CATLETT,  
*Assistant to the Attorney General.*

RICHMOND, VA., *January 21, 1910.*

Col. JOSEPH BUTTON,  
*Commissioner of Insurance,*  
*Richmond, Virginia.*

MY DEAR SIR:

I have read and considered the communication of Mr. Charles R. Miller, vice-president of the Fidelity and Deposit Company of Baltimore, Maryland, as to the rights of this State to impose a percentage tax on the income received by the said company from bonds given in the Federal courts holden in this State, etc.

I concur fully in many of the propositions stated, and arguments advanced, by Mr. Miller, but cannot concur in his conclusion that surety companies are exempt from this percentage tax "upon the gross amount of all assessments, premiums, dues and fees collected or received, or obliga-

tions taken therefor, derived from its business in this State," *quoad* bonds and surety obligations given in the courts of the United States.

The only question to be considered, in my opinion, is, What is "business in this State"; and in the determination of this question there is no distinction between bonds and obligations given and assumed in the Federal and State courts.

The act of Congress of August 14, 1894, confers no privilege upon such companies, nor does it give them any license to do business anywhere; it only permits such companies to become surety upon bonds and other obligations required by the Federal courts, etc., upon the terms and conditions set out in the said act.

In short, this act does not make such companies agencies of the United States Government in any such sense as can exempt them from the operation of the tax laws of the States. My conclusion, therefore, is, that this company, (and all others of like character) is liable to the percentage tax of one and one-fourth per cent. upon the gross amount of premiums derived from "Federal business" done in this State.

As Mr. Miller intimates that they may test this matter (I assume by legal proceeding), and as no such proceeding can be instituted and matured before the present Attorney General retires from office, I refrain from giving an official opinion on the question, and submit the foregoing as my personal view only, and for such consideration as you may feel disposed to give it.

I suggest that you submit this matter to the Honorable Samuel W. Williams, the incoming Attorney General, for his opinion, as he will be the State's representative in any test case that may be made.

I am,

Yours truly,

WILLIAM A. ANDERSON.

RICHMOND, VA., *October 5, 1910.*

J. N. BRENAMEY, *Esq.*,

*Deputy Commissioner of Insurance,*

*Richmond, Virginia.*

DEAR SIR:

Replying to your communication of recent date, which is as follows:

"I desire to know whether letters on file in this department furnishing information which led to the arrest and indictment of parties charged with being guilty of incendiarism, are to be considered privileged communications. I have demands for these letters by the counsel of the accused parties and I declined to grant their request on the ground that such letters and communications are privileged, and to make them public would tend to impair the efficiency of the detective work of this department."

I beg leave to say that under the law, based upon reasons of public policy, it seems to be well settled that the communications referred to in your letter are privileged, and that you are not warranted in disclosing

them if in your judgment the best interests of your department will be subserved by declining to make them public.

Very truly yours,

SAML. W. WILLIAMS,  
*Attorney General of Virginia.*

**To the Superintendent of the Penitentiary.**

RICHMOND, VA., May 21, 1910.

MR. F. A. LAMB,  
*Acting Superintendent of the Penitentiary,*  
*Richmond, Virginia.*

DEAR SIR:

I am in receipt of your communication of this date, with accompanying records and documents. Said communication is as follows, to-wit:

"I enclose herewith copies of the commitment papers in the cases of W. Dallas Wright and Richard Perkins who were sentenced by the circuit court of Buckingham county to be electrocuted, also copies of the correspondence in reference to said cases. We have not sent for these men because we are under the impression that the suspension of sentence granted in their cases is still in force. It seems that the authorities of said county are of a different opinion.

"Kindly take the matter up and advise them what course should be taken."

I have given the records submitted the most careful consideration of which I am capable, and beg leave to reply as follows:

The law (see section 4051 of Pollard's Code and also Acts of 1910, p. 538), confers upon the court trying a felony case full authority to postpone the execution of his sentence until a reasonable time beyond the first day of the next term of the Court of Appeals, not exceeding thirty days after that date.

In the case submitted of *Commonwealth v. Richard Perkins*, it appears from the record that on the 23d day of March, 1910, a verdict was rendered in said court in said case finding the defendant guilty of murder in the first degree as charged in the indictment. It further appears that the court on that day overruled the motion of the prisoner to set aside the verdict, and proceeded to enter up judgment on the verdict and sentenced the said prisoner, Richard Perkins, to be electrocuted in the State Penitentiary on the 3d day of June, 1910, as prescribed by law, and as set forth in said order. In the same order the court in express terms postponed the execution of said order for ninety days from the adjournment of the court. The language of the judgment of the court is as follows: "And the prisoner having expressed a wish to apply for a writ of error, this sentence is suspended for ninety days from the adjournment of this court."

The court had full authority, under section 4051, to enter this order, and the expiration of the ninety days is within the thirty days from the first day of the then next term of the Court of Appeals.

I am of opinion that the legal effect of this suspension is to postpone the execution of the court's sentence until the expiration of the ninety days referred to, and as the date fixed for the electrocution, to-wit, the 3d day of June, 1910, is within the ninety days, that the legal effect of the order is that no date has been fixed for the electrocution of the prisoner. On the 3d of June, 1910, it will be impossible for the prisoner to be legally electrocuted under the judgment and order of the court, unless that part of the court's judgment suspending the execution of said electrocution is illegal and void, the result of which is that after the

In my opinion the converse is true, and that the suspension of the execution of the court's judgment is valid and the date fixed for the order for ninety days can be treated as a nullity.

ninety days shall have expired, the prisoner, Richard Perkins, must be sentenced to be electrocuted on some day to be named in the court's order which shall be fixed in conformity with the statute in such cases made and provided. The result whereof is that no duty devolves upon the Superintendent of the Penitentiary under the said judgment of the said circuit court of Buckingham county under the act approved March 16, 1908. The Superintendent of the Penitentiary cannot legally electrocute a prisoner when the judgment directing his electrocution has been suspended in any of the modes known to and prescribed by law. Should the prisoner be re-sentenced and the judgment of the court be in force—that is, not suspended—then it will be your plain duty to comply with the act of March 16, 1908.

You also submit for my opinion the question as to your duty in the case of *Commonwealth v. W. Dallas Wright*, who was also sentenced to be electrocuted by the judgment of the circuit court of Buckingham county rendered on the same day, to-wit, the 23d day of March, 1910. The records in the two cases are exactly similar. Wright was found guilty of murder in the first degree and sentenced to be electrocuted on the 3d day of June, 1910, as set forth in the judgment of said court. The sentence of the court was suspended in identically the same language as is set forth in the case of *Commonwealth v. Perkins* referred to above, and in my opinion the same results follow in the Wright case as I have indicated above in regard to the Perkins' case.

In both cases by the order of the court the prisoners were remanded to the jail of Buckingham county, and they must remain in the custody of the jailor thereof until they can be removed therefrom in some mode prescribed by law, and the Superintendent of the Virginia Penitentiary cannot lawfully remove them from said jail to the penitentiary for the purpose of electrocuting said prisoners, or either of them, until they have been re-sentenced by said court as stated above.

Very truly yours,

SAML. W. WILLIAMS,  
*Attorney General of Virginia.*

Hon. E. W. HUBARD,  
*Commonwealth's Attorney,*  
*Buckingham, Virginia.*

MY DEAR SIR:

Your letter of May 20th to J. B. Wood, Superintendent of the Penitentiary, has been referred to me, with a letter from F. A. Lamb, acting superintendent, asking my opinion and advice as to the duty of the Superintendent of the Penitentiary in regard to the electrocution of W. Dallas Wright and Richard Perkins under the judgments and orders of the circuit court of Buckingham county rendered on the 23d day of March, 1910. A copy of the judgment in each case was also submitted to me. I have given the matter careful consideration and have embodied in a letter to the acting superintendent of the penitentiary my opinion and conclusions in the matter. I enclose you a copy of the opinion and feel sure that upon reflection you will agree with me as to the correctness of the conclusions at which I have arrived. I can see no way out of the difficulty than the one suggested by me.

With my very kindest regards, I am,

Your friend,

SAML. W. WILLIAMS,  
*Attorney General of Virginia.*

RICHMOND, VA., June 7, 1910.

Hon. J. B. WOOD,  
*Superintendent of Penitentiary,*  
*Richmond, Virginia.*

DEAR SIR:

Answering yours of the 4th instant, relative to the construction of an act to provide for a reduction of four days per month for good behavior from the time for which they were sentenced to jail of all jail prisoners working on the convict road or quarry force, and requiring the Superintendent of the Penitentiary to keep a record of the conduct of such jail prisoners, approved March 15, 1910, will say that the reduction of four days per month for good behavior must be computed with reference to the time the prisoner works on the road after this act takes effect, and the aggregate of said four days is to be deducted or taken from the time for which they were sentenced, provided his behavior has been good. In other words, if the prisoner makes a month's actual work on the roads after this act takes effect, he is entitled to have four days deducted from his original sentence.

In answer to your second inquiry, will say that the reduction in days for good behavior begins when the act goes into effect, and a convict is not entitled to any reduction for any time that he may have served on said road force prior to the day that this act becomes effective. In other words, as stated above in reference to the other inquiry, you will compute the time he makes after this act takes effect, and for every month thereafter he works on the roads he will be entitled to four days deduction from his original sentence.

Very truly yours,

WM. E. BIBB,  
*Assistant Attorney General.*

RICHMOND, VA., September 12, 1910.

Hon. J. B. Wood.

*Superintendent of Penitentiary.*

*Richmond, Virginia.*

DEAR SIR:

I have very carefully gone over the record of the case of the *Commonwealth v. Richard H. Biggs*, and the correspondence relating thereto between yourself and the judge and clerk of the corporation court of the city of Newport News, Va., which you submitted to me to-day for my opinion as to your duty in the premises.

From the record I find the case to be this: That Richard H. Biggs on the 21st day of June, 1910, was indicted in the corporation court of the city of Newport News, Va., for the murder of one Annie Davis, in the manner and form set forth in the indictment then found; that on the 27th day of June the prisoner, Richard H. Biggs, was put on trial for said offense in the said court; that the case regularly proceeded in the court from day to day, and on the 28th day of June, 1910, the jury returned a verdict of murder in the first degree against the prisoner. A motion was made on that day to set aside the verdict, the consideration of which was regularly continued until the 5th of July, 1910, and on which last named day the court overruled the motion to set aside the verdict and grant the prisoner a new trial, and proceeded to, and did, sentence the prisoner to be put to death by electrocution within the confines of the penitentiary of this State on Tuesday, the 20th of September, 1910, between the hours of 6 o'clock in the forenoon and 6 o'clock in the afternoon of that day, in the manner prescribed by law, and the execution of the said sentence was suspended by the court in its said order entered on the 5th of July, 1910, the following language being used in the order:

"Thereupon, at the instance of the prisoner, by counsel, who desires to present to the Supreme Court of Appeals of this State a petition for an appeal from and a writ of error and supersedeas to the judgment and sentence aforesaid, the execution of this judgment and sentence is suspended until the 20th day of September, 1910. Thereupon, the prisoner is remanded to jail."

It appears from the correspondence submitted to me that the copy of the record reached you for the first time on the 6th day of September, 1910. The letter of the clerk transmitting the record to you is also dated September 6th; and you ask my opinion as to your powers and duties in the premises.

The method of executing the death sentence imposed upon prisoners convicted of capital offenses in Virginia was changed by the statute passed by the General Assembly of Virginia, which was approved March 16, 1908, which provides that the Superintendent of the Penitentiary at Richmond shall provide a permanent death chamber within the confines of the penitentiary, "and which said death chamber shall have all the necessary appliances for the proper execution of felons by electrocution. In said death chamber shall be executed all felons upon whom the death penalty has been imposed."

And this statute further provides that the clerk of the court in which the death sentence is pronounced, shall, as soon as may be after sentence (which means with reasonable promptness) deliver a certified copy thereof to the Superintendent of the Penitentiary in Richmond, and the statute then in express terms provides as follows:

“Not more than thirty nor less than fifteen days before the time fixed, in the judgment of the court, for the execution of said sentence, 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 power of the court rendering the judgment or sentence of death against a felon convicted in said court to suspend the execution of the sentence for certain periods named in the statute cannot be questioned, for this power is conferred by express statute. (See Code, section 4051.) The court in this case, in the exercise of this power, in express terms did suspend the execution of said sentence until the 20th day of September, 1910; and the question therefore presents itself, whether the said judgment of the court sentencing the prisoner to be electrocuted on the 20th of September, 1910, is so far operative as to warrant you in performing the duties imposed upon you by the statute in regard to the time and manner in which you shall take the prisoner from the jail of the county or city in which he was sentenced to the penitentiary, or whether under the law the whole sentence or judgment of the court is suspended, and therefore inoperative until the 20th of September, 1910. In my opinion the latter is the correct view, and that the legal effect of the order of the court suspending the execution of the judgment until the 20th day of September, 1910, is to render it illegal for any one to perform any act based upon the mandate of said judgment until the period of suspension has expired, and that the prisoner having been remanded to jail by said order, must remain in jail until taken out under and by virtue of some legal effective order of the court.

A judgment suspended by a court having power to order the suspension, cannot be executed in any of its parts or mandates until the period of the suspension has elapsed. The judgment does not become void by suspension, or even dormant so far as its binding force as a judgment is concerned. This stands during the period of suspension, but no step can be taken during the period of suspension looking to the execution of any final process on the judgment until the period of suspension has expired, and the only operative part of the order during the period of suspension is that part which remands the prisoner to jail to be there held until the judgment can be legally executed.

Holding this view it is unnecessary to discuss the question as to whether your duties under this statute are mandatory or directory, but believing the view to be sound, I will state that I am of the opinion that so much of the statute as prescribes your duty thereunder is so far mandatory as to require a strict compliance therewith, but that your duty there-

under is so far ministerial that should you fail to perform it, it would not work the acquittal or discharge of the prisoner, but if for any cause the judgment of the court directing the execution of the prisoner should not be carried out on the day, or in the manner prescribed by the court in its order, that the prisoner could be again sentenced.

I am further of opinion that before the prisoner, Richard H. Biggs, can be lawfully electrocuted by you, he must be re-sentenced by the corporation court of the city of Newport News, Virginia, in compliance with the statutes in such cases made and provided, and it then becomes your duty in acting thereunder to comply with the statute strictly in all of its particulars.

Yours very truly,

SAML. W. WILLIAMS,  
*Attorney General of Virginia.*

**To the State Board of Charities and Corrections.**

RICHMOND, VA., December 18, 1909.

MR. J. T. MASTIN,  
*Secretary State Board of Charities and Corrections,  
Richmond, Va.*

DEAR SIR:

I have considered the question submitted in Dr. DeJarnette's letter of the 11th instant, to you, received with your favor of the 13th instant,

1. In reference to the insane Greek boy:

The best thing to be done about that will be for either Dr. DeJarnette or the State Board of Charities and Corrections to take the matter up by correspondence with the United States Department of Commerce at Washington, either directly with the Secretary of Commerce and Labor, or perhaps what would be better, with the Commissioner General of Immigration.

If this young Greek was insane when he came into this country, there would be no question that he ought, and doubtless would be, deported.

The matter of his deportation, however, is one for the Federal authorities, and if duly apprised as to the facts I feel sure that the Department of Commerce and Labor would inform Dr. DeJarnette precisely how to proceed under the regulations of that department, of which I have no copy, and as to which I have no information, as they are matters which do not come within any jurisdiction or duty of this office.

As I understand the immigration law of the United States, it may be of great importance to be able to show that this alien has been found to be a public charge from causes existing prior to his landing. Where that is the case there is no question as to his being liable to deportation under section 20 of the immigration act of 1904, which is the last act accessible to me. There seems to be a fund provided under the immigration act to cover the cost of his transportation to the port of deportation, where that cost cannot be otherwise provided.

Under section 21 of the immigration act the Secretary of Commerce and Labor shall, if satisfied that an alien has been found in the United

States in violation of that act, cause such alien, within the period of three years after landing or entry therein, to be taken into custody and returned to the country whence he came, as provided in section 20 of the act.

It is a matter which can only be effectively dealt with by the United States Department of Commerce and Labor.

2. As to Henry Beck, the citizen of Pennsylvania referred to in the letter of Dr. DeJarnette to you:

That matter is covered by section 1676 of the Code.

The authorities of the Western State Hospital, or the State Board of Charities and Corrections, should take that matter up with the proper authorities of the State of Pennsylvania, and cause this lunatic to be returned to the authorities of that State under that section.

The provisions of the law are not very definite, but are probably as definite as they could well be. For any effective relief against such a wrong they require the co-operation of the authorities of Pennsylvania, and I would suppose that inter-State comity, and a sense of justice, would induce the authorities of that State to do what is right in the premises. There is, of course, no legal remedy here against Pennsylvania; and I know of no remedy, which would certainly give adequate relief, which would be open to the State by a suit in the Supreme Court of the United States, where alone Virginia could sue Pennsylvania. I would be loath to believe that Pennsylvania, upon such a state of facts as Dr. DeJarnette mentions, would hesitate to receive this lunatic. I am not apprised as to what are the laws of Pennsylvania upon the subject, but I think we can count upon such just action on the part of the authorities of that State as they would have a right to expect of our authorities under like circumstances.

I herewith return Dr. DeJarnette's letter to you.

Very truly yours,

WILLIAM A. ANDERSON.

Doctor J. T. MASTIN,

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

DEAR SIR:

There is no statute of this State which authorizes the committal of an insane person to any county of city almshouse, or the confinement of such person in any such almshouse.

Subject to certain exceptions provided for in the statute and under special conditions prescribed, a harmless insane person may be confined to the custody of relatives or friends; but there is no statute which authorizes their being sent to an almshouse.

Very truly yours,

WILLIAM A. ANDERSON.

**To the Commissioner of Health.**RICHMOND, VA., *June 6, 1910.**Doctor ENNION G. WILLIAMS,**Commissioner of Health,**Richmond, Virginia.*

DEAR SIR:

Answering yours of the 3d instant, would say that the omission of the words "with the clerk of the court" from the enrolled bill has no effect because of such omission, except to exclude the clerk as a member of said board. The board of health will be legally constituted under said act without the clerk. The act in all other particulars is legal, and it cannot be corrected after having been enrolled and signed by the Governor, although it be a mistake and ever so clearly proved.

I therefore conclude, and am of opinion that the act as enrolled and signed by the Governor is the law, and not as printed in the Acts of Assembly, and that the boards organized and acting without the clerk are legally constituted and are empowered to carry out all the provisions of the law.

Very truly yours,

WM. E. BIBB,

*Assistant Attorney General.*RICHMOND, VA., *September 17, 1910.**Doctor ENNION G. WILLIAMS,**Commissioner of Health,**Richmond, Virginia.*

DEAR SIR:

Replying to yours of recent date, I am of opinion that the true construction of the act approved March, 1910, on the point submitted to me is as follows:

That section 1 of the act is itself self-explanatory, and that no inn, public lodging house, or hotel within the common acceptance of the term, that hasn't more than ten bed-rooms where transient guests are fed or lodged for pay in this State, comes within the purview or meaning of this law, and wherever the word "hotel" is used in this act it means a hotel of the kind and dimensions mentioned in section 1—that is a hotel having more than ten bed-rooms where transient guests are fed and lodged for pay in this State—and that the inspection provided for in the act requires that the bed-rooms and all other rooms used in connection with, and constituting a part of, the hotel proper must be inspected; and the word "room" as used in section 8 should be construed to refer to all the rooms which are required to be inspected, and none others, so far as charging fees thereon is concerned.

Very truly yours,

SAML. W. WILLIAMS,

*Attorney General of Virginia.*

**Miscellaneous**

RICHMOND, VA., *December 3, 1909.*

G. W. KOINER, *Esq.*,  
*Commissioner of Agriculture and Immigration,*  
*Richmond, Virginia.*

DEAR SIR:

Your favor of the 2d, in regard to the construction of section 12 of the law of Virginia in reference to commercial fertilizers, as amended by the act approved February 25, 1908, Acts of 1908, pp. 78-81, this instant received.

Your inquiry is, to whom the penalty which the Commissioner of Agriculture and Immigration is required by that section to assess against a manufacturer, dealer, or agent who has sold a fertilizer which fails to come up to the requirements of that statute, shall be paid, if the person to whom such fertilizer was sold, and who is entitled under the law to receive such penalty cannot be ascertained or identified?

In reply, I have to say that the statute unfortunately makes no provision for any such contingency. It does not prescribe to whom such penalty shall be paid in any such case. It certainly does not authorize the penalty to be paid to the Commissioner of Agriculture, or the Commissioner of Agriculture to receive it.

It seems to impose upon the delinquent manufacturer, dealer, or agent who sold the fertilizer under condemnation the duty of finding the person to whom he sold it, and of paying to him the penalty imposed by the Commissioner of Agriculture in the particular case.

I would suggest, therefore, that in all such cases you notify the delinquent manufacturer, dealer, or agent who sold such fertilizer that he must pay the penalty assessed to the person to whom such fertilizer was sold, take a duplicate receipt from such purchaser for the penalty so paid, and promptly furnish you a duplicate of such receipt signed by such purchaser.

Very truly yours,

WM. A. ANDERSON,

RICHMOND, VA., *December 6, 1909.*

MR. CHARLES A. MILLER,  
*Clerk, Department of Agriculture and Immigration,*  
*Richmond, Virginia.*

MY DEAR SIR:

I have again carefully considered the question mentioned in your favor of the 2d instant.

It is impossible for any lawyer to say with certainty what, or whether any, clerks in the several departments of the State government should be considered officers of the State government within the meaning of section 161 of the Constitution, which prohibits free transportation from being given to any officer, State, county or municipal.

That is a question which could only be decided by the courts. I have always considered it safest for a man in public service, or in any other

position, not to give himself the benefit of a doubt in a case of this kind. The object of the provisions of section 161, and almost the entire corporation article of the Constitution, was not only to prevent improper influences by transportation companies in dealings with public officers, but to prevent favoritism by said companies in respect to any one, whether a public officer or not.

If a transportation company was permitted to give free transportation to public officers when traveling on public business, or in the interest of the public, then you would be surprised to find the number of public officers who would find it necessary to travel upon public business. At any rate, the Convention never intended public officers to travel upon a free pass. That had become an abuse which was becoming a stench in the nostrils of the people of Virginia, and of the country, and it was the purpose of the Convention to tear it up by the roots. There are a great number of clerks in Virginia who are undoubtedly public officers. What the courts would say as to the first clerk in the department of agriculture, I am unable to say.

As indicating how widely comprehensive the convention intended the inhibition of section 161 of the Constitution to be, you will see that in order to permit a street railway company to give free transportation to members of the police force or of the fire department of a city, they considered it necessary to embody an express proviso to that effect in section 161.

I think, however, that the object which the department of agriculture desires to accomplish can be accomplished, without violating the provisions of the Constitution under any construction which can be reasonably placed upon that instrument, under section 160 of the Constitution, which plainly authorizes "special rates for services rendered to the government of this State, or of the United States, or in the interest of some public object when such tickets or rates shall have been prescribed or authorized by the State Corporation Commission."

All that your department would have to do would be to get a low special rate (the lower the better), for such transportation as the department desires to obtain for a stated purely public object and in the public interests only, either from all the railroads, or from any particular railroad company in the State, and then to have the State Corporation Commission authorize and sanction the use or adoption of such tickets or rates by such railroad company, or by all the railroad companies of the State, as the case may be.

The proviso in section 160 just cited was doubtless intended to meet just such conditions as has been mentioned in our recent correspondence.

It is always best to err upon the safe side in such matters, and officers and employees of the State government should set an example of punctilious observance of the requirements of the Constitution and laws of the State, both in letter and in spirit.

Very truly yours,

WM. A. ANDERSON.

RICHMOND, VA., *January 10, 1910.*

CARTER BRAXTON, *Esq.*,  
*Attorney for the Commonwealth,*  
*Staunton, Virginia.*

MY DEAR SIR:

Your letter of the 8th instant, addressed to the Attorney General, has been received and referred to me for reply.

I beg leave to say that the usual practice in such cases has been for the *court* in which recognizances are declared forfeited to direct the clerk to issue process citing the parties bound thereby, to appear and show cause why an execution in favor of the Commonwealth should not be awarded for the amount of the recognizance; and this is usually done in the same order declaring the forfeiture.

It has been the practice, so far as I know, for attorneys for the Commonwealth to supervise and direct such proceeding; but there is no provision of law that I have ever been able to find which *makes it their duty* to institute and prosecute such proceedings; but they have done so under the implication, at least, that such service is properly within the scope of their general authority and duty. The only compensation for which even seeming provision is made, is a fee of \$5.00 which is taxed in the costs under section 3552 of the Code.

When execution has been awarded the Commonwealth in such proceedings, I take it that real estate can be subjected under the same, pursuant to section 687 of the Code.

In the case you submit, it seems to me that the usual course of procedure cannot be followed, owing to the death of the *only* surety; though it may be as to the living obligor.

It has not been the practice of the Auditor of Public Accounts to follow up and prosecute such cases, although he may have authority so to do, and I know personally that he has declined to exercise such authority, on the ground that funds go to the Literary Fund, and should be recovered by the State board of education.

The provisions of the law in these cases are far from satisfactory, and I can find no precedent to "fit" the case presented. On the general subject see *Lewis v. Commonwealth*, 106 Va. 20.

It seems to me that you will certainly relieve yourself from all responsibility by giving notice to the Auditor of the status of the case, and he can refer your communication to the proper department.

Very truly yours,

ROBT. CATLETT,

RICHMOND, VA., *January 28, 1910.*

Doctor PAUL B. BARRINGER, M. D., LL. D.,  
*President Virginia Polytechnic Institute,*  
*Blacksburg, Virginia.*

MY DEAR SIR:

Your favor of the 25th instant was received yesterday.

The rule of law is that a board of visitors or of trustees can only act when in session.

The acts of the individual members of the board, however unanimous they may be, and however distinctly expressed, are not the acts of the board, nor do they, nor can they, bind the board.

As an almost invariable rule, the only manner in which the members of a board can express their judgment, or take effective and legal action, as such, is when they are sitting as a board.

Section 130 of the Constitution provides as follows:

"Sec. 130. The general supervision of the school system shall be vested in a State board of education, composed of the Governor, Attorney-General, Superintendent of Public Instruction, and three experienced educators to be elected quadrennially by the Senate, from a list of eligibles, consisting of one from each of the faculties, and nominated by the respective boards of visitors or trustees, of the University of Virginia, the Virginia Military Institute, the Virginia Polytechnic Institute, the State Female Normal School at Farmville, the School for the Deaf and Blind, and also of the College of William and Mary, so long as the State continue its annual appropriation to the last named institution."

Such a nomination can only be made by these respective boards sitting and acting as such.

It can be no more legally made by the individual members constituting that board, acting separately and independently, in the country, or wherever they may be, than the election of the members of the State board of education could be made by the individual members of the Senate acting separately, independently and individually, at their homes, or wherever they may be, and not acting together as the Senate of Virginia.

Very truly yours,

WILLIAM A. ANDERSON.

RICHMOND, VA., January 31, 1910.

Doctor O. C. BRUNK.

*Superintendent of the Eastern State Hospital,  
Williamsburg, Virginia.*

MY DEAR SIR:

Referring to the inquiry made in your favor of this date, I beg to say:

1. That there is no statute, State or Federal, which provides for the extradition of a lunatic who has escaped from this State and taken refuge, or is at large, in another State.

As a matter of interstate comity, however, it is proper for the authorities of the State in which such an escaped lunatic is at large to deliver or to surrender him to the proper authorities of the State to which he belongs.

I would suggest, therefore, that you obtain from the Governor a letter to the Governor of South Carolina, stating the facts as to Eugene Peebles, and requesting that the authorities of South Carolina will deliver or surrender him to you, or to such guard as you may send to South Carolina to bring him back to Virginia.

The necessary costs and expenses incurred in bringing him back to Virginia and placing him in the hospital to which he has been committed, should be paid by the Eastern State Hospital, or by the Commonwealth.

Very truly yours,

WILLIAM A. ANDERSON.

RICHMOND, VA., *February 11, 1910.*

Hon. ROSEWELL PAGE,

*House of Delegates,*

*Richmond, Virginia.*

DEAR SIR:

You have submitted to me a bill pending before the Committee on Schools and Colleges of the General Assembly of Virginia now in session, entitled "A bill to provide for free text-books in the primary and grammar grades in the public schools of the city or school district of this State when authorized by a vote of the people," and requested my opinion as to whether the bill is or is not constitutional, I have the honor to reply as follows:

Section 139 of the Constitution, which is in the following words:

"Provision shall be made to supply children attending the public schools with the necessary text-books in cases where the parent or guardian is unable, by reason of poverty, to furnish them,"

is clearly mandatory upon the legislature to provide text-books in the cases mentioned in this provision of the Constitution; and the legislature of Virginia, in carrying out this provision, has enacted section 1466 of the Code, clause 4 of which, relating to the powers and duties of district boards of school trustees, provides as follows:

"Fourth. To decide what children wishing to enter the schools of the district should by reason of the poverty of their parents or guardians receive text-books free of charge, and to provide for supplying them accordingly."

Whilst the said provision of the Constitution is mandatory, and whilst the legislature has properly sought to carry it into effect in the manner above stated, I do not think that this or any other provision of the Virginia Constitution can be construed as either expressly or impliedly restraining or prohibiting the legislature from passing any other laws on the subject which in its judgment may seem right and proper, the principle being well settled that the legislature of Virginia is omnipotent in making laws unless restrained by the express or implied provisions of the State or Federal Constitution. This principle is familiar and has been repeatedly affirmed by our courts, both State and Federal.

Respectfully,

SAML. W. WILLIAMS,  
*Attorney General of Virginia.*

RICHMOND, VA., *February 24, 1910.*

Hon. GEORGE B. KEEZELL,

*Chairman Senate Finance Committee,*

*Richmond, Virginia.*

DEAR SIR:

In our conversation in my office this morning you called my attention to a letter addressed by you, dated December 23, 1909, to Hon. William A. Anderson, and to a copy of his reply thereto, which is dated January 7, 1910, and requested me to give you my views or opinion in regard to the matter therein referred to.

I have examined the statute to which you refer, and have discussed the subject with Mr. C. Lee Moore, assistant Auditor of Public Accounts, and learn from him that the practical construction put upon the law referred to, by the Auditor of Public Accounts and the Superintendent of Public Instruction of Virginia, has resulted in the Auditor of Public Accounts paying into the school fund of the State a full ninety per cent. of the revenues referred to in section 1507 as amended.

The practical result is that what is stated in the law to be an approximate basis for the distribution of the revenue, has in reality been the actual basis; that is to say, that after receiving the land and property books from the commissioners of the revenue, the calculation is made by the Auditor based on said books, then ten per cent. is deducted as directed, and one-half of the amount thus ascertained is paid over to the school fund in November of each year, and then in February following the Auditor pays over to the school fund the other half of the amount of the approximate basis arrived at as above stated—that is, the February payment is exactly equal to the November payment, and no abatement or reduction whatever is made on account of any losses sustained by reason of failure to collect the full amount of taxes mentioned in the land and property books; and assuming that it is true, as stated in your letter, “that the practical operation of the law is that less than two-thirds of the capitation taxes assessed are collected,” then your conclusions are inevitably correct, “that the general funds of the State do, as the result of the methods pursued, make good the difference between the amount actually collected and the ninety per cent. of what is assessed,” as stated in your letter.

Then follows in your letter this question: “Is not this difference in effect an appropriation out of the treasury, and should it not conform to the provisions of sections 50 and 186 of the Constitution?”

The practical effect is certainly the payment of money out of the treasury, and it should not be paid except in accordance with sections 50 and 186 of the Constitution—that is by express legislative appropriation.

As to whether it is in legal effect an appropriation or not, depends upon the true state of the law in regard thereto. Certainly no money can be paid out of the treasury except upon appropriations regularly made by the legislature, and the question then arises whether the law (appropriation bill), referred to on page 431 of the Acts of 1908, does or does not appropriate the full ninety per cent. of said revenues. The language of this law is:

"Public Schools.—Such sums as will be sufficient to pay the amount required by section fifteen hundred and seven, Code of Virginia, to be applied to the support of the public free schools."

As section 1507 makes no provision for deducting any amount on account of failure to collect the capitation taxes in full, the law seems to be susceptible of the possible construction which has been put upon it by the Auditor and Superintendent of Public Instruction. It seems to me, therefore, that in some direct, clear and explicit manner this question should be fixed, settled and determined by additional legislation; that is to say, if the legislature intends that the school fund shall receive the full benefit of the ninety per cent. of the aggregate amount of all the taxes mentioned in the land and property books, the legislation on the subject should say so in express terms. If this was done, then all doubt on the question would be removed, and there would be no sort of doubt as to the intention of the legislature, or as to the appropriation of the full amount of the ninety per cent. referred to.

The concluding paragraph of section 1507, as amended, is as follows:

"On the first day of February following the Auditor shall issue his warrant upon the treasurer of the State for the other half of the amount each city or county is entitled to receive, payable to the treasurer of such city or county."

Now does this language mean that the same amount shall necessarily be paid in February as had been paid in the preceding November? The Auditor and Superintendent of Public Instruction have so construed it. This construction gives no effect whatever to the words "the amount each city or county is entitled to receive." In other words, does the statute mean that the city or county is entitled to receive as much in February as had been paid in November? This doubt should be removed and the intention of the legislature clearly expressed. If a change in the policy heretofore pursued is desired, and if section 1507 is to be retained and kept in force, then it might be simpler to amend the latter part of this section by striking out the words "other half" and inserting the word "residue," and adding at the end of the section the words "after deducting all delinquents," so that the section would then read: "on and after the first day of February following the Auditor shall issue his warrant upon the Treasurer of the State for the residue of the amount each city or county is entitled to receive, payable to the treasurer of such city or county after deducting all delinquents."

Section 186 of the Constitution provides as follows:

"No money shall be paid out of the State treasury except in pursuance of appropriations made by law; and no such appropriation shall be made which is payable more than two years after the end of the session of the General Assembly at which the law is enacted authorizing the same."

The course heretofore pursued in making the appropriation in the general appropriation law, by reference to section 1507, certainly makes this

section a part of the law, and as it is certainly "a part of the law appropriating money, it may be strongly contended that section 1507 cannot be operative for more than two years from the end of the session of the General Assembly at which it was enacted. At all events the doubt should be removed, and I suggest that some other course should be pursued, and I can think of no better course than the one suggested, that is, to enact a law which is full and explicit on the subject, either in the general appropriation bill, by a special act, or by amending and re-enacting section 1507 as suggested.

I assume that the amount appropriated by the legislature from the property tax is not in excess of the amount provided for in section 135 of the Constitution.

I have the honor to remain,

Yours very truly,

SAML. W. WILLIAMS,  
*Attorney General of Virginia.*

RICHMOND, VA., March 21, 1910.

FRED. S. AXTELL, *Esq.*,

*Supt. of Agents, Fidelity and Deposit Company of Maryland,  
Baltimore, Maryland.*

DEAR SIR:

As requested in your letter of the 16th instant, the Auditor of Public Accounts has, through his first clerk, Mr. C. Lee Moore, turned over to this office a letter of Mr. Charles R. Miller, vice-president of your company, dated on the 9th instant, and yours of February 10th, addressed to the Honorable Joseph Button, Insurance Commissioner, Richmond, Virginia, as well as two communications from Mr. Moore, one to yourself and the other to Mr. Miller, of the 5th and 11th instant.

I beg to say that our recent tax law, which applies to your company, reads as follows:

"The specific license tax upon every such company for the privilege of doing business in the State shall be two hundred dollars a year, and in addition thereto, a sum equal to one and one-quarter per centum upon the gross amount of all assessments, premiums, dues and fees collected or received, or obligations taken therefor, derived from its business in this State."

My construction of this law is in accordance with the view given you by Mr. Moore. Each company is a separate entity and has to pay premiums upon all the business it does in this State, whether it be re-insurance or otherwise. No deductions for re-insurance in other companies, or premiums paid to your company by other companies, can be made. Each company has to pay on the volume of business done regardless of the source from which it comes.

I am,

Very truly yours,

WM. E. BIBB,  
*Assistant Attorney General.*

RICHMOND, VA., May 12, 1910.

J. W. BARR, *Esq.*

*Abingdon, Virginia.*

DEAR SIR:

Yours of the 9th instant to hand, and which is as follows:

"DEAR SIR:

"As we are to hold an election here in June (14th) for municipal officers it is important that the question as to the number of councilmen the voters in Abingdon can legally elect, lawyers differ as to number, some say six, others ten. Will you be kind enough to give me your opinion as to the correct and legal number we are entitled to.

"I am a candidate for the office of mayor, and want to avoid any complications in the future.

"Thanking you in advance for your prompt attention to the matter, I am,

"Yours truly,

"J. W. BARR."

The Attorney General cannot be called upon to give an official opinion on the point suggested at the mere request of a private citizen, but appreciating the importance of the question to the people of your town, and to the people of other towns in the State, I will give you unofficially my views in the matter for what they may be worth.

I assume from your letter that the charter of the town of Abingdon provides for the election of ten councilmen. I also assume that the charter was in existence at the time of the adoption of the present Constitution. This being true, then I conclude that the question arises from the fact that section 1021 of Pollard's Code provides that six councilmen shall be elected in every town. But all doubt or difficulty on the point is removed by reference to section 1048 of Pollard's Code, which provides that "Nothing contained in this chapter, in conflict with any provision of the charter of any city or town, shall be construed to repeal such provision," except as stated in this section; and by comparing this section with the preceding chapter, you will find that section 1021 is not mentioned, and consequently section 1021 does not repeal the provisions of a town charter existing at the time of the passage of that law. The result is that if the charter of your town was in fact in existence at the time of the passage of section 1021, and did in fact provide for the election of ten councilmen, then the charter will prevail as to the number of councilmen to be elected.

The Constitution, section 117, as construed by our Court of Appeals, has effected very important changes in the charters of the towns of the State which were in existence at the time of the adoption of the Constitution, but the provision as to the number of councilmen, as above stated, is not changed. The legislature having the right under the Constitution to pass a general law on the subject, has seen fit not to change the provisions of these charters as to the number of councilmen to be elected, as I have already stated.

I would prefer that you submit this letter to the lawyer of your town

before acting on it. I think I am right, but if I have arrived at a hasty or incorrect conclusion, I would be glad to have it pointed out, as I may be called upon to advise as to other towns in the State similarly situated.

Very truly yours,

SAML. W. WILLIAMS,  
*Attorney General of Virginia.*

RICHMOND, VA., May 16, 1910.

AMBROSE L. HENKEL, *Esg.*,  
*New Market, Virginia.*

MY DEAR SIR:

Your letter of this date to hand, and before leaving my office for the evening I hasten to reply.

Your first question is this: "Is the registrar of an incorporated town required to post registration notices?" Pollard's Code of Virginia, section 1022, provides that the electoral board of the county shall, not less than fifteen days before any town election, appoint a registrar, who shall before any election in said town register all voters who are residents of such town, and who shall have previously registered as voters in the county. The same section provides that the registrar shall be governed in the performance of his duties by the general laws of the Commonwealth so far as the same are applicable, and under the general law he is required to give ten days' notice before each sitting, but it seems that under the law the registrar of a town can register voters up to the day of election.

Your 2d and 3d questions are answered in the above.

Replying to your 4th question, which is, "Can he register any voter who is not already registered on the precinct registration vote, for other elections?" The law to which I have already referred you, and from which I have quoted, expressly says that the registrar of a town shall only register voters who have previously registered as voters in the county and none others. But a person entitled to register in the county can qualify himself for registration in the town by simply going to the registrar and having himself properly registered as a voter in the county, then get you to register him in the town, provided of course his capitation tax has been properly paid.

Replying to your 5th question, I would say that it is the duty of the registrar to post the notices, and the expenses therefor are paid by the town.

6th. The form of notice which you have prepared is sufficient. In fact a very simple notice to the effect that on a certain day you will proceed to register all voters in the said town who apply for registration and are entitled under the law to be registered, will be sufficient.

It is proper that I should call your attention to section 122-m of Pollard's Code, which provides that all persons who intend to be candidates for office in an incorporated town shall give notice thereof to the county clerk, which means now to the clerk of the circuit court of the county in which the town is situated. I send you copy of the election laws. See p. 45 and p. 39. See also p. 60 of the same laws.

Yours truly,

SAML. W. WILLIAMS,  
*Attorney General of Virginia.*

RICHMOND, VA., May 17, 1910.

MR. L. T. CHRISTIAN,  
*Secretary State Board of Embalming,  
Richmond, Virginia.*

DEAR SIR:

Your letter to hand and duly considered. The law on the subject referred to therein is found in section 7 of the act, and is in the following language:

"From and after the passage of this act every person now engaged or desiring to engage in the practice of embalming dead human bodies within the State of Virginia shall make a written application to the State board of embalming for a license, accompanying the same with the license fee of \$5.00; whereupon the applicant, as aforesaid, shall present himself or herself before the said board, at a time and place to be fixed by said board, and if the board shall find, upon due examination, that the applicant is of good moral character, possessed of skill and knowledge of said science of embalming and the care and disposition of the dead, and has a reasonable knowledge of sanitation and the disinfection of bodies of deceased persons, and the apartment, clothing, and bedding, in case of death from infectious or contagious diseases, the board shall issue to said applicant a license to practice said science of embalming and the care and disposition of the dead, and shall register such applicant as a daily licensed embalmer."

It is very clear to my mind that the language used, to-wit, "Every person" now engaged or desiring to engage in the practice of embalming may apply for a license, includes infants; and the act clearly contemplates that a woman with all of her legal disabilities may be licensed under this act. There is nothing in the act which prohibits an infant from applying for and receiving this license, or from engaging in the business under the license when granted.

It is not a question of the infancy or majority of an applicant for a license, but it is simply a question of fitness within the meaning of the law, that is, the applicant must be of good moral character, possessed of skill and knowledge of said science of embalming and the care and disposition of the dead, with a reasonable knowledge of sanitation and disinfection of bodies as set forth in the act; and the law itself in the absence of express prohibition, does not impose any disability upon an infant to engage in any business, or to practice any science which he is otherwise capable of practicing, simply because he is an infant.

The license when granted does not in any sense create an office, but simply confers the privilege of engaging in a business, and the board determines whether the applicant has sufficient skill to engage in it; but even if it was an office in any proper sense of the term, the books lay down the rule that an infant is capable of holding and discharging the duties of such offices as do not concern the administration of justice, but which only require skill and diligence, and this he may exercise either himself or by a deputy. Tyler on Infancy, page 121.

A notable instance of this rule is to be found in the case of Stephen T. Mason, who was appointed by President Jackson Secretary of the Territory of Michigan in 1831, when he was but nineteen years of age, and upon the promotion of Governor Cass to the War Department Mason became Governor of the Territory, and it is said of him that though a mere youth during his term as Governor, he distinguished himself by the calmness, ability and courage with which he maintained the rights of the Territory. Tyler on Infancy, p. 38.

I think it is clear that under the law, a copy of which you enclose me (see section 7), the question as to who is entitled to receive a license at the hands of the board is purely a question of character, skill and knowledge as set forth in the act, and it therefore follows that the board has authority to grant a license to an infant who measures up to the standard prescribed by the act, and that it would be wrong to withhold a license from such an applicant simply because he was under the age of twenty-one years.

I remain,

Very truly yours,

SAML. W. WILLIAMS,  
*Attorney General of Virginia.*

RICHMOND, VA., May 18, 1910.

L. EVERETT MOSBY, *Esq.*,  
*Columbia, Virginia.*

MY DEAR SIR:

Your letter to hand. The Attorney General under the law is not required to give an official opinion on the question submitted by you unless it reaches this office in the regular channel through one of the heads of departments here at Richmond. Aside from the fact that your letter is entitled to courteous consideration at my hands, the point suggested is one of so much public importance that I take pleasure in writing you unofficially my construction of the Constitution and laws applicable to the case.

Section 110 of the Constitution provides that:

"There shall be elected or appointed, for four years, as the General Assembly may provide, commissioners of the revenue, for each county, the number, duties and compensation of whom shall be prescribed by law; but should such commissioners of the revenue be chosen by election by the people, then they shall be ineligible for re-election to the office for the next succeeding term."

The first act passed by the legislature carrying into effect this constitutional provision was approved May 20, 1903, and is found in section 92 of Pollard's Code, and provides for the election of commissioners of the revenue by the qualified voters of the county at the general election held on the Tuesday after the first Monday in November, 1903, and every fourth year thereafter, and provides that the commissioners so elected should hold their offices for the term of four years from the 1st day of January succeeding their election.

Under this election the commissioner would hold office until the 1st day of January, 1908, and the commissioner of the revenue so elected was ineligible to re-election for the then next succeeding term. Had this law remained in force, commissioners of the revenue would have been elected thereunder and would have been ineligible to re-election at the election held in November, 1907; but in the meantime, before this term expired, to-wit, on the 14th day of March, 1906, the legislature passed a law providing that commissioners of the revenue should be appointed by the circuit courts of the respective counties at some time between the 1st day of July and the 1st day of October, 1907, and between these dates every four years thereafter, and the commissioners so appointed were to hold their offices for four years from the 1st day of January next succeeding their appointment. From this it will be seen that the commissioners of the revenue who went into office on the 1st day of January, 1908, were appointed and not elected, and their terms of office will expire on the 1st day of January, 1912. They are therefore eligible to succeed themselves.

The legislature, by act approved February 25, 1908, changed the law on the subject and provided that the commissioners of the revenue for each county should be chosen by the qualified voters at the general election in November, 1911, and every four years thereafter, the result of which, independent of the constitutional amendment, is that the commissioners of the revenue now in office shall be elected on Tuesday after the first Monday in November, 1911, and the commissioners of the revenue now in office having been appointed by the court and not chosen by election by the people, they are clearly eligible to re-election to succeed themselves; and this is true entirely independent of the constitutional amendment which has been proposed on the subject.

Should the constitutional amendment fail of adoption, however, then the commissioners elected in 1911 would be ineligible to succeed themselves under the Constitution as it now exists.

Very truly yours,

SAML. W. WILLIAMS,  
*Attorney General of Virginia.*

RICHMOND, VA., May 20, 1910.

Hon. P. B. F. Good,

*Montevideo, Virginia.*

MY DEAR SIR:

Your letter to hand. I could give you none other than an unofficial opinion on the point suggested in your letter, unless it was submitted to me through regular channels invoking my opinion, but I can treat your letter in no other way than courteously, and if I could see my way clear to answer your question giving an opinion which was clearly sustained by the law I would not hesitate to do so; but the question propounded is hedged about with so much difficulty that I do not feel disposed, in fact do not think it would be either prudent or right, to venture an opinion in the absence of judicial construction of the law by our courts, further than to say that it seems to me that the construction must turn on this question, what is meant by the word "barroom" or "saloon" as used by the legis-

lature in the law to which you refer (clause (e) of section 19 of the Byrd law). For example: The law says, no female or minor shall be employed in any capacity in any saloon, nor shall any ardent spirits be delivered to any minor or female in any saloon, and no ardent spirits shall be sold or served to any female in any barroom or saloon. Now, does the word "barroom" or "saloon" as used in this section mean the place or room set apart for, and used for the purposes of, selling ardent spirits to be drunk where sold, and if so, does the presence of this room when used in connection with a hotel give character to the hotel building within the meaning of this law? I am inclined to the view that it does not, but that the term "barroom" or "saloon" as used in this clause or section must be given the commonly accepted meaning, to-wit, a room or place where ardent spirits are sold to be drunk where sold.

Carrying out this view I wrote a letter some days ago in which I expressed the belief that the courts would hold that the real evil which the law aimed to correct was to prevent the sale of ardent spirits or other intoxicating liquors to females or minors, and to prevent the employment of any female or minor in any place where intoxicating liquors were being sold, to be drunk where sold, that is to exclude them from such places as are commonly called "saloons" or "barrooms."

I do not desire to be understood as expressing any fixed opinion upon the subject in advance of judicial construction of the statute, but I am disposed to discuss the matter very freely in view of the difficulties surrounding it, hoping that whatever conclusions I may finally reach will be correct; but until this law is construed by the courts and its meaning judicially determined, I do not care to venture an opinion construing the law.

It may be added, however, that if the term "barroom" or "saloon" as used in this section is to be held to apply not only to the room or place in the hotel building where ardent spirits are sold to be drunk where sold, but to apply to and embrace the whole building, that is all the rooms in the hotel, then it would necessarily follow that no hotel keeper could employ a chambermaid or a bellboy in or about the business of his hotel, a result which it is hardly reasonable to conclude that the legislature intended.

Very truly yours,

SAML. W. WILLIAMS,  
*Attorney General of Virginia.*

RICHMOND, VA., May 28, 1910.

AMBROSE L. HENKEL, *Esq.*,  
*New Market, Virginia.*

MY DEAR SIR:

Your letter of the 27th instant just received, and I have given it my careful consideration.

The facts stated in your letter are these: W. M. Calvert was appointed registrar for the town of Woodstock by the electoral board on September 15, 1909, for a local option election. Joseph B. Clower was appointed registrar of the said town by the same board on May 16, 1910, for the ensuing June election. Mr. Calvert now writes that he cannot qualify and fill the office.

If the facts are correct, as stated by you, it would seem that there is no trouble about Mr. Clower qualifying if he was regularly and legally appointed registrar of the said town on May 16, 1910, as he was appointed subsequently to Mr. Calvert.

But assuming that there is a vacancy in the office of registrar, I am of opinion that the only way it can be filled is by appointment by the electoral board. (See section 1022 of Pollard's Code, p. 60 of the Virginia Election Laws.)

In answer to your second question, I am of opinion that the expense of calling a meeting of the electoral board would have to be borne by the county. (See section 70 of Pollard's Code, p. 17 of the Election Laws.)

In answer to your question whether or not Mr. Calvert would hold over until his successor is duly appointed and qualified, I am of opinion that he cannot, for two reasons: 1st. You state in your letter that he is going to be a candidate for election to the council, which, of course, would preclude him from acting as registrar; 2d. The law (section 1022 of Pollard's Code, p. 60 of the Election Laws) requires that the electoral board shall, "not less than fifteen days before any town election therein, appoint one registrar and three judges of election, who shall also act as commissioners of election," which seems to contemplate that as to registrars in towns, they have to be appointed before each recurring town election.

With my kindest regards, I am,

Very truly yours,

SAML. W. WILLIAMS,  
*Attorney General of Virginia.*

RICHMOND, VA., June 27, 1910.

B. V. WHITE, *Esq.*

*Leesburg, Virginia.*

MY DEAR SIR:

Your letter to hand. The course of appeal from the action of the district school board is clearly laid down in our school law. (See Virginia School Laws, p. 28, section 27, Code of Virginia, section 1487.)

Under this law the appeal can be taken by any five interested heads of families resident of the district, and the fact that the heads of families appealing are not patrons of the particular class in the high school I think can make no difference as to their right of appeal, however much weight it might have on the merits of the appeal when heard.

The duty of the division superintendent is also clearly defined, and the right of appeal to the school trustee electoral board is clearly set forth, and whose duty it is to "summons witnesses and decide finally all questions at issue, and the action taken to be recorded in the minutes of the school trustee electoral board, and in the record book of the district whose action is reviewed."

The law constituting the school trustee electoral board—a board of appeal—is found in section 1455 of the Code, which gives the chairman of the board the power to administer the oath of any witness appearing before it, and this law provides for the summoning of witnesses and a full hearing in any matter before this board.

My predecessor, Honorable William A. Anderson, in an opinion rendered on March 5, 1909, in discussing the question of appeal in a case similar to the one submitted in your letter to me, says this:

"It appears to me that it was never designed that an appeal should be taken to the Superintendent of Public Instruction upon the question of the propriety of either the employment or of the dismissal of a school teacher by the district board of school trustees.

"If the division superintendent cannot settle and adjust such complaints and controversies satisfactorily when they arise, then it seems to me that the only remedy is by appeal, under sub-section 2 of section 45, section 27, and section 23 of the School Laws, to the school trustee electoral board of the county, whose decision will be final.

"These statutes were evidently intended to be 'statutes of repose,' and to rest with the local authorities jurisdiction for the final decision of the innumerable questions of this kind which must arise in the different counties and cities of the State, instead of burdening the department of education with their consideration and decision."

I hope this matter will be finally and satisfactory adjusted by your local school authorities. If, however, an appeal should be desired from the action of the school trustee electoral board, it might be well for you to address a communication to the State Superintendent of Public Instruction, who, either directly or by reference of the question to this office, could have settled officially the question as to whether the action of the school trustee electoral board was or was not final, and whether an appeal would lie from this board, and if so through what channel the appeal should be taken.

Very truly yours,

SAML. W. WILLIAMS,  
*Attorney General of Virginia.*

RICHMOND, VA., July 7, 1910.

Hon. JAMES B. DOHERTY,  
*Commissioner of Labor,*  
*Richmond, Virginia.*

MY DEAR SIR:

Yours of the 2d instant to hand. Also letter of the Low Moor Iron Company of Virginia, of date June 30, 1910, addressed to the Commissioner of Labor, Richmond, Virginia. In your letter you ask for my interpretation of the statute referred to in said letter.

Under the act of March 13, 1908, it is provided that no child under the age of fourteen years shall be employed, permitted or suffered to work in any factory work-shop, mercantile establishment or mine in this Commonwealth, with certain exceptions contained in the proviso in the act. Assuming that the children referred to in the letter which accompanies your letter do not come within the proviso, then the question is whether the places at which it is proposed to work these children do or do not come within the meaning of the words "factory, work-shop, mercantile establishment or mine" as mentioned in the statute.

Assuming that the facts stated in said letter are true, and that the work which these children will be required to perform will be outside work and will not be work in any factory or work-shop within the meaning of the law, then, of course, their employment is not prohibited by the Constitution, but this is more a question of fact than of law, and an administrative question to be settled, as it seems to me, by your department. If, as stated in the letter, the work that the children will have to do is in no way connected with the manufacture of pig iron or about any machinery or inside work, and you become satisfied that this is true, then it seems to me that it will not be unlawful. But this I give simply as my impression, for as already stated, it is essentially more a question of fact than law. It is a question which in my opinion should be dealt with and determined by your office.

Yours truly,

SAML. W. WILLIAMS,  
*Attorney General of Virginia.*

RICHMOND, VA., August 29, 1910.

ROLAND E. COOK, *Esq.*,

*Division Superintendent of Schools,*  
*Salem, Virginia.*

DEAR SIR:

Yours of the 25th instant, addressed to Mr. R. C. Stearnes asking whether the mayor of a town can hold the office of school trustee, was sent to this office this morning, and is the first knowledge we have had of such a request. It is our invariable rule to answer all communications promptly.

Answering your request, would say that under the statute it seems that the mayor of a town can legally act as such trustee.

Very truly yours,

WM. E. BIBB,  
*Assistant Attorney General.*

RICHMOND, VA., September 9, 1910.

Hon. GEORGE B. KEEZELL,

*Keezeltown, Virginia.*

DEAR SENATOR:

I found your letter awaiting my return on yesterday morning. I have carefully considered the point suggested, and am clearly of the opinion that a member of the legislature, after he resigns, is eligible to hold the office of county treasurer.

This is a constitutional office and is primarily an office which is elective by the people, and the exception contained in the latter part of section 45 of the Virginia Constitution was as to the office to be filled, and not to the manner of filling it, that is to say, if the office is an elective office, then the member of the legislature after his resignation, is clearly eligible to hold it, whether it is filled temporarily by appointment or is filled by regular election.

This is my best conclusion on the subject, in which I am supported by a very intelligent and strong lawyer who was a member of the Constitu-

tional Convention, and also a member of the committee which reported this section.

With my very kindest regards to yourself and family, I am,

Very truly yours,

SAML. W. WILLIAMS,  
*Attorney General of Virginia.*

RICHMOND, VA., November 12, 1910.

Dr. W. G. CHRISTIAN.

*Chairman Executive Committee, for Distribution of Dead Bodies,  
Richmond, Virginia.*

DEAR DOCTOR:

Your letter of the 10th instant to hand, and which letter is as follows:

"Your opinion is respectfully requested on the law as to the bodies of criminals for anatomical purposes; especially with reference to section 11, Acts 1908, p. 686, and section 1778 of the Code; and on any other matter deemed by you pertinent to the subject of inquiry."

In reply will say that under the Code, section 1778, your board has the right to possession of certain dead human bodies therein mentioned for anatomical purposes, with limitations stated in said section which provides that no such body shall be delivered to the board if any person of kin or related to the deceased, as stated in this law, claim the body for burial and pays the expenses thereof, but there is an exception in cases of criminals. In this case the board is entitled to the body of the criminal even though some person of kin or related to him should demand it for burial.

But this law has been modified by the act of 1908 to which you refer to this extent, that upon the application of the relatives of the person executed, the body, after execution, shall be returned to their address and at their cost. The result is that the dead bodies in question are to be turned over to the board to be used by them in the manner and for the purposes stated in the law (Code, section 1778), unless the relatives demand the body and take possession thereof, as also provided by law.

I am,

Yours very truly,

SAML. W. WILLIAMS,  
*Attorney General of Virginia.*

It will be noticed that I have embraced herein certain letters written by the Honorable William A. Anderson, my predecessor, and Hon. Robert Catlett, his assistant.

This is explained by the fact that the annual report of the Attorney General covers the period from October 31, 1909, to October 31, 1910, and my term of office did not commence until February 1, 1910.

### Conclusion.

Upon assuming the duties of the office on the 1st day of February, 1910, I appointed the Honorable William E. Bibb, of Louisa county, Virginia, as Assistant Attorney General, and in doing so I carried out a determination

often publicly expressed by me, that if elected I would appoint as my assistant an ex-Confederate soldier, if one could be found in every way capable of performing the duties of the office. In the person of Mr. Bibb these requirements were fully met, as he is a lawyer of ability, experience, and is in every way fully qualified to discharge the responsible duties of the position. I desire to make due recognition of the valuable and efficient services being rendered by Mr. Bibb, whose ability and fidelity in the discharge of his duties are worthy of the most favorable commendation.

The gratifying progress made and being made in the splendid developments of the material resources of the State, the enlargement of the scope, powers and duties of the several departments of the State government, and the operations of the various boards created by and operating under the laws passed by the General Assembly have caused a very heavy increase in the work and duties of this office, but I trust that at least proper energy and effort has been exercised by myself and assistant to meet as best we could the increased work and responsibilities arising therefrom.

Upon assuming the duties of this office upon the 1st day of February, 1910, after due inquiry as to his fitness and ability to discharge the duties of the position, I retained the services of Mr. T. Gray Haddon (who had for some time occupied the position as clerk in the office of my predecessor, Honorable William A. Anderson), as my clerk at the aggregate salary provided by law. He has in every way measured up fully to all of the responsibilities of the position, and I desire to specially commend the efficiency with which he has discharged his duties.

I cannot close this report without expressing my gratification at the action of the Virginia State Debt Commission in adopting my suggestion to retain the valuable services of my predecessor, Honorable William A. Anderson, as assistant counsel for Virginia in the case pending in the Supreme Court of the United States, of the *Commonwealth of Virginia v. State of West Virginia*, involving the settlement of the question of West Virginia's liability to pay a proper proportion of the State debt. Major Anderson had acquired a fund of information in regard to this during his term of office as Attorney General which has and will doubtless prove of very great value to the State in the further prosecution of this case.

I append herewith an itemized statement of the expenditure of the appropriation made for the contingent expenses of this office, and also a statement of the amount expended by me out of the appropriation made for the traveling expenses of the Attorney General.

Respectfully submitted,

SAMUEL W. WILLIAMS,  
*Attorney General of Virginia.*

## Statement

*Showing the Current Expenses of the Office of the Attorney General from  
December 1, 1909, to November 1, 1910.*

1909.		
Dec.	1. Balance to credit of contingent fund.....	\$158 74
1910.		
Jan.	1. Warrant on Auditor for William A. Anderson, Attorney General, to pay for various items paid for by him .....	\$12 95
	7. Warrant on Auditor for Boston Book Company, for Virginia Colonial Decisions, 2 volumes...	7 00
	To Southern Bell Telephone and Telegraph Company for long distance messages.....	7 21
	19. Warrant on Auditor for Beaufont Lithia Water Company for 100 gallons of water.....	5 00
	27. Warrant on Auditor for Lawyer's Co-operative Publishing Company for books as follows:	
	53 United States Reports.....	\$5 00
	21 and 22 L. R. A.....	8 00
	L. R. A. Red Book.....	1 00
		14 00
	To West Publishing Company for 1909 Sup- plement to United States compiled statutes..	7 00
	To Everett Waddey Company for sundries furnished this office .....	10 75
	To T. Gray Haddon for various items paid for by him, as shown by memorandum filed with Auditor of Public Accounts .....	4 50
	To Robert Catlett to pay for repairing type- writer, this amount being advanced by him.	7 50
	To C. A. Bryan, clerk of Stafford county, to pay for record of condemnation proceedings in Wm. J Blatchford's estate.....	2 00
	To Brooks Transfer Company, for moving furniture from old office into new.....	14 00
Feb.	18. To Jacob Umlauf for leather cushion for desk chair .....	2 50
	To Picot Printing Company for 100 extra copies of Attorney General's report.....	5 67
	To Samuel W. Williams, Attorney General, for various items paid for by him as follows:	
	Telegram to Lynchburg, Va.....	\$ 67
	1 typewriter ribbon .....	75
	1 cent, 2 cent and 5 cent stamps.....	40 89
		42 31

## REPORT OF THE ATTORNEY GENERAL.

		To Southern Bell Telephone and Telegraph Company for long distance messages and messages in excess of contract.....	2 65	
		To Everett Waddey Company for items furnished this office .....	13 70	
				<u>\$158 74</u>
1910.				
March	1.	Appropriation to defray current expenses to March 1, 1911.....		\$500 00
April	5.	Warrant to Samuel W. Williams, Attorney General, for various items .....	\$5 13	
		To Southern Bell Telephone and Telegraph Company for extension phone, etc.....	27 40	
		To M. B. Watts for Virginia Appeals for one year .....	5 00	
May	3.	To Samuel W. Williams for various items paid for by him .....	9 22	
		To Whittet & Shepperson for printing briefs, etc., in passenger rate cases.....	7 00	
	16.	To M. B. Watts for binding Vols. 1 and 2 of Virginia Appeals and Vols. 10 to 15, inclusive, of Virginia Law Register.....	6 00	
June	2.	To Samuel W. Williams, Attorney General, for various items paid for by him.....	4 57	
	6.	To Michie Company, subscription to Virginia Law Register for one year, and extra number....	5 50	
		To Bell Book and Stationery Company for Minor on Real Property .....	11 00	
		To Southern Bell Telephone and Telegraph Company for long distance messages.....	8 90	
	20.	To Miss Fannie B. Poitiaux for extra stenographic services .....	6 25	
July	27.	To Samuel W. Williams, Attorney General, for various items paid for by him.....	6 42	
Aug.	24.	To Samuel W. Williams, Attorney General, for various items paid for by him.....	17 55	
Sept.	1.	To Western Union Telegraph Company.....	4 85	
		To Everett Waddey Company for sundries furnished this office.....	15 65	
		To Mrs. M. A. Jones for extra stenographic work .....	4 25	
	29.	To Western Union Telegraph Company for telegrams .....	2 99	
	30.	To Samuel W. Williams, Attorney General, to pay for extra stenographic work paid by him	5 60	
Oct.	4.	To Southern Bell Telephone and Telegraph Company .....	9 40	

4.	To J. P. Bell Company for Index to Virginia Law Register, Vols. 1 to 10.....	3 64	
	Lawyers Co-Operative Publishing Company 23-25 L. R. A., Digest 1-25.....	16 00	
	Western Union Telegraph Company .....	2 80	
	J. A. Morrisette, one shock absorber for type- writer .....	3 00	
10.	To Samuel W. Williams, Attorney General, for various items paid for by him.....	14 25	
			202 37
	Travelling expenses of Attorney General from March 1, 1910, to October 31, 1911, were....		\$115 65
1910.			
Nov.	1. Balance to credit of contingent fund .....		\$ 297 63



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