

ANNUAL REPORT

OF THE

ATTORNEY GENERAL

TO THE

GOVERNOR OF VIRGINIA

FOR THE

YEAR 1914

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RICHMOND:  
DAVIS BOTTOM, SUPERINTENDENT PUBLIC PRINTING  
1915



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## ATTORNEYS GENERAL OF VIRGINIA

FROM 1775 TO 1914.

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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	1902-1910
Samuel W. Williams	1910-1914
Jno. Garland Pollard	1914-

OFFICE OF THE ATTORNEY GENERAL.

JNO. GARLAND POLLARD .....	<i>Attorney General</i>
CHRISTOPHER B. GARNETT .....	<i>Assistant Attorney General</i>
MORTON L. WALLERSTEIN .....	<i>Law Clerk</i>
MAURICE A. POWERS .....	<i>Secretary</i>

# REPORT.

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, *February 25, 1915.*

*To His Excellency, HENRY C. STUART,*  
*Governor of Virginia.*

DEAR SIR:

In accordance with section 3025 of the Code of Virginia, I hereby deliver to you a report of the state and condition of the several causes in which the Commonwealth is a party pending November 1, 1914. I have added a number of opinions on questions of public importance, as well as a statement of the expenditures of this office for the year ending October 31, 1914.

Respectfully submitted,

JNO. GARLAND POLLARD,  
*Attorney General of Virginia.*

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

1. *Virginia v. West Virginia.* The history and status of this important case can best be understood from the minutes of the State Debt Commission which are hereto appended. Following the rejection of the proposition of settlement made by West Virginia, and set out in said minutes, the Attorney General of West Virginia moved to reopen the case; and the court, after hearing argument, granted the motion with leave to West Virginia to file a supplemental answer. The opinion of the court, in allowing said answer to be filed, is also hereto appended. The case was again referred to Master Littlefield, and hearings were had before him, in the court room of the Supreme Court of Appeals of Virginia, at Richmond, beginning August 17, 1914, and ending September 12, 1914.

2. *Dalton Adding Machine Co. v. State Corporation Commission of Virginia.* This was an application made to the United States District Court for the Eastern District of Virginia, on behalf of the complainant, a foreign corporation, asking for an injunction to restrain the State Corporation Commission of Virginia from instituting proceedings against said company to compel it to comply with the statute requiring foreign corporations doing business in this State to procure a certificate of authority to do business in this State, etc. The ground relied upon was that the company was doing only interstate business in Virginia, and, therefore, could not be compelled to take out a license here. The district court denied the injunction prayed for, whereupon the Dalton Adding Machine Company appealed the case to the Supreme Court of the United States, where the case is now pending.

3. *C. J. Rixey, An Insane Person, by C. J. Rixey, Jr., his son and next friend, v. Robert H. Cox, Sergeant of the City of Alexandria.* C. J. Rixey was indicted in the corporation court of the city of Alexandria for felony. Before he could be tried, he was adjudged insane and committed to the Western State Hospital at Staunton. Subsequently, by order of the court, it was directed that he be transferred to the Southwestern State Hospital at Marion and confined in

the ward for the criminal insane. An appeal from the order of the court confining him to the ward for the criminal insane was taken to the Supreme Court of Appeals and refused, whereupon a writ of habeas corpus was applied for in the United States Court for the Eastern District of Virginia, and the writ having been refused, the case was appealed to the Supreme Court of the United States, where it has been argued and submitted.

4. *J. G. Davis v. Commonwealth of Virginia*. This case involves the question as to whether the peddler's act, section 50 of the tax bill, as construed by the Supreme Court of Appeals of Virginia, is not a regulation of interstate commerce and, therefore, invalid. Pending.

#### **Cases Pending in the District Court of the United States for the Eastern District of Virginia.**

1. *Oliver Durant v. C. H. Tinsley, Commissioner, and others*. This is a bill in chancery praying for an injunction to restrain the collection of certain taxes assessed against the complainant in the county of Culpeper. The case is an important one, both as to the amount and principles involved. Argued and submitted.

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

1. *Gayle and Eason v. Commonwealth*. Misdemeanor. From the circuit court of the city of Suffolk. Reversed.

2. *Lewis v. Commonwealth*. Misdemeanor. From the circuit court of Norfolk county. Reversed.

3. *Commonwealth v. City of Richmond*. Tax assessment. From the hustings court of the city of Richmond. Affirmed.

4. *Commonwealth v. Lynchburg Y. M. C. A.* Tax assessment. From the corporation court of the city of Lynchburg. Affirmed.

5. *Commonwealth v. City of Lynchburg*. From the corporation court of the city of Lynchburg. This case was controlled by the prior case of *Commonwealth v. City of Richmond* and was dismissed, agreed.

6. *Commonwealth v. Schmetz, surviving partner*. Tax assessment. From the circuit court of Elizabeth City county. Petition for rehearing. Refused.

7. *Jackson v. Commonwealth*. Murder. From the circuit court of Sussex county. Reversed.

8. *Battle v. Commonwealth*. Misdemeanor. From the circuit court of Southampton county. Error confessed.

9. *J. Willis Faltz v. Commonwealth*. Misdemeanor. From the circuit court of Southampton county. Error confessed.

10. *Shenandoah Lime Co. et als. v. Wm. Hodges Mann, Governor, etc.* From the circuit court of the city of Richmond. Affirmed.

11. *Rose v. Commonwealth*. Misdemeanor. From the circuit court of Dickenson county. Reversed.

12. *Stanley v. Commonwealth*. Misdemeanor. From the circuit court of Dickenson county. Error confessed.

13. *Commonwealth v. Werth*. Correction erroneous tax assessment. From the circuit court of Tazewell county. This case involved the question as to whether a lawyer's income derived from his profession is subject to taxation as income. The lower court held that it is not, but the Supreme Court of Appeals of Virginia reversed the case.

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

1. *Garnett and Cosby v. Commonwealth*. Burglary. From the circuit court of King William county. Pending.
2. *Buck v. Commonwealth*. Felony. From the circuit court of Craig county. Argued and submitted.
3. *Commonwealth v. Round Mountain Mining and Manufacturing Co.* Correction of erroneous tax assessment. From the circuit court of Tazewell county. Argued and submitted.
4. *Morris & Co. v. Commonwealth*. Correction of erroneous tax assessment. From the corporation court of the city of Roanoke. Argued and submitted.
5. *Hallie Rawley v. Commonwealth*. Felony. From the circuit court of Middlesex county. Pending.
6. *F. W. Starke v. Commonwealth*. From the circuit court of Brunswick county. Pending.
7. *Wiseman v. Commonwealth*. Misdemeanor. From the circuit court of Louisa county. Pending.
8. *F. C. Taylor v. Commonwealth*. Misdemeanor. From the circuit court of Accomac county. Pending.
9. *F. C. Taylor v. Commonwealth*. Misdemeanor. From the circuit court of Accomac county. Pending.
10. *Standard Oil Co. v. Commonwealth*. Correction of erroneous tax assessment. From the hustings court of the city of Richmond. Pending.

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

#### AT LAW.

1. *Commonwealth v. O. B. Thomas, Treasurer Fluvanna County, et als.*
2. *Commonwealth v. G. P. Barr, Treasurer, Washington County, et als.*
3. *Commonwealth v. W. M. Gray and J. J. Geisler, Washington County.*
4. *Commonwealth v. O. D. Foster, Administrator R. D. Adams.*
5. *Commonwealth v. A. A. Chapman.*
6. *Commonwealth v. D. Mott Robertson, et als.*
7. *Commonwealth, ex rel. Auditor Public Accounts, v. Gray National Telegraph Company.*
8. *Seaboard Air Line Railroad Company v. State Corporation Commission.*
9. *Life Insurance Co. of Virginia v. Commonwealth.*
10. *The Ferries Company v. Commonwealth.*

#### IN CHANCERY.

1. *Commonwealth v. P. H. Huffman, et als.*
2. *Commonwealth v. Walter Millan.*
3. *Commonwealth v. Jas. Hilton's Administrator.*
4. *Commonwealth v. J. T. Young.*
5. *Commonwealth v. A. A. Chapman.*
6. *Commonwealth v. B. Vandegrift, et als.*
7. *Commonwealth v. Sarah E. French.*
8. *Hunter and Jones, Executors of R. M. Stuart, deceased, v. Board of Sinking Fund Commissioners.*
9. *Commonwealth v. Employers Indemnity Co.*
10. *Commonwealth v. American Union Fire Insurance Co.*
11. *Commonwealth v. Empire State Surety Co.*

## OPINIONS.

**Appropriations—Failure to continue code provisions in appropriation bill. Code, Sec. 379; Constitution, Sec. 186.**

RICHMOND, VA., April 11, 1914.

Hon. WM. WILSON SALE,

*Adjutant General,*

*Richmond, Va.*

DEAR SIR:

I beg leave to acknowledge the receipt of your favor of April 6th, in which you ask me to advise you as to the disapproval of the Auditor of Public Accounts of bill of J. A. Connelly & Co. for \$50.00, for rent of the Adjutant General's office.

Section 379 of the Code, as amended by Acts of 1912, p. 652, provides as follows:

"The Adjutant General is authorized to select and rent rooms in the city of Richmond, to be used as offices for his department, when suitable quarters are not available in the government buildings, at a sum not exceeding fifty dollars per month, which shall be paid out of the public treasury upon the warrant of the Auditor of Public Accounts, and such expense shall not be a charge against the Military Fund."

Section 186 of the Constitution, so far as applicable to this question, 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."

I have made a careful study of the cases bearing on this subject, with a view, if possible, to find some decisions which would authorize the payment of the bill; but, after searching through a large number of decisions, I have been unable to find a single one which would authorize its payment.

It is true that in some of the States which do not have a provision in their Constitution similar to ours, preventing an appropriation from being made which is payable more than a definite period after the end of the session of the legislature, it has been held that legislatures may make continuing appropriations, that is, those appropriations the payment of which is to be continued beyond the term or session of the legislature by which they are made.

*People v. Pacheco*, 27 Cal. 175;

*In re Continuing Appropriations*, 18 Colo. 192, 32 Pac. 272;

*Fleckten v. Lumberton*, 69 Minn. 187, 72 N. W. 65.

But even in some States having no such provision, a contrary conclusion has been reached. *People v. Spruance*, 9 Pac. 628.

In States that have a provision similar to ours, preventing appropriations from being made which are payable more than two years after the end of the General Assembly at which the law is enacted, I can find no instance where a continuing appropriation has been held to be valid.

*State v. Holladay*, 64 Mo. 526;

*State v. Regents*, 27 Pac. 850; 13 Kan. 220;

*Opinion of Judges*, 5 Neb. 566;

*State v. Kenney*, 11 Mont. 553, 29 Pac. 89;

*State v. Seibert*, 99 Mo. 122, 12 S. W. 348.

In *State v. Holladay*, *supra*, it was held that the provisions of the Constitution that the General Assembly should meet in regular session once only in two years, and prohibiting money to be drawn from the treasury except in pursuance of regular appropriations made by law, operated to prohibit permanent or annual appropriations and abrogated such as were authorized by previous laws.

See, also, *State v. Weston*, 6 Neb. 16, where it was held that as to officers created by the legislature, an appropriation was necessary in order to authorize payment of their salaries, although such an appropriation was not necessary in case of officers created by the Constitution and whose salaries were fixed thereby. In that case, the statute created the office of State Board of Immigration, fixed the amount of the compensation to which the secretary of the board was entitled and when it should be paid; but the court held that this provision did not authorize the payment of the salary.

From these authorities, I am forced to conclude that the ruling of the Auditor of Public Accounts is correct and that the bill rendered cannot be paid out of the State treasury, for the reason that no appropriation has been made for the purpose in compliance with the provisions of section 186 of the Constitution.

Respectfully submitted,

JNO. GARLAND POLLARD,

*Attorney General of Virginia.*

**Appropriations—Appropriations must be for some definite and limited amount. Appropriation in act for control and regulation of heat, light, etc., companies, ineffectual. Acts 1914, p. 473; Constitution, Sec. 186. See also opinion following.**

RICHMOND, VA., April 9, 1914.

Hon. ROBERT R. PRENTIS,  
*Chairman State Corporation Commission,*  
*Richmond, Va.*

DEAR SIR:

I am sending you herein a short memorandum in regard to the question raised by you as to whether Senate Bill No. 429, which has become law, makes an appropriation to carry out the provisions of the act.

Section 4 of said act provides as follows:

“For the purpose of carrying out this act, the State Corporation Commission is empowered to employ or appoint all necessary accountants, examiners, stenographers, engineers, assistants or agents, who shall be paid by the Treasurer of the State of Virginia upon the order of the State Corporation Commission.”

The appropriation bill of 1914 makes no specific appropriation for the purposes mentioned in the above section; but said tax bill does provide as follows:

"All public revenue received into the treasury within the two appropriation years provided for in this act and the balances of the appropriations made by previous acts of Assembly unexpended at the close of business on the twenty-eighth of February, nineteen hundred and fourteen, which unexpended balances are hereby declared to be lapsed into the treasury, are hereby designated the general fund of the Commonwealth and shall be used for the payment of the appropriations provided for in this act subject to the limitations and upon the conditions set out in this act, and shall be used also for the payment of all other appropriations made by acts of Assembly passed at the session of the General Assembly of Virginia which commenced at the State Capitol on Wednesday, January fourteenth, nineteen hundred and fourteen."

The question, therefore, to be solved is whether section 4 of the act, as quoted above, is an appropriation "made by acts of Assembly passed at the session of the General Assembly of Virginia which commenced at the State Capitol on Wednesday, January fourteenth, nineteen hundred and fourteen."

I have not yet had sufficient time to come to a definite conclusion on this matter, but am merely sending you herein a memorandum of some of the authorities which have been examined by me in trying to reach a conclusion on the matter.

As the act is not an emergency act, it will not go into effect until the 19th of June, 1914.

Section 186 of the Constitution of 1902 provides:

"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."

Some of the definitions given in the cases of what is meant by an appropriation are set out below.

"Appropriation as applicable to the general fund in the treasury may be, perhaps, defined to be an authority from the legislature, given at the proper time and in legal form, to the proper officers to apply sums of money out of that which may be in the treasury in a given year to specified objects or demands against the State." *Ristine v. State*, 20 Ind. 328; *State v. Ristine*, Id. 345.

"No special form of words is necessary to an appropriation of funds to a particular purpose." *State v. Steele*, 37 La. Ann. 353.

"Authority from the legislature to the Governor to draw his warrant in favor of A for a certain sum to be paid out of money in the treasury not appropriated amounts to an appropriation of that sum." *Idem*.

"A resolve of the legislature authorizing the Governor and Council to fix the compensation of an agent for prosecuting claims is no appropriation." *Weston v. Dane*, 51 Me. 461.

"To an appropriation within the meaning of the statute nothing more is requisite than designation of the amount and the fund out of which it should be paid. It is not essential that funds to meet the same should be at the time in the treasury." *McCauley v. Brooks*, 16 Cal. 29.

In the last case cited, Mr. Chief Justice Field (later Justice of the United States) delivered the opinion, and it was held that a valid appropriation had been effected where officers of the State had been by statute empowered to lease land and buildings to be used for a State prison and the statute declared that "the sum of fifteen thousand dollars per month, or such sums per month less than that amount in accordance with the contract to be made, is hereby appro-



priated out of any money in the treasury not otherwise appropriated, and the Comptroller is hereby authorized and required to draw his warrants on the treasurer of the State for that sum."

In *Proll v. Dunn*, 80 Cal. 220, the statute construed was as follows:

"The sum of one hundred thousand dollars is hereby appropriated for the support and maintenance of the mining bureau created under an act entitled 'an act to provide for the establishment and maintenance of a mining bureau, approved,' etc., 'and, at least, seventy per cent. of this appropriation shall be used for geological work in the field.'"

It was contended that the appropriation was invalid because it did not designate the fund out of which the appropriation was made. On this point the court said:

"There is no provision in the Constitution providing or prescribing any particular form of words in which an appropriation shall be made except that it shall be made by law. \* \* \* It is claimed that this act does not specify upon what fund the warrant is to be drawn; and as the comptroller is required in every warrant to specify the fund out of which it is payable, therefore that it is insufficient. Several authorities are cited which are claimed to support the proposition that the act itself must specify the fund out of which the money is to be drawn, but we do not think that they support that construction in the sense claimed for it here; and as to the statutes, not one appropriation act in fifty designates the fund out of which the money is to be drawn. The majority of all appropriations are drawn out of a single fund and that without any designation in the act as to what fund the money shall be drawn from."

And so the court held that the appropriation was validly made.

See, also, *Humbert v. Dunn*, 84 Cal. 57.

In *State v. Moore*, 69 N. W. 373, 59 Neb. 88, 61 Am. State Rep. 538, an extended opinion was handed down upon the subject of appropriations by the legislature under a constitutional provision, similar to ours, providing that no money shall be drawn from the treasury except in pursuance of a specific appropriation made by law and on the presentation of a warrant issued by the Auditor thereon. The court defined "appropriation" to be as follows:

"To appropriate is to set apart from the public revenue a certain sum of money for a specific object in such a manner that the executive officers of the government are authorized to use that money and no more for that object and no other."

In that case, it was held that *certainly in the amount* appropriated is essential to a valid appropriation of public moneys; that an appropriation cannot be certain or specific where it is to be ascertained only by the requisitions which may be made by the recipients; and that a statute providing for the payment of a bounty of a certain sum per pound for an article to be thereafter produced or manufactured within the State, and further providing that when any claim made under the act is presented and verified as therein required the Auditor of the State shall draw a warrant on the treasurer thereof for the amount due, does not constitute a valid appropriation of public moneys, because it cannot be ascertained in advance what amount will become payable in any one year, nor what taxes should be levied to discharge the liabilities created by the statute.

In *State v. Weston*, 4 Neb. 216, it was held that no appropriation was necessary in order to authorize the payment of salaries fixed by the Constitution for officers created thereby; but in *State v. Weston*, 6 Neb. 16, it was held that the above rule did not apply to officers whose offices were created by the legislature, but that in this latter case there must be a specific appropriation.

In *State v. Weston*, 6 Neb. 16, the statute created the office of State Board of Immigration, fixed the amount of compensation to which the secretary of the board was entitled and the time when it should be paid, but the court held that this provision was not an appropriation. The court said (p. 18)

"It was claimed in argument that section 6 of the act of February 24th was a sufficient appropriation to authorize payment to be made, but we do not so construe it. No particular portion of the public revenue is set apart upon which the Auditor is authorized to draw in payment of this expense. This section does nothing more than fix the amount of compensation to which the secretary of the board may be entitled and when it is to be paid. As to the manner of payment and out of what particular fund, it is silent."

In *re Groff*, 21 Neb. 647, 59 Am. Rep. 859, the appropriation bill included a single item for the salaries of district judges of \$95,000. It was held that this was a sufficient appropriation; but in *State v. Moore*, *supra*, Irvine delivering the court's opinion and commenting on *in re Groff*, says:

"It is hardly possible that the court would have construed an appropriation of 'so much as may be necessary,' without fixing any amount, as a valid appropriation, were a valid appropriation necessary."

In *Pickle v. Finley*, 91 Tex. 484, 44 S. W. 400, it was held that a statute creating the office of stenographer and fixing his salary did not authorize the comptroller to issue his warrant in payment therefor, as the Constitution provided that "no money shall be drawn from the treasury but in pursuance of specific appropriations, \* \* \* nor shall any appropriation be made for a longer term than two years."

In *State v. Kenney*, 10 Mont. 496, 26 Pac. 388, the court construed a provision of the Montana Constitution providing that "no money shall be drawn from the State treasury except upon specific appropriations made by law." It was held that in the absence of an appropriation, the State Auditor properly refused to issue his warrant on the Treasurer for salary due the clerk employed by the code commissioners under a session act of Montana authorizing such commissioners to employ a clerk and directing his salary to be paid monthly by the Auditor on vouchers to be approved by the chairman of the commission.

In *State v. Babcock*, 18 Neb. 221, 24 N. W. 683, it was held that under the provisions of the Constitution of that State requiring that "no money shall be drawn from the treasury except in pursuance of a specific appropriation made by law," the Auditor of Public Accounts had no authority to draw a warrant upon the treasury for commissions due county treasurers for money collected by them and paid into the treasury.

In *Humbert v. Dunn*, 84 Cal. 59, the court said:

"The limitation 'no money shall be drawn from the treasury but in consequence of appropriation made by law' is taken literally from the Constitution of the United States. Its object is to secure to the legislative department of the government the exclusive power of deciding how, when and for what purpose the public funds shall be applied in carrying on the government. It had its origin in Parliament in the seventeenth century, when the people of Great Britain, to provide against abuse by the king and his officers of the discretionary money power with which they were invested, demanded that the public funds should not be drawn from the treasury except in accordance with express appropriations therefor by Parliament."

In *Goodykoontz v. Acker*, 19 Colo. 361, 35 Pac. 91, the statute construed provided that "the inspector of metalliferous mines shall receive a salary of thirty-five hundred dollars per year and ten cents per mile mileage actually and necessarily traveled, to be paid monthly by the State Treasurer out of any moneys appropriated for that purpose." The court, after some apparent hesitation, decided that the act contemplated that there should be a further appropriation, and, therefore, that the language above cited was not an appropriation.

In *People v. Goodykoontz*, 45 Pac. 415, it was held that an act establishing the office of boiler inspector and fixing his salary at a certain sum per year, payable as other State officers, constituted an appropriation of such amount for the payment of his salary as required by the Constitution, providing that "no money shall be paid out of the treasury except upon appropriations made by law and on a warrant drawn by the proper officer in pursuance thereof."

In an extended note to *Carr v. State*, found in 22 Am. State Reports, at p. 638, the author uses the following language, citing some of the above cases:

"We apprehend that if the decisions to which we have referred, or any others that may be found, implied that an appropriation must be made in any set form of words they are not in that respect sustained, either by recent or by the majority of the adjudications upon the subject. The appropriations required by the Constitutions of the several States are nothing beyond expressions of the legislative will. That will may be expressed in an act which styles itself an appropriation bill or it may be in some other act. In either event, the words used may amount to an appropriation, the only difference being that in a statute which did not purport to make an appropriation, perhaps the intent to make one may need to be expressed in language more clear and definite than if it were contained in a statute professing to be an appropriation bill."

In *State v. Eggers*, 91 Pac. 819, 16 L. R. A. (N. S.) 630, the Supreme Court of Nevada was called upon to construe a statute establishing a State Industrial and Publicity Commission, and providing that the chairman should receive as compensation for his services, to be paid out of the treasury of the State of Nevada, the sum of twenty-five hundred dollars per annum; and providing, further, that the chairman and the other members of the commission should be allowed necessary mileage and actual expenses of travel incurred in traveling upon official business of the commission, upon affidavit of the members that such mileage and expenses were actually and necessarily incurred. The Constitution of Nevada provides:

"No money shall be drawn from the treasury but in consequence of appropriations made by law."

The court held that the provisions authorizing the payment of the salary, taken in connection with the general statute providing that all officers whose salaries are fixed by law shall be entitled to receive the same on the first of each month, and that the said comptroller shall draw his warrant and the treasurer shall pay the same, was a sufficient appropriation; but held that the appropriation for the expenses was not sufficient, because the amount and time and manner of payment were not specific and certain. To this case, there is appended a long note reviewing many of the cases above cited and others.

In *Mcnafee v. Asker*, 107 Pac. 159, 27 L. R. A. (N. S.) 537, the Oklahoma Supreme Court held that the provisions of an act in regard to game and fish warden providing that the game and fish warden should be reimbursed for his

actual and necessary expenses, including expenses of catching and shipping game for propagating purposes, to be paid monthly and in the same manner as his salary and traveling expenses, did not constitute a valid appropriation as the sum appropriated was not certain nor distinctly specified.

I have had a short interview with the Auditor in regard to this act and he has asked me to look into the authorities and advise him.

As indicated above, this letter is only intended as a memorandum of some authorities bearing on the subject under consideration. It would seem that section 4, set out above, does not constitute an appropriation, for the reason that no certain or definite sum is mentioned therein (but see *People v. Miner*, 46 Ill. 390, holding that "it is not essential or vital to an appropriation that it should be of an amount certainly ascertained prior to the appropriation"). The object of this letter is simply to set before you some of the authorities, with the idea that possibly you may be able to supplement them and assist me in reaching a correct conclusion in the matter, which I hope to do after a complete and thorough study before the act becomes effective.

Respectfully submitted,

CHRISTOPHER B. GARNETT,

*Assistant Attorney General.*

**Appropriations—Appropriations must be for some definite and limited amount—Appropriation in act for control and regulation of heat, light, etc., companies, ineffectual. Acts 1914, p. 473. (See also preceding opinion.)**

RICHMOND, VA., July 29, 1914.

Hon. ROBERT R. PRENTIS.

*Chairman, State Corporation Commission,  
Richmond, Va.*

MY DEAR SIR:

Replying to your letter of June 30th, I beg leave to advise you herein, as I have already done orally, that upon the authority of the cases cited in the letter of the Assistant Attorney General addressed to you, dated April 9, 1914, it is my opinion that the act entitled "An act imposing public duties on heat, light, power, water and telephone companies, and providing for the control and regulation of such companies by the State Corporation Commission," approved March 27, 1914, Acts of 1914, p. 673, cannot be construed as containing an "appropriation" within the meaning of the Constitution. The same provision is contained in the Constitution of many of the States; and in the Constitution of some of the States the same provision appears with the word "specific" before the word "appropriations." I had hoped that the absence of the word "specific" in our constitutional provision would enable me to differentiate the question here under consideration from the cases cited by the Assistant Attorney General in the letter referred to; but an examination of the authorities discloses that the word "appropriation" in itself means a sum definite or limited in amount. This view was taken by the courts of last resort in Oklahoma and Nevada. (107 Pac. 159 and 91 Pac. 819, cited in the Assistant Attorney General's letter). In similar provisions of the Constitutions of both of these States, the word "specific" does not appear before the word "appropriations."

When we take into consideration the history and purpose of this provision so common to the Constitutions of the States, it seems apparent that the word

"appropriation" necessarily carries with it the idea of a sum limited in amount. This requirement is based upon the principle that the General Assembly, and the General Assembly alone, has the right to make appropriations out of the State treasury, and that it cannot delegate this authority to any other governmental agency, except within a limit prescribed by the General Assembly itself.

Very truly yours,

JNO. GARLAND POLLARD,

*Attorney General of Virginia.*

**Agriculture—Duties of the Commissioner of Agriculture in regard to publishing seed test—Liability of the Commissioner of Agriculture to be sued for publication of seed test. Agricultural Seed Law, Va. Code 1904, vol. 3, p. 935; Acts 1910, ch. 286.**

RICHMOND, VA., *February 26, 1914.*

Hon. G. W. KOINER,  
*Commissioner of Agriculture,*  
*Richmond, Va.*

DEAR SIR:

You have referred to me letter of the J. M. McCullough's Sons Co., of Cincinnati, dated January 28, 1914, and the papers referred to in carbon copy of a letter written by you to Mr. C. F. Hurt, of Abingdon, dated January 26, 1914, on the subject of red clover, No. 11059. The facts, as I understand them, are as follows:

A sample of red clover, No. 11059, was drawn by your inspector, Mr. F. C. Breazeal, on October 21, 1913, and numbered by him No. 294, from a lot of five bags found in the hands of C. F. Hurt, bought of the J. M. McCullough's Sons Co., labeled "Purity 99.60 per cent. Germination 91 per cent." Upon test and retest, in duplicate, in your department you found that the purity was 99.08 per cent. and germination 77.70 per cent., thus not coming up to the guarantee under which the seed was found offered for sale. Thereupon, you wrote Mr. C. F. Hurt, of Abingdon, a letter informing him of the facts set out above; and also that the law required that the result of your test should be published under tables 1 and 2 in the next bulletin issued from your office. Later you received the letter from the J. M. McCullough's Sons Co., dated January 28, 1914, and subsequently another letter dated February 11, 1914, in which latter letter the following language is used:

"We understand the Commissioner has no authority to publish our name, unless we are offering goods for sale in the State of Virginia. This we have not done as our goods are sold f. o. b. Cincinnati. It is also our opinion that germination is not really within the Virginia seed law, because of the conflict of the sections in point. At the same time we have our own laboratory and are certainly very careful in all tests we make as to purity as well as germination tests. Now under these circumstances would say in case you publish our name, we will certainly hold you personally responsible for any damages that may arise from illegal publication."

I presume that you desire me to advise you with reference to the threat contained in the latter portion of the letter above.

The Agricultural Seed Law, chapter 286 of act approved March 16, 1910, found in volume 3, p. 935, provides in section 1 that "no person, firm or corporation shall by himself, his agent or representative of any other person, firm

or corporation, sell or offer for sale or distribution within the State for seeding purposes any lot or package of agricultural seeds, fifty pounds or more, unless the same, when put up in either open or closed packages, shall have attached thereto a label on which is plainly printed or written, in the English language:

"First. Name and kind of seed.

"Second. Full name and address of seedsman, importer, agent or dealer.

"Third. The approximate percentage of purity or freedom of such seed from foreign matter, or from other seeds distinguishable by their appearance."

By section 10 of the same act, it is provided that the Commissioner of Agriculture, and other persons therein mentioned, and their special assistants, shall take from any lot or package of seeds fifty pounds or more in weight, a sample not exceeding four ounces in weight or less than two, said samples to be drawn or taken in the presence of the party or parties in interest, or their representatives, and it shall be taken from unbroken packages or lot of packages which shall not be less than five per centum of the whole lot inspected, or said sample may be taken in the presence of two disinterested witnesses. Said sample so taken shall be forwarded to the Commissioner of Agriculture for analysis and comparison with certified statement referred to by section one of this act. A duplicate of said sample shall be furnished, securely sealed, to the person offering or exposing said seeds for sale, and the said Commissioner of Agriculture may appoint such seed analysis as may be necessary to carry out the provisions of this act, subject to the approval of the Board of Agriculture. In the case the sample so drawn, or sample drawn as provided in section sixteen of this act, shall, upon test and analysis, violate any provision of this act, the parties from whom the samples have been obtained, shall be notified and a second test and analysis shall be made from the original sample before publication is made.

Section 15 provides as follows:

"The Commissioner of Agriculture shall print the results of analysis made of seeds, giving percentage of purity and per centum of germinable seeds along with the name and addresses of the party or parties from whom the sample is obtained, together with the names of the seller of the seed, provided the seeds are in unbroken packages and the tag or label of the seller is on the package, in the same bulletin with the analysis of fertilizers."

From the papers sent to this office, I cannot ascertain definitely whether you have complied fully with all the provisions of the above sections. For instance, it does not appear whether, after the first test and analysis had shown that the seed did not come up to the advertisement, you notified the parties from whom the sample had been obtained (as required in section 10) before the second test and analysis. Assuming, however, that the provisions of this section have been complied with, the question arises whether you would be personally subject to an action for publishing the results of the test.

The only kind of action which I can conceive could be brought against you for publishing the test would be the action of libel, which has been defined to be defamation published by means of writing or false publication calculated to bring one into disrepute; and the question for us to examine is whether such an action would lie in a case of this kind. I am constrained to conclude that it will not, for the following reasons.

Even granting that a publication of the results of this analysis would be false and would tend to injure the business of the parties referred to above, still

I am constrained to believe that no suit could be maintained against you, because the case would come under the doctrine of what is known to the law as "privileged communications," and in this connection we must distinguish between cases that are absolutely privileged and cases that are only qualifiedly privileged. If this case falls under the first head, then no action would lie against you even though the publication was both false and malicious. On the other hand, if it belongs to the second class of cases, you would be responsible in damages only when both falsity and malice were affirmatively shown. Therefore, you will agree with me that if we can put the case under either of the above heads, no action would lie.

This case seems to belong to the first class referred to above, and for this I cite the celebrated case of *Spaulding v. Vilas*, 161 U. S. 483, 40 L. ed. 780, where it was held that the head of an executive department is not liable in damages on account of official communications made by him pursuant to an act of Congress and in respect of matters within his authority, by reason of any personal or malicious motive that prompted his action.

It is certainly true that the cases generally hold that absolute privilege applies only in judicial proceedings; but the above case, and others to be cited, seem to hold differently. Thus we find in *Tanner v. Stevenson*, 128 S. W. 878, the following language:

"An absolutely privileged communication is confined to communications in judicial and legislative proceedings and in matters involving military affairs and to *communications made in the discharge of a duty under express authority of law by or to heads of departments*," citing, among others, *Spaulding v. Vilas*, *supra*.

In *Harrison v. Bush*, 32 Eng. L. & Eq. R. 173, Lord Campbell said that the court was willing to adopt as a legal canon, supported by the principles and authorities upon which the doctrine of privileged communications rests, the following:

"A communication made bona fide upon any subject matter in which the party communicating has an interest, or in reference to which, he has a duty, is privileged if made to a person having a corresponding interest or duty, although it contain criminary matter, which, without this privilege, would be slanderous and actionable."

So in *Van Wick v. Aspinwall*, 17 N. Y. 190, 193, it was held that the report of a committee of a college of pharmacy intended to be presented, and which was presented, to the Secretary of the Treasury, respecting the importation of spurious drugs, made in good faith and for probable cause, and not maliciously, was privileged, the court relying upon *Vanderzile v. McGregor*, 12 Wendell, 545, 27 Am. Dec. 156, the court saying that a communication, which would otherwise be actionable, is privileged if made in good faith, upon a matter involving an interest or duty of the party making it, though such duty be not strictly legal but of imperfect obligation to a person having a corresponding interest or duty.

If it be predicated that a communication made in good faith, upon a matter involving an interest or duty of the party making it, is privileged, though such duty be not strictly legal but of imperfect obligation, perforce we must conclude that in a case like the present, where the duty is commanded by law, the obligation must be perfect and, therefore, the privilege absolute.

In Massachusetts it has been held that the publication of proceedings before all public bodies for the necessary information of the people, is privileged, and

that the publication by a member of the Massachusetts Medical Society of a true account of the proceedings of that society in the expulsion of another member, for a cause within its jurisdiction, and of the results of certain suits subsequently brought by him against the society and its members on account of such expulsion, was privileged. *Barrows v. Bell*, 73 Mass. (7 Gray) 301, 66 Am. Dec. 479.

See, also, *Chas. A. DeArnaud v. Fred. C. Ainsworth*, 24 App. D. C. 167, 5 L. R. A. (N. S.) 163 and note thereto.

From a careful study of the above authorities, it seems clear to me that the case presented by the facts here brings it under the doctrine of absolute privilege, and that you would incur no liability by complying with your legal duty, even though the publication by you should prove to be both false and malicious.

The cases only conditionally privileged are those in which the utterance or publication is on a lawful occasion, which fully protects it, unless the occasion has been abused to gratify malice or ill will. 1 Cooley on Torts, 3d ed. No action will lie unless the publication was both false and malicious. *Id.* Therefore, granting that the case set out above does not come under the first class of cases, it seems clear, from a study of the above authorities and others not cited, that it would certainly come under the second class, and that it would be impossible for the complainant in such a case to show that the publication was both false and malicious.

I conclude, therefore, that no action would lie against you in the matter.

Very truly yours,

JNO. GARLAND POLLARD,

*Attorney General of Virginia.*

**Clerks—Fee of, for taking acknowledgment of a deed. Va. Code 1904, Secs. 3505, 2500, 3500, as amended by Acts 1908, p. 70.**

RICHMOND, VA., May 25, 1914.

Mr. NORRIS L. BOWEN,  
*Deputy Clerk,*  
*Rosslyn, Va.*

DEAR SIR:

Replying to your letter of May 9, 1914, in regard to the fees of a clerk for taking acknowledgment of a deed, I find, much to my surprise, upon examining section 3505, that the first paragraph seems to prescribe a fee of fifty cents only for admitting a deed to record, including the acknowledgment, for said paragraph provides as follows:

“Where a writing is admitted to record under chapter one hundred and eleven, for everything relating to it, except the recording in the deed book, to wit: for receiving proof of acknowledgment, entering orders, writing on it clerk’s certificate, statement of deed in list returned to court, recording in minute book and posting same, and embracing it in list for commissioners of the revenue, 50c.”

When a notary public, justice of the peace, or commissioner in chancery takes and certifies the acknowledgment of a deed or writing, section 3500, as amended by Acts of 1908, p. 70, prescribes that for taking and certifying the acknowledgment of any deed or other writing, such officers shall receive fifty



cent; but section 3505, as quoted above, seems clearly to indicate that the fee of the clerk is fifty cents for all services connected with the admitting of the deed or other writing to record, including the acknowledgment, for the language quoted above says that the fifty cents includes services "for receiving proof of acknowledgment." Now, it is well known that a deed or other writing may be recorded when it shall have been acknowledged or proved by two witnesses (section 2500); and it would seem clear that section 3505 would not allow the clerk to collect a fee for acknowledgment and a separate fee for recordation where the instrument is brought to him to be acknowledged and recorded at the same time.

As I have intimated above, my first idea was that the clerk would be entitled to a separate fee for both acknowledgment and recordation, but the statute seems plain on the subject.

Very truly yours,

JNO. GARLAND POLLARD,

*Attorney General of Virginia.*

**Clerks—Fee for copying treasurer's lists of persons who have paid their State poll taxes. Va. Code 1904, Sec. 86-b; Enabling Act, Acts 1914, p. 20.**

RICHMOND, VA., *June 18, 1914.*

Mr. S. C. GOGGEN,

*Clerk,*

*Rustburg, Va.*

DEAR SIR:

In the absence of the Attorney General, on official business, I am replying to your letter of June 12th, in which you ask for a construction of the provision of section 86-b of the Code fixing the compensation of a clerk in the matter of copying and certifying the treasurer's list of persons who have paid their State poll taxes. Said provision is found in clause 4 of section 86-b and is as follows:

"\* \* \* and the clerk for copying and certifying the same shall be allowed two cents for each ten words, counting initials as words, for the first copy and one-half cent for ten words for all other copies required to be made."

This language is identical with the provision of the Enabling Act pertaining to the same subject matter, found on page 25 of the Acts of 1914.

The question which you put in the latter part of your letter is whether, if the board of supervisors of your county agree to pay it, you could collect the actual cost of printing the list and a reasonable fee for the service rendered in making it. I note that if you follow the literal wording of the statute in fixing your fee, your compensation will amount to less than \$16.00, while the actual cost of making the list is \$31.50, thus making the actual loss to you \$15.50.

After a careful study of *Marks v. Rockingham*, 111 Va. 445, which construes this provision of section 86-b, I am reluctantly forced to the conclusion that under the law as it now stands you would have to charge your fee in accordance with the literal language of the statute as construed in the aforesaid case, which is that the compensation of the clerk is two cents for each ten words for the first copy and one-half cent for each ten words for the whole number of

additional copies furnished by him, and not for each additional copy. The court in that case used the following language:

"It may be true as argued that the compensation which the clerks will receive under the construction placed upon the act would be less than their services are worth, *or the necessary expense of performing the duties imposed*. This we think is true also in case of treasurers, sheriffs and sergeants for performing the services required of them."

And, as said in another portion of the said decision, the only remedy which you have is to apply "to the legislature to amend or make such changes in the law as it may deem proper."

I think it very unfortunate that you should have to lose money by performing the services required of you by law; but, under the provisions of the law, as construed in the aforesaid case, I see no way out.

Very truly yours,

CHRISTOPHER B. GARNETT,

*Assistant Attorney General*

**Clerks—Fee of, for copying the register of persons convicted of felony or other infamous crimes—What are infamous crimes?—Vagrancy is not an infamous crime. Va. Code 1904, Secs. 3909, 884 and 885.**

RICHMOND, VA., August 10, 1914.

Hon. C. LEE MOORE,

*Auditor of Public Accounts,*

*Richmond, Va.*

DEAR SIR:

You have referred to this office the account rendered by Geo. H. Rucker, clerk of Alexandria county, Va., for keeping a register of persons convicted in his court of felony or other infamous crimes.

Under section 3909, Va. Code, 1904, the clerk is entitled to a fee of fifty cents to be paid out of the State treasury for his services in keeping such register of every person convicted of felony or other infamous crime, and the question which is raised by the account aforesaid is whether the charges thereon made are correct. I note that the nature of the offense as set out in said account is as follows: Murder, petit larceny, vagrancy, assault, highway robbery, robbery from the person, rape, forgery, grand larceny and assisting a felon to escape from jail. The question therefore is which of the above offenses may be classified as felonies or infamous crimes. The test of an infamous crime is to inquire whether the crime shows such depravity in the perpetrator or such disposition to pervert public justice in the courts as to create a violent presumption against his truthfulness under oath. *King v. State*, 17 Fla. 183. And therefore it has generally been held that all felonies are infamous crimes and so are treason and crimes coming under the head of *crimen falsi*.

Consequently in the above enumerations, murder, robbery, rape, grand larceny and forgery and assisting a felon to escape are infamous crimes, since they are all punishable by not less than a term in the penitentiary. But it has been held that petit larceny is not an infamous crime. *Barbour v. Commonwealth*, 80 Va. 287; *Uhl v. Commonwealth*, 6 Gratt. 806.

Vagrancy is a misdemeanor (secs. 884 and 885, Va. Code, 1904), and therefore should not be classified as an infamous crime. My conclusion therefore is

that the charges on the bill are all correct except the following which are not infamous crimes: 1. vagrancy; 2. assault when punishable only by jail sentence or fine; and 3, petit larceny.

I am returning herewith the account of Geo. H. Rucker aforesaid.

Very truly yours,

CHRISTOPHER B. GARNETT,

*Assistant Attorney General.*

**Commonwealth's Attorney's fees when nolle prosequi is entered. Va. Code, Secs. 4089, 3527 and 3528.**

Mr. N. G. PAYNE,

*Commonwealth's Attorney.*

*Madison, Va.*

RICHMOND, VA., April 1, 1914.

DEAR SIR:

Replying to your letter of the 17th ultimo, as to whether attorneys for the Commonwealth have any right to fees in a criminal case in which a *nolle prosequi* is entered, the Auditor of Public Accounts informs me that he offered a bill in the last legislature providing that the attorneys for the Commonwealth should receive fees in criminal cases in which a *nolle prosequi* should be entered, but that under the rule that the House was working on, several objections killed the bill. The question which you put, however, is as to whether the present law will authorize attorneys for the Commonwealth to collect fees in a criminal case in which a *nolle prosequi* is entered.

As bearing on this question, I will quote from several provisions of the law.

Section 4089 provides that no fee to an attorney for the Commonwealth shall be payable out of the (State) treasury *unless it be expressly provided*.

Section 3528 of the Code, as amended by Acts of 1912, fixing fees for attorneys for the Commonwealth, provides:

For each <i>trial</i> of a felony case in any circuit or corporation court,	
for each person tried.....	\$10 00
Where two or more persons are jointly indicted and jointly tried, for	
one of the persons <i>tried</i> .....	10 00
For each of the other persons so jointly indicted and jointly <i>tried</i> ..	5 00
For every case of misdemeanor <i>tried</i> in any circuit or corporation	
court, (except prosecutions for violations of the revenue law and	
for offenses under section 3815 and the sections following to	
section 3833, inc.) .....	5 00

The Auditor of Public Accounts has ruled that no trial is had in a case in which a *nolle prosequi* is entered; and, therefore, no fees can be paid to the attorney for the Commonwealth in such a case, although section 3527, as amended by Acts of 1908, p. 684, provides as follows:

"And in every prosecution for a *misdemeanor* if the fees of said officers are not paid by the prosecutor or in case of conviction by the defendant, and in case where there is no prosecutor and the defendant shall be acquitted or convicted and unable to pay the costs, of where a *nolle prosequi* is entered or judgment arrested, one-half of the lawful fees of the justice and other officers, except the attorney for the Commonwealth for prosecuting the case in a court of record, and jailor, both of whom shall be paid in full, shall likewise be paid when certified as heretofore required in this section out of the State treasury."

Very truly yours,

JNO. GARLAND POLLARD,

*Attorney General of Virginia.*

**Commonwealth's Attorney's fees when nolle prosequi is entered. Code, Sec. 3527.**

Mr. N. G. PAYNE,

*Commonwealth's Attorney,*

*Madison, Va.*

RICHMOND, VA., *April 13, 1914.*

DEAR SIR:

Referring again to your letter of the 17th of March and my reply of April 1st, I made it perfectly clear, I think, that the Commonwealth's attorney is not entitled to his fee in case of felony where a *nolle prosequi* is entered, for the statute only contemplates a fee for a trial of a misdemeanor. Under section 3527 of the Code, as amended by Acts of 1908, p. 634, in regard to fees in cases of misdemeanor, I find that the rule laid down by the Auditor, that the Commonwealth's attorney is not entitled to a fee in a misdemeanor case where a *nolle prosequi* is entered, results from the construction of said section as given by my predecessor in office in an opinion given to Hon. S. R. Donohoe, Auditor of Public Accounts, on January 23, 1912, in which it is held that where a misdemeanor case comes before a court of record and the Commonwealth's attorney enters a *nolle prosequi*, he is not entitled to a fee "for prosecuting the case in a court of record" because, according to the construction of my predecessor, the entering of the *nolle prosequi* is not a prosecution of the case.

Very truly yours,

JNO. GARLAND POLLARD,

*Attorney General of Virginia.*

**Compromise of judgment for costs in criminal cases. Code, Secs. 702 and 702-a.**

Hon. C. LEE MOORE,

*Auditor of Public Accounts.*

*Richmond, Va.*

RICHMOND, VA., *April 24, 1914.*

DEAR SIR:

Replying to your letter of April 14th, in which you refer to me two letters from F. Pendleton Carter, of Washington, Va., and the question as to your power to compromise a judgment for costs in a criminal prosecution against James W. Bridges, I beg leave to say that I can find no authority in law for you to compromise a judgment obtained by the Commonwealth for costs in a criminal prosecution. As you say in your letter, sections 702 and 702-a of the Code have no application because a judgment for costs in a criminal prosecution is not a claim standing on the books of the Auditor of Public Accounts, and those sections only allow you to compromise claims standing on your books.

Very truly yours,

JNO. GARLAND POLLARD,

*Attorney General of Virginia.*

**Constables—Fees of, for serving civil warrants. Va. Code 1904, Sec. 3508; Sup. 1910, Sec. 3509.**

Dr. W. F. DUNAWAY,

*Brookdale, Va.*

RICHMOND, VA., *February 23, 1914.*

DEAR SIR:

In the absence of the Attorney General, I will reply to your letter of February 16, 1914, giving the construction of sections 3508, 3509 of the Code in reference to the fees of constables for serving a warrant.

Section 3509 of the Code was last amended by the Acts of 1908, p. 540, found in volume 3, Pollard's Code.

So far as these sections pertain to the question in hand, they read as follows:

*"Section 3508: Of Sheriffs, Sergeants, Criers, Coroners and Constables:*

For serving on any person a declaration in ejectment of an order, notice, summon or *other process* when the body is not taken and making return thereof—fifty cents."

*"Section 3509: Of Coroners and Constables:*

A constable shall have \* \* \* and for serving a warrant under chapter 140, or taking a bond or giving a notice thereon—thirty cents."

It may be noted that chapter 140, referred to in the latter section, pertains to warrants for small claims.

The question at issue is whether a constable for serving a warrant under chapter 140 is entitled to thirty cents, or fifty cents. The only possible justification by which it could be concluded that a constable could be entitled to fifty cents would be that section 3508 was passed subsequent to section 3509 and, therefore, superseded, the legislature intending by using the term "other process" in section 3508 to take the place of the expressed provision of section 3509, granting a constable for serving a warrant only thirty cents. This makes it necessary for us to examine the history of these sections.

By reference to these same sections in the Code of 1887, we find that section 3508 was enacted by the Acts of 1874, p. 434, chapter 308, approved April 29, 1874, and that section 3509 was enacted by the Acts of 1874-5, p. 436, chapter 349, approved March 31, 1875. These acts as thus passed were brought together and modified in other respects in the Code of 1887, and they now stand, so far as the present question is involved, in the same state as they stood in the Code of 1887.

Therefore, it is necessary to conclude that so far from section 3508 superseding and taking the place of section 3509 as to the fee a constable is entitled to have for serving a warrant under chapter 140, the latter section supersedes and takes the place of the former.

Therefore, answering specifically your inquiry, I must conclude that the law now only justifies a fee of thirty cents to a constable for serving a warrant under the chapter as to warrants for small claims.

Yours very truly,

CHRISTOPHER B. GARNETT,  
*Assistant Attorney General.*

**Constitutional Law—Proposed act exempting railroad from county taxes and authorizing county aid in extension of road. Const., Secs. 63, 64 and 185.**

RICHMOND, VA., *March 16, 1914.*

*His Excellency, H. C. STUART,*  
*Governor of Virginia,*  
*Richmond, Va.*

DEAR SIR:

Yours of March 14th this day received. The amendment quoted by you to chapter 222, Acts of 1910, is in violation of, at least, three provisions of the Constitution of Virginia, to-wit:

1. It violates sub-section 7 of section 63 of the Constitution, in that it attempts, by local or special law, to exempt property from taxation.

2. It violates section 64 of the Constitution, which provides that no general or special law shall surrender or suspend the right and power of the State, or any political sub-division thereof, to tax corporations and corporate property, except as provided by Article 13. Article 13 does not authorize the exemption contemplated in the bill.

3. It violates section 185 of the Constitution, in that it undertakes to authorize the board of supervisors of the county to aid "in extension of said road in such manner as may be agreed upon," while the section last above referred to prohibits any county from subscribing to, or becoming interested in, "the stock or obligations of any company, association or corporation for the purpose of aiding in the construction or maintenance of its work."

Yours truly,

JNO. GARLAND POLLARD,  
*Attorney General of Virginia.*

**Constitutional Law—Power of the legislature to authorize a county or magisterial district to contribute to the extension and construction of turnpikes—Power of turnpike company to acquire by purchase or condemnation a road or turnpike owned by another turnpike company. Constitution 1902, Sec. 185; Va. Code 1904, Secs. 1105c-2f, 1105e, cls. 52.**

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RICHMOND, VA., *March 28, 1914.*

*His Excellency, HENRY C. STUART,*  
*Governor of Virginia.*  
*Richmond, Va.*

DEAR SIR:

You have referred to this office the question of the constitutionality of Senate Bill No. 267, entitled "A bill to authorize any turnpike company in the State in which the State is a stockholder to extend, operate and maintain its line of turnpike road into or through any county or any part thereof, with the consent of the board of supervisors of such county, upon such terms as may be agreed upon between such board of supervisors and such company."

It may be noted in passing that the bill as originally drawn has been amended so as to allow a county, or magisterial district or road district through which the turnpike is extended to contribute to the extension and construction of such turnpike "in exchange for the shares of the common or preferred stock of such company or otherwise." and upon terms to be agreed upon between the board of supervisors and the turnpike company, the original bill allowing the county or magisterial district or road district to contribute to the extension and construction of such turnpike upon such conditions as the board of supervisors should prescribe and should be accepted and agreed to by such turnpike company.

1. The provision of the bill above referred to allowing the county or magisterial district or road district to contribute to the extension and construction of the turnpike, in exchange for the shares of the common or preferred stock of the turnpike company, or otherwise, is certainly unconstitutional.

Section 185 of the Constitution reads as follows:

"Neither the credit of the State nor of any county, city or town shall be, directly or indirectly, under any device or pretense whatsoever granted to or in aid of any person, association or corporation; nor shall the State or any county, city or town subscribe to or become interested in the stock or obligations of any association or corporation for the purpose of aiding in the construction or maintenance of its work; nor shall the State become a party to or become interested in any work of internal improvement (except public roads), or engage in carrying on any such work." \* \* \*

The express language of the Constitution shows that the above provision of the bill is clearly unconstitutional and needs no citation of authorities nor explanation.

2. This part of section 1 being unconstitutional, it seems clear that the whole of section 1 must fall. The purpose of section 1 is to allow a turnpike company in which the State is a stockholder to extend, operate and maintain its line into or through any county of the State or portion of such county, and the means by which this is to be accomplished are, first, the people of the county must vote affirmatively therefor; and, secondly, the county or the magisterial district or the road district shall extend financial aid and contribute to the extension and construction of such turnpike, in exchange for the shares of the common or preferred stock of the company; and thirdly, the terms as to tolls and as to the conditions upon which the turnpike may be extended and as to the financial aid to be contributed are to be agreed upon by the turnpike company and the board of supervisors, and in return for the financial aid to be extended by the county, magisterial district or road district thereof, the company is to issue its stock. Thus we see that the only provision for raising money granted the turnpike company is by the exchange of its stock for financial aid from the county, magisterial district or road district; and it would seem to be a *sine qua non* that there should be financial aid granted before there could be an extension of the turnpike.

3. If, as seems clear, the provision as to the extension of the turnpike fails because of the unconstitutionality of the means by which funds are to be raised, then section 2 of the bill necessarily falls also. That section provides that any such turnpike company may acquire "by purchase or by condemnation any rights of way or new location for its turnpike road which it may, in its judgment, need for the purpose of *extending* its line of turnpike roads."

There is another serious objection to section 2 of said bill. Such turnpike company is authorized "to acquire by purchase or condemnation any road or turnpike owned or claimed by any other corporation which may extend in the direction of any extension of such turnpike into or through any county under the provisions of this act." Here we have a general provision as to turnpike companies authorizing one turnpike company to acquire, by purchase or condemnation, any road or turnpike owned or claimed by any other corporation which may extend in the direction of such company. Now, in a given case where two turnpike companies own turnpikes extending in the same direction, which one is authorized to acquire, by purchase or condemnation, the road or turnpike of the other? Would turnpike A be authorized to acquire turnpike B, or would turnpike B be authorized to acquire turnpike A?

This provision also seems to be in conflict with clause 52 of section 1105e, which provides that "in no event shall one corporation take by condemnation proceedings any property owned by and essential to the purposes of another

corporation possessing the power of eminent domain." Here we have a statute authorizing one turnpike company to acquire the road or turnpike of another company; and, certainly, the road is essential to the purposes of the turnpike company. Turnpike companies have the power of eminent domain. Section 1105c, cl. 2(f).

Another provision of clause 52 which seems to have been not contemplated by the draftsman of this act, and which would make it contrary to the general policy of our law, is as follows:

"No corporation shall take by condemnation proceedings any property belonging to any other corporation possessing the power of eminent domain, unless after hearing all parties in interest the State Corporation Commission shall certify that a public interest or that an essential public convenience shall so require and shall give its permission thereto."

Of course, it may be said that this section would govern in case one corporation attempted to take the road or turnpike of another; but it would seem to be almost impossible to make out a case under the above provision, and said provision shows clearly that such a statute as this is against the public policy of our laws.

For these reasons, I am constrained to believe the unconstitutional feature of the above bill is such as to nullify the other provisions thereof, and that, in addition, the general policy of our law condemns the main provisions of section 2.

Respectfully submitted,

CHRISTOPHER B. GARNETT,  
*Assistant Attorney General.*

**Convicts—Can a convict who has been conditionally pardoned contract a valid marriage? Code, Sec. 2257.**

RICHMOND, VA., June 17, 1914.

*His Excellency,* HENRY C. STUART,  
*Governor of Virginia,*  
*Richmond, Va.*

DEAR SIR:

In the necessary absence of the Attorney General on official business, I am replying to the letter of Mr. Forward of June 1st, inquiring whether there is any law prohibiting the marriage of a convict out on conditional pardon. It has been very difficult to find any direct authority bearing on this question.

It is well established at common law that a convicted felon is civilly dead, but he is only to be regarded as dead *sub modo*. Thus, while he can enforce no contract, he may make valid contracts with those whose consciences bind them to fulfill their engagements. 6 Am. and Eng. Encyc. of Law, 2d ed., p. 65.

On authority of *Kynnaird v. Leslie*, 14 Law Times Reports, p. 756, it seems clear that there is nothing in the common law to prevent a convict on parole from marrying, and there is certainly no statute in Virginia against the same.

I would hold, therefore, that it would be proper and not against the law for the party referred to in your letter to marry the woman with whom he is living.

This ruling seems to be in consonance with our statute law when we consider that a divorce from the bond of matrimony may be procured where prior to the marriage either party, without the knowledge of the other, had been convicted



of an infamous offense, or where either of the parties is sentenced to confinement in the penitentiary; and it is also provided in the same section (2257) that no divorce shall be decreed if it appears that the party applying for the same has cohabitated with the other after knowledge of such conviction of an infamous offense.

Respectfully submitted,

CHRISTOPHER B. GARNETT,

*Assistant Attorney General.*

*Kymnaird v. Leslic, 14 Law Times Reports, 756, referred to in letter to the Governor, dated June 17, 1914.*

In the above case, Charles Ratcliffe, eldest surviving son of the Earl of Derwentwater, was convicted of high treason, after which he escaped from England, and in the year 1724 married Charlotte Maria, Countess of Newburgh, by whom he had issue. On returning to England many years later, he was apprehended; his conviction was revived and he was beheaded, under the previous attainder. The question of the descent of his property and the legitimacy of his children came before the Court of Common Pleas on July 28, 1866. Earle, C. J., in discussing the case, uses the following language:

"Then, with respect to the other point, that the marriage was a null marriage, I cannot find any authority in our law for it, and it certainly would be a most revolting conclusion to come to, that a person having actual physical capacity in the land where he was abiding, after he had been attainted in England—having the actual capacity to marry in Brussels and to be the father of the children through whom these parties claim—it would be an exceedingly revolting matter to say that because he had been attainted before the time that he went abroad, that the wife whom he might have taken in a foreign country should be affected with the nullity of the marriage and the illegitimacy consequent thereupon. If the law here was so, *if the man who was civiliter mortuus was by our law perfectly incapable of marriage, I should be the last person to think of interfering with it.* I think in France he is held to be civilly dead and incapable of marriage. But I do not find that there is such a rule in our law; I therefore think that the marriage at Brussels did make the children legitimate and did give them a capacity for transmitting the inheritance from one to the other down to their descendants."

Willis, J., in discussing the same point, said that he would go further and say that the marriage would have been good in England "as it is a mistake to suppose that an attainted man, though for certain purposes he is said to be dead in law, can be considered other than a human being in existence."

**Costs in criminal cases—Apportionment between parties jointly indicted, tried and convicted.**

RICHMOND, VA., March 20, 1914.

Mr. ED. MEEKS,

*Farmers' Bank Building,*

*Amherst, Va.*

DEAR SIR:

I have your letter of March 9th, referring to your previous letter of February 25th, in reference to the apportionment of costs in the case of the *Commonwealth v. Jno. P. Beard and H. Bascomb Williams*. I note from your letter that Jno.

P. Beard and H. Bascomb Williams were jointly indicted, tried and convicted of murder in the second degree and given five years in the State penitentiary; and that said conviction carried with it the costs incurred, amounting to \$387.33. I note also that Jno. P. Beard has no property at all but that H. Bascomb Williams has some little property, sufficient, however, to pay the total of said costs with a small margin; and the question you refer to me is whether said costs may be apportioned between the said Beard and Williams so as to allow each of them to stand for one-half of them.

This question does not seem to have arisen in our law. Certainly, there is no statute which authorizes the apportionment in such a case as this. It has been held in *Commonwealth v. Sprinkle*, 4 Leigh 650, that where four persons were indicted for an assault and pleaded separately and a verdict of guilty was pronounced against them and several fines assessed on each, the Commonwealth's attorney's fee was not to be taxed against each but only one against all. But in other jurisdictions this question has arisen, and decided adversely to your desire. For instance, in Alabama it has been held that where two or more persons are jointly indicted for a felony, jointly tried and convicted, whether the judgment is rendered against all or a separate judgment against each, each is liable for the entire costs though but one payment can be enforced; and in the event of unequal payment contribution may be recovered as between themselves. *Dawson v. Sayre*, 80 Ala. 444, 2 So. 479. See, also, *Moody v. People*, 20 Ill. (10 Peck) 315; and there are many other authorities outside of the State of Virginia on the same line.

I must conclude, therefore, that however desirable from the standpoint of Bascomb Williams, and however much a hardship it may be, there is no authority for the apportionment of the costs in such a case as you put.

Very truly yours,

CHRISTOPHER B. GARNETT,  
*Assistant Attorney General of Virginia.*

**Domestic animals with infectious or contagious diseases. Chapter 203, Acts 1908, p. 309.**

RICHMOND, VA., April 29, 1914.

Dr. THOS. M. OWEN,  
*Inspector in Charge,*  
*Norfolk, Va.*

DEAR SIR:

You have asked me to give you a letter defining your power to prosecute and the power of a justice of the peace to try cases of persons who are accused of having in their possession, or allowing to run at large, domestic animals infected with contagious or infectious disease or with fever ticks, your special purpose being to eradicate fever ticks from the counties of York and Warwick.

Chapter 203 of the Acts of 1908, in the eleventh section thereof, provides as follows (p. 309):

"Any person who shall have in his possession any domestic animal infected with any contagious or infectious disease or fever ticks, knowing such animals to be affected, who shall permit such animals to run at large, or who shall keep such animals where other domestic animals not affected by or previously exposed to such disease may be exposed to its infection or contagion, or who shall ship, drive, sell, trade or give away such diseased

animal or animals which have been exposed to such infection or contagion, or who shall move or drive any domestic animal in violation to any direction, rule, regulation or order of the State live-stock sanitary board, establishing and regulating live-stock quarantine, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than ten dollars, nor more than one hundred dollars, for each of such exposed or diseased domestic animals which he shall permit to run at large or sell, ship, drive, trade or give away in violation of the provisions of this act; provided, that the owner of any domestic animals which have been affected with or exposed to any contagious or infectious disease may dispose of same after having obtained from the said board or its veterinarian a bill of health for such animal or animals."

Under the foregoing section, it is made a misdemeanor for any person to have in his possession any domestic animal infected with any contagious or infectious disease or fever ticks, knowing such animals to be affected; to permit such animals to run at large, or to keep such animals where other domestic animals may be exposed to infection or contagion; and it would be the duty of the justice of the peace, where any of the above facts are proven, to convict such person of a misdemeanor and fine him a sum not less than ten nor more than one hundred dollars for each of such exposed or diseased domestic animals which he shall permit to run at large, or sell, ship, drive, trade or give away.

Very truly yours,

JNO. GARLAND POLLARD,

*Attorney General of Virginia.*

**Elective franchise—Who may vote in towns? Code, Secs. 1021-2-3-4 and 86c.**

RICHMOND, VA., April 11, 1914.

Mr. JOHN W. ECHOLS,  
*Vienna, Va.*

DEAR SIR:

Replying to your favor of April 6th, your town attorney is the proper authority to decide the question which you put to me. In order, however, for him to reach a decision on this matter, I will make a few suggestions.

Section 1021 provides that in every town there shall be elected every two years, on the second Tuesday in June, one elector of said town who shall be nominated mayor, and six other electors who shall be nominated councilmen of said town.

Section 1022, so far as applicable to this question, provides that the electoral board shall, not less than fifteen days before any town election, appoint one registrar and three judges of election, who shall act as commissioners of election; and that said registrar 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, or either of them, in which said town is situated and none others."

Section 1023 provides as follows:

"Such list of registered voters shall be placed by the registrar in the hands of the judges of election, who shall, at the time and in the manner prescribed by law, open a poll at the place designated by the proper officer; and the manner of receiving the ballots and canvassing the vote shall conform to the general law."

Section 86c of the Code (as amended by Act of March 3, 1908) provides as follows:

"The treasurer of every county in this Commonwealth in which any incorporated town is located in which a regular election is to be held on the second Tuesday in June in any year, in pursuance of law, and in which a local option election may, by reason of its population, be ordered as provided by law, shall furnish the clerk of the circuit court of his county with a list of the residents of said incorporated town who shall have paid the State capitation tax provided by law six months prior to the second Tuesday in June. The said lists shall be prepared and posted in all respects as provided in section 38 of the Constitution \* \* \*."

Section 1024 of the Code provides as follows:

"The electors of a town shall be actual residents thereof and qualified to vote for members of the General Assembly."

In order to assist your town attorney in coming to a conclusion in this matter, I have collated the statutes above, and respectfully suggest that it appears therefrom that the following requisites, at least, must be complied with in order for one to qualify to vote in a town election:

First. A voter in a town election must be an actual resident of the town.

Second. He must have previously registered as a voter in the county.

Third. He must be on the treasurer's list, required by 86-c, as having paid State capitation tax six months prior to the second Tuesday in June.

I think your town attorney will find that the three requisites above are all that are necessary in order for one to qualify to vote in a town election next June.

Very truly yours,

JNO. GARLAND POLLARD,

*Attorney General of Virginia.*

**Elective Franchise—Who may vote in towns. Va. Code 1904, Secs. 1021, 1022, 1023, 1024; Sup. 1910, Sec. 86c.**

RICHMOND, VA., *March 10, 1914.*

*Hon. J. H. NAVE,*

*Mayor,*

*Broadway, Va.*

DEAR SIR:

Supplementing Mr. Pollard's letter of March 7, 1914. I have thought it would be wise to call your attention to some provisions of the statute law bearing on the question which you put to Mr. Pollard, as to who will be entitled to vote at the coming June election for officers of your town.

Section 1021 provides that in every town there shall be elected every two years, on the second Tuesday in June, one elector of said town who shall be nominated mayor, and six other electors who shall be nominated councilmen of said town.

Section 1022, so far as applicable to this question, provides that the electoral board shall, not less than fifteen days before any town election, appoint one registrar and three judges of election, who shall act as commissioners of election; and that said registrar 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, or either of them, in which said town is situated and none others."

Section 1023 provides as follows:

"Such list of registered voters shall be placed by the registrar in the hands of the judges of election, who shall, at the time and in the manner prescribed by law, open a poll at the place designated by the proper officer; and the manner of receiving the ballots and canvassing the vote shall conform to the general law."

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Section 1024 of the Code provides as follows:

"The electors of a town shall be actual residents thereof and qualified to vote for members of the General Assembly."

In order to assist your town attorney in coming to a conclusion in this matter, I have collated the statutes above, and respectfully suggest that it appears therefrom that the following requisites, at least, must be complied with in order for one to qualify to vote in a town election:

First. A voter in a town election must be an actual resident of the town.

Second. He must have previously registered as a voter in the county.

Third. He must be on the treasurer's list, required by 86-c, as having paid State capitation tax six months prior to the second Tuesday in June.

I think your town attorney will find that the three requisites above are all that are necessary in order for one to qualify to vote in a town election next June.

Very truly yours,

CHRISTOPHER B. GARNETT,

*Assistant Attorney General.*

**Elective Franchise—Payment of poll taxes. Constitution, Secs. 18, 20 and 26.**

RICHMOND, VA., April 30, 1914.

Mr. I. F. KANE,  
*Gate City, Va.*

DEAR SIR:

I am in receipt of your letter of the 17th instant, in which you ask my opinion on the following state of facts: A party who was formerly a citizen of the State of Tennessee has moved from that State to the State of Virginia and has been a resident of this State for more than two years, and thus far has paid no taxes in this State. He is qualified to vote in this State, except on the

question of payment of poll taxes. He became a citizen of this State on March 1, 1912. You desire to know for how many years he should pay his poll taxes in order to vote.

Section 18 of the Constitution provides as follows:

"Every male citizen of the United States, twenty-one years of age, who has been a resident of the State two years, of the county, city or town one year, and of the precinct in which he offers to vote, thirty days, next preceding the election in which he offers to vote, has been registered, and has paid his State poll taxes, as hereinafter required, shall be entitled to vote for members of the General Assembly and all officers elective by the people \* \* \* "

Section 20 of said Constitution provides as follows:

"After the first day of January, nineteen hundred and four, every male citizen of the United States, having the qualifications of age and residence required in section 18, shall be entitled to register, provided: First, That he personally paid to the proper officer all State poll taxes assessed or assessable against him, under this or the former Constitution, for the three years next preceding that in which he offers to register; \* \* \* ."

Section 26, so far as applicable to this question, provides as follows:

"Any person who, in respect to age or residence would be qualified to vote at the next election, shall be admitted to registration, notwithstanding that at the time thereof he is not so qualified, and shall be entitled to vote at said election if then qualified under the provisions of this Constitution."

Under the facts set out above, I understand this party moved to Virginia from Tennessee on March 1, 1912. Therefore, he has been a resident of the State for two years; and if he has been a resident of the county for one year, and of the precinct in which he offers to vote for thirty days, next preceding the election in which he offers to vote, he will be qualified to vote, if he has registered and has paid his State poll taxes which were assessed or assessable against him under the Constitution for the three years next preceding that in which he offers to vote.

The first poll tax which was assessable against this party was February 1, 1913, and the next was February 1, 1914, but this latter poll tax is not due until December 1, 1914. Therefore, it seems to me that the only poll tax which the party of whom you speak would have to pay would be the one assessed against him on February 1, 1913, which must be paid at least six months prior to the November election in order for him to vote therein.

Very truly yours,

JNO. GARLAND POLLARD,  
*Attorney General of Virginia.*

**Elective Franchise—Disqualification for conviction in Federal court.**

RICHMOND, VA., July 10, 1914.

Mr. E. L. CORMER,  
*Lexington, Va.*

DEAR SIR:

Yours of July 7th received. As I understand your question, you desire to know whether a person convicted under section 4046 of the Revised Statutes of the United States, relating to embezzlement of money orders, is thereby

disqualified to exercise the right of suffrage in Virginia. Section 23 of the Constitution of Virginia provides that all persons convicted of embezzlement shall be excluded from registering and voting. By the terms of the constitutional provision itself, it makes no difference whether the conviction took place within or without this State. I am of opinion that whether the prisoner was convicted in Federal or State court, he is excluded from registering and voting.

Yours truly,

JNO. GARLAND POLLARD,  
*Attorney General of Virginia.*

**Examiners of records—Fees of.** Va. Code 1904, Sec. 3326, as amended by Acts 1912, ch. 278, p. 571; Va. Code 1904, Secs. 511, 513, Sec. 278, as amended by Acts 1912; Va. Code 1904, Secs. 604, 605.

RICHMOND, VA., April 17, 1914.

Hon. C. LEE MOORE,  
*Auditor of Public Accounts,  
Richmond, Va.*

DEAR SIR:

In the necessary absence of the Attorney General, on official business, I am replying to your favor of April 16, 1914, in regard to the fees of Examiners of Records. It seems from the correspondence between you and A. M. Bowman, Jr., Salem, Va., and Robert W. Arnold, of Waverly, Va., that you are endeavoring to require the Examiners of Records to refund and pay into the treasury a certain part of the compensation paid them and that Robert W. Arnold, Examiner of Records for the Third Circuit, and C. S. Bowman, Examiner of Records for the Twentieth Circuit, are contesting your right to demand this refund.

By section 3326a of the Code of 1904, being acts of 1897, p. 756, the compensation of the Examiner of Records was fixed by the following language:

“The Examiner of Records shall be entitled to receive as compensation for his services under this act, to be paid in the same manner as the compensation is now paid to the Commissioners of the Revenue, one-tenth of one per centum for the first one and a half million dollars of aggregate amount of property assessed under this act, and one-fifteenth of one per centum on all amounts in excess of one and a half million dollars; provided, the Examiner of Records shall refund and pay into the treasury the compensation paid him on all property hereafter reported by him that shall be relieved of taxes erroneously assessed thereon.”

By chapter 278 of the acts of 1912, p. 571, the above section was amended by adding to the language heretofore quoted the following language:

“And the compensation paid him on all property upon which the taxes hereafter assessed are not collected and are returned delinquent.”

An additional section is then added, which does not affect the question here being examined, and then is superadded the following emergency clause:

“An emergency exists for this act because the examiners are now engaged in making their assessments, and to enable the Commonwealth to receive the benefits of this act, it shall be in force from its passage.”

The effect of the amendment heretofore quoted is to require each Examiner of Records to refund into the treasury the compensation paid him on all property upon which the taxes assessed after March 14, 1912, are not collected and are

returned delinquent. The word "hereafter" in the statute necessarily means after the passage of this act. It is contended for C. S. Bowman, by A. M. Bowman, Jr., that C. S. Bowman's "assessments" were made and filed with the Commissioners of the Revenue of the counties and cities comprising the Twentieth Circuit during the first part of February, 1912, and before the act took effect, and that, therefore, his compensation cannot be affected by the subsequent passage of the act.

From the wording of the emergency clause, it was evidently the intention of the legislature for the Commonwealth to receive the benefit of the act in all cases in which the Examiners were then engaged. It is also to be noted that the language of the act, requiring the Examiner of Records to refund into the treasury the compensation paid him on all property "upon which the taxes hereafter assessed are not collected and are returned delinquent," does not refer to any assessment of taxes by the Examiner of Records, for the Examiner of Records has no power to assess taxes. It is his duty to examine causes pending in court and records thereof and make report to the Commissioner of the Revenue, and thereupon it becomes the duty of the Commissioner of the Revenue to make the assessment. It, therefore, becomes pertinent, in order to determine the question, to ascertain whether the Commissioners of the Revenue completed their assessments of taxes for the year 1912 before the date of the approval of the aforesaid act, to-wit: March 14, 1912, or after that time.

Under section 513 of the Code, it is made the duty of the Commissioner to furnish to the clerk of the court of his county or corporation, before the first day of July of each year, the copies of the land and personal property book; and I learn from the records in your office that the Commissioners of the Revenue in the Twentieth Circuit complied with this section as shown by the following table, showing the county, district, names of the commissioners and the dates when the commissioners signed the certificates showing completed assessments of taxes and delivered the copies to the clerk under sections 511 and 513 of the Code.

<i>County</i>	<i>District</i>	<i>Commissioner</i>	<i>Date</i>
Roanoke	No. 1	W. A. Francis	July 5, 1912
	No. 2	L. L. Greenwood	July 8, 1912
Montgomery	No. 1	R. K. Thompson	July 22, 1912
	No. 2	M. S. Price	July 13, 1912
Floyd	No. 1	W. J. Phillips	July 29, 1912
	No. 2	A. L. Vest	July 1, 1912
Radford City		Mark Ried	July 5, 1912
Roanoke City		H. M. Darnall	July 31, 1912

The following table shows the same information with reference to the third circuit.

<i>County</i>	<i>District</i>	<i>Commissioner</i>	<i>Date</i>
Prince George		R. C. Burrow	August 6, 1912
Surry		L. W. James	July 1, 1912
Sussex	No. 1	E. L. Best	August 9, 1912
	No. 2	G. O. Wrenn	July 11, 1912
Greensville		M. J. Squire	July 6, 1912
Brunswick	No. 1	J. B. Mallory	July 13, 1912
	No. 2	R. S. Moseley	July 9, 1912



From an examination, therefore, of the law and of the actual facts, as shown by the above tables, it is perfectly apparent that in the above counties, in both circuits, the Commissioner of the Revenue assessed the taxes therein after chapter 278 of the acts of 1912 became a law, that is, after March 14, 1912; and as it is also apparent, from said chapter, that the act was passed to meet these specific cases, I must come to the conclusion that the aforesaid Examiners of Record should refund and pay into the treasury the compensation paid them on all property upon which the taxes assessed by the Commissioners of the Revenue as of the aforesaid dates were not collected and were returned delinquent.

This conclusion is borne out by section 604 of the Code requiring each treasurer, on or before the 15th day of June of each year, to make his final settlement with the Auditor of Public Accounts, furnishing a statement of all moneys collected by him on account of taxes and penalties, and also list of insolvents and delinquents, at the time and in the manner prescribed by section 605; and is further borne out by section 605, which requires the treasurer, not later than the first day of July in each year, to make out the delinquent lists.

I am, therefore, of opinion that the Examiners of Records should be required to refund and pay back into the treasury commissions paid them on the values returned for 1912 taxes on which were returned delinquent in July by a county or city treasurer.

Respectfully submitted,

CHRISTOPHER B. GARNETT,  
*Assistant Attorney General.*

**Labor laws—Payment of wages at regular intervals. Code, Sec. 3657d.**

RICHMOND, VA., June 18, 1914.

Hon. J. B. DOHERTY,  
*Commissioner of Labor,*  
*Richmond, Va.*

DEAR SIR:

In the absence of the Attorney General, on official business, I am replying to yours of June 4th, with reference to the payment of wages of employes of manufacturing companies. The question which you ask is whether the law does not require all manufacturers to settle in full with their employes, at least twice a month.

Section 3657-d requires all persons, firms, companies, corporations or associations in this Commonwealth, engaged in operating railroad shops, 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, to pay their employes the amounts due them for their work or services in lawful money of the United States, or by check or by cash order, at least twice in each month; and, therefore, answering specifically the question which you put, I would say that the law does require all manufacturers to settle with their employes, at least twice a month.

Very truly yours,

CHRISTOPHER B. GARNETT,  
*Assistant Attorney General.*

**Labor laws—Payment of wages at regular intervals. Code, Sec. 3657d.**

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

RICHMOND, VA., May 13, 1914.

DEAR SIR:

Referring to my conversation with Mr. Clinedinst, of your department, and your communications of April 4th, 10th and 29th, I hereby confirm the verbal opinion given to Mr. Clinedinst, to-wit:

Section 3657d of the Virginia Code, 1904 (as amended by chapter 106 of the Acts of 1912), securing to certain operatives and laborers the payment of wages at regular intervals and in lawful money, does apply to skilled mechanics engaged in the manufacture or cutting, for commercial purposes, of slate which has already been mined or quarried; and said skilled mechanics are entitled to the payment of their wages, at least twice in each month. The exception set out in the latter clause of section 2 applies only to employes engaged in "mining coal, manufacturing coke, mining ore, or other minerals, excelsior mills or saw mills;" and employers of labor engaged in this latter work must settle with their employes, at least once in each month.

In answer to the question raised by the letter of the Penlan Slate Co., Inc., dated April 8, 1914, which letter you refer to me for consideration, will say that sub-section 3 of the section already referred to makes it unlawful for any person, firm, company, corporation or association to issue to employes, in payment of labor, an order not redeemable in lawful money. As requested by you, I am returning the letter of the Slate Co. referred to.

Very truly yours,

JNO. GARLAND POLLARD,  
*Attorney General of Virginia.*

**Labor laws—Hours of employment of females. Vol. 3, Code, Sec. 3657b; Acts 1912, p. 557.**

Hon. H. S. LARRICK,  
*Commonwealth's Attorney,*  
*Winchester, Va.*

RICHMOND, VA., April 1, 1914.

DEAR SIR:

In the necessary absence of the Attorney General, on official business, I am replying to your letter of March 30, 1914. The facts stated in your letter are as follows: Beck's Steam Bakery, Incorporated, employs a number of girls, all of whom at present are working only ten hours per day. A few of them would like to return after supper in the evening and put in a couple of hours extra work, for which they would receive extra pay. If the corporation would permit these young women to return and to do this extra work, would this be in violation of the provisions of the acts of 1912 regulating the hours of labor of women and children?

The act of 1912, referred to, may be found on page 557 of said acts (and is section 3657-b of supplement 1912, p. 164) and provides, so far as this question is concerned, as follows:

"No female \* \* \* shall work as an operative in any factory, workshop, mercantile or in any manufacturing establishment in this State more than ten hours in any one day of twenty-four hours. All

contracts made or to be made for the employment of any female \* \* \* as an operative in any factory, workshop, mercantile, or in any manufacturing establishment to work more than ten hours in any one day of twenty-four hours, are and shall be void. Any person having the authority to contract for the employment of persons as operatives in any factory, workshop, mercantile, or in any manufacturing establishment who shall engage or contract with any female \* \* \* to work as an operative in such factory, workshop, mercantile, or in any manufacturing establishment during more than ten hours in any one day of twenty-four hours, shall be guilty of a misdemeanor, and be fined, etc."

The case which you put does not come under any of the provisos of the act quoted. The object of said act evidently is to prevent females from working more than ten hours a day: for, first, it makes contracts for working more than ten hours a day void; and, secondly, it is made a misdemeanor for any person having authority therefor to contract with any female to work as an operative during more than ten hours in any one day of twenty-four hours. Now, if the statute could be construed so as to allow females, after they had completed the ten-hour day, to make a supplemental contract for two hours, even though it was done by an actual supplemental contract, then the statute could in all cases be made null and void. In other words, the case which you put, to my mind, clearly violates the statute, and anyone who would allow such work to be done by females in his factory, etc., would be clearly subject to the penalties provided by the statute.

I will bring this matter to the attention of the Attorney General when he returns, and if he disagrees with me, I will get him to write to you.

Very truly yours,

CHRISTOPHER B. GARNETT,

*Assistant Attorney General.*

#### Labor laws—Female employes at laundries. Chapter 58, Acts 1914.

RICHMOND, VA., July 17, 1914.

Hon. JAS. B. DOHERTY,

*Commissioner of Labor,  
Richmond, Va.*

DEAR SIR:

I have your letter of July 2d, requesting me to advise you whether females in charge of branch offices of laundries are within the exceptions to chapter 58, Acts 1914, regulating the hours of labor in factories and manufacturing establishments where females and children under fourteen years of age are employed. The facts as stated in your letter are as follows:

A large number of laundries maintain branch offices separate from the principal offices and plants. Linen is received at these branch offices which is washed at the laundry and is then returned to the branch office, where it may be called for. These branch offices are largely in charge of females; and the question which you present is whether these females will come under the provision in the third section of the act, which reads as follows:

"Provided, however, that nothing in this act shall be construed to apply to females whose full time is employed as bookkeeper, stenographer, cashier or office assistant \* \* \*."

Assuming that the full time of these females is employed in the capacity of an office assistant, and that none of their time is taken as an "operative" in the laundry, my conclusion is that such female employes are exempted from the operation of the act.

Very truly yours,

JNO. GARLAND POLLARD,  
*Attorney General of Virginia.*

**Remission of fines before removal of political disabilities. Constitution, Sec. 63.**

RICHMOND, VA., *February 11, 1914.*

Hon. H. C. STUART,  
*Governor of Virginia,*  
*Richmond, Va.*

DEAR SIR:

In reply to your letter of February 9, 1914, in which you ask to be advised if it is necessary to have a fine, which has been imposed for a felony, remitted by the court or otherwise settled, before political disabilities may be removed, I beg to submit the following:

Section 73 of the Constitution, so far as applicable to this question, reads as follows:

"He (the Governor) shall have power to remit fines and penalties in such cases, and under such rules and regulations as may be prescribed by law, and, except when the prosecution has been carried on by the House of Delegates, to grant reprieves and pardons after conviction; to remove political disabilities consequent upon conviction for offences committed prior or subsequent to this Constitution, and to commute capital punishment; but he shall communicate to the General Assembly, at each session, particulars of every case of fine or penalty removed or reprieve or pardon granted, and of punishment commuted, with his reasons for remitting, granting or commuting the same."

It will be noted from the above that the Governor's power to remove political disabilities is unqualified, just as is his power to commute capital punishment, whereas his power to remit fines and penalties is qualified, in that such power must be exercised under the rules and regulations which may be prescribed by law.

The legislature has seen fit to prescribe the rules and regulations under which the power of the Governor to remit fines may be exercised, but the legislature has properly refrained from passing any law with reference to how the power given the Governor to remove political disabilities may be exercised.

Cooley on Constitutional Limitations (7th ed., p. 158) says in this connection:

"Whatever power or duty is expressly given to, or imposed upon, the executive department is altogether free from the interference of the other branches of the government. Especially is this the case where the subject is committed to the *discretion* of the chief executive officer, either by the Constitution or by the laws. So long as the power is vested in him it is to be by him exercised, and no other branch of the government can control its exercise,"—citing *Attorney General v. Brown*, 1 Wisconsin, 513."

Therefore, I must conclude that the power conferred upon the Governor by the Constitution, authorizing him to remove political disabilities consequent

upon conviction for offenses, is an absolute power; and that even if the legislature had attempted to qualify this power, it would have been unconstitutional; but that the legislature has not qualified this power, and, consequently, that the Governor may remove political disabilities without remitting the fine imposed for such felony.

Very truly yours,

JNO. GARLAND POLLARD,

*Attorney General of Virginia.*

**Governor's right to erase his signature approving bill before its return to the General Assembly.**

RICHMOND, VA., *March 13, 1914.*

*His Excellency, HENRY C. STUART,*  
*Governor of Virginia,*  
*Richmond, Va.*

DEAR SIR:

You have asked my opinion on the following state of facts:

A bill is passed by both branches of the General Assembly and presented to the Governor for his approval. The Governor signs the bill; but while the same is in his possession, and during the five days allowed him by the Constitution for the consideration of bills, he reaches the conclusion that the bill ought to be vetoed. Question: Is the Governor, under these circumstances, at liberty to erase his signature and return the bill with his veto?

Upon investigation of the authorities, I find that similar questions have arisen in other States; and while the reported opinions disclose some differences of opinion, yet the weight of authority is to the effect that the court, in such cases, will respect and be guided by the final act of the Executive; and if the bill is returned with a veto, and the legislative record discloses that fact, the courts will not permit such record to be questioned.

The strongest case supporting this view may be found reported under the title of *People v. McCullough*, 210 Ill., p. 428. The record in that case shows that the Governor approved and signed a certain bill. Subsequently, and within the ten days allowed by the Constitution of Illinois to the Governor for the consideration of bills, he erased the word "approved" above his signature and wrote in lieu thereof "returned without approval," accompanying the return with a formal document vetoing the measure. The question arose as to whether the act ever became operative. Section 16 of Article 5 of the Constitution of Illinois (similar to section 76 of the Constitution of Virginia) provides that every bill passed by the General Assembly shall be presented to the Governor, and if he approve it, he shall sign it, *and thereupon it shall become a law*. The court decided that the words quoted do not mean that the Governor cannot revoke his approval while the bill remains in his custody, and within the constitutional period for consideration.

Note that the words above italicized do not appear in the Constitution of Virginia; and the case cited is, therefore, a stronger authority for the proposition that, under the language of the Virginia Constitution, the Governor may revoke his approval, so long as the bill remains in his custody, and within the five days allowed him by law for the consideration of measures.

The court, continuing, said:

"While the Governor retains the bill within the ten days (five in Virginia, except after adjournment) it is as much within his control, and his action on the bill is as much subject to reconsideration, as are bills in either House of the General Assembly while remaining before them."

I will not burden you with a recitation of the facts of other similar cases, as I understand from you that you desire me to give you my opinion rather than the processes by which I reach my conclusion.

Yours very truly,

JNO. GARLAND POLLARD,  
*Attorney General of Virginia.*

**Governor's power to pardon—Constitutionality of act vesting pardoning power in Board of Directors of Penitentiary. Senate Bill 442; Code, Sec. 4198a, as amended.**

RICHMOND, VA., *March 21, 1914.*

*His Excellency, H. C. STUART,*  
*Governor of Virginia,*  
*Richmond, Va.*

DEAR SIR:

You have referred to this office the question as to whether Senate Bill No. 442 is constitutional or not. The title of this bill is as follows:

"To amend and re-enact an act entitled 'An act to authorize the Governor to grant a conditional pardon to persons confined in the penitentiary upon the recommendation of the board of directors of said institution,' approved March 3, 1898, as amended and re-enacted by an act approved February 3, 1900, as further amended and re-enacted by an act approved May 1, 1903, as further amended and re-enacted by an act approved March 7, 1904."

The original act on this subject is found in the Acts of 1897-8, chapter 685, p. 732, and its title is as follows:

"An act to authorize the Governor to grant a conditional pardon to persons confined in the penitentiary upon the recommendation of the board of directors of said institution."

The effect of the original act was to provide that whenever any person is confined in the penitentiary for any offense and shall have served out half of his term of imprisonment, he shall be allowed to file a petition with the board of directors of said institution setting forth certain facts and asking the board to recommend him to the Governor as a proper person to receive a conditional pardon. It is made the duty of the board of directors, or any two of them, to inquire into the statements and they are authorized, if they find the statements to be true and that the convict was a fit and proper person to receive a conditional pardon, to recommend to the Governor for that purpose. Section 3 provides that the "Governor, after examining the petition and the proof filed to sustain it and the recommendation of the board of directors, may grant a conditional pardon, upon such conditions and with such restrictions and under such limitations as he may deem proper."

The act was amended and re-enacted by its title by Acts of 1903, chapter 192, p. 282, but the amendments are not important, so far as this inquiry

is concerned, as the Governor was given the power to grant or refuse a conditional pardon under the terms of the act as amended.

The act was again amended by Acts of 1904, chapter 68, p. 112, the title to which is as follows:

"An Act to amend and re-enact an act entitled 'An act to authorize the Governor to grant conditional pardon to persons confined in the penitentiary upon recommendation of the board of directors of said institution,' approved March 3, 1898, as approved by an act approved February 3, 1900, as amended by an act approved May 1, 1903."

By the terms of this act, the most radical departure from the previous act was made in that the power to grant the conditional pardon was taken away from the Governor and conferred directly upon the board of directors of the penitentiary. The language of the first section of said act, as amended, is as follows:

"Whenever it appears to the board of directors of the penitentiary that a prisoner in that institution who was sentenced to the penitentiary for any crime, has served out half of his term of imprisonment for which he was sentenced, that he has kept the prison rules for the two years next preceding the date of the expiration of one-half of his term (if he shall have been confined in the penitentiary so long), as shown by the prison records, and that he is a fit person to receive such parole, said board may, in its discretion, parole him during the remainder of his term of sentence upon such terms and conditions as it may prescribe, if he has an assurance satisfactory to said board that he will have employment as soon as he is discharged, or if otherwise so provided for that he will not be dependent upon public or private charity. If the record shows that he has violated the rules of the prison the board may, in its discretion, parole him at such time after the expiration of one-half of the time for which he was sentenced, as it shall determine."

Senate Bill No. 442 purports to amend and re-enact the above act by the same title. The only difference between the act of 1904 and Senate Bill No. 442 is that it enlarges the powers given to the Board.

Section 73 of the Constitution of 1902 provides, so far as this question is concerned, as follows:

"He (the Governor) shall have power to remit fines and penalties in such cases and under such rules and regulations as may be prescribed by law, and except when the prosecution has been carried on by the House of Delegates to grant reprieves and pardons after convictions; \* \* \* but he shall communicate to the General Assembly at each session particulars of every case of fine or penalty remitted, of reprieve or pardon granted and all punishments commuted, with his reasons for remitting, granting or commuting the same."

Section 9 of the Constitution of Virginia adopted on June 29, 1776, providing how the Governor should be elected and defining his powers, provides as follows:

"An adequate but moderate salary shall be settled on him during his continuance in office, and he shall, with the advice of the Council of State, exercise the executive powers of Governor according to the laws of this Commonwealth, and shall not, under any pretense, exercise any power or prerogative by virtue of any law, statute or custom of England; but he shall, with the advice of the Council of State, have the power of granting reprieves or pardon except where the prosecution shall have been carried on by the House of Delegates, or the law shall otherwise particularly direct; in which cases no reprieve or pardon shall be granted but by resolve of the House of Delegates."

Thus it will be seen that the power of the Governor to pardon is, at the present time, without restriction or limitation thereon and is ampler and broader than the power to remit fines and penalties, which latter power is restricted in this respect that his power to remit fines and penalties can only be exercised in such cases and under such rules and regulations as may be prescribed by law, whereas his power to grant reprieves and pardons after conviction is absolute in all cases, except when the prosecution has been carried on by the House of Delegates.

The original provision of the Constitution of 1776 came under review in *Commonwealth v. Caton*, 4 Call, p. 5, and in *Commonwealth v. Fowler*, 4 Call, p. 35. The former case does not bear directly on the point under discussion here, but is remarkable for the opinions of Wythe, J., and Pendleton, P. In the latter case, it was held that the Governor could not pardon upon condition. This same question came before the court in *Lee v. Murphy*, 22 Gratt. 789, where the court, speaking through Staples, J., held that the Governor did have authority under the Constitution to grant a conditional pardon to a prisoner convicted of felony, provided the condition annexed to the pardon was not impossible, immoral or illegal.

Cooley on Constitutional Limitations (6th ed.), p. 133, lays down the following general rule as to legislative encroachment upon executive power:

“Such powers as are specially conferred by the Constitution upon the Governor, or upon any other specified officer, the legislature cannot require or authorize to be performed by any other officer or authority; and from those duties which the Constitution requires of him he cannot be excused by law.”

In *Rich v. Chamberlain*, 104 Mich. 436, 62 N. W. 584, 27 L. R. A. 573, the court had under consideration the constitutionality of a statute providing a board of pardons to investigate the facts on petition for a pardon and to report the result of their investigation, with such recommendations as to them seemed expedient, and the Governor who could pardon or not according to his own discretion. The constitutional provision of Michigan, Article 5, section 11, provided that “he may grant reprieves, commutations and pardons after convictions for all offenses except treason and cases of impeachment, upon such conditions and with such restrictions and limitations as he may think proper, subject to regulations provided by law relative to the manner of applying for pardon.” The court held that the statute was not unconstitutional, because the statute left the discretion with the Governor whether the pardon should issue or not. But, even in this case, there was a strong dissenting opinion by Hooker, J., who claimed that the section was unconstitutional because it encroached upon the prerogative of the Governor and, in a measure, relieved him of the responsibility which the Constitution placed upon him. In this dissenting opinion, McGrath, Chief Justice, concurred.

In *People v. Brown*, 54 Mich. 15, Cooley, J., in speaking of the above provision of the Michigan Constitution, uses this language:

“Now it cannot be for a moment supposed that any thirty-five intelligent citizens of this State are ignorant of the fact that the power to pardon is an executive power expressly vested by the Constitution of the State in the Governor and exclusively belonging to his office. And knowing that fact as these petitioners must have done, they could scarcely fail to understand that this judge would be usurping the functions of the executive were he to assume to give total immunity from punishment.”



In *United States v. Wilson*, 7 Peters, 150, 8 L. ed. 640, Chief Justice Marshall said:

"A pardon is an act of grace proceeding from the power entrusted with the execution of the laws, which exempts an individual upon whom it is bestowed from the punishment the law inflicts for a crime he has committed. It is the private though official act of the executive magistrate delivered to the individual for whose benefit it is intended."

In *ex parte Ridley*, 106 Pac. 549, the Supreme Court of Oklahoma was called upon to pass upon the constitutionality of an act which was entitled "An act relating to the granting of pardons, creating a board of pardons and defining its duties," which act created a board of pardons consisting of the State Superintendent of Public Instruction, the President of the Board of Agriculture and the State Auditor and provided how the board should meet and receive applications for pardons, and further provided that their decision should be transmitted to the Governor; and, further, that "no pardons nor paroles shall be granted by the Governor until he shall present the matter to and obtain the advice of the board of pardons and parole, but he may commute death sentences of pardons to imprisonment for life." Section of Article 6 of the Constitution of Oklahoma provided as follows:

"The Governor shall have power to grant after conviction reprieves, commutations, paroles and pardons for all offenses except cases of impeachment, upon such conditions and with such restrictions and limitations as he may deem proper, subject to such regulations as may be prescribed by law."

The Supreme Court of Oklahoma held that the constitutional provision was self-executing and that the act creating the board of pardons was clearly unconstitutional and void in that the legislature had attempted to confer pardoning powers upon other State officers, which was clearly an unconstitutional interference and encroachment upon the executive power, and adopted the reasoning of Justice Hooker in the case of *Rich v. Chamberlain*, *supra*.

In *People v. Cummings*, 88 Mich. 249, 50 N. W. 310, 14 L. R. A. 285, it was held that a statute authorizing a parole or conditional release by the board of control of prisons of a person who had been sentenced for an indefinite term whereby he remained in the legal custody of the board, although outside the prison, and subject to be taken back on order of the board if he violated the conditions of his parole or release, was in violation of the Michigan Constitution, Article 6, section 1, giving the judicial powers to the courts, and of Article 5, section 11, giving the pardoning power to the Governor. On the latter point, the court said:

"But from the other clauses of the statute it may be inferred, perhaps, that this release is in all cases to be a conditional one, and that it is a system of parole that is contemplated by the law. Yet if it be considered that the only power conferred is a conditional release upon parole, still, if the prisoner keeps his parole, or, rather, if the board is of opinion that he does, the release is in fact an absolute one. By what refinement of reasoning it can be made to appear that this is not in effect a pardon of the prisoner, is beyond my comprehension."

And again, the court said:

"But it is claimed that the pardoning power is not granted to the board of control by this statute, because there is no authority to discharge prisoners absolutely conferred upon the board. It is argued that the

power granted by this act is only to permit prisoners sentenced under it to go upon parole in the legal custody and control of the board, subject at any time to be taken back within the inclosure of the prison. If this be so, what is meant by this parole, and what is the power of the board? Can they let one man out, not to go beyond a five-mile limit, another to keep within the county where the prison is located, the third to keep within the congressional district, the fourth not to go outside of the State, the fifth to keep himself within the limits of certain States of the Union, the sixth not to leave the United States, and the seventh not to visit England, and the others confined to certain localities, at the will and pleasure of this board? Or does the law contemplate that this parole shall be in fact a release from prison with only the condition that the board may bring the person on parole back again if they see fit, and make him serve his whole unexpired maximum term within the prison walls? In any event, this parole system is as obnoxious to the Constitution as an unconditional release by the board would be; and, if they have the power to release on conditions, those conditions may be made so trifling as in fact to be no conditions at all."

And the court expressly disapproves the case of *State v. Peters*, 43 Ohio State 629, saying the reasoning of the latter opinion was not at all satisfactory.

In *Fuller v. State* (Ala.), 45 L. R. A. 502, a convict was paroled under a statute giving the powers to the Governor to discharge any convict from custody and suspend the sentence of such convict without granting a pardon, and authorizing the Governor to prescribe the terms upon which the convict so paroled should have his sentence suspended. The Constitution of Alabama, section 12, Article 5, provided as follows:

"The Governor shall have power to remit fines and forfeitures under such regulations as may be prescribed by law, and after conviction to grant reprieves, commutations of sentence and pardons, except in cases of treason and impeachment."

The court, construing this section of the Constitution, used the following language:

"It is the settled law that the grant includes powers to grant conditional pardons, the condition to be either precedent or subsequent, and of any nature, so long as it is not illegal, immoral or impossible of performance, and that a breach of the condition avoids and annuls the pardon," "citing *ex parte Wells*, 18 How. 307, 15 L. ed. 421; *State v. Barnes*, 32 S. C. 14, 6 L. R. A. 743; *People v. Cummings*, 14 L. R. A. 245."

The court then went on to say:

"The parole of a convict is in the nature of a conditional pardon, and within the constitutional grant of the pardoning power to the Governor. The power to grant pardons, absolute or conditional, cannot, of course, be taken away from the executive, nor limited by legislative action, but the General Assembly may enact laws to render its exercise convenient and efficient. *Kennedy's Case*, 135 Mass. 48."

In *re Conditional Discharge of Convicts*, 73 Vt. 414, 56 L. R. A. 658, the court had under consideration the constitutionality of a statute which created a board with power to grant conditional pardons. The Supreme Court of Vermont was requested by the Governor to pass upon certain questions in connection with this statute; and in their answer responded as follows:

"The power to grant pardons is given to the Executive by the Constitution in unrestricted terms, except in case of treason, murder and impeachment; and that such general power includes all kinds of pardon known to the common law is well settled. The grant may be for a full, partial,

absolute or conditional pardon, provided the condition be not illegal, immoral or impossible of performance. *Lee v. Murphy*, 27 Gratt. 789. This power can neither be restricted nor taken away by legislative action, nor can a like power be given by a legislature to any other officer or authority. Cooley on Constitutional Limitations, 133 \* \* \*

"By section 1, a board of prison commissioners is established. By section 8, all the duties and powers conferred upon the Governor by sections 5306 to 5309, inclusive, of the former statutes are conferred upon and given to the prison commissioners and the Governor is relieved therefrom as to all convicts sentenced after the passage of that act. The effect of this act would be to transfer the power of conditional power from the Governor to the board of prison commissioners which, as already seen, cannot be done by legislative action; and section 8 of Act No. 126 is unconstitutional and void."

Later on, in the same opinion, the court in referring to another act, known as No. 127, uses the following language:

"Whether the prison commissioners can grant such a parole depends upon whether the law giving them that power is an encroachment upon the prerogatives of the Executive. Is the granting of a parole within the pardoning power? If it is, the power is exclusively with the Executive, and the law is such an encroachment. Under the Constitution of Indiana the pardoning power is vested in the Executive, subject to such rules and regulations as may be made by law. No legislation was had thereon, by reason whereof the power was with the Executive to its full extent. The Governor granted a parole, and later by his command the prisoner was reimprisoned because he had failed to perform the conditions of his parole. One question before the court was whether the release granted was a conditional pardon, or, what it purported and was intended to be, a mere parole. It was held to be a parole, and within the pardoning power. *Woodward v. Murdock*, 124 Ind. 439, 24 N. E. 1047. In Alabama the Constitution gives the Executive the power to grant reprieves, commutation of sentence, and pardons, after sentence, except in cases of treason and impeachment. The court said a parole is in the nature of a conditional pardon, and within the constitutional grant; that, while this power cannot be taken away or limited by legislative action, laws may be enacted to render its exercises convenient and efficient. *Fuller v. State*, 122 Ala. 32, 45 L. R. A. 502, 26 So. 146. In Utah the pardoning power is given by the Constitution to a board constituted of certain State officials therein named. A law was enacted providing for a board of correction, whose duty it was to allow prisoners to go upon parole after they had served the minimum term of their sentence, to remain in the legal custody and under the control of the board, subject at any time to be taken back within the prison. The validity of this law was directly in issue on an application for writ of prohibition, and it was held to be an encroachment upon the pardoning power and therefore unconstitutional. *State ex rel. Bishop v. State Board of Corrections*, 16 Utah, 478, 52 Pac. 1090."

The Vermont court examines and disapproves the reasoning of *State v. Peters*, 43 Ohio State, 629, 4 N. E. 81.

The Vermont court examines and criticizes those cases which differ from the majority rule on this subject, and concludes that a parole is nothing but a conditional pardon, and that the granting of such power to the board of prison commissioners was an encroachment upon the prerogatives of the Governor.

In *ex parte Garland*, 4 Wall. 333, 18 L. ed. 366, section 2, Article 2, of the Constitution of the United States, providing that "the President shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment," was construed. The court said that inasmuch as the Constitution provided that the President should have power to grant

reprieves and pardons for offenses against the United States, except in cases of impeachment, the power thus conferred was unlimited, extending to every offense known to the law, and might be exercised at any time after its commission; and that this power of the President was not subject to legislative control, and that Congress could neither limit the effect of his pardon nor exclude him from exercising it as to any class of offenders.

On this subject, 24 Am. and Eng. Encyc. of Law (2d ed., p. 557) uses the following language:

"Since it is a principle of constitutional law that each of the great departments of the government, viz: the executive, the legislative, and the judicial, shall in its sphere be supreme and independent of the others, and that a grant of general powers to one department constitutes an implied exclusion of the other departments from the exercise of those powers, it is the prevailing weight of judicial opinion that a grant of the pardoning power by the Constitution upon the executive department of either the State or Federal government precludes the legislative department of that government from exercising or controlling that power; in other words, that the pardoning power is solely an executive function, and cannot be exercised, limited, or impaired by the legislature."

And, again, at page 560, the same authority says:

"It is conceded that so far as the pardoning power is conferred by the Constitution upon the executive department, it cannot be delegated to any other branch of the government by any act of the legislature; and, consequently, that any statute purporting so to delegate that power is unconstitutional and without legal effect. Thus the legislature cannot delegate to a court the right to exercise any part of the pardoning power vested in the Governor by the Constitution. Likewise, where the Constitution of a State invests the Governor with power to commute penalties, the legislature cannot delegate that power to another body."

On the other hand, in the case of *State v. Peters*, 43 Ohio State 629, 4 N. E. 81, it was held that an act of assembly authorizing the Board of Managers of the Ohio Penitentiary to establish rules and regulations under which certain prisoners who had served the minimum term provided by law for the crime for which they were convicted might be allowed to go upon parole outside of the buildings and enclosures; but to remain, while on parole, in the legal custody and under the control of the board, and subject at any time to be taken back within the enclosure of the institution, was not an interference with the executive or judicial powers conferred on those departments by the Constitution of the State. The Constitution of Ohio, Article 3, section 11, vested in the Governor the exclusive "right to grant reprieves, commutations and pardons for all crimes and offenses, except treason and cases of impeachment, upon such conditions as he may think proper; subject, however, to such regulations as to the manner of applying for pardons as may be prescribed by law." The act in question provided that "the board of managers shall, *subject to the approval of the Governor*, make such rules and regulations for the government of the prisoners as shall best promote their reformation, by separation and classification of prisoners; division into grades, with promotion and degradation, according to their merit, employment, and instruction, and industry, their education, their conditional and absolute relief." The court held that the act was not unconstitutional; but, as has been seen, the reasoning of the court has been disapproved by the Michigan court above.

So, also in *Ware v. Sanders*, 124 N. W. 1981, the Supreme Court of Iowa held that an act of assembly creating the board of parole and providing that said board should have the power to establish rules and regulations under which it might allow persons within the penitentiary to go upon parole, was not unconstitutional as encroaching upon the power of the Governor to grant pardons, reprieves and commutations. The reasoning of the court is unsatisfactory and the court does not cite any authority in its opinion.

The Supreme Court of Missouri, in *State v. Collins*, 125 S. W. 465, follows the Ohio and Iowa courts in holding that a statute that provided for the parole of prisoners and determination thereof without further hearing in the discretion of the court or judge granting the same was constitutional.

From a careful investigation of the authorities, I am constrained to conclude that Senate Bill No. 442 and the Acts of 1904, chapter 68, p. 112, are both unconstitutional, because they are in conflict with section 73 of the Constitution of 1902, which confers upon the Governor alone the power to grant pardons after conviction.

This opinion is strengthened by section 5 of the Constitution which provides that "the legislative, executive and judicial departments of the State shall be separate and distinct;" and by section 39, providing as follows:

"Except as hereinafter provided the legislative, executive and judicial departments shall be separate and distinct, so that neither exercise the powers belonging to either of the others, nor any person exercise the power of more than one of them at the same time."

Nor can the power granted to the board of directors of the penitentiary be inferred from the powers granted to that board by section 148 of the Constitution, which provides that "said board, subject to such regulations and requirements as may be prescribed by law, shall have the government and control of the penitentiary, branch prisons and prison farms, and shall appoint the superintendents and surgeons thereof."

But, there is still another reason why the Acts of 1904, chapter 68, p. 112, and Senate Bill No. 442 are both unconstitutional. Section 52 of the Constitution provides as follows:

"No law shall embrace more than one object *which shall be expressed in its title.*"

This constitutional provision has been construed time and again by our supreme court. Thus it has been held that the constitutional provision is mandatory and not directory merely. *Board of Supervisors v. McGruder*, 84 Va. 828; *Ellinger v. Commonwealth*, 102 Va. 100. And it has been held that where the title affords no clue whatever to the contents, the statute is wholly inoperative and void. *Board of Supervisors v. McGruder*, *supra*.

So, also, it has been held that an act containing a misleading title is void. *Anderson v. Hill*, 54 Mich. 477; *Lewis' Sutherland Statutory Construction* (2d ed.), vol. 1, sec. 125, p. 212, and cases cited.

And provisions of an amendatory act not germane to the subject expressed in the title to the original act are unconstitutional and void. 1 *Lewis' Sutherland Statutory Construction* (2d ed.) 234, and cases cited. Or, as the doctrine has been expressed in West Virginia, new matters brought in by amendment must not be foreign to the subject of the prior legislation, but must be congruous and germane

to such prior legislation, such as might have been put into that legislation under the original title. *Robey v. Sheppard*, 42 W. Va. 286-290; *State v. Mines*, 38 W. Va. 125-137.

And so the doctrine was laid down in Virginia, in *Iverson Brown's Case*, 91 Va. 773, as follows:

"If the title of the original act is sufficient to embrace the matters contained in the amendatory act, whether that of the amendatory act is of itself sufficient is unimportant."

In *People v. Gadway*, 61 Mich. 285, 1 Am. State Reports, 578, an act entitled "An act to regulate the sale of spirituous liquors" was amended by adding a new section prohibiting absolutely the sale of such liquors within certain specified limits. This amendment was held not to be embraced in the title of the original act and, therefore, unconstitutional and void.

In *Astor v. Arcade Railway*, 113 N. Y. 93, 20 N. E. 594, 2 L. R. A. 789, it was held that the New York act of 1873, chapter 105, the title to which indicated the amendment of prior statutes relating to the transportation of passengers and property through the pneumatic tubes by atmospheric pressure, but the provisions of which enlarged the powers of a corporation formed for such purposes by giving authority to operate a grand underground railway, not less than fifteen miles long, with two or more tracks, which could not be operated by atmospheric pressure, and with authority, by the consent of the board of engineer commissioners, to use horse, steam or any other motive power, was unconstitutional and void. In this case the court said, with reference to the constitutional provision:

"Its purpose is to prevent fraud and deception by concealment in the body of the acts of subjects not by their titles disclosed to the general public and to legislators who may rely upon them for information as to pending legislation. When the subject is expressed, all matters fairly and reasonably connected with it, and all measures which will or may facilitate its accomplishment, are proper to be incorporated in the act and are germane to the title. The title must be such at least as fairly to suggest or give a clue to the subject dealt with in the act, and unless it comes up to this standard it falls below the constitutional requirement."

In *Eaton v. Walker*, 76 Mich. 579, 43 N. W. 638, 6 L. R. A. 102, it was held that the amendment of an act entitled "An act for the incorporation of *manufacturing* companies" which makes it include *mercantile* companies is in violation of the constitutional provision that the object of an act shall be expressed in its title.

Freeman, in a long note in 64 Am. State Reports, pp. 70-79, lays down the rule as follows:

"Of course, the new matters brought in by the amendment must not be foreign to the subject of the prior legislation, but congruous and germane to it, such as might have been put into that legislation under the original title in the case of a separate act."

Examining Senate Bill No. 442 and the Acts of 1904, chapter 68, p. 112, with reference to the provisions of section 52 of the Constitution, and the cases construing that and similar sections, we note that the title of both the bill and the act aforesaid purports "to authorize the Governor to grant a conditional pardon to persons confined in the penitentiary, upon the recommendation of the board

of directors of the said institution;" whereas the real purpose of said bill and act, as we have seen, was to take away from the Governor his constitutional prerogative and confer the same upon the board of directors of the penitentiary. It would have been impossible in case of a separate act to have put any such legislation under the original title. The subject matter of the act is not congruous with the title, and so far from informing the legislators of the real purpose of the bill and act, the effect of the title was to mislead the legislature as to that real purpose.

For these reasons, I must conclude that both Senate Bill No. 442 and the Acts of 1904, chapter 68, p. 112, in attempting to confer upon the board of directors of the penitentiary the right to parole prisoners in that institution, are unconstitutional and that the courts would have to declare them null and void if the question were properly presented to them.

Respectfully submitted,

CHRISTOPHER B. GARNETT,  
*Assistant Attorney General of Virginia.*

**Governor's power to remove political disabilities of persons convicted in  
the Federal Courts. Constitution, Secs. 23 and 73.**

RICHMOND, VA., *September 9, 1914.*

*His Excellency, HENRY C. STUART,*  
*Governor of Virginia,*  
*Richmond, Va.*

DEAR SIR:

I am in receipt of letter from your secretary, dated September 8th, in which he inquires whether the Governor can remove the political disabilities of persons convicted of crime in the Federal courts. In reply thereto, I beg to say the Governor's power to remove political disabilities is conferred by section 73 of the Constitution which, so far as applicable, reads as follows:

The Governor shall have the power "to remove political disabilities consequent upon conviction for offenses committed prior or subsequent to the adoption of this Constitution."

Section 23 of the Constitution excludes from voting persons who have been convicted, within or without this State, of \* \* \* embezzlement \* \* \*.

It appears from your letter that, in the case you have under consideration, the conviction was for embezzlement in the Federal courts. The exercise of franchise is given by the State Constitution and laws and a criminal does not lose his right of franchise by Federal enactment. Inasmuch, therefore, as the political disabilities are imposed by the State Constitution, and the same instrument gives the Governor the right to remove such disabilities, I am of the opinion that you have a right to grant the request which you have before you.

Very truly yours,

JNO. GARLAND POLLARD,  
*Attorney General of Virginia.*

**Governor—Expiration of terms of judges appointed by—Power of Governor to limit to a single subject acts of extra session. Constitution, Sec. 73.**

RICHMOND, VA., *September 10, 1914.*

*His Excellency, HENRY C. STUART,  
Governor of Virginia,  
Richmond, Va.*

DEAR SIR:

Yours of September 1st received. The first question you propound is,

“Whether your recess appointments of judges will hold until the next regular session of the General Assembly, or whether they will terminate with the extra session to be held next winter.”

Section 73 of the Constitution provides, among other things, that the “Governor shall have the power during the recess of the General Assembly \* \* \* to fill *pro tempore* vacancies in all offices of the State for the filling of which the Constitution and laws make no other provision; but his appointments to such vacancies shall be by commissions to expire at the end of thirty days after the commencement of the *next session* of the General Assembly.” Inasmuch as the Constitution and laws make no other provision for the filling of vacancies in the judicial offices, your power to fill such vacancies is derived from the constitutional provision above quoted. The answer to your question, therefore, depends on the meaning of the term “next session.” I am of the opinion that this term, as used in the Constitution, means the first session held after the vacancy is filled by you, whether such session be regular or extra. I can find no authority which would justify reading into the Constitution the word “regular” before the word “session.” On the contrary, I am of the opinion that the evident intent of this constitutional provision is to give the Governor power to fill vacancies only temporarily until the General Assembly can meet and perform the function of electing judges—a power placed primarily upon the General Assembly by the Constitution itself.

Your second question is,

Whether the election of judges at the coming extra session would be precluded should your call for the extra session limit the consideration of the session to a single subject.

Section 73 of the Constitution provides, among other things, that the Governor shall “convene the General Assembly on application of two-thirds of the members of both houses thereof, or when in his opinion the interests of the State may require.” I am informed that the Keeper of the Rolls has in his possession the application of two-thirds of the members of both houses of the General Assembly praying that you call an extra session of the General Assembly to consider matters pertaining to the assessment, levying and collection of taxes. The House Journal of 1914, p. 1011, also discloses the fact that the resolution was passed by both houses making application to you to call an extra session at such time as you might designate, not later than the second Wednesday in January, 1915. The resolution provides that the General Assembly “will consider no bills or resolutions which do not pertain to the assessment, levying and collection of taxes.” It is competent for you to call the extra session either in response to the application referred to or of your own initiative, if in your opinion the interests of the State require such extra session. But, in any event,



when the General Assembly shall have convened it is vested with all powers of legislation not withheld from it by the Constitution. When the General Assembly is once constitutionally convened it represents the sovereignty of the people, and may do any and all things not prohibited by the Constitution, even though the members may have voluntarily in their application for the calling of the extra session sought to limit the consideration of the session to a single subject; but note the language of the resolution above quoted can only obligate the General Assembly to "consider no bills or resolutions" which do not pertain to taxation. It does not obligate the General Assembly not to fill vacancies in offices; but even if the General Assembly should have, by legal enactment, sought to limit its deliberations to a single subject, such legal enactment would be subject to repeal at the coming extra session.

It also follows, from the above, that I am of the opinion that the Governor has no power to limit the action of the General Assembly in any manner whatsoever. In some States this power is specifically given to the Governor by the Constitution, but in Virginia the Governor is given no other power than to convene the General Assembly in special session when "in his opinion the interests of the State may require."

If, however, the General Assembly should see fit to limit itself to the consideration of the subject mentioned in the application to the Governor for the calling of the extra session, and should decline to consider any other matters and should adjourn without electing judges to fill the vacancies for which the Governor made *pro tempore* appointments, the effect would be that there would be another vacancy in said offices and the Governor could, after the adjournment, make new appointments and issue new commissions to expire at the end of thirty days after the commencement of the next session of the General Assembly.

Yours truly,

JNO. GARLAND POLLARD,  
*Attorney General of Virginia.*

Hollywood Memorial Association. Acts 1914, page 37.

Mr. E. D. TAYLOR,  
No. 9 South 13th Street,  
Richmond, Va.

RICHMOND, VA., July 25, 1914.

DEAR MR. TAYLOR:

I regret that other pressing duties prevented my consideration of the agreement between the Hollywood Memorial Association and others and the Hollywood Cemetery Company. I am especially sorry that I had to postpone the matter because of the noble and patriotic work which the agreement is intended to promote.

I have examined the act under which the agreement is made (Acts 1914, p. 37) and do not think that, under the terms of the act, it is proper that the agreement should contain the following words which appear in the second paragraph of the agreement:

"But it is understood and agreed between all parties hereto that this supervision and care shall not be so exercised as to interfere, except by way of suggestion, with the work of the Hollywood Cemetery Company in the execution of this contract."

I am of the opinion that the act contemplates that the graves in the Confederate section shall continue under the supervision and care of the Hollywood Memorial

Association, and that the clause above quoted, in effect, deprives that association of the right to exercise the supervision and care required by the act of Assembly. I, therefore, respectfully suggest for the consideration of all parties concerned the elimination of the clause referred to, and the insertion in the third paragraph of the agreement a clause stating, in terms, that the graves in the section shall continue under the supervision and care of the Hollywood Memorial Association.

I dislike very much to have to put the ladies to any additional trouble, but the act requires that the contract should be submitted to me for approval, and I think it my duty not to approve any contract which, in my opinion, deprives the Hollywood Memorial Association of the right of supervision and care given it by the General Assembly of Virginia.

Allow me, also, to suggest, as a matter of preservation of the terms of this important contract, that it be acknowledged by the parties before a notary public preparatory to recordation in the chancery court of the city of Richmond, so that the effects of a possible loss of the agreement may be guarded against.

I am returning, herewith, the three copies of the agreement.

Very truly yours,

JNO. GARLAND POLLARD,

*Attorney General of Virginia.*

**Intoxicating liquors—Byrd Law—Construction of provisions in regard to sale of wine. Va. Code 1904, Vol. 3, pp. 766, 774; Acts 1910, p. 296, cls. 4.**

RICHMOND, VA., *February 23, 1914.*

Mr. LANDON LOWRY,  
*Commonwealth's Attorney,  
Bedford City, Va.*

DEAR MR. LOWRY:

I have your favor of February 18th, asking me to give you my construction of section 14 of the Byrd Law of Acts 1910, page 296, found in volume 3—Virginia Code, pages 766, 774, so far as the same relates to the sale of wine by one who manufactures the same from fruit grown or bought by him.

I agree with you that the section is not very clear and needs construction.

It will be noted that the first portion of the section relates to the manufacture and sale of cider, which is the pure juice of the apple, and so far as cider is concerned, the effect of the section seems to be as follows:

*First.* The general provisions of the act do not apply to the manufacture or sale of cider which is the pure juice of the apple, without any additional alcohol, distilled spirits, wine or any other intoxicating liquor or any mixture whatever, except preservatives not prohibited by the United States law.

*Second.* Cider that will produce intoxication shall not be sold in quantities of less than five gallons in local option territory or in territory in which license to sell ardent spirits at retail has not been granted, except by the person growing or buying the fruit from which cider is made (or reading this paragraph positively—a person growing or buying the fruit from which cider is made *may* sell such cider in quantities of less than five gallons in local option territory, or in territory in which license to sell ardent spirits at retail has not been granted).

*Third.* But no cider containing more than six per centage of alcohol at the time of sale shall be sold in local option territory or in territory where license to sell ardent spirits at retail has not been granted.

*Fourth.* Nothing in this act shall prevent the sale of cider to be delivered to a common carrier to be transported to a place where ardent spirits may be legally sold nor to a licensed distiller for the purpose of distillation.

After the foregoing provisions, we find in the act this language:

"Provided, further that this act, except this section, shall not apply to the sale of pure wine, manufactured by the person growing or buying the fruit from which the wine is made: Provided, further, such persons may sell such wine to be delivered to a common carrier to be transported to some place where ardent spirits may be sold legally."

My construction of the above language is that, if you will insert in the numbered paragraphs above instead of "cider" the words "pure wine manufactured by the person growing or buying the fruit from which the wine is made," you will find the law applicable to the sale of wine. In other words, in providing that the other sections of the Byrd Law do not apply to the sale of pure wine, etc., but in specifically providing that section 14 does apply thereto, the act necessarily means that whatever is the law made by section 14, as to the manufacture or sale of cider, which is the pure juice of the apple, the same provisions apply to the manufacture and sale of wine by persons growing or buying the fruit from which the wine is made.

The form of section 14 is abominable in that it has exceptions to exceptions and provisos to provisos; but, after carefully reading the act, my conclusion, briefly stated, is that the law in regard to the sale of "cider, which is the pure juice of the apple," is applicable to the sale of "wine manufactured by the person growing or buying the fruit from which the wine is made."

Yours very truly,

CHRISTOPHER B. GARNETT,

*Assistant Attorney General.*

**Intoxicating liquors—Possession of United States revenue tax receipt.  
Acts 1906, Chapter 236.**

Hon. C. LEE MOORE,  
*Auditor of Public Accounts,  
Richmond, Va.*

RICHMOND, VA., April 1, 1914.

DEAR SIR:

Referring to the letter of Mr. S. B. Drewry, commissioner of revenue, Southampton county, Virginia, which you have sent for my opinion, and which I am returning, herewith, I beg leave to call your attention to the Acts of 1906, chapter 236, p. 411 (Vol. 3, p. 684), which makes the possession of a United States internal revenue tax receipt for the sale of ardent spirits *prima facie* evidence of sale, and which provides that whenever the holder of such a receipt shall not be licensed to sell wine, ardent spirits, etc., under and in accordance with the laws of Virginia, and shall be prosecuted for such illegal sale, the burden of proof shall be upon him, and in the absence of satisfactory proof that he has not violated the law, shall be convicted.

It has been held, under the above statute, that a copy of the record of the collector of internal revenue showing that the defendant had a United States

license may be received as evidence without calling the collector to testify. *Runde's Case*, 108 Va. 873.

Your correspondent by writing to the Collector of Internal Revenue, Richmond, Va., can procure a certificate similar to the one referred to in *Runde's Case*, of all persons possessing a United States Internal Revenue license in his county; and I am sure that such evidence should be sufficient, not only for an indictment, but also for conviction, if the court follows *Runde's Case*.

As to the specific question put, to wit, whether the United States laws prohibit summoning a district deputy collector of internal revenue before a grand jury for the purpose of testifying as to licenses issued, I am not now advised, but do not think it necessary to procure this information in the foregoing case. If, however, you desire me to do so, I will endeavor to inform you on the point.

Very truly yours,

JNO. GARLAND POLLARD,

*Attorney General of Virginia.*

**Intoxicating liquors—Enabling Act—Qualifications for voting thereunder. Acts 1914, p. 20.**

RICHMOND, VA., April 2, 1914.

*His Excellency*, HENRY C. STUART,  
*Governor of Virginia,*  
*Richmond, Va.*

DEAR SIR:

Replying to your favor of March 20th, in regard to the construction of the Enabling Act, I beg leave to submit the following:

The specific question which you put is whether persons who have complied with the provisions of section 4 of said act but who have not yet registered, may register and vote in the election to be held in September. Section 4 of the act reads as follows:

"The qualifications of voters at any election held under this act shall be such as are prescribed for voters by the general law. Provided, the following persons only shall be qualified to vote at such election, namely: All persons who were qualified to vote at the regular November election, nineteen hundred and thirteen, and all other persons, who are otherwise qualified and have personally paid, at least six months prior to the second Tuesday in June of the year nineteen hundred and fourteen, all State poll taxes assessed or assessable against them during the three years next preceding the year of nineteen hundred and fourteen; and all such other persons who shall become of lawful age at a time when no capitation tax was assessable against them for the year nineteen hundred and thirteen, and shall thereafter register by reason of becoming of lawful age prior to the date herein fixed for the holding of said election."

As many questions are coming to this office involving the construction of this act, I think it proper to give you an analysis thereof, which will not only answer the question put by you, but which may be used to answer other questions which have come to this office, and in which there seems to be general interest.

The section quoted provides that the qualifications of voters at the election in September shall be such as are prescribed by general law, and further provides that the following persons only shall be qualified to vote at such election:

- I. All persons who were qualified to vote at the regular November election, 1913.

- II. All other persons who are (a) otherwise qualified and (b) have personally paid, at least six months prior to the second Tuesday in June, 1914 (*i. e.*, before December 9, 1913), all poll taxes assessed or assessable against them during three years next preceding the year 1914 (*i. e.*, during 1913, 1912, 1911).
- III. All such (?) other persons who shall become of lawful age at a time when no capitation tax was assessable against them for the year 1913 and shall thereafter register by reason of becoming of lawful age prior to the date herein fixed for the holding of said election.

Taking up each of these classes, I will discuss them in their order.

*"I. All persons who were qualified to vote at the regular November election, 1913."*

This class includes:

- (1) Old soldiers on the permanent list required by section 19 of the Constitution, whether they have paid their poll taxes or not, and whether or not they voted at the November election, 1913.
- (2) All persons on said permanent list other than old soldiers who, at least six months prior to the election in November, 1913, had paid all State poll taxes assessed or assessable against them during 1912, 1911 and 1910, whether such persons actually voted or not at the November election, 1913.
- (3) All other persons who had registered and had, at least six months prior to the November election, 1913, paid all the State poll taxes assessed or assessable against them during 1912, 1911 and 1910, whether such persons actually voted or not in the November election, 1913.
- (4) All persons who became of age after February 1, 1913, and prior to the November election, 1913, who registered and paid one dollar and fifty cents in satisfaction of the first year's poll tax assessable against them, whether such persons voted in the November election, 1913, or not.

*II. All other persons who are (a) otherwise qualified and (b) have personally paid, at least six months prior to the second Tuesday in June, 1914 (i. e., before December 9, 1913), all poll taxes assessed or assessable against them during three years next preceding the year 1914 (i. e., during 1913, 1912 and 1911)."*

In order for one to be entitled to vote under this provision, he must be

- (1) A male citizen of the United States;
- (2) Twenty-one years of age;
- (3) Resident of this State for two years and of the county, city or town one year and of the precinct in which he offers to vote thirty days;
- \* (4) Registered at any time before the election in September; and
- (5) On the treasurer's list as having personally paid, at least six months prior to the second Tuesday in June (that is, before December 9, 1913) all State poll taxes assessed or assessable against him during three years next preceding the year 1914, that is, during 1913, 1912, 1911.

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\*The only question as to the above analysis is as to when one must be registered in order to be qualified to vote in the September election. My ruling is that if all the other provisions of the section be complied with, a person may register at any time before the election in September. My reasons will be stated below.

*"III. All such (?) other persons who shall become of lawful age at a time when no capitation tax was assessable against them for the year 1913 and shall thereafter register by reason of becoming of lawful age prior to the date herein fixed for the holding of said election."*

The relevancy of the word "such" in this section is not apparent. It seems to have no meaning whatever, because it does not refer to any of the prior classes.

Under this class, any person becoming of lawful age before the fourth Tuesday in September, and after the time when a capitation tax was assessable against him for the year 1913 (that is, after the 1st of February, 1913) who can register, will be allowed to vote. It will be noted that, under section 20 of the Constitution, such person will not be entitled to register unless he has paid one dollar and fifty cents in satisfaction of the first year's poll tax assessable against him, which he can pay at any time before he registers and he may register at any time before the election.

As indicated above, the only point on which there seems to be any doubt is the question as to when a person fulfilling all of the conditions under class II, but who has not registered, may be allowed to register in order to vote in the September election.

By section 78 of the Code (as amended by the Acts of 1906, p. 571), each registrar is required annually, on the third Tuesday in May at his voting place, to register the names of all qualified voters within his election district not previously registered in said district who shall apply to be registered; and thirty days prior to the November election, the registrar is required to sit one day for the purpose of amending and correcting the lists, at which any qualified voter applying and not previously registered may be added; and section 78 goes on to provide that "the registrar shall at any time previous to the regular days of registration, register any voter entitled to vote at the next succeeding election who may apply to him to be registered." Now, the provisions of section 4, quoted and analyzed above, require, first, that the qualifications of voters at such election shall be such as are prescribed by the general law, and in class II, set out above, all other persons who are *otherwise qualified* and have personally paid, etc., certain poll taxes shall be allowed to vote. Construing these provisions together, it seems to me that the general law must govern as to when parties who are on the treasurer's list, referred to in class II, above, may register. It may be noted in passing that parties coming under class III may register at any time prior to the date for holding the election. Certainly, it will be the duty of the registrar, under section 78 of the Code, quoted above, to register at any time before October 3, 1914, all voters who may be qualified to vote in the November election. Therefore, when the judges of election are called upon to decide who are entitled to vote in the September election, it will be their duty to determine whether the name of the person offering to vote is on the first "treasurer's list" required by section 11, that is, one who has paid at the proper time poll taxes for 1913, 1912 and 1911; or, if not, whether his name is on the second "treasurer's list" required by section 11, that is, as one who has paid at the proper time poll taxes required for 1912, 1911 and 1910; or, if he be not on either list, whether he be an old soldier on the permanent list of 1902-3. If he be on the first or second list aforesaid, then the judges must ascertain whether he has registered; and if the registrar is bound to register all persons otherwise

qualified up to October 3, 1914, I cannot see how the judges could prevent such a one from voting.

This construction is borne out by the fact that under the second paragraph of section 11, it is provided that any person who shall have paid his capitation tax, but whose name is omitted from the certified list may, after five days' written notice to the treasurer, apply to the circuit court, or the judge thereof in vacation, to have the same corrected and his name entered thereon. If he can have his name put on the treasurer's list, but has failed to register, he would be certainly allowed to register for the November election; and it would become necessary for the judges, in every case, to determine the date of registration of all persons who would be qualified to vote under class II, above.

The act does not seem to contemplate a new method of registration; in fact, the act does not provide any method of registration or for a new registration, but would rather seem to indicate that the general law will govern on the question of registration; and, as we have seen above, the general law will allow registration of persons qualified to vote up to thirty days prior to the November election. Therefore, I am of opinion a person who would be qualified under class II, set out above, may register at any time before the election in September.

Respectfully submitted,

JNO. GARLAND POLLARD,

*Attorney General of Virginia.*

**Intoxicating liquors—Enabling Act—Qualifications for signers of petition for State-wide prohibition election. Acts 1914, p. 20, Secs. 1, 5, 7.**

RICHMOND, VA., May 14, 1914.

*His Excellency,* HENRY C. STUART,  
*Governor of Virginia,*  
*Richmond, Va.*

DEAR SIR:

You have referred to this office a communication from Rev. James Cannon, Jr., asking for an interpretation of the sections in the Enabling Act which refer to the qualifications for signers for the State-wide prohibition election. I beg leave to submit the following in reply thereto:

Section 1 of the Enabling Act provides that "whenever such of the qualified voters of the State as shall be equal in number to one-fourth of the number of persons voting in the preceding regular November election of this State for general officers, shall petition the Governor as provided in this act for an election in this State on the question of prohibiting the manufacture for sale and the sale of intoxicating liquors in the State, the Governor shall within ten days after the receipt of a certificate from the Secretary of the Commonwealth \* \* \* issue a writ of election," etc.

Section 5 of the Enabling Act provides as follows:

"Petitions for the calling of an election under this act shall be substantially in the following form: To His Excellency, the Governor of Virginia: The undersigned petitioners, each of whom hereby declares that he is a qualified voter of the State of Virginia and that he has not within the past ninety days signed any other similar petition, hereby petition your Excellency to call a State election," etc.

Section 7 of the act makes it the duty of the Secretary of the Commonwealth to certify to the Governor the fact that "the number of voters of the

State required by this act have petitioned for an election under this act, accompanied by a statement showing the number so certified to have thus petitioned, and the total number of votes cast at the last preceding regular election.

It is perfectly clear, from section 1 quoted above, that the petition to the Governor must contain the signatures of "such of the qualified voters of the State as shall be equal in number to one-fourth of the number of persons voting at the preceding regular election;" and the only question is what is meant by a qualified voter of the State. Two solutions of this question are possible: Either the language means voters who were qualified to vote at the last general election, or voters who are qualified to vote under the terms of the act itself. My decision is in favor of the former construction for the following reasons: First. The term "qualified voters" in the first section is used in conjunction with the "persons voting at the preceding regular November election in this State for general State officers." Second. Under the decision of *Willis v. Kalmbach*, 109 Va. 475, the qualifications of voters for local option and other special elections need not be the same as the qualifications for voters in general elections. In other words, in fixing the qualifications for a special election, such as is contemplated by the Enabling Act, the legislature has the power to adopt special qualifications different from the general qualifications required by the Constitution for those desiring to vote for elective offices. Therefore, the term "qualified voters" in the Enabling Act would seem to be used in section 1 to refer, not to those who may be qualified to vote under the special law then being enacted, but to those who were qualified to vote at the last general election for general State offices. Third. The qualifications for voters under the Enabling Act may be divided into three classes; first, those who were qualified to vote at the regular November election, 1913; second, persons becoming of lawful age at a time when no capitation tax was assessable against them for the year 1913, and who shall thereafter register by reason of becoming of lawful age prior to the date for holding of the election under the Enabling Act; and a third class not necessary here to be analyzed, as I have in a previous letter thoroughly analyzed this class. It would be a doubtful construction which would allow a young man becoming of lawful age in August, 1914, to sign the petition for the Enabling Act, for at the time that he signed it he could certainly not be called a qualified voter, although he might be a qualified voter in the September election. And so, also, to allow any other person than one coming under the first class mentioned above to sign the petition would cast some doubt upon the regularity of the petition.

For the above reasons, I am constrained to hold, therefore, that only those voters who were qualified voters of the State at the regular election in November, 1913, in this State for general State officers should be allowed to sign said petitions.

Respectfully submitted,

CHRISTOPHER B. GARNETT,

*Assistant Attorney General of Virginia.*

**Intoxicating liquors—Jamaica ginger within section 1 of Byrd Bill.**

Hon. LANDON LOWRY,  
*Bedford City, Va.*

RICHMOND, VA., June 29, 1914.

DEAR MR. LOWRY:

Yours of June 27th received. Jamaica ginger, containing 98 per cent. alcohol, would undoubtedly come under the definition of intoxicating liquors as



given in section 1 of the Byrd Bill, as follows: "That all mixtures, preparations and liquids which will produce intoxication shall be deemed ardent spirits within the meaning of this act, and this definition shall include beer, malt liquors, whiskey, wine, brandy, or any mixture thereof, fruits preserved in ardent spirits and alcoholic bitters."

Very truly yours,

JNO. GARLAND POLLARD,  
*Attorney General of Virginia.*

**Intoxicating liquors—Petition for calling prohibition election public record.**

RICHMOND, VA., *July 8, 1914.*

Hon. B. O. JAMES,  
*Secretary of the Commonwealth,*  
*Richmond, Va.*

DEAR SIR:

Yours of July 8th has just been handed me by messenger, and in response to your request I am sending by the same messenger my reply thereto.

I am of the opinion that the certificates referred to by you are public records, and subject to the inspection of any person interested, provided always that such inspection shall be made at such time and in such manner as not to interfere with you or your office force in the performance of the duties imposed upon them by law.

Yours truly,

JNO. GARLAND POLLARD,  
*Attorney General of Virginia.*

**Intoxicating liquors—Enabling Act—Petition filed in the office of the Secretary of the Commonwealth is open to public inspection. Va. Code 1914, Sec. 3179.**

RICHMOND, VA., *July 11, 1914.*

Mr. JNO. D. GRANT, JR.,  
*Clerk,*  
*Accomac, Va.*

DEAR SIR:

In the absence of the Attorney General, who is detained at home on account of sickness, I am replying to your letter of July 9th, in which you enclose a letter from Ben. P. Owen, Jr., Secretary of the Virginia Association for Local Self Government, requesting you to send him a copy of all of those names who have signed the petition filed in your office asking for an election on September 22d for State-wide prohibition, and you request us to inform you whether it is your duty, under the law, to furnish the list asked for. You also state that you are not sure whether it is proper for you to furnish said list. Mr. Pollard has written an opinion to Hon. B. O. James that the lists in the office of the Secretary of the Commonwealth are public lists and open to public inspection; and I presume that he would hold the same in regard to the lists in your office. Consequently, I am of opinion that it would be entirely proper for you to furnish

said list, and under section 3179 of the Code it would seem to be your duty to do so, provided, of course, that you are paid the fees provided by law for such work.

Very truly yours,

CHRISTOPHER B. GARNETT,

*Assistant Attorney General.*

**Justices of the Peace—Disqualification by reason of being witness. Code, Secs. 96, 106, 3956, 3958, 3972.**

RICHMOND, VA., *February 24, 1914.*

Mr. H. G. MOFFETT,  
*Commonwealth's Attorney,*  
*Washington, Va.*

DEAR SIR:

I beg leave to acknowledge the receipt of your favor of recent date, requesting my opinion on the question as to what course may be taken in a misdemeanor where there is only one justice in a magisterial district and he is disqualified from acting by reason of being an important witness. The sections of the Code which seem to bear on this question are as follows, so far as they are pertinent:

Section 3956 provides that in case of a misdemeanor, where the warrant is issued by a justice or other person lawfully authorized to issue the said warrant in the county where the offense has been committed, the warrant shall be made returnable and tried in the magisterial district in which the offense was committed by a justice of the said district, unless for good cause shown by affidavit of the defendant the justice before whom the said warrant is made returnable shall, in his discretion, remove the trial to some point in another magisterial district of the said county.

Section 3958 provides as follows:

"In case of an arrest for a misdemeanor under a warrant issued by a justice or other person lawfully authorized to issue the said warrant in the county wherein the offense is committed, the officer making the arrest shall bring such person before, and return such warrant to, a justice in the magisterial district of the county in which the offense was committed as may be directed in the warrant."

Section 3972 provides as follows:

"A justice before whom complaint is made, or before whom a prisoner is brought, may associate with himself other justices of the county or corporation not exceeding two, and they may together execute the powers and duties before mentioned; but in case of disagreement in any opinion, the opinion of the justice to whom the complaint is made, or before whom the prisoner is brought, shall prevail when one justice is associated with him; but in case there be two justices associated with him, the opinion of a majority shall prevail."

Section 96 provides that in each magisterial district there shall be chosen every four years three justices of the peace.

Section 106 provides that when a vacancy shall occur in a district office, the same shall be filled by the court of the county, or judge thereof in vacation.

Reading all these sections together, and also that provision of section 97 allowing the circuit court to appoint additional justices when, in his opinion, the public service requires it, I would say that ordinarily the case which you have

in mind could not occur, that is to say, if one justice in a district was incapacitated to act, there would usually be two other justices in the same district before whom the offender could be brought.

As there is no other justice, however, in the district before whom the offender could be brought, on account of the fact that there are two vacancies in the office of justice of the peace in that district, the judge in vacation is authorized, by sections 106 and 107, to fill such vacancies. This, of course, would allow the offender to be tried as prescribed by sections 3956 and 3958, quoted above.

If this course be not taken, a liberal interpretation of section 3972, quoted above, would allow the justice who is to be a witness to associate with himself two other justices; and having associated them with himself, I think he might then retire from the case and allow these justices to decide the matter as they may see fit.

Answering the last query put in your letter, viz: if it should happen that there should be no justice of the peace in a certain district who would have jurisdiction to treat misdemeanors in that district? This query has been anticipated by my answer to the former one, to-wit: it would be the duty of the judge of the court, either in term time or in vacation, to fill the vacancies existing in said district by appointing three justices for said district. The vacancies having been filled, there would then be competent justices of the peace with jurisdiction as contemplated by sections 3956 and 3958, referred to above.

With best wishes, I am,

Very truly yours,

JNO. GARLAND POLLARD,

*Attorney General of Virginia.*

P. S.—Under the provisions of section 3956, if the defendant shall make affidavit showing therein good cause the justice may, in his discretion, remove the trial to some point in another magisterial district of the said county. I am not certain that this would authorize the justice in his own discretion to remove the trial without affidavit, but a liberal interpretation of the language would allow the justice to remove the trial to another magisterial district, and certainly if he felt incapacitated to act, on account of the fact that he was a witness, it would seem to me that this would be just as much reason for removing the trial as could be shown by an affidavit of the defendant.

**Lime Grinding Act of 1912—Lapse of appropriation. Constitution, Sec. 186.**

RICHMOND, VA., *February 11, 1914.*

*Hon. C. LEE MOORE,*

*Auditor of Public Accounts,*

*Richmond, Va.*

DEAR SIR:

At the request of the Governor, I am herewith rendering my opinion as to whether the \$30,000, appropriated under chapter 295 of Acts of 1912, commonly known as the "Lime-Grinding" act, is now available for use as provided in that chapter.

Section 186 of the Constitution provides that "no 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." Section 8 of the act referred to appropriates the sum of \$30,000 to be paid out of the treasury "as the same may be needed."

Upon inquiry, I find that there is now no need for said money to be paid out, inasmuch as no obligations have been contracted under the act, nor will any such obligations be contracted before the adjournment of the General Assembly.

I am, therefore, of opinion that the safest course to pursue would be to seek to have the General Assembly make a new appropriation.

Yours very truly,

JNO. GARLAND POLLARD,  
*Attorney General of Virginia.*

**Medicine and Surgery—Reciprocity agreements. Chapter 237, Acts 1912.**

RICHMOND, VA., *September 5, 1914.*

Dr. J. N. BARNEY,

*Secretary-Treasurer, Virginia State Board of Medical Examiners,*

*Fredericksburg, Va.*

DEAR SIR:

On my return to the city on yesterday, I found your letter of August 25th, referring to the case of Dr. W. I. Burns, of Roanoke, Va. The facts, as I understand them, are as follows: On June 23, 1914, Dr. W. I. Burns appeared before your Reciprocity Committee and was granted license by the board. Some days later, but before the license was actually sent to Dr. Burns, your committee received information which would lead them to believe that Dr. Burns was connected with a concern known as the United Doctors, who advertise in a manner deemed unprofessional. You now desire to know whether you are legally justified in withholding the delivery of the license.

I am totally uninformed as to the reciprocity agreements which exist between your board and the boards of other States. The only provision which I can find in the law on the subject is contained in section 6 of chapter 237 of the Acts of 1912, regulating the practice of medicine and surgery in the State of Virginia. In the section referred to there appears the following language:

"The board may, at its discretion, arrange for reciprocity with the authorities of other States and territories having requirements equal to those established by this act. Certificates may be granted applicants to practice under such reciprocity on payment of a fee of twenty-five dollars to the secretary of the board."

I presume that it was under the above provision that your committee acted and that Dr. Burns comes from some State with which you have a reciprocity agreement.

In the first place, under the language of the act, the board alone could grant or withhold the license, and that power cannot be delegated by the board to the Committee on Reciprocity. The question, therefore, arises, first, whether the board can reconsider its action, refuse the license and return the license fee after having once accepted the fee and passed favorably upon the license. It is manifest that such action could be taken (if at all) only in cases where the circumstances are such as would have justified the withholding of the license in the first instance. As I understand it, the board was and is still of opinion that Dr. Burns' education and training are such as to fit him to practice medicine

in the State, and that your only objection grows out of the fact that he is guilty of unprofessional conduct in associating himself with an advertising concern known as the United Doctors. While this conduct is wholly unprofessional, yet the law does not prohibit advertising, nor does it withhold the privilege of practicing from those who comply with the law, although their conduct may otherwise be unethical, according to the standards of the profession. I am, therefore, of the opinion that if Dr. W. I. Burns meets the standards fixed by your board in accordance with the law that he is entitled to his license to practice, notwithstanding the fact that he may be connected with an advertising concern known as the United Doctors. Of course, there may be other facts concerning Dr. Burns' case which I am not informed of and which, if known to me, might entirely change my opinion. This letter is based on the facts conveyed to me by yours of August 4th.

Yours truly,

JNO. GARLAND POLLARD,

*Attorney General of Virginia.*

**Military Fines—Act of 1912 to divert same from Literary Fund unconstitutional—History of the Literary Fund and of the Military Fund. Code, Secs. 374, 375a and 376; Constitution, Sec. 134.**

RICHMOND, VA., April 14, 1914.

Hon. C. LEE MOORE,

*Auditor of Public Accounts,  
Richmond, Va.*

DEAR SIR:

Replying to your letter of March 30, 1914, in regard to the question as to whether a certain paragraph of section 374 of the Code, as amended by Acts of 1912, chapter 310, p. 634, is constitutional or not, I beg leave to submit the following: Said paragraph reads as follows:

"All fines collected by said courts shall be turned into the treasury and placed to the credit of the Military Fund, and shall be accounted for by the civil officer collecting them as fines imposed by a justice of the peace are accounted for."

The fines referred to in said section are known as military fines, and the question which you submit is whether the paragraph quoted above is not void as contrary to section 134 of the Constitution, which defines the Literary Fund and provides as follows:

"The General Assembly shall set apart as a permanent and perpetual Literary Fund the present Literary Fund of the State \* \* \* and all fines collected for offenses committed against the State, and such other sums as the General Assembly may appropriate."

The question, therefore, to be determined is whether the military fines referred to in section 374, as amended, and in the other sections of chapter 21 of the Code relating to the militia, are fines for offenses against the State, for, if they are, then section 134 of the Constitution requires that they shall constitute a part of the Literary Fund.

It may be well to give a history of the Literary Fund, as found in the statutes of the State of Virginia, in order, if possible, that some light may be thrown on this subject.

The Literary Fund was established by an act approved February 2, 1810, chapter 14, p. 15, which provides, among other things:

"That all escheats, convictions, fines, penalties and forfeitures, and all rights in personal property accruing to the Commonwealth, as derelict, and having no rightful proprietor, be, and the same are hereby appropriated to the encouragement of learning; and that the Auditor of Public Accounts be, and he is hereby required to open an account to be designated the Literary Fund. To which he shall carry every payment hereafter made into the treasury on account of any escheat or confiscation, which has happened or may happen, or any fine, penalty or forfeiture which has been or may be imposed, or which may accrue; provided always, that this act shall not apply to militia fines."

By an act passed February 11, 1811, chapter 19, p. 10, it is provided:

"That all fines and pecuniary penalties heretofore imposed by any act of Assembly, or declared by the common law and now recoverable under the laws of the Commonwealth, of whatever nature or kind they may be (except militia fines), and to whatever use or purpose appropriated, shall accrue to the Commonwealth, be paid into the public treasury, and appropriated to the encouragement of learning in the manner prescribed in the above act" (that is, the act just quoted).

The Code of 1849, chapter 79, section 2, p. 366, provided:

"To the Literary Fund shall belong whatever shall accrue to the State from escheats, forfeitures or fines (except militia fines)," etc.

The Code of 1860, p. 416, has exactly the same provision as the Code of 1849 quoted above.

Up to the Constitution of 1869, the statutes provided what constituted the Literary Fund, but after that time the Literary Fund is defined by the Constitution. Accordingly, the Constitution of 1869, article VIII, section 7, provides:

"The General Assembly shall set apart as a permanent and perpetual Literary Fund the present Literary Fund of the State, the proceeds of all public lands donated by Congress for public school purposes, of all escheated property, of all waste and unappropriated lands, of all property accruing to the State by forfeitures and all fines collected for offenses committed against the State, and such other sums as the General Assembly may appropriate."

Thus, for the first time, the provision for the Literary Fund is put into the Constitution, and in that provision the exception theretofore found in all the statutes, to wit, "militia fines," is omitted from the provision defining the Literary Fund.

Practically the same provision is contained in the Constitution of 1902 as is contained in the Constitution of 1869, set out above, and the question which we are to decide, therefore, is whether the omission in the Constitution of the exception always found in the statutes was intended to change the law on this subject, and whether a fine for an offense against the militia laws is a fine for an offense against the State.

When we come to examine the history of the Military Fund, we find that by an act passed March 9, 1819, Code of 1819, chapter 35, p. 93, being an act to reduce into one all acts and parts of acts for regulating the militia of the Commonwealth, section 81 thereof provides:

"Whatever fines shall be thus paid into the public treasury by virtue of this act shall be held as a fund for defraying the salaries of the officers herein mentioned and equipping and furnishing the militia with all necessary apparatus for the defence and security of the State, and the treasurer shall keep a separate book for the same and the expenditure thereof."

But by Acts of 1883-4, chapter 451, p. 612, being an act to provide for the organization, maintenance and government of the Virginia volunteers, and to repeal existing laws concerning the volunteer militia section 81 thereof provided:

"To provide for carrying into effect all provisions of this law it shall be the duty of the Auditor to set aside annually one-half of one percentum of all receipts into the treasury derived from regular sources of income *except the school fund*, which sum so set aside shall constitute and be known as the Military Fund, which is hereby appropriated to the uses and purposes set forth in this act; provided, further, that no other or further appropriation or sum of money shall be made, expended or asked for for the purpose of carrying into operation the provisions of this act or any of them."

This latter act was carried into the Code of 1887, practically unchanged, as section 376 thereof.

Section 375a of the Code of 1904 provided as follows:

"The sum of one-half of one percentum of all receipts into the treasury derived from regular sources of income, except the school fund, be and the same is hereby appropriated for the support, maintenance and instruction of the Virginia volunteers. The said sum shall be known as the Military Fund and shall be controlled, expended and disbursed by the military board as provided in section 377 of the Code of Virginia."

Section 376 of the Code, as amended by Acts of 1912, p. 622, so far as applicable, reads as follows:

"For carrying into operation the provisions of this chapter, it shall be the duty of the Auditor of Public Accounts to set aside annually to the credit of the Adjutant-General one and one-half per centum of all receipts into the treasury derived from regular sources of income, except the school fund, which sum here set aside shall constitute and be known as the Military Fund, which is hereby appropriated for the uses and purposes set forth in this chapter; provided, however, that no other appropriations shall be made for the purpose aforesaid."

It will be seen, therefore, that there has been a change of policy not only as to what constitutes the Literary Fund, but also as to what constitutes the Military Fund.

Formerly, it was specifically provided that the Literary Fund should be composed, among other things, of fines, except military fines; whereas, now the law is that all fines for offenses against the State shall go to the Literary Fund. So formerly the Military Fund consisted entirely of fines for violation of the military law, whereas now the Military Fund is composed of a certain per cent. of all receipts into the treasury derived from regular sources of income, except the school fund; and the purpose of the law seems to be to limit the appropriation for the latter fund to this certain percentage.

My conclusion, therefore, is that military fines are "fines collected for offenses committed against the State" within the meaning of the constitutional provision above quoted; and that, therefore, the provision of the Act of 1912 attempting to divert these fines to the Military Fund is unconstitutional and void.

Yours very truly,

JNO. GARLAND POLLARD,  
*Attorney General of Virginia.*

**Notaries Public fees. Code, Sec. 3500, as amended; Tax Bill, Sec. 16.**

Mr. R. M. DAUGHERTY,  
Nickelsville, Va.

RICHMOND, VA., February 10, 1914.

DEAR SIR:

Replying to your letter, addressed to the previous Attorney General, Hon. Samuel W. Williams, dated December 13, 1913, in regard to the fees of notaries public: section 3500 of the Code of Virginia, 1904, as amended by the Acts of 1908, p. 70, provides that the fees of a notary public for administering and certifying an oath shall be twenty-five cents, and for taking and certifying the acknowledgment of any deed, or other writing, shall be fifty cents. If the paper which was certified by the notary public was in form merely an affidavit, his proper fee was twenty-five cents; but if it was for taking and certifying an acknowledgment, his proper fee was fifty cents.

Section 16 of the Tax Bill, so far as applicable to this matter, reads as follows:

"When the seal of a notary public is affixed to any paper, except in the cases exempted by law, the tax shall be as follows: \* \* \* \$1.00."

Section 589 of the Code provides as follows:

"No tax shall be charged when a seal is annexed to any paper or document to be used in obtaining the benefit of a pension, revolutionary claim, money due on account of military service or land bounty, under any act of Congress, or under a law of this or any other State, or when the seal is annexed by a notary to an affidavit or deposition."

Therefore, whether it was necessary for the notary to use the adhesive stamp required by section 16, and for which the additional sum of \$1.00 must be paid, is to be determined by the question as to whether the paper contained an affidavit or an acknowledgment. If the paper contained an affidavit, section 589, quoted above, provides that no tax shall be charged, and, therefore, no adhesive stamp was required. If the paper contained an acknowledgment and the notary took the acknowledgment, then it was the duty of the notary to procure from the county treasurer an adhesive stamp, paying therefor the sum of \$1.00, and, therefore, the notary would have had the right to charge, in addition to his usual fee, the sum of \$1.00 for the adhesive stamp.

It may be noted that the same section 16 of the Tax Bill provides as follows:

"In all cases in which no tax is required by law, the officer affixing the seal shall certify it is a case in which, by the laws of Virginia, no tax is required upon the seal so affixed by him."

Very truly yours,

JNO. GARLAND POLLARD,  
*Attorney General of Virginia.*

**Notaries Public—Right to take acknowledgment outside of his county or city. Code, Sec. 923.**

RICHMOND, VA., July 23, 1914.

Mr. W. S. McCLANAHAN,  
Roanoke, Va.

DEAR SIR:

Replying to your favor of July 15th, in which you request me to advise you whether a person residing in the county outside of the city limits may be com-



missioned a notary public for the city, I beg to submit the following: Section 923 of the Code, so far as applicable to this question, provides:

"The Governor shall appoint in and for the separate counties and cities of the State as many notaries as to him may seem proper, who shall hold office for the term of four years, and who shall exercise the powers and functions of conservators of the peace, and he may appoint the same person to serve for two or more counties and cities: provided, that notaries in cities and in counties in which cities or parts thereof are located shall have authority to act as such in each of said localities, or for one county or city."

Under the *proviso* quoted above, it would seem clear that a person residing in Roanoke county may be appointed a notary for Roanoke city, and he will be ex-officio notary for Roanoke county; or vice versa, he may be appointed for Roanoke county and he will be ex-officio notary for Roanoke city. Notaries public for Richmond city often reside in Henrico county, and this has been the custom for many years in this locality.

Very truly yours,

JNO. GARLAND POLLARD,  
*Attorney General of Virginia.*

**Pensions—Property owned by beneficiary and wife. Acts 1912, p. 384.**

RICHMOND, VA., September 2, 1914.

Hon. C. LEE MOORE,  
*Auditor of Public Accounts,  
Richmond, Va.*

DEAR SIR:

Continued absence from the city has prevented earlier reply to your letter of August 20th, relative to the claim for pension made by Mr. A. J. Lane, of James City county. It appears from your letter, and the accompanying letter of Hon. Norvell L. Henley, Commonwealth's Attorney for James City county, that Mr. A. J. Lane and his wife own a life estate in property assessed at \$850.00. Section 6 of the Pension Act (1912, page 384) withholds the benefit of that act from an applicant "who owns in his or her own right, or where there is held in trust for his or her own benefit, or where the wife owns, or there is held in trust for the benefit, estate or property, either real, personal or mixed, in fee or for life, of the assessed value of \$750.00." In this particular case, neither the applicant nor his wife, alone, own a life estate in property of the assessed value of as much as \$750.00, but the two jointly own a life estate in property assessed at \$850.00; and, under a well known rule of law, their respective interests in the property would be one-half each (there being no provision to the contrary in the deed under which the estate was derived). Mr. Lane does not own a life estate in property valued at \$850.00, but owns only one-half interest in the same. I am, therefore, of the opinion that, under the facts contained in your letter and that of Mr. Henley, Mr. A. J. Lane is entitled to draw a pension under the act referred to.

I am aware of the illogical consequences of this construction, but I am forced to the conclusion above indicated by the language of the statute which must be liberally construed in favor of the applicant, in accordance with the

rule laid down at an early date by our court of last resort, to the effect that statutes intended to reward soldiers for military services rendered the State must be liberally construed in favor of the soldier. *Innes v. Roane*, 4 Call, 379, 399.

Yours truly,

JNO. GARLAND POLLARD,  
*Attorney General of Virginia.*

**Public health—Quarantine lines. Code, Secs. 1599a and 2215a.**

Mr. T. S. HARRIS,  
*Harris Grove, Va.*

RICHMOND, VA., August 22, 1914.

DEAR SIR:

Replying to your letter of August 14th, I beg to submit the following:

The sections of the Code which bear on the question submitted by your letter are as follows:

"Sec. 1599a. \* \* \* It shall be the duty of the said live stock board to protect the domestic animals of the State from all contagious and infectious diseases of a malignant character whether said diseases exist in the State or elsewhere, and for this purpose they are hereby authorized and empowered to establish and maintain and enforce such quarantine lines and sanitary rules and regulations as they may deem necessary."

"\* \* \* and if said disease is found to be of a malignant, contagious or infectious character, they shall direct and enforce such quarantine lines and sanitary regulations as are necessary to prevent the spread of any such disease."

"\* \* \* and should such investigation show a reasonable probability that a domestic animal is affected with a contagious or infectious disease, the supervisors shall immediately establish such temporary quarantine as may be necessary to check the spread of the disease."

"Sec. 2215a. The inspectors of the bureau of animal industry of the United States shall have the right of inspection, quarantine and condemnation of animals affected with any contagious, infectious or communicable disease, or suspected to be so affected or that have been exposed to any such disease."

Under the above sections, the proper authorities are empowered to establish, maintain and enforce such quarantine lines and sanitary rules and regulations as they may deem necessary in order to prevent the spread of disease. I can find nothing therein which limits the power of the authorities to establish a line once; and, therefore, I would conclude that the proper authorities may establish quarantine lines as often as they may deem it necessary in order to prevent the spread of disease.

Very truly yours,

JNO. GARLAND POLLARD,  
*Attorney General of Virginia.*

**Public officers—Deputy Sheriff and Notary Public. Constitution, Sec. 12; Code, Sec. 923.**

Mr. S. FLOYD LANDRETH,  
*Galax, Va.*

RICHMOND, VA., June 25, 1914.

DEAR MR. LANDRETH:

Your letter of June 24, 1914, is just to hand. You ask me to inform you whether there is any law preventing a deputy sheriff from being appointed a notary public.

In section 12 of the Constitution, it is provided that men and women eighteen years of age shall be eligible to the office of notary public, and qualified to execute the bonds required of them in that capacity. Section 923 of the Code provides for the appointment of notaries public by the Governor, but there is no qualification upon the aforesaid provision of the Constitution; and I can find no statute passed either by the last legislature or any previous legislature which would prevent the Governor from appointing a deputy sheriff as a notary public. Therefore, I must conclude that it would be entirely proper for Mr. Higgins, the deputy sheriff in Grayson county, to apply for appointment to such office.

With best wishes, I am,

Very truly yours,

JNO. GARLAND POLLARD,

*Attorney General of Virginia.*

**Public Roads—Constitutionality of Bedford Road Law. Acts 1914, p. 531; Constitution, Secs. 63 and 65; Code, 944a.**

RICHMOND, VA., *March 25, 1914.*

*His Excellency, HENRY C. STUART,*  
*Governor of Virginia,*  
*Richmond, Va.*

DEAR SIR:

I beg to acknowledge the receipt of yours of March 19th, asking my opinion as to the constitutionality of an act entitled, "An act to authorize the board of supervisors of Bedford county, Virginia, to adopt any laws, or parts of laws, in force in any county of this State for repairing and keeping in order the public roads and bridges."

In the first place, it should be said that the act referred to does not fall within any one of the twenty classes of cases in which local and special legislation is prohibited by section 63 of the Constitution.

For a proper determination of this question, we must consider section 65 of the Constitution, which reads as follows:

"The General Assembly may by general laws confer upon the boards of supervisors of counties and the councils of cities and towns such powers of local and special legislation as it may from time to time deem expedient, not inconsistent with the limitations contained in this Constitution."

Section 944a of the Code (as amended by Acts of 1908, p. 408) contains the general road law of the State. Clause 47 of said Act, as amended, reads as follows:

"The boards of supervisors of any county which has not now a special road law may by a recorded vote adopt instead of this act the special road law of any other county in this State, or any part or parts of the special road law of any other county or counties in this State; the said board, or its successors, having the power at any time to rescind and annul any such road law as it may have adopted under this act or any part thereof."

Thus it may be seen that if the county of Bedford has not a special road law, the specific power is given in the above statute to its board of supervisors which is given by the bill quoted in your letter and referred to above.

By Acts of 1897-8, p. 1321, I find that a law was passed for classification and working the roads of Bedford county; and I have not been able to find

where this law has been repealed. Therefore, I take it for granted that Bedford county is a county in which there is now a special road law.

Now, the effect of the bill in question is to allow a specific (Bedford) county, with a special road law, to adopt another local or special law in lieu of the one authorized by the legislature—a right which is denied other counties having special road laws.

The question, therefore, arises whether the General Assembly, in the passage of the act in question, is attempting by *special* law to confer upon the board of supervisors of Bedford county powers of local and special legislation in violation of section 65 of the Constitution which, as above stated, provides that such powers may be conferred by general laws.

The provision of clause 47 of section 944a of the Code, quoted above, presents an anomaly, in that that section, which is a general law, confers the power of local legislation upon one class of counties, to wit, those having no special law, and yet withholds the same power from counties to which a special law has been granted by the legislature. So that we have this peculiar result that, although there is a general law in the Code in regard to the maintenance and repair of roads, every county to which a special law has not been granted by the legislature may abrogate the general law and avail itself of any one or more of the special road laws, while a county to which the legislature has granted a special road law cannot avail itself of the general law, nor has it any right to adopt any other special law. And, what is more remarkable, a county not having a special road law may not only free itself from the provisions of the general law and avail itself of the provisions of any special law in force in the State, but having tried such special law, it may rescind and annul the same and put itself under the provisions of the general law.

In conclusion, I would say that this act does not belong to that class of laws which can be said to be clearly and unmistakably in violation of the Constitution. The question propounded presents a peculiar situation which, according to my investigation, finds no parallel in the reported cases. Under such circumstances, it is difficult to predict what the decision of the courts would be as to the constitutionality of the act in question. But, from an examination of the same, it appears that no great harm could accrue from allowing the will of the legislature, as expressed in the act, to go into effect, subject to the review of the courts as to its constitutionality should the people affected see fit to invoke judicial authority to finally determine the question.

Very truly yours,

JNO. GARLAND POLLARD,  
*Attorney General of Virginia.*

**Public Roads—May the clerk of a county bid for the contract to construct a public road within his county? Va. Code 1904, Secs. 822, 834f.**

RICHMOND, VA., May 5, 1914

Hon. GEO. P. COLEMAN,  
*State Highway Commissioner,*  
*Richmond, Va.*

DEAR SIR:

You have referred to this office the question as to whether the clerk of a county may bid for the contract to construct a road within his county.

Section 822, Va. Code 1904, provides that *no supervisor, superintendent of the poor, overseer of the poor, constable, special officer or any paid officer of the county, shall become interested, directly or indirectly, in any contract, or in the profits of any contract, made by or with any officer, agent, commissioner or person acting on behalf of the supervisors, or superintendent of the poor of the county, or any overseer of the poor therein, or in the sale or furnishing of supplies or materials to such county, and shall not become interested, directly or indirectly, in any contract, or in the profits of any contract made by or with any officer, agent, commissioner, trustee or overseer for working and keeping in repair the public roads of the county.*

By the express terms of the above section, you will observe that paid officers of the county are prevented from being interested, directly or indirectly, in any contract made by or with any officer or other person acting on behalf of the board of supervisors; and that it is further expressly provided that no such person shall become interested, directly or indirectly, in any contract made in regard to working the public roads of the county. Therefore, the only question is whether a clerk is a paid officer of the county or not.

By section 834f, which provides that the supervisors shall determine what annual allowance shall be made to the clerks payable out of the county treasury, it is perfectly clear that a clerk of the county is a paid officer of the county, and, therefore, that he is prevented by section 822, quoted above, from bidding on a contract for the construction or working of the roads in the county.

Very truly yours,

CHRISTOPHER B. GARNETT,

*Assistant Attorney General.*

**Public Roads—Construction of Act. Code, Sec. 944a, as amended.**

Hon. N. S. TURNBULL, JR.,  
*Commonwealth's Attorney,*  
*Victoria, Va.*

RICHMOND, VA., May 8, 1914.

DEAR SIR:

I owe you an apology for not replying sooner to your letter inquiring as to the proper construction of the road law, section 944a as amended. The question which you put to me is, as I understand it, as follows: The board of supervisors of Lunenburg county condemned a certain road under the provisions of section 944a, as amended. Land owners do not wish the road opened and have appealed to the circuit court, as provided by section 5 of said law. Query, does this appeal act so as to prevent the county from proceeding to open the said road at once, or will the opening of said road have to be postponed until the action of the circuit court on said appeal?

Section 5, as amended by Acts of 1910, p. 251, so far as applicable to this question, reads as follows:

"If such applicant, proprietor, or tenant, is dissatisfied with the decision of the board of supervisors in respect to the opening or location of the proposed road or the amount of compensation allowed, he may by right appeal to the circuit court of said county, and the said court shall hear the matter *de novo*, with the further right of appeal as provided by general law. Upon the hearing of said appeal, said court shall ascertain, and by its order determine, first, whether the said road ought to be established at all; and if so, where located; second, if established, the amount of compensation," etc.

As by the very terms of the act, the matter is heard in the circuit court *de novo* and the circuit court is to determine, first, whether the road ought to be established at all or not, it seems perfectly clear to me that the matter of working on the road would have to be postponed until the decision of the circuit court, for by the very terms of the act quoted above the circuit court may decide that the road shall not be opened at all.

Very truly yours,

JNO. GARLAND POLLARD,

*Attorney General of Virginia.*

**Public Roads—Bond issue of Kempsville district, Princess Anne county, under Chapter 74 of Acts 1914.**

Hon. G. P. COLEMAN,  
*State Highway Commissioner,  
Richmond, Va.*

RICHMOND, VA., July 7, 1914.

DEAR SIR:

Referring to your inquiry concerning chapter 74 of the Acts of 1914 relating to the issuing of road bonds in Kempsville magisterial district, Princess Anne county, will say that I am of the opinion that, unless the supervisors already know of purchasers who would take these bonds, it would be inadvisable to proceed to issue the same under the act referred to, for the reason that said act contains several features which, in my opinion, would affect the market value of the bonds, and perhaps make it impossible to dispose of them. In the first place, the issue of the bonds in proportion to the taxable real and personal property is unusually high; so high, indeed, that I fear that regular purchasers of bonds would not be willing to buy these particular bonds because there are offered on the market so many other bonds the issue of which is in smaller proportion to the taxable values.

In addition to this, the act contains a provision by which an election shall be "held for the purpose upon an order of the circuit court of said county, or the judge thereof in vacation, at any time within sixty days after the enactment hereof." This language raises two questions, first, whether the bill was enacted on the date of its approval, to wit, March 13, 1914, or whether it was enacted on the date when it went into effect, to wit, June 19, 1914. If the former is the date of the enactment, it is manifestly too late now to hold the election; and while I am of the opinion that the courts would decide, under the circumstances, that the date of the enactment was June 19th, yet a question may arise in the minds of the bond purchasers as to the true meaning of the act, and bond buyers will avoid the purchase of bonds about which there is any question, especially since the market is so full of bonds about which there is no question. There is also another ambiguity in the language quoted from the act, in that it is not clear whether the judge must order the election within sixty days after the enactment, or whether the election must be held within sixty days after the enactment.

In view of these considerations, it would seem wise for this magisterial district to proceed to issue bonds under the general law, under which law many bonds have already been issued and concerning which no question will now be raised.

Very truly yours,

JNO. GARLAND POLLARD,

*Attorney General of Virginia.*

**Public roads—Bond issue by county or district—Authority of the State Highway Commissioner in regard to payments made out of funds derived from county and district bond issues. Acts 1910, ch. 25, 46, cls. 7; Sup. 1910, p. 864.**

RICHMOND, VA., August 21, 1914.

Hon. GEO. P. COLEMAN,  
State Highway Commissioner,  
Richmond, Va.

DEAR SIR:

I have your letter of August 14th, requesting me to advise you as to the construction of the law relating to payments made out of funds derived from county and district bond issues. You state that you believe that the law contemplates complete supervision of all expenditures from the proceeds of such bond issues by your department jointly with the local road authorities, as without such control of payments your department would have no power to carry out the provisions of the law relative to having the work done according to your plans and specifications. You, therefore, suggest that before the board of supervisors should issue their warrant against money realized from such bond issues, your department should first certify to the board as follows:

"RICHMOND, VA., ....., 19....  
"To the Local Road Authorities of the County of ....., Virginia:  
"This is to certify that work has been done on the road between ..... and ..... in the county during the month of ....., 19...., on which there is now due and payable to ..... out of the proceeds of the bond issue of ..... district in the hands of the county treasurer for the permanent improvement of roads, the sum of ..... dollars as shown by estimate No. .... of ....., resident engineer. State aid is applicable to this work to the amount of 50 per cent. of this expenditure.

.....  
State Highway Commissioner."

Under chapter 70 of the Acts of 1908, as amended by chapter 25 of the Acts of 1910, magisterial districts or counties of the State are authorized to hold an election to provide for the issuing of county bonds for permanent road or bridge improvement. Under clause 9 of said act if the election has resulted favorably to the bond issue and bonds have been issued, the local road authorities are required to apply to the State Highway Commissioner for, or shall employ, a competent road engineer, whose selection shall be approved by the State Highway Commissioner, to make plans and specifications of all roads or bridges to be built or permanently improved, to supervise the building of the same, and to let the work to the highest bidder, after due access to the specifications and public advertisement for bids in such publication as the State Highway Commissioner may deem proper; "and such State Highway Commissioner and the local road authorities, acting jointly, may award such contract to the lowest responsible bidder." The commissioner and the local road authorities are authorized to reject all bids; and before entering into a contract with any other bidder than the local road authorities, the statute directs that they shall require a bond, with penalty; and it is further provided that "partial payments may be provided for in the contract and paid in the manner herein provided when

certified to by such commissioner or road engineer approved by him to an amount not exceeding ninety per centum of the value of the work done, and ten per centum of the contract price shall be retained until ninety days after the entire work has been accepted and open to the public. The said contractor shall conform to all reasonable regulations and directions of the said highway commissioner or road engineer. *The board of supervisors or local road authorities shall have no power or authority to expend the money derived from the bond sales as aforesaid except to pay for materials furnished and work done under supervision and contract as aforesaid.*"

Thus it is to be observed that the commissioner or road engineer is required, in terms, to approve all partial payments to an amount not exceeding ninety per centum of the value of the work; and I take it that when the statute requires that ten per centum of the contract price shall be retained until ninety days after the entire work has been accepted and opened to the public, the implication is certain and sure that before the ten per centum of the contract price shall be paid a like certificate from the commissioner or road engineer must be given. Thus the statute itself seems to answer your question in the affirmative, and this conclusion is strengthened by the closing sentence of the statute quoted above, that the board of supervisors or local road authorities have no power or authority to expend money derived from the bond sales as aforesaid except to pay for materials furnished and work done under supervision and contract as aforesaid. The form of certificate which has been suggested by you seems to be correct.

As State aid is applicable to roads constructed under bond issues to the extent of fifty per cent. thereof, it is well to note that, under the State Aid Law, chapter 76, Acts 1908, amended by chapter 46, Acts 1910, clause 7 provides that State aid money "shall be paid out of the treasury of the county upon the warrants of the local road authorities thereof, issued upon the certificates of the State Highway Commissioner, and such warrants shall be attached to, or made out on the back of, and shall not be paid by the county treasurer, nor shall he be entitled to receive credit for the payment thereof, unless such warrants be so accompanied by such certificate when presented to such treasurer for payment and when sought to be used by him as vouchers." Under analogy to the above act, if not under its express terms, it would be well for the certificate suggested by you to be either attached to or made out on the back of the warrants of the board of supervisors.

There is one paragraph in your letter which I cannot leave unnoticed. You state "that in some counties members of the boards of supervisors and attorneys for the commonwealth are interested in the outcome of contracts or are charged with being in the employ of contractors and that it is the duty of this department to see that under such conditions no improper payments are made, and that the county receives full value for every dollar expended." The language above quoted makes a grave charge against public officials, and if you have information of this character, it seems to me to be incumbent upon you to make said information specific and to produce it before the proper tribunal, so that the interests of the public may be safeguarded.

Very truly yours,

CHRISTOPHER B. GARNETT,  
*Assistant Attorney General of Virginia.*



**Public schools—Constitutional law—"Annual tax on property"—Does it apply to receipts from clerks of courts, receipts from franchise tax, registration fees, etc. Const. 1902, Secs. 135, 177; Va. Code 1904, Sec. 564; Tax Bill, Sec. 104.**

Hon. R. C. STEARNES,

RICHMOND, VA., February 12, 1914.

*Superintendent Public Instruction,*

*Richmond, Va.*

DEAR SIR:

You refer to me the following question:

Should the provisions of section 135 of the Constitution, requiring the General Assembly to apply an annual tax on property of not less than one nor more than five mills on the dollar to the schools of the primary and grammar grades, be so construed as to apply to receipts from clerks of courts, receipts from franchise taxes, registration fees, licenses, sale of adhesive stamps, and also to receipts from water, light and heating companies, insurance companies, dispensaries and from the oyster tax?

Section 135 of the Constitution provides as follows:

"Sec. 135. The General Assembly shall apply the annual interest on the literary fund; that portion of the capitation tax provided for in the Constitution to be paid into the State treasury, and not returnable to the counties and cities; and an annual tax on property of not less than one nor more than five mills on the dollar to the schools of the primary and grammar grades, for the equal benefit of all of the people of the State, to be apportioned on a basis of school population; the number of children between the ages of seven and twenty years in each school district to be the basis of such apportionment, but if at any time the several kinds or classes of property shall be segregated for the purposes of taxation, so as to specify and determine upon what subjects State taxes and upon what subjects local taxes may be levied, then the General Assembly may otherwise provide for a fixed appropriation of State revenue to the support of the schools not less than that provided in this section."

In order properly to answer your question, it is necessary to construe the meaning of the phrase "an annual tax on property." We find that, in another section of the Constitution, a tax of one mill on the dollar of the assessed value of lands and improvements thereon and of intangible property not exempt from taxation, is required to be applied to the support of the public free schools of the State. (See section 189 of the Constitution). Thus we have in the Constitution itself a provision which throws some light upon the construction which should be put on the phrase "an annual tax on property."

So far as some of the items indicated by you, in the annual report of the Auditor of Public Accounts for the fiscal year ending September 30, 1913, (pp. 1 to 3, inclusive), are concerned, to-wit: Receipts from the sale of adhesive stamps, receipts from clerks of courts—on fees on suits, the recordation of deeds, administration of estates, etc., I cannot conceive that these could by any means be construed to come under the definition of a tax upon property; but, even if under some construction of the term they might be included therein, there can be no reason for making a distinction between these taxes and the registration fees and franchise taxes of corporations, or between these fees and licenses. Therefore, we will now address ourselves to the question of determining specifically whether the registration and franchise fees of corporations and the various fees for licenses can be held to be "an annual tax on property" under section 135 of the Constitution.

The word "property," in its largest sense, is a general term and extends to every species of valuable right and interest, including real and personal property, easements, franchises and other incorporeal hereditaments.

*Lawrence v. Hennesy*, 65 S. W., 717-719; 165 Mo., 659;

*Scranton v. Wheeler*, 179 U. S., 141;

*C. & O. Canal Co. v. B. & O. R. R. Co.*, Md. 4, Gill & J. 1, 145;

*Stuart v. Hargrove*, 23 Ala., 437-439.

And wherever a franchise is valued, in order that it may be taxed, then the courts always hold that a *tax on a franchise* must be construed to be a tax on property within the provisions of the constitutions which require that the tax on property shall be uniform.

In *Kaiser Land and Fruit Co. v. Curry*, 155 Cal. 638, 103 Pac. 341, it was held that the license tax imposed by statute upon corporations doing business in the State was not a tax upon property within the meaning of the Constitution requiring all property to be taxed in proportion to its value.

In this case, the court distinguished between *license tax* and the *corporate franchise or right to exist as a corporation*, and held that the latter is property while the former is not a tax upon property within the constitutional provision aforesaid.

In discussing the same question, the Court of Errors and Appeals of New Jersey said:

"Although the statute designates an imposition of this kind as a license fee or franchise tax, it plainly is not a *tax upon corporate franchises*. (Italics ours). In fact, strictly speaking, it is not a tax at all, nor has it the elements of one. It is in reality an arbitrary imposition laid upon the corporation *without regard to the value of its property or franchises*, and without regard to whether it exercises the latter or not solely as a condition to its continued existence." *In re U. S. Car Co.*, 60 N. J. Eq. 516, 43 Atl., 573.

In *Standard Underground Cable Co. v. Attorney General*, 46 N. J. Eq. 270, 19 Atl. 733, 19 Am. St. Rept. 394, it was held that the act imposing a license or franchise tax upon corporations was not within the constitutional provisions requiring that "property shall be assessed for taxes under general laws and by uniform rules according to its true value." The court held that this license tax was manifestly not a tax upon property, saying:

"The law in question imposed a tax on certain corporations by way of a license for exercising corporate franchises. \* \* \* As a license or franchise tax, it is not within the equality clause of the Constitution referred to. In those States in the Union having Constitutional provisions requiring equality in the taxation of property, it is uniformly held that such provisions do not abridge or apply to the legislative power of indirect taxation by taxes on franchise privileges, trades and occupations," citing *Cooley on Taxation*, (2d ed.) 176; *State Board of Assessors v. Railroad Co.*, 48 N. J. Law 146, 347, 4 Atl. 578.

So also the charge imposed by the State upon foreign corporations for doing business in the State is not a tax on property.

*Ashley v. Ryan*, 153 U. S. 436, 38 L. ed. 773;

Gray's Limitations on Taxation Power, sec. 57.

So also it has been held that a tax on a business or occupation is not a tax on property within the constitutional provisions requiring that taxation shall be according to value.

*Atlanta Nat'l Building Ass'n, etc. v. Stewart*, 109 Ga., 35 S. E., 73.

In discussing the question as to what taxes are affected by the constitutional provisions requiring taxation according to value, in 37 Cyc. 761, this rule is laid down:

"The constitutional provisions requiring that taxation shall be according to value do not apply to every species of taxation and are ordinarily held to apply only to ordinary taxes for purposes of general revenue and which are levied upon property. So it has been held that such provisions do not apply to corporate franchises or privileged taxes, or taxes upon their gross receipts, or to business or occupation taxes, or poll taxes, or to such as are levied under the police power or by way of license fees, which include specific or per capita taxes on dogs, or to fees of public officers, or inspection fees, or to assessments for local improvements or a bonus for renewing a corporate charter."

Thus we see that while corporate franchises are a species of property, and where they are taxed as such must be taxed in a uniform manner under the provisions of the Constitution, we also perceive that the so-called franchise taxes, or license taxes, are not taxes on property within the sense that that term is used in the constitutional provisions.

Our own constitutional provision (section 135) as we have seen provides that "the General Assembly shall apply \* \* \* an annual tax on property of not less than one nor more than five mills on the dollar to the schools of the primary and grammar grades, etc."

While the decisions we have been studying are not directly in point, they are so persuasive as to prevent us from coming to any other conclusion than that the annual tax on property in our provision does not include license fees of any kind, franchise taxes or any such taxes as are enumerated in the above question.

Suppose, for the sake of argument, that we were to concede that the constitutional provision does apply to franchise taxes, how would the General Assembly apply an annual tax on a franchise tax, or how could the constitutional provision be construed to mean that the General Assembly should set apart a certain percentage of franchise taxes, or poll taxes or license taxes for the purpose aforesaid? The law requires that a tax shall be made on property directly and not that a percentage of taxes already assessed shall be set apart.

That this construction of section 135 of the Constitution is correct is made clear when we consider section 177 of the Constitution, which provides as follows:

"Each such railway or canal corporation, including also any such as is exempt from taxation as to its works, visible property, or profits, shall also pay an annual State franchise tax equal to one per centum upon the gross receipts hereinafter specified in section one hundred and seventy eight, for the privilege of exercising its franchises in this State which, with the tax provided for in section one hundred and seventy-six, shall be in lieu of all other taxes or license charges whatsoever upon the franchises of such corporation, the shares of stock issued by it, and upon its property assessed under section one hundred and seventy-six. (Section 176 referred to provides that the State Corporation Commission shall assess annually the value of the roadbed, rolling stock and personal property of railroad corporations, etc.)

This construction of the Constitution is also aided by the provisions of section 170, which provides that "the General Assembly may levy a license tax upon any business which cannot be reached by the *ad valorem* system; and may impose such franchise taxes, and in imposing a franchise tax, may, in

its discretion, make the same in lieu of taxes upon other property, in whole or in part, of a transportation, industrial or commercial corporation."

So that the Constitution itself makes a clear distinction between a tax upon property according to its value and license tax or a franchise tax.

When we come to consider our statutes, we find that they recognize the same distinction. For instance, section 564, Va. Code, 1904, provides as follows:

"This license shall not be construed to exempt from taxation the property used in the licensed business, nor the profits of such business."

See also section 104 of the Tax Bill, as amended by act approved February 19, 1904, (referring to billiard saloons, bagatelle saloons, etc.), which provides as follows:

"Nothing herein shall be construed to exempt the furniture and houses mentioned in this schedule from being taxed as property."

When we come to consider our Virginia decisions, they show that the construction placed above the language of our Constitution is correct. In *Newport News R. R. Co. v. Newport News*, 100 Va. 157, 40 S. E. 645, it is declared that a license tax may be imposed on a street railway company by a municipal corporation through which it runs, either in pursuance of its general power of taxation or in the exercise of its police power; and that this right is not affected by the fact that the property used by the company in the conduct of its business is taxed both by the city and the State upon the *ad valorem* basis, citing *Thomas v. Snead*, 99 Va. 613.

So also *Commonwealth v. Moore*, 25 Gratt. (66 Va.) 951; and Morgan's Case, 98 Va. 812, 25 S. E. 448. So also *City of Norfolk v. Griffith-Powell Co.*, 102 Va. 115, in which it was held that where a municipality has been invested with complete power of taxation, the mere fact that the State imposes an *ad valorem* tax on the capital, invested in the particular business does not debar the municipality from imposing a license tax on such business, although no license is imposed by the State, overruling *Thomas v. Snead*, 99 Va. 613, on this point.

From a careful consideration of all the authorities, we must conclude that the provision of section 135 of the Constitution, requiring the General Assembly to apply an annual tax on property of not less than one nor more than five mills on the dollar for primary and grammar grade schools, cannot be construed so as to apply to the taxes referred to in your inquiry.

Very truly yours,

CHRISTOPHER B. GARNETT.

*Assistant Attorney General of Virginia.*

**Public schools—Construction of building by adjoining school districts in different counties. Va. Code 1904, Secs. 1482, 1492.**

RICHMOND, VA., February 13, 1914.

Hon. R. C. STEARNES,  
*Superintendent Public Instruction,*  
*Richmond, Va.*

DEAR SIR:

Replying to your letter of December 17th, addressed to the Hon. Samuel W. Williams, then Attorney General, in regard to the letter written to the State

Board of Education by Mr. J. C. Matthews, from Galax, Va., under date of December 16, 1913, I beg to submit the following:

The question put by Mr. Matthews is, Can the school trustees of the East Galax district, in Carroll county, adjacent to the West Galax district, in Grayson county, contribute funds for the joint purchase, by the East Galax district and the West Galax district, of property in Grayson county, to be used as a school-house for the joint use of the two districts?

Section 1482, Va. Code, 1904, provides as follows:

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

And section 1492 of the Code, as amended by acts of 1908, p. 686, provides, so far as it is applicable to the question, as follows:

"\* \* \* The State Board of Education shall have power, and it shall be its duty, to make regulations whereby the children of one district may attend school in an adjoining district, either in or out of the county."

School trustees are corporations created for a special purpose, and have only the powers expressly granted to them and that are necessary to accomplish the objects for which they are created. In the discharge of their duties and the exercise of their powers, and especially in making contracts, they are governed and restrained by the provisions of the law creating them. 35 Cyc. 833, 949.

There is no express power conferred upon the school trustees of a district to make a contract with the school trustees of an adjacent district whereby title to real estate in one district may be acquired jointly; and, unless this power can be necessarily implied from our statutes, or unless it is necessary to accomplish the objects for which the board of a district is created, we must deny such power to the board.

I can find no law which allows the school boards of adjacent districts to take title jointly to property for the use of the two districts; but, on the contrary, sec. 1482, above quoted, provides that "the title to all property, both real and personal, belonging to the district, shall vest in the said board," thus excluding the idea that it can vest in said board and some other board.

As the school boards are bodies corporate with only those powers conferred upon them by statute, I must conclude that the school trustees of one district have, at present, no power to acquire title to property jointly with the trustees of another school district. But the provisions of section 1492, as quoted above, would seem broad enough to accomplish everything that could be accomplished by the joint ownership of the school. In other words, the State Board of Education can make regulations allowing the school trustees of the East Galax district, in Carroll county, to contribute to the payment for the property located in the West Galax district, in Grayson county, upon such conditions as seem wise to the State Board of Education, whereby the children of the former district may be allowed to attend the school in the latter district. In other words, the broad

powers given the State Board of Education, in regard to the boards of adjacent districts, whether they be in the same county or not, would seem to affect the purposes aimed at by your correspondent.

Yours very truly,

JNO. GARLAND POLLARD,  
*Attorney General of Virginia.*

**Public schools—Appropriation of money therefor and apportionment of public money to schools of the primary and grammar grades. Constitution, Sec. 135.**

RICHMOND, VA., *February, 17, 1914.*

Hon. S. F. CLEMENT,  
*House of Delegates,*  
*Richmond, Va.*

DEAR SIR:

You have requested me to advise you as to the constitutionality of a bill which has been introduced by you, entitled "A bill to provide an increased revenue for the support of the public free schools of Virginia."

After a careful examination of this bill, I can find nothing unconstitutional in the provisions contained on pages one and two thereof; but, I wish to call your attention to the paragraph on page three which apparently is contrary to the provisions of section 135 of the Constitution of 1902. The provision in your bill is that in appropriating money to the primary and grammar schools, the Board of Education is authorized "to take into account not only the duty of maintaining, as far as practicable, a uniform term throughout all the schools of the various school districts of the State, but also the right of local taxation prevailing in each district, to the end that those districts of limited resources in which the people are willing to submit to a higher rate of local taxation shall receive such special assistance from said funds as may be deemed wise and just by the State Board of Education."

Section 135 of the Constitution, referred to above, after providing what money the General Assembly shall apply to the schools of the primary and grammar grades, goes on to provide how this money shall be apportioned, and that part of the section is as follows:

"\* \* \* to be apportioned on a basis of school population, the number of children between the ages of seven and twenty years in each school district to be the basis of such apportionment."

It would seem clear, therefore, that the apportionment provided for in your bill is on an entirely different basis from that provided for in the Constitution, section 135.

I would suggest, therefore, that you cut out the whole of the last paragraph of your bill and simply provide, in lieu thereof, some provision about as follows:

"In appropriating that part of the fund which goes to the primary and grammar grades under the provisions of this act, the State Board of Education shall apportion the same as provided by section 135 of the Constitution."

Very truly yours,

CHRISTOPHER B. GARNETT,  
*Assistant to the Attorney General.*

**Public schools—Division superintendent not to accept compensation for services to Federal Government. Code, Secs. 163-4.**RICHMOND, VA., *March 16, 1914.*

Mr. W. T. HODGES,  
*Superintendent Alexandria County Public Schools,  
Rosslyn, Va.*

DEAR SIR:

I have your favor of the 9th instant, in which you request me to pass upon the following state of facts:

You are the Superintendent of Schools for the county of Alexandria; and while you were engaged in that capacity last summer, you entered into a contract with the United States Bureau of Education to write or compile a bulletin on some phases of Rural Education. This contract has been carried out by you; and by the terms of the contract, you are entitled to receive the compensation specified therein. You made this contract in ignorance of sections 163 and 164 of the Code of Virginia; and you desire my opinion as to whether the acceptance by you of the money agreed to be paid you will have any effect upon your status as Superintendent of Schools.

Section 162 provides, in effect, that no person shall be allowed to hold "any office of honor, profit or trust under the Constitution of Virginia who, while a citizen of the State, has since the adoption of the present Constitution fought a duel with a deadly weapon, etc."

Section 163 provides, so far as this question is concerned, as follows:

"No person shall be capable of holding any office or post mentioned in the preceding section who holds any office or post of profit, trust or emolument, civil or military, legislative, executive or judicial in the Government of the United States, or who is in the employment of such government, or who receives from it in any way any emolument whatever; and the acceptance of any such office, post or emolument, or the acceptance of any emolument whatever under such government, shall, *ipso facto*, vacate any office or post of profit, trust or emolument under the government of this Commonwealth, or of any county, city or town thereof."

Section 164 makes certain qualifications to the preceding section which do not apply to your case.

The terms of section 163 are so plain as to need no interpretation; and I do not hesitate to say that the acceptance by you of the emolument provided for in your contract will *ipso facto* vacate the office of superintendent of schools which you occupy.

Very truly yours,

JNO. GARLAND POLLARD,

*Attorney General of Virginia.***Public schools—Third and fourth-class postmasters may act as trustees in town constituting a separate district. Code, Secs. 163-4, 1459 and 1538.**

Hon. R. C. STEARNES,  
*Superintendent Public Instruction,  
Richmond, Va.*

RICHMOND, VA., *April 13, 1914.*

DEAR SIR:

Replying to your letter of April 4th, in which you enclose letter from James Allan, Vienna, Va., dated April 2d, I beg leave to submit the following:

The question put by Mr. Allan is as to whether a third-class postmaster is qualified to hold the office of school trustee in a town constituting a separate school district. Section 163 of the Code, so far as applicable, provides as follows:

"No person shall be capable of holding any office or post mentioned in the preceding section (that is, office of honor, profit or trust under the Constitution of Virginia) who holds any office or post of profit, trust or emolument, civil, military, legislative, executive or judicial under the government of the United States \* \* \* and the acceptance of any such office, post or emolument whatever under such government shall *ipso facto* vacate any office or post of profit, trust or emolument under the government of this Commonwealth or under any county, city or town thereof."

Section 164, as amended by Acts of 1910, p. 503, so far as applicable to this question, provides as follows:

"The preceding section shall not be construed to prevent fourth-class or third-class postmasters from acting as \* \* \* school trustees."

Chapter 67 of the Code treats of "public free schools in cities and towns constituting separate school districts;" and section 1538 of said chapter, as amended by the Acts of 1906, p. 513, volume 3, p. 235, provides, so far as applicable to this question, as follows:

"No Federal or State officer, except a notary public, no city officer, no member of council or any officer thereof shall, during his term in office, be chosen or allowed to act as a school trustee; but this provision shall not have the effect of prohibiting a commissioner in chancery or commissioner in bankruptcy, or member of board of health from holding such office."

Section 1459 of the Code, as amended by Acts of 1908, p. 187, defines who may act as *district school trustee* and provides as follows:

"No Federal, State or county officer, or any deputy of such officer, and no supervisor shall be chosen or allowed to act as district school trustee; provided that the provisions herein contained shall not apply to fourth-class postmasters, county superintendents of the poor, commissioners in chancery, commissioners of accounts and notaries public."

This last section is not applicable to the question since it only applies to district school trustees in counties and is not a part of chapter 67 of the Code having reference to free schools in towns constituting a separate school district.

The question, therefore, reduces itself to this: Do the provisions of section 164, as amended by the Acts of 1910, supervene, override and take the place of the provisions of section 1538, as amended by the Acts of 1906, p. 513, which provides that no Federal or State officer shall be chosen or allowed to act as a school trustee?

Section 164 of the Code is a qualification or exception to the general rule laid down by section 163 that the acceptance of Federal office *ipso facto* vacates any office held under the Constitution of Virginia, and its effect is to provide that section 163 shall not be construed to prevent fourth or third-class postmasters from acting as school trustees. As section 164 stood in the Code of 1887, it had no reference to the question we are considering and section 163 absolutely prevented a Federal officer of any kind from acting as a school trustee. In the Code of 1904, section 164 provided that section 163 should not be construed to prevent fourth-class postmasters from acting as school trustees. This



section in the Code of 1904 was enacted by the Acts of 1901, p. 52. By the Acts of 1902-3-4, p. 828, section 1538 was amended so as to prevent any Federal officer from being chosen or allowed to act as a school trustee, and that section as amended by the Acts of 1906, p. 513, still has the same provision. The question, therefore, is whether this qualification of a district school in a town is abrogated by the latter amendment to section 164 which provides that section 163 shall not be construed so as to prevent a fourth-class postmaster or a third-class postmaster from acting as school trustee.

As repeals by implication are not favored, and as section 164, as amended, does not in terms define who may be a school trustee, I am constrained to hold that section 1538, as amended, is still the law; and that, therefore, neither fourth-class postmasters nor third-class postmasters can act as a school trustee in a town which constitutes a separate school district.

Very truly yours,

JNO. GARLAND POLLARD,

*Attorney General of Virginia.*

**Public Schools—Teachers' pension. Chapter 239, Acts 1912.**

RICHMOND, VA., April 22, 1914.

Mr. E. R. CHESTERMAN,

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

DEAR SIR:

Replying to your communication in which you inform me that the State Board of Education has requested an opinion from me as to the status of a former teacher whose name had been removed from the teachers' pension list on account of her marriage but who had since become widowed, I have before me also the letter of Mrs. Anna L. Davis, to Superintendent Stearnes, bearing on the same subject.

By Acts of 1912, chapter 239, p. 655, it is provided in effect that any female teacher unmarried at the time her pension was applied for or granted who had been placed upon the retired teachers' list, who had taught in the public schools the required number of years, etc., should be removed from said list, after thirty days' notice, should it appear that she had married since her pension was applied for or if she should thereafter marry.

The act providing a Retirement Fund for public school teachers had no such provision in it as set out above, and before the Act of 1912 the law does not seem to have contemplated that marriage by a retired teacher after being placed upon the pension roll would affect the standing of that teacher on said roll.

In my opinion, if the lady in question can bring herself under the provisions of the act providing the Retirement Fund for public school teachers she would be entitled to be placed thereon, notwithstanding the fact that she has married and her husband has died.

Very truly yours,

JNO. GARLAND POLLARD,

*Attorney General of Virginia.*

**Public Schools—Premium on bond of Superintendent of Public Instruction. Code, Sec. 225.**

Mr E. R. CHESTERMAN,

RICHMOND, VA., April 22, 1914.

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

DEAR SIR:

You have sent me the minutes of the meeting of the State Board of Education held on Monday, March 9, 1914, containing the following request:

“Attorney General Pollard was requested to inquire into and to prepare an opinion as to the legality of the said boards paying the premium on the official bond of the State Superintendent of Public Instruction from the State school funds.”

Section 225 of Virginia Code 1904, so far as applicable to the question herein stated, reads as follows:

“The officers and clerks herein named shall each give bond with sufficient sureties, to be approved by the Governor. Such surety may be either personal or a guaranty or trust company. If any clerk herein required to give bond with surety shall give as such guaranty a guaranty company, the cost thereof shall be paid by the Commonwealth, provided that the charge made by such company for becoming such surety shall be approved by a board composed of the Governor, Lieutenant Governor and Attorney General, as a fair and reasonable charge. The penalties of the bonds shall be as follows: \* \* \* Of the Superintendent of Public Instruction ten thousand dollars. Of each of his clerks, two thousand dollars \* \* \*.”

I can find no express authority conferred upon the State Board of Education authorizing the payment of the premium on the official bond aforesaid; but, on the contrary, a correct construction of the section set out above seems to indicate that authority to take such action has been withheld by the terms of the statute under the well known doctrine of *expressio unius est exclusio alterius*. The rule is stated in 2 Lewis' Sutherland Statutory Construction, section 493, p. 921, as follows:

“Where a statute enumerates the persons or things to be affected by its provisions, there is an implied exclusion of others; there is then a natural inference that its application is not intended to be general. \* \* \* An act providing for levying the poor rate, specified *coal* mines only, and it was, therefore, held that no other mines were ratable. \* \* \* The enumeration of powers granted to national banks by the eighth section of the National Bank Act is exclusive; being granted the power to loan money on personal security, such banks are precluded from loaning money on real estate mortgages.”

In the statute set out above, certain officers, including clerks, are required to give bond with surety and it is provided that the surety may be either personal or a surety company; but the statute goes on to expressly say that where a clerk gives surety in a surety company, the cost thereof shall be paid by the Commonwealth. Now, it was the evident intention of the lawmaker in this case that the clerks, whose pay was not as large as that of the heads of departments, should have a privilege conferred upon them which was not conferred at the same time upon the heads of departments; and, therefore, I am constrained to hold that the State Board of Education has no authority under the law to pay the premium on the official bond of the State Superintendent of Public Instruction from the State school funds.

Very truly yours,  
JNO. GARLAND POLLARD,  
*Attorney General of Virginia.*

**Public schools—Power of the State Board of Education to loan money from the Literary Fund for building school houses in a district where there has been a bond issue. Acts 1908, p. 106; Sec. 1432, Va. Code, Supplement 1910.**

RICHMOND, VA., *June 17, 1914.*

MR. E. R. CHESTERMAN,  
*Secretary State Board of Education,  
Richmond, Va.*

DEAR SIR:

Your letter of May 29th, enclosing a letter addressed by J. H. Stephens, of Christiansburg, Va., to Hon. R. C. Stearnes, Superintendent of Public Instruction, concerning a school loan; and informing me that the State Board of Education, at its meeting on May 28th, desired an opinion concerning the questions asked by Mr. Stephens, has been duly received.

The facts as stated in the letter of Mr. Stephens are as follows: An election was held in March in Montgomery county, by which a bond issue was authorized for \$15,000, \$10,000 of which was to be used in Blacksburg and \$5,000 for the erection of county school-houses. The question is asked whether, under the law as it now stands, the school boards for Montgomery county may apply to the State Board of Education for a loan of \$5,000 from the Literary Fund, to be used on the same buildings on which \$10,000 of the aforesaid bond issue will be used. In other words, instead of using the whole \$15,000 bond issue, the authorities in Montgomery county are desirous, if possible, of saving the difference between the interest on \$5,000 of the bond issue and the interest which would be paid on a like sum borrowed from the Literary Fund; and the question is whether under the law, money from the Literary Fund may be used to help to build the same school-houses which will be partially built by \$10,000 from the bond issue.

By the Acts of 1908, p. 106; vol. 3, p. 685, Virginia School Laws, p. 46, the several school boards of the school districts are authorized to borrow money belonging to the Literary Fund. By section 6 of said acts, it is provided that the State Board of Education, before making any loan under the act, shall be satisfied that the school district or board borrowing the fund has a good and sufficient title in fee to the real estate on which the proposed building is to be erected "and that the same is free from incumbrances." By section 1432 of the Code, as amended by Acts of 1906, p. 432, the law seems to contemplate that the State Board of Education may sell real estate on which it has a loan, to secure money due the Literary Fund. By Acts of 1908, p. 103, vol. 3, p. 687, Virginia School Laws, p. 49, the school boards of the several school districts in the counties of this State are authorized to borrow money and to issue bonds for the purpose of erecting and furnishing school-houses, and to provide for the payment of such bonds and the interest to accrue thereon. It is provided in section 2 of this latter act that whenever bonds are issued thereunder there shall be a lien upon the school property erected and procured with the proceeds of the sale of any such bonds for the payment of the principal thereof and the interest to accrue thereon; "and if it shall be so stated on the face of the bonds, there shall be a lien on all the school property of the school district issuing and selling the same for the payment of the principal thereof and the interest to accrue thereon."

Therefore, I do not see how the State Board of Education could loan money from the Literary Fund for the building of school-houses in a district where there has been a bond issue, for both the loan from the Literary Fund and the money secured by the bond issue are made liens upon the property, and as we have already seen, before the State Board of Education can loan money from the Literary Fund on school property, it is required that the State Board of Education shall be satisfied that the real estate on which the proposed building is to be erected is free from incumbrances.

Very truly yours,

JNO. GARLAND POLLARD,  
*Attorney General of Virginia.*

**Public Schools—Steps to be taken in acquiring title to real estate to be used for school purposes—What abstract of title to show. Va. Code 1904, Sec. 824, as amended by Acts 1912, p. 78; Va. Code 1904, Sec. 1488, as amended by Acts 1914, p. 270.**

RICHMOND, VA., *June 30, 1914.*

Hon. R. C. STEARNES,  
*Superintendent of Public Instruction,  
Richmond, Va.*

DEAR SIR:

In view of the large number of titles which you are referring to me for examination and approval in connection with applications for loans from the Literary Fund and also in view of the fact that many of these titles have to be disapproved because of some omissions therein, I have thought it proper to write you this general letter for your information, setting out the requisites prescribed by law for abstracts of title to property purchased for school purposes and on which a loan is requested from the Literary Fund.

Under section 824 of the Code, as amended by chapter 46 of the Acts of 1912, p. 78, and section 1488, as amended by Acts 1914, p. 270, read together, I have held, and will continue to hold, that abstracts of title to school property, on which a loan is requested from the Literary Fund, must comply with the following provisions, that is to say, each abstract must show:

*First.* That the contract for acquiring property for school purposes is in writing.

*Second.* That the title thereto has been examined and approved in writing by a competent and discreet attorney-at-law, designated by the judge of the circuit court for the circuit wherein the real estate is located.

*Third.* That such approval has been recorded along with the deed or other papers by which the title is conveyed; and, in this connection, it would seem necessary that the approval should be acknowledged before a notary public, or other officer authorized to take acknowledgments, in order that it may be recorded.

*Fourth.* That the evidence of title has been submitted to the circuit court, or the judge thereof in vacation, for approval, which approval has been entered of record by the clerk of the court.

*Fifth.* That the certificate of the attorney examining the title should show that the school board desiring to borrow the funds "has a good and sufficient title in fee to the real estate on which the proposed building is to be erected,

and that the same is free from incumbrances;" and also that there are no school bonds outstanding as a lien upon said property.

I would suggest that the form of the certificate of the attorney examining the title should be as follows:

"I, ....., who have been designated by the judge of the circuit court for the county of ....., wherein the real estate in the caption aforesaid is located, as a competent and discreet attorney-at-law for the examination of the title to the aforesaid property, do certify that I have examined said title and have made the foregoing abstract of title to said property; and I do further certify that the School Board of ..... District, No. .... of the county of ....., Va., has a good and sufficient title in fee thereto; that the same is free from incumbrances; that there are no outstanding school bonds issued by said district; and that I approve the title to said property.

"Given under my hand this ..... day of ..... 19..

"State of Virginia,  
County of ....., to-wit:

I, ....., a ..... in and for the county aforesaid in the State of Virginia, do certify that ....., whose name is signed to the foregoing writing, dated the ..... day of ....., 19.., personally appeared before me in my county aforesaid and acknowledged the same.

"My commission expires on the ..... day of ....., 19..

"Given under my hand this ..... day of ....., 19..

(Official character)

If the lawyers designated by the court for the examination of these titles will see to it that their abstracts comply with the above requisites, much time will be saved.

Very truly yours,

JNO. GARLAND POLLARD,

*Attorney General of Virginia*

**Public Schools—Appropriation, Act 1914, dormitories for agricultural high schools. Acts 1914, ch. 199, p. 339.**

Hon. C. LEE MOORE,  
*Auditor of Public Accounts.*  
*Richmond, Va.*

RICHMOND, VA., August 5, 1914.

DEAR SIR:

In the absence of the Attorney General I am replying to your letter of July 15, 1914, asking my advice on the construction of chapter 199, Acts 1914, page 339, as to the item in said act for dormitories to congressional district high schools.

The item as found in the acts aforesaid reads as follows:

"For dormitories to congressional district high schools, two thousand dollars for each school, upon condition that the districts shall raise a like amount to each school, and upon the further condition that the supervision of each of said schools be extended to each congressional district, fifteen thousand dollars (\$15,000.00).

"And provided, that any portion of the sum hereby appropriated not taken or used by said congressional district high school at the end of the

fiscal year ending twenty-eighth of February, nineteen hundred and fifteen, shall be re-apportioned among said schools upon the same conditions; but "in no event shall the sum to any such school exceed the sum of two thousand dollars."

It is perfectly apparent that your construction as to the two conditions to be complied with before any of this money can be paid is correct, to-wit: That the district shall raise a like amount, and that the supervision of each of said schools be extended to each congressional district. These are conditions precedent which must be complied with before you can pay any amount.

I think it would be perfectly proper for you to pay one congressional district as soon as it shall have complied with the conditions, even though the other districts may not have done so. In other words, it does not seem to be a condition precedent to the payment of this sum that all of the districts shall have complied with the conditions, but the appropriation seems to contemplate a payment to each school as soon as each district shall have complied with the conditions.

As to the last question which you put, whether you may pay less than \$2,000 to a congressional district, this question has given me more difficulty. It is a fundamental proposition for the construction of statutes that the intention of the lawmakers should govern, and if we can ascertain and give effect to that intention, we must accept the construction which will enable us to do so, although it may not be in conformity with the strict letter of the law. *Bolling v. Bolling*, 88 Va. 524. And it has been held in Virginia that when one word has been used for another or a word omitted, and the context affords the means of correction, the proper word will be deemed substituted or supplied.

*Hutchings v. Commercial Bank*, 91 Va. 68.

So also we note that the proceedings of the legislature in reference to the passage of any act may be taken in consideration in order to determine the intention of the legislature with reference thereto. Thus the reports of the committees made to the legislature are proper sources of information in ascertaining the intention and meaning of the act. 2 Sutherland Statutory Construction 880; *Church v. United States*, 143 U. S. 457. Prior to the report of the conference committee of the legislature in 1914, the first paragraph of the act quoted above read as it is except that instead of \$15,000 we find in the bill, \$20,000. The conference committee changed the bill so as to read \$15,000 instead of \$20,000 and added the proviso above quoted. (See L. 914, Senate Journal, pp. 768, 773).

In view of these circumstances and the particular mention of "each," it seems clear that the intention of the legislature was to appropriate \$15,000 to be equally divided between the ten congressional districts and that it was a clerical error not to change the \$2,000 to \$1,500.

Hence I would say that the proper construction would indicate that you are to pay to each of the ten schools \$1,500 when each congressional district shall have complied with the conditions precedent aforesaid; that is to say when each shall have raised \$1,500, and also when evidence shall have been adduced before you that the supervision of each of said schools has been extended to each congressional district.

Very truly yours,

CHRISTOPHER B. GARNETT,

*Assistant Attorney General.*

**Public Schools—Appropriation Act 1914, dormitories for agricultural high schools.**RICHMOND, VA., *September 5, 1914.*

Hon. R. C. STEARNES,  
*Superintendent of Public Instruction,  
Richmond, Va.*

DEAR SIR:

I have been receiving a number of requests for opinions as to the true construction to be placed upon that item of the appropriation bill which provides for dormitories to congressional high schools, and especially with reference to that clause which makes the appropriation conditional "that the supervision of each of said schools be extended to each congressional district." (Acts of 1914, p. 339.) I am informed that this clause is in the appropriation act by reason of the fact that the draftsman had assumed that the General Assembly would pass a certain bill then pending providing for the supervision of such high schools by representatives from the several counties of each congressional district. This bill, however, was not passed. Notwithstanding this fact, it is apparent from the language used that it was the will of the Legislature that the congressional district high school should enjoy the appropriation referred to, upon certain conditions, one of which was that the supervision of each school be extended "to each congressional district." I understand that at present such schools are supervised by the division superintendent. I do not know how such supervision could be extended to each congressional district, unless it be done by transferring supervision, heretofore exercised by the division superintendent in whose county the district high school was located, to the division superintendents of the congressional district.

I think, however, that this is a matter for the Board of Education to decide at its next meeting, and I ask you to keep this letter as a memorandum and bring the same before the board at its next meeting.

Very truly yours,

JNO. GARLAND POLLARD,  
*Attorney General of Virginia.*

**Public Schools—Release of school bonds issued by a school district.  
Acts 1910, p. 281.**RICHMOND, VA., *September 8, 1914.*

Hon. R. C. STEARNES,  
*Superintendent of Public Instruction,  
Richmond, Va.*

DEAR SIR:

Replying to your letter of the 5th instant, in which you request me to inform you if there is any way in which the lien given by the statute for school bonds which have been issued by a school district may be removed, I beg leave to submit as follows: There seems to be only two ways by which such a lien may be removed; first, the bonds may be paid, redeemed and taken up. It is well established that when a debt is extinguished, the lien expires with it. The destruction of the debt extinguishes the lien, but the annihilation of the lien does not extinguish the debt. *Hardy v. Norfolk Manfg. Co.*, 80 Va. 404; *Morrison v. Coal, etc. Co.*, 52 W. Va. 331. Or, second, there may be a formal release by the holder of each bond indorsed thereon by such holder. This release

would have to be under seal and would have to be indorsed on each bond in order that a purchaser thereof might have full notice.

In order that the subject of the release may be more specifically brought before you, it may be well to call your attention to the Acts of 1910, p. 281, under which school bonds are issued. Said acts provide in part as follows:

“ \* \* \* and there shall be a lien upon the school property erected and procured with the proceeds of the sale of any such bonds for the payment of the principal thereof, and the interest to accrue thereon; and if it shall be so stated on the face of the bonds, there shall be a lien on all the school property of the said district issuing and selling the same for the payment of the principal thereof and the interest to accrue thereon.”

It is an elementary proposition of law that the lien may be released or waived where the intention is expressed plain and clear, but the presumption is always against the waiver.

*Osborne v. Big Stone Gap Colliery Co.*, 96 Va. 58; *Stribling v. Splint Coal Co.*, 31 W. Va. 82.

Therefore, I would conclude that the holders of bonds which have been issued under this statute may, by an express release indorsed on said bonds, waive or give up the lien given them by said statutes. If the release was not given by the holder of the bond, of course, it would not be valid.

Very truly yours,

CHRISTOPHER B. GARNETT,

*Assistant Attorney General.*

**Public Schools—Appropriation, Acts 1914, for dormitory agricultural high schools.**

RICHMOND, VA., *September 9, 1910.*

*Hon. C. LEE MOORE,*

*Auditor of Public Accounts,*

*Richmond, Va.*

DEAR SIR:

Referring to your letter of August 12th, wherein I am asked whether you would be justified in honoring the order of the State Board of Education to pay to the treasurer of Bedford county \$1,500.00 on account of the dormitory for the Sixth Congressional District Agricultural High School, I beg leave to state that while the Appropriation Bill does not specifically place the fund appropriated to agricultural high schools under the control of the State Board of Education, yet, according to precedent and analogy, I should say that the State Board of Education is the natural and proper body through whom this fund should be disbursed, especially since the conditions of the appropriation are of such a nature that the State Board of Education is the proper body to pass upon the question as to whether the conditions have been complied with. I am, therefore, of the opinion that you can very properly honor the order of the State Board of Education above referred to and all similar orders issued by the board.

Very truly yours,

JNO. GARLAND POLLARD,

*Attorney General of Virginia.*



**Public Schools—Title of property to secure loans from Literary Fund.**  
Chapter 252, Acts 1906, as amended 1908 and 1914; Code, Secs. 824, 1488 and 3203.

RICHMOND, VA., *September 9, 1914.*

STATE BOARD OF EDUCATION,  
*Richmond, Va.*

GENTLEMEN:

You have requested me to advise you whether it is necessary for the State Board of Education to refer to the office of the Attorney General the abstracts of title forwarded to you by the boards of school districts who desire to borrow money belonging to the Literary Fund for the purpose of erecting school-houses in such districts.

From the records in this office, it apparently has been the custom to refer all such abstracts to the Attorney General for his approval. Chapter 252 of Acts of 1906, as amended by Acts of 1908, p. 106, authorizes the several school boards of the school districts of this State to borrow money belonging to the Literary Fund for the purpose of erecting school-houses in such districts, and authorizes the State Board of Education to loan said funds to such districts, upon the terms set forth in said act. Said act has been further amended as to sections 4 and 8 by chapter 359, p. 715, of the Acts of 1914. Section 6 of said act provides as follows:

“Before making any loan under this act, the State Board of Education shall be satisfied that the school district or board borrowing the fund has a good and sufficient title in fee to the real estate on which the proposed building is to be erected, and that the same is free from incumbrances, and shall take proper measures to secure the expenditures of the money for the purpose for which it is loaned.”

Thus, by the very terms of the act itself, it is the duty of the board to ascertain and to be satisfied that the school district or the board borrowing the fund (1) has a good and sufficient title in fee to the real estate on which the proposed building is to be erected, and (2) that the same is free from incumbrances.

From my experience with these abstracts, I would say that the laws regulating the purchase of lands by school boards for school purposes have, generally, been very loosely and laxly complied with. It might be well to call your attention to the requirements of the law in this respect as they now stand upon the statute books. Under section 824 of the Code, as amended by chapter 46 of the Acts of 1912, p. 78, and section 1488, as amended by Acts of 1914, p. 270, read together, the requirements are as follows:

*First.* That the contract for acquiring property for school purposes is in writing.

*Second.* That the title thereto has been examined and approved in writing by a competent and discreet attorney-at-law, designated by the judge of the circuit court for the circuit wherein the real estate is located.

*Third.* That such approval has been recorded along with the deed or other papers by which the title is conveyed; and, in this connection, it would seem necessary that the approval should be acknowledged before a notary public, or other officer authorized to take acknowledgments, in order that it may be recorded.

*Fourth.* That the evidence of title has been submitted to the circuit court, or the judge thereof in vacation, for approval, which approval has been entered of record by the clerk of the court.

*Fifth.* That the certificate of the attorney examining the title should

show that the school board desiring to borrow the funds "has a good and sufficient title in fee to the real estate on which the proposed building is to be erected, and that the same is free from incumbrances;" and also that there are no school bonds outstanding as a lien upon said property.

Out of forty-five abstracts which have been furnished to this office, eight have shown that these provisions of the law had been complied with.

The Literary Fund is a sacred fund, held in trust for the benefit of public education in the State. The legislature has seen fit to make certain requirements upon the State Board of Education before it shall loan any money therefrom. Obviously, it is the duty of the board to comply with these requirements. I do not find any specific or direct provision in the law making it necessary for the State Board of Education to refer these abstracts to the Attorney General for his approval. Under section 3203, the Attorney General is required to give his opinion and advice in writing, when required to do so, by any of the public boards and officers at the seat of government. Unless the State Board of Education desires the opinion and advice of the Attorney General upon these abstracts of title, it is not his duty to pass upon them, nor does there seem to be any direct provisions of the statute requiring the State Board of Education to ask such opinion and advice. In other words, it is a matter entirely within the discretion of the State Board of Education.

In view of the fact that, by the terms of the statute (Acts 1914, chapter 359, p. 715), it is required that "there shall be a specific lien upon the property upon which any loan is made under this section for the payment of said instalments of interest and principal," and also in view of that provision which requires that before loaning money the State Board of Education shall be satisfied that the school district or board borrowing the fund has a good and sufficient title in fee to the real estate on which the proposed building is to be erected, and that the same is free from incumbrance, it would be unwise for the State Board of Education to make any of these loans without being certain that all the formalities of the law have been complied with. If, in the opinion of the board, the Attorney General should not be called upon to give his advice and opinion, it would relieve the Attorney General's office of a considerable portion of the labor which has heretofore been imposed upon it.

Very truly yours,

JNO. GARLAND POLLARD,

*Attorney General of Virginia.*

**Public Schools—Power of school trustee, who is a merchant, to sell school books and supplies in regular course of trade; and also to write insurance on public school buildings. Va. Code 1904, Sec. 1472, as amended by Acts 1908, p. 295.**

RICHMOND, VA., *September 17, 1914.*

Mr. J. N. HILLMAN,  
*Division Superintendent,*  
*Coeburn, Va.*

DEAR SIR:

In the absence of the Attorney General, I am replying to your favor of September 5th, asking whether it is illegal for a trustee, who is a member of an insurance corporation, being a stockholder in said corporation and its secretary,

to write insurance on public school buildings; and also whether a member of a business firm, for instance the president of a drug company, handling school books in the regular course of trade, is eligible for appointment as district school trustee.

As I read section 1472 of the Code of Virginia, as amended by Acts 1908, p. 295, it would probably be unlawful for a school trustee to enter into a contract to insure, or for any firm in which he is interested, to enter into a contract of insurance on public school buildings.

As to the other question, the same section provides as follows:

"Exception shall also be made in the case of a merchant who in the regular course of trade and without employing agents to solicit business, sells either books selected or adopted by the State Board of Education or supplies used in the schools and by the pupils."

Thus it would seem lawful for a school trustee to engage in the selling of school books and supplies in the regular course of trade and without employing agents to solicit such business.

Very truly yours,

CHRISTOPHER B. GARNETT,

*Assistant Attorney General.*

**Public Schools—Literary Fund—Power of district school board to use money borrowed from the Literary Fund to pay operating expenses of schools. Acts 1914, p. 715.**

RICHMOND, VA., *September 19, 1914.*

Mr. FREDERICK C. HANDY,  
1413 G Street, N. W.,  
Washington, D. C.

DEAR SIR:

In the absence of the Attorney General I am replying to your letter of the 18th inst., informing this office that the Arlington District School Board of Alexandria county has secured a loan of \$10,000 from the State Literary Fund to assist in building the school at Ballston, Va., and that it proposes to use a part of this sum to pay the expenses of operating the schools until the regular school funds are available in November and December. You request the opinion of the Attorney General as to whether you are correct in your construction of the law. By the Acts of 1906, chapter 252 as amended by 1908 acts, page 106, as further amended by 1914 acts, page 715, the only purpose for which school boards of the different counties are authorized to borrow money from the Literary Fund "is for the purpose of erecting school houses." There is nothing in the act which would authorize the use of this money for current expenses of the school board. By the same law the State Board of Education is required to take "all proper measures to insure the expenditure of the money for the purpose for which it was loaned." Therefore, it is perfectly clear that your position is correct and the district school board has no authority or power to use this money for any other purpose than that of erecting school houses. A copy of this letter will be sent to Hon. R. C. Stearnes, Superintendent of Public Instruction.

Very truly yours,

CHRISTOPHER B. GARNETT,

*Assistant Attorney General.*

**Public schools—Investment of Literary Fund in school bonds.**

Hon. R. C. STEARNES, RICHMOND, VA., September 29, 1914.  
*Superintendent of Public Instruction,*  
*Richmond, Va.*

DEAR SIR:

Yours of September 28th received. I am of the opinion that the State Board of Education is authorized, in its discretion, to invest the capital and unappropriated income of the Literary Fund in the bonds of the District School Board of Tanner's Creek Magisterial District, in the county of Norfolk, which bonds are issued under chapter 76 of the Acts of the General Assembly of Virginia 1910:

*Provided*, the said board executes a deed of trust giving a lien upon the funds and school property of the district referred to.

My opinion is based on clause 11 of section 1433 of the Code, as amended, which, so far as applicable, reads as follows:

"The powers and duties of the board (that is, the State Board) shall be as follows: \* \* \* 11th. To invest the capital and unappropriated income of the Literary Fund in bonds \* \* \* made by the district school boards of the different school districts in the State, constituting a lien on the district funds in the different districts, secured by deed of trust on the school property of said districts in which said bonds are invested."

Very truly yours,

JNO. GARLAND POLLARD,  
*Attorney General of Virginia.*

**Public schools—Authority of city to turn over entire school levy and make extra appropriation. Code, Secs. 1529 and 1538.**

PORTSMOUTH CITY SCHOOL BOARD, RICHMOND, VA., September 29, 1914.  
*Portsmouth, Va.*

GENTLEMEN:

Your letter of September 15th came during my absence from the city. The questions which you put to me are (1) whether it is permissible for the city to turn over to the school board the entire school levy, and (2) in addition to make an extra appropriation by the city council.

These questions depend upon the proper construction of the Virginia statutes. Section 1529 of the Virginia Code, as amended by Acts of 1906, p. 82, reads as follows:

"The council of each city shall have power, and it shall be its duty, on or before the fourth Monday in July in each year, or as soon thereafter as practicable, to levy a tax upon the real and personal property in the city of not to exceed fifty cents on the one hundred dollars of its assessed value, or the council may, in its discretion, make an appropriation in lieu of such levy."

Section 1538 of the Virginia Code, as amended by the Acts of 1906, p. 513, provides, so far as applicable to these questions, that the city school board of every city shall establish and maintain therein a general system of public free schools, and for the accomplishment of this purpose it shall have the power and duty "to manage and control the school funds of the city;" and also "to examine all claims against the school board, and when approved, to pay the same: provided, that a record of such approval shall be made in the proceedings of the board and a warrant on the city treasurer shall be drawn by the chairman of the

board and countersigned by the clerk thereof, payable to the person or persons entitled to receive such money, and stating on its face the purpose or service for which it is to be paid, and that such warrant is drawn in pursuance of an order entered by the board on the ..... day of ....."

From a study and analysis of the above provisions of the Code, the law seems to contemplate that the council of the city shall either make a levy or an appropriation for school purposes, and that the fund, when collected, shall be deposited with the city treasurer; but the management and control of the said fund is entirely with the school board. In this connection, we may note that the 14th sub-section of section 1538, as amended, provides that it shall be the duty of the school board of every city once in each year, and oftener if deemed necessary, to submit to the council in writing a classified estimate of what funds will be needed for the proper maintenance and growth of the public schools of the city, and to request the council to make provision by appropriation or levy for the same. When once the appropriation or levy has been made, then the money can only be drawn from the city treasury as indicated above, that is, by a warrant drawn in pursuance of an order entered by the board, signed by the chairman of the board and countersigned by the clerk thereof.

The second question which you put is whether the city may make an extra appropriation for school purposes. It would seem, from the language of section 1529, as amended, and quoted above that if the council makes a levy, then it cannot make an appropriation. The law makes it mandatory upon the council to either make a levy or an appropriation in lieu of such levy. It hardly seems necessary to cite authority for the statement that this language prevents the council from doing both. If authority be needed, reference may be had to *Austin v. Oakes*, 1 N. Y. S. 307, 310; *Third Bank v. Bond*, 64 Kas. 346; *Elliott v. Turner*, 2 Man., G. & S. 446, 461. If instead of making a levy the council makes an appropriation, then I cannot see anything to prevent the council from adding to said appropriation. This construction is aided by the language of the 14th sub-section of section 1538, as amended, and quoted above.

Very truly yours,

JNO. GARLAND POLLARD,

*Attorney General of Virginia.*

Virginia Polytechnic Institute—State students—Who are eligible therefor. Va. Code 1904, Secs. 587, 1511, 1544, 1575; Acts 1906, p. 95.

RICHMOND, VA., August 12, 1914.

Mr. THEO. P. CAMPBELL,

*Dean of the Faculty, Virginia Polytechnic Institute.*

*Blacksburg, Va.*

DEAR SIR:

In the absence of the Attorney General, I am replying to your letter of August 5th requesting a construction of the statute providing what students may attend the Virginia Polytechnic Institute free of charge. Your queries are in the following language:

"1st. A man will come from another State, remain here one or two years, register from Blacksburg, and claim that he is entitled to tuition since he has acquired citizenship. Is such a claim valid under law?

"2d. Men who previously lived in Virginia but have subsequently moved to some other State, but are still paying taxes in Virginia, make a claim that their sons be given free tuition."

Sec. 587 Va. Code 1904 provides as follows:

"A number of students equal to four times the number of members of the house of delegates, to be apportioned in the same manner, shall have the privilege of attending said college without charge for tuition, use of laboratories, or public buildings, to be selected by the school trustees of the respective counties, cities and election districts for said delegates, with reference to the highest proficiency and good character, from the white male students of the free schools of their respective counties, cities and election districts, or, in their discretion, from others than those attending said free schools."

An analysis of the foregoing statute will show clearly that the students must be selected by the school trustees of the respective counties, cities and election districts from persons who are *bona fide* residents of such counties, cities or election districts. For these students are to be apportioned in the same manner as the members of the House of Delegates. This apportionment is not a mere formal thing, but necessarily means a choice from students who live in said county, city or district. That this is the correct construction is also apparent from the fact that the persons who are given the privilege by the statute are "white male students of the free schools of their respective counties, cities and election districts," and while it is true that the statute allows students to be selected in the discretion of the members of the House of Delegates, "other than those attending free schools," it is implied in this privilege, I am sure, that persons so selected for free tuition shall be residents of the election district from which the member of the House of Delegates selects them. An examination of the requirements for State students at William and Mary, the State Female Normal School, University of Virginia and Virginia Military Institute will show that in every case these State students must be selected from residents of the State of Virginia and of some sub-division thereof (Acts 1906, p. 95, Va. Code 1904, Secs. 1511, 1544 and 1575).

Taking up the first query set out above, the presumption is strong that a man who has come from another State to the Virginia Polytechnic Institute and after remaining there a year or two will register from Blacksburg and then claim that he is entitled to tuition has not become such a resident of the State of Virginia as will entitle him to free tuition. In the first place, it would seem to be difficult for such a man to procure an appointment by the school trustees of any county, city or election district in the State. In the next place it has been held that students at an institution of learning are not domiciled there in the legal sense of the term. *Opinion of Justices*, 5 Met. 587, 589. And even if he may acquire a domicile in the same town it would take strong circumstances to prove such domicile. *In re Goodman*, 146 N. Y. 284.

As to the second query, it seems perfectly clear that men who have moved from Virginia can claim no privilege of free tuition for their sons since, as shown above, the selection by the school trustees must be from a student of the public free schools or from others residing in their district.

Therefore, answering your letter succinctly, I would say that you are correct in your opinion that neither of the two classes mentioned in your letter as quoted above is entitled to free tuition at the Virginia Polytechnic Institute.

Very truly yours,

CHRISTOPHER B. GARNETT,  
*Assistant Attorney General.*

**Public Printer—Stationery includes stenographer's note books. Vol. 3, Va. Code, Sec. 285a; Acts 1912, p. 535; Va. Code 1904, Sec. 275.**

RICHMOND, VA., *April 16, 1914.*

Mr. R. T. WILSON.

*Clerk, State Corporation Commission,  
Richmond, Va.*

DEAR SIR:

Your letter to the Attorney General, dated April 15th, enclosing certain correspondence between yourself, as clerk to the Commission, and Hon. Davis Bottom, Superintendent of Public Printing, and requesting a ruling on the meaning of the word "stationery" in section 285a, Supplement 1912, Acts 1912, p. 535, has just come to the office; and, in the necessary absence of the Attorney General, on official business, I will endeavor to answer the same.

Section 275 of the Code, as amended by Acts of 1912, p. 535, so far as applicable to this question, reads as follows:

"He (the Superintendent of Public Printing) shall supply all the officers, departments, boards and institutions located at the seat of government, the hospitals for the insane, and the Virginia State Epileptic Colony with such printing, stationery, lithographing, engraving, ruling, and binding as may be required by them in their several departments for the proper conduct of the business of the State."

Section 285a, referred to above, provides as follows:

"The term 'stationery' as used in this act shall be construed to mean such office supplies as carbon and typewriter papers, pens, pencils, pads, ink, rubber bands and so forth, but shall not include machinery or mechanical devices of any kind whatsoever."

I note from your letter that the Superintendent of Public Printing furnishes only pencils, pens, ink, rubber bands, paste, pens, erasers, penholders, mucilage, clips and fasteners, carbon paper, typewriter ribbon coupon books, linen typewriter paper, yellow second sheets and desk blotters; but that he does not furnish stenographers' note books nor cut blotters, and you request this office to advise you whether these should be included under the term "stationery" as defined in the above act. The Standard dictionary defines stationery as follows:

"Writing material in general, including paper, envelopes, blank books, pens, ink, etc.: a term of somewhat indefinite extent, sometimes restricted to note paper and envelopes."

Enc. Britt., 11th ed., gives the following:

"Stationery, a term embracing all the various articles sold by stationers, who were originally booksellers having stations or stands in markets, near churches or other buildings for the sale of their goods. \* \* \*

"Under the name stationery are now included all writing materials and implements, together with the numerous appliances of the desk and of mercantile and commercial offices."

We find some judicial definitions of the term. Under Article 207 of the Constitution of Louisiana, capital engaged in the manufacture of stationery is expressly exempted from taxation. In *State v. Dupre*, 7 So. 727, 42 La. Ann. 561, Fenner J., delivering the opinion of the court, said:

"What is stationery? Worcester defines it thus: 'The goods sold by a stationer, such as books, papers, pens, sealing wax, ink, etc.' He says that 'stationer' was synonymous with booksellers and meant 'one who

occupied a stall or station for selling books.' But in modern use the term 'stationery' probably covers only blank books, account books, etc.; yet the Constitution considers the makers of such books as manufacturers; and it is certainly difficult to conceive of any reason or principle that should deny the same quality to the making of printed books."

In this case, the court recognized the principle that a blank book was stationery and extended the doctrine to printed books.

In a statute in Illinois it was provided that county commissioners' courts shall make allowance for \* \* articles of stationery necessary for their respective courts out of the common treasury from time to time. In holding that printed blanks, such as summonses, subpoenas, etc., were articles of stationery, the court in *County of Knox v. Armes*, 22 Ill. (12 Peck) 175-179, said:

"The county contends that stationery as defined by lexicographers cannot include blanks, and reference is made to Webster. He says 'stationer' meant originally a bookseller, from his occupying a stand or station; but at present, one who sells papers, quills, inkstands, pencils and other furniture for writing, and 'stationery' means the articles usually sold by stationers, as paper, ink, quills, etc. If this be so, and we do not doubt it, stationery must include printed blanks, as they are articles usually sold by stationers. So would steel pens, penholders, wafers, mucilage, sand or sponge paper and various other articles be deemed stationery. A stationer deals in blank paper and in paper partially printed. Such is our experience, and blank forms are not unusually one of the main articles of their business. We think stationery includes blanks and are indispensable for the prompt performance of the duties of the office of clerk and therefore necessary for the court, the clerk's office being an indispensable appendage of the court."

An exactly contrary opinion to the above was reached by the court in *Commissioners of Arapahoe County v. Koons*, 1 Colo. 160, where it was held that blanks used by the clerk of a district court are not stationery within the meaning of their statute; but the court recognized the definition of stationery to include "such articles as are usually sold by stationers, as paper, ink, quills and the like."

In *Oklahoma County v. Blakeney*, 5 Okl. 70, 48 Pac. 101-103, the Supreme Court of Oklahoma uses the following language:

"The term stationery has a well defined and well understood meaning. Under the name of stationery are embraced all writing materials and implements, together with the numerous appliances of desk and of mercantile and commercial offices."

In *Harris County v. Clark* (Tex.), 37 S. W. 22, the court construed a statute of Texas providing that there should be allowed to certain county officers such books, stationery and office furniture as might be necessary for their offices. It was contended that the term "stationery" did not include printed forms with blanks therein to be filled by State officers as occasion required. In construing this question, the court said:

"Stationery is defined by Webster to mean paper, pens, ink, quills, blank books, etc. From this definition of the word, it would be only by a narrow and contracted interpretation that printed blanks could be denied to the sheriff or clerks of a county in the performance of their official duties."

The court then quotes *Knox County v. Armes*, *supra*, with approval, and held that the term "stationery" did include blank appeal bonds, blank complaints, etc.

Thus it will be seen that in most courts the term "stationery" is given



rather a broad than a contracted meaning. Now, by the very terms of the Virginia statute, "stationery" includes *pads*, and it does not seem to be stretching the language of the statute itself to say that a pad would include a stenographers' note book. Every one of the definitions seems to imply that it would include blank books, which would also seem to include a stenographer's note book. Certainly, if the statute includes paper to be written on in the offices of the departments, which cannot be denied, a stenographer's note book is simply paper to be written on in a form more convenient than in loose sheets; and it does not seem to be at all unreasonable to include stenographers' note books under the term "stationery."

In regard to the question as to whether the term "stationery" should include cut blotters, a liberal interpretation of the statute certainly would include such under the head of stationery. In one of the opinions set out above (in *County of Knox v. Armes*), it is said that sand or sponge paper would certainly be deemed stationery. It may be noted in this connection, however, that the Superintendent of Public Printing has recognized that the term includes desk blotters, and it may be that the form in which the blotter is furnished should be left entirely to the discretion of the Superintendent of Public Printing.

Respectfully submitted,

CHRISTOPHER B. GARNETT,  
*Assistant Attorney General.*

**Register of the Land Office—May be enjoined from issuing a patent for land.**

RICHMOND, VA., *February 23, 1914.*

Hon. J. W. RICHARDSON,  
*Register of the Land Office,*  
*Richmond, Va.*

DEAR SIR:

I beg to acknowledge the receipt of your letter, addressed to the Attorney General, dated February 23, 1914, in which you ask the following question:

"Is there any process of law, aside from caveat, by which this office can be restrained from issuing grant on survey regularly filed in same?"

I find that this specific question has been decided in the case of *Lyne v. Jackson*, 1 Rand., 22 Va. 114, where it was held that where a party applies to a court of chancery to prevent the issuing of a patent, or an assignment of a survey, and alleges a fraud committed by the defendant in forging an agreement between him and the complainant, the court of chancery has jurisdiction without the parties resorting to a caveat in the first instance.

In that case, the prayer of the bill was that the surveyor might "be enjoined from delivering the said warrant to any person until the further order of the court; and that the Register may be enjoined from issuing any patent for the land aforesaid." An injunction was awarded in accordance with the prayer of the bill, restraining the Register from issuing any patent. Upon the hearing, the Chancellor dismissed the suit, holding that the complainants had a remedy at law by caveat.

Upon an appeal to the Supreme Court, Judge Brooke, delivering the opinion of the court, held that the chancery court had jurisdiction, and that the Register of the Land Office was a proper party to effectuate the relief prayed for.

From a careful reading of the case, I must conclude, therefore, that courts of chancery may, by injunction, restrain the Register of the Land Office from issuing a grant whenever a proper case is made out, as was done in the case of *Lyne v. Jackson*, above.

Very truly yours,

CHRISTOPHER B. GARNETT,  
*Assistant to the Attorney General.*

**State Board of Embalming—Power and duty in regard to licensing applicants—Renewal of license. Va. Code 1904, Sec. 1743g, cls. 7, 8, as amended by Acts 1910, p. 358.**

Major L. T. CHRISTIAN, RICHMOND, VA., August 15, 1914.  
*Secretary, State Board of Embalming,*  
*Richmond, Va.*

DEAR SIR:

I have your letter of July 6th, making certain inquiries on behalf of the State Board of Embalming.

The first inquiry put is as follows: Whether the State Board of Embalming has the right to require all persons applying for a license to be twenty-one years old; in other words, can the board decline to issue license to practice embalming to a person who is not twenty-one years old?

Sec. 1743g, clause 7, Code of Va., provides that persons desiring to engage in the practice of embalming "shall make written application to the State Board of Embalming for a license" and present himself before said board for examination, 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."

The requirements of said section are: first, that the applicant shall be found of good moral character; second, that he shall be possessed of skill and knowledge of the science of embalming and sanitation, etc.

If upon examination an applicant is found to be of good character and has sufficient skill and knowledge of the science of embalming, etc., it would seem to be an unreasonable regulation of the board to require that he should be also twenty-one years of age. In other words, this would seem to be adding to the requirements of the law one that was not made by the lawmakers. Of course the fact that a person is under twenty-one years of age is one fact that the board could take into account in determining the experience and knowledge of the applicant, and if the board were of the opinion that it would be impossible for a person to acquire sufficient experience and knowledge before he became twenty-one years of age, then a regulation passed thereon might stand, but on the other hand, if the board were satisfied with the good character and the experience and knowledge of the science of the applicant, then it would seem to be unreasonable to refuse the license simply because the applicant was not twenty-one years of age.

The second query which you put is whether the board has the right to require that an applicant shall have at least two years practical experience in the undertaking business before being licensed.

You are given the right by the statute to examine the applicant to find out whether he is possessed of skill and knowledge of the 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, etc. You are also given the authority under section 6 to adopt rules, regulations and by-laws not inconsistent with the laws of this State or the United States. It is probably true that at least two years of practical experience is necessary in order for a person to be possessed of the knowledge and skill required by the statute; but, since the statute does not make it a requirement, then it would seem probable that the board would be stretching its powers a little to read into the statute a requirement not made thereby. On the other hand, in the case of each individual applicant it will be necessary for the board to take into consideration the length of his experience in determining whether he complies with the statute as to the requisite skill and knowledge to be possessed.

Your third query is whether the renewal license signed by the secretary of the board, with the seal of the board, would not be as valid as if it were signed by all the members of the board. Clause 8 of section 1743g, as amended by Acts of 1910, p. 358, provides as follows:

"And if the applicant for the renewal of such license has committed no offense against the laws of this State since the issue of previous license, or has not violated the rules of said board of embalming, the secretary shall issue a renewal license to the applicant; but if the laws of this State, or the rules of the board of embalming, have been violated by such applicant, then the application for renewal shall be referred to the board for its action."

From the above quotation, it would seem clear that a renewal license is only to be issued and signed by the secretary of the board and it is not necessary that it should be signed by all the members. In other words, it would seem that if there are no charges against the applicant, his renewal license will be issued as a matter of course and need be signed only by the secretary; but, if there be charges against him, then the board as a whole must pass on the application.

Very truly yours,

CHRISTOPHER B. GARNETT,

*Assistant Attorney General.*

**State Board of Medical Examiners—Power of the board in regard to the examination of applicants—Requisites for osteopaths. Acts 1912, p. 525.**

RICHMOND, VA., *March 12, 1914.*

Dr. R. S. MARTIN,

*President, Virginia State Board of Medical Examiners,  
Stuart, Va.*

DEAR SIR:

I beg leave to acknowledge the receipt of your favor of February 18, 1914, containing a letter from Dr. Herbert S. Beckler, of Staunton, Va., dated February 14, 1914, with reference to certificates to osteopaths.

The form of certificate which you furnish me certifies that the State Board of Medical Examiners has examined the applicant, in accordance with the provisions of an Act to Regulate the Practice of Medicine in the State of Virginia, approved April 23, 1903, and having obtained satisfactory evidence of his ability

and proficiency and qualifications as a practitioner, authorizes him to treat human ailments in the State of Virginia, "without the use of medicine internally, or externally, and without performing surgical operations." The complaint made by Dr. Beckler seems to be based on the following facts:

"I appeared before this board for licensure in June, 1911, and, as you will find, passed all subjects required of any physician except *materia medica* and the practice of medicine as, in lieu of these, I have studied and used the practice of osteopathy and mechanics of the human body. When my license came it did not grant me the privilege of using surgery. I wrote the secretary and did not receive a reply until after I had written him repeatedly some two and a half months after the meeting at which it was considered, and his reply was to the effect that I was not entitled to the change. Since then I find that the later graduates have been given the same kind of license as those licensed at the time the first law regulating the practice of osteopathy was enacted and who were not even required to graduate from a reputable school of osteopathy or pass any examination for license."

The present law is found in the Acts of 1912, chapter 237, p. 525 (Supplement of 1912, p. 331). Section 11 of said acts, so far as applicable to this question, reads as follows:

"It is further provided that graduates of any sectarian school of medicine who profess to practice medicine according to the tenets of said schools shall fulfill all of the conditions of the board and of the State board of education, save that they may be exempted from taking the examination of the regulars on practice of medicine, *materia medica* and therapeutics. A license to practice such sectarian school of medicine shall not permit the holder thereof to administer drugs or practice surgery unless he has qualified himself so to do by examination before the board, nor shall it permit members of such sectarian schools now practicing in this State to perform surgery with the use of instruments, unless they satisfy the board that they have had adequate clinical facilities at their respective colleges of graduation, or by hospital work, to enable them to perform such operations."

This seems to be the law now governing this question; and you will observe therefrom that, by the terms of the statute, the board shall not permit members of such sectarian schools now practicing in this State to perform surgery with the use of instruments unless the members of such schools satisfy the board that they have had adequate clinical facilities at their respective colleges of graduation, or by hospital work, to enable them to perform such operations. Therefore, it seems to be necessary for the members of such schools to satisfy the board on the point by exhibiting evidence that they have had adequate clinical facilities at their respective colleges of graduation, or by hospital work, to enable them to perform surgical operations; and, if the board is satisfied on this point, then the board would seem to be empowered to change the certificate, as set out above, so as to allow the licensee to practice surgery.

You will observe that in the future licenses may be granted to the members of such sectarian schools to practice surgery if the applicant "qualifies himself so to do by examination before the board;" but as to members of such sectarian schools now practicing in the State, it is sufficient if they satisfy the board that they had adequate clinical facilities, etc.

Very truly yours,

JNO. GARLAND POLLARD,  
*Attorney General of Virginia.*

**Automobile License Law—Power of Secretary of the Commonwealth to employ extra help. Vol. 3, p. 965; Acts 1910.**

RICHMOND, VA., April 18, 1914.

Hon. B. O. JAMES,  
*Secretary of the Commonwealth,*  
*Richmond, Va.*

DEAR SIR:

In the necessary absence of the Attorney General, on official business, I am replying to your letter addressed to this office asking for a construction of section 19 of the Automobile Law, involving the following question:

In sending out the automobile licenses in the month of December, 1913, and January and February, 1914, your office was flooded with applications, and in order to send out these licenses it became necessary for you to employ extra help. The question involved is whether you are authorized by section 19 to pay for the expense of extra clerical assistance out of the automobile fund, or whether you must pay for the same out of your contingent fund.

Section 19 aforesaid, so far as it applies to the question herein considered, provides as follows:

"All fees collected by the Secretary of the Commonwealth under the provisions of this act after the payment of the necessary expenses incident to the cost of purchasing number plates and paying the cost of mailing same, shall be paid into the State treasury," etc.

The Tax Bill, it may be noted in passing, contains an appropriation to the Secretary of the Commonwealth for the contingent expenses of his office. The question involved here is whether the expense for the extra clerical force employed by you can be construed as a part of the "necessary expenses incident to the cost of purchasing number plates and paying the cost of mailing same." If it can be considered as a part of said expense, then clearly you would be entitled to have the same paid out of the automobile fund. In your letter you state as follows:

"This extra help was used for no other purpose than that of mailing out the automobile licenses and plates."

This being true, it seems to me inevitable to conclude that it was a part of the necessary expense incident to paying the cost of mailing these licenses; and, consequently, it is my opinion that the automobile fund should bear this expense.

I note in the letter of the Auditor, sent with your letter, that the reason why he did not feel authorized to pass the account was because he did not think that the act authorized you to employ extra clerical assistance. While the act may not in terms authorize the employment of clerical assistance, still the act does in terms authorize the payment of the necessary expenses of mailing these licenses and plates; and as the law requires that every owner of a machine should, on or before the first day of January of each year, before he commences to operate his machine, register and obtain a license, and makes it unlawful to run a machine along the streets or highways without complying with the terms of the act and defines the penalty therefor, it would seem clearly within the power of the Secretary of the Commonwealth to incur extra expense in mailing out said licenses, and that the law contemplated that the expense thereof should be paid out of the automobile fund.

If the Secretary of the Commonwealth was not authorized to employ clerical assistance, it is perfectly clear that long delays would probably have resulted in sending out the licenses and number plates.

Respectfully submitted,

CHRISTOPHER B. GARNETT,

*Assistant Attorney General.*

**State Corporation Commission—Power to supervise, regulate and control heat, light, power and water companies. Constitution 1902, Sec. 156a; Va. Code 1904, Secs. 12941, cls, 2, 3, 1294i, 1294a; Acts 1914, p. 673.**

RICHMOND, VA., *February 5, 1914.*

*His Excellency, H. C. STUART,*  
*Governor of Virginia,*  
*Richmond, Va.*

DEAR SIR:

Replying to your letter of February 4, 1914, to the Attorney General, in regard to House Bill No. 60, imposing public duties on heat, light, power and water companies, and providing for the control and regulation of such companies by the State Corporation Commission, I beg leave to submit the following: Section 8 of the bill provides as follows:

“It is hereby expressly provided that all public utility companies shall have within this State the power of eminent domain, subject to the laws which may now exist or may hereafter be enacted for the enforcement of the right of eminent domain, and for the purpose of enforcing such power shall proceed as provided in chapter forty-six B of the Code of Virginia (edition 1904) or any amendments thereto so far as the same may be applicable.”

It is to be noted that section 1294h, in clauses 2 and 3, Virginia Code 1904, provides that if a telegraph or telephone company cannot agree with any person or corporation, the owner of lands, for any interest, franchise, privilege or easement over which such corporation proposes to construct a line “for a right of way for erecting, repairing and preserving its poles and other structures necessary for operating its line and for sufficient land for the erection and occupation of offices at suitable distances along its line for the public accommodation,” then the company may acquire such right of way in the manner provided under the laws of this State for the exercise of the right of eminent domain. The title which may be acquired by a telegraph or telephone company under this section applies only to a right of way for the purpose stated in clause 3, to wit: “for a right of way for erecting, repairing and preserving its poles and other structures necessary for operating its lines and for sufficient land for the erection and occupation of offices at suitable distances along its line for the public accommodation.”

It may be also noted that section 1294i, Virginia Code 1904, provides in the first section thereof new corporations, organized (a) for the purpose of producing, distributing and selling steam heat or power or compressed air, or (b) for the purpose of producing gas made of coal or other material, or (c) for the purpose of furnishing water supply to any city or town, or (d) for the purpose of maintaining a cold storage plant or furnishing cold air, or (e) for the purpose

of constructing or maintaining any viaduct, bridge or conduit, shall have authority to use the public roads and highways of the counties and the public parks, streets, avenues and alleys of the cities and towns of this State, subject to the restrictions of said section.

Clause 4 of said section, 1294i, provides as follows:

"The corporations mentioned in this chapter may contract with any person or corporation, the owner of lands, for any interest, franchise, privilege or easement therein over, under or through which any such line is to be constructed *for the right of way for its line and works and for sufficient land for its necessary offices, plant or plants, works, stations and structures.*"

Clause 5, of section 1294i, provides that if the company and the owner cannot agree on the terms of such contract, the company may acquire such right of way in the manner provided under the laws of the State for the exercise of eminent domain, and further provides that in case any person is damaged in his property along the line of the right of way by such use and occupation, such corporation shall, before using or occupying such public road, etc., make compensation therefor to the person so damaged, said compensation, if the parties cannot agree, to be ascertained in the mode prescribed by law for the exercise of eminent domain.

By comparing House Bill No. 60 with the law as it now stands, it will be seen that section 1 of the bill provides that every company *operating any public utility* in this State shall be deemed a public service corporation; and section 2 provides that the term "public utility" as used therein shall mean and embrace every corporation (other than a municipal corporation), company, individual or association of individuals, their lessees, trustees or receivers appointed by any court that now or hereafter may own, operate, manage or control any plant or equipment, or any part of a plant or equipment within the State for the conveyance of telephone messages *or for the production, transmission, delivery, or furnishing of heat, light, water or power either directly or indirectly to or for the public use.*

It will be noted also that whereas the law as it now stands confers the power of eminent domain upon the public service corporations enumerated in section 1294h and 1294i (to wit: telegraph and telephone companies and corporations organized for the purpose of producing and distributing and selling steam heat, power, compressed air or gas made of coal or other material, or for the purpose of furnishing and distributing water supply to any city or town, or for the purpose of establishing and maintaining a cold storage plant, or furnishing cold air, or for the purpose of constructing or maintaining any viaduct, bridge or conduit), this power of eminent domain is limited to the purposes enumerated in these sections, respectively, to wit: (a) for a right of way for erecting, repairing and preserving poles and structures of telegraph and telephone companies necessary for operating their lines, and for sufficient land for offices; and (b) for a right of way for the lines and works, and for sufficient land for the offices, plants, works, stations and structures of the companies mentioned in section 1294a; but House Bill No. 60 purports to give the power of eminent domain with *no qualifications* whatever to *all public service corporations.*

It must be remembered that the power of eminent domain is a sovereign right and inherently a part of the rights belonging to the people; and as it is

more harsh and peremptory in its exercise and operation than any other power, the rules of strict construction are always applied to an act granting the power. Lewis on Eminent Domain (3d ed.), section 388, page 708.

In order for a statute to provide for the grant of the power of eminent domain, the taking must be for public use and the use must be defined in the act, and it must conform to the provisions of the Constitution as to the title of acts. Lewis on Eminent Domain (3d ed.), section 409, pp. 738-39.

The act in question, therefore, would seem to be open to the following objections:

First, the title gives no notice of the fact that the bill confers the right of eminent domain;

Second, section 8, providing for the conferring of the power of eminent domain, either must be construed to confer the power of eminent domain with such qualifications as exist in the present statutes (and, therefore, would be unnecessary so far as the corporations enumerated in the present statutes are concerned); or if it is to be construed as conferring the power of eminent domain upon all public service corporations and companies for all purposes, is unconstitutional in not defining the public uses for which the power may be exercised;

Third, the bill in terms includes within its scope every public utility and then in section 2 sets out certain public service corporations, or companies, to wit: those conveying telephone messages or producing, etc., heat, light, water or power. If the doctrine of *ejusdem generis* be applied, only public service corporations and companies of the same kind as those enumerated will be held to be within its scope; but if the bill be construed to apply to other public service corporations than those enumerated, then the bill is obnoxious to the rule that an act conferring the power of eminent domain must specifically define the use in the act. *In re Theresa Drainage Dist.*, 90 Wis. 301, 63 N. W. 288; 3 Dillon on Municipal Corporations (5th ed.), p. 1644; 1 Lewis on Eminent Domain (3d ed.), p. 738 (and the power when conferred will not be enlarged by doubtful construction, *Id.*). And this fault is not cured by the reference, in section 8 of the bill, to chapter 46b of the Code; for that chapter nowhere defines the uses, but simply marks out the method by which the power of eminent domain may be exercised.

In your letter you suggest that "the question arises as to how the State can reach a company of this kind through the Corporation Commission as to the works already established." As I understand it, the company to which you refer is a corporation organized and established for the purpose of furnishing to the public heat, light and power, and as such has all the powers and is subject to the provisions of section 1294i, Va. Code 1904, being ch. 9 of the act concerning public service corporations.

Section 156a of the Constitution provides:

"Subject to the provisions of this Constitution and to such requirements, rules and regulations as may be prescribed by law, the State Corporation Commission shall be the department of government \* \* \* through which shall be carried out all the provisions of this Constitution, and of the laws made in pursuance thereof, for the creation, visitation, supervision, regulation and control of corporations chartered by or doing business in this State."



Therefore, it would seem clear that, so far as House Bill No. 60 provides for the *supervision, regulation and control of public service corporations*, it is clearly within the scope of section 156a of the Constitution quoted above.

Very truly yours,

CHRISTOPHER B. GARNETT,

*Assistant Attorney General.*

**Taxation—Power of town council to exempt manufactories from taxation. Constitution 1902, Secs. 168, 183.**

RICHMOND, VA., May 5, 1914.

Mr. R. D. PATTERSON,  
*Chase City, Va.*

DEAR SIR:

Replying to your favor of May 4, 1914, in which you inquire as to the legal right of your town council to exempt from taxation, for a limited period, certain manufacturing interests in your town, it is impossible for the council to exempt property from taxation under Article XIII of the Constitution of Virginia. Section 168 thereof provides that all property, except such as is mentioned in section 183 of the Constitution, shall be taxed, and that 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 taxes, and shall be levied and collected under general laws. Section 183 provides as follows:

"Except as otherwise provided in this Constitution, the following property, *and no other*, shall be exempt from taxation, State and local; but the General Assembly may tax any of the property hereby exempted save that mentioned in sub-section (a)."

The section then goes on to provide what property shall be exempt from taxation, such as property owned by the State, counties, cities or towns; property owned by religious denominations, used for religious worship, etc.

From the aforesaid provisions, it is clear that your town council would not have the right to exempt from taxation, for a limited period, any manufacturing interests in your town.

Very truly yours,

JNO. GARLAND POLLARD,

*Attorney General of Virginia.*

**Taxation—Collateral inheritance tax—Property exempt from taxation. Const. 1902, Sec. 183; Tax Bill, Acts 1910, Sec. 44, ch. 148, p. 229.**

RICHMOND, VA., February 16, 1914.

Hon. C. LEE MOORE,  
*Auditor of Public Accounts,*  
*Richmond, Va.*

DEAR SIR:

You have asked me to consider section 44 of the Tax Bill, as amended by an act approved March 14, 1910, as applicable to the will of Mary B. Briggs, who died in Hampton, Va., and whose executor probated said will in the clerk's office of Elizabeth City county, referring to me for the purpose the letter of Hon. H. H. Holt, clerk, dated February 12, 1914.

This is such an important question that I deem it advisable to make a part of the record a copy of said will, which reads as follows:

"KNOW ALL MEN BY THESE PRESENTS, that I, Mary B. Briggs, at present a teacher in Hampton, Virginia, but a native and aforetime resident of Norfolk county, Massachusetts, make this, my last Will and Testament.

First. My savings bank deposits, with my wardrobe, books, jewelry and other personal belongings, I give to my kinswoman, Mary Lee Adams, or in case of her inability to serve, to my other kinswoman, Helen Tileston Chickering, of Milton, Massachusetts, to be distributed according to their best judgment, and in accordance with any instructions which I may give them.

Second. I give to the Hampton Normal and Agricultural Institute, Hampton, Virginia, the sum of forty-four hundred dollars, to establish the Francis C. Briggs Academic Scholarship for Indians, the Mrs. William B. Bannister Industrial Scholarship for Indians, the Frances B. Bannister and the Sarah W. Hale Industrial Scholarships for negroes.

Third. I give to the American Board of Commissioners for Foreign Missions, to the Massachusetts Home Missionary Society, to the Congregational Board of Ministerial Relief, to the American Bible Society, and to the American Tract Society, two thousand dollars each.

Fourth. I give to the ecclesiastical society connected with the Trinitarian Congregational Church in Norwood, Massachusetts, and to such society connected with the Trinitarian Congregational Church in Halifax, Massachusetts, the sum of one thousand dollars each.

Fifth. I give to the ecclesiastical society connected with the North Congregational Church in Newburyport, Massachusetts, if such society now exists separately or in combination with another, the sum of one thousand dollars.

*Special Notice.* The legacies in articles second, third, fourth and fifth are from my brother, Francis C. Briggs, and should be credited in his name.

Sixth. I give to the ecclesiastical society connected with the Trinitarian Congregational Church in Norton, Massachusetts; to the Woman's Home Missionary Association, for work in Massachusetts; to the New Hampshire Cent Society, for work in New Hampshire; to the Cottage Hospital at Plymouth, New Hampshire, and to the Dixie Hospital at Hampton, Virginia, the sum of five hundred dollars each.

Seventh. All the rest of my estate shall be divided as follows into one hundred equal parts, and of such equal parts I give to—

Two parts—

Mrs. Fannie T. Briggs, of Boston, Massachusetts, two parts; she being my sister-in-law and in love;

Two parts—

Mrs. Mary Hannah Briggs, of Indianapolis, Indiana, my sister-in-law, two parts;

Two parts—

Mary Lee Adams, of Pittsfield, Massachusetts, my kinswoman, two parts;

Two parts—

Frances L. Goodrich, my kinswoman, two parts;

One part—

Lowell C. Briggs, my nephew, one part;

One part—

Mary Wheelock Fletcher, of Acton, Massachusetts, one part;

One part—

Ada Tillson, my kinswoman, one part;

Three parts—

Pierpont Alford, of Shawnee, Oklahoma, three parts;

Three parts—

William H. H. Pilcher, of Omaha, three parts: the legacies to said Alford and Pilcher being from Mr. Briggs.

Notice. If any of the legatees mentioned in article seventh die before this will is executed, their portion lapses into the general fund, for the residuary legatees.

I give from the said hundred equal parts to—

Eighteen parts—

Charles R. Briggs, my nephew, five parts,  
Charles R. Briggs' wife, five parts,  
Charles R. Briggs' daughters, in equal shares, eight parts.

Eighteen parts—

Frederick M. Briggs, M. D., my nephew, nine parts,  
Frederick M. Briggs' wife, nine parts.

Eighteen parts—

William S. Briggs, my nephew, five parts,  
William S. Briggs' wife, five parts,  
William S. Briggs' daughters, in equal shares, eight parts.

Eighteen parts—

Richard Briggs, my nephew, five parts,  
Richard Briggs' wife, five parts,  
Richard Briggs' son, eight parts.

Eighth. The residue of my estate, including any lapsed legacies, shall be equally divided among my four grand-nieces, Frances and Ruth, daughters of said Charles R. Briggs, and Myla Fletcher and Julia Fletcher, daughters of said William S. Briggs.

Ninth. I desire that my executor serve as trustee for the children of my nephews, allowing the principal for each one to accumulate till he or she is twenty-one years of age, unless in the judgment of the executor and the Probate Judge any portion of such principal be needed for their education.

Tenth. If I should hereafter make a "conditional bequest" to any of the beneficiaries mentioned in section third, fourth or sixth, or a loan or gift to any other beneficiary, and a signed receipt or my own memorandum be found with my papers, the amount of such gift or loan will be deducted from the legacy I have here directed.

Eleventh. I request that neither Mary Lee Adams nor Helen Tileston Chickering be required to qualify as trustee, but that the delivering to them of the property mentioned, relieve my executor of all further liability therefor.

Twelfth. I appoint as executor of this will, my kinsman, Munroe Chickering, of Milton, Massachusetts, or in case he be unable or unwilling to serve, I appoint in his stead George Chandler Coit, of Winchester, Massachusetts, and I ask that whichever serves be exempted from giving security on his bond.

IN WITNESS WHEREOF, Hereunto set my hand and seal this twentieth day of May, one thousand nine hundred and eleven.

MARY B. BRIGGS (Seal).

On this twentieth day of May, the above Mary B. Briggs executed the foregoing instrument as and for her last Will and Testament, in our presence, who, in her presence and in the presence of each other, hereto set our names as witnesses.

ANNA I. VINTON,  
MARY JOHNSON DODD,  
WM. S. DODD."

The question arises, under the above will, as to what property devised or bequeathed thereby is subject to a collateral inheritance tax under section 44 of the Tax Bill and what bequests and devises may be exempt from said collateral inheritance tax, either by the terms thereof or by section 183 of the Constitution.

Section 44, as amended by the act approved March 14, 1910, so far as it is applicable to this question, reads as follows:

"(a) Tax on collateral inheritance.—Where any estate in this Commonwealth of any decedent shall pass under his will, or the laws regulating descents and distributions, to any other person or for any other use than to or for the use of the grandfather and grandmother, father, mother, husband, wife, brother, sister or lineal descendant of such decedent, the estate so passing shall be subject to a tax at the rate of five per centum on every hundred dollars' value thereof: provided, that such tax shall not be imposed upon any property bequeathed or devised where such bequest or devise is for State, county, municipal, benevolent, charitable, education or religious purposes."

Section 183 of the Constitution of 1902, so far as it is applicable hereto, reads as follows:

"Except as otherwise provided in this Constitution, the following property and no other, shall be exempt from taxation, State and local; but the General Assembly may hereafter tax any of the property hereby exempted save that mentioned in sub-section (a):

"(a) Property directly or indirectly owned by the State, however held, and property lawfully owned and held by counties, cities, towns or school districts, used wholly and exclusively for county, city, town, or public school purposes, and obligations issued by the State since the fourteenth day of February, eighteen hundred and eighty-two, or hereafter exempted by law.

"(b) Buildings with land they actually occupy, and the furniture and furnishings therein lawfully owned and held by churches or religious bodies, and wholly and exclusively used for religious worship, or for the residence of the minister of any such church or religious body, together with the additional adjacent land reasonably necessary for the convenient use of any such building.

"(d) Buildings with the land they actually occupy and the furniture, furnishings, books and instruments therein, wholly devoted to educational purposes, belonging to, and actually and exclusively occupied and used by churches, public libraries, incorporated colleges, academies, industrial schools, seminaries, or other incorporated institutions of learning, including the Virginia Historical Society, which are not corporations having shares of stock or otherwise owned by individuals or other corporations; together with such additional adjacent land owned by such churches, libraries and educational institutions as may be reasonably necessary for the convenient use of such buildings, respectively; and also the buildings thereon used as residences by the officers or instructors of such educational institutions; and also the permanent endowment funds held by such libraries and educational institutions directly or in trust, and not invested in real estate: provided, that such libraries and educational institutions are not conducted for profit of any person or persons, natural or corporate, directly, or under any guise or pretence whatsoever. But the exemption mentioned in this sub-section shall not apply to any industrial school, individual or corporate, not the property of the State, which does work for compensation, or manufactures and sells articles, in the community in which such school is located; provided that nothing herein contained shall restrict any such school from doing work for or selling its own products or any other articles to any of its students or employees.

"(e) Real estate belonging to, actually and exclusively occupied, and used by, and personal property including endowment funds, belonging to Young Men's Christian Associations, and other similar religious associations, orphan or other asylums, reformatories, hospitals and nunneries, which are not conducted for profit, but purely and completely as charities.

"(f) Buildings with the land they actually occupy, and the furniture and furnishings therein, belonging to any benevolent or charitable association and used exclusively for lodge purposes or meeting rooms by such

association, together with such additional adjacent land as may be necessary for the convenient use of the buildings for such purposes.

"No inheritance tax shall be charged, directly or indirectly, against any legacy or devise made according to law for the benefit of any institution or other body or any natural or corporate person whose property is exempt from taxation as hereinbefore mentioned in this section."

There are some general principles to be noted in coming to a correct conclusion in this case to which I desire to direct your special attention.

Exemptions from taxations are in derogation of sovereign authority and of common right, and are not to be extended beyond the exact and express requirements of the grants, construed *strictissimi juris*. 1 Cooley on Taxation (3d ed.), 374, 375.

The burden is on the person or corporation claiming the exemption to bring himself or itself within the terms of the statute. *In re Collins Estate*, 93 N. Y. S. 342.

It is a universally accepted rule of construction that an act of the General Assembly of a State granting powers, privileges or immunities to corporations must be held to apply only to corporations created under the authority of that State over which such State has the power of visitation and control, unless the intent that the act shall apply to other than domestic corporations is plainly expressed in the terms of the act. *In re Estate of Speed*, 216 Ill. 23, 74 N. E. 809, 108 Am. St. Rep. 189, citing Dos Passos on Inheritance Tax Law, 2d ed., sec. 36; *People v. Western Seaman's Friend Soc.*, 87 Ill. 246; *Baille's Estate*, 144 N. Y. 132, 38 N. E. 1007; *Humphrey v. State*, 70 Ohio St. 67, 101 Am. St. Rep. 888.

In the case of *In re Estate of Speed supra*, Fannie Speed devised certain real estate in Chicago to the Board of Education of the Kentucky Annual Conference of the Methodist Episcopal Church, a corporation organized under and existing by virtue of the laws of the State of Kentucky, with power to form a fund for the promotion of literature, art, education, morality and religion, to be held and used exclusively in the State of Kentucky. The statute of Illinois provided as follows:

"When the beneficial interests of any property or income shall pass to or for the use of any hospital, religious, educational, Bible, missionary, tract, scientific, benevolent or charitable purpose, \* \* \* by grant, gift, devise, bequest or otherwise, the same shall not be subject to any such duty or tax, but this provision shall not apply to any corporation which has the right to make dividends or distribute profit or assets among its members."

The court, in construing this section, held that, as the devise of Fannie Speed was made to a foreign corporation, the exemption of charitable bequests to corporations from an inheritance tax did not apply to the bequest in that case, and that such bequest was subject to the inheritance tax.

(It may be noted that the case went to the Supreme Court of the United States on the question as to whether the construction put by the Illinois court upon its statute did not render the provisions of the statute void as discriminatory and counter to the equal protection clause of the Fourteenth Amendment; but the court upheld its constitutionality, sustaining the State court on this point. *Board of Education v. Illinois*, 203 U. S. 553.)

In the case of *In re Baille's Estate*, 144 N. Y. 132, 38 N. E. 1007, the testator in New York State, by his will, divided his residuary estate among certain

religious corporations, organized and existing under the laws of other States; and it was contended for these corporations that they were exempted from the collateral inheritance tax of that State under the following clause:

“But any property heretofore or hereafter devised or bequeathed to any person who is a bishop, or to any religious corporation, shall be exempted from and not subject to the provisions of this act.”

The Court of Appeals held that the clause exempting property devised or bequeathed to “any religious corporation” from the collateral inheritance tax did not apply to foreign religious corporations, citing and following an elaborate opinion of Andrews, Ch. J., in the case of *In re Prime*, 136 N. Y. 350, 32 N. E. 1091.

In *Rice et al. v. Bradford*, 180 Mass. 545, 63 N. E. 7, it was held that under a statute exempting from taxation legacies for charitable educational or religious societies or institutions, the property of which is exempt by law from taxation, a legacy to Bowdoin College, in the State of Maine, incorporated under a Massachusetts statute of 1794, was not exempt, as there was no statute in Massachusetts so exempting it; since the statute of 1819, creating Maine as an independent State out of the Commonwealth of Massachusetts, and providing that all lands theretofore granted by the Commonwealth to any religious, literary or eleemosynary corporation or society should be free from taxation while the same continued to be owned by such corporation or society, was not such a general exemption from taxation as was referred to in the statute above exempting from taxation legacies for charitable societies, etc.

See, also, *Minot v. Winthrop*, 162 Mass. 113, 126, 38 N. E. 512, 26 L. R. A. 259; *In re Rothschild's Estate*, 71 N. J. Eq. 210, 63 Atl. 615. order affirmed *Rothschild's Estate*, 72 N. J. Eq. 425, 65 Atl. 1118; *Alfred University v. Hancock*, 69 N. J. Eq. 470, 46 Atl. 178; *In re Wolfe's Estate*, 52 N. Y. S. 415; *Humphreys v. State*, 70 Ohio St. 67, 70 N. E. 957, 65 L. R. A. 776.

In the last case cited above (*Humphreys v. State*) it was remarkable that the will of Isabella Brown there construed devised legacies to the American Bible Society and the American Tract Society, two of the legatees mentioned in the third paragraph of the will of Mary B. Briggs now being construed; and the court in that case held that under the Ohio statute these two legacies were subject to the collateral inheritance tax, and the ground upon which this decision was based is practically the same as in the cases above quoted.

The court in rendering this opinion quotes from the case of *People ex rel. Huck v. Western Seaman's Friend Society*, 87 Ill. 246, as follows:

“But if a broader construction could be given to the statute and it could be held to embrace all institutions that dispense charity, whether public or private, and the property used exclusively for that purpose, there is still a valid reason why the property in this case is not exempt from its just proportion of taxation. The statute must in any event be understood to have exclusive reference to *institutions or corporations created by the laws of this State, and not to foreign corporations that may choose to locate branches in this State*. It is only by that comity that exists between States that foreign corporations are permitted to transact in this State the business for which they were created. The General Assembly has manifested no intention to relieve the property situated in this State belonging to such corporations, no matter what their objects may be, whether charitable or otherwise, from the burdens of taxation.”

In *United States v. Perkins*, 163 U. S. 625, 41 L. Ed. 287, the case of *In re Prime*, 136 N. Y. 347, referred to above is cited and quoted with approval.

From the foregoing cases, we are forced to conclude that the exemption of charitable institutions relates only to domestic institutions, and that this construction of this statute does not place it in conflict with the Fourteenth Amendment to the Constitution of the United States.

Applying these principles to the specific sections of the above will, my conclusion is set out below, following the names given to the paragraphs in said will.

*First.* The bequests to the testatrix kinswomen in this paragraph are evidently subject to the tax.

*Second.* The bequest to the Hampton Normal and Agricultural Institute is not subject to the tax. (*Commonwealth v. Hampton Institute*, 106 Va. 614.)

*Third.* The bequests in this paragraph of the will are subject to the tax.

*Fourth.* The bequests in this paragraph of the will are subject to the tax.

*Fifth.* The bequests in this paragraph of the will are subject to the tax.

*Sixth.* The bequests in this paragraph of the will are subject to the tax, with the possible exception of the bequest of \$500.00 to the Dixie Hospital at Hampton, Va. Whether this bequest is subject to the tax depends upon the purposes for which the Dixie Hospital has been incorporated, and especially upon the question as to whether it is conducted for profit, or purely and completely as a charity. (Section 183 of the Constitution.)

*Seventh.* The bequests in this paragraph of the will are subject to the tax.

*Eighth.* The bequests in this paragraph of the will are subject to the tax.

If there are any points of doubt in your mind in regard to this opinion, I will be glad for you to indicate to me wherein you need further advice.

Very truly yours,

CHRISTOPHER B. GARNETT.

*Assistant Attorney General of Virginia.*

**Taxation—Constitutional Law—Power of the legislature to fix the situs of certain rolling stock belonging to railroad corporations. Const. 1902, Secs. 168, 176; Acts 1914, ch. 135, p. 218.**

RICHMOND, VA., March 5, 1914.

Hon. A. C. HARMAN,

Hon. J. M. HART.

*Senate Chamber, Richmond, Va.*

GENTLEMEN:

You requested me at noon today to give you my opinion in reference to House Bill No. 88, saying that you desired my opinion by tomorrow morning. As I have only had a few hours to give to this most important subject, my conclusions have necessarily been hastily formed. The said bill has been amended by the House by striking out on page 2 after the word "located" in line 11, all down to and including the word "located" in line 21. The question which you

address to me is whether it would be constitutional to leave the bill in its original form, that is to say, inserting in the amended bill that portion which was stricken out by the House amendment.

The effect of the bill as amended by the House is to provide that the value of the rolling stock of steam, electric and street railroads, as ascertained and assessed by the State Corporation Commission for the purpose of State taxation, shall be divided, apportioned and distributed, for the purposes of local taxation, among the several counties, cities, towns and school districts in and through which any part of such railroad is located in the ratio and proportion that the total assessed value of the right of way, roadbed, track and all other property (except rolling stock) of such corporations, respectively, located in any such county, city, town or district bears to the assessed value of all such property (except rolling stock) of said railroad corporations, respectively; and the effect of the provision left out by the amendment, that is to say, the effect of the bill as reported by the committee to the House, was to apportion and distribute to the towns or cities in which the principal offices of such companies are located thirty per cent. of the assessed value of such rolling stock, and to apportion the remaining seventy per cent. in the same manner as provided by the bill in its present form for the apportionment and division of all the rolling stock. In other words, according to the original bill, the counties, cities and towns in which the principal offices are located would get their pro rata share of seventy per cent. of the assessed value and, in addition, would get thirty per cent. of the said assessed value; and the question, therefore, which you have addressed to me is to determine whether it is constitutional for the county, city or town in which the principal office is located to share pro rata in seventy per cent. of the assessed value of the rolling stock, and then to receive the other thirty per cent. in addition.

Section 176 of the Constitution, providing for the assessment and taxation of railroad companies, provides, so far as this question is concerned, as follows:

"The State Corporation Commission shall annually ascertain and assess, at the time hereinafter mentioned and in the manner required of the Board of Public Works by the law in force on January 1, 1902, the value of roadbed and other real estate, rolling stock and all other personal property whatsoever (except its franchise and non-taxable shares of stock issued by other corporations) in this State of each railway corporation \* \* \* ; and such property shall be taxed for said county, city, town and district purposes in the same manner as authorized by said law at such rates of taxation as may be imposed by them, respectively, from time to time upon the real estate and personal property of all such persons \* \* \* ."

The manner in which the Board of Public Works was required by law in force on January 1, 1902, to ascertain and assess the property of railroad corporations is set out by Acts of 1891-2, chapter 254, p. 428, which required the railroads to report annually on the first day of June to the Auditor of Public Accounts all its real and personal property of every description as of the first day of February of each year, showing in what county or corporation the principal office was located and in what county or corporation such property was located, classifying the same under various heads, including, in the fourth sub-division, rolling stock.

These reports were required to be verified by the oath of the president, or other proper officer. The Auditor was required to lay these reports before



the Board of Public Works, who, after thirty days' notice to the proper officer, was required to proceed to ascertain and assess the value of the property as reported and to send a certified copy of such assessment immediately to the proper officer of the railroad, who was required within sixty days after the receipt thereof to pay into the treasury of the State the taxes imposed thereby.

House Bill No. 88, referred to above, assumes, and I shall take it for granted, that section 176 of the Constitution, as set out above, in connection with the act of the legislature, also set out, does not fix the situs of rolling stock for taxation, but simply provides the method by which rolling stock and other property mentioned therein shall be assessed, turning over to the State Corporation Commission the function which theretofore had been exercised by the Board of Public Works. Of course, it is perfectly evident that no attempt was made to fix the situs of real estate, and it certainly does not seem clear that the constitutional provision was intended to fix the situs of any other class of property mentioned therein.

It is a well established rule that where there is no statute fixing its situs elsewhere for taxing purposes, railroad rolling stock is personal property and taxable only in the county or corporation wherein the railroad has its head office.

*Orange & A. R. Co. v. Alexandria*, 17 Gratt., 58 Va. 176, 185;

*Atlantic & Danville R. Co. v. Lyons*, 101 Va. 1, 42 S. E. 932;

*Sangamon & M. R. Co. v. Morgan County*, 14 Ill. 163, 56 Am. Dec. 497;

*State ex rel. Morton v. Beck* (Neb.), 69 L. R. A. 447;

*Philadelphia, W. & B. R. Co. v. Appeal Tax Court*, 50 Md. 397;

*Appeal Tax Court v. Western Maryland R. Co.*, 50 Md. 274.

But, while it is generally true that in the absence of express provision of law to the contrary, personal property follows and has its situs for the purpose of taxation at its owner's domicile, and the power of the State to tax is limited to persons and property within its jurisdiction, nevertheless, personal property may by law be severed for taxation from its owner. *Tappan v. Merchants National Bank*, 19 Wall. 490, 22 L. ed. 189. And it follows from this principle that a railroad corporation has not a constitutional right to have its intangible personal property taxed only at its place of domicile. It is entirely competent for the legislature to fix its situs for taxation anywhere along the line. *Columbus So. R. Co. v. Wright*, 151 U. S. 470, 38 L. ed., 238; *Mobile v. Baldwin*, 57 Ala. 61. And it has been held that under the general laws the legislature may fix the situs for taxation of personal property, tangible or intangible, provided its classification is not arbitrary. *Walton County v. Morgan County*, 120 Ga., 548. Therefore, it is competent for the legislature to treat railroad rolling stock for purposes of taxation as real estate and make it taxable as such. *L. & N. A. R. Co. v. State*, 25 Ind. 177. And so it has been held that it is perfectly competent for the legislature to say that the rolling stock and machinery of a railroad corporation, which is constantly passing between the termini, shall become part of the road for taxable purposes and be equally distributed along the line to the counties, cities and towns, according to the length of the road in the respective localities. *State ex rel. Kansas City, St. J. & C. B. Co. v. Severance*, 55 Mo., 378. And so in Maryland it has been held that notwithstanding a constitutional provision that the personal property of residents of the State shall be subject to taxation in the counties and cities where they reside for the greater part of the fiscal year and not elsewhere, except

goods and chattels permanently located in other places, the legislature may make taxable the rolling stock of domestic corporations elsewhere than at the home or principal office of the railroad company, for the constitutional provision refers only to natural persons, having power to change their residence at will, which corporations cannot do.

*Baltimore, C. & R. Co. v. Wicomico County*, 93 Md. 113. 48 Atl. 853.

In the case of *State ex rel. K. C. St. J. & C. B. R. Co. v. Severance*, 55 Mo. 378, the statute there being construed provided that the Board of Equalization should apportion the value of lands, depots and other buildings to the counties, cities or towns in which they were situated and "the aggregate value of all other property of each railroad company shall be apportioned to each county, city or incorporated town in which such railroad shall be located according to the ratio which the number of miles of road completed in each county shall bear to the whole length of such railroad."

It was argued in that case that as the company had its chief office for the transaction of its business in the city of St. Joseph, its rolling stock should have been assessed in that city and made liable there for taxation; that though constantly used in other counties through which the road passed in the transaction of the business of the road, still the only situs of its rolling stock was where the chief office was located.

The court, after laying down the rule set out above that if there was no law prescribed regulating the subject rolling stock was liable for assessment and taxation where the corporation had its residence, uses the following language:

"This notion of the situs of personal property following the personal residence of the corporation is a legal fiction but is not an unbending and uncontrollable feature of law. It may be modified by the legislature. The rolling stock of a company is in a constant state of transition and has no more real local existence in one county than another. The county through whose whole length it runs might well think that it had as much right to tax it as a city that it passed through but for a mile or two at most; but both would have no right to levy a tax for that would be double taxation upon the same property. This machinery by which the road is operated is constantly passing from one terminus to the other of the entire road, and to save all cabal and dispute in connection with it, it was perfectly competent for the legislature to say that it should become a part of the road itself and become property the same as the road itself, and that for the purposes of taxation it should be equally distributed through the counties, cities or towns through which it passed, in proportion to its length in these respective localities."

In *Teagan Transportation Co. v. Detroit Board of Assessors* (Michigan), 69 L. R. A. 431, the court said that it was undoubtedly true that the legislature could determine the situs for taxation of personal property, but that in fixing the situs the legislature could not disregard the constitutional provision requiring uniformity of taxation. On this point the court said:

"The legislature derives its authority to determine the situs for the taxation of personal property, and it certainly has that authority (*Detroit v. Board of Assessors*, 91 Mich. 78, L. R. A. 59, 51 N. W. 787), not from an express constitutional grant but from the grant of general authority to legislate. The provision requiring uniformity of taxation is a constitutional limitation on that authority. To contend that in determining such situs the legislature may ignore the constitutional requirement of uniformity is to contend that in exercising its general authority the legislature may ignore the constitutional limitation on that authority.

This argument nullifies all constitutional limitations on legislative authority and is, therefore, unsound. We are, therefore, forced to conclude that the legislature in determining the situs for the taxation of personal property must regard the constitutional requirement of uniformity, and the disregard of that requirement makes the law under consideration unconstitutional and void."

In that case, the law declared void was a statute making all the property of corporations engaged in maritime commerce and navigation taxable only at the places designated in their charters as their general offices for business; because the law in question clearly taxed the property of corporations engaged in maritime commerce and navigation at a rate different from all other property of the same class. Said the court on this point:

"In the case before us it permits a particular class of corporations to have their property assessed for taxation at that place in a State where taxation is lowest."

It cannot be contended that House Bill No. 88, as originally introduced, would be open to any such objection as the court found to the Detroit statute above; in fact, whether the bill is passed either in the original or amended form, the assessment for taxation will be exactly the same.

It was expressly held in *State ex rel. K. C. St. J. & C. B. R. Co. v. Severance*, above, that where the statute provided that for the purposes of taxation of rolling stock such rolling stock should be distributed through the counties, cities or towns through which the road passed, in proportion to its length in these respective localities, such a statute was not void as violating that provision of the State Constitution declaring that taxation of property should be uniform. On this point the court says:

"We are unable to perceive the force of this objection. Under the act no part of the company's property is exempt but it is all taxed alike upon a cash valuation. The Board of Equalization assesses all the property at its cash value and then it is taxed in the same manner as all other property of like description. The principle of uniformity is adopted throughout. Its validity is in no wise impaired or affected because a different mode of assessment is provided for so long as the same end is attained. \* \* \* There is no attempt here to tax one section for the benefit of another, nor is any real inequality produced."

In *State ex rel. Morton v. Beck*, 69 L. R. A. 447, it was held that it was competent for the legislature to provide for the valuation and assessment of all railroad property as a unit and distribute the aggregate value to the different counties, townships, cities and towns through which the lines run on a mileage basis, and that such a scheme or plan of assessment and taxation of the property of railroad companies for State, county and municipal purposes did not violate the provisions of the fundamental law commanding uniformity in the valuation and assessment of property for the purpose of raising needful revenues by the levying of a tax upon all property subject to its value. The court on this point said:

"Uniformity with respect to person and property requires that the tax-rate must be the same as to all persons affected and the valuation of the property must be upon the same basis throughout the entire taxing jurisdiction."

And, further, the court said on this point:

"As to those properties which have no fixed situs, such as the rolling stock, franchises and other intangible property, it is difficult to conceive

of any more just or equitable scheme or plan than to fix the value of the whole and distribute the same throughout the different taxing jurisdictions according to the distance of the line of road situated in each district for whose benefit taxes are levied."

The Supreme Court of Colorado, in *Ames v. the People*, 26 Colo. 83, 56 Pac. 656, upheld the validity of a statutory enactment providing for one body to value or assess all the property of a railway company as a unit and to distribute the value upon a mileage basis.

The Supreme Court of the United States, in *Union Pacific R. Co. v. Ryan*, 113 U. S. 516, speaking through Bradley, J., used the following language:

"The difficulty of assessing the value of railroad property in separate parcels located in distinct cities and townships is almost insuperable. A railroad cannot be regarded as mere land like farm land or building lots. Its value depends upon the whole line as a unit to be used as a thoroughfare and means of transportation. A separate mile or two of its length is almost valueless by itself. And then its rolling stock has no particular locality except a constructive one in the place where the principal office of the railroad company is situated, and it would be manifestly unequal, to give to that place the benefit of taxing the whole of it. The plan adopted by the statute evades these difficulties. It places the power of assessing the value of the whole line, so far as it lies within the territory, including the territory, in the hands of the Board of Equalization, and after they have fixed such valuation and ascertained what it amounts to per mile for the length within the territory, such valuation per mile is certified by the Territorial Auditor to the clerks of the several counties through which the road passes, specifying the number of miles in each county so as to give to each its pro rata share, and then the county commissioners divide and adjust the number of miles and the amounts within each taxing precinct, township and school district to be entered upon their respective lists of taxable property."

See, also, on the question as to whether such a statute violates the provision of the Constitution requiring taxation to be uniform, *Detroit Citizens Street Ry. v. Detroit*, 125 Mich. 673, 84 Am. State Reports 589; *Chicago, B. & Q. R. Co. v. Richardson County*, 61 Neb. 519, 85 N. W. 532.

It must be borne in mind in considering this question that our constitutional provision on the subject reads 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."

All that is required, therefore, by our Constitution on this subject is that the tax, State, local and municipal, shall be uniform within the territorial limits respectively of the State, county, city or town levying the tax. Of course, it cannot be contended that this provision of the Constitution was intended to make the rate of taxation in one county the same as in another; nor does this section affect the right of the legislature to fix the situs of property for taxation.

The only difference between the original bill and the amended bill is as to the relative percentage of the value of rolling stock whose situs is fixed in the cities where the principal offices are located and the value of the rolling stock whose situs is fixed in the counties and cities through which the lines run. From the authorities quoted above, I think it would have been perfectly competent for the legislature to have fixed the situs of the rolling stock in the various localities according to the number of miles in such locality, as was done in most

of the cases cited above. Instead of adopting that method of fixing the situs, the bill as amended determines the value of the rolling stock whose situs is fixed in a definite locality by getting the relative proportion of the property (excluding rolling stock) of the corporation in such locality to the total value of the property of the corporation (excluding rolling stock) in the State of Virginia. It is perfectly evident that the only difference between these two methods of fixing the situs is as to the relative amount given to the various governmental areas concerned. It, therefore, follows that if the legislature has the right to choose either one or the other of the two methods of fixing the situs, it may adopt the third, which varies from the other two only in the relative value of the rolling stock whose situs is fixed in the various localities. Therefore, it would be just as constitutional and competent for the legislature to adopt the method outlined in the bill as reported to the House as it would be for it to adopt the method outlined in the amended form of the bill.

Very truly yours,

CHRISTOPHER B. GARNETT,

*Assistant Attorney General.*

**Taxation—Taxes to be paid on recordation of deeds. Tax Bill, Sec. 13.**

RICHMOND, VA., *March 6, 1914.*

Hon. C. LEE MOORE,

*Auditor of Public Accounts,  
Richmond, Va.*

DEAR SIR:

You have referred to this office the following question:

"A commissioner's deed has been offered for record in the chancery court of the city of Richmond from W. W. Crump, Special Commissioner, to Wm. H. Boschen and others. It appears from said deed that there was a decree of the chancery court of the city of Richmond, entered on the third day of June, 1890, appointing special commissioners to offer for sale, at public auction, certain real estate described therein; that said commissioners did, on the 18th day of June, advertise the property for sale, and that in those proceedings Herman C. Boschen became the purchaser, at the consideration of \$18,000. It also appears from said deed that the purchase money has finally been paid; and that by another decree, entered on the 9th day of February, 1914, W. W. Crump, who was appointed special commissioner for the purpose, should execute and deliver to Wm. H. Boschen and others a deed for said property. The clerk of the chancery court, when the deed was presented for record, on February 11, 1914, charged a tax on said deed the sum of \$35.50, arriving at said sum by the present assessed value of the real estate. It is contended by the purchasers that, as the consideration of the sale which was made in 1890 was \$18,000, the tax should be on that sum, which was then the true value of said real estate."

Section 13 of the Tax Bill, so far as it is applicable to this question, reads as follows:

"On every deed \* \* \* 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* \* \* \*. 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 one hundred dollars or fraction thereof of such consideration or

actual value \* \* \*. The tax on every deed, contract or agreement shall be determined and be collected by the clerk in whose office it is first offered for recordation \* \* \*.

I can find no case in which this question has arisen, and the cases which construe section 13 do not throw any light on this subject. Our construction, therefore, must be guided by the general rules of construing statutes.

The purpose of giving the double measure as to what the tax should be, to-wit: upon first, the consideration, or second, the actual value of the property conveyed—seems to be to allow the clerk where the actual value is not stated in the deed, or where the person offering the deed for record is unwilling to state the true consideration, or where the deed is one on a consideration of love and affection, or some similar sentimental consideration, to determine what is the actual value and, thereupon, to charge a just sum as a tax. In this case, there is no intimation that the sum of eighteen thousand dollars was not the actual value of the property at the time the sale occurred, and the question presented for solution is simply where the deed was not made to the property at the time of the consummation of the sale, the simple fact that the property has arisen in value before the deed passed authorizes the clerk to increase the tax accordingly. If the clerk is authorized to increase the tax in such a case as this, it would be entirely competent for him to increase the tax where the deed did not pass for one, two or any other number of years. In other words, any delay which prevented the deed from being admitted to record would authorize the clerk, when the deed was presented, to charge an additional fee for the increment in the value of the property. I do not believe that such was the object of the law, but I am of opinion that the purpose was simply to prevent parties from paying a low tax by understating the actual consideration.

Very truly yours,

JNO. GARLAND POLLARD,

*Attorney General of Virginia.*

**Taxation—Poll tax under Constitution, Sec. 173; Tax Bill, Sec. 3.**

Mr. D. E. FRIZZELL,

*Treasurer,*

*Bristol, Va.*

RICHMOND, VA., March 11, 1914.

DEAR SIR:

Replying to your favor of March 7th, as to who, under the laws of Virginia, are subject to a capitation tax, I beg leave to call your attention to section 173 of the Constitution which, so far as this subject is concerned, reads as follows:

“The General Assembly shall levy a capitation tax of, and not exceeding, one dollar and fifty cents per annum on every male resident of the State not less than twenty-one years of age, except those pensioned by this State for military services.”

And the Virginia Tax Law, approved April 16, 1903, in providing what are taxable subjects, sets out the following:

“Schedule A.

“The classification under Schedule A shall be as follows, to-wit:

“First. The number of white male inhabitants who have attained the age of twenty-one years, except those pensioned by this State for military services.

*Second.* The number of colored male inhabitants who have attained the age of twenty-one years, except those pensioned by the State for military services.

*Tax on Persons.*

Upon every male person classified in Schedule A, there shall be a tax of one dollar and fifty cents \* \* \*."

From the foregoing, you will see that the constitutional provision requires a capitation tax "on every male resident of the State not less than twenty-one years of age," and that the General Assembly, in carrying out this provision, uses the term "male inhabitants."

Residence and habitation are generally regarded as synonymous. A resident and an inhabitant mean the same thing. Drake on Attachments, section 59; 4 Minor's Institutes, p. 367.

Consequently, I am constrained to hold that British subjects residing in Bristol are subject to the capitation tax prescribed by the Virginia Constitution and statutes.

Of course, what I have said pertains only to the laws of Virginia, which might be overridden by some treaty obligation of the United States, as to which this office has no information. Inquiry at the State Department at Washington would throw light on the subject.

Very truly yours,

JNO. GARLAND POLLARD,

*Attorney General of Virginia.*

**Taxation—Constitutionality of Senate Bill No. 278 amending Code Secs. 833 and 833a. Constitution, Secs. 183 and 50.**

RICHMOND, VA., March 24, 1914.

*His Excellency, H. C. STUART,  
Governor of Virginia,  
Richmond, Va.*

DEAR SIR:

You have referred to me the question of the constitutionality of Senate Bill No. 278, being a bill to amend and re-enact sections 833 and 833a of the Code. The amendment to the original sections is found on page 3, beginning at line twenty and extending to line forty-two of page 4, providing in effect that the board of supervisors shall have authority to order a levy on all real estate situated in their respective counties belonging to any city, town or other municipality, situated outside of said county (?), which may have been relieved from taxation for State purposes, "this act to apply to such real estate as may heretofore have been or may hereafter be purchased for the purpose of securing a water supply for said city, town or municipality which water is a source of revenue for such city, town or municipality \* \* \* and when such real estate has been relieved of assessment for State taxes and does not show an assessment on the land books of said county for that or the preceding year, then such board of supervisors shall direct the commissioner of the revenue for the revenue district in which said real estate is situated to assess the same for taxation, etc."

The draftsman of this bill makes the amendment to apply to all real estate of a certain class which may "have been relieved from taxation for State purposes. Section 183 of the Constitution, so far as applicable to this question, reads as follows:

"Except as otherwise provided in this Constitution, the following property, *and no other*, shall be exempt from taxation, State and local \* \* \*."

(a) Property directly or indirectly owned by the State, however held, and property lawfully owned and held by counties, cities, towns or school districts, used wholly and exclusively for county, city, town or public school purposes, etc."

It will be observed that the same section of the Constitution which exempts property from taxation for *State* purposes also exempts such property from taxation for *local purposes*; and if the bill was intended to reach property which is exempt from taxation for State purposes, then I must conclude, without going further, that the bill is unconstitutional.

However, it may be well to call attention to the case of *Commonwealth v. City of Richmond*, 9 Va. Appeals 38, in which the opinion was handed down by the Supreme Court of Appeals on March 12, 1914, exempting from taxation for State purposes the following property owned by the city of Richmond: the auditorium, market houses, water works and gas works.

It is true that the county of Henrico was not a party to said suit, and, therefore, the direct question was not involved as to whether the county of Henrico had a right to tax that portion of the water works outside of the city of Richmond; and the only question involved in that case was whether the commissioner of the revenue for the city of Richmond had the right to assess for taxation the public utilities and properties owned by the city within the city. But if it be admitted, as the bill in question does admit, a certain property is exempt from taxation for State purposes by section 183 of the Constitution, it would seem to be the necessary inference that it would be exempt from taxation for local purposes.

There is another objection to the bill which would, I think, cause the Supreme Court to declare it unconstitutional. As has been seen before, the object of the bill is to impose local taxes on real property which has been relieved of assessment for State taxes. Section 50 of the Constitution, so far as applicable to the question in hand provides:

"No bill which \* \* \* imposes, continues or revives a tax shall be passed except by the affirmative vote of a majority of all the members elected to each House, the vote to be by the yeas and nays and the names of the members voting for and against entered on the journal."

Mr. John W. Williams, clerk of the House of Delegates, has informed me that this bill passed the House by the recorded vote of forty-six yeas to ten nays. This would seem to be a clear violation of this section.

In view of the foregoing considerations, I am led to the conclusion that there is a strong probability that the Supreme Court of Appeals would declare this act unconstitutional.

Very truly yours,

JNO. GARLAND POLLARD,  
*Attorney General of Virginia.*



**Taxation—Constitutional Law—Game Law—License tax for hunters must be uniform—Rights of non-residents to hunt in the State. Constitution 1902, Sec. 168.**

RICHMOND, VA., March 27, 1914.

*His Excellency, HENRY C. STUART,*  
*Governor of Virginia,*  
*Richmond, Va.*

DEAR SIR:

In the necessary absence of the Attorney General from the city, I am submitting below my opinion on the questions asked by the letter of your secretary, Mr. Forward, dated March 26th, in regard to House Bill No. 171; first, whether section 13 is constitutional; and, second, whether sections 10 and 11 considered together are constitutional?

First. Section 13 provides as follows:

"That every resident of the State of Virginia other than of the county of Princess Anne, before he shall be entitled to shoot or hunt on the waters of Back Bay or its tributaries, or the lands and marshes adjacent thereto, shall obtain a license from the clerk of the circuit court of Princess Anne county and pay for such license the sum of three dollars (\$3.00); the said license to be in the form approved by the Auditor of Public Accounts, and said fund, after deducting the fee allowed said clerk, to be accounted for by him as provided by law."

The effect of the above section is to require a license of every resident of Virginia other than of the county of Princess Anne before he shall be entitled to shoot or hunt on the waters of Back Bay or its tributaries, but to relieve the residents of Princess Anne county from the necessity of procuring a license for such privilege.

Section 168 of the Constitution, so far as applicable to this question, provides:

"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."

The license tax authorized by the above section seems to be in violation of this provision of the Constitution in that it makes a discrimination between those citizens of Virginia who reside outside of Princess Anne and those who reside within the county of Princess Anne. If the discrimination had been against the citizens residing within the county of Princess Anne, it would be perfectly clear that the classification would be in violation of the above provision of the Constitution; and, therefore, equality and uniformity would seem to require the same construction when the conditions are reversed. On this point 1 Cooley on Taxation (3d ed.), 260, uses the following language:

"Let a license tax reach all of a class either of persons or things. It matters not whether those included in it be one or many, or whether they reside in any particular locality or are scattered all over the State. But when for any reason it becomes discriminative between individuals of the class taxed and selects some for an exceptional burden, the tax is deprived of the necessary element of legal equality and becomes inadmissible. It is immaterial on what ground the selection is made; whether it be because of residence in a particular portion of the taxing district or because the persons selected have been remiss in meeting a former tax for the same purpose, etc."

So it has been held that a statute forbidding the citizens of any other county from fishing in the waters of two specified counties without a license, without anything to forbid the citizens of those counties from fishing in either county without a license, violates the constitutional guarantee of the equal protection of the laws.

*State v. Higgins*, 51 S. C. 51; 38 L. R. A. 561; 28 S. E. 15.

Now, as the ownership of wild animals is in the State—not as property, but in its sovereign capacity as the representative, and for the benefit of *all its people in common* (2 Cyc. 309), and as the right of hunting on public land and water belonging in common to all of the residents of the State (19 Cyc. 992), it would seem clear that the Supreme Court of Appeals would hold, upon a proper case, that the provisions of section 13, set out above, were unconstitutional.

*Second.* Whether the provisions of sections 10 and 11 of said bill, read together, are unconstitutional by which non-residents of the State are permitted to kill not more than thirty-five water fowl a day and prevented from taking out of the State more than twenty-five water fowl lawfully killed by him.

It is well established that by reason of the State's control over game within its limits, it is within the police power of the State legislature, subject to constitutional restrictions, to enact such general or special laws as may be reasonably necessary for the protection and regulation of the public's right in such game, even to the extent of restricting the use or right of property in the game after it is taken or killed. *Boggs v. Commonwealth*, 76 Va. 989; *McCready v. Commonwealth*, 27 Gratt. 68 Va. 985, affirmed 94 U. S. 391, 24 L. ed., 248.

In the case of *Geer v. State of Connecticut*, 161 U. S. 519, the Supreme Court of the United States, speaking through Mr. Justice White (now Chief Justice), held as follows:

"1. The State has power to make it an offense to have in possession for the purpose of transportation beyond the State birds which have been lawfully killed within the State during the open season; and a State statute creating this offense does not violate the interstate commerce clause of the United States.

2. Although the killing of game and its sale within the State are allowed, it does not thereby necessarily become a subject of interstate commerce in the legal meaning of those words.

3. The source of the police power as to game birds is the duty of the State to preserve for its people a valuable food supply.

4. The police power of the State to preserve game birds as a valuable food supply for its people, justifies a statute prohibiting the transportation of such birds beyond the State even though interstate commerce may be remotely and indirectly affected thereby."

The learned and extensive opinion of Chief Justice White in the above case seems to settle every question as to the constitutionality of the provisions of sections 10 and 11 above, and leads me to believe that the Supreme Court would probably hold the provisions of said sections to be constitutional.

Although, as indicated above, it is probable that the Supreme Court would hold the provisions of section 13 unconstitutional, that section is not so inseparably connected with the rest of the statute as to cause the whole statute to fall. In other words, the other provisions of the statute do not necessarily fail because that section is vicious.

Respectfully submitted,

CHRISTOPHER B. GARNETT,

*Assistant Attorney General.*

**Taxation—Income tax—Does income tax include a profit made by the sale of real estate which had been held for more than fifteen years? Va. Tax Law, Sec. 10, as amended by Acts 1914, p. 264.**

Hon. C. LEE MOORE,  
*Auditor of Public Accounts,*  
*Richmond, Va.*

RICHMOND, VA., April 28, 1914.

DEAR SIR:

You have referred to this office the following query:

"Tax payers residing in the city of Richmond, doing business as a firm, during the year ending January 31, 1914, sold real estate which it had held between fifteen and twenty years, realizing a profit of \$55,000.00. The proceeds of the sale were re-invested prior to February 1, 1914, in taxable property in this State, which will be or has been returned for taxation for 1914. Should the share (or any portion thereof) of each member of the firm in the profits (\$55,000.00) be taxed as income under the tenth section of the tax laws?"

The tenth section of the tax laws, as amended by act of March 14, 1912, so far as applicable to this question, reads as follows:

"The classification under Schedule D shall be as follows, to-wit:

The aggregate amount of income in excess of two thousand dollars, whether received or due but not received, within the year next preceding the first of February in each year.

Income shall include:

\* \* \* All other gains and profits derived from any source whatever."

The question, therefore, to be solved in this case is whether the term "income" as defined in the above law includes a profit of \$55,000 made by the sale of real estate which had been held for over fifteen years.

Almost exactly the same question came before the Supreme Court of the United States in the case of *Gray v. Darlington*, 15 Wall. (U. S.) 63, 66, 21 L. ed., 45, which held, that the mere fact that property has advanced in value between the date of its acquisition and sale does not authorize the imposition of a tax on the amount of the advance as gains, profits or income. In this case, the plaintiff in 1885 exchanged certain United States treasury notes for United States 5-20 bonds. In 1869, he sold these bonds at an advance of \$20,000 over the cost of the treasury notes and, upon this amount, the Assistant Assessor of the United States for the Collection District in Pennsylvania within which the plaintiff resided assessed a tax of five per cent., alleging it to be gains, profits and income of the plaintiff for that year. The tax was paid by the plaintiff under protest and action was brought to recover back the money. The United States statute under which the tax was assessed provided that "there shall be levied, collected and paid annually upon the gains, profits and income of every person," derived from certain specified sources, a tax of five per cent., and that this tax "shall be assessed, collected and paid upon the gains, profits and income for the year ending the 31st of December next preceding the time for levying, collecting and paying said taxes." Mr. Justice Field, in delivering the opinion of the court, said:

"The mere fact that property has advanced in value between the date of its acquisition and sale does not authorize the imposition of a tax on the amount of the advance. Mere advance in value in no sense constitutes the gains, profits and income specified by the statute. *It constitutes and can be treated merely as increase of capital.*"

This case may be taken as conclusive of the question, but, for our records in the office, I append a few others. Increase in value was held not to be profit or gain in the following cases:

*In re Geiry*, 103 N. Y. 445, 450, 9 N. E. 235;

*Cross v. Long Island L. & I. Co.*, 75 Hun. (N. Y.), 533, 27 N. Y. Supp. 495.

*Ducrose v. Berner*, 117 N. Y. Supp. 168 (reversed on other grounds, but affirmed in this particular in 136 N. Y. 560, 567, 32 N. E. 1002), holding that an increase in value of securities owing to a depreciation in the rate of interest affected by natural causes is not a profit upon an investment in such securities but rather an accretion to the principal sum so invested; *Jennry v. Olmstead*, 36 Hun. (N. Y.) 536, 539, holding that an increase in value of property held and not sold is not a profit, but a profit has not accrued simply from the fact that property if sold would have resulted in a profit.

For other cases, see Cyc. 585, under the head "Profit" and foot notes.

Answering specifically your question, I would say that neither the share of each member of the firm in the profits, nor any portion of said profits, resulting from the sale of the real estate can be taxed as income under the tenth section of the tax laws.

Very truly yours,

CHRISTOPHER B. GARNETT,

*Assistant Attorney General of Virginia.*

**Taxation—Payment of poll tax six months before election. Constitution, Sec. 21.**

Mr. THOS. NEWMAN,

*City Treasurer,*

*Newport News, Va.*

RICHMOND, VA., April 15, 1914.

DEAR SIR:

Replying to your favor of the 14th instant, I am writing to advise you that section 71 of the Constitution requires that a person shall, as a prerequisite to the right to vote, personally pay, *at least six months prior to the election*, all State poll tax assessed or assessable against him under the Constitution during the three years next preceding that in which he offers to vote. Therefore, it would be improper for you to advertise that Monday, May 4, 1914, is the last day to pay the poll taxes, as the election comes on November 3d. I will advise you, therefore, to advertise that Saturday, May 2, 1914, will be the last day on which to pay poll taxes.

Very truly yours,

JNO. GARLAND POLLARD,

*Attorney General of Virginia.*

**Taxation—State taxes on deeds of property subject to a deed of trust. Tax Bill, Sec. 13, as amended by Acts 1910; vol. 3, Va. Code, p. 512.**

Hon. C. LEE MOORE,

*Auditor of Public Accounts,*

*Richmond, Va.*

RICHMOND, VA., April 17, 1914.

DEAR SIR:

You have referred to this office a question raised by Messrs. Moore, Barbour, Keith & McCandlish, in their letter of April 14, 1914, as to the construction of

section 13 of the Tax Bill, as amended by act approved March 17, 1910. In the absence of the Attorney General, on official business, I am sending you the following:

It seems that a deed has been offered for record (presumably in Fairfax county) of certain property which was sold under a second deed of trust and was bought subject to the first deed of trust of \$30,000, the price paid therefor being \$10,000. The deed made to the purchaser states that the sale is subject to the first lien of the deed of trust for \$30,000, but the purchasers do not, in terms, assume the payment of said lien of \$30,000. The question is, should the clerk collect a tax on the basis of \$10,000 or on the basis of the actual value of the property.

Section 13 of the Tax Bill aforesaid provides, so far as applicable to this question, 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. \* \* \*

The tax on every deed, contract or agreement shall be determined and be collected by the clerk in whose office it is first offered for recordation."

It will be seen, by reading the above statute, that the amount of tax to be collected by the clerk is made to depend upon *the consideration of the deed or the actual value of the property conveyed*. These terms are generally identical in meaning, but the different language was evidently used to cover those cases where the actual consideration was not stated in the deed or where the consideration was one of love and affection, in which case it is the duty of the clerk to determine, as far as possible, the actual value of the property conveyed. In the case which was put to you, if we measure the tax to be charged by the actual value of the property, it would seem that the clerk would have to collect a tax on the basis of, at least, \$40,000, for the purchaser pays \$10,000 for a property subject to the lien of a deed of trust of \$30,000. On the other hand, if we measure the tax to be collected by the consideration of the deed, it is not clear that the same conclusion will not in effect be reached as by the other measure. While it is perfectly clear that the purchaser of the land is not *personally bound* to *pay the deed of trust* unless he personally assumes payment thereof (1 Minor on Real Property, sec. 647, p. 726), on the other hand the property itself is liable for the deed of trust, and unless the purchaser pays off the deed of trust, the holder of the deed of trust may foreclose and the purchaser will not only lose the land, but his \$10,000 invested.

So far as the clerk is concerned, I cannot see why he should tax a less fee in such a case than he would be authorized to tax in case the purchaser directly and personally assumed the deed of trust. It is a common transaction in the sale of land for the purchaser to pay only a portion of the purchase price and to give a deed of trust for the balance. In such a case, the tax would be the consideration of the deed or the actual value of the property, that is, money agreed to be paid; and the fact that there was a deed of trust given at the same time would not authorize the clerk to charge a less tax than if the whole

consideration had been paid. I can see no reason why the clerk in the case put should adopt a different rule. Therefore, I would advise that the fee to be determined and collected by the clerk would be the actual value of the property conveyed.

Respectfully submitted,

CHRISTOPHER B. GARNETT,

*Assistant Attorney General.*

**Taxation—Property belonging to lodges. Constitution, Sec. 183f.**

Hon. C. LEE MOORE,  
*Auditor of Public Accounts,*  
*Richmond, Va.*

RICHMOND, VA., April 20, 1914.

DEAR SIR:

With reference to the letter of G. T. Stephenson, Master of Franklin Lodge No. 151, A. F. & A. M., of Franklin, Va., dated April 15, 1914, addressed to you and by you referred to this office, I endorse your opinion in regard to the subject matter of said letter. Under section 183f of the Constitution, as construed in the case of the *Commonwealth v. Lynchburg Young Men's Christian Association*, decided on January 15, 1914, 8 Va. Appeals 537, the real estate of said lodge is subject to taxation, first, because the building is not used exclusively for lodge purposes; and, second, because a portion of the building is leased to a jeweler and another portion to a lawyer. In the aforesaid case, it was held that the use made of the third and fourth floors of the Young Men's Christian Association building in letting the rooms on these floors to its members for sleeping or lodging purposes, was not a rental or leasing of those rooms and that said use was a part of the purposes for which the Young Men's Christian Association was formed. In this case, it cannot be contended that the leasing of one room to a jeweler and the other room to a lawyer is a mere letting of rooms, nor can it be contended that said renting is a part of the purposes for which the lodge was formed.

Therefore, I unhesitatingly approve of your opinion in holding that the real estate of said lodge is liable to State and local taxation.

Very truly yours,

JNO. GARLAND POLLARD,

*Attorney General of Virginia.*

**Taxation—Power of the boards of supervisors of counties to raise or lower the levy of taxes for school purposes in different districts. Constitution 1902, Sec. 168; Va. Code 1904, Secs. 1466, 1506.**

Mr. S. R. CURTIS,  
*Treasurer,*  
*Lee Hall, Va.*

RICHMOND, VA., May 7, 1914.

DEAR SIR:

The facts as stated in your letter seem to be as follows: In one district the county school board desires the board of supervisors to reduce the levy for county school purposes from ten cents on the hundred dollars to five cents on the hundred dollars, and likewise to reduce the levy for district school purposes from ten cents on the hundred dollars to five cents on the hundred dollars. In another district, it is desired that the levies be raised from forty cents on the

hundred dollars to forty-five cents on the hundred dollars; and, in a third district, the levy to remain as at present. Your question is, can the board of supervisors carry out this scheme according to the desires of the county school board?

Section 168 of the Constitution provides that "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." Under section 1506 of the Code, as amended, it is provided that the board of supervisors of each county at the regular meeting of April of each year, or as soon thereafter as practicable, or when the division superintendent of schools shall file with the State board the estimates made by the county and district boards in accordance with section 1466, shall levy a tax of not less than ten nor more than forty cents on the one hundred dollars of the assessed value of the real and personal property in the county for the support of the public free schools of the county, and a tax of not less than ten nor more than forty cents on the one hundred dollars of the assessed value of the real and personal property of any school district for district school purposes; with a proviso that if the board of supervisors fail to make a levy sufficient to raise the amounts estimated, then upon a petition, the board of supervisors may call an election to submit the question of the increase to the qualified voters of the county or district; and another proviso that the total levy for county and district school purposes shall not exceed fifty cents on the one hundred dollars of the assessed value of taxable property in both county and district. It is also provided, by the same section, that boards of supervisors may be permitted to make a less rate of levy than the minimum rates of county or district school levies named above in any case, by special order of the State Board of Education.

It is clear, from the constitutional provision quoted above that the county levy must be the same in all three districts; otherwise taxation in the three districts would not be uniform.

It seems clear, from the section of the Code quoted above, that the rate cannot be lowered to five cents, either for county school purposes or for district school purposes, without a special order of the State Board of Education. Observing these qualifications, therefore, I see no objection to the district school levy being reduced in one district and raised in another.

As the facts stated in your letter may not have been correctly apprehended by me, I am not certain that this opinion is clear. If there is any point upon which you wish any more information, I shall be glad to give the same.

Very truly yours,

JNO. GARLAND POLLARD.

*Attorney General of Virginia.*

**Taxation—Who is required to pay poll tax in Virginia? Va. Code 1904, p. 2919.**

Mr. S. C. AGEE,

RICHMOND, VA., June 4, 1914.

*Baldwin Station, Va.*

DEAR SIR:

Your letter of June 1st, addressed to the Attorney General has just come to hand. In his absence, on official business, I beg leave to submit as follows: The question which you put is whether a person is exempted from paying his poll tax because he is unable to register as a voter. It is clear that, under the

tax laws of Virginia, every white male inhabitant who has attained the age of twenty-one, except those pensioned by this State for military service, and every colored male inhabitant who has attained the age of twenty-one, except those pensioned by the State for military service, are required to pay a poll tax. See act of April 16, 1903, found in volume 2 of the Code, p. 2191.

Very truly yours,

CHRISTOPHER B. GARNETT,

*Assistant Attorney General.*

**Taxation—Homestead declarations. Code, Sec. 3631; Tax Bill, Sec. 13.**

Mr. EMERY B. CHASE,

*Clerk,*

*Clintwood, Va.*

RICHMOND, VA., June 25, 1914.

DEAR SIR:

I have your letter of June 18th, asking me to give you my opinion as to whether or not there should be a State tax on homestead declarations. The homestead declaration in chapter 178, section 3631 of the Code is an *ex parte* paper, and while sometimes called a homestead deed, it has none of the requisites of a deed; and, therefore, section 13 of the Tax Bill, amended by act of March 17, 1910, providing that on every deed which is admitted to record there shall be a tax graded according to the consideration of the deed or the actual value of the property conveyed, is not applicable; first, because there is no consideration to a homestead declaration, and, second, because no property is conveyed by the declaration.

As taxes are to be construed most strongly against the Commonwealth, I would conclude, therefore, that there is no State tax required on a homestead declaration; and in this opinion Hon. C. Lee Moore, Auditor of Public Accounts, concurs.

Very truly yours,

JNO. GARLAND POLLARD,

*Attorney General of Virginia.*

**Taxation—Duty of court in a creditor's suit to require taxes to be paid—Of treasurer to levy on property in the hands of the court. Va. Code, Supplement 1910, Sec. 492b. Real Fixtures—Machinery, engine and boilers may be real fixtures.**

RICHMOND, VA., August 5, 1914.

Hon. C. LEE MOORE,

*Auditor of Public Accounts,*

*Richmond, Va.*

DEAR SIR:

You have referred to this office the letter of Chas. R. McCann, treasurer of Frederick county, dated July 23, 1914, in which the following queries are put to you:

"Kindly advise me whether a decree of court in a general creditors' suit directing the sale of real and personal property would bar me from making levy and sale for taxes touching the personal property included in the decree. Also please advise me whether the machinery in the mill, such as gasoline engines, etc., would be considered real or personal property."



As to the first query, it is perfectly clear that the court erred in not decreeing that all taxes should be paid out of the property before general creditors. Section 492b, Va. Code 1904, Supp. 1910, p. 84; *Taylor v. Sutherland Meade Tobacco Co.*, 107 Va. 787 and the failure of the court to make such provision is a reversible error.

I find, however, that some courts hold that interference with the possession of property, in *custodia legis*, is contempt of court, even in the case of officers engaged in the collection of taxes, but, on the other hand, there are certain courts which hold that officers engaged in the collection of taxes may interfere with property in *custodia legis*. See note 17 L. R. A. (N. S.) 465.

But after a decree in a creditor's suit, all the other creditors may come in under the decree and prove their debts before the commissioner to whom the cause is referred. *Conrad v. Fuller*, 98 Va. 16.

I would advise, therefore, in this case, that it would not be wise, in spite of the error of the court, for the treasurer to make the levy and sale, but if the case is still before the commissioner, let the treasurer appear before the commissioner and prove his claim, or if the matter is in the hands of the court, let him take the matter up directly with the court.

As to the second query, whether machinery in the mills, such as gasoline engines, etc., constitutes real or personal property, this would depend upon the circumstances of each particular case, and no general rule can be laid down from which all cases may be decided. I am appending hereto some rules which may guide the treasurer in deciding the question.

Real fixtures consist of things originally chattels personal, which have been annexed to land, or to things permanently attached to land by the owner of the chattels or with his assent, and with the intention to make the annexation permanent. All other fixtures are personal fixtures. I need not add that real fixtures would be real property, while personal fixtures would be personal property. A thorough discussion of this subject may be found by referring to 1 Minor on Real Property, pp. 32-40, inclusive, where we find the following language (p. 38):

"The fact that the particular fixture is peculiarly adapted for use with the realty is a pregnant indication that it was intended to be permanently annexed, and that it is therefore a real fixture. Especially is this true if the chattel in question is not only useful in connection with the land or building, but usually accompanies such property or is indispensable to its proper or correct enjoyment.

"Thus, machinery, engines, boilers, etc., in mills and factories, without which the business could not be conducted, are real fixtures and not ordinarily susceptible to removal save by the owner of the land."

Very truly yours,

CHRISTOPHER B. GARNETT,

*Assistant Attorney General.*

**Taxation—Personal payment of poll tax. Constitution, Sec. 20.**

Mr. ROSCOE BRUCE,  
*Sperryville, Va.*

RICHMOND, VA., September 8, 1914.

DEAR SIR:

I have your favor of the 28th instant, asking me whether or not the law of Virginia requires that a person shall pay his poll in person. In reply thereto,

I beg leave to submit as follows: Section 20 of the Constitution, providing who may register after 1904, reads as follows:

"After the first day of January, nineteen hundred and four, every male citizen of the United States, having the qualifications of age and residence required in section eighteen, shall be entitled to register, provided: First, that he *personally paid* to the proper officer all State poll taxes assessed or assessable against him," etc.

Section 21 of the Constitution provides as follows:

"Any person registered under either of the last two sections, shall have the right to vote for members of the General Assembly and all other officers elective by the people, subject to the following conditions: That he, unless exempted by section twenty-two, shall, as a prerequisite to the right to vote after the first day of January, nineteen hundred and four, *personally pay*, at least six months prior to the election, all State poll taxes assessed or assessable against him," etc.

In *Tilton v. Herman*, 109 Va. 503, the Supreme Court of Virginia construed the law as to what is meant by personal payment, and it was there held that the words "personally paid," as used in the Constitution, means that the tax therein referred to must be paid by the voter out of his own estate or means and not by another out of that other's estate or means. The payment need not be by the voter in proper person. His bodily or physical presence is not necessary. It is enough if the payment be out of the tax payer's estate or means; and the actual payment may be made by the tax-payer himself or by his check, or through the hands of his clerk or authorized agent, or perhaps in other ways.

Very truly yours,

JNO. GARLAND POLLARD,

*Attorney General of Virginia.*

Copy of agreement required by law to be kept on file in Attorney General's office. Acts 1914, p. 37.

*This Agreement*, made this 31st day of August, 1914, between the Hollywood Memorial Association, a corporation, and Mrs. E. D. Taylor, Mrs. J. Taylor Ellyson, Mrs. Norman V. Randolph and Mrs. J. D. Crump, Trustees, as hereinafter set forth, of the first part, and the Hollywood Cemetery Company, also a corporation, of the second part.

*Whereas*, By an act of the General Assembly of Virginia, approved on the 2d day of March, 1914, entitled an act "to appoint trustees from the members of the Hollywood Memorial Association and to make an appropriation to enable said trustees and said association to make a contract with the Hollywood Cemetery Company by which the graves of the Confederate dead in the soldiers' section in Hollywood Cemetery shall be kept in 'perpetual care,' and to relieve the State from further obligation in this behalf," the sum of eight thousand dollars (\$8,000.00) was appropriated to enable the parties of the first part to make a contract with the party of the second part binding the said Hollywood Cemetery Company to keep the graves of the Confederate dead buried in the soldier's section in Hollywood Cemetery at Richmond, Va., in "perpetual care," provided that said graves and the section in which they are contained shall continue to be under the supervision and care of the Hollywood Memorial Association.

Now, therefore, In consideration of the payment by the said parties of the first part to the party of the second part of the said sum of eight thousand dollars (\$8,000.00), appropriated for that purpose by the General Assembly of Virginia, as aforesaid, the receipt of which is hereby acknowledged by the said party of the second part, it (the said party of the second part), its successors and assigns, doth hereby undertake, covenant and agree with the said parties of the first part, their successors and assigns, that it (the said party of the second part) shall and will keep in perpetual care the graves of the Confederate dead buried in the soldiers' section in Hollywood Cemetery at Richmond, Va., subject to the terms and conditions of the act of the General Assembly aforesaid (Acts 1914, p. 37), which is hereby made a part of this agreement, and to this end that the grounds and the enclosures of said section shall be kept in good order and condition, having regard to the sightly appearance in perpetuity of the said graves and sections in which they are contained.

Witness the corporate names and seals both of the Hollywood Memorial Association and of the Hollywood Cemetery Company attached and affixed hereto by the proper authority of said corporations, respectively, and also witness the hands and seals of the said trustees hereinbefore named.

HOLLYWOOD CEMETERY COMPANY,

By B. C. WHERRY, *President*.

Attest:

W. S. STREET, *Secretary*.

HOLLYWOOD MEMORIAL ASSOCIATION,

By MRS. E. D. TAYLOR, *President*.

Attest:

FANNIE E. MUNFORD, *Secretary*.

MRS. E. D. TAYLOR, *Trustee*, (SEAL)

MRS. J. TAYLOR ELLYSON, *Trustee*, (SEAL)

MRS. N. V. RANDOLPH, *Trustee*, (SEAL)

MRS. J. D. CRUMP, *Trustee*, (SEAL)

Approved:

H. C. STUART, *Governor of Virginia*.

Approved:

JNO. GARLAND POLLARD, *Attorney General of Virginia*.

STATE OF VIRGINIA,

CITY OF RICHMOND,

} To wit:

I, Bruce Bowe, a notary public in and for the city and State aforesaid, do hereby certify that B. C. Wherry, president, and W. S. Street, secretary, of the Hollywood Cemetery Company; and Mrs. E. D. Taylor, president, and Miss Fannie E. Munford, secretary, of the Hollywood Memorial Association; and Mrs. E. D. Taylor, trustee, Mrs. J. Taylor Ellyson, trustee, Mrs. Norman V. Randolph, trustee, and Mrs. J. D. Crump, trustee, whose names in their several capacities are signed to the foregoing writing, bearing date on the 31st day of August, 1914, have acknowledged the same before me in my city aforesaid.

Given under my hand this 1st day of September, 1914.

BRUCE BOWE,

*Notary Public*.

My commission expires on September 11, 1917.

**Statement.**

*Showing the Current Expenses of the Office of the Attorney General from  
January 1, 1914, to October 31, 1914.*

1914.

Jan.	1.	Balance to credit of contingent fund as per 1913 report of Attorney General Williams.....		\$ 61 45
	3.	Western Union Telegraph Company, telegrams....	\$ 2 08	
	3.	Everett Waddey Company, office supplies.....	4 10	
	3.	Chesapeake and Potomac Telephone Company, long distance calls .....	2 25	
	3.	Sam'l W. Williams, expenses to Lynchburg.....	4 85	
	12.	Sam'l W. Williams, expenses to Alexandria.....	18 75	
	31.	Postmaster, Richmond, Va., postage stamps.....	2 50	
Feb.	24.	Postmaster, Richmond, Va., postage stamps.....	10 00	
	27.	Lawyers' Co-operative Publishing Company, United States Supreme Court Reports.....	7 50	
	27.	Everett Waddey Company, office supplies.....	4 40	
	27.	Remington Typewriter Company, repairs typewriter .....	50	
	27.	Western Union Telegraph Company, telegrams...	1 95	
	27.	The Beaufont Company, drinking water.....	1 25	
	27.	Postmaster, Richmond, Va., postage stamps.....	1 32	
				<hr/> \$ 61 45
Mar.	1.	Appropriation to defray current expenses to March 1, 1915 .....		\$500 00
Apr.	10.	Secretary of State, State of Georgia, copy of law election of Senators by the people.....	\$ 1 00	
	10.	Leroy Shorts, laundering towels.....	25	
	10.	M. C. Heslip, extra stenographic services.....	1 50	
	10.	J. C. Swan, extra stenographic services.....	1 50	
	10.	Postmaster, Richmond, Va., postage stamps.....	10 00	
	10.	Postal Telegraph Company, telegrams.....	37	
	10.	R. S. Friend, extra stenographic services.....	4 50	
	10.	Mintz, the Trunk Man, brief bags.....	9 00	
	10.	Gunn Disinfecting Company, container and liquid soap .....	2 25	
	10.	J. B. Mosby & Co., screen.....	5 00	
	10.	Western Union Telegraph Company, telegrams...	1 68	
	10.	Appeals Press, subscription to Virginia Appeals, year beginning March 1, 1914.....	5 00	
	10.	Morris Hunter, telephone stands and call bells....	36 50	
	10.	W. E. Hetzer & Co., lettering doors, Attorney General's office .....	8 00	
	10.	Remington Typewriter Company, one typewriter, (exchanged) .....	46 00	
	15.	The Michie Company, final payment for Digest Virginia Cases and Enc. Digest United States, for which notes were outstanding .....	68 25	

May	2.	Geo. M. West, Vol. 3 Virginia Code and 35 copies Virginia Law Register .....	\$27 50
	2.	Hill Directory Company, Richmond City Directory .....	7 00
	6.	Beaufont Company, drinking water.....	75
	6.	Leroy Shorts, laundering towels .....	25
	6.	Sydnor & Hundley, picture wire.....	25
	6.	P. H. Casper, extra services as porter.....	2 50
	6.	T. J. Bethel, extra services as porter.....	2 50
	6.	The Bell Book and Stationery Company, dating stamp and pen wiper .....	4 60
	6.	Western Union Telegraph Company, telegrams..	1 76
	15.	Chesapeake and Potomac Telephone Company, long distance telephone calls .....	2 80
	15.	Everett Waddey Company, office supplies.....	26 75
	15.	Chesapeake and Potomac Telephone Company, rental of extension 'phone one year from March, 1914 .....	12 00
	15.	The Scarborough Company, wall map of Virginia..	1 95
	27.	Postmaster, Richmond, Va., postage stamps.....	10 00
June	15.	Bancroft-Whitney Company, Gray's Limitations on the Taxing Power .....	6 50
	15.	West Publishing Company, Black on Interpretation of Laws .....	3 75
	15.	Bell Book and Stationery Company, Beale on Foreign Corporations .....	6 67
	15.	The Michie Company, subscription to Virginia Law Register to May, 1915 .....	5 00
	14.	Alvah H. Martin, clerk, copies of instructions <i>Commonwealth v. Mathew Franke</i> .....	1 25
	27.	Expert Letter-Writing Company, duplicating warrants <i>Jamestown Jockey Club Cases</i> .....	5 00
	27.	Western Union Telegraph Company, telegrams..	92
	27.	M. L. Staples, keys, entrance to Library building..	80
	27.	Leroy Shorts, laundering towels .....	25
July	13.	Postmaster, Richmond, Va., postage stamps.....	10 00
	13.	Everett Waddey Company, Vols. 1 and 2, Va. Code, 1904, and office supplies .....	18 40
	17.	The Beaufont Company, drinking water.....	2 50
	24.	B. O. James, two copies of the Acts of 1914, General Assembly of Virginia, for use in the office of the Attorney General .....	3 00
	24.	F. H. Overby, extra stenographic services.....	3 00
	24.	R. S. Friend, extra stenographic services.....	4 90
Aug.	17.	M. McCausland, extra stenographic services.....	20 00
	18.	The Beaufont Company, drinking water.....	2 00
	18.	R. Kirsh, extra stenographic services.....	5 00
	27.	Western Union Telegraph Company, telegrams....	1 20
	27.	M. L. Staples, keys to office of the Attorney General .....	80

Oct.	8.	Western Union Telegraph Company, telegrams ..	\$ 3 02	
	8.	K. F. Chalkley, extra stenographic services.....	13 75	
	8.	L. Shorts, laundering towels .....	50	
	8.	Southern Stamp and Stationery Company, rubber stamp and pad .....	1 85	
	8.	Postal Telegraph Company, telegrams.....	1 11	
	9.	S. B. Adkins Company, book boxes.....	5 00	
				<hr/>
				\$427 58
				<hr/>
	31.	Balance to credit of contingent fund.....	\$ 72 42	

### Statement.

*Showing Amounts Expended from the Traveling Fund Appropriated for the Fiscal Year Beginning March 1, 1914.*

1914.

Mar.	1.	Amount of appropriation for necessary traveling expenses on business of the State, any part of which may be used to pay expenses in the matter of the settlement of the West Virginia debt	\$700 00
May	11.	Jno. Garland Pollard, expenses four trips to Washington, D. C., in connection with <i>West Virginia Debt Case</i> , and three trips to Norfolk, Va., in connection with <i>Jamestown Jockey Club Cases</i> .....	\$118 26
	22.	C. B. Garnett, expenses trip to Lynchburg to assist Commonwealth's attorney in the case of <i>United Cigarette Machine Co. v. Commonwealth</i> .....	12 55
June	8.	C. B. Garnett, expenses trip to Wytheville, Va., to appear before Supreme Court of Appeals....	17 25
	8.	G. Stanley Clarke, expenses as special messenger to Norfolk, Va., <i>In re Jamestown Jockey Club Cases</i> .....	9 10
July	13.	Jno. Garland Pollard, expenses two trips to Norfolk in connection with <i>Jamestown Jockey Club Cases</i> , and one trip to New York in <i>West Virginia Debt Case</i> .....	77 18
	24.	Chesapeake and Potomac Telephone Company, long distance calls, in <i>West Virginia Debt Case</i> .....	4 80
	24.	Jno. Garland Pollard, expenses trip to Norfolk, in connection with <i>Jamestown Jockey Club Cases</i> .....	9 50
	27.	Chesapeake and Potomac Telephone Company, long distance calls, <i>West Virginia Debt Case</i> .....	2 00
Aug.	17.	C. B. Garnett, expenses on trip to Lynchburg, to assist Commonwealth's attorney in case of <i>United Cigarette Machine Co. v. Commonwealth</i> .....	6 48
	31.	C. B. Garnett, expenses trip to Washington, D. C., in connection with the case of <i>Stuart's Administrator v. Board of Sinking Fund Comrs</i> .....	18 75

## STATEMENT OF EXPENDITURES

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Sept. 4.	C. B. Garnett, expenses on trip to Staunton, Va., to appear before Supreme Court of Appeals ..	\$13 35	
8.	Postmaster, Richmond, Va., postage stamps for use in connection with <i>West Virginia Debt Case</i>	10 00	
Oct. 23.	Jno. Garland Pollard, expenses trip to New York, in connection with <i>West Virginia Debt Case</i> ...	49 25	
			<hr/>
			\$348 47
31.	Balance to credit of traveling fund.....		<hr/>
			\$351 53

**Statement.**

*Showing Amounts Expended from the Fund Appropriated for Furniture for the Attorney General's Office.*

1914.

Mar. 1.	Amount of appropriation for furnishings and gen- eral improvements in office of the Attorney General .....		\$400 00
May 6.	Sydnor & Hundley, desk and chair.....	\$ 41 75	
15.	American Furniture and Fixture Company, oak wardrobe, setting up and repairing rail.....	94 22	
15.	Geo. W. Anderson & Son, rug.....	50 00	
June 8.	Everett Waddey Company, partial payment on book and filing cases and desks.....	150 00	
15.	Sydnor & Hundley, cuspidor .....	2 00	
Aug. 18.	Sydnor & Hundley, revolving book case.....	20 00	
18.	J. A. Skinner, repairing and putting up awnings..	2 00	
			<hr/>
			\$359 97
Sept. 30.	Balance to credit of furniture fund.....		<hr/>
			\$ 40 03

**Statement.**

*Showing Law Books Purchased for Use in the Office of the Attorney General.*

1914.

Feb. 27.	Lawyers' Co-operative Publishing Company, Vol. 57 United States Supreme Court Reports .....	\$ 7 50	
Apr. 15.	The Michie Company, Digest of Virginia Cases and Enc. Digest United States Supreme Court Reports (final pay- ment) .....	68 25	
May 2.	Geo. M. West, Vol. 3, Va. Code 1904, and 35 copies Va. Law Register .....	27 50	
June 15.	Bancroft-Whitney Company, Gray's Limitations on the Tax- ing Power .....	10 00	
15.	West Publishing Company, Black on Interpretation of Laws	6 50	
15.	Bell Book and Stationery Company, Beale on Foreign Cor- porations .....	6 67	
13.	Everett Waddey Company, Vols. 1 and 2, Virginia Code 1904	15 00	
July 24.	B. O. James, Secretary of the Commonwealth, two copies Acts of Assembly of Virginia 1914.....	3 00	
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			\$121 92

The Attorney General has entered into agreements to purchase Ruling Case Law and Corpus Juris as shown in the contract and letter here following:

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Forward by freight C. O. D. to address below, transportation prepaid, the books named below, the price of which is \$315.00. This I will pay as follows: \$50.00 March 1, 1915, and \$50.00 annually thereafter until fully paid for. 144 1/2

Set of Cyc. of Law and Procedure, and Index, 42 volumes. Thin paper, Russia backs and fabrikoid covers.....	Thin	\$315	00
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The Company agrees to furnish free any and all volumes in excess of 60 inclusive of Index, which may be required to complete the work, and subscriber agrees to pay carriage charges on all exchange or free volumes of Corpus Juris.

Also send me future Yearly Annotations at \$8.00 annually. All books to belong to the vendor, until entire purchase price is paid. In case of default in any payment for thirty days, purchase price of books delivered will be due and payable, including all notes given therefor.

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(Signed) JNO. GARLAND POLLARD,  
*Attorney-General of Virginia,*  
(Address) Richmond, Va.

Date October 7, 1914.

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COMMONWEALTH OF VIRGINIA,  
OFFICE OF ATTORNEY GENERAL,  
RICHMOND, VA., April 11, 1914.

BANCROFT-WHITNEY Co.,  
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GENTLEMEN:

Please deliver this office, carriage prepaid, as published, complete set of Ruling Case Law, in regular book paper, buckram-bound edition, at six dollars per volume delivered.

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The first payment under this order is to be made during the month of March, 1915, for the volumes which may have then been delivered, and like payments shall be made annually thereafter during the month of March.

Yours truly,  
(Signed) JNO. GARLAND POLLARD,  
*Attorney General of Virginia.*



# APPENDIX.

## VIRGINIA *v.* WEST VIRGINIA.

A meeting of the Debt Commission was held at the New Willard Hotel, Washington, D. C., at four o'clock p. m., Wednesday, March 4, 1914. Present: John B. Moon, chairman; Joseph Button, secretary, and Messrs. Harrison, Rhea, Downing, Brown, Flood and Wickham. There were also present Attorney General John Garland Pollard and former Attorney General William A. Anderson.

The acting chairman, Hon. H. H. Downing, laid before the Commission a letter of Mr. W. C. Le Gendre, bearing date January 31, 1914.

After full consideration the following resolutions were, with the concurrence of the present Attorney General of Virginia, duly adopted.

*Resolved*, That this Commission regards the said letter and the opinion accompanying it, as unsatisfactory, and not in accord with the joint resolution of March 6, 1894, and the act of Assembly of the 6th of March, 1900; in disregard of the contracts existing between the Commonwealth of Virginia, acting by and through this Commission, with the concurrence of the Attorney General, and the certificate holders, and in violation of the understanding shown by the correspondence between the Attorney General of Virginia and W. C. Le Gendre, writing on behalf of the West Virginia Debt Settlement Committee, agent of the said certificate holders, in June and July, 1910, under which this Commission and the Attorney General have been consistently acting, as set forth in the letter of the Attorney General to W. C. Le Gendre, under date of December 18, 1913.

*Resolved, Further*, That in the conduct of the negotiations and litigation with the State of West Virginia, the Commonwealth of Virginia, acting through its Commission, with the concurrence of its Attorney General, while carefully observing the contracts heretofore referred to, cannot and will not recognize the right of the West Virginia Debt Settlement Committee to interfere with the due and orderly control by this Commission, of said negotiations and litigation, to whom said matters have been confided not only by the Commonwealth of Virginia, but also by the certificate holders themselves, by the contracts aforesaid.

*Resolved, Further*, That this Commission repudiates any suggestion intimating that it did not have authority to employ counsel to represent the State of Virginia in the litigation of *Virginia v. West Virginia*, the expenses and compensation of such counsel to be borne as provided in the resolution, act and contracts aforesaid; and at the proper time and in the proper manner this Commission, with due regard to said contracts, will insist upon and assert its right.

The secretary of this Commission is hereby directed to transmit a copy of these resolutions to the members of the West Virginia Debt Settlement Committee. Approved:

JNO. GARLAND POLLARD,

*Attorney General of Virginia.*

March 4, 1914.

Judge John W. Mason, chairman, and Hon. John T. Harris, secretary, of the West Virginia Commission, appeared and presented the following communication:

## COMMONWEALTH OF VIRGINIA *v.* THE STATE OF WEST VIRGINIA.

WASHINGTON, D. C., March 4, 1914.

Hon. JOHN B. MOON,

*Chairman Virginia Debt Commission,  
Washington, D. C.*

DEAR SIR:

The West Virginia Commission has adopted a preamble and resolution embodying a proposition to the Virginia Commission for the settlement of West Virginia's equitable proportion of the Virginia debt, and has requested me to

transmit the same to you, and, through you, to the Virginia Commission, in the hope that it may receive early attention and a favorable reply.

Your attention is called to the fact that a list and history of the credits referred to in the resolution are attached to the copy thereof now presented you.

With great respect, I remain,

Very truly yours,

JOHN W. MASON,  
*Chairman West Virginia Commission.*

#### PREAMBLE AND RESOLUTION OF THE WEST VIRGINIA DEBT COMMISSION.

*Adopted at a Meeting Thereof Held in Charleston, W. Va., on  
the 27th Day of February, 1914.*

*Whereas*, The Supreme Court of the United States, by its opinion rendered on the sixth day of March, 1911, in the case of the *Commonwealth of Virginia v. State of West Virginia*, ascertained the gross indebtedness of the old Commonwealth of Virginia, to the payment of which the State of West Virginia should contribute an equitable proportion, to be \$30,563,861.58 (220 U. S. page 1); and,

*Whereas*, In consequence of the relative resources of the two debtor populations, Virginia's portion of said debt was fixed at .7651 and West Virginia's at .235; and,

*Whereas*, As the records of the case then stood, there appeared to be *no stocks of value on hand* that could be treated as assets, and a proper proportion thereof applied to the reduction of the claim against West Virginia, its equitable proportion of the principal of said debt (subject to the correction of clerical errors) was fixed at \$7,182,507.46; and,

*Whereas*, Since the announcement of the opinion aforesaid, and since the joint conference of the Virginia and West Virginia Debt Commissions, held at Washington on the 25th day of July, 1913, this Commission has discovered that, prior to the establishment of the State of West Virginia out of the territory of the Commonwealth of Virginia on the 20th day of June, 1863, the Commonwealth of Virginia purchased, and became the owner of certain stocks, bonds, securities and other property, which were paid for out of the common funds of the two States,—in fact, were purchased mainly, if not altogether, out of the proceeds of the bonds that constitute the debt of the old Commonwealth of Virginia in question here—and was the owner and holder of said stocks, bonds, securities and other property on the 1st day of January, 1861, and after the 20th day of June, 1863, sold and disposed of many of said stocks, bonds, and securities, and realized in cash therefor, and appropriated to its own exclusive use many millions of dollars and gave away without the consent or knowledge of the State of West Virginia other portions of said assets and property which were of great value not only on the first day of January, 1861, but at the time they were so given away, and has retained and still retains other portions of said assets and property which not only have a present value but were of great value on the first day of January, 1861, that is to say, of the aggregate value as of the first day of January, 1861, of \$20,810,357.98; and,

*Whereas*, According to the apportionment of the debt made by the Supreme Court between the two States, West Virginia is entitled in equity, as a credit upon the part of said debt allotted to it, .235 of the aggregate value as of January 1, 1861, of said stocks, bonds, securities and other property whether the same had been sold, retained or given away by the State of Virginia; that is to say, to the sum of \$4,855,312.18, including cash on hand as of that date, and the additional sum of \$225,078.06 collected by the Commonwealth of Virginia from West Virginia counties after June 20, 1863, which, if deducted from its allotment of \$7,182,507.46, would leave a balance of \$2,327,195.28, principal to be paid by the State of West Virginia; and

*Whereas*, In consequence of the great lapse of time and the long delay on the part of Virginia to have its rights and the liability of West Virginia in the premises judicially determined; also in consequence of the fact that Virginia has received from time to time, in addition to the amounts heretofore set out, dividends upon the bonds, stocks and securities hereinbefore described to an amount equal to \$5,782,240.09, and in consequence of the further fact that a part of said bonds has been mislaid, lost or destroyed and will never be presented for payment; and many of the remaining bonds were purchased by the present holders thereof at nominal prices, and in consequence of the fact that Virginia at the time of the separation of the two States retained, without an accounting unto the State of West Virginia for any part thereof, all of the public buildings including the Capitol at Richmond, the Penitentiary in that city, the State Asylum at Staunton, the University at Charlottesville, and various other public buildings and institutions that had been constructed and equipped out of the joint funds of the two States, as well as much personal property consisting of libraries, arms and munitions of war, etc., and in consequence of the further fact that Virginia has largely scaled her debt without West Virginia receiving her full proportionate benefit of such scaling, to say nothing of the legal reasons that might be presented in opposition to such a charge, no interest should be charged upon West Virginia's allotted proportion of the principal of said debt;

*Now, therefore, be it resolved, as follows:*

1. That this Commission propose, and it does here now propose to the Virginia Commission that .235 of \$20,810,357.98, or the sum of \$4,890,434.12 of the value of the stocks, bonds, securities and other property hereinbefore recited, and described in the list hereto appended, be allowed by the Commonwealth of Virginia as a credit upon, and that the same be deducted from the sum of \$7,182,507.46 ascertained as aforesaid, to be the equitable proportion of the principal of the debt of Virginia assumed by the State of West Virginia, and that the balance so ascertained, that is to say, the sum of \$2,327,195.28 be accepted by the Commonwealth of Virginia in full settlement, both principal and interest, of West Virginia's proportion of the Virginia debt.

2. That in the event the Virginia Commonwealth consent to the foregoing proposition, then this Commission will at once make a report of the fact to the Governor of the State of West Virginia, accompanied with the recommendation that the State of West Virginia pay unto the Commonwealth of Virginia the sum of \$2,327,195.28, in full settlement of the present controversy; and the Governor of West Virginia will at once, pursuant to the terms of the joint resolution of the House of the West Virginia Legislature establishing this Commission, adopted on the twenty-first day of February, 1913, convene the Legislature of the State of West Virginia, for the purpose of adopting or rejecting the foregoing proposition of this Commission, and for the purpose, in the event of its adoption, of providing the funds without delay for the payment of the amount so agreed upon.

3. That this proposition is made by way of settlement of the present suit and shall in no way affect the rights, or influence the action of the State of West Virginia, in the event of its rejection and future ensuing litigation.

4. *Be it further resolved*, That the chairman of this Commission at once transmit to the Virginia Commission a copy of this resolution, with the appendix thereto, with the request that the same be at once considered and acted upon at an early day.

JOHN W. MASON,  
WILLIAM D. ORD,  
J. A. LENHART,  
R. J. A. BOREMAN,  
HENRY ZILLIKEN,  
JOS. S. MILLER,  
U. G. YOUNG,  
JNO. M. HAMILTON,  
W. T. ICE, JR.

*West Virginia Debt Commission.*

Analysis of Report of Accountants, classifying the credits to which the West Virginia Debt Commission believes the State of West Virginia is entitled, dividing the same into classes marked from A to G, inclusive.

#### CLASS A CASH.

The credit assigned to Class A consists of cash on hand in the treasury of the State of Virginia on the first day of January, 1861, amounting to \$1,104,927.06, which sum was allotted to the following funds in the following amounts, that is to say:

In the Commonwealth Fund.....	\$ 252,842 67
In the Literary Fund.....	26,876 08
In the Board of Public Works Fund.....	5,958 28
In the Sinking Fund.....	819,250 03
Total .....	<u>\$1,104,927 06</u>

#### CLASS B.

Stocks purchased by the State of Virginia with the common funds of the two States prior to January 1, 1861, unsold, still owned and unaccounted for by the State of Virginia.

The assets assigned to this class consist of 2,752 shares of stock in the Richmond, Fredericksburg & Potomac Railroad Company, of the par value of \$100 each. This stock was bought by the State of Virginia, under Acts of January 23, 1835, page 87 of Accountant's Report, and March 23, 1836, page 95 of said report, for the cash price of \$275,200.00 and has never been disposed of by her, but is still owned by the State of Virginia, and had a valuation as of the first day of January, 1861, of at least \$275,200.

Total, \$275,200.00.

#### CLASS C.

Proceeds of sales of securities purchased with common funds of the two States by the State of Virginia prior to the first day of January, 1861, and sold by the State of Virginia without the knowledge or consent of West Virginia, and without accounting therefor.

1. Orange and Alexandria Railroad Company, stock and loan....	\$1,156,210 98
2. Richmond and Danville Railroad Company, stock and loan....	1,653,423 04
3. Richmond and Petersburg Railroad Company, stock.....	578,404 13
4. Virginia Central Railroad Company, stock and loan.....	321,458 17
5. Blue Ridge Railroad Company, built by State of Virginia....	705,280 82
6. Alexandria, Loudoun and Hampshire Railroad Company, stock.	68,044 51
7. Winchester and Potomac Railroad Company, loan reduced by annuity .....	83,333 33
8. Virginia and Tennessee Railroad Company, loan.....	992,030 32
9. Southside Railroad Company, loan.....	91,897 66
10. Norfolk and Petersburg Railroad Company, loan.....	165,024 49
11. Roanoke Navigation Company, stock.....	3,832 00
12. Alexandria Canal Company, stock.....	816 00
13. Upper Appomattox Company, stock.....	16,144 26
14. Dismal Swamp Canal Company, stock.....	24,839 98
15. Loan to Washington College.....	2,000 00
16. Richmond Academy, bonds.....	400 00
17. Claim against United States Government.....	298,369 74
18. Claim against Selden-Withers Company.....	152,023 04
Total .....	<u>\$6,313,532 47</u>

## CLASS D.

Interest on loans and dividends on stock accrued prior to January 1, 1861, upon common investments, and collected by the State of Virginia after January 1, 1861, and still unaccounted for.

1. Orange and Alexandria Railroad Company.....	\$ 18,144 29
2. Richmond and Danville Railroad Company.....	8,516 80
3. Richmond and Petersburg Railroad Company.....	43,048 00
4. Virginia Central Railroad Company.....	182,436 36
5. Winchester and Potomac Railroad Company.....	833 33
6. Richmond, Fredericksburg and Potomac Railroad Company....	157,662 07
7. Virginia and Tennessee Railroad Company.....	211,891 82
8. Southside Railroad Company.....	204,602 34
9. Norfolk and Petersburg Railroad Company.....	45,900 00
10. James River and Kanawha Company .....	250 00
11. Loan to Washington College.....	60 00
12. Richmond Academy, bond.....	12 00
13. Claim against United States Government.....	832,451 57
14. The Farmers' Bank of Virginia.....	33,691 00
15. Bank of Virginia.....	33,726 70
16. Bank of the Valley.....	16,936 50
17. Exchange Bank .....	30,642 50
18. Northwestern Bank .....	13,104 00
19. Fairmont Bank .....	1,500 00
Total .....	\$1,835,409 28

## CLASS E.

Bank stock purchased by Virginia with joint funds prior to January 1, 1861, and in her possession on that date.

1. Farmers' Bank of Virginia.....	\$ 962,600 00
2. Bank of Virginia.....	963,620 00
3. Bank of the Valley.....	483,900 00
4. Exchange Bank .....	875,500 00
5. Northwestern Bank .....	374,400 00
6. Fairmont Bank .....	50,000 00
Total .....	\$3,710,020 00

## CLASS F.

Railroad stock purchased by the State of Virginia out of the common funds of the two States in various railroads, prior to the first day of January, 1861, and sold by her subsequent to the 20th day of June, 1863, without the knowledge or consent of West Virginia, and for which she has never accounted.

Prior to January 1, 1861, the State of Virginia, with common funds, bought stocks of and made loans to each of the following railroad companies:

Virginia and Tennessee Railroad Company,  
Southside Railroad Company,  
Virginia and Kentucky Railroad Company,  
Norfolk and Petersburg Railroad Company,

and from time to time sold portions of said stock until she had left on hand stocks therein and residue of loans that cost her:

Virginia and Tennessee Railroad Company, stock.....	\$2,300,000 00
Southside Railroad Company—	
Stock .....	803,500 00
Loan .....	708,102 34
Virginia and Kentucky Railroad Company, stock.....	82,000 61
Norfolk and Petersburg Railroad Company—	
Stock .....	1,139,970 00
Loan .....	134,975 51
Total .....	\$5,168,548 46

which residuary stocks she subsequently, that is to say, on the 20th day of December, 1870, sold to the Atlantic, Mississippi and Ohio Railroad Company, for the sum of \$4,000,000.00, the purchase price to be paid in installments, and took a second mortgage upon the property of the said railroad company to secure the payment of the same. This sale was made and this security taken without the knowledge and consent of the State of West Virginia; and finally after the lapse of many years, the first mortgage upon said railroad company was foreclosed and the property covered thereby sold, but did not bring enough to satisfy the second mortgage and pay the \$4,000,000.00 purchase price agreed to be paid to Virginia for these stocks. After this foreclosure sale, that is to say, on the first day of March, 1882, the re-organization of the Atlantic, Mississippi and Ohio Railroad Company paid unto the State of Virginia the sum of \$500,000.00 for her second mortgage rights, whatever they may have been. Virginia has never accounted to West Virginia, either for a proportionate part of the \$4,000,000.00 original purchase price, or the \$500,000.00 subsequently received.

It will be seen that the value placed upon these stocks, both by the State of Virginia and by the railway company purchasing them, was \$4,000,000.00; and this can be taken as their reasonable value as of January 1, 1861.

Total, \$4,000,000.00.

#### CLASS G.

Securities purchased with joint funds by the State of Virginia prior to January 1, 1861, and subsequently given away without the knowledge or consent of West Virginia, together with certain other railroad and canal securities appropriated by her in one way and another, but not hereinbefore recapitulated:

1. James River and Kanawha Company, 104,000 shares.....	\$10,400,000 00
2. Residue of securities:	
Manassas Gap Railroad.....	2,105,000 00
Roanoke Valley Railroad.....	307,402 00
Fredericksburg and Gordonsville Railroad.....	132,399 00
Richmond and York River Railroad.....	490,999 52
Rappahannock Company .....	179,500 00
Rivanna River Navigation Company.....	227,133 00
Smithe River Navigation Company.....	4,083 12
Slate River Company.....	21,000 00
Kempsville Canal Company.....	13,650 00
Hazel River Navigation Company.....	63,079 58
Goose Creek and Little River Company.....	58,255 35
Dragon Swamp Navigation Company.....	1,464 00
Chesapeake and Ohio Canal Company.....	281,111 11
	<hr/>
	\$14,285,076 68

The foregoing \$10,400,000.00 attributed to the James River and Kanawha Company was the par value of its stock, and, although the State of Virginia by an Act of its General Assembly passed on the 23d day of March, 1860, something less than ten months before January 1, 1861, placed a value of par thereon and made purchases thereof at such valuation, yet so much time has elapsed and the evidence of the actual value of this stock of that date has become so obscure, that it has been thought best, out of a spirit of compromise, to place a value thereon of twenty-five per cent. of its par value, or the sum of \$2,600,000.00.

The other securities embraced in this class (amounting to \$3,885,076.68) have been treated in the same way for the same reason, and their value placed herein at twenty-five per cent. of their par value, or the sum of \$971,269.17.

Total, \$3,571,269.17.

In addition to the foregoing the State of Virginia, after the division of the old Commonwealth into two States, June 20, 1863, collected large amounts of

money from several counties then and now located in the State of West Virginia, aggregating the sum of \$225,078.06.

## RECAPITULATION.

Class A .....	\$ 1,104,927 06
Class B .....	275,200 00
Class C .....	6,313,532 47
Class D .....	1,835,409 28
Class E .....	3,710,020 00
Class F .....	4,000,000 00
Class G .....	3,571,269 17
<b>Total .....</b>	<b>\$20,810,357 98</b>
West Virginia equity .235.....	4,890,434 12
Less Northwestern Bank stock.....	\$210,200 00
Fairmont Bank stock.....	50,000 00
	<b>260,200 00</b>
<b>Balance .....</b>	<b>\$ 4,630,234 12</b>
Collected from West Virginia counties .....	225,078 06
<b>Total net equity.....</b>	<b>\$ 4,855,312 18</b>

## RESULT.

West Virginia's share of debt.....	\$ 7,182,507 46
Less net equities as above.....	4,855,312 18
<b>Balance .....</b>	<b>\$ 2,327,195 28</b>

NOTE.—Subsequent to the 1st day of January, 1861, the Commonwealth of Virginia has received as dividends and interest upon the securities and loans hereinbefore listed the sum of \$5,782,240.09, as follows:

*Interest and Dividends Received by Virginia in Cash After January 1, 1861, From Assets Held January 1, 1861, and Exclusive of any Dividends or Interest up to January 1, 1861.*

	INTEREST		DIVIDENDS	TOTAL
	Cash	Bonds	Cash	
Orange and Alexandria Railroad .....	\$ 113,459.00	\$ 81,311.34	\$ 66,516.09	\$ 261,286.43
Richmond and Danville Railroad .....	380,497.66	281,322.35	249,605.67	911,425.68
Virginia Central Railroad .....	86,385.03	72,174.40	387,404.65	545,964.08
Richmond and York River Railroad .....			54,009.94	54,009.94
Richmond, Fredericksburg and Potomac Railroad .....	24,012.71		1,282,198.74	1,306,211.45
Virginia and Tennessee Railroad .....	137,762.86		138,000.00	275,762.86
Norfolk and Petersburg Railroad .....	69,561.41		82,800.00	152,361.41
Roanoke Navigation Company .....			2,800.00	2,800.00
Upper Appomattox Company .....			6,150.00	6,150.00
Richmond and Petersburg Railroad .....	1,703.81		227,504.00	229,207.81
Winchester and Potomac Railroad .....	4,166.67	35,184.79		39,351.46
Southside Railroad .....	192,000.00			192,000.00
Washington College .....	4,140.00			4,140.00
Richmond Academy .....	816.00			816.00
United States Government .....		575,837.52		575,837.52
Farmers Bank of Virginia .....			373,007.50	373,007.50
Bank of Virginia .....			370,993.70	370,993.70
Bank of the Valley .....			94,360.50	94,360.50
Exchange Bank .....			343,633.75	343,633.75
Northwestern Bank .....			42,920.00	42,920.00
<b>TOTAL .....</b>	<b>\$1,014,505.15</b>	<b>\$1,045,830.40</b>	<b>\$3,721,904.54</b>	<b>\$5,782,240.09</b>

After the representatives of the West Virginia Commission had retired, on motion of Mr. Flood, a sub-committee consisting of the chairman, Mr. Harrison and Mr. Downing, was appointed to prepare a reply to the communication of the West Virginia Commission. The Commission then took a recess until eight p. m., at which time they reconvened and the sub-committee presented to the Commission the reply to the West Virginia Commission which they had formulated. The Commission, on motion, adopted the report of the sub-committee and Mr. Downing was instructed to present it to the chairman of the West Virginia Commission, and which is in the following form:

March 4, 1914.

Hon. JOHN W. MASON, *Chairman,*  
West Virginia Commission,  
Washington, D. C.

DEAR SIR:

VIRGINIA v. WEST VIRGINIA.

I beg to hand you, herewith, the resolutions adopted by the Virginia Debt Commission in response to the proposition submitted to them this day by the West Virginia Commission.

With great respect, I am,

Very truly yours,

JOHN B. MOON,  
*Chairman Virginia Debt Commission.*

VIRGINIA v. WEST VIRGINIA.

Resolutions of the Virginia Debt Commission, adopted at a meeting held in Washington, D. C., at the New Willard Hotel, Wednesday, March 4, 1914.

The Virginia Debt Commission, having received the proposition submitted this day by the West Virginia Commission, which contains statements and conclusions to which this Commission cannot assent and concerning which it is unwilling to engage in any discussion, adopted the following resolutions:

*Whereas*, The Supreme Court of the United States, in its opinion delivered at the October term, 1913 (November 10, 1913), in the suit of *Virginia v. West Virginia*, on motion of Virginia to proceed to a final hearing, said:

"In March, 1911 (*Virginia v. West Virginia*, 220 U. S. 1) our decision was given 'with respect to the basis of liability and the share of the principal of the debt of Virginia that West Virginia assumed.' In view, however, of the nature of the controversy, of the consideration due the respective States and the hope that by agreement between them further judicial action might be unnecessary, we postponed proceedings to a final decree and left open the question of what, if any, interest was due and the rate thereof, as well as the right to suggest any mere clerical error which it was deemed might have been committed in fixing the sum found to be due upon the basis of liability which was settled," and

*Whereas*, The matters left open and referred by the court to the respective States for consideration and adjustment, "in the hope that by agreement between them further judicial action might be unnecessary," were specifically stated to be (1) "what, if any, interest was due and the rate thereof," and (2), "the right to suggest any clerical error which it was deemed might have been committed in fixing the sum found to be due upon the basis of liability which was settled," and

*Whereas*, The proposition now submitted by the West Virginia Commission does not embrace either of said matters left open by the court and referred to the parties litigant for adjustment between them;

*It is therefore resolved* That the Virginia Debt Commission is unwilling to, and respectfully declines to consider the said proposition; and



*It is further resolved* That the Virginia Debt Commission hereby expresses its regret that the West Virginia Commission has not seen its way to respond to the opinion of the court and submit a proposition to adjust the question of interest.

JOHN B. MOON,  
*Chairman.*  
JOSEPH BUTTON,  
*Secretary.*

Approved:

JNO. GARLAND POLLARD,  
*Attorney General of Virginia.*

The chairman and secretary of the West Virginia Commission again appeared and presented the following reply to the communication of this Commission:

WASHINGTON, D. C., March 4, 1914.

Hon. JOHN B. MOON,  
*Chairman, Virginia Debt Commission,*  
*Washington, D. C.*

DEAR SIR:

In response to your communication of this date declining the proposition of the West Virginia Debt Commission made this day looking to a settlement of the Virginia debt, we regret to be under the necessity of calling your attention to the fact that, although you deem the question of interest still open, yet you have offered nothing in reply to the reasons advanced in our proposition why no interest should be charged, and thus close the discussion upon the only point considered by you still to be open. And, so far as the credits advanced by us are concerned, you express an unwillingness even to discuss them, thus leaving us, in the absence of errors therein pointed out to you, with the conviction that they are equitable, and under the necessity of adhering to the terms of a proposition made in an effort to do justice to all.

We deem it unnecessary to indulge in any interpretation or construction of the opinion of the Supreme Court at this time further than to say that, in our opinion, the court ascertained West Virginia's proportion of the principal of Virginia's debt to be \$7,182,507.46 only because, as the record then stood, there appeared to be "*no stocks of value on hand*" to be applied to the reduction of the same. These stocks are now discovered and disclosed, and a portion of them, at least, were set forth in the proposition you have declined.

You have, therefore, closed the door to further negotiations and it is with regret that we cease further effort along that line.

Respectfully submitted,

JOHN W. MASON,  
JOSEPH S. MILLER,  
WILLIAM D. ORD,  
J. A. LENHART,  
U. G. YOUNG,  
R. J. A. BOREMAN,  
HENRY ZILLEKEN,  
JOHN M. HAMILTON,  
W. T. ICE.

After which the meeting adjourned.

A meeting of the Debt Commission was held at the Jefferson Hotel, Richmond, Va., at eleven o'clock a. m., Tuesday, March 17, 1914. Present: John B. Moon, chairman; Joseph Button, secretary; and Messrs. Harrison, Brown, Rhea and Wickham. There were also present Attorney General Pollard and former Attorney General William A. Anderson.

The chairman stated that the Commission had been called together for the purpose of considering the answer to be filed to the petition of West Virginia for a hearing of the case. Mr. Wickham presented the following resolution which was adopted:

*Resolved*, That the Attorney General and counsel of the Commission be requested to take such steps as they may be advised are needful and appropriate

to resist the motion of the State of West Virginia for leave to file a supplemental answer to the bill of complaint of the Commonwealth of Virginia, Case No. 2 Original, now pending in the Supreme Court of the United States.

After which the meeting adjourned.

A meeting of the Debt Commission was held at the Jefferson Hotel, Richmond, Va., at noon on Tuesday, May 19, 1914. Present: John B. Moon, chairman; Joseph Button, secretary, and Messrs. Harrison, Brown, Rhea and Wickham. There were also present Attorney General Pollard and former Attorney General William A. Anderson.

Chairman Moon stated that the meeting of the Commission had been called at the request of Attorney General Pollard. The Attorney General being present, stated that he had received a letter from Maj. Holmes Conrad, counsel for the certificate-holders' committee, notifying him that at the next term of the Supreme Court he would make a motion for the appointment of a receiver to distribute whatever funds that might be recovered in the case of *Virginia v. West Virginia*, whereupon Judge Rhea proposed the following resolution, which was unanimously adopted:

Attorney General Pollard having submitted to the members of the Commission the letter of Maj. Holmes Conrad to him of the 5th instant, together with a copy of the motion for a receivership therein mentioned. On consideration whereof it is

*Resolved*, By the Virginia Debt Commission that the Attorney General and associate counsel for Virginia be and they are requested to oppose on behalf of Virginia any such motion, and to take such action to that end as they may be advised to be appropriate and best.

After which the meeting adjourned.

The letter of Maj. Holmes Conrad, above referred to, reads as follows:

HOLMES CONRAD,  
HOME LIFE BUILDING,  
WASHINGTON, D. C., May 5, 1914.

Hon. JOHN GARLAND POLLARD,  
Attorney General of Virginia,  
Richmond, Va.

My dear Mr. Attorney General:

I enclose a copy of a motion which I propose to submit to the Supreme Court, as soon after the opinion is announced in the case of *Virginia v. West Virginia*, as the court will hear the motion.

I send it in this form now, because I have not yet had it printed, but I wanted to get it in your hands as soon as possible, that you may give it such consideration as you may think it needs.

That there must be a receiver, all will, I assume, agree, and I do not think that any objection can be urged to Mr. Brown, whose name I present.

If you have any suggestions, or amendments to make to the form in which I have put the motion, and will indicate them to me, I will try and recast the motion to meet your wishes.

Your very truly,

(Signed) HOLMES CONRAD.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

<i>Commonwealth of Virginia</i> , Complainant,	}	Motion for Receiver.
<i>State of West Virginia</i> , Defendant.		

Come now O. L. Grosvenor, Adrian Iselin, Jr., executor of Oliver O. Donnell, Lambert Suydam, Eutaw Savings Bank, Baltimore, Md., the Johns Hopkins University, Mary Custis Lee, Robert E. Lee, administrator of estates of Mildred

O. Lee, and W. H. F. Lee, trustees of Andover Theological Seminary; Safe Deposit and Trust Company, Baltimore, Md., trustees for Richard Twain, Thomas Twain, Isador Raynor, Nathaniel W. James and Francis B. Harvey; The Catholic University of America, The Peabody Institute of the City of Baltimore, who are bondholding creditors of the Commonwealth of Virginia, on behalf of themselves and of all other such bondholding creditors (1) who are in the same class with them, whose interests are now, and from the institution of this suit have been represented here by counsel, and move the court to appoint a receiver, with full power to demand, receive and give acquittance for the money that may be paid over by the State of West Virginia, under the decree of this court, in this cause.

For reasonable and sufficient grounds for this motion, they assign the following:

1. There is now no hand, duly authorized and empowered to receive this fund, and hold the same safely, to abide the decree of this court as to its ultimate application.

2. This court, having called this fund into existence, must, in order to a complete decree in this cause, provide for its collection and for its ultimate application to those persons who may be ascertained by future decrees in this cause, to be entitled to receive it.

3. The Commonwealth of Virginia, has, by the decree made in this cause, fully accomplished the objects, and attained the ends had in view in filing her bill of complaint here. (1) To fulfill the obligations imposed upon her by the certificates issued by her to the holders of her bonds, who received the new bonds of Virginia for two-thirds of their claim, and the certificate for the one-third, allotted to West Virginia. Such certificates providing that Virginia, who had received the old bonds from the creditors should "hold said bonds, so far as unfunded, in trust for the holder thereof, or his assignee." (2) To secure her exoneration from liability on account of the bonds issued by her prior to 1861. The institution of this suit, its prosecution, and the final recovery from West Virginia, achieved the release of Virginia from the obligations of the trust, and of her old bonds. She has no longer any interest in this cause. She will not receive one dollar of the amount to be paid by West Virginia, under the decree of this court.

All of that amount, when paid, must be applied to the redemption of the certificates issued by Virginia to those holders of her bonds who surrendered their bonds to Virginia, and received these certificates.

The joint resolution of the Virginia legislature of March 6, 1894, appointing the Virginia Debt Commission, and relieving Virginia from any of the expense incident to this proceeding, provided in terms, as follows, viz:

"All expenses incurred by said Commission, \* \* \* including reasonable compensation of the members thereof, shall be paid out of the proceeds of such settlement, or by the holders of said certificates who are beneficiaries of such settlement, but without subjecting the State to any expense in this account." (Record, p. 49.)

The act of the Virginia legislature, of March 6, 1900, adopts this provision of the joint resolution.

It must be conceded by all that a receiver must be appointed by the court before the objects of this proceeding can be fully accomplished. (2) They further move the court, that either *Brown Brothers and Company*, Bankers, 59 Wall St., New York City, or *Thatcher M. Brown*, who is the member of that firm who has given special attention to this matter, be appointed the receiver.

Brown Brothers and Company are a partnership, and there may be objections to making a partnership firm receivers of a fund, because of the difficulty in holding the members to personal responsibility, but such objection cannot apply to the appointment of Mr. Thatcher M. Brown, a member of the firm. He can be required to give bond with approved sureties, and his long and satisfactory experience in the matter of assembling these certificates does strongly commend him.

For grounds for this motion, the following, among others, may be assigned:

1. Brown Brothers and Company from the inception of this movement to require from West Virginia the payment of her equitable proportion of the

public debt of Virginia, prior to 1861, have been the chosen depository of the certificates held by the bondholding creditors of Virginia. With them have been deposited these certificates, which by their intelligent and well directed efforts have been assembled from all parts of this country and from Europe.

2. As early as September 18, 1902, an agreement was entered into between several gentlemen, therein styled "The Committee," parties of the one part, and "such holders of the certificates herein mentioned as deposit hereunder," parties of the other part wherein it was provided.

(a) The appointment of an advisory board consisting of Thomas F. Bayard, W. Pinckney White, Edward J. Phelps, and George C. Williams, whose function should be to approve such plan of settlement as may be proposed by the committee representing the holders of the certificates. (b) Defining the functions of the committee, one of which was to appoint depositors to receive the certificates and issue receipts therefor. (c) A proposal from the committee representing the holders of the certificates, to the Virginia Debt Commission, which was approved by the Attorney General of Virginia, and accepted by the Virginia Debt Commission, wherein Brown Brothers and Company are recognized as the depository chosen for the receipt of the certificate. (Record, pages 59-60).

On December 3, 1902, the advisory board approved the plan of settlement of the West Virginia Debt, proposed by the committee. (Record pages 67-69).

3. In addition to the fact of the thorough knowledge of all the details of this matter, acquired by Brown Brothers and Company, during the eleven years of their connection with it, the high standing of this banking-house throughout the United States and Europe, would afford to the holders of the certificates throughout these countries, the strongest assurance that their interests, in the hands of such a receiver, would be thoroughly protected. The certificates deposited with Brown Brothers and Company up to April 7, 1914, amount in their par value to \$14,041,698.97.

If the appointment of the partnership banking firm of Brown Brothers and Company as the receiver of the fund, be considered by the courts as inexpedient or undesirable, then the appointment of Mr. Thatcher M. Brown as such receiver, would be equally acceptable to the bondholding creditors, who are the holders of the certificates.

BONDHOLDING CREDITORS OF VIRGINIA,  
By Holmes Conrad, their Attorney.

#### SUPREME COURT OF THE UNITED STATES.

No. 2, Original.—OCTOBER TERM, 1913.

<i>Commonwealth of Virginia</i>	}	On Motion of the State of West Virginia for Leave to File a Supplemental Answer to the Bill of Complaint of the Commonwealth of Virginia.
v.		
<i>State of West Virginia.</i>		

[June 8, 1914.]

Mr. Chief Justice White delivered the opinion of the court.

This case, which was begun in 1906, was elaborately argued in 1907 on a demurrer, which was overruled. 206 U. S. 290. It was again argued in 1908 on a motion to appoint a master. 209 U. S. 514. Before that officer there was an extended hearing and a full report of all the matters involved was filed in March, 1910. It was then argued on a motion to take further testimony, and was ultimately heard in an argument which extended many days, every party in interest being represented, in the month of January, 1911.

Notwithstanding these facts when in March, 1911, the court came to decide the controversy, although it fully reviewed and passed upon the fundamental issues, as its obvious duty required it to do, and fixed the principal sum due by

the State of West Virginia to the State of Virginia, in view of the consideration due to the parties as States and that the cause was, as then said, "no ordinary commercial suit, but, \* \* \* a quasi-international difference referred to this court in reliance upon the honor and constitutional obligations of the States concerned rather than upon ordinary remedies," the controversy was not completely and irrevocably disposed of but was left open for a time not specified to the end that any clerical errors that might have crept into the calculations of the sums due could be corrected and to give the States time to consider the subject of liability for interest in the light of what had been decided and to agree as to the rate and period of the interest to be paid on the principal sum which was determined. 220 U. S. 1.

On the convening of the court in the following October, 1911, a motion was made on behalf of the State of Virginia to proceed at once to a final decree. Listening to the suggestion of the State of West Virginia to the effect that it desired further time to consider the subject, and in view of the public consideration which had prevailed when the decree was entered, the motion of Virginia was overruled. 222 U. S. 17.

Yet further, when in November, 1913, another motion on the part of Virginia was made to set the case down to be finally disposed of at once upon the statement that no agreement between the parties was possible, again giving heed to the request of West Virginia through its constituted officers for a postponement for a stated time and to the statement that they were engaged in an honest endeavor to deal with the controversy and if possible to come to an agreement as to the subjects left open, the motion of Virginia was again refused, 231 U. S. 89, and as it was possible to give to the State of West Virginia all the time which that State in resisting the motion asked and yet secure against the possibility of the hearing being carried over to another term, the case was assigned for hearing on the 13th of April of this year. When that day was reached, the State of West Virginia, in accord with a motion filed some days before, prayed leave to be permitted to file a supplemental answer asserting the existence of credits, which if properly considered would materially reduce the sum fixed as due to the State of Virginia, the said answer in addition asserting various grounds why interest should not be allowed in favor of Virginia and against West Virginia on the sum due. Resisting this request the State of Virginia insists that the items embraced in the supplemental answer asked to be filed had in effect already entered into the considerations by which the principal sum due was fixed, and that if not, the case should not be postponed for the purpose of permitting the rights urged in the answer to be availed of because every item concerning such alleged rights was proved in the case before the master, was mentioned in his report and was known or could have been known by the use of ordinary diligence by those representing West Virginia. And it is this controversy we now come to dispose of.

Without intimating any opinion whatever as to whether the items with which the proposed supplemental answer deals entered into the processes of calculation or reasoning by which the sum due was previously fixed, and moreover, without intimating any opinion as to how far the items embraced in the answer could serve as credits upon the sum previously found due and therefore to that extent reduce the amount, we think it is obvious that most of the items embraced in the answer were contained in the master's report, and in any event all were available then for every defense now based upon them if their consideration had been pressed in the aspect and with the assertions of right now made.

The question then is, Under these conditions ought the permission to file the supplemental answer be granted? We think it must be conceded that in a case between ordinary litigants the application of the ordinary rules of legal procedure would render it impossible under the circumstances which we have stated to grant the request. We are of the opinion, however, that such concession ought not to be here controlling. As we have pointed out, in acting in this case from first to last the fact that the suit was not an ordinary one concerning a difference between individuals, but was a controversy between the States involving grave questions of public law determinable by this court under the exceptional grant of power conferred upon it by the Constitution, has been

the guide by which every step and every conclusion hitherto expressed has been controlled. And we are of the opinion that this guiding principle should not now be lost sight of, to the end that when the case comes ultimately to be finally and irrevocably disposed of, as come ultimately it must in the absence of agreement between the parties, there may be no room for the slightest inference that the more restricted rules applicable to individuals have been applied to a great public controversy, or that anything but the largest justice after the amplest opportunity to be heard has in any degree entered into the disposition of the case. This conclusion, which we think is required by the duty owed to the moving State also in our opinion operates no injustice to the opposing State, since it but affords an additional opportunity to guard against the possibility of error, and thus reach the result most consonant with the honor and dignity of both parties to the controversy.

Because of these convictions, we therefore make the following order:

That the motion on the part of the State of West Virginia to file the supplemental answer be and the same is hereby granted; and that the averments in such answer be and the same shall be considered as traversed by the State of Virginia; that the subject matter of the supplemental answer as traversed be at once referred for consideration and report to Charles E. Littlefield, Esq., the master before whom the previous hearings were had, with directions to hear and consider such evidence and testimony as to the matters set forth in the supplemental answer as the State of West Virginia may deem advisable to proffer and such counter showing on the part of the State of Virginia as that State may deem advisable to make. The report on the subject to embrace the testimony so taken and the conclusions deduced therefrom as well as the views of the master concerning the operation and effect of the proof thus offered, if any, upon the principal sum found to be due by the previous decree of this court. Nothing in this order to vacate or change in any manner or in any particular the previous decree, and the same to stand wholly unaffected by the order now made or any action taken thereunder until the examination and report herein provided for is made and this court acts upon the same. It is further directed that the proceedings before the master be so conducted as to secure a report on or before the second Monday of October, 1914.

True copy.

Teste:

*Clerk Supreme Court, U. S.*

## DIGEST OF OPINIONS.

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During the past year the reports containing the opinions of the Attorneys General of Virginia for the last thirty years (1883-1913 inclusive) have been carefully digested. Such opinions as are on November 1, 1914, still applicable, because the sections and statutes construed have neither been repealed nor amended on the point which was the subject of the opinion, have been preserved and made a part of this report. Those sections of the Virginia Code, 1904, and the Acts of Assembly from 1906 to 1914, inclusive, of a permanent and general nature have been consecutively listed with a short resumé of the construction given, and a reference to the report in which they may be found. The arrangement which follows is self-explanatory, being similar to that found in the Virginia Code, 1904, with the Supplement and Biennials.

MORTON L. WALLERSTEIN,

*Law Clerk.*

## TABLE.

*Showing a consecutive list of such sections of Virginia Constitution 1902 as have been construed by Attorneys General, together with a brief digest of the construction placed thereon.*

Sec. **18** Constitution. See report of Attorney General Anderson, 1906, page 71, where the opinion is expressed that under this section the only poll tax prerequisite to the right to vote is the State poll tax.

Sec. **19** Constitution. See report of Attorney General Anderson, 1902, page 21, where the opinion is expressed that under this section a man who served in the war is entitled to register even though he cannot write or read nor explain a section of the Constitution nor has even paid any taxes, and the same applies to the son of such soldier.

See report of Attorney General Anderson, 1902, page 21, where the opinion is expressed that under this section if a man owns a beneficial interest in property on which \$1.00 in taxes has been paid for the preceding year he is entitled to register regardless of whether he can read or write or explain a section of the Constitution.

See report of Attorney General Anderson, 1902, page 23, where the opinion is expressed that under this section the soldier clause includes only enlisted men in the army or navy. A person driving a wagon or working on a fortification is not entitled to its benefits unless he was enlisted.

See report of Attorney General Anderson, 1902, page 22, where the opinion is expressed that under this section a man who furnished a substitute, but did not actually serve in army himself, is not entitled to be registered as a voter. The substitute would, however, be entitled to register.

See report of Attorney General Anderson, 1902, page 23, where the opinion is expressed that under this section the son of a soldier means *lawful* son.

See report of Attorney General Anderson, 1902, page 22, where the opinion is expressed that taxes as mentioned in this section means any and all State taxes on property, and income and capitation taxes are not included.

See report of Attorney General Anderson, 1902, page 27, where the opinion is expressed that under this section a merchant's license tax is a tax on property.

See report of Attorney General Anderson, 1902, page 17, where the opinion is expressed that this section entitles to registration beneficial owner of property upon which State taxes aggregating at least \$1.00 have been paid in the year preceding that in which he offers to register.

See report of Attorney General Anderson, 1902, page 21, where the opinion is expressed that under this section property owned need not be assessed in name of person seeking to register. Beneficial ownership is all that is necessary.

See report of Attorney General Anderson, 1902, page 19, where the opinion is expressed that this section was intended to exclude the ignorant and vicious voter.



**Sec. 20 Constitution.** See report of Attorney General Anderson, 1907, page 71, where an opinion is expressed under this section as to a person who recently attains his majority.

See report of Attorney General Anderson, 1909, page 89, where the opinion is expressed that under this section an application for registration must be in the English language.

See report of Attorney General Anderson, 1904, page 12, where the opinion is expressed that under this section the payment of poll taxes cannot be required six months beforehand as a prerequisite to the right to register, but that they may be paid at any time prior to the election, and if evidence be adduced to prove payment of poll taxes for the preceding three years there is nothing to prevent registration.

**Sec. 21 Constitution.** See report of Attorney General Anderson, 1907, page 69, where the opinion is expressed that under this section "personally" means out of one's own means.

See report of Attorney General Anderson, 1904, page 12, where the opinion is expressed that under this section poll taxes must be paid six months beforehand as prerequisite to the right to vote.

See report of Attorney General Anderson, 1907, page 66, where the opinion is expressed that under this section a person need pay only those poll taxes with which he was lawfully assessable.

**Sec. 22 Constitution.** See report of Attorney General Anderson, 1904, page 22, where the opinion is expressed that under this section the collection of a State poll tax assessed against anyone cannot be enforced by legal process until the same has become three years past due.

See report of Attorney General Anderson, 1905, page 10, where the opinion is expressed that under this section the fact that a Civil War veteran when he registered, did not base his application on that ground, and who now has a transfer from his former election district does not prevent him from registering and voting in the primary.

See report of Attorney General Anderson, 1907, page 62, where the opinion is expressed that under this section no person except a soldier of the Civil War may vote without paying his poll tax.

See report of Attorney General Anderson, 1904, page 10, where the opinion is expressed that under this section persons who served in the Spanish-American War are not exempt from the payment of poll taxes.

See report of Attorney General Anderson, 1902, page 16, where the opinion is expressed that under this section taxes are due when payable, but this section does not apply to capitation taxes which are collectible as formerly.

**Sec. 23 Constitution.** See report of Attorney General Anderson, 1902, page 27, where the opinion is expressed that a challenge need not be accepted to disqualify under this section.

See report of Attorney General Anderson, 1902, page 26, where the opinion is expressed that under this section the term "pauper" includes all persons so poor that they have to be supported by the public, and old soldiers not inmates of the home but who do receive some aid from the county and pensions from State are not paupers.

Sec. **24** Constitution. See report of Attorney General Williams, 1911, page 49, where the opinion is expressed under this section that the Elks Home is a charitable institution, and therefore its inmates have not gained a residence to enable them to vote.

See report of Attorney General Anderson, 1902, page 25, where the opinion is expressed that under this section no sojourn in a charitable institution however long, can entitle a person to vote in the county where institution is located unless the inmate was a resident of that county before and at the time of taking abode with such institution.

Sec. **30** Constitution. See report of Attorney General Anderson, 1906, page 81, where the opinion is expressed that under this section a release of any claim of the State is prohibited.

Sec. **31** Constitution. See report of Attorney General Anderson, 1903, page 13, where the opinion is expressed that a candidate for office is eligible as a member of the board of registrars under this section.

See report of Attorney General Anderson, 1905, page 11, where the opinion is expressed that under this section an electoral board may not appoint one of its members a judge of election.

Sec. **32** Constitution. See report of Attorney General Montague, 1898, page 17, where the opinion is expressed that this section leaves the legislature free to pass on the incompatibility of offices.

See report of Attorney General Anderson, 1904, page 23, where the opinion is expressed that under this section any woman whether married or single may be appointed a notary public.

See report of Attorney General Anderson, 1904, page 23, where the opinion is expressed that under this section the difficulty occasioned by the marriage of a woman who is a notary public by the change of name in the absence of statute may be remedied by the reappointment of the married woman.

Sec. **33** Constitution. See report of Attorney General Anderson, 1908, page 68, where the opinion is expressed that under this section the president of the State Library Board continues as such after the expiration of his term and prior to the appointment of a successor.

See report of Attorney General Anderson, 1908, page 69, where the opinion is expressed that under this section a member of the State Library Board is an officer.

Sec. **34** Constitution. See report of Attorney General Anderson, 1902, page 29, where the opinion is expressed that under this section county and district officers do not have to take the oath prescribed.

Sec. **35** Constitution. See report of Attorney General Anderson, 1903, page 16, where the opinion is expressed that this section has no application to party *unlegalized* primary.

Sec. **38** Constitution. See report of Attorney General Anderson, 1909, page 78, where the opinion is expressed that under this section a list of voters need not be filed before the second Tuesday in June of any year in which no election is held in that month.

See report of Attorney General Anderson, 1908, page 67, where the opinion is expressed that under this section a man reaching his majority after February 1st having performed the other conditions may vote in elections of that year upon exhibiting to the judges of election his receipt for payment of poll taxes.

See report of Attorney General Anderson, 1906, page 72, where the opinion is expressed that under this section no provision is made in regard to special elections.

See report of Attorney General Anderson, 1904, page 13, where the opinion is expressed that under this section the question as to whether poll taxes were paid by a citizen personally not being one of the facts required or authorized to be shown in the treasurer's list is not concluded thereby.

See report of Attorney General Anderson, 1903, page 17, where the opinion is expressed that this section requires that treasurer's lists contain those who have paid their poll taxes for the preceding three years.

See report of Attorney General Anderson, 1907, page 67, where the opinion is expressed that this section requires the tax to be paid for each one of the preceding years and the list furnished by each treasurer should show precisely what taxes have been so paid.

See report of Attorney General Anderson, 1907, page 69, where the opinion is expressed that under this section all required of a treasurer is a list of those paying poll taxes during the preceding three years.

See report of Attorney General Anderson, 1906, page 77, where the opinion is expressed that under this section the remedy for a person paying his capitation tax to the wrong county treasurer is to apply to the judge of the court for relief.

Sec. 44 Constitution. See report of Attorney General Anderson, 1907, page 83, where the opinion is expressed that under this section there is nothing to prevent the mayor of an incorporated town from also being a member of the General Assembly.

See report of Attorney General Anderson, 1907, page 84, where the opinion is expressed that under this section one who is mayor of an incorporated town, thereby its police justice, is not a "salaried officer under the State government."

See report of Attorney General Anderson, 1907, page 84, where the opinion is expressed that under this section a mayor of a town, by its charter made the police justice, is not "a judge of any court."

Sec. 45 Constitution. See report of Attorney General Williams, 1910, page 68, where the opinion is expressed that under this section a member of the legislature after his resignation is eligible to the position of county treasurer.

Sec. 50 Constitution. See report of Attorney General Williams, 1912, page 11, where the opinion is expressed that the submitting of a bill to the governor by this section is not required where action is taken under Section 196 of the Constitution.

Sec. 52 Constitution. See report of Attorney General Williams, 1910, page 18, where an opinion is expressed under this section as to what is constitutional.

See report of Attorney General Williams, 1910, page 15, where an opinion is expressed as to the constitutionality of a bill under this section. (See also report of Attorney General Williams, 1910, page 18).

Sec. **55** Constitution. See report of Attorney General Williams, 1912, page 10, where the opinion is expressed that neither this section nor any other section prevents the legislature from requiring each Congressional district to build an almshouse.

Sec. **63** Constitution. See report of Attorney General Anderson, 1908, page 62, where the opinion is expressed that this section prohibits the passage of a bill to quiet title to certain land.

See report of Attorney General Williams, 1910, page 13, where the opinion is expressed that under this section the passage by the legislature of a municipal charter authorizing the council to exempt manufacturing enterprises from city taxes for a period of five years is unconstitutional.

See report of Attorney General Williams, 1910, page 21, where the opinion is expressed that neither under this section nor any other is a law providing that "neither the mayor nor any member of the council of said town shall be eligible to any municipal office in said town until after one year from the expiration of his term" unconstitutional.

Sec. **64** Constitution. See report of Attorney General Williams, 1910, page 16, where an opinion is expressed under this section as to what legislation is constitutional.

Sec. **66** Constitution. See report of Attorney General Anderson, 1903, page 46, where the opinion is expressed that the purpose and effect of this section is to prevent compensation being paid to any employees of the General Assembly, including the clerks of the two houses during any recess of the General Assembly.

Sec. **67** Constitution. See report of Attorney General Anderson, 1903, page 24, where the opinion is expressed that the donation of the public funds to an association for the relief of disabled firemen and families of deceased firemen is not prohibited by this section.

Sec. **69** Constitution. See report of Attorney General Williams, 1912, page 34, where the opinion is expressed that under this section the Governor may not be a notary public.

Sec. **73** Constitution. See report of Attorney General Anderson, 1906, page 23, where the opinion is expressed that this section does not apply to appointments made under Section 1608 of the Code.

See report of Attorney General Anderson, 1906, page 19, where the opinion is expressed that under this section costs are not included.

See report of Attorney General Anderson, 1905, page 34, where the opinion is expressed that the governor is given power under this section to appoint during the recess of the legislature judges of a circuit court.

See report of Attorney General Anderson, 1902, page 42, where the opinion is expressed that this section confers upon the Executive the power and right

to relieve any citizen of the Commonwealth of any penalties or disabilities which may rest upon him consequent upon conviction for offenses, wherever or whenever such conviction may have been had.

See report of Attorney General Williams, 1913, page 57, where the opinion is expressed that under this section power is not given to remove but merely to suspend.

See report of Attorney General Williams, 1913, page 62, where the opinion is expressed that under this section no power is given the governor to revoke the commission of a notary public.

See report of Attorney General Williams, 1913, page 86, where the opinion is expressed that neither under this or any other section may the governor convey realty of the State of Virginia.

See report of Attorney General Williams, 1910, page 22, where the opinion is expressed that under this section the governor is empowered to call out the militia to aid the Commission of Fisheries to perform its duties and carry out the law.

See report of Attorney General Williams, 1912, page 26, where the opinion is expressed under this section that where the governor commutes the sentence of a felon to a jail sentence, the judge of the court in which he was convicted may not require the prisoner to serve on the roads for the time prescribed by the governor.

See report of Attorney General Williams, 1912, page 25, where the opinion is expressed that neither under this section nor any other section can the governor exempt from taxation any person.

See report of Attorney General Williams, 1911, page 24, where an opinion is expressed under this section as to the power of the governor as to horse racing, gambling, etc., under Sections 3618c and 3818b.

**Sec. 76** Constitution. See report of Attorney General Montague, 1898, page 14, where the opinion is expressed that under this section the governor has the right to sign a bill after the adjournment of the General Assembly.

See report of Attorney General Williams, 1912, page 11, where the opinion is expressed that under this section the approval or disapproval by the governor is not required where legislative action is taken under Section 196 of the Constitution.

**Sec. 83** Constitution. See report of Attorney General Williams, 1912, page 16, where the opinion is expressed that under this section the superintendent of public printing is probably an "officer of the executive department."

See report of Attorney General Williams, 1912, page 16, where the opinion is expressed that under this section an executive officer—the Commission of Statistics and Labor—may have his salary raised or lowered by a legislature in session at the time of the beginning of his term.

**Sec. 86** Constitution. See report of Attorney General Williams, 1912, page 16, where the opinion is expressed that under this section the office created is an executive office.

**Sec. 102** Constitution. See report of Attorney General Anderson, 1905, page 34, where the opinion is expressed that nothing in this section is inconsis-

tent with the appointment by the governor of the judge of the circuit court made vacant by resignation under Section 73 of the Constitution.

Sec. **105** Constitution. See report of Attorney General Williams, 1912, page 34, where an opinion is expressed as to right of a judge to be a notary public.

Sec. **110** Constitution. See report of Attorney General Williams, 1912, page 10, where the opinion is expressed that under this section there is nothing to prevent the legislature from requiring each Congressional district to build an almshouse.

Sec. **113** Constitution. See report of Attorney General Williams, 1912, page 34, where an opinion is expressed as to what offices a notary public may hold.

Sec. **117** Constitution. See report of Attorney General Williams, 1911, page 48, where under this section the opinion is expressed as to whether under Section 1021 action as to the qualifications of councilmen is to be taken by the council or the legislature.

See report of Attorney General Williams, 1910, page 13, where the opinion is expressed that under this section legislation authorizing the council of a certain city to exempt manufacturing enterprises from city taxes for a period of five years is unconstitutional.

Sec. **123** Constitution. See report of Attorney General Anderson, 1906, page 83, where the opinion is expressed that by adoption of Section 1033c of the Code the legislature has construed this section as applicable only to cities.

Sec. **125** Constitution. See report of Attorney General Anderson, 1903, page 19, where the opinion is expressed that this section prohibiting any public franchise or privilege from being granted by a municipality (except for a trunk railway) "for a term of years" except after due advertisement and receiving public bids therefor except as prescribed by law forbids the granting of any such privilege or franchise where there is no legislation as required by the Constitution.

See report of Attorney General Anderson, 1902, page 41, where the opinion is expressed that under this section councils of cities and towns have power to grant municipal franchise only for a period of less than a term of years.

Sec. **130** Constitution. See report of Attorney General Anderson, 1910, page 54, where the opinion is expressed that under this section the board's action must be as a body.

Sec. **132** Constitution. See report of Attorney General Anderson, 1909, page 58, where the opinion is expressed that under this section the Board of Education is empowered to make regulations to provide for an appeal from the action of the city school board to the division superintendent of schools.

See report of Attorney General Anderson, 1904, page 36, where the opinion is expressed that under this section district boards are authorized to pay only as much as the State board authorizes for school appliances.

See report of Attorney General Anderson, 1903, page 25, where the opinion is expressed that a uniform system of text-books need not be adopted by the State Board of Education under this section.

See report of Attorney General Anderson, 1903, page 25, where the opinion is expressed that under this section it is not competent for the General Assembly to require the State Board of Education to adopt a uniform system of textbooks for use in the schools of the State.

See report of Attorney General Anderson, 1908, page 31, where the opinion is expressed that under this section the superintendent of public instruction must rule on school law questions and if he consults the Attorney General, and follows his advice he must adopt the ruling as his own.

See report of Attorney General Williams, 1913, page 92, where the opinion is expressed that under this section, clause 5, a circuit judge may not be appointed by virtue of Section 3130 as a director of the State Library.

Sec. **134** Constitution. See report of Attorney General Anderson, 1908, page 39, where the opinion is expressed that under this section a law giving to towns fines for violations of State laws is unconstitutional.

See report of Attorney General Williams, 1912, page 40, where the opinion is expressed that all fines collected for offences against the State go to the Literary Fund and nowhere else under this section.

Sec. **135** Constitution. See report of Attorney General Anderson, 1902, page 32, where the opinion is expressed that this section does not operate to exclude pupils between ages of 5 and 7 years who are already enrolled, without some further regulation by State Board of Education or by law enacted by the legislature.

See report of Attorney General Anderson, 1907, page 43, where the opinion is expressed that under this section, the auditor of public accounts should, from time to time, upon request, transfer to the second auditor the annual specific school appropriation, in such sums as may be necessary to defray the salaries of division superintendents of schools, the current expenses of the department of education, and the apportionment to be made under this section.

See report of Attorney General Williams, 1912, page 40, where the opinion is expressed that under this section the annual interest can be used only for school purposes.

Sec. **136** Constitution. See report of Attorney General Anderson, 1906, page 46, where the opinion is expressed that under this section district school boards are fully empowered to appropriate any surplus remaining after providing for school-houses and appliances to pay the salaries of teachers.

See report of Attorney General Anderson, 1902, page 31, where the opinion is expressed that this section prohibits local authorities from appropriating any money derived from local taxation to the support of schools of a higher grade than primary schools until adequate provision has been made for the maintenance of such primary schools as may be established in any school year for at least four months of such year, and that the school authorities shall determine what are schools of higher grade and what primary schools.

Sec. **139** Constitution. See report of Attorney General Williams, 1910, page 56, where the opinion is expressed that this section is mandatory.

Sec. **140** Constitution. See report of Attorney General Anderson, 1909, page 60, where the opinion is expressed that under this section Mongolians are not negroes within its prohibition.

Sec. **141** Constitution. See report of Attorney General Anderson, 1908, page 30, where the opinion is expressed that under this section no public school funds can be devoted to a kindergarten not a part of the public school system.

Sec. **148** Constitution. See report of Attorney General Williams, 1913, page 57, where the opinion is expressed that under this section those suspended under Section 73 of the Constitution are entitled to notice before proceedings are commenced.

Sec. **156** Constitution. See report of Attorney General Anderson, 1902, page 34, where the opinion is expressed that this section empowers General Assembly or State Corporation Commission to impose any penalties which may be necessary to compel any delinquent company to promptly make such reports as may be necessary to ascertain fairly and justly the value of its property liable to taxation.

Sec. **157** Constitution. See report of Attorney General Anderson, 1902, page 34, where the opinion is expressed that this section empowers the legislature or the Corporation Commission to impose any penalties which may be necessary to compel any delinquent company to promptly make such reports as may be necessary to ascertain fairly and justly the value of its property liable to taxation.

Sec. **161** Constitution. See report of Attorney General Anderson, 1907, page 40, where the opinion is expressed that under this section an inspector and examiner of schools is a State officer as the term is therein used.

See report of Attorney General Anderson, 1903, page 38, where the opinion is expressed that under this section free transportation is not forbidden to be granted to mineral experts employed to collect exhibits for an exposition.

See report of Attorney General Anderson, 1903, page 49, where the opinion is expressed that this section forbids the issuance of a free pass for transportation to a county superintendent of schools.

See report of Attorney General Anderson, 1903, page 49, where the opinion is expressed that under this section a donation by a railroad company to the public schools is not forbidden.

See report of Attorney General Anderson, 1910, page 52, where the opinion is expressed that under this section the first clerk in the department of agriculture is an officer.

See report of Attorney General Anderson, 1902, page 36, where the opinion is expressed that this section is intended to prohibit the officers enumerated from accepting and using any reduction in rate not afforded the general public for like transportation and is not confined to free passes, and that this section does not prohibit an officer who is an employee of a transportation company from riding on a pass while attending to the company's business, but it does not apply to excursion tickets, such as are universally sold by railroad companies in their regular course of business.

See report of Attorney General Williams, 1912, page 46, where the opinion is expressed that under this section the superintendent of schools of a county is not disqualified because he uses free railroad passes given him as a part of his compensation as employee of such railroad.



See report of Attorney General Anderson, 1902, page 39, where the opinion is expressed that this section applies only to street railway companies regardless of their motive power, but applies to county policeman as well as city policeman provided they are in discharge of their duties.

See report of Attorney General Anderson, 1902, page 35, where the opinion is expressed that under this section the Railroad Commissioner, his clerk and experts when travelling on official business are not passengers.

See report of Attorney General Anderson, in report of 1902, page 31, where the opinion is expressed that under this section a contract between a city and a telephone company, by which, as a part consideration for the franchise granted to such company by the city, it is required to furnish telephones for the use of the city government and its officers in discharge of their public duties, is not invalid.

See report of Attorney General Anderson, 1902, page 29, where the opinion is expressed that under this section a State or local officer, in the employment of a railroad company, cannot receive and use free transportation or pass, and this applies to all transportation and transmission companies doing business in this State, but does not apply to members of the State Corporation Commission while in office or members of police or fire departments of municipalities in transportation on street railways.

Sec. **168** Constitution. See report of Attorney General Williams, 1910, page 12, where the opinion is expressed that under this section a municipal charter authorizing the council to exempt manufacturing enterprises from city taxes for a period of five years is unconstitutional.

Sec. **169** Constitution. See report of Attorney General Anderson, 1902, page 33, where the opinion is expressed that this section authorizes the inauguration of segregation of classes of property for State and local taxes.

Sec. **170** Constitution. See report of Attorney General Williams, 1913, page 96, where the opinion is expressed that under this section there is nothing to prevent the imposition of an income tax by a town council.

Sec. **173** Constitution. See report of Attorney General Anderson, 1902, page 16, where the opinion is expressed that this section is not retroactive and applies only to capitation tax.

See report of Attorney General Anderson, 1903, page 29, where the opinion is expressed that under this section any levy of a capitation tax by the Board of Supervisors of any county, or the council of any city or town is invalid until and unless the General Assembly shall by law authorize such levy in respect of the particular county or town making the same.

Sec. **175** Constitution. See report of Attorney General Anderson, 1907, page 78, where an opinion is expressed as to the policy of this section.

See report of Attorney General Anderson, 1906, page 66, where opinion is expressed that under this section patents may not be issued for oyster beds, rocks, and shoals.

Sec. **176** Constitution. See report of Attorney General Anderson, 1902, page 33, where the opinion is expressed that under this section the assessed value for local taxation is that which is fixed for State taxation.

See report of Attorney General Anderson, 1902, page 33, where the opinion is expressed that under this section and those following, the assessed value of property of railroad and canal companies will be ascertained by State Corporation Commission.

Sec. **183** Constitution. See report of Attorney General Anderson, 1909, page 65, where the opinion is expressed that under this section land acquired by the city of Lynchburg for its reservoir and water supply is exempt from taxation.

See report of Attorney General Williams, 1910, page 40, where the opinion is expressed that under this section municipal bonds are not exempt from State or county taxation.

See report of Attorney General Anderson, 1903, page 21, where the opinion is expressed that the word "community" as used in this section is to be given a restricted meaning since the section is to be liberally construed.

See report of Attorney General Anderson, 1903, page 21, where the opinion is expressed that "manufactured articles" as used in this section does not include farm or dairy products, such as eggs, butter, and milk.

See report of Attorney General Anderson, 1903, page 22, where the opinion is expressed that publishing the school paper and receiving advertisements and subscriptions from parties residing or doing business in the community does not come within this section.

See report of Attorney General Anderson, 1903, page 22, where the opinion is expressed that the business of keeping a boarding-house or hotel does not come within the meaning of this section.

Sec. **188** Constitution. See report of Attorney General Anderson, 1903, page 24, where the opinion is expressed that an appropriation for the relief of disabled firemen and the families of deceased firemen does not violate this section.

Sec. **189** Constitution. See report of Attorney General Anderson, 1903, page 19, where the opinion is expressed that the authority given to levy a special annual tax of not exceeding five cents on the hundred dollars is specific, and can only be exercised for the purpose of raising a fund in excess of the sum of \$135,000, for pension purposes; that the section is entirely prospective and does not authorize paying pensions which accrued under former legislation; and that the section is not self-executing, but merely empowers the legislature to act within the limitations therein set forth.

Sec. **196** Constitution. See report of Attorney General Anderson, 1909, page 92, where the opinion is expressed that under this section publication in two newspapers in Richmond is permissible.

See report of Attorney General Williams, 1912, page 11, where the opinion is expressed that under this section on the question of certifying a constitutional provision to the people there need not be any approval or disapproval by the governor.

See report of Attorney General Anderson, 1907, page 55, where the opinion is expressed that under this section reference by title only to a proposed constitutional amendment on the Journal of either branch of the legislature is insufficient.

## TABLE

*Showing a consecutive list of such sections of the Virginia Code, 1904, (as amended up to but not including 1915), as have been construed by Attorneys General, together with a brief digest of the construction placed thereon.*

Sec. **4**. See report of Attorney General Anderson, 1906, page 35, where the opinion is expressed as to when legislative enactments take effect.

Sec. **5**, cl. 8. See report of Attorney General Anderson, 1908, page 59, where an opinion is expressed as to computation under this section in regard to registering voters.

Sec. **15a**. See report of Attorney General Williams, 1913, page 56, where the opinion is expressed that under this section no provision is made for the acquisition of land for the specific and designated purposes named in the U. S. Constitution (Art. I, Sec. 8, Cl. 17).

See report of Attorney General Williams, 1913, page 56, where the opinion is expressed that this section does not reserve to the State jurisdiction for service of criminal process in and over the territory acquired by the United States government.

See report of Attorney General Williams, 1913, page 56, where the opinion is expressed that this section stands as passed in 1912 Acts, Chapter 260, and that 1901-2 Acts, p. 565 is entirely nullified.

Sec. **53**. See report of Attorney General Anderson, 1909, page 30, where the opinion is expressed that under this section the governor has authority to issue a writ directing a special election to fill a vacancy in the House of Representatives.

Sec. **61**. See report of Attorney General Montague, 1900, page 12, where the opinion is expressed that this section prescribes no time for notice of the election.

Sec. **62**. See report of Attorney General Anderson, 1909, page 91, where an opinion is expressed under this section as to who may vote in a special or local option election and also as to registry.

See report of Attorney General Williams, 1913, page 97, where the opinion is expressed that this section prescribes the qualifications of voters in special elections held under Sec. 110.

Sec. **63**, cl. 8. Constitution. See report of Attorney General Williams, 1912, page 21, where opinion is expressed that under this section an act to release certain tax judgments against the land of an individual is unconstitutional.

Sec. **64**. See report of Attorney General Anderson, 1905, page 11, where the opinion is expressed that under this section a member of an electoral board may not be appointed judge of election.

Sec. **67.** See report of Attorney General Anderson, 1902, page 12, where the opinion is expressed that salaries of the clerks under this section are to be paid by the city of Richmond.

Sec. **68.** See report of Attorney General Williams, 1910, page 25, where the opinion is expressed that under this section a social club retailing tobacco must be licensed.

Sec. **69.** See report of Attorney General Anderson, 1906, page 78, where the opinion is expressed that under this section judges and clerks appointed by the electoral board who failed to act at the last election may be removed by the board.

See report of Attorney General Montague, 1900, page 9, where the opinion is expressed that under this section the electoral board can remove judge of election upon notice and upon failure to discharge his duties.

Sec. **70.** See report of Attorney General Williams, 1910, page 65, where the opinion is expressed that under this section the expense of calling a meeting of the electoral board is to be borne by the county.

Sec. **71.** See report of Attorney General Montague, 1898, page 22, where the opinion is expressed that under this section where registration books are lost, stolen or destroyed, judges upon satisfactory proof of registration and other qualifications to vote must allow elector to vote.

Sec. **73.** See report of Attorney General Anderson, 1904, page 11, where the opinion is expressed that under this section poll taxes of one reaching the age of twenty-one within three years of the election should be paid to the treasurer.

See report of Attorney General Anderson, 1904, page 11, where the opinion is expressed that under this section a man coming of age after February 1, 1903, and on or before February 1, 1904, should first be assessed (if not already so assessed) by the commissioner of revenue for his district with the poll tax for 1904, and upon furnishing the treasurer with certificate of such payment, he will receive the \$1.50, give a receipt therefor which will entitle him to be registered if otherwise qualified.

See report of Attorney General Anderson, 1904, page 11, where the opinion is expressed that under this section that the first poll tax assessable against a person coming of age after February 1, 1904, and on or before February 1, 1905, is the poll tax for 1905.

See report of Attorney General Anderson, 1906, page 72, where the opinion is expressed that this section applies to regular elections, and the registrar is required to register voters up to thirty days next preceding the election.

See report of Attorney General Anderson, 1909, page 96, where the opinion is expressed that under this section a young man who will become of age before election day may pay a poll tax for one year in advance, register and vote in the election.

Sec. **78.** See report of Attorney General Anderson, 1907, page 72, where the opinion is expressed that under this section the registration books should be closed between the thirtieth day before any general election and the day on which such election is held.

See report of Attorney General Anderson, 1906, page 72, where the opinion is expressed that under this section the registration books must be closed between the regular registration day before the November election and the election day.

See report of Attorney General Anderson, 1908, page 71, where the opinion is expressed that this section has no application to the case arising under Section 1022 as to the thirty-day closing of the registration books.

**Sec. 80.** See report of Attorney General Scott, 1897, page 17, where the opinion is expressed that under this section without a change of residence there can be no transfer of the voter.

See report of Attorney General Montague, 1899, page 11, where the opinion is expressed that under this section the registrar has no right to issue or receive a transfer on election day.

See report of Attorney General Anderson, 1907, page 72, where the opinion is expressed that under this section a registered voter who changes his place of residence, can only obtain a certificate.

See report of Attorney General Anderson, 1906, page 73, where the opinion is expressed that under this section one registered in a county is entitled to a certificate of transfer to a town into which he has been removed at any time, and also that a person voting in a town may also vote in the magisterial district.

**Sec. 86b.** See report of Attorney General Williams, 1913, page 97, where an opinion is expressed under this section as to its applicability to special elections.

See report of Attorney General Anderson, 1907, page 64, where the opinion is expressed that this section is not satisfied by the treasurer making up three separate and distinct lists, one for each of the preceding years.

See opinion of Attorney General Anderson in report of 1907, page 67, where the opinion is expressed that under this section the list of the treasurer should include all persons who have paid the capitation taxes required by the Constitution during any one of said three years; and the list should show for what years any capitation taxes were so paid by each person.

See report of Attorney General Anderson, 1907, page 73, where the opinion is expressed that under this section a treasurer should include in his poll tax list all those who have paid their poll taxes for any of the preceding years.

See report of Attorney General Anderson, 1907, page 73, where the opinion is expressed as to how under this section a name omitted from the capitation tax list may be inserted.

See report of Attorney General Anderson, 1909, page 78, where the opinion is expressed that under this section a list of voters need not be filed before the second Tuesday in June of any year in which no election is held in that month.

**Sec. 86d.** See report of Attorney General Anderson, 1907, page 73, where the opinion is expressed that under this section only cases of a voter who has been transferred from a city or county to a city or county are covered.

**Sec. 97.** See report of Attorney General Williams, 1911, page 25, where the opinion is expressed that this section is constitutional.

**Sec. 100.** See report of Attorney General Williams, 1910, page 25, where

the opinion is expressed that under this section a person who runs a pool table in connection with his business whether a charge is made or not must pay a license tax.

See report of Attorney General Williams, 1910, page 25, where the opinion is expressed that under this section an individual who has a pool or billiard table in his private residence is not subject to a license tax therefor.

See report of Attorney General Williams, 1913, page 64, where the opinion is expressed that under this section a special election for State Senator may be held on a general election day.

Sec. **110**. See report of Attorney General Williams, 1913, page 97, where the opinion is expressed that in elections under this section the qualifications of voters are prescribed by Section 62 of the Code.

See report of Attorney General Anderson, 1907, page 45, where the opinion is expressed that no special time is fixed by law as to time at which a special election is to be held.

See report of Attorney General Williams, 1913, page 64, where the opinion is expressed that under this section a special election for State Senator may be held on a general election day.

Sec. **112**. See report of Attorney General Scott, 1897, page 16, where the opinion is expressed that under this section each magisterial district of a county, each ward in the city is an election district. If the county or ward be divided into more election districts than one, each subdivision is an "election district" which is the same thing as voting place or precinct.

Sec. **117**. See report of Attorney General Anderson, 1905, page 11, where the opinion is expressed that under this section an electoral board may not appoint one of its members a judge of election.

Sec. **118**. See report of Attorney General Anderson, 1906, page 78, where the opinion is expressed that this section is the only one containing the oath to be taken by judges and clerks of elections.

Sec. **122a**. See report of Attorney General Scott, 1894, page 145, where the opinion is expressed that only those candidates who have followed the method prescribed by law shall have their names on the ballots.

See report of Attorney General Anderson, 1903, page 50, where the opinion is expressed that under this section the twenty days' notice excludes election day in the computation.

See report of Attorney General Anderson, 1908, page 86, where the opinion is expressed that neither under this section nor any other section can the Secretary of Commonwealth omit the name of any candidate for Congress from the official ballot if he has complied with the requirements of the law in regard to notice and requests his name to be placed thereon.

See report of Attorney General Montague, 1900, page 16, where the opinion is expressed that under this section the electoral board may inquire into genuineness of signatures of candidates before putting the names on the ballot.

Sec. **122b**. See report of Attorney General Scott, 1894, page 145, where the opinion is expressed that this section requires no special order of arrangement of names on the ballot.

See report of Attorney General Scott, 1897, page 17, where the opinion is expressed that under this section the electoral board shall prepare the ticket and enter the names of all of the candidates upon separate lines.

See report of Attorney General Anderson, 1908, page 86, where the opinion is expressed that under this section no election officer can keep the name of any candidate for Congress off the official ballot if he has complied with the requirements of the law in regard to notice and requests his name to be placed thereon.

See report of Attorney General Montague, 1899, page 17, where the opinion is expressed that this section does not apply where no political party nominates candidates for county or corporation offices, and the voter should provide his own ballot.

Sec. **122h**. See report of Attorney General Montague, 1898, page 21, where the opinion is expressed that under this section an elector has no right to expose his ballot after it is prepared and ready for deposit.

Sec. **122kk**. See report of Attorney General Scott, 1896, page 13, where the opinion is expressed that under this section a judge of election after receiving a ballot may not expose it.

See report of Attorney General Anderson, 1908, page 59, where the opinion is expressed that under this section a ballot prepared with the assistance of a judge of election is illegal where the voter is not disabled.

See report of Attorney General Montague, 1899, page 18, where the opinion is expressed that under this section a disabled elector may require judge to mark his ballot as he directs.

Sec. **122m**. See report of Attorney General Williams, 1910, page 61, where the opinion is expressed that under this section county clerk means clerk of the circuit court of the county.

Sec. **125**. See report of Attorney General Anderson, 1907, page 72, where the opinion is expressed that under this section a voter otherwise qualified, who has removed from one precinct in the same county to another precinct in that county, and has resided in the latter precinct for thirty days may be registered and vote upon the day of election, upon a proper transfer obtained by him at least thirty days before such election.

See report of Attorney General Anderson, 1907, page 72, where the opinion is expressed that under this section taken in conjunction with Sections 78 and 80 a registrar is not authorized to issue a transfer during the period between the thirtieth day before a general election up to and including such election.

Sec. **126**. See report of Attorney General Anderson, 1907, page 69, where the opinion is expressed that under this section the challenge of a voter for not "personally" paying a poll tax may be tried.

Sec. **127**. See report of Attorney General Anderson, 1904, page 13, where the opinion is expressed that under this section the judges of election should explain to every person whose vote is challenged the qualifications of an elector and may examine him as to the same.

See report of Attorney General Anderson, 1904, page 13, where the opinion is expressed that under this section the question of whether a citizen's poll tax has been personally paid may be tried.

See report of Attorney General Anderson, 1904, page 13, where the opinion is expressed that under this section the burden of proving that poll taxes were not personally paid is on the challenger.

See report of Attorney General Williams, 1913, page 97, where the opinion is expressed that in special elections challenges may be tried under this section.

Sec. **163.** See report of Attorney General Montague, 1898, page 17, where the opinion is expressed that this section is not in conflict with Section 32 of the Constitution.

See report of Attorney General Anderson, 1908, page 82, where the opinion is expressed that under this section a rural letter carrier may not be a notary public.

See report of Attorney General Anderson, 1906, page 86, where the opinion is expressed that under this section a United States commissioner may not hold any post or office of trust, honor, or emolument under the government of this State or any city or county therein.

See report of Attorney General Anderson, 1909, page 52, where the opinion is expressed that under this section a school trustee cannot act as a United States census enumerator, but that acceptance of such employment *ipso facto* vacates the office of school trustee.

See report of Attorney General Anderson, 1908, page 71, where the opinion is expressed that under this section an appointment as collaborator in the department of agriculture of the United States vacates the office of State entomologist.

See report of Attorney General Montague in report of 1899, page 12, where the opinion is expressed that under this section a postmaster may not be a supervisor or jailor.

See report of Attorney General Montague, 1898, page 17, where the opinion is expressed that under this section the office of Commonwealth's Attorney cannot be filled by an officer in the militia.

See report of Attorney General Montague, 1900, page 9, where the opinion is expressed that under this section one person cannot hold office of fourth-class postmaster and member of electoral board at same time.

See report of Attorney General Montague, 1899, page 24, where the opinion is expressed that under this section a person cannot hold office of supervisor and postmaster at the same time, nor can a justice of the peace be a postmaster, but Section 164 allows fourth-class postmasters to be notaries public or school trustees.

See report of Attorney General Montague, 1899, page 13, where the opinion is expressed that under this section school trustee cannot be enumerator of United States census if such is an office under the United States Government.

See report of Attorney General Anderson, 1903, page 51, where the opinion is expressed that under this section a postmaster may not serve as judge of election.



Sec. **164**. See report of Attorney General Montague, 1900, page 9, where the opinion is expressed that under this section the office of fourth-class postmaster and membership on the electoral board may not be held by the same person.

See report of Attorney General Anderson, 1903, page 51, where the opinion is expressed that under this section a postmaster may not serve as judge of election.

Sec. **178**. See report of Attorney General Williams, 1913, page 75, where the opinion is expressed that this section is the only one providing for giving a new bond by a treasurer.

Sec. **183a**. See report of Attorney General Anderson, 1903, page 30, where the opinion is expressed that under this section the salaries, mileage and allowance of the employees of the State should be paid without any specific appropriations by the legislature therefor.

Sec. **184**. See report of Attorney General Anderson, 1903, page 46, where the opinion is expressed that under this section the officers can only be allowed compensation for the days when they were actually and necessarily employed, and that time when said clerks were so employed must be determined by appropriate enactment of the General Assembly.

(2) See report of Attorney General Anderson, 1903, page 17, where the opinion is expressed that this section is constitutional since it was valid before the adoption of the new Constitution and there is nothing in the new Constitution repugnant thereto.

Sec. **185**. See report of Attorney General Anderson, 1905, page 32, where the opinion is expressed that under this section one trip is included each way from the home of the judge to the place where a term of his court is held, and back again either to his home or to the place where the next term of court is held, and no other trips.

Sec. **188**. See report of Attorney General Anderson, 1903, page 30, where the opinion is expressed that under this section no specific appropriation by the legislature is necessary to authorize payment.

Sec. **192**. See report of Attorney General Anderson, 1903, page 30, where the opinion is expressed that under this section no specific appropriation by the legislature is necessary to authorize payment.

Sec. **196**. See report of Attorney General Anderson, 1909, page 86, where the opinion is expressed that under this section publication should be consecutively for at least three months before and up to the day of election.

Sec. **218**. See report of Attorney General Anderson, 1903, page 47, where the opinion is expressed that under this section compensation of counsel defending soldiers charged with offences under the laws of the State while discharging their duties under the orders of superior officers may be paid.

Sec. **223**. See report of Attorney General Williams, 1912, page 16, where the opinion is expressed that under this section the superintendent of public printing is an executive officer.

Sec. **225.** See report of Attorney General Anderson, 1906, page 61, where the opinion is expressed that under this section the penalty on the bond of the superintendent of the penitentiary is not provided for and remedy therefor is suggested.

Sec. **232.** See report of Attorney General Anderson, 1906, page 61, where the opinion is expressed that although this section requires a bond of the superintendent of the penitentiary, no penalty is provided.

See report of Attorney General Williams, 1912, page 56, where an opinion is expressed that under this section the duty and time of electing a superintendent and surgeon of both the penitentiary and State farm is mandatory.

Sec. **248.** See report of Attorney General Williams, 1911, page 44, where the opinion is expressed that under this section money otherwise disposed of cannot be disposed of under its provisions.

Sec. **252.** See report of Attorney General Anderson, 1902, page 58, where the opinion is expressed that this section expressly provides who shall have authority to sell Virginia Reports and the limitations and restrictions of this power.

Sec. **254.** See report of Attorney General Anderson, 1908, page 68, where the opinion is expressed that under this section the State Board of Education has nothing to do with travelling libraries, but this is a matter for the Library Board of the State.

See report of Attorney General Williams, 1913, page 92, where opinion is expressed that under this section a circuit judge may not be appointed by virtue of Section 3130 as a director of the State Library.

See report of Attorney General Anderson, 1902, page 58, where the opinion is expressed that this section does not confer on the Library Committee the power to dispose of the Virginia Reports.

Sec. **258.** See report of Attorney General Anderson, 1908, page 70, where the opinion is expressed that under this section the Library Board has discretion as to whether to close the State Library on public holidays, and the proclamation of the governor does not affect the State Library.

Sec. **273.** See report of Attorney General Anderson, 1905, page 24, where the opinion is expressed that under this section taken in conjunction with Section 280 additional copies of the reports of State Departments must be contracted for at the time of the giving of the original contract, but that expenses therefor are to be borne by the individual departments.

See report of Attorney General Anderson, 1905, page 23, where the opinion is expressed that under this section the Superintendent of Public Printing is not prevented from rejecting all bids.

Sec. **275.** See report of Attorney General Anderson, 1905, page 33, where the opinion is expressed that under this section no provision is made for the printing of the adjutant-general.

See report of Attorney General Williams, 1913, both on page 84, where the opinion is expressed that a roster of pensioners published by the Auditor of Public Accounts is to be paid for under the provisions of this section.

See report of Attorney General Anderson, 1906, page 57, where the opinion is expressed that under this section the governor may not order work to be done for other departments and have it charged to the executive department.

Sec. **275a**. See report of Attorney General Anderson, 1906, page 53, where the opinion is expressed that this section does not control as to the payment of extra copies ordered by the Corporation Commission of annual reports printed, but that Section 280 controls.

Sec. **280**. See report of Attorney General Anderson, 1906, page 53, where the opinion is expressed that this section rather than Section 275a controls as to the payment of extra copies of the annual report ordered by the Corporation Commission.

Sec. **281**. See report of Attorney General Anderson, 1906, page 56, where the opinion is expressed that under this section there is no requirement that the official State court reports be copyrighted.

Sec. **288**. See report of Attorney General Anderson, 1907, page 83, where the opinion is expressed that under this section the governor and the superintendent of Public Buildings and Grounds may allow the city of Richmond to lay a granolithic walk around Lee Monument Circle, but may not cede any of the land to the city.

Sec. **300**. See report of Attorney General Anderson, 1908, page 57, where the opinion is expressed that this section and those following are the paramount military law in times of peace.

Sec. **304**. See report of Attorney General Anderson, 1903, page 39, where the opinion is expressed that under this section that the officers of the Virginia Volunteers on duty with troops in the actual service of the State, who occupied quarters which were inadequate and were furnished without cost to the State are not entitled to receive commutation of quarters for time during which they were on such duty or for any part of such time.

See report of Attorney General Anderson, 1903, page 40, where the opinion is expressed that under this section no allowance of commutation of quarters to officers serving with troops is authorized to be made under any circumstances.

Sec. **305**. See report of Attorney General Anderson, 1903, page 47, where the opinion is expressed that under this section no provision is made for the compensation of counsel defending soldiers because of acts done while in the discharge of their duties and done under the order of superior officers.

See report of Attorney General Anderson, 1903, page 39, where the opinion is expressed that under this section there is no provision made for the allowance of any commutation of quarters to officers serving with troops when no quarters or inadequate quarters have been provided for such officers.

See report of Attorney General Anderson, in report of 1902, page 59, where the opinion is expressed that this section covers all reasonable and necessary expenses incurred in executing any lawful order of the authorities of the State under which troops are called out "in cases of riot, tumult, breach of the peace, resistance to process" or "in aid of the civil authorities." The question of what expenses are reasonable and necessary is one of fact.

Sec. **306**. See report of Attorney General Williams, 1910, page 21, where the opinion is expressed that this section is not repealed by Section 374.

See report of Attorney General Anderson, 1908, page 57, where the opinion is expressed that under this section provisions of Chapter 21 of the Code are not repealed unless in direct conflict.

See report of Attorney General Anderson, 1908, page 57, where the opinion is expressed that under this section broad authority is conferred on the governor in regard to the militia or volunteers.

Sec. **308**. See report of Attorney General Montague, 1901, page 5, where the opinion is expressed that under this section every officer must be examined for every office to which he may be successively elected or appointed.

Sec. **368**. See report of Attorney General Williams, 1910, page 22, where the opinion is expressed that this section does not and cannot conflict with the powers conferred by Section 73 Constitution.

See report of Attorney General Montague, 1899, page 27, where the opinion is expressed that under this section the mayor of a city has no authority to order out the militia in aid of the civil authorities beyond the limits of his own city.

Sec. **374**. See report of Attorney General Williams, 1910, page 21, where the opinion is expressed that this section is not repealed by Section 306.

Sec. **375a**. See report of Attorney General Anderson, 1903, page 48, where the opinion is expressed that under this section there is no authority for payment by the State of any bill or claim for rations furnished troops on duty in aid of civil authorities in excess of the sum allowable as commutation of rations.

Sec. **377**. See report of Attorney General Montague, 1900, page 10, where the opinion is expressed that under this section the senior officer of naval militia is eligible to membership in the Military Board.

See report of Attorney General Anderson, 1905, page 33, where the opinion is expressed that under this section provision is made for the printing of the adjutant general.

See report of Attorney General Anderson, 1903, page 47, where the opinion is expressed that under this section compensation of counsel defending soldiers charged with offences under the laws of the State while discharging their duties under the order of superior officers may be paid.

Sec. **382**. See report of Attorney General Montague, 1900, page 14, where the opinion is expressed that under this section deserters are not entitled to pensions nor are "reserves" or soldiers who are not natives of Virginia and moved here since the war and did not belong to a Virginia command.

Sec. **382a** (2). See report of Attorney General Anderson, 1909, page 58, where the opinion is expressed that under this section a person confined in a lunatic asylum of the State may receive or have his committee receive the pension notwithstanding.

(5) See report of Attorney General Anderson, 1908, page 68, where an opinion is expressed that under this section as to its proper construction.

Sec. **437a**. See report of Attorney General Anderson, 1908, page 42, where the opinion is expressed that under this section, especially in view of Section 4089, no provision is made for compensation for Commonwealth's Attorneys.

Sec. **444**. See report of Attorney General Anderson, 1906, page 33, where the opinion is expressed that under this section the applicant is not relieved of ordinary court costs.

Sec. **453**. See report of Attorney General Williams, 1912, page 37, where the opinion is expressed that under this section the clerk is entitled to the same fees as he would get for performing similar services for an individual.

Sec. **456**. See report of Attorney General Williams, 1910, page 27, where the opinion is expressed that neither under this section nor any other section can an assessor enter on his books the lands and lots to one man and improvements to another.

Sec. **457**. See report of Attorney General Anderson, 1902, page 81, where the opinion is expressed that under this section the income derived by a town from the sale of water is not such a profit as is here contemplated.

See report of Attorney General Montague, 1900, page 18, where the opinion is expressed that neither this section nor Section 590 excepts from taxation a deed of real estate to a city for school and court-house purposes combined.

Sec. **469**. See report of Attorney General Williams, 1912, page 60, where an opinion is expressed as to use of the books under this section in connection with 1906 Acts, Chapter 52, providing for sale of lots purchased by the Commonwealth for delinquent taxes and not redeemed within four years.

Sec. **508**. See report of Attorney General Anderson, 1908, page 35, where an opinion is expressed under this section as to procedure.

See report of Attorney General Anderson, 1908, page 73, where the opinion is expressed that under this section the commissioner of revenue should assess omitted capitation taxes immediately upon ascertaining the omission of such taxes.

See report of Attorney General Anderson, 1904, page 10, where the opinion is expressed that under this section a person assessable with a poll tax for the preceding three years may go to the assessing officer and get him to assess the same as omitted taxes, certifying the fact of such assessment and such certificate to be taken to the treasurer who will thereupon receive the money.

Sec. **530**. See report of Attorney General Anderson, 1908, page 61, where the opinion is expressed that under this section the identical account upon which the auditor is to issue his warrant must be on certificate of the judge of the court allowing the account.

Sec. **532**. See report of Attorney General Williams, 1912, page 55, where the opinion is expressed that under this section proceedings are to be had under 1910 Acts, Chapter 286.

Sec. **574**. See report of Attorney General Scott, 1897, page 11, where the opinion is expressed that this section is criminal in nature and therefore the prosecution has no right of appeal.

See report of Attorney General Scott, 1897, page 11, where the opinion is expressed that under this section and those following a remedy for the violation of the revenue laws is provided.

Sec. **575**. See report of Attorney General Scott, 1897, page 11, where the opinion is expressed that this section being civil in nature, the prosecution has the right of appeal.

Sec. **586**. See report of Attorney General Anderson, 1908, page 64, where the opinion is expressed that under this section a special congressional election is not a national election.

Sec. **587**. See report of Attorney General Montague, 1901, page 6, where the opinion is expressed that this section does not allow the manufacturer, nor does a license to a manufacturer authorize him to sell and deliver in such local option district, but he can make sale and deliver liquor outside of such local option district.

Sec. **587b**. See report of Attorney General Anderson, 1908, page 34, where the opinion is expressed that under this section a license is not revoked by operation of law until the expiration of ninety days from the day the election is held.

Sec. **590**. See report of Attorney General Montague, 1900, page 18, where the opinion is expressed that neither this section nor Section 457 exempts from taxation a deed of real estate to a city for school and court-house purposes combined.

See report of Attorney General Williams, 1911, page 32, where the opinion is expressed that under this section a deed conveying school property in addition to other property is not exempt from taxation on deeds.

Sec. **603**. See report of Attorney General Anderson, 1908, page 73, where the opinion is expressed that where the tax books are omitted under this section the treasurer must nevertheless receive omitted capitation taxes.

Sec. **613**. See report of Attorney General Montague, 1900, page 13, where the opinion is expressed that under this section a county school board has no authority to allow a treasurer any commission upon the State school tax fund.

See report of Attorney General Anderson, 1905, page 15, where the opinion is expressed that this section and Section 614 together determine the rate to be paid treasurers for the handling of school funds under Section 1515.

Sec. **614**. See report of Attorney General Anderson, 1909, page 49, where the opinion is expressed that neither under this section nor any other section can the treasurer of a city receive compensation on moneys paid as tuition by parents or guardians for children in the public schools.

See report of Attorney General Anderson, 1908, page 86, where the opinion is expressed that this section does not prevent an incoming treasurer from keeping commissions collected on the tax tickets uncollected by his predecessor.

See report of Attorney General Anderson, 1907, page 52, where opinion is expressed under this section as to various computations. See also report of 1908, page 25.

See report of Attorney General Anderson, 1904, page 14, where the opinion is expressed that under this section in settling with the outgoing and incoming treasurers, the school authorities should make an equitable apportionment of the prescribed commission between them provided they can in no case allow the incoming treasurer more than two per cent. of the amount paid over to him by his predecessor.

See report of Attorney General Anderson, 1905, page 15, where the opinion is expressed that this section and Section 613 together determine the rates to be paid treasurers for handling the school funds under Section 1515.

See report of Attorney General Anderson, 1908, page 22, where the opinion is expressed that under this section a county treasurer receiving money by order of the circuit court is not entitled to any commission.

See report of Attorney General Anderson, 1907, page 76, where the opinion is expressed that under this section a treasurer is entitled to only one commission for both receiving and disbursing school funds.

See report of Attorney General Anderson, 1907, page 76, where the opinion is expressed that this section takes precedence over Section 1515 where the two conflict as to the commissions allowed city treasurers for receiving and disbursing the school funds.

Sec. **617**. See report of Attorney General Anderson, 1909, page 87, where the opinion is expressed that under this section the clerk is allowed two cents per name for each copy of the reports required to be made by that section.

See report of Attorney General Williams, 1911, page 35, where the opinion is expressed that this section repeals Section 669 so far as it refers to compensation of clerks under Section 662. (See also opinion of Attorney General Williams in report of 1911, page 36).

Sec. **666**. See report of Attorney General Anderson, 1909, page 84, where the opinion is expressed that under this section lands bought by the Commonwealth for delinquent taxes cannot be rented by treasurers for current taxes.

Sec. **669**. See report of Attorney General Anderson, 1909, page 87, where the opinion is expressed that under this section the clerk is allowed five cents for each lot, tract, or parcel of land purchased in the name of the auditor for the benefit of the State and county to be paid out of the public treasury under Section 662.

See report of Attorney General Williams, 1911, page 35, where the opinion is expressed that this section is repealed by Section 647 in so far as it refers to compensation of clerks under Section 662. (See also opinion of Attorney General Williams in report of 1910, page 36).

Sec. **687**. See report of Attorney General Williams, 1912, page 39, where the opinion is expressed that procedure may be had under this section in a case arising under Section 144 Tax Bill.

Sec. **695**. See report of Attorney General Williams, 1912, page 39, where the opinion is expressed that under this section procedure is provided for cases arising under Section 144 Tax Bill.

Sec. **702a**. See report of Attorney General Anderson, 1906, page 81, where the opinion is expressed that under this section only doubtful claims may be compromised.

Sec. **712**. See report of Attorney General Anderson, 1909, page 70, where the opinion is expressed that neither under this section nor any section can a *chancery suit* be instituted to subject real estate to the payment of a fine.

Sec. **715**. See report of Attorney General Williams, 1913, page 69, where an opinion is expressed under this section as to whether a policeman is included.

Sec. **724**. See report of Attorney General Anderson, 1907, page 27, where the opinion is expressed that under this section the only remedy for the remission of a fine imposed for contempt is provided.

Sec. **738**. See report of Attorney General Anderson, 1907, page 26, where the opinion is expressed that under this section the governor has no authority to remit fines until conditions set forth in Sections 738-743 are complied with.

See report of Attorney General Anderson, 1907, page 26, where the opinion is expressed that under this section fines imposed for contempt of court may not be remitted by the governor.

See report of Attorney General Anderson, 1907, page 29, where the opinion is expressed that under this section fines imposed for refusal to pay license taxes may be remitted by the governor.

Sec. **743**. See report of Attorney General Williams, 1912, page 44, where the opinion is expressed that neither this section nor any other section confers any authority on the governor to remit a fine already paid into the State treasury.

Sec. **765**. See report of Attorney General Montague, 1899, page 13, where the opinion is expressed that this section covers only legal claims.

Sec. **766**. See report of Attorney General Williams, 1913, page 70, where the opinion is expressed that under this section the State Corporation Commission determines the amount to be paid to Bureau of Insurance.

Sec. **767**. See report of Attorney General Anderson, 1906, page 30, where the opinion is expressed under this section that expenses entailed in going out of the State to bring back into this State persons arrested in another State cannot be collected, except where the person going out of the State has requisitions gotten from the governor.

Sec. **814**. See report of Attorney General Anderson, 1904, page 22, where the opinion is expressed that under this section only one bond should be executed.

Sec. **815**. See report of Attorney General Williams, 1913, page 75, where the opinion is expressed that under this section the judge before whom bond is given has discretion to fix the penalty within the bounds prescribed in this section.

Sec. **821**. See report of Attorney General Anderson, 1909, page 94, where the opinion is expressed that this is the only section providing for remedy by removal from office by the circuit court of an officer acting from improper motives.

Sec. **823**. See report of Attorney General Anderson, 1902, page 98, where the opinion is expressed that under this section school trustees are city officers.



Sec. **824**. See report of Attorney General Williams, 1912, page 48, where the opinion is expressed that under this section a remedy is provided for contesting the right to locate a school within a certain distance of a dwelling house.

Sec. **853**. See report of Attorney General Anderson, 1904, page 14, where the opinion is expressed that under this section no commission is provided for a treasurer for paying over to the incoming treasurer the school funds.

Sec. **862**. See report of Attorney General Anderson, 1904, page 14, where the opinion is expressed that under this section no commission is provided for a treasurer for paying over to the incoming treasurer the school funds.

Sec. **869**. See report of Attorney General Anderson, 1909, page 72, where the opinion is expressed that neither under this section nor any other section may boards of supervisors pay the superintendent of the poor any fixed sums per month or year for the support of paupers committed to his care; or to give him in addition to such allowance any part of the crops raised on the poor farm.

Sec. **881**. See report of Attorney General Anderson, 1909, page 71, where the opinion is expressed that under neither this section nor any other section is the board of supervisors authorized to farm out the poor of the county to the superintendent of the poor or to any other person.

See report of Attorney General Williams, 1910, page 50, where the opinion is expressed that under this section insane persons cannot be sent to an almshouse nor can they under any other section.

Sec. **923**. See report of Attorney General Anderson, 1902, page 54, where the opinion is expressed that under this section a notary public of a city may also act as notary for the county in which such city is situated.

See report of Attorney General Williams, 1913, page 63, where the opinion is expressed that under this section no authority is given the governor to revoke the commission of a notary public.

See report of Attorney General Williams, 1912, page 34, where the opinion is expressed that under this section certain other offices may be held by a notary public.

Sec. **928**. See report of Attorney General Anderson, 1902, page 73, where the opinion is expressed that this section provides only for care and nursing and medical attention and allowance made to jailor and physician for such treatment, but see Section 4079.

Sec. **944a**. See report of Attorney General Anderson, 1909, page 80, where the opinion is expressed that under this section, Clause 12, a county road upon which toll is charged is not a public road.

See report of Attorney General Anderson, 1906, page 58, where the opinion is expressed that under this section there can be no objection to voluntary private aid in road building.

See report of Attorney General Anderson, 1906, page 58, where the opinion is expressed as to who are the road authorities of Norfolk county as used in Clause 1 of this section.

Sec. **1015b**. See report of Attorney General Anderson, 1903, page 41, where the opinion is expressed that under this section the council must pass an ordinance approved by the mayor or passed over his veto.

Sec. **1017a**. See report of Attorney General Anderson, 1902, page 78, where the opinion is expressed that under this section city sergeant is not a policeman within the meaning of this act, but he is for all intents and purposes a State officer.

Sec. **1020**. See report of Attorney General Williams, 1912, page 34, where an opinion is expressed under this section as to eligibility of a justice of the peace for the position of notary public.

Sec. **1021**. See report of Attorney General Williams, 1910, page 60, where the opinion is expressed that under this section if a city charter at the time of the passage of this section had a different provision from the general law as to election of councilmen it prevails.

See report of Attorney General Williams, 1911, page 48, where the opinion is expressed that under this section a question arises as to whether certain qualifications of councilmen are to be provided for by the legislature or the council itself.

Sec. **1022**. See report of Attorney General Williams, 1910, page 65, where the opinion is expressed that under this section a vacancy in the office of registrar can only be filled by appointment by the electoral board.

See report of Attorney General Williams, 1910, page 61, where form and sufficiency of notice under this section are detailed.

See report of Attorney General Williams, 1910, page 61, where the opinion is expressed that under this section it is the duty of the registrar in a town to post the notices and the expenses therefor are paid by the town.

See report of Attorney General Williams, 1910, page 61, where an opinion is expressed under this section as to who are entitled to be registered in town elections.

See report of Attorney General Anderson, 1910, page 61, where the opinion is expressed that under this section the registrar of a town can register voters up to the day of election.

See report of Attorney General Anderson, 1908, page 71, where the opinion is expressed that under this section it is the duty of a town registrar to enter upon the registration books of his town the names of such voters and only such voters as shall have registered as voters in the county in which the town is situated.

See report of Attorney General Anderson, 1906, page 76, where the opinion is expressed that under this section only registered county voters can be registered in a town in that county, but a transfer may be made up to the day of election.

See report of Attorney General Williams, 1910, page 65, where the opinion is expressed that under this section registrars of towns have to be appointed before each recurring town election.

See report of Attorney General Anderson, 1906, page 75, where the opinion is expressed that under this section the town registrar may enter transfers up to the date of the town election.

Sec. **1033a**. See report of Attorney General Montague, 1899, page 22, where the opinion is expressed that under this section a mayor of a town is *ex-officio* justice of the peace.

Sec. **1033f**. See report of Attorney General Anderson, 1906, page 83, where the opinion is expressed that under this section the mayor of a town in regard to granting of franchise is given veto power.

Sec. **1033g**. See report of Attorney General Anderson, 1905, page 9, where the opinion is expressed that under this section the "qualified voters" are those determined under Section 62.

See report of Attorney General Anderson, 1905, page 9, where the opinion is expressed that under this section taken in conjunction with Section 1048 the provisions in the charters of all municipalities are practically repealed as to the issuance of bonds, and this section supplants them.

Sec. **1043**. See report of Attorney General Williams, 1913, page 96, where the opinion is expressed that under this section there is nothing to prevent the imposition of an income tax by a town council.

Sec. **1048**. See report of Attorney General Anderson, 1905, page 9, where the opinion is expressed that under this section taken in conjunction with Section 1033g the provisions in the charters of all municipalities are practically repealed as to the issuance of bonds and this section supplants them.

Sec. **1067a**. See report of Attorney General Williams, 1912, page 52, where the opinion is expressed that this section is to be liberally construed.

Sec. **1105e**(30). See report of Attorney General Anderson, 1909, page 75, where the opinion is expressed that under this section railroad corporations are included, nor is there any difference whether the corporation is incorporated under general law or special law.

(40) See report of Attorney General Anderson, 1904, page 20, where the opinion is expressed that under this section if a corporation is formed by two companies being united, consolidated, and forming a new corporation, it must pay the same fee as if it were a newly formed corporation.

See report of Attorney General Anderson, 1904, page 20, where the opinion is expressed that under this section if one corporation is merged in and absorbed by another, there will be no charter fee unless the authorized capitalization be increased or additional powers conferred.

(51) See report of Attorney General Anderson, 1906, page 85, where the opinion is expressed that this section is not mandatory.

Sec. **1266**. See report of Attorney General Anderson, 1902, page 61, where the opinion is expressed that under this section the powers and duties of an agent or attorney, in fact, continues as long as there may be a cause of action in the State of Virginia against the company appointing such agent, unless sooner terminated in the manner prescribed by Section 1267.

Sec. **1267**. See report of Attorney General Anderson, 1902, page 61, where the opinion is expressed that the powers and duties prescribed under Section 1266 continue until terminated by this section.

Sec. **1271**. See report of Attorney General Anderson, 1905, page 40, where the opinion is expressed that this section is not applicable to fraternal and beneficial societies and associations.

See report of Attorney General Montague, 1898, page 10, where the opinion is expressed that under this section companies which do both an insurance and guaranty business shall be required to make a deposit required by both of these sections above-mentioned before being licensed to do business.

Sec. **1271a**. See report of Attorney General Anderson, 1906, page 51, where the opinion is expressed that this section is repealed by 1906 Acts, Chapter 112 (Ch. II, Section 14) by implication thereby requiring a marine insurance company to make a deposit with the State treasurer.

Sec. **1286c**. See report of Attorney General Montague, 1898, page 10, where the opinion is expressed that companies which do both an insurance and a guaranty business shall be required to make a deposit required by this section before being licensed to do business.

Sec. **1338**. See report of Attorney General Anderson, 1906, page 66, where the opinion is expressed that patents may not be issued under this section for oyster lands.

See report of Attorney General Anderson, 1905, page 29, where the opinion is expressed that under this section, 1887-88 Acts, p. 273 is only declaratory of existing law.

See report of Attorney General Anderson, 1905, page 29, where the opinion is expressed that under this section the only limitation on the State's right to control its own property is Section 175 of the Constitution.

Sec. **1417**. See report of Attorney General Anderson, 1905, page 26, where the opinion is expressed that under this section discretion as to who shall be given the benefits of this act and upon what condition is discretionary with the managing board.

Sec. **1429**. See report of Attorney General Anderson, 1907, page 42, where the opinion is expressed that under this section the oath required is that provided for in Section 175.

Sec. **1433**(11). See report of Attorney General Anderson, 1906, page 39, where the opinion is expressed that under this section it would seem that authority to give security as therein provided is nowhere plainly conferred.

(11) See report of Attorney General Anderson, 1906, page 39, where the opinion is expressed that under this section no investment may be made in bonds issued by virtue of 1906 Acts, Chapter 255.

(12) See report of Attorney General Anderson, 1907, page 43, where the opinion is expressed that under this section the auditor of public accounts should transfer from time to time to second auditor money to be paid out for schools through special appropriations.

(1) See report of Attorney General Williams, 1912, page 48, where the opinion is expressed that under this section a division superintendent of schools may not be paid his expenses.

Sec. **1433**(6). See report of Attorney General Anderson, 1907, page 45, where the opinion is expressed that where under this section a contract has been made for school furniture for the schools of the State with one concern, a contract by a city school board for furniture with another concern is illegal and void. (See also same report page 51).

Sec. **1433**(11). See report of Attorney General Anderson, 1908, page 41, where the opinion is expressed that neither under this section nor any other section is authority conferred upon the board of education to make a loan of any of the securities in which the literary fund is invested.

Sec. **1438**. See report of Attorney General Anderson, 1907, page 43, where the opinion is expressed that under this section the auditor of public accounts should transfer from time to time to second auditor money to be disbursed for schools through special appropriation.

See report of Attorney General Anderson, 1909, page 42, where the opinion is expressed that under this section it is lawful for the board of supervisors of a county to supplement the salary of a division superintendent of schools in a case where the county school board of such county has already made an addition to such salary.

See report of Attorney General Anderson, 1909, page 48, where the opinion is expressed that under this section the board of supervisors are authorized to supplement the salary of a division superintendent of schools only out of any surplus of any funds in the treasury of such county.

See report of Attorney General Williams, 1913, page 76, where the opinion is expressed that this section does not authorize the council of any city out of the surplus funds in the treasury of such city to supplement the salary of the division superintendent of schools of such city.

See report of Attorney General Anderson, 1909, page 48, where the opinion is expressed that under this section the board of supervisors are not authorized to diminish the salary of a division superintendent when such salary has been once supplemented by such board, nor would such salary be diminished by the failure of funds at a particular time to pay the same, but payment would have to be postponed until there should be funds in the treasury applicable to its payment.

See report of Attorney General Williams, 1910, page 34, where the opinion is expressed that under this section no authority is expressly given to boards of supervisors to furnish an office to the division superintendent of schools.

See report of Attorney General Anderson, 1907, page 41, where the opinion is expressed that under this section the population is to be determined by the last United States census, except in the case of cities which are provided for by Section 1013c.

Sec. **1439**. See report of Attorney General Anderson, 1908, page 27, where the opinion is expressed that under this section power is given to superintendent of public instruction to pass on effect of act *ultra vires* done under color of Section 1487.

Sec. **1441**. See report of Attorney General Anderson, 1909, page 50, where the opinion is expressed that under this section a quorum consists of a majority of the county school board and that in so counting the division superintendent may be included.

Sec. **1449**. See report of Attorney General Anderson, 1909, page 39, where the opinion is expressed that under this section compensation is provided for a county treasurer receiving and disbursing school taxes collected by a city treasurer for the year and paid over to the county treasurer.

See report of Attorney General Anderson, 1909, page 39, where the opinion is expressed that this section governs the question of compensation to be allowed a county treasurer for receiving and disbursing the fund turned over to him by the treasurer of Lynchburg on account of value of school buildings in county territory annexed to the city.

Sec. **1454**. See report of Attorney General Anderson, 1909, page 44, where the opinion is expressed that under this section a school trustee elected and who does not resign can only be succeeded by an election held not more than thirty days prior to September first.

Sec. **1455**. See report of Attorney General Anderson, 1902, page 89, where the opinion is expressed that under this section in taking action the board discharges a judicial function, requiring notice to be given the accused trustee of the charge or charges preferred against him as well as a fair opportunity to defend himself and only legal evidence should be heard.

See report of Attorney General Williams, 1911, page 38, where the opinion is expressed that under this section if an unfit school trustee be retained the matter should be presented to the State Board of Education.

See report of Attorney General Anderson, 1908, page 26, where the opinion is expressed that under this section power is conferred on the school trustee electoral board to remove a school trustee disqualified by Section 1459.

Sec. **1459**. See report of Attorney General Anderson, 1907, page 45, where the opinion is expressed that under this section a justice of the peace or constable is not prevented from serving as district school trustee.

See report of Attorney General Williams, 1910, page 68, where the opinion is expressed that under this section the mayor of a town may be a school trustee.

See report of Attorney General Williams, 1911, page 39, where the opinion is expressed under this section that a member of the General Assembly cannot be a school trustee.

See report of Attorney General Williams, 1911, page 41, where the opinion is expressed that under this section an oyster inspector may not be a school trustee.

See report of Attorney General Anderson, 1908, page 26, where the opinion is expressed that under this section a county chief of police may not be a district school trustee.

See report of Attorney General Williams, 1911, page 46, where the opinion is expressed that under this section a referee in bankruptcy may not be a school trustee in a town constituting a separate school district.

Sec. **1466**. See report of Attorney General Anderson, 1906, page 40, where the opinion is expressed that there is no qualification of the prohibition of the section relating to the employment of certain relatives of members of the district board.

See report of Attorney General Anderson, 1906, page 46, where the opinion is expressed that under this section it was the intention of the law to provide that school buildings, books for indigent children, and appliances be provided for in advance of teachers' salaries.

See report of Attorney General Anderson, 1909, page 59, where the opinion is expressed that under this section the insertion of a covenant not to allow the sale of ardent spirits on property conveyed for school purposes is not improper.

See report of Attorney General Anderson, 1909, page 53, where the opinion is expressed that under this section a school district cannot acquire and hold either separately or jointly with some other district property located in another school district.

See report of Attorney General Anderson, 1908, page 27, where the opinion is expressed that under this section power to select a site for a school remains, although action is taken under Section 1487.

See report of Attorney General Anderson, 1907, page 42, where the opinion is expressed that this section is applicable to 1906 Acts, Chapter 211, Clause 2.

(12) See report of Attorney General Anderson, 1906, page 36, where the opinion is expressed that under this section no authority is given to district school boards to issue negotiable warrants or to make them payable to order, or payable twelve months after date.

Sec. **1466a**. See report of Attorney General Williams, 1910, page 39, where the opinion is expressed that under this section the court has no right to borrow money or give a lien on school property.

Sec. **1469**. See report of Attorney General Anderson, 1908, page 66, where the opinion is expressed that no authority is conferred to form separate school districts within the limits of a town.

See report of Attorney General Anderson, 1906, page 39, where the opinion is expressed that under this section a town which becomes a separate school district is subject to the same rules and regulations which apply to other school districts of such county, and therefore liable to the same tax as any other school district.

Sec. **1472**. See report of Attorney General Anderson, 1906, page 36, where the opinion is expressed that under this section it is questionable whether the Commonwealth's Attorney is a "School Officer."

See report of Attorney General Williams, 1912, page 49, where the opinion is expressed that under this section the interest of a member of a school board in a corporation making certain fixtures for a school building is a violation of this section.

See report of Attorney General Anderson, 1909, page 55, where the opinion is expressed that under this section a member of a county school board is prohibited from entering into a contract to do printing required by the said board.

Sec. **1482**. See report of Attorney General Anderson, 1907, page 39, where the opinion is expressed that under this section and indeed under all the laws the school property in the case of the counties and towns is vested in the district school board.

See report of Attorney General Williams, 1913, page 76, where the opinion is expressed that under this section school property must be conveyed to the district school board as a corporation.

See report of Attorney General Williams, 1910, page 39, where the opinion is expressed that neither under this section nor any other can school trustees borrow money or give a lien on school property.

Sec. **1483**. See report of Attorney General Williams, 1913, page 78, where the opinion is expressed that under this section property donated for schools need not be fee simple property.

Sec. **1487**. See report of Attorney General Anderson, 1908, page 27, where the opinion is expressed that under this section no power is conferred upon a school trustee electoral board to select the site for a school.

See report of Attorney General Anderson, 1907, page 50, where the opinion is expressed that under this section the school trustee electoral board may merely approve or disapprove the location of a school-house, but may not itself select.

See report of Attorney General Williams, 1910, page 66, where the opinion is expressed that under this section the heads of families appealing need not be patrons of the particular aggrieved class in the school.

See report of Attorney General Anderson, 1909, page 40, where the opinion is expressed that under this section the decision of the school trustee electoral board is final. But see the opinion on page 41 of the same report.

See report of Attorney General Montague, 1899, page 19, where the opinion is expressed that under this section if the board reverses the action of the trustees the matter of the employment of a teacher comes up *de novo* with the power on their part to employ another teacher.

See report of Attorney General Anderson, 1909, page 51, where the opinion is expressed that under this section where a donation offered to a district school board is dismissed no appeal lies nor can the electoral board take any action in the premises.

See report of Attorney General Anderson, 1909, page 40, where the opinion is expressed that this section prohibits the enactment of a regulation by the Board of Education conferring upon division superintendents jurisdiction to hear questions in regard to the employment or dismissal of a school teacher. But see the opinion on page 41 of the same report.

See report of Attorney General Anderson, 1909, page 40, where the opinion is expressed that under this section appeals to the school trustee electoral board can only be had by five interested heads of families resident in the district who feel themselves aggrieved by the action of the district school board. But see the opinion on page 41 of the same report.

See report of Attorney General Anderson, 1909, page 40, where the opinion is expressed that under this section no intention was shown to allow an appeal to the superintendent of public instruction. But see the opinion on page 41 of the same report.



Sec. **1488**. See report of Attorney General Williams, 1912, page 48, where an opinion is expressed under this section as to the right to locate a school within a certain distance of a dwelling house.

Sec. **1492**. See report of Attorney General Anderson, 1906, page 41, where the opinion is expressed that under this section no powers are left in city councils to determine the age of admission of children to the public schools.

See report of Attorney General Anderson, 1909, page 60, where the opinion is expressed that under this section a Mongolian is not a negro within its prohibition.

See report of Attorney General Anderson, 1908, page 23, where the opinion is expressed that under this section children under seven years of age may not be admitted to the public schools under any circumstances.

See report of Attorney General Anderson, 1908, page 32, where the opinion is expressed that under this section no child under seven can enter the public schools.

Sec. **1493**. See report of Attorney General Anderson, 1909, page 60, where the opinion is expressed that under this section the question as to where Mongolian children are to attend school is largely a matter for the local school board.

Sec. **1494**. See report of Attorney General Anderson, 1908, page 32, where the opinion is expressed that under this section no pupil in the public schools over twenty years old can be allowed to attend without the consent of the district school board and the prepayment of the prescribed tuition fees.

Sec. **1496**. See report of Attorney General Anderson, 1908, page 55, where the opinion is expressed that under this section no authority is conferred on boards of health, State or local to *order* or *suspend* vaccination, but may only suspend the operation of this section as to attendance in the schools.

Sec. **1506**. See report of Attorney General Anderson, 1910, page 34, where the opinion is expressed that under this section no authority is expressly given to boards of supervisors to furnish an office to the division superintendent of schools.

See report of Attorney General Williams, 1910, page 36, where opinion is expressed that under this section boards of supervisors may levy county and district school taxes not aggregating more than fifty cents on the hundred dollars without a vote of the people.

See report of Attorney General Williams, 1910, page 41, where the opinion is expressed that banks may be taxed under this section.

Sec. **1515**. See report of Attorney General Anderson, 1904, page 14, where the opinion is expressed that under this section no commission is provided for a treasurer for paying over to the incoming treasurer the school funds.

See report of Attorney General Anderson, 1905, page 15, where the opinion is expressed that under this section taken in connection with Sections 613 and 614 the compensation for the handling of school funds by treasurers is to be determined.

See report of Attorney General Anderson, 1907, page 54, where under this section method of computing compensation of county treasurers for receiving,

collecting and disbursing county and district school taxes and levies is explained. See also report of Attorney General Anderson, 1908, page 25.

See report of Attorney General Anderson, 1907, page 76, where the opinion is expressed that under this section a city treasurer may receive only one per cent. for disbursing school funds apportioned to a city from State funds, and he can only be allowed that by the school board.

See report of Attorney General Anderson, 1905, page 13, where the opinion is expressed that under this section the proceeds from the sale of bonds issued for school purposes and authorized to be sold shall be handled by the county treasurer in the absence of any provision as to the handling of such funds.

See report of Attorney General Montague, 1900, page 13, where the opinion is expressed that under this section a commission paid to treasurer may be allowed by the County Board on Literary Fund.

Sec. **1518**. See report of Attorney General Williams, 1911, page 40, where the opinion is expressed that under this section it is the duty of the town treasurer to add five per cent. penalty, proceed to collect it and make due report of it just as a county treasurer would do.

See report of Attorney General Williams, 1910, page 33, where the opinion is expressed that under this section a town treasurer is entitled to the same rate of compensation on school funds that a county treasurer would receive if the revenues were the same.

Sec. **1526**. See report of Attorney General Anderson, 1909, page 54, where the opinion is expressed that under this section if a member of the board is elected clerk he must be a citizen of the State and town; but that if it elect a person other than one of its members he need not be a citizen and qualified voter of the town, but must be a resident of the State and town.

Sec. **1528**. See report of Attorney General Anderson, 1904, page 15, where the opinion is expressed that under this section trustees chosen to fill unexpired terms serve until the expiration of the terms for which they were elected to fill unless otherwise disqualified.

Sec. **1531**. See report of Attorney General Anderson, 1906, page 41, where the opinion is expressed that under this section funds collected are to be expended by the school boards although they are to be provided for by the councils.

Sec. **1533**. See report of Attorney General Anderson, 1905, page 16, where the opinion is expressed that under this section a division superintendent of a city receives pay from the State.

Sec. **1538**. See report of Attorney General Anderson, 1905, page 17, where the opinion is expressed that under this section the division superintendent of a city may be paid additional remuneration by the *Council* of the city, but that the city school board is not authorized to make any increase in such salaries.

See report of Attorney General Anderson, 1904, page 15, where the opinion is expressed that under this section membership in the city council vacates the office of school trustee.

See report of Attorney General Williams, 1911, page 46, where the opinion is expressed that under this section a referee in bankruptcy may not be a school trustee in a town constituting a separate school district.

See report of Attorney General Anderson, 1906, page 41, where the opinion is expressed that under this section, (Clause twelfth) a city charter conferring such duties upon the council is overruled as far as there is conflict.

Sec. **1566**. See report of Attorney General Anderson, 1908, page 81, where the opinion is expressed that neither under this section or any section regarding the Virginia Military Institute is there anything to prevent acceptance of benefits from United States Government.

Sec. **1573**. See report of Attorney General Williams, 1913, page 94, where the opinion is expressed that under this section the professors at the Virginia Military Institute are exempted from payment of a federal income tax.

Sec. **1599(a)**. See report of Attorney General Anderson, 1902, page 53, where the opinion is expressed that under this section there is no duty on person not owner of cattle to report cases of diseased cattle, but it is advisable that same should be done by any person suspecting cattle of disease.

Sec. **1608**. See report of Attorney General Anderson, 1906, page 23, where the opinion is expressed that this section is not within the purview of Section 73 of the Constitution.

See report of Attorney General Anderson, 1906, page 23, where the opinion is expressed that an appointment made by the governor under this section may be rejected or ratified at any time during the session of the Senate.

See report of Attorney General Anderson, 1906, page 23, where the opinion is expressed that under this section a *de novo* appointment would fail upon the adjournment of the Senate without taking action thereon.

See report of Attorney General Anderson, 1906, page 23, where the opinion is expressed that under this section an appointment made by the governor to fill a vacancy remains valid in the absence of the Senate's confirmation or rejection although the governor may revoke the appointment thus made after the adjournment of the Senate without their having taken action thereon.

Sec. **1617**. See report of Attorney General Montague, 1899, page 15, where the opinion is expressed that under this section a member of Board of Visitors of the Virginia School for Deaf and Dumb cannot furnish the institution with supplies.

Sec. **1660**. See report of Attorney General Anderson, 1908, page 40, where the opinion is expressed that under this section and the following sections lunatics should be removed to one of the State hospitals as soon as practicable after their insanity has been determined.

Sec. **1662**. See report of Attorney General Anderson, 1904, page 24, where opinion is expressed that under this section every member of the board of directors of a State hospital is a member of the general board of directors of all the hospitals of the State.

See report of Attorney General Anderson, 1903, page 42, where opinion is expressed that under this section in the absence of any statutory provision on the subject it is competent for the special board of a hospital of the State subject to the paramount authority of the general board to prescribe what officer of the institution shall sign legal papers other than deeds of conveyance.

Sec. **1664**. See report of Attorney General Anderson, 1905, page 25, where the opinion is expressed that under this section the General Board of Directors may appropriate funds for traveling expenses for the Commissioner of State hospitals within certain limits.

Sec. **1669**. See report of Attorney General Anderson, 1909, page 78, where the opinion is expressed that under this section the justice who issues the warrant of lunacy shall sit on the commission trying the case.

Sec. **1671**. See report of Attorney General Anderson, 1909, page 78, where the opinion is expressed that under this section there is no provision made for a fee of but one justice.

Sec. **1674**. See report of Attorney General Williams, 1911, page 26, where the opinion is expressed that under this section "chronic inebriates" should be returned to the county authorities.

Sec. **1676**. See report of Attorney General Anderson, 1908, page 21, where the opinion is expressed that under this section a non-resident adjudged a lunatic in this State should be cared for at one of the State hospitals.

Sec. **1678**. See report of Attorney General Anderson, 1908, page 21, where the opinion is expressed that under this section only the case of a non-resident insane person who has been received into a hospital under contract is covered.

Sec. **1679**. See report of Attorney General Anderson, 1908, page 40, where the opinion is expressed as to whether this section by implication repeals Section 1693.

Sec. **1681**. See report of Attorney General Anderson, 1909, page 71, where the opinion is expressed that neither this section nor any other authorizes the commitment of idiots to hospitals for the insane, or their confinement in jail.

Sec. **1682**. See report of Attorney General Anderson, 1908, page 45, where the conflict of this section and Section 4123 is considered.

Sec. **1683**. See report of Attorney General Anderson, 1909, page 93, where the opinion is expressed under this section as to the right to arrest a person who has been adjudicated to be a lunatic but who is not in an insane hospital.

Sec. **1684**. See report of Attorney General Anderson, 1909, page 93, where an opinion is expressed under this section as to the right to arrest a person who has been adjudicated to be a lunatic, but who is not in an insane hospital.

Sec. **1686**. See report of Attorney General Anderson, 1908, page 19, where the opinion is expressed that neither under this section nor any other law can a lunatic not accused of crime, who escapes, be gotten from another State.

Sec. **1693**. See report of Attorney General Anderson, 1908, page 40, where the opinion is expressed that under this section only *temporary* emergency is provided for.

See report of Attorney General Anderson, 1908, page 40, where the opinion is expressed as to whether this section by implication is repealed by Section 1679.

Sec. **1710**. See report of Attorney General Anderson, 1904, page 24, where the opinion is expressed that under this section no director of any State asylum shall be in any way personally interested in any contract in connection with such asylum.

Sec. **1713d**. See report of Attorney General Anderson, 1905, page 21, where the opinion is expressed that this section does not abrogate Section 1743 except where most clearly expressed.

See report of Attorney General Anderson, 1905, page 21, where the opinion is expressed that to this section, Section 1743 is subordinate.

(5) See report of Attorney General Montague, 1899, page 26, where the opinion is expressed that under this section county local boards of health have no existence, but there is a local county board.

See report of Attorney General Williams, 1910, page 51, where the opinion is expressed that under this section clerical error in enrolling this bill by omission of "clerk of court" cannot be corrected, but that the validity of the section is unaffected.

See report of Attorney General Anderson, 1908, page 55, where the opinion is expressed that this section is not in conflict with Section 1733.

(5) See report of Attorney General Anderson, 1902, page 49, where the opinion is expressed that although this section is silent on mode of enforcement and there is no power to enforce a penalty the Board could quarantine any person failing to comply with its orders.

See report of Attorney General Anderson, 1906, page 68, where the opinion is expressed that under this section a county board of health may destroy by fire a building infected with a contagious disease, and that compensation therefor is to be determined by the board of supervisors advised by Commonwealth's Attorney.

(7) See report of Attorney General Anderson, 1904, page 20, where the opinion is expressed that under this section the State Board of Health, or its executive officer, is entitled to take entire control of a situation in a county to prevent the spread and continuance of a contagious disease where other cities, towns or counties are liable to be thereby infected.

(10) See report of Attorney General Anderson, 1905, page 21, where the opinion is expressed that under this section power is conferred to annul orders given under Section 1743.

Sec. **1719**. See report of Attorney General Anderson, 1902, page 45, where the opinion is expressed that this section and those following prevail over other Code sections.

See report of Attorney General Anderson, 1902, page 45, where the opinion is expressed that under this section no provision is made as to who shall bear expense, therefore where county board instigates proceeding county should bear expense and where town board is instigator the town should defray the costs.

Sec. **1724**. See report of Attorney General Montague, 1899, page 26, where the opinion is expressed that under this section there is no special form of authorization required.

Sec. **1733**. See report of Attorney General Anderson, 1908, page 55, where the opinion is expressed that this section is not in conflict with Section 1713d.

Sec. **1743**. See report of Attorney General Anderson, 1905, page 21, where the opinion is expressed that orders given under this section may be annulled under Section 1713d(10).

See report of Attorney General Anderson, 1905, page 21, where the opinion is expressed that this section continues in force except in so far as clearly made subordinate to the provisions of Section 1713d.

See report of Attorney General Anderson, 1905, page 21, where the opinion is expressed that subject to the paramount authority of the State Board of Health (see Section 1713d) the powers and duties conferred by this section are in full force.

Sec. **1743g**(7). See report of Attorney General Williams, 1910, page 62, where the opinion is expressed that under this section infants and women may be licensed.

See report of Attorney General Anderson, 1909, page 87, where the opinion is expressed that under this section examinations may be wholly oral or wholly written or part of each.

Sec. **1778**. See report of Attorney General Williams, 1910, page 69, where the opinion is expressed that this section is limited by 1908 Acts, Chapter 398, Clause 11.

See report of Attorney General Anderson, 1906, page 62, where the opinion is expressed that no provision is made under this section or elsewhere for the disposal of the bodies of convicts who die while working on the roads.

Sec. **1783a**(2). See report of Attorney General Anderson, 1905, page 27, where the opinion is expressed under this section as to how regular and special meetings of the Board of Agriculture are called.

Sec. **1783d**(11). See report of Attorney General Anderson, 1905, page 27, where the opinion is expressed that under this section fertilizer inspectors are appointed by the Commissioner of Agriculture subject to the confirmation of the Board of Agriculture.

Sec. **1790**(a). See report of Attorney General Anderson, 1902, page 42, where the opinion is expressed that under this section "per annum" means the calendar year ending December 31st.

See report of Attorney General Anderson, 1908, page 71, where the opinion is expressed that under this section the board of pest commissioners may not expend money in the investigation of bees.

Sec. **1790**(a). See report of Attorney General Anderson, 1909, page 76, where the opinion is expressed that this section, Clauses 9 and 10, relates only to the extermination of or protection against the San José scale.

Sec. **1790c**. See report of Attorney General Williams, 1912, page 16, where the opinion is expressed that under this section the Commissioner of Labor and Statistics is an executive officer.

Sec. **2042**. See report of Attorney General Anderson, 1902, page 50, where the opinion is expressed that this section applies to whole State except Henrico county within three miles of the limits of the city of Richmond.

Sec. **2070a**. See report of Attorney General Anderson, 1908, page 85, where the opinion is expressed that under this section the privilege of hunting hares on one's own land is non-transferable.

Sec. **2079**. See report of Attorney General Anderson, 1908, page 64, where the opinion is expressed that under this section the keeping of wild-water fowl for the purpose of propagation is not *prima facie* evidence of the violation of the game laws.

Sec. **2082(a)**. See report of Attorney General Anderson, 1906, page 65, where the opinion is expressed that under this section the Board of Fisheries may insure the oyster fleet.

Sec. **2086**. See report of Attorney General Anderson, 1907, page 79, where the opinion is expressed that under this section there is no recovery allowed for expenses of the Board of Fisheries in prosecuting those violating its provisions.

See report of Attorney General Anderson, 1902, page 50, where the opinion is expressed that this section imposes license tax upon privilege of fishing with pound net in the waters of this Commonwealth, except in waters where any such fishing is prohibited.

See report of Attorney General Anderson, 1902, page 67, where the opinion is expressed that under this section in granting charters to companies to engage in the business of catching fish with a pound net, etc., or catching fish in the waters of the Commonwealth for the purpose of converting the same into oil or manure, a provision restricting the ownership of stock in or the sharing of profits to residents of Virginia is valid.

Sec. **2095**. See report of Attorney General Anderson, 1902, page 67, where the opinion is expressed that under this section in granting charters to companies to engage in the business of catching fish with pound net, etc., or catching fish in the waters of the Commonwealth for the purpose of converting same into oil or manure a provision restricting the ownership of stock and of sharing in profits to residents of Virginia is valid.

Sec. **2104**. See report of Attorney General Anderson, 1902, page 67, where the opinion is expressed that under this section the penalties prescribed may be imposed on non-resident stockholders in a company engaged in the business of catching fish, etc., for purposes of converting the same into oil.

Sec. **2108**. See report of Attorney General Anderson, 1902, page 71, where the opinion is expressed that this section prevails over any prior special legislation in case of conflict.

Sec. **2130a**. See report of Attorney General Anderson, 1905, page 29, where the opinion is expressed as to the power to lease certain oyster bottoms.

See report of Attorney General Anderson, 1904, page 24, where the opinion is expressed that under this section that the bottom not described by courses and distances, or acreage noted on the survey nor designated, mentioned nor referred to in the notes of the Baylor survey, is not included in the "Baylor" survey and may be leased as other bottom outside of said survey, although colored brown as are the other natural oyster bottoms.

Sec. **2131**. See report of Attorney General Anderson, 1906, page 64, where the opinion is expressed that under this section an oyster inspector must qualify and give bond before the circuit or corporation court of the jurisdiction in which he resides, and not before the judge in vacation.

Sec. **2136**. See report of Attorney General Montague, 1898, page 12, where the opinion is expressed that under this section owners of creeks, coves, or inlets are not required to pay the tax under Section 2137, and that "lawful survey" should be accentuated in the interpretation of this section.

See report of Attorney General Montague, 1898, page 21, where an opinion is expressed as to the applicability of this section to Horn Harbor and Milford Haven.

Sec. **2137**. See report of Attorney General Montague, 1898, page 12, where the opinion is expressed that under this section and Section 2136 a riparian owner should pay one dollar tax per acre upon all ground, in excess of one-half acre taken by assignment.

See report of Attorney General Anderson, 1902, page 93, where the opinion is expressed that under this section contracts entered into in which rights are vested are not disturbed by subsequent acts, but should be continued under the law existing at the time the contract was made.

Sec. **2110a**. See report of Attorney General Montague, 1899, page 24, where the opinion is expressed that this section provides for the assessment of oysters planted and deposited on October 1st and for no other assessment.

Sec. **2148**. See report of Attorney General Anderson, 1907, page 79, where the opinion is expressed that this section does not include clams.

Sec. **2153**. See report of Attorney General Anderson, 1907, page 79, where the opinion is expressed that under this section clams may be taken all year with tongs under Section 2178c.

Sec. **2164**. See report of Attorney General Anderson, 1906, page 67, where opinion is expressed that under this section the use of a boat propelled by a gasoline engine may not be prohibited.

Sec. **2165a**. See report of Attorney General Anderson, 1906, page 67, where the opinion is expressed that under this section the privilege of using a gasoline dredge on private grounds may be revoked by the Board of Fisheries.

Sec. **2178c**. See report of Attorney General Anderson, 1907, page 79, where the opinion is expressed that under this section clams may be taken with tongs all the year by any resident of Virginia who has complied with Section 2153.

Sec. **2322**. See report of Attorney General Williams, 1911, page 42, where the opinion is expressed that under this section a deputy may not substitute for the surveyor.

Sec. **2326**. See report of Attorney General Williams, 1911, page 42, where the opinion is expressed that under this section a deputy may not substitute for the surveyor.

Sec. **2341**. See report of Attorney General Anderson, 1906, page 66, where the opinion is expressed that under this section the issuance of patents for marsh



lands which are natural oyster beds, shoals, or rocks is prohibited, and a remedy for the breach of this section is suggested.

See report of Attorney General Williams, 1911, page 42, where the opinion is expressed that under this section the survey must be made or authorized by the surveyor or his deputy.

Sec. **2376**. See report of Attorney General Anderson, 1909, page 94, where the opinion is expressed that under this section no provision is made for the compensation of witnesses and jurors.

Sec. **2905**. See report of Attorney General Williams, 1912, page 43, where the opinion is expressed that the tax in a proceeding under this section is provided by Section 14 of the Tax Bill.

Sec. **2944**. See report of Attorney General Anderson, 1902, page 62, where the opinion is expressed that this section requires a justice of the peace to keep record book.

Sec. **3049**. See report of Attorney General Williams, 1913, page 65, where the opinion is expressed that under this section the duty of the Governor to appoint a judge to substitute is mandatory.

See report of Attorney General Anderson, 1905, page 34, where opinion is expressed that under this section provision is made for the filling of an office of circuit judge by the Governor during the legislative recess.

Sec. **3130**. See report of Attorney General Williams, 1913, page 92, where the opinion is expressed that under this section a circuit judge is ineligible to serve as a member of the State Library Board.

See report of Attorney General Williams, 1912, page 34, where an opinion is expressed as to right of a judge to be a notary public.

Sec. **3163**. See report of Attorney General Montague, 1899, page 13, where the opinion is expressed that this section, together with Section 3164, designates methods for making statutory vouchers for county treasurers.

Sec. **3164**. See report of Attorney General Montague, 1899, page 13, where the opinion is expressed that this section, together with Section 3163, designates methods for making statutory vouchers for county treasurers.

Sec. **3326a**. See report of Attorney General Anderson, 1908, page 60, where the opinion is expressed that under this section a commonwealth's attorney may not be examiner of records.

Sec. **3500**. See report of Attorney General Anderson, 1902, page 62, where the opinion is expressed that under this section a fee herein stipulated is for all services including issuing of warrant and subpœna, swearing witnesses, taxing costs and issuing execution, and that a justice of peace has no right to charge for entering judgment on record book.

Sec. **3521**. See report of Attorney General Anderson, 1902, page 57, where the opinion is expressed that although this section is ambiguous, the limit of \$1.00 seems to apply to such cases in proceedings before a justice.

Sec. **3527**. See report of Attorney General Anderson, 1902, page 56, where the opinion is expressed that under this section a fee for summoning witnesses is absolute when payable out of treasury at all, whether witness is summoned before justice or in a prosecution in court.

See report of Attorney General Williams, 1913, page 75, where the opinion is expressed that under this section the failure of a justice to collect the costs before rendering his bill does not forfeit his right to collect afterwards when the costs are actually collected.

See report of Attorney General Williams, 1913, page 72, where the opinion is expressed that under this section the Commonwealth's Attorney of the city of Richmond is entitled to fees for prosecutions under Section 4179 *et seq.* (ch. 204).

See report of Attorney General Williams, 1911, page 34, where the opinion is expressed that under this section the clerk of a court is not entitled to one-half of the fee provided in a felony case under Section 3529.

See report of Attorney General Montague, 1899, page 22, where the opinion is expressed that under this section the Commonwealth pays nothing in case of acquittal for misdemeanor.

Sec. **3528**. See report of Attorney General Anderson, 1902, page 52, where the opinion is expressed that under this section the Commonwealth's Attorney gets no fee in felony case unless same is tried, no fee in misdemeanor case unless prosecuted to judgment for Commonwealth.

See report of Attorney General Montague, 1899, page 22, where the opinion is expressed that under this section there is no fee in misdemeanor cases where there is an acquittal.

See report of Attorney General Anderson in report of 1902, page 44, where the opinion is expressed that the purpose of this section was to limit compensation that each attorney for the Commonwealth should receive for one year's services; that compensation not to be cumulative and that excess of one year not to be carried over to next year.

See opinion of Attorney General Montague, 1899, page 24, where the opinion is expressed that under this section the fee is for each case and not for each defendant in a case.

Sec. **3529**. See report of Attorney General Williams, 1911, page 34, where the opinion is expressed that one half of the fee provided for court clerks in felony cases cannot be gotten under Section 3527.

Sec. **3531**. See report of Attorney General Anderson, 1909, page 96, where the opinion is expressed as to certain fines to be charged under this section.

See report of Attorney General Williams, 1913, page 73, where the opinion is expressed that this section has no application to fees for a sheriff in executing a writ of venire facias under the order of a court for a venire out of the county, but compensation is provided by Section 4083.

Sec. **3532**. See report of Attorney General Anderson, 1902, page 73, where the opinion is expressed that under this section providing for support of prisoners in jail does not provide for medicine, but see Section 4079.

See report of Attorney General Williams, 1913, page 66, where the opinion is expressed that under this section the fee provided for may not be collected in cases covered by Section 3533 and that it is proper for the auditor of public accounts to require a certificate stating whether or not the conditions referred to in Section 3533 obtained or not.

**Sec. 3533.** See report of Attorney General Williams, 1913, page 68, where the opinion is expressed that under this section payment for keeping and supporting prisoners in jail is provided.

See report of Attorney General Williams, 1913, page 67, where the opinion is expressed that under this section no fee can be collected for receiving a person in jail when first committed in certain cases.

See report of Attorney General Anderson, 1902, page 60, where the opinion is expressed that this section is positive in its terms and cannot be changed by a city ordinance.

See report of Attorney General Anderson, 1902, page 79, where the opinion is expressed that this section does not provide for payment to city sergeant for service of *capias* by auditor of public accounts.

**Sec. 3618c.** See report of Attorney General Williams, 1911, page 24, where an opinion is expressed under this section as to the power of the governor to suppress race track gambling under Section 73 of the Constitution.

**Sec. 3657b.** See report of Attorney General Anderson, 1909, page 99, where an opinion is expressed under this section as to what constitutes a manufacturing establishment.

**Sec. 3657bb.** See report of Attorney General Anderson, 1909, page 100, where the opinion is expressed that a cannery is not a manufacturing establishment within this section.

See report of Attorney General Anderson, 1909, page 99, where the opinion is expressed under this section as to what constitutes a manufacturing establishment.

**Sec. 3657d.** See report of Attorney General Williams, 1913, page 79, where an opinion is expressed under this section as to what constitutes a "saw-mill."

See report of Attorney General Williams, 1913, page 79, where the opinion is expressed that under this section semi-monthly payment requirements do not prevail in cases mentioned in the proviso (cl. 2).

**Sec. 3671.** See report of Attorney General Anderson, 1906, page 80, where opinion is expressed that under this section it is error to find a defendant guilty of unlawful assault and yet impose for it the penalty of a felony.

**Sec. 3751.** See report of Attorney General Anderson, 1902, page 57, where the opinion is expressed that this section applies to any person aiding escape of a prisoner whether the person aiding, etc., is in or out of jail.

**Sec. 3780.** See report of Attorney General Montague, 1901, page 7, where the opinion is expressed that under this section a deputy collector of internal revenue may carry concealed weapons while in discharge of his duties as such.

Sec. **3795b**. See report of Attorney General Anderson, 1903, page 43, where opinion is expressed that this section and Acts 1901-02, chapter 137, relating to Children's Home Society of Virginia, are in no way inconsistent.

Sec. **3799**. See report of Attorney General Anderson, 1906, page 85, where the opinion is expressed that exemptions from this section cannot be claimed under the guise of a social club.

Sec. **3805**. See report of Attorney General Anderson, 1909, page 94, where the opinion is expressed that under this section *both* fine and imprisonment must be imposed.

Sec. **3818**. See report of Attorney General Anderson, 1909, page 86, where the opinion is expressed that under this section an insurance office is not a "public place."

Sec. **3818b**. See report of Attorney General Williams, 1911, page 24, where an opinion is expressed under this section as to the power of the governor under Section 73 of the Constitution to suppress race track gambling.

Sec. **3905**. See report of Attorney General Anderson, 1909, page 79, where the opinion is expressed that if under this section the aggregate term exceeds five years the felon may not be sentenced to service on the roads.

Sec. **3933**. See report of Attorney General Montague, 1899, page 15, where the opinion is expressed that under this section the county must pay board for those who may be worked on chain gang.

See report of Attorney General Anderson, 1902, page 51, where the opinion is expressed that under this section if a prisoner is working on a chain gang for a city and escapes that city must pay the expense of his recapture.

Sec. **3936**. See report of Attorney General Montague, 1899, page 15, where the opinion is expressed that under this section the county must pay into the State Treasury twenty-five cents a day for each convict worked.

Sec. **3946**. See report of Attorney General Williams, 1912, page 57, where the opinion is expressed that this section makes no provision for a convict killed while on the road force.

See report of Attorney General Montague, 1898, page 26, while the opinion is expressed that under this section where inquest is upon a citizen of the county with no estate the county or corporation must pay costs unless the inquest is upon a convict in the penitentiary, where the State must pay; but where the inquest is upon a citizen with estate the estate of the deceased must pay, and where upon a stranger without estate the State will pay upon proper certification as required by statute.

Sec. **3950**. See report of Attorney General Anderson, 1902, page 72, where the opinion is expressed that under this section the fee provided for is for cases where an inquest is held.

Sec. **3960**. See report of Attorney General Anderson, 1904, page 21, where the opinion is expressed that under this section fees of a bail commissioner are not required to be paid out of the State treasury.

Sec. **3976**. See report of Attorney General Anderson, 1902, page 41, where the opinion is expressed that this section is constitutional.

Sec. **3987**. See report of Attorney General Williams, 1913, page 67, where the opinion is expressed that under this section the expenses incurred may not be charges under Section 4087.

Sec. **4025**. See report of Attorney General Anderson, 1902, page 57, where the opinion is expressed that this section does not provide for payment out of treasury of the board of the sheriff or his deputies when a jury is kept together.

Sec. **4042**. See report of Attorney General Anderson, 1906, page 80, where the opinion is expressed that under this section it is error on an indictment under Section 3671 to find a defendant guilty of unlawful assault and yet impose for it the punishment of a felony.

Sec. **4046a**. See report of Attorney General Anderson, 1909, page 79, where the opinion is expressed that under this section convicts whose aggregate terms exceed five years may not be sentenced by a judge to serve on the roads.

Sec. **4049**. See report of Attorney General Anderson, 1907, page 77, where the opinion is expressed that this section does not preclude the inclusion of the costs of the jury under Section 4049.

Sec. **4051**. See report of Attorney General Williams, 1910, page 44, where the opinion is expressed that where under this section sentence has been suspended the superintendent of the penitentiary may not electrocute as provided by 1908 Acts, Ch. 398.

See report of Attorney General Williams, 1910, page 47, where the opinion is expressed that under this section where death sentence is suspended no action as provided for by 1908 Acts, Ch. 398, can be taken.

Sec. **4052**. See report of Attorney General Anderson, 1902, page 43, where the opinion is expressed that this section does not provide for an appeal from the judgment of a justice of the peace.

Sec. **4075**. See report of Attorney General Anderson, 1908, page 46, where the opinion is expressed that this section is unaffected by any subsequent legislation relating to jail prisoners.

See report of Attorney General Anderson, 1908, page 46, where the opinion is expressed that this section is not repealed by 1908 Acts, Ch. 354.

Sec. **4083**. See report of Attorney General Williams, 1913, page 73, where the opinion is expressed that under this section a sheriff in executing a writ of venire facias under the order of a court for a venire out of the county may not be paid out of the State Treasury.

Sec. **4087**. See report of Attorney General Williams, 1913, page 67, where the opinion is expressed that under this section charges under Section 3987 cannot be charged.

See report of Attorney General Williams, 1913, page 67, where the opinion is expressed that under this section witnesses before a grand jury are required to be paid by the Commonwealth under Section 3584.

See report of Attorney General Anderson, 1906, page 19, where the opinion is expressed that under this section no provision is made for the remission by the governor of costs assessed against the estate of a convicted criminal.

See report of Attorney General Anderson, 1907, page 77, where the opinion is expressed that under this section the costs of a jury in criminal prosecutions is included, nor is this affected by Section 4049.

See report of Attorney General Anderson, 1908, page 36, where the opinion is expressed that under this section costs in a criminal proceeding are collectible in the same mode as a fine.

See report of Attorney General Anderson, 1908, page 36, where the opinion is expressed that under this section the Commonwealth's attorney must see that the judgment is docketed on the judgment lien book of his county.

Sec. **4099**. See report of Attorney General Anderson, 1908, page 13, where the opinion is expressed that this is the only section which permits a penalty upon a recognizance or forfeited bail bond to be remitted.

Sec. **1106**. See report of Attorney General Anderson, 1902, page 43, where the opinion is expressed that this section gives to circuit and corporation courts complete jurisdiction of revenue cases.

Sec. **4107**. See report of Attorney General Anderson, 1902, page 43, where the opinion is expressed that this section does not provide for an appeal from the judgment of a justice of the peace.

Sec. **4113**. See report of Attorney General Anderson, 1905, page 18, where the opinion is expressed that under this section the board of directors of the penitentiary acting with the approval of the governor may refuse to receive into the penitentiary from any jail a person sentenced to the penitentiary upon notice in writing from the surgeon of the penitentiary that he was reliably informed that a contagious disease existed in the jail or locality in which the jail was situated.

Sec. **4120a**. See report of Attorney General Anderson, 1908, page 47, where the opinion is expressed that under this section the superintendent of the penitentiary may in a proper case require the sheriff of a county or the constable of a corporation to deliver a felon condemned to death to a designated railroad station.

Sec. **1123**. See report of Attorney General Anderson, 1908, page 45, where the conflict of this section and Section 1682 is considered.

See report of Attorney General Anderson, 1906, page 26, where the opinion is expressed that under this section the governor is given no authority to have a convict suspected of being insane sent to an asylum, but can merely have him brought before the circuit court for trial therefor.

Sec. **1144**. See report of Attorney General Montague, 1898, page 18, where the opinion is expressed as to the meaning of "term of imprisonment" as used in this section.

See report of Attorney General Anderson, 1906, page 61, where the opinion is expressed that under this section convicts on the road forces are included.

See report of Attorney General Montague, 1898, page 18, where the opinion is expressed that under this section the superintendent must keep a record of the conduct of each prisoner, which shall be the sole evidence used by the board in the absence of false or erroneous entries.

Sec. **4154**. See report of Attorney General Anderson, 1906, page 25, where the opinion is expressed that under this section the board is, under certain circumstances, empowered to purchase real estate.

Sec. **4163**. See report of Attorney General Anderson, 1904, page 15, where the opinion is expressed that this section was not repealed by 1902-03-04 Acts, page 685.

Sec. **4172**. See report of Attorney General Anderson, 1902, page 55, where the opinion is expressed that this section does not appear to limit the power of the superintendent of the penitentiary acting with the concurrence of the governor, either as to terms upon which, or time for which a contract for hire of convicts may be made.

Sec. **4173b(5)**. See report of Attorney General Williams, 1912, page 57, where the opinion is expressed that under this section the question as to what is to be paid out of the earnings of the State Farm is one for the sound discretion of the penitentiary board.

Sec. **4179**. See report of Attorney General Williams, 1913, page 72, where the opinion is expressed that under this section the attorney for the Commonwealth of the city of Richmond is entitled to the fees provided by Section 3527.

See report of Attorney General Williams, 1912, page 33, where the opinion is expressed that under this section a convict working on the road force who kills one of the guards in a county may be tried there or in Richmond—which ever first assumes jurisdiction.

Sec. **4197**. See report of Attorney General Anderson, 1905, page 40, where the opinion is expressed that this is the only section limiting a sheriff's right to a reward.

Sec. **4198**. See report of Attorney General Montague, 1899, page 26, where the opinion is expressed that under this section the governor can pardon negro upon condition that he serve a given time in the Virginia Manual Labor School.

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### TAX BILL.

Sec. **8** Tax Bill. See report of Attorney General Anderson, 1909, page 95, where the opinion is expressed that under this section deposits are taxed as on February first of each year and *not* the aggregate deposits for the preceding year.

Sec. **10** Tax Bill. See report of Attorney General Anderson, 1909, page 28, where the opinion is expressed as to how far foreign consuls are liable to the income tax under this section.

See report of Attorney General Anderson, 1906, page 35, where the opinion is expressed that under this section the weight of authority though not certain holds that the income of federal officers may not be taxed.

See report of Attorney General Anderson, 1907, page 36, where the opinion is expressed that under this section the salaries of federal officers cannot be taxed.

See report of Attorney General Williams, 1911, page 31, where the opinion is expressed that under this section the income of a retired United States officer is not taxable.

Sec. **12** Tax Bill. See report of Attorney General Williams, 1910, page 27, where the opinion is expressed that under this section a tax should be charged for the administration of the estate of a deceased pensioner except where granted to a sheriff without assets other than the pension claim.

Sec. **13** Tax Bill. See report of Attorney General Williams, 1912, page 45, where an opinion is expressed as to what constitutes a contract under this section.

See report of Attorney General Williams, 1911, page 34, where the opinion is expressed that under this section the mortgage providing for security of payment of one sum by a note and further security by another sum, the tax should be assessed on the total amount.

See report of Attorney General Williams, 1911, page 32, where the opinion is expressed that under this section a tax should be levied on a deed conveying both school and other property notwithstanding Section 590.

See report of Attorney General Anderson, 1908, page 37, where the opinion is expressed that under this section the graduated tax should not be imposed upon the recordation of a contract for lease of lands, or for hire of personal property.

See report of Attorney General Anderson, 1902, page 97, where the opinion is expressed that under this section contracts in form of merger or consolidation, but which operate as a conveyance of property of granting company to grantee company, are subject to recordation tax provided for in this section.

See report of Attorney General Anderson, 1902, page 70, where the opinion is expressed that this section permits taxation of an instrument though it be cumulative security upon a similar conveyance when offered for recordation.

See report of Attorney General Anderson, 1909, page 62, where the opinion is expressed that a mortgage on property other than railroad or internal improvement property is to be assessed according to the value of the obligation secured even though it lies partly in another State.

See report of Attorney General Williams, 1910, page 31, where the opinion is expressed under this section as to proper valuation for purposes of taxation.

See report of Attorney General Anderson, 1909, page 63, where the opinion is expressed that an agreement evidencing a conditional sale is a "deed" within this section.

See report of Attorney General Anderson, 1909, page 68, where the opinion is expressed that under this section a tax may be assessed upon a deed to the United States of land in Virginia.

See report of Attorney General Williams, 1912, page 43, where an opinion is expressed under this section as to the tax on charitable gift to the University of Virginia.

See report of Attorney General Williams, 1912, page 37, where the opinion is expressed that under this section the clerk's fee for recordation is to be fixed by the value fixed by the parties.

Sec. **14** Tax Bill. See report of Attorney General Williams, 1912, page 43, where the opinion is expressed that under this section the tax is prescribed for the proceeding under Section 2905.



See report of Attorney General Anderson, 1902, page 55, where the opinion is expressed that under clause 2 of this section a tax of \$3.00 should be charged and collected by the clerk on every writ of error, whether civil or criminal.

See report of Attorney General Anderson, 1902, page 71, where the opinion is expressed that under this section the tax on suits is due and payable at moment of commencement and in case of fifteen days' notice is due when notice is filed in clerk's office.

**Sec. 16 Tax Bill.** See report of Attorney General Anderson, 1906, page 89, where the opinion is expressed that under this section, under the federal statutes, no charge may be made for affixing a seal to naturalization papers. See, also, opinion of Attorney General Anderson in report of 1906, page 90, and in report of 1907, page 75.

**Sec. 19 Tax Bill.** See report of Attorney General Anderson, 1902, page 33, where the opinion is expressed that under this section the property mentioned is that which the State Corporation Commission is required to assess.

See report of Attorney General Anderson, 1902, page 34, where the opinion is expressed that under this section the legislature or the State Corporation Commission may impose such additional penalties as may be just and reasonable in order to secure prompt compliance with its provisions.

**Sec. 23 Tax Bill.** See report of Attorney General Williams, 1910, page 59, where the opinion is expressed that under this section a tax must be paid for premiums for re-insurance.

See report of Attorney General Williams, 1910, page 42, where the opinion is expressed that under this section a surety company is taxable upon "federal business" done in this State.

**Sec. 28 Tax Bill.** See report of Attorney General Anderson, 1908, page 79, where the opinion is expressed that under this section commissioners of revenue are entitled to no compensation for assessing railroad property.

See report of Attorney General Anderson, 1908, page 44, where the opinion is expressed that under this section the tax year is from June 30th to June 30th.

**Sec. 39 Tax Bill.** See report of Attorney General Anderson, 1904, page 20, where the opinion is expressed that under this section if one corporation is merged in and absorbed by another, there will be a charter fee if the capital stock be increased based on the amount of the increase as provided for.

**Sec. 41 Tax Bill.** See report of Attorney General Anderson, 1908, page 43, where an opinion is expressed under this section as to the right of the State to collect a franchise tax from receiver of a bankrupt corporation.

See report of Attorney General Anderson, 1906, page 32, where the opinion is expressed that under this section the corporation commission may accept the belated reports and assess the unassessed registration fee for the preceding two years if only two years have elapsed and not two years plus ninety days.

**Sec. 42 Tax Bill.** See report of Attorney General Anderson, 1906, page 32, where the opinion is expressed that under this section a distinct penalty for failure to report as required by Section 41 Tax Bill is provided for.

Sec. **43** Tax Bill. See report of Attorney General Williams, 1913, page 82, where the opinion is expressed that under this section building and loan associations are taxable.

Sec. **44** Tax Bill. See report of Attorney General Anderson, 1909, page 82, where the opinion is expressed that under this section as between the remaindermen and others the collateral inheritance tax should be paid by the first taker.

See report of Attorney General Williams, 1912, page 38, where an opinion is expressed as to the procedure under this section.

Sec. **44a** Tax Bill. See report of Attorney General Anderson, 1906, page 82, where the opinion is expressed that under this section "lineal descendant" does not include bastards.

Sec. **50** Tax Bill. See report of Attorney General Montague, 1899, page 12, where the opinion is expressed under this section as to what constitutes peddling.

Sec. **51** Tax Bill. See report of Attorney General Anderson, 1907, page 35, where the opinion is expressed that under this section apple cider is a "farm product."

See report of Attorney General Anderson, 1902, page 65, where the opinion is expressed that this section provides for tax on peddler and is broad enough to cover hucksters.

Sec. **52** Tax Bill. See report of Attorney General Anderson, 1902, page 52, where the opinion is expressed that under this section the patentee, himself, if a citizen of the United States, may personally sell the right to manufacture or use of machinery or other thing patented without paying license tax. However, if sale is to be made by agents or assignee of patent license tax required by these sections must be paid.

Sec. **63** Tax Bill. See report of Attorney General Anderson, 1902, page 46, where the opinion is expressed that this section imposes a tax of one-fourth of one per centum without qualification on real estate auctioneers who should be assessed by commissioner of revenue.

Sec. **64** Tax Bill. See report of Attorney General Anderson, 1902, page 66, where the opinion is expressed that under this section commercial brokers such as are required to pay a tax are such as represent and sell only goods of Virginia merchants, millers, etc.

Sec. **78** Tax Bill. See report of Attorney General Anderson, 1906, page 34, where the opinion is expressed that under this section a private banker's capital is not exempted from taxation.

Sec. **81** Tax Bill. See report of Attorney General Williams, 1910, page 32, where opinion is expressed that under this section a company selling coal in Richmond on account of the shipper is within this section.

Sec. **95** Tax Bill. See report of Attorney General Williams, 1910, page 26, where an opinion is expressed as to the amount of taxes to be paid under this section.

Sec. **97** Tax Bill. See report of Attorney General Williams, 1912, page 36, where the opinion is expressed that under this section the license confers no authority to sell goods on Sunday by one having a merchant's license.

See report of Attorney General Anderson, 1908, page 85, where the opinion is expressed that under this section, a place at which oysters are served and eaten is an "eating house."

Sec. **100** Tax Bill. See report of Attorney General Williams, 1910, page 25, where the opinion is expressed that under this section a Y. M. C. A. exempted from taxation under Section 183 of the Constitution is exempted from a license tax on pool and billiard tables.

See report of Attorney General Williams, 1910, page 25, where the opinion is expressed that under this section social clubs which keep a billiard or billiard tables, pool tables, etc., at their club for the use of their members whether a charge for use thereof is made or not must pay a license tax on the same.

Sec. **121** Tax Bill. See report of Attorney General Anderson, 1908, page 76, where the opinion is expressed that under this section agents soliciting for a firm out of this State for enlarging pictures may not be taxed.

Sec. **139** Tax Bill. See report of Attorney General Williams, 1912, page 27, where the opinion is expressed that this section is constitutional, although the title thereof refers to the original act and fails to make any reference to the amendment.

Sec. **144** Tax Bill. See report of Attorney General Williams, 1912, page 39, where an opinion is expressed as to procedure under this section.

## TABLE.

*Showing a consecutive list of such Acts of a general and permanent nature passed at the sessions of 1906, 1908, 1910, 1912 and 1914 as have been construed by Attorneys General, together with a brief digest of the construction placed thereon.*

### ACTS OF 1906.

#### Chap. 48, Acts 1906.

See report of Attorney General Anderson, 1909, page 20, where the opinion is expressed that under this section the duty of establishing a hospital in Amherst county is mandatory.

See report of Attorney General Anderson, 1909, page 24, where the opinion is expressed that Act is constitutional both prior and subsequent to its amendment.

See report of Attorney General Anderson, 1908, page 24, where opinion is expressed that under this section the State takes the property subject to an express trust.

#### Chap. 52, Acts 1906.

See report of Attorney General Williams, 1912, page 60, where the opinion is expressed that under this Act the clerk in making up the list shall include municipal taxes for a town, as provided by Section 469.

See report of Attorney General Williams, 1912, page 60, where the opinion is expressed that under this section in accordance with Section 469 State taxes and municipal taxes extended on the land books will be found and upon these taxes and levies the clerk should calculate the interest and include the same in the list.

#### Chap. 59, Acts 1906.

See report of Attorney General Anderson, 1906, page 63, where the opinion is expressed that the cost of maintenance of prisoners under this section is provided for by 1906 Acts, Chapter 74, Clauses 3, 5, and 14.

#### Chap. 73, Acts 1906.

See report of Attorney General Anderson, 1906, page 58, where the opinion is expressed that under Sections 9 and 10 of this act a *part* of a highway may be improved.

#### Chap. 74, Acts 1906.

See report of Attorney General Anderson, 1908, page 46, where the opinion is expressed that this Act does not provide for any sentence to work on public roads in lieu of jail sentence.

See report of Attorney General Williams, 1912, page 57, where the opinion is expressed that under this Act that where a convict is killed while attempting to escape from the road force, the expense of the coroner's inquest is to be paid by the superintendent of the penitentiary.

(3) See report of Attorney General Williams, 1913, page 71, where the opinion is expressed that under this section the duties imposed upon the judge are mandatory.

See report of Attorney General Williams, 1913, page 71, where the opinion is expressed that under this section no city or town has the right to work upon the local chain gang any person confined in a jail for a misdemeanor or other violation of State law where there has been a demand made by the superintendent of the penitentiary for the delivery of such person to the State convict road force.

See report of Attorney General Anderson, 1906, page 63, where the opinion is expressed that under this section, the cost of maintenance of prisoners committed under 1906 Acts, Chapter 59 is provided for.

(10) See report of Attorney General Anderson, 1906, page 58, where the opinion is expressed as to the necessary procedure under this section.

(11) See report of Attorney General Anderson, 1906, page 61, where the opinion is expressed that convicts utilized under this section may be clothed in the distinctive uniform required of convicts.

#### **Chap. 107, Acts 1906.**

See report of Attorney General Anderson, 1906, page 54, where an opinion is expressed as to the constitutionality of this Act.

#### **Chap. 112, Acts 1906.**

See report of Attorney General Anderson, 1909, page 75, where the opinion is expressed that under this act subject to certain special provisions relating to insurance companies, such corporations are subject to the general corporation laws of the State.

See report of Attorney General Anderson, 1906, page 50, where the opinion is expressed that under this section no special provision is made for the valuation of the preliminary term method of policy, but that the valuation of one-year term contracts should be made from the year of issue, and on the basis of the contract at the time without the consideration of the one-year term.

See report of Attorney General Anderson, 1906, page 50, where the opinion is expressed that under this Act where insurance companies are required to make report of reserves to the bureau of insurance they may be required to use the American table of mortality with four per cent. interest.

#### **[CHAPTER I (5).]**

See report of Attorney General Williams, 1913, page 70, where the opinion is expressed that under this section, and not by the auditor, the amount to be paid to the Bureau of Insurance is determined.

#### **[CHAPTER I (28, 29 and 30).]**

See report of Attorney General Anderson, 1906, page 48, where the opinion is expressed that the Act is constitutional.

#### **[CHAPTER I (29).]**

See report of Attorney General Anderson, 1906, page 57, where the opinion is expressed that under this Act the cost of printing for the Commissioner

of Insurance is payable out of the funds assessed on the insurance companies by Section 29, nor is there anything in Section 5 inconsistent with such a conclusion.

[CHAPTER II (1).]

See report of Attorney General Anderson, 1906, page 49, where an opinion is expressed under this section as to what is a business, "including any of the features or principles of insurance."

[CHAPTER II (14).]

See report of Attorney General Anderson, 1906, page 52, where the opinion is expressed that under this Act the contract set forth is one which is within the exception to the section and therefore requires no deposit with the State.

[CHAPTER II (14).]

See report of Attorney General Anderson, 1906, page 51, where the opinion is expressed that this Act repeals by implication Section 1271a of the Code thereby requiring a marine insurance company to make a deposit with the State treasurer.

[CHAPTER II (39).]

See report of Attorney General Williams, 1910, page 42, where the opinion is expressed that this section does not *require* insurance policies to be printed in a certain size of type.

CHAPTER V.

See report of Attorney General Anderson, 1912, page 49, where the opinion is expressed that under this Act the term casualty applies only to insurance on persons and not on stock of any kind.

[CHAPTER V (1).]

See report of Attorney General Anderson, 1909, page 73, where the opinion is expressed as to what under this section constitutes a fraternal beneficial association.

[CHAPTER VIII AND CHAPTER V (4 and 7).]

See report of Attorney General Anderson, 1906, page 51, where the opinion is expressed that under this Act deposits of surety companies made in this State are to be classed as "special."

[CHAPTER VIII (28).]

See report of Attorney General Anderson, 1907, page 30, where the opinion is expressed that under this section, the governor may refuse to accept a bond unless evidence is furnished that the penalty of such bond does not exceed ten percentum of the paid-up capital plus the surplus and undivided profits of the surety company.

**Chap. 155, Acts 1906.**

See report of Attorney General Anderson, 1906, page 44, where the opinion is expressed that this section includes the whole legislation upon the subject of loans by district boards for the erection and equipment of school-houses, and is in no way in conflict with Chapter 255, Acts 1906.

**Chap. 221, Acts 1906 (21).**

See report of Attorney General Williams, 1910, page 28, where the opinion is expressed that under this section where one city consolidates with another the commissions received by the treasurer of the newly consolidated city are the same for the uncollected funds as would have been received by the former treasurer.

**Chap. 252, Acts 1906.**

See report of Attorney General Anderson, 1906, page 43, where the opinion is expressed that under this section cities are not included.

See report of Attorney General Anderson, 1906, page 44, where the opinion is expressed that this section is in no way in conflict with Chapter 255, Acts 1906.

See report of Attorney General Williams, 1913, page 78, where the opinion is expressed that under this section no loan can be made on property conveyed to revert to grantor if the land ceases to be used for school purposes.

See report of Attorney General Anderson, 1908, page 41, where the opinion is expressed that under this section no authority is conferred upon the board of education to make a loan of any of the securities in which the literary fund is invested.

See report of Attorney General Williams, 1910, page 40, where the opinion is expressed that under this section an unencumbered fee simple is a condition precedent to a loan by the State Board of Education.

See report of Attorney General Anderson, 1909, page 52, where the opinion is expressed that under this section no loan should be made from the literary fund unless the title to the land is gotten in the manner the law requires.

See report of Attorney General Williams, 1911, page 40, where the opinion is expressed that under this section the district school board must have title below the surface of the land.

See report of Attorney General Williams, 1910, page 36, where the opinion is expressed that under this Act bonds given are not taxable.

**Chap. 255, Acts 1906.**

See report of Attorney General Anderson, 1906, page 86, where the opinion is expressed that under this Act bonds so issued are subject both to State and local taxation.

**ACTS OF 1908.****Chap. 2, Acts 1908.**

See report of Attorney General Anderson, 1908, page 29, where the opinion is expressed that under this section the status of Hampton is dubious.

**Chap. 28, Acts 1908.**

See report of Attorney General Anderson, 1908, page 46, where the opinion is expressed that this Act does not provide for any sentence to work on public roads in lieu of jail sentence.

**Chap. 70, Acts 1908.**

See report of Attorney General Williams, 1912, page 58, where the opinion is expressed that under this section the roads are to be constructed under the

advice and supervision of the State Highway Commissioner and the engineer recommended by him, and not merely by the local authorities alone.

**Chap. 76, Acts 1908.**

See report of Attorney General Anderson, 1908, page 83, where the opinion is expressed that under this section money paid by individuals into the public treasury will be received as a part of the amount raised by the local authorities.

See report of Attorney General Anderson, 1909, page 97, where the opinion is expressed that under this section, the county does not lose its right to participate in the State fund appropriated by this section until March 1st in the year in which the default is made.

See report of Attorney General Anderson, 1908, page 83, where the opinion is expressed that this section does not *bind* the State to furnish aid.

**Chap. 175, Acts 1908.**

See report of Attorney General Williams, 1910, page 27, where the opinion is expressed that a clerk can charge no fee under this section of a personal representative who qualifies before the clerk to collect the funeral expense benefits of a deceased pensioner.

**Chap. 181, Acts 1908.**

See report of Attorney General Anderson, 1909, page 74, where the opinion is expressed that under this section a fire company must be chartered and organized prior to October 31st, and the required certificate be filed with the Commissioner of Insurance on or before that date to participate in the fund to be paid in within ninety days of December 31st.

**Chap. 188, Acts 1908.**

See report of Attorney General Anderson, 1908, page 36, where the opinion is expressed that under this Act auditing need not be until *after* payment.

See report of Attorney General Williams, 1913, page 87, where opinion is expressed that this section does not control as to appointments of assistants to the dairy and food commissioner, but 1910 Acts, Chapter 151, does.

(15) See report of Attorney General Anderson, 1908, page 76, where the opinion is expressed that under this section the fees charged are not a tax, but an inspection fee.

See report of Attorney General Anderson, 1908, page 52, where the opinion is expressed that under this section wheat bran is a "concentrated commercial feeding stuff."

See report of Attorney General Anderson, 1908, page 54, where the opinion is expressed that under this section a license fee required annually of a manufacturer, dealer, or agent for each and every condimental patented, proprietary trade mark, stock or poultry foods and condition powders cannot be abated.

**Chap. 189, Acts 1908.**

(5) See report of Attorney General Anderson, 1908, page 87, where the opinion is expressed that under this section a sale of liquor without a license or in local option territory even by a trustee under legal process is prohibited.



(11) See report of Attorney General Anderson, 1909, page 66, where the opinion is expressed that under this section a license to sell in Newport News does not confer authority to sell in Norfolk.

(14) See report of Attorney General Williams, 1910, page 30, where the opinion is expressed that under this section coloring matter may not be used in cider.

(15) See report of Attorney General Anderson, 1909, page 66, where the opinion is expressed that this Act does not discriminate between the residents and non-residents.

See report of Attorney General Anderson, 1909, page 66, where the opinion is expressed that under this section a license to maintain a "distributing or storing warehouse" does not confer the power to sell, although liquors theretofore sold may be shipped.

(19e) See report of Attorney General Williams, 1910, page 64, where an opinion is expressed under this section as to the meaning of "barroom."

(23½) See report of Attorney General Anderson, 1908, page 79, where doubts are expressed as to whether this section is constitutional.

#### **Chap. 276, Acts 1908.**

See report of Attorney General Anderson, 1908, page 48, where the opinion is expressed that under this Act printing done for the State Board of Charities must be paid for out of its fund.

(8 and 16) See report of Attorney General Williams, 1910, page 28, where the opinion is expressed that this act does not authorize either the governor under Section 48 of the Constitution to direct, or the Board of Charities to make any investigation in regard to the manner in which the board of directors of the penitentiary shall exercise the functions, powers and discretion in regard to the management of the penitentiary.

(14) See report of Attorney General Anderson, 1908, page 49, where the opinion is expressed that this section is only applicable to *public* institutions.

#### **Chap. 301, Acts 1908.**

See report of Attorney General Williams, 1910, page 67, where the opinion is expressed that children doing outdoor work at a factory are not within the prohibition of this section.

See report of Attorney General Williams, 1911, page 45, where the opinion is expressed that under this section children may do work at home, though it be factory work.

See report of Attorney General Anderson, 1909, page 100, where the opinion is expressed that under this section a cannery is a factory.

See report of Attorney General Williams, 1912, page 52, where the opinion is expressed that under this section children in the country or in towns of less than 2,000 inhabitants are exempted if working in stores but not if in factories, mercantile establishments, mines and workshops.

#### **Chap. 313, Acts 1908.**

See report of Attorney General Anderson, 1908, page 33, where opinion is expressed that under this Act the question as to whether a person has applied in time is for the executive discretion of the board of education.

See report of Attorney General Anderson, 1908, page 32, where the opinion is expressed that under this section a person receiving such a pension is not prevented from teaching in a private kindergarten.

**Chap. 354, Acts 1908.**

See report of Attorney General Anderson, 1908, page 84, where the opinion is expressed that under this section neither courts nor justices are empowered to sentence persons convicted of misdemeanors, or for default in payment of fine, to work on the roads.

See report of Attorney General Anderson, 1908, page 46, where the opinion is expressed that this Act does not repeal Section 4075.

**Chap. 372, Acts 1908.**

See report of Attorney General Williams, 1913, page 87, where the opinion is expressed that this section does not control as to the appointment of assistants to the dairy and food commissioner, but 1910 Acts, Chapter 151 does.

**Chap. 398, Acts 1908.**

See report of Attorney General Anderson, 1908, page 47, where the opinion is expressed that under this Act authorities of the penitentiary must provide an adequate guard to prevent the escape of any felon under sentence of death.

See report of Attorney General Anderson, 1908, page 47, where the opinion is expressed that under this Act the provisions of Section 4120a apply.

See report of Attorney General Williams, 1910, page 47, where the opinion is expressed that under this section no proceedings can be taken under Section 4051.

See report of Attorney General Williams, 1910, page 44, where the opinion is expressed that under this Act the superintendent of the penitentiary may not electrocute a man whose sentence has been suspended under Section 4051.

See report of Attorney General Williams, 1910, page 69, where the opinion is expressed that this section limits Section 1778.

**ACTS OF 1910.**

**Chap. 14, Acts 1910.**

See report of Attorney General Williams, 1913, page 80, where the opinion is expressed that under this Act a justice of the peace has no right to require the prepayment of fees where a *prima facie* case is made out.

**Chap. 151, Acts 1910.**

See report of Attorney General Williams, 1913, page 87, where the opinion is expressed that this Act controls as to appointment of assistants to the dairy and food commissioner.

**Chap. 155, Acts 1910.**

See report of Attorney General Williams, 1912, page 51, where the opinion is expressed that under this Act only one fee of one dollar can be charged.

**Chap. 217, Acts 1910.**

See report of Attorney General Williams, 1910, page 46, where the opinion is expressed as to computation of time under this section.

**Chap. 229, Acts 1910.**

(8) See report of Attorney General Williams, 1910, page 51, where an opinion is expressed under this section as to construction of "room."

**Chap. 286, Acts 1910.**

See report of Attorney General Williams, 1912, page 55, where an opinion is expressed under this Act as to procedure in prosecution, chiefly under Section 532.

**Chap. 326, Acts 1910.**

(3a). See report of Attorney General Williams, 1911, page 43, where the opinion is expressed that under this section no authority is conferred to sell automobiles.

(3b). See report of Attorney General Williams, 1911, page 43, where the opinion is expressed that under this section the license must be paid annually.

(10). See report of Attorney General Williams, 1913, page 55, where the opinion is expressed that under this Act a person is entitled to only two periods to run his automobile in this State, and each period not to exceed a week.

See report of Attorney General Williams, 1912, page 25, where the opinion is expressed that under this section the governor is not empowered to exempt the members of the United States Embassy Staff from the payment of automobile taxes.

(19½) See report of Attorney General Williams, 1910, page 29, where an opinion is expressed as to collection and disposition of taxes under this section.

**Chap. 343, Acts 1910.**

See report of Attorney General Williams, 1910, page 22, where the opinion is expressed that under this Act and Section 73 of the Constitution there is nothing to prevent the Commission of Fisheries from calling on the governor to aid in carrying out the law.

**ACTS OF 1912.****Chap. 112, Acts 1912 (Ch. VIII), Sec. 26.**

See report of Attorney General Anderson, 1909, page 73, where the opinion is expressed that under this section it is not necessary that powers of attorney given by surety companies should be recorded in the several courts where bonds may be executed thereunder.

**Chap. 181, Acts 1912 (23 and 24).**

See report of Attorney General Williams, 1912, page 50, where the opinion is expressed that under this section the cost of printing these blanks is to be paid out of the fund of the board of health as prescribed in Section 24.

**Chap. 223, Acts 1912.**

See report of Attorney General Williams, 1912, page 40, where the opinion is expressed that this Act is unconstitutional.

**Chap. 295, Acts 1912.**

(2) See report of Attorney General Williams, 1913, page 89, where the opinion is expressed that this section does not repeal a special act applicable to Newport News (1897-8 Acts, p. 452).

**ACTS OF 1914.****Chap. 170, Acts 1914.**

See report of Attorney General Williams, 1913, page 92, where the opinion is expressed that under this section the treasurer of the institution may pay for stenographic services rendered in an investigation of the institution by the Board of Charities and Corrections.

See report of Attorney General Williams, 1913, page 94, where the opinion is expressed that under this Act costs in a suit against the directors of this institution for maintaining a nuisance may be paid out of the treasury of the institution.

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