

ANNUAL REPORT

OF THE

ATTORNEY GENERAL

TO THE

GOVERNOR OF VIRGINIA

FOR THE

YEAR 1918

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RICHMOND:  
DAVIS BOTTOM, SUPERINTENDENT PUBLIC PRINTING  
1919



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# ATTORNEYS GENERAL OF VIRGINIA.

*From 1775 to 1918*

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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.....	1852-1857
JOHN RANDOLPH TUCKER.....	1857-1865
THOMAS RUSSELL BOWDEN.....	1865-1869
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.....	1914-1918
*J. D. HANK, JR.....	1918
JNO. R. SAUNDERS.....	1918

## Office of the Attorney General.

JNO. R. SAUNDERS.....	<i>Attorney General</i>
J. D. HANK, JR.*.....	<i>Assistant Attorney General</i>
LEON M. BAZILE†.....	<i>Law Assistant</i>
F. B. RICHARDSON.....	<i>Law Assistant</i>
ELISE S. FITZWILSON.....	<i>Secretary</i>

\*Hon. J. D. Hank, Jr., was appointed Attorney General on January 5, 1918, to fill the unexpired term of Hon. Jno. Garland Pollard.

†Mr. Leon M. Bazile, was appointed Assistant Attorney General on January 5, 1918, to succeed Hon. J. D. Hank, Jr.

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# REPORT

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COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, January 1, 1919.

*His Excellency, WESTMORELAND DAVIS,*  
*Governor of Virginia,*  
*Richmond, Va.*

SIR:

I beg leave, as is required by law, to submit the following report of the work of this office for the year ending December 31, 1918.

While section 3205 of the Code of Virginia requires the Attorney General, on or before the 1st day of November in each year, to make a report of the state and condition of the several causes in which the Commonwealth is interested, and which are pending in the courts, I did not make this report as of the 1st day of November, 1918, because of the fact that the report submitted to the Governor by my predecessor, Hon. John Garland Pollard, embraced all matters in connection with this office up to and including January 1, 1917.

I have, therefore, embodied in this report the work of the office for the year beginning January 1, 1918, and expiring December 31, 1918.

Yours respectfully,

JOHN R. SAUNDERS,  
*Attorney General of Virginia.*

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

1. *Armour & Co. v. Commonwealth.* Merchant's license tax. In error from the Supreme Court of Appeals of Virginia. Decided in favor of the Commonwealth.
2. *Dalton Adding Machine Co. v. Commonwealth.* Non-resident corporation doing business in Virginia. In error from the Supreme Court of Appeals of Virginia. Decided in favor of the Commonwealth.
3. *General Railway Signal Co. v. Commonwealth of Virginia ex rel State Corporation Commission.* Non-resident corporation doing business in Virginia. In error from the Supreme Court of Appeals of Virginia. Decided in favor of the Commonwealth.
4. *Wise, Henry A., Trustee, et al, v. Commonwealth.* Taxation. From the Supreme Court of Appeals of Virginia. Application for writ of certiorari. Petition denied.

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

1. *Bragg, Talbot Darby, v. R. S. Weaver & H. Flippin.* Bill praying for injunction to restrain use of plaintiff's soil for repair of public highway. In error from the Supreme Court of Appeals of Virginia.
2. *Royster Guano Co. v. Commonwealth.* Erroneous assessment of taxes. In error from the Supreme Court of Appeals of Virginia.

3. *Virginia v. West Virginia*. On petition for mandamus against the General Assembly of West Virginia. The Supreme Court granted a rule against the members of the Senate and the House of Delegates of the State of West Virginia, which rule, the State of West Virginia and the other respondents moved to discharge, which motion the court took under advisement. No decision has been rendered at this time (January 1, 1919). See appendix in 1917 Annual Report of the Attorney General.

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

1. *Corn Products Refining Co. v. Benjamin L. Purcell, Dairy and Food Commissioner*. Injunction suit.

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

1. *Allen v. Commonwealth*. Larceny. From the hustings court of the city of Petersburg. Affirmed.

2. *Artrip v. Commonwealth*. Violation of the prohibition law. From the circuit court of Russell county. Reversed.

3. *Bowling v. Commonwealth*. Forfeited bail bond. From the circuit court of Floyd county. Reversed.

4. *Brooklyn Trust Co. v. Booker, Commissioner, etc.* Non-resident trustee. From the circuit court of Elizabeth City county. Reversed.

5. *Burton v. Commonwealth*. Violation of the prohibition law. From the circuit court of Northampton county. Reversed.

6. *Calas v. Commonwealth*. Violation of the prohibition law. From the hustings court of the city of Petersburg. Error confessed.

7. *Carter v. Commonwealth*. Violation of the prohibition law. From the circuit court of Wise county. Affirmed.

8. *Collins v. Commonwealth*. Violation of the prohibition law. From the circuit court of Wise county. Affirmed.

9. *Commonwealth v. The Tredegar Co.* Taxation. From the circuit court of the city of Richmond. Reversed.

10. *Corby Baking Co. v. Commonwealth*. Taxation. From the hustings court of the city of Richmond. Reversed.

11. *Derrick v. Commonwealth*. Engaging in business of civil engineer without license. From the circuit court of Lunenburg county. Reversed.

12. *Elliott's Knob, etc. Co. v. State Corporation Commission*. Assessment of registration fee of corporation. From the State Corporation Commission. Affirmed.

13. *Flippo v. Commonwealth*. Abuse of child. From the circuit court of Henrico county. Reversed.

14. *Gotlieb v. Commonwealth*. Violation of prohibition law. From the corporation court of the city of Norfolk. Error confessed.

15. *Green v. Commonwealth*. Murder. From the circuit court of Charles City county. Reversed.

16. *Harrison's Executor v. Commonwealth*. Taxation. From the circuit court of New Kent county. Affirmed.

17. *Hollywood Cemetery Co. v. Commonwealth*. Exemption of cemetery companies. From the hustings court of the city of Richmond. Affirmed.

18. *Kiser v. Commonwealth*. Felony. From the circuit court of Dickenson county. Error confessed.
19. *Lane v. Commonwealth*. Violation of the prohibition law. From the corporation court of the city of Hopewell. Reversed.
20. *Lucchesi v. Commonwealth*. Violation of prohibition law. From the hustings court of the city of Richmond. Affirmed.
21. *Main Street Bank v. Commonwealth*. Taxation. From the hustings court of the city of Richmond. Affirmed.
22. *Mullins v. Commonwealth*. Desertion. From the circuit court of Giles county. Error confessed.
23. *McCandish v. Commonwealth*. Soliciting laborers. From the circuit court of Buckingham county. Error confessed.
24. *Pettus v. Commonwealth*. Violation of the prohibition law. From the corporation court of the city of Roanoke. Affirmed.
25. *Posey v. Commonwealth*. Taxation. From the corporation court of the city of Roanoke. Affirmed.
26. *Riddleberger v. Commonwealth*. Seduction. From the circuit court of Shenandoah county. Reversed.
27. *Robertson, Taylor, Guardian, v. Commonwealth*. Taxation. From the corporation court of the city of Norfolk. Affirmed.
28. *Smith v. Virginia Home & Industrial School for Girls*. Delinquent girl. Habeas corpus submitted and petition denied.
29. *Southern Rwy. Co. v. Commonwealth*. Establishment of underpass at North Garden. From the State Corporation Commission. Affirmed.
30. *Stapleton v. Commonwealth*. Murder. From the circuit court of Scott county. Affirmed.
31. *Stuart's Executors v. Board of Sinking Fund Commissioners*. Public debt, unused bonds. From the circuit court of the city of Richmond. Reversed.
32. *Stuart v. Smith Courtney Co.* Contract for construction of Lime Grinding Plant at Staunton. From the circuit court of the city of Richmond. Affirmed.
33. *Spellman v. Commonwealth*. Fraudulent levy on goods and chattels. From the circuit court of Princess Anne county. Error confessed.
34. *Taylor v. Commonwealth*. Murder. From the circuit court of Fairfax county. Affirmed.
35. *Tomlin v. Commonwealth*. Violation of prohibition law. From the circuit court of Amherst county. Affirmed.
36. *Union Tanning Co. v. Commonwealth*. Taxation. From the circuit court of Giles county. Affirmed.
37. *Webb v. Commonwealth*. Larceny. From the circuit court of Giles county. Affirmed.
38. *Wilkerson v. Commonwealth*. Violation of the prohibition law. From the corporation court of the city of Norfolk. Affirmed.
39. *Wise, Trustee, v. Commonwealth*. Taxation. From the circuit court of the city of Williamsburg and county of James City. Affirmed.

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

1. *Ball v. Commonwealth*. Larceny. From the circuit court of Grayson county.
2. *Byrd v. Commonwealth*. Use of vulgar and abusive language. From the corporation court of the city of Hopewell.

3. *Cheatwood v. Commonwealth*. Murder. From the circuit court of Botetourt county.

4. *Commonwealth v. Bryan*. Violation of prohibition law. From the circuit court of the city of Harrisonburg.

5. *Commonwealth v. Smallwood Memorial Institute*. Taxation. From the circuit court of Surry county.

6. *Gottlieb v. Commonwealth*. Criminal assault. From the corporation court of the city of Norfolk.

7. *Hutzler, Henry, v. Commonwealth*. Taxation. From the circuit court of the city of Richmond.

8. *Irvine v. Commonwealth*. Sanitary regulations of office buildings. From the corporation court of the city of Norfolk.

9. *Karnes v. Commonwealth*. Murder. From the corporation court of the city of Richmond.

10. *Loyd Corporation v. Commonwealth*. Taxation. From the circuit court of Washington county.

11. *Lufty v. Commonwealth*. Criminal assault. From the circuit court of the city of Roanoke.

12. *Martin & White v. Commonwealth*. Violation of the prohibition law. From the corporation court of the city of Roanoke.

13. *McCoy v. Commonwealth*. Murder. From the circuit court of Dickenson county.

14. *Neal v. Commonwealth*. Violation of the prohibition law. From the circuit court of Lunenburg county.

15. *Perrow v. Commonwealth*. Illegal solicitation of labor. From the circuit court of Buckingham county.

16. *Pinkard v. Commonwealth*. Unlawful practice of medicine. From the corporation court of the city of Roanoke.

17. *Scruggs v. Commonwealth*. Murder. From the circuit court of the county of Campbell.

18. *Sickel v. Commonwealth*. Violation of the prohibition law. From the hustings court of the city of Richmond.

19. *Virginia-Western Power Co. v. Commonwealth, ex rel Lexington*. Regulation of public service corporations. From the State Corporation Commission.

20. *Virginia-Western Power Co. v. Commonwealth, ex rel Clifton Forge*. Regulation of public service corporations. From the State Corporation Commission.

21. *Virginia-Western Power Co. v. Commonwealth, ex rel Buena Vista*. Regulation of public service corporations. From the State Corporation Commission.

22. *Virginia-Western Power Co. v. Commonwealth, ex rel Covington*. Regulation of public service corporations. From the State Corporation Commission.

23. *Withers, et als v. Sallie V. Jones, et als*. Taxation. From the circuit court of the city of Richmond.

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

1. *Commonwealth v. Alvah H. Martin, Clerk of Norfolk county*. Recovery of excess fees. Affirmed.

2. *Easley v. Moore, Auditor*. Taxation. Affirmed.

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

1. *Commonwealth v. O. B. Thomas, Treasurer of Fluvanna Co., et als.* Official bond.
2. *Commonwealth v. G. P. Barr, Treasurer of Washington Co., et als.* Official bond.
3. *Commonwealth v. W. M. Gray and J. J. Geisler, Washington Co.* Official bond.
4. *Commonwealth v. O. D. Foster, Adm'rs R. D. Adams.* Official bond.
5. *Commonwealth v. A. D. Phillips, et als, sureties of Adams.* Official bond.
6. *Commonwealth v. D. Mott Robertson.* Official bond.

9. *Commonwealth ex rel Attorney General v. Virginia Railway & Power Co.*  
Taxation.

10. *Commonwealth ex rel Auditor v. A. M. Bowman, Jr., et als.* Official bond.
11. *Commonwealth v. Chesapeake & Ohio Railway Co.* Taxation.
12. *Commonwealth v. R. F. & P. Railroad Co.* Taxation.
13. *Commonwealth v. Southern Railway Co.* Taxation.
14. *Commonwealth v. A. C. L. Railway Co.* Taxation.
15. *Commonwealth v. S. A. L. Railway Co.* Taxation.
16. *Commonwealth v. Jas. V. Trehy.* Recovery of excess fees.
17. *Commonwealth v. Jno. T. Fitzpatrick, Treasurer of Nelson county.* Recovery of excess fees.
18. *Commonwealth v. W. B. Hamilton, Treasurer of Wise county.* Recovery of excess fees.
19. *Commonwealth v. John B. Evans, Sergeant of the city of Petersburg.* Recovery of excess fees.
20. *Commonwealth v. E. Thompson.* Recovery of excess fees.
21. *Commonwealth v. R. E. Glover, Sergeant of the city of Portsmouth.* Recovery of excess fees.
22. *Commonwealth v. J. F. Richmond* (settled).
23. *Commonwealth v. Bowman, et als., examiners of records.* Official bond.
24. *County of Westmoreland v. Md. Del. & Va. Ry. Co.* Taxation.
25. *Seaboard Air Line Railroad Co. v. State Corporation Commission.* Taxation.

**IN CHANCERY.**

1. *Commonwealth v. P. H. Huffman, et als.*
2. *Commonwealth v. Walter Milan.*
3. *Commonwealth v. Jas. Hilton's Adm.*
4. *Commonwealth v. F. J. Young.*
5. *Commonwealth v. A. A. Chapman.*
6. *Commonwealth v. B. Vandergrift, et als.*
7. *Commonwealth v. Sarah E. French.* Creditors bill.
8. *Commonwealth v. Illinois Surety Co.*
9. *Commonwealth v. Empire State Surety Co.*
10. *Commonwealth v. Empire State Surety Co.*
11. *Blue Ridge Overalls Co. v. State Penitentiary.*
12. *Talbot, Minton W., v. Commonwealth.*

**Cases Pending in the Hustings Court of the City of Richmond.**

1. *Arrington & Rose v. Commonwealth.* Taxation.

### **Cases Decided in the Law and Equity Court of the City of Richmond.**

1. *Glinn, Brooks P., v. Virginia Home & Industrial School for Girls, Inc.* Notice of motion on alleged rent contract. Decided in favor of the Commonwealth.

### **Other Cases Decided in Various Courts.**

1. *Tredegar Co. v. Commonwealth.* Taxation. From the circuit court of the city of Richmond. Heard before the local board of review. Decided in favor of the Commonwealth.

### **Portraits of Former Attorneys General Now in the Office of the Attorney General.**

Portrait of EDMUND RANDOLPH, first Attorney General of Virginia, 1776-1786. A copy made and loaned the office by Miss Emma Whitfield, artist, Richmond, Va.

Portrait of JOHN ROBERTSON, Attorney General, June 1819-1834. Loaned the Attorney General's office by the State Library Board.

Portrait of JOHN RANDOLPH TUCKER, Attorney General, 1857-1865. Presented by his son, Hon. Harry St. George Tucker.

Portrait of RALEIGH T. DANIEL, Attorney General, 1874-1877. Presented by his family.

Portrait of RUFUS A. AYRES, Attorney General, 1886-1890. Presented by his family.



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# OPINIONS

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## ADOPTION OF ADULT FEMALE BY ADULT MALE.

RICHMOND, VA., *January 14, 1918.*

S. ALTON RALPH, ESQ.,  
*Attorney-at-Law,*  
*White Plains, N. Y.*

DEAR SIR:

Acknowledgment is made of your letter of January 9, 1918, to the Attorney General, in which you say:

"May I ask the courtesy of your advice as to whether or not there is a legal proceeding in your State whereby an adult male may adopt as his sister an adult female, not related to him?"

The Virginia statute relating to this subject is chapter 186 of the Acts of 1906, Virginia Code, Volume 3, p. 659. This statute reads as follows:

"1. Be it enacted by the General Assembly of Virginia, That any inhabitant of this State not married or a husband and wife jointly may petition the circuit court of their county, or the corporation or circuit court of their city, for leave to adopt an adult person not their child by birth; but such petition shall set forth the reasons for such adoption, and shall be accompanied by a statement in writing signed by the person proposed to be adopted signifying his or her consent to such adoption.

2. If the court, upon consideration of the petition, shall be satisfied as to the fitness and propriety of such adoption, it shall make an order setting forth the facts and declaring that from that time such adult person, to all legal intents or purposes, is the son or daughter and heir at law of the person or persons filing such petition, as if such adopted son or daughter had been born to such adopted parents in lawful wedlock; and, if the petition shall so pray, the court may in such order provide for the change of the name of such adopted son or daughter; but on decease of such adopted parent and the subsequent decease of such adopted son or daughter without issue the property of such adopted parent still undisposed of shall descend to his or her next of kin and not to the next of kin of such adopted son or daughter.

No property which by any will, deed, or other writing would go to the child or heir of the person so adopting an adult shall go to such adopted adult, unless the absolute fee simple first vested in the person so adopting the adult. (1906, p. 310. In force June 13, 1906.)"

Yours very truly,  
LEON M. BAZILE,  
*Assistant Attorney General.*

## DISBURSEMENTS FROM FERTILIZER FUND.

RICHMOND, VA., January 17, 1918.

HON. W. W. SPROUL, *Secretary,*  
*State Board of Agriculture and Immigration,*  
*City.*

DEAR SIR:

Acknowledgment is made of your letter of January 17, 1918, in which you say:

"I have been directed by the State Board of Agriculture and Immigration to request your opinion on the following question with reference to the auditing and approval of the vouchers and accounts of the Department of Agriculture covering the disbursements from the Fertilizer Fund and the Feeding Stuffs Fund.

\* \* \* \* \*

I will appreciate it very much if you will advise me whether or not in view of the powers and duties conferred on the State Accountant under the Acts of 1910 and the change in the manner of handling the Fertilizer Fund embodied in the Acts of 1915 above referred to, the State Board of Agriculture is not relieved of the duty of auditing these accounts with which it was charged in the fertilizer law of 1908 and the feeding stuffs law of 1910."

As you say in your letter, section 5 of chapter 80 of the Acts of 1908 provides that the State Board of Agriculture and Immigration

"shall appoint an auditing committee to consist of three members which shall be charged with the duty of auditing the accounts of the department and shall report thereon to the board at a regular meeting of said board.

The board shall have control of all the funds of the department, and none of said funds shall be paid out except upon appropriations made at a regular meeting of the board."

By section 15 of chapter 140 of the Acts of 1915, amending the act regulating the sale and purity of commission fertilizers, it is provided:

"All monies collected under the provisions of this act shall be paid into the State treasury to the credit of the Department of Agriculture and Immigration, and held in a separate fund to be known as the 'fertilizer fund,' from which shall be appropriated by the General Assembly such sums as may be required for the carrying out of the provisions of this act, to be available as the money may be deposited in the treasury. The funds appropriated by the General Assembly as aforesaid shall be drawn from the State treasury by warrants issued by the Commissioner of Agriculture and Immigration, countersigned by the president of the Board of Agriculture and Immigration, upon the Auditor of Public Accounts, and said warrants shall state the general purposes for which said warrant is drawn, but the said Board of Agriculture and Immigration shall require and keep vouchers, giving in detail the purposes for which said payments were made, so that the State Accountant may be able to audit the expenditures of said board.

Any portion of the 'fertilizer fund' not otherwise appropriated may be appropriated and disbursed by the Board of Agriculture and Immigration, in accordance with the foregoing provisions of this act for the purpose of carrying on experiments with plants and fertilizers, and in carrying out the other purposes of this act."

It is provided by section 15-a, chapter 151, of the Acts of 1910, relating to the manufacture or sale of adulterated, misbranded, poisonous or deleterious stock and cattle feeds, as follows:

"All expenses incurred by the Dairy and Food Commissioner in the conduct of his office shall be paid by the Treasurer of the State out of the

fund to the credit of the Department of Agriculture, upon warrants drawn on the Auditor of Public Accounts by the Dairy and Food Commissioner, countersigned by the Commissioner of Agriculture, and which shall be approved and audited by the Board of Agriculture."

It will be seen from an examination of the above-quoted statutory provisions that the duty is placed on the State Board of Agriculture and Immigration to appoint an auditing committee, which committee shall be charged with the duty of auditing the accounts of the department which would include the fertilizer fund and the feeding stuffs fund, the accounts of which latter fund must be approved and audited by the Board of Agriculture.

By section 3 of chapter 156 of the Acts of 1910, Virginia Code, Volume 3, p. 893, it is made the duty of the State Accountant under the direction of the joint auditing committee

"to devise a modern, effective and uniform system of bookkeeping and accounting, comprehending:

(a) An efficient system of checks and balances between the officers at the seat of government and entrusted with the collection and receipt, custody and disbursement of the revenues of the State.

(b) A system of accounting applicable to the offices of the Auditor of Public Accounts, of the State Treasurer, of the Secretary of the Commonwealth, the Corporation Commission, the Second Auditor, the Commissioner of Agriculture, the Superintendent of Public Instruction, the State Highway Commission, Bureau of Insurance, the Register of the Land Office, the State Library and all other State offices now being or hereafter established at the seat of government, the Board of Fisheries and the Board of Sinking Fund Commissioners, which said system of accounting shall be suitable to the needs of these several offices and boards, considering their relation to each other and their relation to subordinate offices and officials."

It is provided by section 6 of the act that the officials mentioned in the above-quoted portion of the statute may be compelled to adopt such system of bookkeeping by mandamus proceedings if they refuse or neglect to adopt the same. It is provided that as the systems of bookkeeping prescribed for by the act shall be devised and promulgated that it shall be the duty of the State Accountant or his deputy "from time to time to inspect and scrutinize the accounts and vouchers of all State officers set forth in sections 3 and 4 of" the act. It is provided by section 9 of the act as follows:

"Such inspection shall be made without notice to the officials whose accounts are to be inspected, and it shall be the duty of the official whose books and accounts and vouchers are being inspected to produce such books, vouchers and accounts, and give the State Accountant or his deputy all necessary help and aid in making such inspection. Should any official fail to perform the requirements of this section he shall be guilty of a misdemeanor."

By section 11 of the act it is made the duty of the State Accountant to report any monies not properly accounted for or paid out contrary to law to the Auditor and the Governor.

As there is nothing in chapter 156 of the Acts of 1910 inconsistent with the above-quoted provisions of chapter 80 of the Acts of 1908 and chapter 151 of the Acts of 1910, I am of the opinion that the above-quoted provisions of the latter statutes are not repealed by chapter 156 of the Acts of 1910. The rule is well settled that the repeal of a statute by implication is never favored, and the presumption is always against the intention of repeal where express terms are not used,



and to sustain a repeal by implication there must be such a positive, plain and visible repugnancy between the provisions of the new law and the old that they cannot stand together or be consistently reconciled. There is no such repugnancy between the statutes here under consideration.

The fact that the books of the Department of Agriculture are subject to the inspection and audit of the State Accountant under the provisions of chapter 156 of the Acts of 1910, does not relieve the State Board of Agriculture of the duty of also auditing its accounts as provided for by law, as there is nothing inconsistent or repugnant between the duties placed on this board and those imposed on the State Accountant.

Yours very truly,  
LEON M. BAZILLE,  
*Assistant Attorney General.*

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#### REGISTRATION OF ANIMALS.

RICHMOND, VA., *October 31, 1918.*

MR. A. B. THORNHILL, *Acting Chairman,*  
*Dairy and Food Commission,*  
*Richmond, Va.*

DEAR SIR:

Acknowledgment is made of your letter in which you state that application has been made for the payment, at registered price, for reacting animals, but that the registration was made after tests were applied, and that registration certificates were secured after the death of the animals. You ask whether you have authority to pay for such animals at the price fixed by the statute for registered animals.

The statute allowing you to pay for registered reacting animals a greater amount than for animals never registered refers, in my opinion, to animals that were registered prior to the time the test is applied, and that, after the test has been applied and the animals have died, the securing of a certificate of registration will not entitle the owners of such animals to receive greater compensation than if the animals were not registered.

In accordance with your request, I am herewith returning the papers submitted to us by you.

Yours truly,  
J. D. HANK, JR.,  
*Assistant Attorney General.*

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#### USE OF APPROPRIATION FOR PRISONERS.

RICHMOND, VA., *June 5, 1918.*

MR. J. B. WOOD,  
*Superintendent State Penitentiary,*  
*Richmond, Va.*

MY DEAR SIR:

I have for acknowledgment your letter of May 31, 1918, in which you wish to be advised whether or not you are authorized to use any part of the appropriation

made in chapter 301, Acts of Assembly, 1918, found on page 474 of the said act. You ask particularly about paragraph 13, in which the appropriation is made.

From a very careful reading of this section, it was very plainly the intent of the legislature that the sum of \$25,000 was appropriated to be applied to the payment of the sums to which prisoners should be respectively entitled under the provisions of the act. To construe that a part of the \$5,000 mentioned in section 13 of the act could be used for the purpose of employing additional office force in carrying out the provisions of the act would be contrary to the plain meaning of the same. This part of section 13 provides

" \* \* \* and \$5,000, or so much thereof as may be necessary, shall be used in carrying out the provisions of this act *for the improvement of the sanitary and moral conditions* under which said prisoners are compelled to live."

It is very plain that the employment of additional office force could not be said to be for "the improvement of the *sanitary and moral* conditions under which the prisoners are compelled to live."

In view of the above, I am of the opinion that no part of the appropriation made in section 13 of said act is available for the purpose you mention.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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#### TRAVEL REGULATIONS.

RICHMOND, VA., July 27, 1918.

HON. C. LEE MOORE,  
*Auditor of Public Accounts,*  
*City.*

DEAR SIR:

I beg leave to acknowledge receipt of your letter enclosing a copy of "Travel Regulations."

You ask if, in my opinion, gratuities or tips can be paid out of the public funds appropriated for expenses in the absence of a statutory provision to that effect.

In reply, I will state that inasmuch as the law does not authorize the payment of such, I do not think the payment of gratuities and tips would be a legal charge upon the funds appropriated.

I realize that it is almost impossible now to obtain proper service without the payment of tips. At the same time, the legislature has not seen fit to make any provision for so doing.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## FUND TO BE CHARGED WITH REWARD OFFERED BY GOVERNOR.

RICHMOND, VA., *August 16, 1918.*

*His Excellency, HONORABLE WESTMORELAND DAVIS,*  
*Governor of Virginia,*  
*Richmond, Va.*

MY DEAR GOVERNOR:

You ask to be advised whether or not "rewards offered by the Governor for the apprehension and conviction of criminals can be paid under authority of section 767 instead of having to be defrayed out of the Civil Contingent Fund."

Section 767 provides as follows:

"For services rendered or expenses incurred in the arrest of a criminal, or about a criminal prosecution for which no particular provision is made by law, or for a sum on account of a list of insolvents, whether of taxes, militia fines, or other public dues, or any other account which it would have been legal to pay, \* \* \* ."

Section 218 of the Code of Virginia, which provides for the Civil Contingent Fund is as follows:

"Out of the sum annually appropriated as a civil contingent fund, there may be paid all expenses in the execution of any law for which there is no special appropriation, and any other sums which the Governor may deem necessary or proper. \* \* \* ."

While section 4197, which provides that the Governor may offer a reward for the apprehension and securing of any person convicted of an offense, or charged therewith, does not specify out of what fund this reward shall be paid, at the same time, it has been the custom for all Governors to use the Civil Contingent Fund for the payment of such rewards.

From the reading of section 767, it looks as if the legislature intended, by that section, to provide for the general expenses in connection with all criminal cases rather than that said fund should be used for the payment of any reward for the arrest of a criminal. The Auditor tells me that, owing to the increase in the fees of the officers by the last legislature whose duty will be to enforce the criminal laws of the State, the tax on this fund will be very much larger than heretofore, and it seems to have been the intent of the legislature to use this fund as stated above for the general expenses incident to the arrest, trial and conviction of criminals.

I believe it would be unwise, and I doubt the authority of the Governor, to use any portion of the fund provided for in this section for the payment of rewards offered by him for the arrest of criminals. I have discussed this with the Auditor, and he concurs with me in this opinion.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General of Virginia.*

## EXPENSES OF SECRETARY OF BOARD OF CHARITIES.

RICHMOND, VA., *September 27, 1918.*

DR. S. C. HATCHER, *Chairman,*  
State Board of Charities and Corrections,  
*Richmond, Va.*

DEAR SIR:

Acknowledgment is made of your letter of September 24, 1918, in which you state that the secretary of your board has been appointed by the Governor as a delegate to the National Prisoners' Congress, which meets in New York City on October 14th, and that your board considers it important that the secretary should attend this congress, in order that he may obtain information which you believe will be of great benefit to your board in the fulfillment of its duties. You ask whether or not you are authorized by law to pay the expenses of the secretary in this case.

The appropriation bill of 1918 sets aside \$6,700 for—among other things—the expenses of the administration of the State Board of Charities and Corrections. The act establishing the board, Acts of 1908, page 395, provides that the secretary shall be paid for his services “in addition to necessary traveling expenses.”

I am, therefore, of the opinion that the board is authorized to pay the expenses of your secretary to this congress, the board having determined that his attendance there will be for the furtherance of the splendid work which your board is doing, and, therefore, the payment of the expenses of the trip would come under “necessary traveling expenses.”

Yours truly,  
J. D. HANK, JR.,  
*Assistant Attorney General of Virginia.*

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REMISSION OF FORFEITED BAIL BONDS.RICHMOND, VA., *May 2, 1918.*

*His Excellency,* WESTMORELAND DAVIS,  
*Governor of Virginia,*  
*City.*

DEAR SIR:

I beg leave to acknowledge receipt of a letter from your secretary, Col. LeRoy Hodges, of April 29, 1918, in which letter he submits to me the following case for an opinion, namely: One Sam Palmer was bailed in the penalty of \$100.00 and one Wyllie Williamson became surety for his appearance at the June term of the corporation court of the city of Danville to answer a charge of burglary.

From the facts submitted in this case, it appears that at the June term of the court, the said Sam Palmer failed to appear, and at the October term, 1914, judgment was rendered against Wyllie Williamson for the amount of the recognizance, namely: \$100.00, and \$6.61 costs. Later, it appears that by the diligence of the said Wyllie Williamson, surety as aforesaid for Sam Palmer, he succeeded in bringing the said Sam Palmer before the court at a later date, who, after being arraigned and tried, was acquitted. You ask whether or not, under sections 738 to 743 inclusive,

of the Code of Virginia, you have the right to relieve said Wyllie Williamson of the payment of this amount of \$100.00.

Section 738 of the Code of Virginia reads as follows:

"The Governor shall have power, in his discretion, to remit, in whole or in part, fines and penalties, whether heretofore or hereafter imposed, in all cases of felony or misdemeanor, after conviction, except where judgment shall have been rendered against any person for contempt of court, for non-performance of or disobedience to some order, decree, or judgment of said court, or where the fine or penalty has been imposed by the State Corporation Commission, or where the prosecution has been carried on by the House of Delegates. \* \* \*"

Section 745 of the Code, reads as follows:

"Wherever the word 'fine' is used in this chapter, it shall be construed to include a pecuniary forfeiture, penalty and amercement."

The failure of Sam Palmer to appear at the term of court set for his trial forfeited his bond, and in my opinion, the forfeiture of a bail bond is certainly the same as the "pecuniary forfeiture" or penalty referred to in section 745. Such being the case, I am of the opinion that you have the right to relieve his surety, Wyllie Williamson, from the payment of the \$100.00.

Apart from all this, this seems to be a very just claim, inasmuch as all costs connected with this matter have been paid by Mr. Williamson, and the ends of justice were met when he brought back Sam Palmer for trial.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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FORFEITED BAIL BOND OF MRS. NEIGHBORS.

RICHMOND, VA., *October 30, 1918.*

*His Excellency, WESTMORELAND DAVIS,*  
*Governor of Virginia,*  
*Richmond, Virginia.*

DEAR GOVERNOR:

Acknowledgment is made of your letter of October 30, 1918, enclosing correspondence from the firm of McNutt & Walker, attorneys-at-law, Charlottesville, Va., to which is attached a petition asking certain relief for Mrs. E. V. Neighbors.

It appears from the petition that M. C. Thomas became surety for George Neighbors on July 9, 1915, in the penalty of \$500.00, conditioned upon the personal appearance of George Neighbors before the corporation court of the city of Charlottesville, on July 19, 1915; that in order that M. C. Thomas might be indemnified against any loss by reason of his becoming surety for George Neighbors, Mrs. E. V. Neighbors, mother of George Neighbors, deposited with M. C. Thomas the sum of \$500.00 in cash; that George Neighbors failed to appear before the said court on July 19, 1915, and that on September 30, 1915, the bail bond was ordered forfeited by the said court, and judgment was rendered against George Neighbors and M. C. Thomas, for \$500.00, the sum of \$500.00 being thereafter paid in court by M. C. Thomas.

It appears that George Neighbors was prevented from making his appearance

before the court by reason of the fact that he was confined in jail in the State of Kansas, but that on November 19, 1915, he was brought before the court, pleaded guilty, and was sentenced. It appears that the court entered an order on November 19, 1915, directing the clerk to hold the \$500.00 to be disposed of according to law, and to notify the Auditor that only \$200.00 should be collected by the Commonwealth under the circumstances.

The petitioner asks Your Excellency that the \$300.00 now in the hands of the clerk of the corporation court of the city of Charlottesville, be remitted to her.

There is no doubt in my mind that the Governor is permitted to remit fines, which is construed under section 745, so as to include a pecuniary forfeiture, such as this case presents, but if you will refer to section 738, as amended by Acts of Assembly 1908, found on p. 101, third volume, Pollard's Code, you will find that the second sentence of the act reads:

"But the provisions of sections 739, 740, 741, 743 of the Code of Virginia shall be complied with as a condition precedent to such action by the Governor."

It follows, therefore, that until the provisions set forth in section 738 have been complied with, no relief can be granted by Your Excellency. It appears also that the petition is presented in the name of Mrs. E. V. Neighbors, a person not appearing in the record in the case, the bond having been declared forfeited, and the penalty paid by M. C. Thomas.

If any procedure is to be taken for the remission of this fine, it appears to me that it should be done in the name of M. C. Thomas. I gather from the petition that the sum of \$300.00 is now in the hands of the clerk of the corporation court of the city of Charlottesville, and that it has not been paid into the treasury of the State and placed to the credit of the Literary Fund. If it has, I am of the opinion, following the opinion of two of the former attorneys general, that it cannot be recovered. I add this statement so that if it appears that the money has already been paid into the treasury of the State, you will know what action to take.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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ASSESSMENT OF BONDS OF EASTERN SHORE INS. CO. FOR OMITTED TAXES.

RICHMOND, VA., *November 27, 1918.*

GEO. L. DOUGHTY, JR., ESQ.,  
*Attorney-at-Law,*  
*Accomac, Va.*

DEAR SIR:

Acknowledgment is made of your letter enclosing copy of the letter received by you from John S. Waples, Examiner of Records for the 31st Judicial Circuit, all of which relate to the question of whether or not bonds secured by deed of trust belonging to the Eastern Shore Fire Insurance Company, Inc., should be assessed for omitted taxes for the years 1915, 1916, 1917.

I have just had a conference with Mr. Moore relating to this matter, and it is his view that such bonds are not taxable, in which view I concur. The authority for this is found in section 26 of the tax laws (as amended in 1915), which provides

that the real estate and *tangible* personal property shall be taxed at the same rate as other like property is taxed in this State. This section, of course, refers to the insurance business. The second paragraph, however, reads as follows:

"The license tax on gross premiums as provided in section 23 and the tax on real estate and tangible personal property herein provided to be paid by every person, partnership, company or corporation doing such an insurance business in this State, shall be in lieu of all other license fees, taxes or levies whatsoever for State, county, municipal or local purposes, which shall be construed to include their agents except that the certificate fee of one dollar required to be paid by all such agents to the Bureau of Insurance shall be paid by them as heretofore."

You will see from a reading of the above paragraph that it is provided therein that "such tax shall be in lieu of all other license fees, taxes or levies whatsoever, for State, county, municipal or local purposes."

Yours very truly,

F. B. RICHARDSON,

*Law Assistant.*

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BOND OF STATE TREASURER.

RICHMOND, VA., *January 14, 1918.*

HON. CHARLES A. JOHNSTON,  
*Christiansburg, Va.*

DEAR SIR:

Acknowledgment is made of your letter of recent date in which you call attention to the fact that you must give official bond in the sum of \$100,000 as State Treasurer of Virginia, and asking whether or not you can give two separate bonds of \$50,000 each.

Section 225 of the Code of Virginia provides that the penalty of the bond of the State Treasurer shall be \$100,000. I am of the opinion, therefore, that your bond as State Treasurer must be in the penalty of \$100,000, and that two bonds in the penalty of \$50,000 each would not meet the requirements of the statute.

Yours very truly,

J. D. HANK, JR.,

*Attorney General.*

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EMPLOYMENT OF CHILDREN IN CANNERIES.

RICHMOND, VA., *July 8, 1918.*

HON. C. G. KIZER, *Commissioner,*  
*Bureau of Labor and Industrial Statistics,*  
*Richmond, Virginia.*

MY DEAR SIR:

Acknowledgment is made of your letter of July 5, 1918, in which you ask whether or not the inspectors for your department would be justified in arresting proprietors

of canneries for not complying with the provisions of the Child Labor Law, this being chapter 204 of the Acts of 1918.

The second paragraph of section 1 of the act states that no child under the age of 14 years shall be employed, permitted or suffered to work in any factory, workshop, cannery, mercantile establishment, laundry, bakery, brick or lumber yard, theatre or place of amusement, nor shall any child under the age of 16 years be employed in any mine or quarry. However, section 6 of the act, which makes it a misdemeanor to violate the provisions of the act, does not use the word "cannery."

It is impossible to say whether it was the intention of the legislature to exclude canneries from the operation of the act, but, since the word "cannery" is not used in section 6, which carries the penalty for the violation of the act, I am of the opinion that the inspectors of your department will not be justified in arresting proprietors of canneries for not complying with the provisions of the law.

Yours very truly,

J. D. HANK, JR.,  
*Assistant Attorney General.*

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#### EMPLOYMENT OF OFFICE BOYS.

RICHMOND, VA., *July 9, 1918.*

HON. C. G. KIZER, *Commissioner,*  
*Bureau of Labor and Industrial Statistics,*  
*City.*

DEAR SIR:

Acknowledgment is made of your letter of July 8th, referring to chapter 204 of the Acts of 1918, known as the Child Labor Law, in which you wish to be advised whether or not a child under fourteen years of age would be permitted to work in the office of any industry mentioned in section 1 of the law, and whether or not children under fourteen years of age can be legally employed in railroad offices and in other offices connected with employment not mentioned in section 1, as office boy or errand boy. Paragraph 1 of the act reads as follows:

"On and after July 1, 1918, no child under the age of fourteen years shall be employed, permitted or suffered to work in any factory, workshop, cannery, mercantile establishment, laundry, bakery, brick or lumber yard, theatre or place of amusement, nor shall any child under the age of sixteen years be employed in any mine or quarry."

The word "office" is not mentioned in this section, and I am of the opinion that a child under fourteen years of age would be permitted to accept employment in the office of any of the industries mentioned in section 1 of the law.

The act seems not to apply to employment in any office, and my opinion is that children under fourteen years of age could be legally employed in railroad offices and in other offices not mentioned in section 1, as office boy or errand boy.

Yours very truly,

J. D. HANK, JR.,  
*Assistant Attorney General.*



## CHILDREN OF STOCKHOLDERS WORKING IN FACTORIES.

RICHMOND, VA., July 9, 1918.

HON. C. G. KIZER, *Commissioner,*  
*Bureau of Labor and Industrial Statistics,*  
*City.*

DEAR SIR:

Acknowledgment is made of your letter of July 8th, in which you desire a ruling on the second paragraph of section 6 of the Child Labor Law, which reads as follows:

"But nothing in this act shall prevent a parent from working his or her child in any factory, workshop, mercantile establishment or laundry or other place owned or operated by said parent."

You state in your letter that the parents contesting this law are stockholders, and as such, claim that they are owners within the provisions of the act, and that their children are permitted to work.

My opinion is that a stockholder in a corporation, unless he be the sole stockholder, is not such owner of the places mentioned in the act as would authorize the employment of children in any factory, workshop, mercantile establishment or laundry unless the proper certificates were furnished, as provided for in section 3.

The act reads, "owned or operated," so it would seem that it was contemplated by the legislature that the children of any person operating a factory, workshop, mercantile establishment or laundry would not be prevented from working his or her child under the provisions of the act.

However, I am unwilling to pass judgment on who is an operator under the provisions of the act, until some specific case arises calling for a construction of that particular word.

Yours very truly,

J. D. HANK, JR.,  
*Assistant Attorney General.*

## COMMITMENT OF PERSONS TO CITY FARM.

RICHMOND, VA., October 24, 1918.

DR. J. T. MASTIN., *Sec.,*  
*State Board of Charities and Corrections,*  
*Richmond, Va.*

MY DEAR DR. MASTIN:

I am in receipt of your letter in which you call my attention to chapter 404, Acts of Assembly, 1918, section 2, which makes provision for the commitment of any person convicted of being a prostitute, keeper or inmate of a house of ill fame, etc., to a city farm or hospital.

Section 4 of the said act provides that the State Board of Charities and Corrections shall report to the Governor all such persons who are convicted and confined in jails, and the Governor is authorized, with the consent of the farm board, to remove such persons from jails to city farms or other suitable institutions.

You ask whether or not it is necessary, in order to receive pay from the State for the keeping of prisoners described in this act, that they shall be reported by the

State Board of Charities and Corrections to the Governor, and be removed by the order of His Excellency, or whether or not persons committed directly to city farms or hospitals, under this act, are to be paid for out of the treasury of the Commonwealth without action by the Governor.

The law provides, as stated above, that any person convicted of the offenses described in this act shall not be fined, but shall be committed to a city farm or hospital, as, in the discretion of the court or justice, is deemed best; but, if there is no city farm or hospital in which such convicted person can be confined, such person shall be committed to a jail.

It would, therefore, appear from the reading of the act, that the State should pay for the keeping of such persons, whether committed directly to city farms or hospitals, or committed to jails and afterwards removed, by the order of the Governor. The only duty imposed upon the Governor by this act, as I see it, is that all persons confined in jails for such offenses can be removed by the Governor, with the consent of the farm board, to city farms or other suitable institutions.

Very truly yours,  
JNO. R. SAUNDERS,  
*Attorney General of Virginia.*

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#### LEGALITY OF CHANGE OF CITY CHARTERS BY LEGISLATURE.

RICHMOND, VA., *February 25, 1918.*

HON. JNO. W. WILLIAMS, *Clerk,*  
*House of Delegates,*  
*City.*

DEAR SIR:

Acknowledgment is made of the resolution of the House of Delegates, requesting my opinion on several questions relative to the legality of the change of city charters by the legislature. The resolution is in the following terms:

*"Resolved, by the House of Delegates, that we request an opinion from the Attorney General as to the legality of the various acts of the General Assembly for allowing the cities to change their forms of government under section 117 of the Constitution; the legality of allowing anybody other than an elected charter commission to propose the change, and his general recommendations as to legislative procedure; and more especially the policy of submitting a proposed law and declaring the result upon the vote at the polls, and further if a charter change proposed concerning a city also has a change of the form of government must it be submitted to the people under the general law."*

From reading the resolution, it will be seen that it is very vague and indefinite in its terms, and I am not sure that I understand precisely the questions you desire answered.

The first request made, namely: that I advise you as to the legality of the various acts of the General Assembly for allowing cities to change their form of government under section 117 of the Constitution, is, I understand from a conversation with a member of the House, limited to the legality of chapter 81 of the Acts of 1914 and chapter 74 of the Acts of 1916, which statutes provide for the changing of the form of government in cities having a population of over one hundred thousand, and in replying to this request, I have limited my reply to these two statutes.

I have examined the statutes with care, and am unable to detect any provision therein rendering the same invalid. Of course, you will appreciate the fact that it is difficult to answer a question as broad as this, as there are innumerable questions that may be raised as to the legality of a statute, and it is not always easy to detect every objection that may be raised against the same. The title to these acts, however, seem to be sufficient, and the general subject matter thereof, within the scope of the powers of the General Assembly.

Your second question is that I advise you as to the legality of allowing anybody other than an elected charter commission, to propose a change in a city charter. It is provided by section 117 of the Constitution that general laws for the organization and government of cities and towns shall be enacted by the General Assembly, and that no special act shall be passed in relation thereto except in the manner provided in Article 4 of the Constitution, and except also in the case of cities having more than five thousand inhabitants "as hereinafter provided." It is then provided by the second and third paragraphs of this section, as follows:

"Notwithstanding, however, anything in this article contained, the General Assembly may, by general or by special act (passed as prescribed in Article IV. of this Constitution), depart in any respect (except as otherwise in this section expressly provided) from the form of organization and government prescribed by this article for cities and towns, and may provide from time to time for the various cities and towns of the Commonwealth, such forms or forms of municipal government as the General Assembly may deem best; but no form or forms of government authorized by the second paragraph of this section shall become operative except as to such cities or towns as may thereafter adopt the same by a majority vote of its qualified electors at an election to be held as may be prescribed therefor by law. All the limitations on the powers of the councils of cities and towns imposed by this article shall apply in like manner to the principal legislative authority under any form of government which may be authorized hereunder. The term 'council,' as used in sections 125 and 127 of this Constitution, shall be construed to include the body which, under any form of municipal government, shall be vested with the principal legislative authority of such municipality.

"The General Assembly, for the purpose of this Article, may classify cities according to their population, but the maximum population prescribed for any class shall exceed the minimum for the same class by at least ten thousand. The General Assembly, at the request, made in manner which may be prescribed by law, of any city having a population of over fifty thousand inhabitants, may grant a special form of government for such city."

You will see that the second paragraph of section 117 of the Constitution authorizes the General Assembly, by general or by special act "passed as prescribed in Article Four of the Constitution" to depart in any respect except as otherwise in this section expressly provided, from the form of organization and government prescribed in this Article for cities and towns, and to provide from time to time for the various cities and towns of the Commonwealth, such form or forms of municipal government as the General Assembly may deem best.

This provision of the Constitution is qualified, however, by the provision that "no form or forms of government authorized by the second paragraph of this section shall become operative except as to such cities or towns as may thereafter adopt the same by majority vote of its qualified electors at an election to be held as may be prescribed therefor by law."

It is provided by the third paragraph of section 117 of the Constitution that the General Assembly, at the request made in the manner which may be prescribed

by law, of any city having a population of over fifty thousand inhabitants, may grant a special form of government for such city.

It will be seen from these provisions that the General Assembly is authorized to pass a general or special law providing for a change of the form of government of the cities and towns or of a particular city or town in the Commonwealth, which form, however, shall not become operative until ratified by a majority vote of the qualified electors of such cities and towns or city or town at an election to be held as prescribed therefor by laws. Under authority of this provision, the legislature may pass such an act of its own motion or at the suggestion of any person without limit, and I am of the opinion that the provision found in the third paragraph of section 117 was not intended to limit this provision of the second paragraph of section 117 of the Constitution, but was intended to furnish to cities with a population of over fifty thousand, a mode of changing their forms of government in addition to the remedy given by the second paragraph of this section of the Constitution.

Your third question is that I advise you as to the policy of submitting a proposed law and declaring the result upon the vote at the polls. As the policy of the General Assembly in enacting laws is exclusively a matter for the members thereof to determine, I must respectfully decline to advise you as to this question.

Your last question is that I advise you whether a charter change proposed concerning a city which also has a change in the form of government, must be submitted to the people under the general law. If there is a change under the provisions of paragraph two of section 117 of the Constitution, I am of the opinion that such change must be submitted to the people to be adopted or rejected by a majority vote of the qualified electors of the city or town affected thereby "at an election to be held as may be prescribed therefor by law." If, however, such change in the government of a city having a population of over fifty thousand is the result of a procedure under the third paragraph of section 117 of the Constitution, I am of the opinion that the law enacted by the General Assembly at the request of such city made in the manner prescribed by law, does not have to be referred back to the electors of such city for ratification.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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CITY INDEPENDENT OF COUNTY IN WHICH LOCATED.

RICHMOND, VA., *March 27, 1918.*

MR. JOS. E. AVENT,  
*Professor of Education,*  
*East Radford, Va.*

DEAR SIR:

Acknowledgment is made of your letter of March 17th, addressed to the Attorney General, in which you request him to advise you on several questions.

Your first question is:

"Is a city in Virginia in a county technically and legally, or is it independent of, and co-ordinate with, the county by which it is surrounded? For example, is Roanoke city legally and technically a part of Roanoke county, or is it absolutely independent of, and co-ordinate with, Roanoke county?"

While a city like Roanoke, for example, is physically within the county of Roanoke so far as its government is concerned, it is entirely independent of and a separate political division of the State from the county of Roanoke.

So far as I know, the only practical purpose for which a city is treated as being within a county by our laws, is under section 923 of the Code of Virginia, 1904, as amended, which authorizes a notary for a county to take acknowledgments in a city located within his county. As I have said, however, so far as the government of a county or city is concerned, they are two separate and distinct jurisdictions.

Your second question is:

"In filling out various questionnaires in which you put down the post office, county and State, should it be put down, post office Roanoke, county Roanoke, State of Virginia, or should it be put down, post office Roanoke, city Roanoke, State Virginia, leaving out the word 'county' absolutely in the second alternative?"

As the cities of Virginia are separate and distinct political divisions of the State from the counties, the proper address would be, post office, Roanoke city, State of Virginia.

Owing to the fact that the cities in most States are a part of the counties and not separate political divisions, most of the Federal papers, particularly bankruptcy petitions, provide for the name of the county as well as the name of the city. It is, therefore, customary in the Federal courts to place in the caption of papers: City of Richmond, County of Henrico, State of Virginia. The name of the county, however, is wholly unnecessary, and except for the custom in the Federal courts, would not be used.

Yours very truly,

LEON M. BAZILE,

*Law Assistant.*

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#### CHARTER FOR QUANTICO.

RICHMOND, VA., *October 7, 1918.*

*His Excellency, WESTMORELAND DAVIS,  
Governor of Virginia,  
Richmond, Va.*

MY DEAR GOVERNOR:

Acknowledgment is made of certain correspondence delivered to me relating to the conditions at Quantico, Va., which I have very carefully read.

I am of the opinion that the best solution of the matter is for the inhabitants of the town to apply to the circuit court of Prince William county for a charter for the town of Quantico.

The procedure required is very simple, all of which is governed by chapter 308, p. 552, Acts of Assembly, 1908, second paragraph of which was amended by chapter 372, p. 560 of the Acts of Assembly 1918. The circuit court has jurisdiction to incorporate towns when the number of inhabitants exceeds 200 and does not exceed 5000.

If the people of the town will at once take steps to have Quantico incorporated, they can be working under a town charter within a very short time, probably sixty days. While the proceedings for the incorporation of the town are pending, the

circuit court of Prince William county has authority to appoint additional justices of the peace and constables, which will take care of the situation until the town charter has been granted and its officers elected.

Section 97 of the Code provides that circuit courts may call an election for additional justices of the peace and that the court may appoint officers to serve until such additional officers are elected and qualified. By following the provisions contained in section 97 of the Code relating to the appointment of additional justices and constables, and by the inhabitants of the town applying for a charter under chapter 308, Acts of Assembly 1908, it appears to me to be the best solution of the conditions now existing there.

When conditions at Hopewell in 1915 were investigated by the Governor, it was a town of probably 20,000 inhabitants, and, of course, it could not have been incorporated by a circuit court, consequently the procedure followed in the early stages of Hopewell do not obtain in the case of Quantico, Quantico being within the limitations of chapter 308 of the Acts of 1908, relating to the population, which makes the handling of the situation very much easier and at less expense, and within a much shorter period of time.

If I can be of any further service to you in this regard, I shall be very glad to have you call on me.

Yours very truly,  
JNO. R. SAUNDERS,  
*Attorney General.*

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HARRISONBURG CITY OF SECOND CLASS.

RICHMOND, VA., *January 29, 1918.*

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

DEAR SIR:

Acknowledgment is made of your letter in which you state that, in the year 1916, the town of Harrisonburg, Va., became a city of the second class in accordance with the provisions of chapter 159 of Acts of 1916, pp. 314-321; and further stating that there were in office in the town of Harrisonburg at that time, a town treasurer and a town assessor, and the town treasurer and the town assessor became, in accordance with the provisions of said act, the treasurer and commissioner of revenue, respectively, of said city. You further enclose copies of the bonds executed by these officers, and continued by saying,

"The question upon which I, therefore, desire your opinion is if no treasurer and no commissioner of the revenue for the city of Harrisonburg were elected at the general election held last November, are the persons holding those offices on that date continued in office and properly bonded to the Commonwealth under the bonds executed by them, respectively, on the 18th of May, 1916 (copies of which are enclosed), or do vacancies exist which should be filled by the court and the appointees be required to qualify and execute the bonds, required by law, to the Commonwealth?"

Section 8 of the act referred to provides:

"At the next general election of State officers after the municipality is declared to be a city of the second class and succeeding the expiration of Tuesday after the first Monday in November, when similar officers are

the regular term of office of the existing municipal officers, to be held on the elected for other cities there shall be elected in such city a city treasurer, commissioner of the revenue \* \* \*."

It appears from the bonds and also from conversation I have just had with the clerk of the city in question, that the present treasurer and present commissioner of revenue were elected on the 9th day of June, 1914, for a term beginning September 1, 1914, and running for two years. Their regular term of office, therefore, ended September 1, 1916. The next general election of State officers, after the expiration of the regular term of office for which they had been elected, took place in November 1917, at which time there should have been elected for the city of Harrisonburg, a treasurer and a commissioner of revenue for the term of office beginning on the first day of January, 1918, and continuing for four years therefrom.

As neither a treasurer nor a commissioner of the revenue for said city was elected at the general election in 1917, the question arises as to the effect of the failure to elect such officers at that time.

Section 33 of the Constitution of Virginia provides:

"The terms of all officers elected under this Constitution shall begin on the first day of February next succeeding their election, unless otherwise provided in this Constitution. All officers, elected or appointed, shall continue to discharge the duties of their offices after their terms of service have expired until their successors have qualified."

Section 6 of chapter 159 of the Acts of Assembly, 1916, provides, among other things, as follows:

"\* \* \* All of the above mentioned officers (which includes treasurers and commissioners of revenue) shall serve until their successors are elected and qualified."

Therefore, the present treasurer and commissioner of revenue of the city of Harrisonburg, under the express provisions of the act, should serve as such until their successors are elected and qualified; and as the Constitution and act in question provide that an incumbent shall hold office until his successor is elected and qualified and upon the authority of the better considered cases, I am of the opinion that no vacancy exists in the offices of treasurer and commissioner of revenue of the city of Harrisonburg.

As to the bonds, I note they state that the terms of office expire on the 31st day of December, 1919. I am of the opinion that new bonds should be executed in conformity with the above expressed opinion.

Yours very truly,

J. D. HANK, JR.,  
*Attorney General.*

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PROSECUTION BY COMMONWEALTH'S ATTORNEY.

RICHMOND, VA., July 2, 1918.

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

DEAR SIR:

I have for acknowledgment a letter addressed to you from Hon. C. A. Woodrum, Commonwealth's Attorney of Roanoke City, in which he desires to know what cases

of misdemeanor he is required by law to prosecute, as contemplated in chapter 385 of the Acts of 1918. The act provides that

"For each person tried for a misdemeanor in his circuit or corporation court, \$5.00, and for each person prosecuted by him before any court or justice of his county or city for a misdemeanor, *which he is required by law to prosecute*, or upon an indictment found by a grand jury, he shall be paid \$5.00 unless the costs, including such fee, are paid by the defendant. \* \* \*"

I have examined very carefully the index to the Code, and to the two supplemental volumes of the Code, and I have failed to find any case in which a Commonwealth's Attorney is required by law to prosecute a misdemeanor before a justice of the peace.

However, there can be no objection to the Commonwealth's Attorney appearing before a justice of the peace in misdemeanor cases whenever he is required to do so, or the case is of sufficient public interest to demand his attention, and in such cases collecting a fee of \$5.00 whenever the same is taxed as a part of the costs and paid by the defendant, since the act provides that "in every misdemeanor case so prosecuted, the court or justice shall tax in the costs and enter judgment for such misdemeanor fees."

Yours very truly,  
JNO. R. SAUNDERS,  
*Attorney General.*

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COMPATIBILITY OF OFFICERS.

RICHMOND, VA., *September 21, 1918.*

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

DEAR SIR:

Acknowledgment is made of your letter of September 19th, in which you state that you have been elected a member of the Board of Directors of the Prison Association of Virginia, and ask if you can legally serve as such member while Secretary of the State Board of Charities and Corrections.

You call attention to the fact that the establishing of the State Board of Charities and Corrections, Acts of Assembly, 1908, p. 395, provides that

"No director, officer, or employee of an institution subject to the terms of this act, shall be appointed a member of such board."

There is nothing in this provision which would prevent you, as Secretary of the Board of Charities and Corrections being a member of the Prison Association of Virginia.

While not a director on the State Board of Charities and Corrections, I understand from you that you would not desire to accept a position on the board of other institutions which any member of the Board of Charities and Corrections would be barred from holding.

I find nothing in the act incorporating the Prison Association of Virginia, which bars you from acting as a member of the Board of Directors of the Prison Association



of Virginia, and I am therefore of the opinion that you can legally serve as such member and at the same time retain your position as Secretary of the State Board of Charities and Corrections.

Yours truly,

J. D. HANK, JR.,  
*Assistant Attorney General.*

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LICENSE FOR SALE OF FARM PRODUCE ON COMMISSION.

HON. G. W. KOINER,  
*Commissioner of Agriculture,*  
*City.*

DEAR SIR:

Acknowledgment is made of your letter of July 10, 1918, enclosing correspondence with J. P. Wescott, Chase & Bond, and Withers, Brown & Leigh, all of which relate to the provisions and requirements of the law in relation to the sale of farm products on commission, required under chapter 77 of the Acts of 1916. I will answer your questions in the order in which they appear in your letter.

It appears from the letter of J. P. Wescott, Nassawadox, Va., that he sometimes buys farm produce from merchants and at other times he allows the farmers to leave in his possession farm produce to be later disposed of, but no sale is effected by him until he has named a price to the farmer.

If these statements are true, I do not think that Mr. Wescott should be required to give bond and register under the provisions of chapter 77 of the Acts of 1916. However, he should be required to take out a regular merchant's license, and such articles as he buys from the various farmers should be included in the list of purchases for the year, and his license tax should be based on such purchases as set out in section 45 of the Virginia Tax Laws, as amended by Act of Assembly, 1916. If you find that Mr. Wescott accepts farmers' produce on a commission basis or on consignment, in such a way as he derives a commission on the selling price, then he comes under the provision of section 77 of the Acts of 1916, and should be required to pay a commission merchant's license. I agree with you that his way of doing business is rather unusual, and to some extent is unfair to the producer.

Section 48 of the Virginia Tax Laws, as amended by Acts of Assembly, 1915, provides that "every person, firm or corporation, buying or selling for another any kind of merchandise on commission, shall be a commission merchant." This quotation from the Virginia Tax Laws would seem to make the firm of Chase & Bond, commission merchants, and subject to the provisions of section 77 of the Acts of 1916. It appears that Chase & Bond solicit or buy potatoes for various merchants in New York, Philadelphia, Pittsburgh, etc., mark the same for shipment, and out of a commission charge of 8 per cent. charged by the persons to whom the farm produce is shipped, Chase & Bond receive a commission of 3 per cent. It does not appear whether or not returns are made direct to the various farmers who sell through Chase & Bond or whether the returns are made to Chase & Bond who, in turn, make payment to the various farmers from whom they buy. It is certain, however, that Chase & Bond receive a commission for buying, and I am of the opinion that they should conform with the requirements of section 77 of the Acts of Assembly, 1916, as well as section 48 of the Virginia Tax Laws.

Regarding commission merchants and brokers license, the various warehouses you mentioned, located at Danville, Va., should be required to comply with section

77 of the Acts of 1916 if they receive a commission from the sale of tobacco sold in their warehouses. The question of the sales being made "by a duly licensed auctioneer," does not relieve the warehouses from complying with the said section. The exception in the first paragraph of the act is intended to relieve the auctioneer and not the warehouse from the provision of the act. Licensed auctioneers for the sale of tobacco are required under the Virginia Tax Laws to take out a special tobacco auctioneers license, and the exception in chapter 77 of the Acts of 1916, is intended to apply to the auctioneer and not to the firm to whom such farm produce is consigned.

The letters you send me are herewith returned.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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#### DISPOSITION OF OIL WASHED ASHORE.

RICHMOND, VA., *September 25, 1918.*

*His Excellency, WESTMORELAND DAVIS,*  
*Governor of Virginia,*  
*Richmond, Va.*

DEAR SIR:

I acknowledge receipt of your letter of September 23, 1918, enclosing correspondence with W. D. Steelman and others, relating to certain quantities of oil washed ashore, which is supposed to be from the Brazilian vessel "Madrughada."

I take from the letters enclosed in your letter that portions of this oil have been taken into possession by fishermen and boatmen from five to seven miles at sea, and that other portions of the oil have been found on the shore.

The word "flotsam" is the term used which applies to goods found floating upon the sea. The definition recited in 19 Cyc. on p. 1080, reads as follows:

"Term applied to a ship which is sunk or otherwise perishes and the goods that float upon the sea, or the goods that are found noating on the waves."

The word "wreckage" is defined to be such goods as, after a shipwreck are cast upon land by the sea and left there, but they are not wrecked so long as they remain upon the sea in the jurisdiction of admiralty, and thus, none of the goods coming under the definition of "flotsam" can be called or deemed wrecks, so long as they remain on or in the sea.

The jurisdiction of admiralty extends to all vessels on the high seas and navigable waters within the United States, with the exception of government vessels, and likewise "flotsam" would come under the jurisdiction of admiralty. Only such articles as have been washed ashore and coming under the definition of the work "wreck" could be taken in charge by the Commissioner of Wrecks.

Chapter 88, beginning on p. 1008, Vol. 1 of the Code, deals with the duties of the Commissioner of Wrecks. I take it that his jurisdiction is confined only to such articles as have been washed ashore. Those found on the high seas or navigable waters of the State, come under the jurisdiction of admiralty.

It does not follow, however, that articles covered by the word "flotsam" become the property of fishermen and boatmen who find them on the high seas, because it has been held that no length of time will divest the owner of property found derelict upon the sea. It will be restored to the owner upon the payment of salvage according to the circumstances.

You will understand, of course, that this office has no jurisdiction to deal with the question any further than the State law on the subject which applies to the Commissioner of Wrecks.

Trusting that this will give you the information you desire, and assuring you of my willingness to be of further service to you in this matter if you find it necessary, I am,

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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OIL WASHED ASHORE IN NORTHAMPTON COUNTY.

RICHMOND, VA., *October 25, 1918.*

MR. BENJAMIN T. FISHER,  
*Eastville, Va.*

DEAR SIR:

Acknowledgment is made of your letter of October 19, 1918, writing further about certain quantities of oil which, you state, have been washed ashore in Northampton county.

In my letter of October 10, 1918, I referred you to sections 1938 to 1954, both inclusive, which set forth in full all of the law in Virginia relating to the question of wrecks. I cannot answer your letter more fully than to refer you again to these sections, and to add that the purpose of the passing of these statutes was to protect property which has been washed ashore until such time as the rightful owner, or his agent, may claim possession. You will, of course, understand that the Commissioner of Wrecks will have no authority to take possession of the property if the owner, or his agent, has previously taken possession of it.

Referring to the question of the oil which, you state in your letter, has been removed to Norfolk, the sale of which was stopped by the Continental Insurance Company and by the Government War Risk, I can only say that, if the property belongs to the United States Government and proper agents of the United States Government have come forward and taken possession of the property, you, of course, have no jurisdiction over the same.

We are not in a position to say what the proper amount of salvage would be on the 150 drums of oil, which, you state, is in the possession of Ballard Brothers. If you know who the owner of this oil is, and the owner and the party recovering the same can agree on reasonable salvage, I see no reason why the matter should not be adjusted that way.

As stated before, it seems to be the primary duty of the Commissioner of Wrecks to see that property which has been washed ashore is protected for the owner until such time when the owner shall claim the same and pay whatever reasonable charges there may be due for its recovery, including, of course, proper commission to the Commissioner of Wrecks, when he has taken such action in the matter as will entitle him to a commission.

You will understand, of course, that this letter, as well as was the letter of October 10, 1918, is written as a personal favor to you, and is, in no sense, official, since official opinions of the Attorney General can be required only by the various heads of departments at the seat of government.

Yours very truly,  
JNO. R. SAUNDERS,  
*Attorney General of Virginia.*

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#### EARNINGS OF CONVICTS.

RICHMOND, VA., *August 15, 1918.*

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

DEAR SIR:

As requested by yourself and Hon. J. B. Wood, Superintendent of the Virginia Penitentiary, I have examined the provisions of chapter 301, pages 475-476, Acts of Assembly of 1918, and it is my opinion, upon receipt of detailed statement showing the amount earned by each State convict at ten cents per day, you are authorized to draw a warrant on the Treasurer for that amount, payable out of the appropriation made by that act, for that purpose, to the order of the Superintendent of the Virginia Penitentiary, that he may, with the aid of the Board of Directors of that institution, carry out the provisions of said act.

Yours very truly,  
JNO. R. SAUNDERS,  
*Attorney General of Virginia.*

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#### WORKING OF CONVICTS.

RICHMOND, VA., *September 21, 1918.*

COL. LEROY HODGES,  
*Secretary to the Governor,*  
*Richmond, Va.*

DEAR MR. HODGES:

Your letter of September 16, 1918, addressed to the Attorney General, has been referred to me in his absence for reply.

I gather from your letter that the Governor desires to know whether or not he or the Superintendent of the Penitentiary, or either of them, have the power to assign convicts to work other than on the roads, which authority has been conferred by law.

You desire to know specifically whether or not the Governor or the Superintendent of the Penitentiary can assign convicts to work in agriculture during the period of the war.

I have examined all the statutes that I have been able to find relating to the question, and have not been able to find anything which would give the Governor or the Superintendent of the Penitentiary the authority to assign convicts to work in agriculture except at the State farm.

Chapter 236, found on page 213, Acts of Assembly, 1918, deals with the subject of convicts, which fails to mention that they may be used in agricultural work.

Yours very truly,

F. B. RICHARDSON,

*Law Assistant.*

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CORPORATIONS IN EMPLOY OF FEDERAL GOVERNMENT.

RICHMOND, VA., *April 12, 1918.*

HON. C. B. GARNETT, *Chairman,*  
*State Corporation Commission,*  
*Richmond, Va.*

DEAR SIR:

Acknowledgment is made of your letter of April 10th addressed to the Attorney General, which is as follows:

"The Commission desires your opinion on the following state of facts:

The Construction Company, a Delaware corporation, entered into a contract with the United States Government outside the State of Virginia for the construction of a dry dock within the Norfolk Navy Yard. Prior to this time the Construction Company had never transacted any business whatever in Virginia, nor had it subsequently transacted any such business except in the performance of this Government contract. The Government contract is being performed wholly within the limits of the Government Navy Yard, and the offices of the Construction Company are maintained wholly within the limits of the Yard.

Under these circumstances, is the Construction Company doing business within the State of Virginia within the meaning of sections 1104 and 1105 of the Virginia Code, and should such company be required to take out a license under said sections?"

The right of a State to place conditions upon foreign corporations, as a prerequisite to allowing such corporations to do business in the State, has been frequently a subject of review by the Supreme Court of the United States. As early as 1891, in the case of *Horn Silver Mining Co., v. New York*, 143 U. S., 305, 36 L. Ed., 164, the Supreme Court of the United States after stating in the clearest way the absolute power of the State, generally speaking, to exclude foreign corporations, said:

"Only two exceptions or qualifications have been attached to it in all the numerous adjudications in which the subject has been considered, since the judgment of this court was announced more than a half century ago in the *Bank of Augusta v. Earl*, 38 U. S. 13 Pet. 519 (10: 274). One of these qualifications is that the State cannot exclude from its limits a corporation engaged in interstate or foreign commerce, established by the decision in *Pensacola Teleg. Co. v. Western U. Teleg. Co.* 96 U. S. 1, 12 (24: 708, 711). The other limitation on the power of the State is, where the corporation is in the employ of the general government, an obvious exception, first stated, we think by the late Mr. Justice Bradley in *Stockton v. Baltimore & N. Y. R. Co.* 32 Fed. Rep. 9, 14. As that learned justice said: 'If Congress should employ a corporation of ship-builders to construct a man-of-war, they would have the right to purchase the necessary timber and iron in any State of the Union.' And this court, in citing this passage, added, 'without the permission and against the prohibition of the State.' *Pembina Con. S. Min. & Mill Co. v. Pennsylvania*, 125 U. S. 181, 186 (31: 650, 652)."

The two exceptions to the general rule set out above have been consistently recognized by the Supreme Court of the United States, and were reiterated in the concurring opinion of White, J., in the case of *Pullman Co. v. Kansas*, 216 U. S., 56, 54, L. Ed. (378-385, 1909), and have never been controverted so far as we know.

Applying this rule to the facts stated in your letter, it is evident that the company referred to by you is in the employ of the Federal Government, and therefore comes within the exception of the rule allowing a State to exclude foreign corporations save upon the fulfillment of such conditions as the State deems proper. It is manifest, therefore, that to construe the words "doing business," as contained in sections 1104 and 1105 of the Virginia Code, to apply to the corporation mentioned in your letter would be to place upon these sections a construction which would make them violate the Federal Constitution, and in the case of the *Dalton Adding Machine Co. v. the Commonwealth*, 118 Va., 563, the Supreme Court of Appeals of Virginia sustained the position that the statute must be so interpreted as not to conflict with the Federal Constitution.

It is too well established to admit of controversy that as the State has no right to exclude a corporation in the employ of the Federal Government, it has no right to place any condition upon its fulfilling that employment, and, of course, the requiring of a license tax would be the placing of a burden or condition upon such company which would be unconstitutional.

I am, therefore, of the opinion that the Construction Company referred to by you, is not such a corporation as comes within the meaning of sections 1104 and 1105 of the Virginia Code, nor is it such a corporation as can be required to take out a license as a condition precedent to the transaction of the business referred to by you in your letter.

Yours very truly,

J. D. HANK, Jr.,  
*Assistant Attorney General.*

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#### REFUND OF TAXES.

RICHMOND, VA., June 20, 1918.

HON. C. B. GARNETT, *Chairman,*  
*State Corporation Commission,*  
*City.*

DEAR SIR:

I beg leave to acknowledge receipt of your favor of the 19th, in which you ask the question if the State Corporation Commission has authority to enter an order directing the Auditor of Public Accounts to make a refund of \$23.87 to the Phenix Fire Insurance Company of Paris, France.

You state in said letter, that, due to some delay, the certificate of authority authorizing this Company to do business in Virginia, was not issued until the 13th day of June, 1918.

As stated by you in your letter, section 23 of the Tax Bill provides that the license year on insurance companies shall expire on the 30th day of April of each year. The law further provides that this license tax shall be \$200.00 if the said license be for one year, otherwise the first year's tax should be such proportion of the whole tax as the space of time between the issuance of the license and the 30th of April following, bears to the whole year. It is very clear, therefore,

First: That this company, inasmuch as the authority to do business was not granted until the 13th day of June, will not have a full year for doing business in this State. Such being the case, they should not be charged the entire sum of \$200.00.

I think, under section 1313-a of the Code of Virginia, 1904, that the State Corporation Commission should certify these facts to the Auditor of Public Accounts, and upon such certification, the Auditor should refund the proportionate part of the tax due the Phenix Fire Insurance Company.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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FEE OF CORPORATION TO DECREASE CAPITAL STOCK.

RICHMOND, VA., June 25, 1918.

HON. C. B. GARNETT, *Chairman,*  
*State Corporation Commission,*  
*City.*

DEAR SIR:

I beg leave to acknowledge receipt of your letter in which you enclose a copy of your letter of May 12, 1917, to Hon. Jno. Garland Pollard, former Attorney General.

You state in that letter that the American Tobacco Company, which is a foreign corporation having an authorized capital stock of \$180,000,000 became domesticated in the State of Virginia when our law only required an entrance fee of \$600.00.

You further state that this company filed with your department a certificate of amendment whereby it sought to decrease its capital stock from \$180,000,000 to \$154,000,000.

Under the provisions of section 38-a of the present tax laws, the entrance fee for a corporation with so large a capital would now be \$5,000.00. You ask whether the filing of this certificate of amendment which decreases its capital stock, as stated above, requires this corporation to pay an additional fee, which fee, under the present law, would amount to \$4,400.00.

I am of the opinion that inasmuch as the American Tobacco Company is already domesticated in the State of Virginia, and has paid the entrance fee which, at the time of its entrance, was required under our law, and has continued to do business in this State, that the mere fact that it now seeks to amend its charter decreasing its capital stock, does not require it to pay an additional tax.

I think the law contemplates that where a charter of a corporation is amended, whereby its capital stock is increased, that then it should pay the additional fee based upon the amount of maximum capital stock to which it is increased.

As stated in your letter, if a corporation which has entered the State since the amendment of section 38-a, which materially increases the entrance fee, should file a certificate of amendment decreasing its stock, that would not subject it to the payment of an additional fee under the said section. Surely, then, it was not contemplated by the legislature that a corporation which is already licensed to do business in this State, and has paid such fees as the law required when it entered the State, could not be subjected to this additional tax when that corporation decreases its capital stock.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## EXEMPTION OF CORPORATIONS FROM PAYMENT OF TAXES.

RICHMOND, VA., June 27, 1918.

HON. HARRIS HART,  
*Superintendent of Public Instruction,*  
*City.*

MY DEAR SIR:

I beg leave to acknowledge receipt of your letter of June 24th, in which you enclose a statement made by Messrs. Wm. L. Keyser, counsel for the county school board of Page county, and R. S. Parks, counsel for the town of Luray, concerning certain taxes which they claim are due by Deford Company, Incorporated, to the town of Luray. I have read their statement very carefully, and am convinced that the position which they take in reference to this matter is correct.

They state that this corporation claims that they are exempt from the payment of these taxes on account of the act approved March 15, 1918, by the General Assembly of Virginia, which act became effective from its passage. I do not think that the provisions of this act in any way exempt them from the payment of these taxes. They cannot claim that the town is barred by the statute, for the reason that section 4 contains the following language:

"Nothing contained in this act shall operate to invalidate or defeat any assessment of property or income, or inheritance, or any suit or action for the collection of taxes, paid or commenced prior to the date on which this act shall become effective. \* \* \* \*

I understand from the facts contained in the statement furnished by Messrs. Keyser and Parks, that these taxes were assessed and completed in December, 1917, and that the tax bills were made out prior to the passage of this act. The mere fact that the tax bills were not delivered to the Deford Company, Incorporated, until April 10, 1918, certainly does not affect the situation because the statute says that nothing contained therein shall invalidate or defeat any assessment of property made or commenced prior to the date when said act became effective.

These gentlemen further state that the commissioner of the revenue assessed this property, and that the treasurer of the town of Luray made out his tax bills based upon the assessment which was made by the county commissioner of revenue. That, in my judgment, was right and proper because section 508 of the act approved March 15, 1918 (and upon which act the Deford Company, Inc., relies) provides that the commissioner of the revenue has the right to do this very thing.

I understand that the town of Luray has no assessor *per se*, but because of this fact there is no reason why the treasurer of the town has not the right to make out the tax bills against the tax payers of the town, based upon the assessment made by the commissioner of the revenue of the county.

I am, therefore, of the opinion that there is nothing in the contention of the Deford Company, Incorporated, against the payment of these taxes, and that the same should be paid by this corporation.

Yours very truly,  
JNO. R. SAUNDERS,  
*Attorney General.*



## PREREQUISITE FOR CORPORATIONS DOING BUSINESS IN VIRGINIA.

RICHMOND, VA., *June 28, 1918.*

HON. CHRISTOPHER B. GARNETT, *Chairman,*  
*State Corporation Commission,*  
*Richmond, Va.*

DEAR SIR:

Acknowledgment is made of your letter asking whether or not it is necessary for the Old Dominion Steamship Company, a foreign corporation, to comply with section 1104 of the Code of Virginia before doing business in this State. I am also advised that the Old Dominion Steamship Company is a public service corporation, as defined by the laws of the State of Virginia.

Section 1104, referred to by you, provides that *every* incorporated company shall comply with the first provision of the section, and that *every foreign* corporation shall comply with the other provisions contained in the said section. I find nothing in this section which distinguishes between the ordinary private corporation and a public service corporation, and it is the manifest intention of this statute that every foreign corporation, regardless of the character of its business, shall comply with the section, as a prerequisite to doing business in this State.

I am, therefore, of the opinion that it is necessary for the Old Dominion Steamship Company, before doing business in Virginia, to fulfill the requirements of section 1104 of the Virginia Code.

Yours truly,

J. D. HANK, JR.,  
*Assistant Attorney General.*

## PROPERTY DELINQUENT FOR NON-PAYMENT OF TAXES.

RICHMOND, VA., *October 10, 1918.*

S. L. WALTON, ESQ.,  
*Attorney-at-Law,*  
*Luray, Va.*

DEAR SIR:

Acknowledgment is made of your letter of October 4th, in which you state that the Shenandoah Furnace Company, Inc., of your county, closed out its business February 15, 1900, to the Empire Steel & Iron Company, except certain lots which you state had not been taxed for the past twenty years. You desire to know whether the undisposed of property of the corporation which has been out of business for twenty years, or more, escheats.

I do not think that the statute dealing with the subject of escheats is intended to refer to property belonging to a corporation. It would seem that these lots should have been returned delinquent for the non-payment of taxes, and if this has been done, the title would now vest in the Commonwealth or in some other person who purchased the lots at the treasurer's delinquent tax sale, whether the lots have been listed for taxation within the past twenty years or whether they have been returned delinquent. They are liable for such taxes as might be properly assessed against a corporation for franchise taxes, etc., under the opinion in the case of *Elliott's Knob, Iron, Steel & Coal Co. v. Commonwealth*, recently decided by the Supreme Court of Appeals of Virginia, and referred to in your letter.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## TAXES AGAINST UNION TANNING COMPANY AT NARROWS.

RICHMOND, VA., *October 23, 1918.*

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

MY DEAR SIR:

Referring again to the matter of the question as to where taxes should be assessed against the Union Tanning Company for the years 1917 and 1918, in view of the recent decision of the Supreme Court of this State, fixing Narrows, Giles county, Virginia, as the principal office of this corporation, I am constrained to believe that this must remain the principal place of business until it is changed by the intention and acts of the corporation, and that the mere fact that this corporation filed its interrogatories at Iron Gate for the years in question would not be sufficient to change its principal place of business; that, the domicile once being established, there must be some change which would go to show that Iron Gate is, in fact, its principal place of business in the State.

I understand that it is contended that the returns for these years made by the corporation do not include all of their property, and that there is a desire to assess them for omitted taxes, and it is necessary for you to determine the *situs* of taxation of this corporation for these years, in order to know upon which examiner falls the duty of reporting the omitted taxes for assessment, whether upon the examiner for Giles county or upon the examiner for Alleghany county.

I understand that Mr. Barley, examiner for Alleghany county, has made a careful and extensive investigation of the property of this corporation, and I feel that both he and Judge Mason are only desirous of protecting the interest of the State. I also feel that, in this case, it would be well for you to suggest to Judge Mason that he get in touch with Mr. Barley, and that the two co-operate in this matter, in order that the interest of the State may be subserved.

I feel that it would be unfortunate for Mr. Barley to be precluded from reporting any omitted taxes which he may know of, because the property is not assessable within his circuit, and, at the same time, for the State of Virginia to lose its taxes because of the want by Judge Mason of information which has been ferretted out by Mr. Barley. I would suggest, therefore, that you write Judge Mason, laying the matter before him, and recommending that he immediately get in touch with Mr. Barley so that these two gentlemen can co-operate in seeing that this company is properly assessed.

Yours truly,

J. D. HANK, JR.,  
*Assistant Attorney General of Virginia.*

## CHARTER FEE FOR CHARITABLE INSTITUTIONS.

RICHMOND, VA., *November 15, 1918.*

MR. R. T. WILSON, *Clerk,*  
*State Corporation Commission,*  
*Richmond, Va.*

DEAR SIR:

Acknowledgment is made of your letter of November 12, 1918, asking whether or not a charter fee of \$25.00, under the provisions of section 38 of the Tax Law, shall be required of a corporation organized for the following purposes:

"(c) PURPOSES. The purpose for which this corporation is formed is of a purely benevolent, charitable, educational, and religious nature; it being an organized effort to promote friendly intercourse among its members and their families; to promote education, virtue, morality, and good citizenship; to administer to the material wants of the needy; to encourage and cheer those who are distressed and in grief; and otherwise to perform acts of charity and benevolence among its members, their families, and neighbors. Such services, however, shall be performed by its members and the corporations as a whole without levying dues or assessments on the members of the said corporation, and in a purely voluntary manner on the part of the same."

I have given consideration to your views regarding the matter, but am of the opinion that no charter fee should be required of this corporation.

If you will examine the last clause of section 38 of the Tax Law, found on page 67 of the booklet of Tax Laws issued by the Auditor of Public Accounts, you will find that these words are used:

" \* \* \* and, provided, further, that no fee shall be imposed on corporations organized for religious, benevolent or literary purposes, or to conduct a purely charitable institution or institutions."

The purposes of the corporation seem to be purely of a charitable nature, and, in my opinion, come within the provision of the Tax Law exempting it from the charter fee provided for therein.

Very truly yours,

JNO. R. SAUNDERS,

*Attorney General.*

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#### COSTS FOR SUMMONING WITNESSES.

RICHMOND, VA., *January 14, 1918.*

HON. C. LEE MOORE,  
*Auditor of Public Accounts,*  
*City.*

DEAR SIR:

Acknowledgment is made of the letter of S. M. Bolling, clerk of the circuit court of Bedford county, to you and by you referred to me, in which letter Mr. Bolling asks:

"1. In taxing costs in a Commonwealth case, is it proper to include charges made by an individual, not an officer, for summoning witnesses in the case for the Commonwealth on instructions from the Commonwealth's Attorney, and on subpoenas issued by him, no memo. of the witnesses so summoned having been made in the clerk's office?

"2. Have witnesses so summoned a right to claim their attendance against the Commonwealth, to be paid out of the public treasury?"

Section 4091 of the Code of Virginia provides that in a criminal case a summons may be issued by the Attorney for the Commonwealth and refers to sections 3352 and 3356, from the reading of which sections it will be seen that a summons for a witness in such cases should be directed to an officer. I find no provision in the law for paying a private individual for serving a summons.

I am therefore of the opinion that charges made by an individual for serving such summons as referred to in the first question cannot be taxed as costs.

Answering your second question, section 3534 of the Code of Virginia provides that:

"All witnesses summoned for the Commonwealth shall be entitled to receive for each day's attendance, fifty cents," etc.

I am therefore of the opinion that regardless of whether the summons was served on the witness by an officer or a private individual, if he actually attended court in answer to the summons, he would be entitled to such fees as are provided by law for witnesses.

Yours very truly,

J. D. HANK, JR.,

*Attorney General.*

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FEES OF SHERIFF FOR SUMMONING WITNESSES.

RICHMOND, VA., *December 6, 1918.*

HON. J. COLEMAN PRIDDY,

*Keysville, Va.*

MY DEAR MR. PRIDDY:

Your letter of December 2d received. You ask my opinion as to what is the fee of a sheriff for summoning witnesses in civil cases.

If you will examine section 3508 of Pollard's Code, Vol. 4, p. 501, you will find this language:

"For serving on any person a declaration in ejectment or an order, notice, summons, or other process when the body is not taken and making return thereof, fifty cents, except the fee for summoning a witness or a garnishee on an attachment shall be thirty cents."

If you will examine this section as amended by the last legislature and found in the Acts of Assembly, 1918, p. 300, you will observe that the following, as contained in the above section, is left out: "Except the fee for summoning a witness or a garnishee on an attachment shall be thirty cents."

I am therefore of the opinion that the legislature intended to give the sheriff a fee of 50 cents for summoning a witness, and that he is entitled to that fee for so doing. Certainly that is not too much compensation, as it frequently happens that a sheriff has to go a long distance to summon witnesses in civil cases.

With regards of the writer, I am,

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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EXPENSES OF FELONY PROSECUTION.

RICHMOND, VA., *December 20, 1918.*

SAM'L. W. WILLIAMS, JR.,

*Commonwealth's Attorney,*

*Bland, Va.*

DEAR SIR:

Acknowledgment is made of your letter of December 18, 1918, asking the opinion of this office as to whether or not the defendant in a felony case is properly chargeable

with the costs expended in having the prisoner brought back to the State of Virginia from the State of Nebraska to which State he absconded after he had been indicted.

Section 487 of the Code provides that in every criminal case the clerk of the court in which the accused is convicted shall make up a statement of *all expenses incident to the prosecution*. It seems to me that the language of this statute is broad enough to cover the expenses of sending to Nebraska for the accused in the case you refer to.

I have been unable to find a case in which the same question has been raised, but certainly money expended by the Commonwealth in bringing back a prisoner, is incident to the prosecution. That is the view of this office.

Yours very truly,

F. B. RICHARDSON,  
*Law Assistant.*

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QUARANTINE OF HAY BY CROP PEST COMMISSION.

RICHMOND, VA., *January 14, 1918.*

W. J. SCHOENE, ESQ.,  
*State Entomologist,*  
*Blacksburg, Va.*

DEAR SIR:

Acknowledgment is made of your letter of January 9, 1918, in which you request an opinion regarding the authority delegated to the Crop Pest Commission by law. In your communication you say:

"Recently there has come to knowledge several important pests which are likely to be distributed or introduced into the State on merchandise other than nursery stock. There is for instance, a very serious pest known as the alfalfa weevil which is likely to be brought in in shipments of hay. Would you kindly let us know whether or not the Commission has authority under sections 1 and 2 to quarantine commodities other than nursery stock?"

From an examination of section 1790-a of the Code of Virginia 1904, I am of the opinion that the authority conferred upon the Crop Pest Commission does not extend to a quarantine of such articles as hay, which is neither nursery stock nor a plant, and I would, therefore, suggest that if you desire to have such articles placed under the power of quarantine conferred upon you by this section, that you have the same amended so as to cover such cases.

Yours very truly,

J. D. HANK, JR.,  
*Attorney General.*

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DEED FROM VALLEY TURNPIKE COMPANY.

RICHMOND, VA., *September 20, 1918.*

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

MY DEAR MR. COLEMAN:

I beg leave to acknowledge receipt of your letter, enclosing the deed from the Valley Turnpike Company to the Commonwealth of Virginia, dated the 31st day of August, 1918. You ask me to advise you whether or not this conveyance is

satisfactory, and also request that I will give you an outline of the acceptance of the same, which is to be forwarded to Hon. Harry F. Byrd.

The last legislature, by an act approved March 20, 1918, which is found in the Acts of Assembly, 1918, pages 633, 634 and 635, provided as to how the Valley Turnpike could be taken over by the State of Virginia. Section 5 provides that

"The Attorney General shall pass upon the legal effect of the resolutions, and the conveyance of the Valley Turnpike Company, as hereinbefore provided, and no conveyance as hereinbefore provided shall be accepted by the State Highway Commissioner except and until the Attorney General shall in writing give his opinion that the same is valid."

I have read the deed, which you enclosed to me, very carefully, and I would suggest the following:

First of all, the act provides that the Attorney General shall pass upon the legal effect of the resolutions, meaning, of course, the resolutions adopted by the directors and stockholders of the said Valley Turnpike Company. These resolutions have not been submitted to me, and, therefore, I am not prepared to express an opinion as to their validity. I would like to be furnished a certified copy of these resolutions.

The deed should be amended in the following particulars:

A copy of the resolutions, duly signed by the chairman and secretary of the meeting at which said resolutions were adopted, should be made a part of the deed, and recorded along with the same.

I do not think that the description of the property which is conveyed in the deed is clear and accurate, which it most certainly should be. The conveyance clause grants and conveys to the Commonwealth of Virginia all of the assets and property, real and personal and mixed, of the Valley Turnpike Company. It is my opinion that that should be more explicit.

The deed should distinctly convey so many miles of turnpike road, specifying the beginning, the terminus and the width; it should, likewise, specify the number of toll houses with a description of the real estate upon which said toll houses are located, and should furnish a description of all other real estate belonging to said Company. At the end of this specific description, there should be added all property of every kind and description, real, personal and mixed.

I also notice that, in the conveyance clause of said deed, there is this paragraph :

"to be received, held and used by the said Commonwealth of Virginia, upon the terms and conditions fully set forth in said act of the General Assembly of Virginia, approved March 20, 1918."

I do not see the need of that language, nor do I think the deed should contain the same, as it is the express intention of that act that, after the resolutions have been adopted by the stockholders and directors of the said Company, then the Company, by its duly authorized officers, shall convey this property to the State of Virginia in fee simple, without any terms, restrictions or conditions attached. In other words, the State takes over this property in fee simple.

I dislike to appear captious in this matter, but it is one in which the State cannot be too particular. The State of Virginia has had so much trouble in the location of the boundaries of its road beds and other property bought in connection with the purchase of toll roads, that it is extremely important that, so far as possible, the width of the road should be given, and that, as to all other real estate conveyed, including that upon which the toll houses are located, a specific description should be given.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General of Virginia.*

## DEED OF VALLEY TURNPIKE COMPANY.

RICHMOND, VA., *October 17, 1918.*

R. GRAY WILLIAMS, ESQ.,  
*Attorney-at-Law,*  
*Winchester, Va.*

DEAR MR. WILLIAMS:

Your letter in regard to the deed to be executed by the Valley Turnpike Company to the State of Virginia, has been received.

So far as concerns the description, I think you will agree with me that it should be specific, as far as possible, and I feel sure that the secretary of the company must have the original deeds containing the description of the real estate upon which the toll houses are located.

In reference to the State compensating you for securing the data for the drawing of the deed, I regret to say that the State has no appropriation for this expense, and I feel sure you will agree with me that any such expense should be borne by the Turnpike Company.

The existence of encroachments upon the road is the very best reason why the width of the pike should be stated in the deed. As soon as the Commonwealth receives the deed, of course, it will be the duty of the State Highway Commissioner to see that these trespassers are removed.

After reading your suggestions that the conveyance be made subject to conditions and restrictions, I carefully re-read the act, and found no provisions therein which would justify me in approving any deed to the State other than a deed in fee simple. Such a deed, it appears to me from the reading of the statute, is necessary as a condition precedent to the turning over of the money in the hands of the treasurer of this company in accordance with the terms of the statute.

Any conditions and restrictions referred to in the act have reference to the manner of procedure whereby the stockholders and directors of the Valley Turnpike Company should turn over the property to the State, and it was never intended that they should be attached to the title of the Commonwealth in the property, or made a condition under which the State holds the same. A reading of the first section of the act will bear this idea out.

I hate to give you so much trouble in this matter. At the same time, I know you want to unite with me in fixing the matter exactly right.

Yours very truly,  
JNO. R. SAUNDERS,  
*Attorney General.*

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TAX FOR RECORDING DEEDS OF TRUST.RICHMOND, VA., *October 25, 1918.*

HON. C. LEE MOORE,  
*Auditor of Public Accounts,*  
*City.*

DEAR SIR:

I beg leave to acknowledge receipt of two letters from Hon. W. A. Willeroy concerning the re-recording of a certain deed of trust, and your reply to the same.

You ask for an opinion as to whether or not, when a deed of trust has once been recorded and the tax paid thereon to the State, in the event it becomes necessary

to re-record the said deed of trust on account of some defect in the deed, it will be necessary to again pay the State tax on the amount secured in the said deed of trust.

I have read both of these letters of Mr. Willeroy's very carefully. He states that, due to the fact that the acknowledgment was taken by the trustee, of course the deed of trust was not valid, and it became necessary to record another deed of trust. That is true. There are two ways, which, in my judgment, would obviate the necessity for again paying the State tax, namely:

Mr. Willeroy could write a new deed of trust, and in this deed of trust set forth the fact that, due to an error in the acknowledgment of the former deed of trust, this new deed of trust was executed. Or he could take the same deed of trust, and have it re-acknowledged before a proper officer and then again offer the same deed for record. But should a new deed of trust be written and no reference be made in this new deed of trust to the fact that it was given for the purpose of correcting a former deed of trust, unquestionably the clerk should again collect the State tax on said deed.

Mr. Willeroy does not state in his letter whether he has pursued either of these two modes or not. I do not think it should be the policy of the State to make a party pay twice for the same benefit and advantage derived from the recordation of the same deed.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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REFUSAL OF PERMIT TO PRACTICE DENTISTRY.

RICHMOND, VA., *August 14, 1918.*

DR. N. E. RIERSON,  
*Bluefield, W. Va.*

DEAR SIR:

Acknowledgment is made of your letter of August 12th, addressed to the Attorney General, in which you refer to the action of the State Board of Dental Examiners in refusing to grant you a permit to practice dentistry in the State of Virginia until the next regular meeting of the State Board. In the absence of the Attorney General, your letter has been referred to me for attention.

The act to which you refer, passed in 1914, relating to the State Board of Dentistry, was amended by chapter 512, Acts of 1916. This act provides that no person, unless previously licensed or registered to practice dentistry in this State, shall begin the practice of dentistry until he obtains a license for said purpose from the Virginia State Board of Dental Examiners, and provides that the application must be to the board in writing and accompanied by an examination fee of \$10.00. It also provides that the Board may *in its discretion*, arrange for reciprocity with the authorities of other States and territories, if the requirements equal those established by the Virginia law.

The matter of arranging reciprocity is in the discretion of the board, and my opinion is that you will have to abide by whatever action they may take.

Yours truly,

F. B. RICHARDSON,

*Law Assistant.*



## ARREST BY DEPUTY SHERIFF OF PERSONS ON FEDERAL RESERVATION.

MR. E. S. CURTIS,  
*Deputy Sheriff,*  
*Hampton, Va.*

DEAR SIR:

I beg leave to acknowledge receipt of your letter of May 7th, to which I will reply at once.

You state that at times you are called upon to go to Old Point Comfort, and there take prisoners who have been apprehended on the Reservation for violation of the Prohibition Law. You further state that you have some doubt as to whether you have the authority to arrest persons on the Reservation for a violation of such laws, and desire to know whether you have jurisdiction in such cases. If you will refer to Pollard's Code, Vol. 1, section 15, you will find the following:

"The United States having, by the consent of the General Assembly of this State, purchased, leased, or obtained jurisdiction over certain places therein for the erection of forts, magazines, arsenals, dockyards and other needful buildings, for national cemeteries and for other purposes, that is to say, \* \* \* Under an act of the first of March, eighteen hundred and twenty-one, the lands and shoal at Old Point Comfort and the Rip Raps, for fortifications \* \* \* It is hereby declared that this State retains concurrent jurisdiction with the United States over the said places, so far as it lawfully can, consistently with the acts before mentioned, and its courts, magistrates and officers, may take such cognizance, execute such process, and discharge such other legal functions within the same as may not be incompatible with the true intent and meaning of the said acts."

I am therefore of the opinion, in accordance with the law just above quoted, that you, as deputy sheriff of Elizabeth City county, have authority to arrest persons on the Federal Reservation at Fort Monroe for the violation of any criminal law of this State.

Yours very truly,  
JNO. R. SAUNDERS,  
*Attorney General.*

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## PRISONERS ON FEDERAL RESERVATION.

RICHMOND, VA., *June 17, 1918.*

MR. E. S. CURTIS,  
*Deputy Sheriff,*  
*Hampton, Va.*

DEAR SIR:

I have your letter replying to my letter of May 10, 1918, in which you ask whether or not you have authority to take possession of prisoners arrested on the Federal Reservation at Old Point without some warrant or certificate of commitment being furnished you.

The general law on this subject is that no arrest can be made for a misdemeanor except where it is committed in the presence of the officer making the arrest without a warrant; and without a certificate of commitment from some person who has authority to issue the same, an officer is not authorized to take possession of a person charged with crime, and imprison him.

If an arrest is made without a warrant in a misdemeanor case other than an offense committed in the presence of the officer, or if the officer imprisons the person without the proper commitment papers, he lays himself personally liable to the party he imprisons, for damages.

Trusting this will give you the information you desire, I am,

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

#### ENFORCEMENT OF BAKER DOG LAW.

RICHMOND, VA., May 8, 1918.

HON. WALTER E. HATHAWAY,

*Commissioner of Game and Inland Fisheries,  
City.*

DEAR SIR:

I beg leave to acknowledge receipt of your letter of the 7th, in which you ask the question on what date the game wardens of your department should begin to enforce the provisions of the so-called Baker Dog Law, passed by our last General Assembly.

In reply thereto, I will state that the provisions of this law are rather confusing and conflicting, and it is really difficult to reconcile them. The law does not go into effect until the 21st of June, 1918. After that date, all dogs must be listed by their owners with the commissioners of the revenue of the district, county, city or town wherein the owner of the dog resides, but the license tax under this act will not be due until February 1, 1919, or within a reasonable time after February 1, 1919. It is the duty of the owners to have such dogs listed on and after June 21, 1918.

The law provides, in section 2, that any person paying the license tax on his dog

" \* \* \* shall be entitled to receive a receipt card therefor, and a metal license tag with the year for which the license is paid. \* \* \* When the tag is issued the treasurer shall record the name of the owner of the dog, with the number of the license tag. \* \* \* "

Section 2 further provides that

" \* \* \* It shall be the duty of the county, city or town game wardens, on the first day of July, or as soon thereafter as practicable, to obtain from the treasurer of said county, city or town a list of all the dogs in his county, city or the towns in his county on which the license has not been paid, and the warden shall immediately apply to a justice of the peace for a warrant against the party or parties whose names have been furnished by the treasurer, and if such party or parties be convicted, he or they shall pay a fine and costs, as herein provided, and unless such fine and costs, as well as such tax, be forthwith paid, such dog shall be killed by the game warden or the officer serving said warrant."

According to the provisions of the law just quoted, I am of the opinion that it will not be the duty of the game wardens throughout the State to begin enforcing the law until on and after July 1, 1919.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

## BAKER DOG LAW TAX.

RICHMOND, VA., *June 21, 1918.*

HON. F. M. CHICHESTER,  
*Commonwealth's Attorney,  
Fredericksburg, Va.*

DEAR SIR:

I am just in receipt of your letter of June 20th, in which you ask the question whether the cities of the State can levy a tax on dogs under an ordinance for that purpose, in addition to the tax fixed by the act of the General Assembly, which act is known as the Baker Dog Law.

In reply, I will state that I do not think cities would have such an authority, for the following reasons:

The first five lines of section 2 of the said law, read as follows:

"Every dog above six months of age shall be liable to a license tax as follows, viz: on all male dogs and spayed females, one dollar; on all unspayed females, three dollars; said tax to be in lieu of all other taxes at present imposed by State and local county laws, which license tax shall be paid to the treasurer of the county, city or town wherein the owner of the dog or such person as may have him under control may reside."

You will see that the law provides that "said tax to be in lieu of all other taxes at present imposed by State and local county laws." Moreover, these taxes are to be paid to the treasurer of the county, city or town wherein the owner of the dog resides. Of course, the taxes paid on all dogs by the owners who happen to live in a city would go into the treasury of the city, so really there is no necessity for a city or town levying an additional tax on dogs, inasmuch as they receive the revenue. However, the law very plainly intended that these taxes should be in lieu of all other taxes.

Yours very truly,  
JNO. R. SAUNDERS,  
*Attorney General*

## CONFINEMENT OF DOGS.

RICHMOND, VA., *August 10, 1918.*

MR. M. D. HART, *Chief Clerk,  
Department of Game and Inland Fisheries,  
Richmond, Va.*

DEAR SIR:

Acknowledgment is made of your letter of August 7th, in which you state that your department would like to have the opinion of this office as to whether chapter 164 of the Acts of Assembly, 1914, is in conflict with chapter 390 of the Acts of Assembly, 1918, in whole or in part.

The first act provides for the confining of dogs to the premises of owners in counties in which the act has been adopted by the boards of supervisors. Section 3 of the act of 1918 provides:

"It shall be unlawful for any person to permit any dog to run at large during the night time unless such dog be muzzled, or in the immediate use and control of his owner or custodian, or to permit any dog to run at large at any time without a license tag as hereinabove provided."

It is a well established principle of law that acts should be construed so as not to conflict, if possible, and I am of the opinion that there is no necessary conflict between these two acts.

While the act of 1918 does not prohibit the running at large of dogs where its provisions have been complied with, at the same time, it does not expressly permit dogs to run at large where its provisions have been complied with. On the other hand, the act of 1914, above referred to, does forbid the running at large of dogs under certain circumstances, and, in my opinion, should be read in connection with the act of 1918, and, as a further restriction upon the running at large of dogs in such counties as have adopted the latter act.

Yours truly,  
J. D. HANK, JR.,  
*Assistant Attorney General.*

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ELECTION FOR CHARTER CHANGES.

RICHMOND, VA., *January 18, 1918.*

COL. JOHN W. WILLIAMS, *Clerk,*  
*The House of Delegates,*  
*Richmond, Va.*

DEAR SIR:

Acknowledgment is made of notice to me of the following resolution passed by the House of Delegates, which has just reached me:

*"Resolved by the House of Delegates that the Attorney General be requested to advise this House what persons shall be counted as qualified voters, constituting the necessary 25% for calling an election for charter changes under Act approved February 29, 1916, Acts 1916, page 116."*

The act referred to provides that "the council of any city of this Commonwealth \* \* \* when requested by petition \* \* \* signed by a number of voters equal to twenty-five (25) per centum of the voters qualified to vote at the last preceding general election, shall provide by ordinance for the holding of an election."

It is manifest, therefore, that the persons who shall be counted in order to determine the necessary twenty-five (25) per centum for calling an election for charter changes are the voters qualified to vote at the last preceding general election. At this writing, it would refer to persons qualified to vote at the election which was held in November, 1917. Persons who were qualified to vote at that election were, of course, persons who had personally paid their poll taxes for the previous three years at least six months prior to that election; had registered in the precinct at which they proposed to vote; had lived in the State two years; in the city one year, and in the precinct in which they offered to vote, thirty days.

Therefore, I am of the opinion that the voters to be counted in ascertaining the necessary twenty-five (25) per centum to call such an election as is here under discussion, would be such persons as were qualified to vote in the last general election as above set out.

Yours very truly,  
J. D. HANK, JR.,  
*Attorney General.*

## VIOLATORS OF ELECTION LAWS.

RICHMOND, VA., *January 25, 1918.*

CLAUDE F. BEVERLY, ESQ., *Registrar,*  
*Freeling, Va.*

DEAR SIR:

Acknowledgment is made of your letter of recent date, in which you state:

"A number of persons in this county were convicted for violating the election laws a few years ago. Some of them have recently had their rights of citizenship restored by the Governor. Now the question arises whether or not they will have to register before they can vote or whether the registrar can legally place their names upon the registration books.

Your opinion in this matter will be greatly appreciated and will save considerable wrangling."

Section 79 of the Virginia Code, 1904, provides:

"The county clerk, and the clerk of each hustings or corporation court shall, at each registration, deliver to each registrar in his county or city a list of all voters who have been convicted of any of the offenses enumerated in section twenty-three of the Constitution since the last registration. It shall be the duty of the registrar to correct his list in accordance with the list thus furnished, and he shall strike from the list of voters the name of any person so convicted upon the production before him of a certificate of the clerk of a court of competent jurisdiction that such person has been so convicted since December first, eighteen hundred and seventy-six, in such court, or has been so convicted by a mayor, police justice or justice of the peace in the county or corporation wherein is held the court to which the said clerk belongs, unless said person shall produce a pardon from the Governor, or a certificate from the keeper of rolls that his disabilities have been removed by the General Assembly. It shall also be the duty of the registrar to strike from the list of voters the names of all persons who are proven before him to have died. If any voter whose name has been so stricken off shall appear at any election and offer to vote upon satisfactory proof that he has not changed his residence since his registration, his name shall be restored to the registration books by the judges of election, and he shall be permitted to vote if qualified in other respects."

The last sentence in this section evidently refers only to voters whom the registrar has stricken from the list because it has been proved before him that they have died. Therefore, it will be seen that it is the duty of the registrar to strike from the list the names of persons convicted as set out in this section and reported to him by the clerk as provided for in the section.

If these names have already been stricken off, there is no provision in the law for the replacing of their names upon the registration books by the registrar save and except as provided for by section 73.

I am of the opinion, therefore, that in order for the persons designated by you to have their names placed upon the registration books (if they have been stricken off) they must pursue the same method as if they had never been on the registration books.

Yours very truly,

J. D. HANK, JR.,

*Attorney General.*

## WHEN BALLOT IS VOID.

RICHMOND, VA., *March 27, 1918.*

MR. B. E. ROBERTSON, *Registrar,*  
*7th Precinct, Madison Ward,*  
*1707 Albany Avenue,*  
*South Richmond, Va.*

DEAR SIR:

Acknowledgment is made of your letter to the Attorney General, in which you say:

"What I desire to know, is this: If five candidates are to be elected and any voter should cast a ballot for less than five, shall I, as an election official, allow his vote to be counted in that particular?"

Section 131 of the Code of Virginia, 1904, pertaining to the counting of ballots at an election, reads as follows:

"If a ballot is found to contain a greater number of names for any one office than the number of persons required to fill the said office, or if the title of the office is erased, the said ballot shall be considered void as to all the names designated to fill such office, but no further; but no ballot shall be void for containing a less number of names than is authorized to be inserted therein."

It is therefore manifest that where five persons are to be voted for and a voter only votes for four, scratching off the other names appearing on the ballot, the ballot should be counted for the four whose names are left unscratched.

In other words, the ballot is not void, but effective, so far as concerns the names left unscratched.

Yours very truly,

J. D. HANK, JR.,  
*Assistant Attorney General.*

## TOWN CAPITATION TAXES.

RICHMOND, VA., *May 6, 1918.*

HON. E. W. FITZGERALD, *Mayor,*  
*Town of Dillwyn,*  
*Dillwyn, Va.*

DEAR SIR:

Acknowledgment is made of your letter of May 3d, in which you ask whether the voters in a town are required to pay the town capitation taxes as well as the State capitation taxes in order to vote.

The only taxes which any one, whether he lives in county, town or city, has to pay, in order to vote, are the State poll taxes assessed or assessable against him during three years next preceding that election in which he offers to vote.

This prerequisite to voting is provided in the Constitution (section 21) as well as by the acts of the legislature (Va. Code, section 62).

Answering, therefore, your question specifically, a voter does not have to pay town capitation taxes in order to vote.

Yours truly,

J. D. HANK, JR.,  
*Assistant Attorney General.*

## PAYMENT OF CAPITATION TAX.

RICHMOND, VA., *May 8, 1918.*

MR. R. C. OGG,  
*Waynesboro, Va.*

DEAR SIR:

I beg leave to acknowledge receipt of your letter of the 7th, in which you ask if you are entitled to vote in the town election in June, 1918.

You state that you voted in the last general election and paid your taxes for 1917 in April, 1918. Of course, that entitles you to vote in the general election this fall, but inasmuch as you did not pay your taxes six months previous to the election to be held in your town in June, 1918, you cannot vote in the town election, as the Constitution requires that capitation taxes must be paid six months prior to the election in which you desire to vote.

Yours very truly,  
JNO. R. SAUNDERS,  
*Attorney General.*

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## MARKING OF BALLOT.

RICHMOND, VA., *June 6, 1918.*

MR. M. W. ATKINS,  
*Ridgeway, Va.*

DEAR SIR:

Acknowledgment is made of your letter and also of your telegram of June 6th.

You refer, first, to section 122-h of the Election Laws:

By reading this section, which I presume you have in your possession, you will see that all of the requirements contained in the said section are mandatory and not discretionary to the voter. The several sentences contained therein use the word "shall." To construe the phrase quoted in your letter in such a way as to allow the voter to mark his ballot outside of the election booth, would seem to me to be contrary to the plain meaning of the section referred to. If voters were allowed to mark their ballots outside of the booth, there is no good reason why they might not take them anywhere in the town other than the place of election, and I do not think that the law intended that this be done.

You also inquire regarding section 77, found on page 25 of the Election Laws, which reads as follows:

"No person who acts as registrar shall be eligible to an office to be filled by election by the people at the election to be held next after he had so acted as registrar."

You ask in your letter whether or not a citizen who has regularly been appointed and actually sat as a registrar in Ridgeway district on the third Tuesday in May, 1819, could be a candidate for or hold an office as mayor or councilman to be voted on June 11, 1918.

I presume you mean he acted as registrar on the *third Tuesday in May, 1918*; if so, it is very plain from the reading of the above section that he cannot be a candi-

date. This does not matter whether the individual be a town registrar or a district registrar, since the section referred to says "no person who acts as registrar, etc."

Trusting that this information will reach you in time and be of service to you, I am,

Very truly yours,

JNO. R. SAUNDERS,

*Attorney General.*

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NO WAR VETERAN REQUIRED TO PAY POLL TAX.

RICHMOND, VA., June 17, 1918.

MR. HARRY HARDY, *President,*  
*Democratic Executive Committee,*  
*Winchester, Va.*

DEAR SIR:

Acknowledgment is made of your letter in which you ask to be advised on three questions:

1. "Can Spanish-American soldiers who registered in 1902, who have not paid their poll taxes, vote?
2. "Can the son of a veteran of the Civil War register without passing the literacy test?
3. "Can a resident of the county moving into a town in the same county vote on his transfer if he has not been a resident of the (town) voting precinct one year?"

Section 22 of the Constitution of Virginia covers the first question which you ask, and reads as follows:

"No person who, during the late war between the States, served in the army or navy of the United States, or the Confederate States, or any State of the United States, or of the Confederate States, shall at any time be required to pay a poll tax as a prerequisite to the right to register or vote. The collection of the State poll tax assessed against any one shall not be enforced by legal process until the same has become three years past due."

Section 20 of the Constitution covers your second question, and 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 has 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; or, if he come of age at such time that no poll tax shall have been assessable against him for the year preceding the year in which he offers to register, has paid one dollar and fifty cents, in satisfaction of the first year's poll tax assessable against him; and,

"Second. That, unless physically unable, he make application to register in his own hand-writing, without aid, suggestion, or memorandum, in the presence of the registration officers, stating therein his name, age, and date and place of birth, residence and occupation at the time and for the two years next preceding, and whether he has previously voted, and, if so, the State, county, and precinct in which he voted last; and,

"Third. That he answer on oath any and all questions affecting his qualifications as an elector, submitted to him by the officers of registration, which questions, and his answers thereto, shall be reduced to writing, certified by the said officers, and preserved as a part of their official records."



Section 18 of the Constitution, which answers your third question, reads 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; but removal from one precinct to another, in the same county, city or town shall not deprive any person of his right to vote in the precinct from which he has moved, until the expiration of thirty days after such removal."

Construing these three sections of the Constitution, I am of the opinion that the poll tax must be paid by a soldier who fought in the Spanish-American War; that the son of a veteran of the Civil War must pass the literacy test before he can register; and that a resident of a county, moving into a town in the same county on his transfer, the town being the voting precinct, may vote after having lived there thirty days, that is to say, a person has a right to move from one precinct to another in the same county, city or town, and may vote after the expiration of thirty days; and where the town is in the same county and is one of the voting precincts of the county, it is plain that such person may vote at the expiration of thirty days.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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#### CAN REPUBLICANS VOTE IN DEMOCRATIC PRIMARY?

RICHMOND, VA., July 9, 1918.

HON. W. N. TIFFANY,  
*The Plains, Virginia.*

DEAR SIR:

In the absence of the Attorney General, acknowledgment is made of your letter of July 8th, in which you inquire whether Republicans can vote in the Democratic primary to be held in August next.

Section 8, sub-section-b, of the act legalizing primary elections (Acts of Assembly, 1912, pp. 611-613) provides:

"No person shall be permitted to vote for the candidates of any party unless in the last next preceding general election he voted for the presidential electors nominated by such party, or for the nominee of the house of representatives of such party, or the nominee of such party for Governor, or the nominee of such party for the House of Delegates: provided, further, that if he did not vote at such general election, then upon his declaration that he will support at the ensuing election the nominee of the party in whose primary he wishes to vote, he shall be allowed to vote."

From this provision, it is manifest that if a person, even though a Republican, voted in the last general election for the Democratic nominee for Governor, or for the Democratic nominee for the House of Delegates, he has a right to vote in the coming August Democratic primary. If he did not vote in the general election last fall, then he has a right, even though he is a Republican, to vote in the said primary, provided he makes declaration that he will support, at the ensuing election, the nominee of the primary.

In the case of *Taliaferro v. Smith*, which was a contest over the result of a primary election in Gloucester county, the circuit court of that county held that the judges of election improperly refused to allow a person to vote who, on being challenged, admitted that he was a Republican, but stated that he did not vote in the last general election and that he would support the nominee of the primary in the general election.

In this same case, the court threw out a vote which was cast by a person who, upon going to the polls, was challenged on the ground that he was a Republican, and stated that he voted in the last general election for the Democratic nominee. The proof, however, was that he had not voted at all in the last general election, and, as he made no declaration, when he was allowed to vote in the primary, that he would support the nominee of the party, the court threw out his vote.

Yours truly,

J. D. HANK, JR.,  
Assistant Attorney General.

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#### REGISTRATION LAWS.

RICHMOND, VA., *July 24, 1918.*

COL. E. B. WHITE,  
*Leesburg, Va.*

DEAR SIR:

I beg leave to acknowledge receipt of your letter of the 22nd, in which you ask for certain information concerning the registration laws. You state in your letter that you wrote me several days ago. However, I did not receive that letter, and your letter of the 22nd is the first one I have had in reference to this matter.

Section 78 of the Election Laws, which provides when voters shall be registered, and prescribing the duties of registrars, etc., states, among other provisions contained therein, that

“ \* \* \* The registrar shall, at any time previous to the regular days of registration, registrar any voter entitled to vote at the next succeeding election who may apply to him to be registered. \* \* \* ”

The regular registration days are the third Tuesday in May and one day thirty days previous to the November election.

You state that the registration books at Quantico have been destroyed by fire. The latter part of section 86-a of the Election Laws, reads as follows:

“And whenever any permanent roll or book of any precinct in the possession of the registrar shall be lost or destroyed, a copy of the permanent roll or book in the county clerk's office of the county, or in the office of the clerk of the corporation or hustings court of a city, as the case may be, shall be made and certified by the county court (now circuit court) of the county, or clerk of the corporation or hustings court of the city, as the case may be, and when so made and certified shall be used for all purposes with the same force and effect as the original roll or book. \* \* \* ”

Hoping that these two sections of the law will give you the desired information, I am,

Yours very truly,

JNO. R. SAUNDERS,  
Attorney General.

## VOTING OF NEGRO REPUBLICANS.

RICHMOND, VA., *August 5, 1918.*

MR. WM. E. TYLER,  
*Aldie, Va.*

DEAR SIR:

Acknowledgment is made of your letter of August 2nd, in which you ask whether negro Republicans and known white Republicans can vote in the coming August primary.

The primary law recognizes the right of a party to prescribe any qualifications for voting at primaries, provided such qualifications are not in conflict with the Constitution or the primary statute. Thus, under the plan issued by the State Democratic Committee on February 13, 1913, only white persons are permitted to vote in Democratic primaries.

In regard to whether white Republicans can vote in such primaries, I am sending you a copy of a letter written to the Hon. W. N. Tiffany, The Plains, Virginia, on July 9th, which sets out under what conditions a Republican can vote in said primary.

Yours very truly,

J. D. HANK, JR.,  
*Assistant Attorney General.*

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WHO MAY VOTE IN PRIMARIES.RICHMOND, VA., *August 9, 1918.*

MR. W. F. MYERS, *Registrar,*  
*Lincoln,*  
*Loudoun County, Va.*

MY DEAR SIR:

Please pardon my delay in replying to your letter of August 3rd, but it is due to this fact: Your letter came while I was at my home in Middlesex spending a few days vacation, and I did not return to my office until after the primary.

The act passed in 1912 to regulate the holding of primary elections in providing as to who may vote in primaries, reads as follows:

"All persons qualified to vote at the election for which the primary is held may vote at the primary: provided, however,

(a) No person shall vote for the candidates of more than one party.

(b) No person shall be permitted to vote for the candidates of any party unless in the last next preceding general election he voted for the presidential electors nominated by such party, or for the nominee of the House of Representatives of such party, or the nominee of such party for Governor, or the nominee of such party for the House of Delegates: provided, further, that if he did not vote at such general election, then upon his declaration that he will support at the ensuing election the nominee of the party in whose primary he wishes to vote, he shall be allowed to vote."

It therefore follows from this that if any elector voted for the presidential electors or for the nominee of the House of Representatives or the nominee for Governor or the nominee for the House of Delegates of the Republican party in the last fall election, he would not be entitled to vote in the last Democratic primary. It would seem, though, that if he did not vote in the last general election, then, upon his declaration that he will support at the ensuing election the nominee of the Democratic primary, a Republican would be entitled to vote.

This is one feature of the primary plan which certainly should be amended, as I believe the spirit of the law is that only Democrats should vote in a Democratic primary.

Regretting that my reply to your letter is delayed, I am,

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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LIST OF PERSONS WHO HAVE PAID CAPITATION TAXES.

RICHMOND, VA., *December 16, 1918.*

MR. THOMAS NEWMAN, *City Treasurer,*  
*Newport News, Va.*

DEAR SIR:

Acknowledgment is made of your letter of December 13, 1918, in which you state that the law requires you to file a list of persons who have paid certain capitation taxes six months prior to the next June election with the clerk of the corporation court five months previous to this election. You ask to be advised whether you shall publish on this list the names of persons who have paid their capitation taxes prior to December 10, 1918, as follows:

A person who has paid 1916 capitation tax only;

A person who has paid 1916 and 1917 capitation taxes only; and

A person who has paid 1916, 1917 and 1918 capitation taxes.

Sub-section 1 of section 86-b of Pollard's Code, Vol. 3, page 22, reads as follows:

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

I construe this section to mean that the list you are required to file should contain the names of *all persons* who have paid their capitation taxes not later than six months prior to the second Tuesday in June and the regular election in November, whether they be for 1916, 1917, or 1918, or whether for one or more of these years.

Very truly yours,

JNO. R. SAUNDERS,

*Attorney General.*

## SPECIAL ELECTION FOR SUCCESSOR TO HONORABLE CARTER GLASS.

RICHMOND, VA., *December 26, 1918.*

MR. LAWRENCE S. DAVIS, *Treasurer,*  
*City of Roanoke, Va.*

DEAR SIR:

Acknowledgment is made of your letter of December 23, 1918, addressed to the Attorney General, and, in his absence, I am taking the liberty of replying because you desire the information asked for by the 28th.

You wish to know what voting list should be used in the election called by Governor Davis for February 25th to elect a successor for the Hon. Carter Glass.

Section 62 of the Election Laws, relating to the question you ask, reads as follows:

" \* \* \* provided, that at any such special or local option election held on or before the second Tuesday in June in any year any person shall be qualified to vote who is otherwise qualified and has personally paid at least six months prior to the second Tuesday in June of that year all State poll taxes assessed, or assessable, against him during the three years next preceding that in which such special or local option election is held; \* \* \* "

Therefore, it follows that all persons who have paid their poll taxes six months prior to the second Tuesday in June, 1919, as set out above, and are otherwise qualified to vote, are qualified to vote in the special election called for February 25, 1919.

Answering your second question as to whether or not a primary could be held in this case, I beg to refer you to section 6 of the Primary Law, which provides that

"This act shall not apply to the nomination of presidential electors, nor to the nomination of candidates to fill vacancies."

However, the above quotation refers only to the primary held under the Primary Election Law, and, of course, does not prevent the holding of a primary by the consent of all the candidates running, if they choose to contribute to a fund out of which the expenses of holding such primary are to be paid. You, of course, understand that the District Committee could call a convention, and at that convention nominate a candidate, which would, perhaps, in this case be better than the holding of a primary. It would certainly be less expensive.

If this office can be of further service to you in this connection, we will be glad if you will communicate with us.

Very truly yours,  
F. B. RICHARDSON,  
*Law Assistant.*

## BUSINESS COLLEGES AS EMPLOYMENT AGENTS.

RICHMOND, VA., *April 15, 1918.*

HON. C. G. KIZER, *Commissioner of Labor,*  
*Richmond, Va.*

DEAR SIR:

Acknowledgment is made of your letter of April 12th, in which you state that a certain business college, under an agreement with its pupils, secures employment

for such pupils and charges a considerable fee for the service rendered in securing such positions, and that even after a pupil has left the college and secured employment, the college, under agreement with such former pupil, obtains other positions for such pupil and charges therefor. You request that I advise you whether this college must comply with the provisions of chapter 168 of the Acts of Assembly, 1916.

This act applies to "every person, firm, or corporation who shall agree, or promise, or who shall advertise through the press, or by letter, to furnish employment or situation to any person or persons." I am, therefore, of the opinion that the business college mentioned by you comes within the provisions of this act, and must comply with the terms thereof.

Very truly yours,

JNO. R. SAUNDERS,

*Attorney General.*

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#### DEFINITION OF LABOR AGENTS.

RICHMOND, VA., May 9, 1918.

HON. J. GORDON BOHANNAN,

*Attorney-at-Law,*

*Petersburg, Va.*

DEAR SIR:

I am in receipt of your letter of May 7th in which you ask for a construction of an act of the legislature, approved March 17, 1916, which said act is found on page 880 of the Acts of the General Assembly of Virginia of 1916. Section 128 of said act, is as follows:

"Any person who solicits, hires, or contracts with, laborers, male or female, to be employed by persons other than himself, and every agent of such person, except as provided in the next following section, shall be deemed to be a labor agent; and no person shall engage in such business without having first obtained license therefor. Every person who shall without a license conduct business as a labor agent, shall pay a fine of not less than one hundred dollars (\$100), nor more than five hundred dollars (\$500)."

The object of this act was to prevent the crippling and injury done to various industries in the State by the employment of laborers by irresponsible labor agents, who, after employing them, took them to other States.

You state in your letter that regular employees of the E. I. duPont de Nemours Company, who have been soliciting laborers throughout the State for the purpose of bringing them to their Hopewell plant there to engage in work for the duPont Company, have been frequently arrested and fined, due to the fact that they were considered labor agents who did business without having first paid the license. I do not consider that such persons who are regularly in the employ of the duPont Company and who solicit laborers for said company, come within the meaning of said section, nor can they be classed as labor agents.

As was stated by you in your letter, this statute was construed by the Supreme Court of Appeals in the *Watts' Case*, which is reported in 106 Va. p. 851, and later in the case of *Derrick v. Commonwealth*, reported in 15 Va. App. p. 486.

The facts in *Watts' Case* were these: The Nave Ryan Curtis Construction Company, a corporation chartered under the laws of Ohio, was duly licensed to do a general contracting business in the State of Virginia. This company was engaged in construction work for the Southern Railway Company in Pittsylvania county.

Albert Watts, who was regularly employed as a laborer by said company was sent to Danville by said company to secure laborers. He succeeded in hiring several laborers, and was endeavoring to induce others to enter the service of the said Company, when he was arrested and convicted for an alleged violation of the law quoted above. The Supreme Court held that such conviction was erroneous, and set aside the judgment of the lower court for the following reasons:

That the act of Watts in this case was nothing more nor less than the employing of laborers by the construction company, the principal, for the lawful prosecution of its business, Watts simply being the medium or agent by whom this was done. The court further stated that corporations must, of necessity, act through agents, as it is wholly impracticable for individuals engaged in large affairs personally to hire laborers to carry on their work. The object of the law is to reach a class of persons who, for compensation, conduct the business of employing laborers for other persons, with respect to whom they bear no contractual relation, but it can have no application to a principal, whether corporation or natural person, who, in good faith, employs such laborers for his own service by means of his own employees. In such case, the acts of the agent are the acts of the principal.

I am, therefore, of the opinion that if the E. I. duPont de Nemours Company have men regularly in their employ, who go out into various sections of the State and engage laborers for said company to work at its plant, are not labor agents within the meaning of the above statute referred to, and therefore, are not amenable to prosecutions and fines for so doing.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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TERMS OF EXAMINERS OF RECORDS.

RICHMOND, VA., *December 22, 1917.*

HON. C. LEE MOORE,  
*Auditor of Public Accounts,*  
*City.*

DEAR SIR:

Confirming the verbal opinion expressed to you some weeks ago, will say I have come to the conclusion that under sub-section 2 of section 3326-a, Vol. 4 of the Code, the terms of the examiners of records declared satisfactory by the State Board, expire May 1, 1920.

As to such acceptable examiners, I am of the opinion that said act did not create for them a new term beginning May 1, 1916, but simply extended the term they were then serving under court appointment for four years from said date.

As Major Sands was one of the acceptable examiners, I am of the opinion that by this act his term has been simply extended, and that the term of office which he was holding when the act of March, 1914, in regard to the commission of examiners of records was passed (Acts of Assembly, 1914, p. 707) expires May 1, 1920.

As the Supreme Court of Appeals of this State in the case of *Sands v. Moore*, 119 Va. 744 held that section 10 of this act applies to the office of examiners of records of the Tenth Judicial Circuit, which office is held by Major Sands, I am of the opinion that the provisions of the act do not apply to the office held by him until May 1, 1920.

Yours very truly,

J. D. HANK, JR.,  
*Attorney General.*

## EXTRADITION OF CRIMINAL IN OHIO.

RICHMOND, VA., *May 24, 1918.*

*His Excellency, WESTMORELAND DAVIS,*  
*Governor of Virginia,*  
*City.*

DEAR SIR:

I have before me the letter of Hon. N. S. Turnbull, Jr., Commonwealth's Attorney of Lunenburg county, Virginia, to you, in which he asks the question if a criminal of Ohio can be extradited, the charge being the making and selling of ardent spirits. He further states that the party has been indicted, and he thinks he is somewhere in Ohio.

Section 109 of Volume 1 of the Code of Ohio, reads as follows:

"On demand, the Governor, when authorized by the Constitution of the United States, may deliver to the executive authority of another State or territory, a person charged therein with treason, felony or other crime committed therein. On application, the Governor may appoint an agent to demand of the executive authority of another State or territory, a person charged with felony, who has fled from justice in this State."

Section 4190 of the Code of Virginia is very similar to the section just above quoted.

In 1887 there was held an Interstate Extradition Conference at which Virginia and a number of States were represented, among them Ohio. At this Conference there were certain rules and forms adopted, which are now practically observed by all of the States in the Union. These rules are fully set forth under section 4190 of the Supplement of 1910 to the Code of Virginia.

In Volume 19 of the Cyclopaedia of Law and Procedure, p. 86, under the head of Extradition (Interstate), Section IV. "Offenses Which Are Ground for Extradition," is found the following:

"The words of the Constitution 'treason, felony or other crime' include every offense made punishable by the law of the State in which it was committed, from the highest to the lowest in the grade of offenses, including misdemeanors and statutory crimes. It must, however, be a definite and specific offense."

I am, therefore, of the opinion that under the law, a person indicted in Virginia for a violation of the sale of ardent spirits can be extradited from Ohio.

I am informed that on two occasions, Governor Stuart issued requisitions for persons who were guilty in Virginia of a similar offense in Virginia, and who had fled to another State, which said requisitions were honored by the Governors of the other States.

Yours very truly,  
JNO. R. SAUNDERS,  
*Attorney General.*



## FIXING OF FEES OF COUNTY OFFICERS.

RICHMOND, VA., *January 26, 1918.*

WM. B. SUTHERLAND, ESQ., *Chairman,*  
*Board of Supervisors of Dickenson County,*  
*Tiny, Va.*

DEAR SIR:

Referring further to your letters of January 4th and January 22nd, as to whether or not the board of supervisors of a county should fix the fees of its county officers upon the basis of an estimated population or upon the official census as reported by the United States government for the year 1910, I beg to advise that this matter is controlled by section 4 of chapter 834 of the Code of Virginia, found on page 245 of Volume 4, Pollard's Code, which section reads as follows:

"The board of supervisors of each county shall have power at their regular meeting or at any other legal meeting: \* \* \* \* To provide temporary offices when necessary; insure buildings; fix allowances to officers.— To cause the county buildings to be insured in the name of the board of supervisors of said county and their successors in office, for the benefit of the county, if they shall deem it expedient; and if there are no public buildings to provide temporary suitable rooms for the county purposes; to determine what annual allowances, not less in any case, to sheriffs and clerks of their respective counties, than three hundred dollars, and to attorneys for the Commonwealth of their respective counties not less in any case than four hundred dollars, payable out of the county treasury, shall be made severally to the sheriffs, clerks and attorneys for the Commonwealth of their respective counties (and also in their discretion to determine what annual allowances, if any, payable out of the county treasury, in counties having over forty thousand inhabitants, shall be made to the circuit court judge, if he resides in the county, for office rent, fuel, lights, stationery and other contingent office expenses), so that in counties containing a population of ten thousand and less, the allowance to each of said officers shall not exceed five hundred dollars; in counties containing ten and less than fifteen thousand, six hundred dollars; in counties containing fifteen and less than twenty thousand, seven hundred dollars, and in counties of more than twenty thousand and less than forty thousand, eight hundred dollars; and in counties over forty thousand, fifteen hundred dollars; provided, however, that in the counties of Alexandria, Fairfax, Rockingham, Chesterfield, Wise, and Elizabeth City the annual allowance for the attorney for the Commonwealth shall be fixed at a sum not exceeding one thousand dollars; in the counties of Henrico and Accomac at a sum not exceeding twelve hundred dollars; in the county of Norfolk at a sum not exceeding fifteen hundred dollars, and in the county of Russell at a sum not exceeding seven hundred and fifty dollars; and in the county of Washington, at a sum not less than seven hundred dollars; and provided, further, that in the counties of Henrico and Chesterfield the annual allowance for the county clerk shall be fixed at a sum not exceeding one thousand dollars, and in the county of Elizabeth City, at a sum not exceeding eighteen hundred dollars; and in the county of Washington, at a sum not less than seven hundred dollars; and provided, further, that in the counties of Henrico, Norfolk and Pittsylvania the annual allowance for sheriff shall be fixed at a sum not exceeding fifteen hundred dollars; in the county of Elizabeth City, at a sum not exceeding twelve hundred dollars; and in the county of Chesterfield, at a sum not exceeding seven hundred and fifty dollars; and in the county of Washington at a sum not less than seven hundred dollars; provided, further, that in the counties containing a population of forty-five thousand, or more, the allowance to the sheriff shall not be less than twelve hundred dollars, and to attorneys for the Commonwealth not less than nine hundred dollars."

It will be seen that the reference to population in the section above quoted does not mention the word "estimated," and I am of the opinion that the salaries referred to should be based, not on an estimated population, but upon the official census of the United States government for 1910.

Yours very truly,  
J. D. HANK, JR.,  
*Attorney General.*

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#### INSPECTION FEE ON NITRATE OF SODA.

RICHMOND, VA., *March 1, 1918.*

HON. G. W. KOINER,  
*Commissioner of Agriculture,*  
*City.*

DEAR SIR:

Your letter of the 28th in which you write that the National Department of Agriculture proposes to import nitrate of soda into this State for sale to the farmers at cost, has been received.

You ask whether the State of Virginia has a right to require the payment of an inspection fee of 15 cents per ton on the nitrate of soda proposed to be imported. My understanding is that the United States government will distribute this direct to the farmers. Such being the case, the State of Virginia would have no right to impose an inspection fee of 15 cents per ton on this nitrate of soda.

Yours very truly,  
JNO. R. SAUNDERS,  
*Attorney General.*

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#### LICENSE FEES ON AUTOMOBILE LICENSES.

RICHMOND, VA., *June 19, 1918.*

*His Excellency,* WESTMORELAND DAVIS,  
*Governor of Virginia,*  
*City.*

DEAR SIR:

I have the honor to acknowledge receipt of your letter of the 18th, enclosing a letter from Hon. A. A. Moss, mayor of the city of Newport News, Va., in which he desires to know whether or not the commissioner of the revenue of the city of Newport News is authorized to collect a license fee of 25 cents on automobile licenses sent to him by the Secretary of the Commonwealth, and whether or not the Secretary of the Commonwealth has authority to authorize the commissioner of the revenue to collect a license charge of 25 cents.

By a careful reading of the automobile law, it will be seen that every owner or operator of an automobile must, before he begins to operate his machine, obtain a license to do so from the Secretary of the Commonwealth. Any person operating a machine without a license is subject to a fine for so doing as is set out in the automobile law.

There is nothing in the automobile law which gives the Secretary of the Commonwealth authority to authorize the commissioner of the revenue to collect a license charge of 25 cents. I see no objection to the Secretary of the Commonwealth

furnishing license tags to the commissioner of the revenue of the city of Newport News for his convenience, if he cares to do so, but any question of license charge made by the commissioner of the revenue is one entirely between the commissioner of revenue and the party to whom the license is furnished, and one not authorized by law.

Yours very truly,  
JNO. R. SAUNDERS,  
*Attorney General.*

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## FEE FOR SERVICES RENDERED IN RECOVERING TAXES.

RICHMOND, VA., *August 7, 1918.*

HON. C. LEE MOORE,  
*Auditor of Public Accounts,*  
*City.*

DEAR SIR:

Acknowledgment is made of your letter of August 3, 1918, in which you ask whether or not you are authorized by the provisions of chapter 425 of the Acts of Assembly, 1916, pp. 729-31, or by any other law of the State of Virginia, to pay Hon. Marshall B. Booker, attorney for the Commonwealth of Halifax county, a fee for services rendered in recovering taxes, amounting to \$336.25, which he has already paid into the State Treasury.

I have examined chapter 425 of the Acts of 1916 very carefully, and find no provision in said act which would authorize you to pay Mr. Booker any amount of compensation for the services he has rendered.

However, chapter 473 of the Acts of 1916, p. 805, authorizes the Auditor of Public Accounts to employ the attorneys for the Commonwealth in the several counties and cities to take steps and institute suits for the recovery of taxes, etc., as set out in said act, and makes it the duty of the attorneys for the Commonwealth to accept such employment; and the compensation to be paid for such services is to be agreed upon between the Auditor and the attorney. It shall not exceed 10% of the amount collected.

If the amount you refer to has been collected under the provisions of this chapter (473), I think you will be authorized in paying such compensation as you and the attorney for the Commonwealth might agree upon, not exceeding 10%.

Yours very truly,  
JNO. R. SAUNDERS,  
*Attorney General.*

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## FEES OF HIGH CONSTABLE.

RICHMOND, VA., *August 19, 1918.*

HON. C. C. KNIGHT,  
*High Constable,*  
*Norfolk, Va.*

DEAR SIR:

I am in receipt of your letter of August 17, 1918, in which you call my attention to two paragraphs of the Acts of Assembly, 1918, pp. 627 and 300, and ask that I advise you which is correct for fees of a high constable.

If I mistake not, your services are confined to civil cases rather than criminal cases. If you will examine Vol. 2 of the Code of Virginia, you will find that section 3508, which is the section amended by the new acts, p. 300, you will find that the fees mentioned in said section have reference to services rendered in civil cases.

Section 3510 states that "fees mentioned in this chapter shall be chargeable to the party at whose instance the service is performed." Section 3531 pertains to fees in criminal cases, which fees are paid out of the treasury of the Commonwealth.

I have talked with the Auditor of Public Accounts, and he advises me that he is paying the fees of constables, sheriffs, etc., in accordance with section 3531 as amended by the Acts of Assembly, 1918, p. 627. Trusting I have made myself clear, I am,

Yours very truly,  
JNO. R. SAUNDERS,  
*Attorney General.*

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FEE OF JUSTICE OF PEACE FOR ISSUING SEARCH WARRANT.

RICHMOND, VA., *December 19, 1918.*

HON. C. LEE MOORE,  
*Auditor of Public Accounts,*  
*City.*

DEAR SIR:

I beg leave to acknowledge receipt of your letter of December 18th, in which you enclose certain correspondence you have had with Mr. A. J. Dalton, a justice of the peace of the city of Norfolk. You ask whether a justice of the peace is entitled to a fee out of the State Treasury for issuing search warrants in prohibition cases.

Section 3530 of the Code of Virginia, as amended by the Acts of Assembly, 1918, p. 627, provides that a justice of the peace shall be entitled to a fee of 50 cents for issuing a warrant of arrest.

Section 22 of the prohibition act, which is contained in chapter 388 of the Acts of Assembly, 1918, provides that a justice of the peace to whom complaint is made that ardent spirits are being manufactured, sold, kept, stored, etc., or concealed in any particular place, if satisfied that there is reasonable cause for such belief, shall issue a warrant to search such house or other place for the ardent spirits. This section further provides that every such warrant shall be directed to an officer charged with the enforcement of this act, commanding him to search the place designated and seize such ardent spirits and their containers and bring the same and the person in whose possession they are found, before a justice of the peace.

You will see from the reading of this section that while the warrant issued by a justice of the peace in pursuance of said section, is technically a search warrant, at the same time it has the force and effect of a warrant of arrest because under this warrant the officer making the search is authorized not only to seize the ardent spirits, but to arrest the person in whose possession they are found, and bring him before the justice issuing the warrant.

Section 55 of the prohibition act provides that it shall be the duty of justices of the peace and other officers mentioned in said section, to enforce all the provisions of this act, and the neglect, failure or refusal of such officers so to do, shall be deemed misfeasance in office.

As stated by you in your letter to Mr. Dalton, it is "very important for a successful administration of the prohibition law, to make these searches."

I cannot conceive that the legislature of Virginia would impose a duty upon a State officer which, if he failed to perform, would be a cause for his removal, and yet not intend that he should be compensated for such service.

I am therefore of the opinion that a justice of the peace is entitled to a fee out of the State Treasury for issuing a search warrant under the prohibition act.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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PUNISHMENT FOR GAMBLING.

RICHMOND, VA., *October 5, 1918.*

HONORABLE JOHN J. CRUTCHFIELD,  
*Police Justice,*  
*Richmond, Va.*

DEAR SIR:

In answer to your inquiry as to whether or not a person who conducts a game in which he sells tickets, paddles, or tokens, bearing numbers, and then delivers to one of the persons holding one of the numbers—such person to be ascertained by a revolving wheel or other device—a prize, or other thing of value, is violation of the laws of Virginia, I beg to state that, in my opinion, such a game is in violation of section 3826 of the Code of Virginia.

In response to your request as to the amount of punishment which should be inflicted in such cases, this is a matter of discretion of the court, the statute only limiting that discretion in providing a fine and a jail sentence, the jail sentence not to exceed one year and the fine not to exceed \$500.00. You are authorized, upon conviction, in your discretion, to fix the punishment for any period of time not to exceed one year, and the fine at any amount not to exceed \$500.00.

Yours truly,

J. D. HANK, JR.,  
*Assistant Attorney General.*

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RESTRICTIONS UPON MEMBERS OF COMMISSION OF FISHERIES.

RICHMOND, VA., *March 15, 1918.*

HON. WALTER E. HATHAWAY,  
*Commissioner of Fisheries,*  
*City.*

MY DEAR MR. HATHAWAY:

I beg leave to acknowledge receipt of your letter in which you ask whether the construction of section 14 of the revised fishery laws applies to certain industries with which you are connected, according to statements contained in your letter.

Section 14 of chapter 501 of the act creating the Commission of Fisheries of Virginia, as amended March 23, 1916, reads as follows:

"*No interest in fisheries.*—No member of the Commission of Fisheries, nor any of the inspectors, captains or other employees shall be engaged (for market or profit) in any fishing industry in Virginia, either directly or indirectly."

You state in your letter that you have disposed of all of your interests and holdings in all fish and oyster enterprises, and then say:

“However, to clear up a possible uncertainty, I want your opinion on this point. The Little Bay Ice Plant and the Dymers Creek Packing Company; of both concerns I am president and holder of the majority of stock, are engaged primarily in canning fruits and vegetables; especially tomatoes. They, however, both can herring roe and the roe of other fishes, and some fish. They also salt and sell corned as well as tight packed herring and other fish. These concerns are not engaged in taking these fish, and have no interest whatever in traps, seines or boats used for catching them. The fish are simply bought on the open market from the men who catch them, and are then salted or canned, as the case may be. Does this business as outlined above conflict with the law above quoted.”

I am unable to find any decisions of the court whereby section 14 as quoted above, has been construed. In fact, the law being comparatively new, no case (as far as I have been able to ascertain) has been decided by our courts construing the same. Therefore, the opinion given you in this letter, will have to be based entirely upon a common sense construction as to the meaning and intent of this section of the law.

I think the law means that you should not be engaged in the actual taking or catching of fish and oysters from the waters of this State, nor should you have any interest in any boats, seines or traps used for catching them. The mere fact that the two corporations with which you are connected (the chief business of which is the manufacturing of ice and canning fruits and vegetables) can herring roe, buy, pack and sell fish, I do not think constitutes being engaged in the fishing industry as is contemplated by the statute.

Yours very truly,  
JNO. R. SAUNDERS,  
*Attorney General.*

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IS BUENA VISTA AMENABLE TO PROVISIONS OF CHAPTER 151, ACTS OF 1912, AS AMENDED.

RICHMOND, VA., *April 26, 1918.*

HON. WALTER E. HATHAWAY,  
*Commissioner of Game and Inland Fisheries,*  
*City.*

DEAR SIR:

I beg leave to acknowledge receipt of your letter of April 24th in which you ask the question whether the city of Buena Vista, located in Rockbridge county, Virginia, is amenable to the provisions of chapter 151, approved March 7, 1912, as amended by act approved March 20, 1914, this law having been adopted and ratified by the supervisors of Rockbridge county.

Section 1 of this act reads as follows:

“That it shall not be lawful at any time for any person to take or catch fish by gill nets, seines, or nets of any kind in any of the rivers and streams of the county of Rockbridge. Except that it shall not be unlawful for any person to catch fish with dip nets in the rivers and streams on his own lands, nor shall it be unlawful for any person to catch with nets minnows for the use of fish bait.”

Section 3 of this act provides that it

"shall be and become effective and in force only after the board of supervisors of Rockbridge county shall have adopted and ratified the same by matter of record,"

The same section further provides that

"the board of supervisors of said county may, if it sees fit, submit the question of adoption or rejection of this act to the people of Rockbridge county at any regular election, and if adopted, it shall be the law, and if rejected, it shall be of no force and effect."

You will observe by a careful reading of section 1 as quoted above, that it is unlawful for any person to do the things mentioned in said section, therefore, it would be as much contrary to the law for a citizen of Buena Vista to do the things prohibited in said act as it would be for a citizen of the city of Richmond to do them.

While it is true that Buena Vista, notwithstanding the fact that it is within the limits of the county of Rockbridge, is a city and has its own city government, yet I do not concede the fact to be that there would be anything in the provisions of the charter of said city which could permit the taking or catching of fish in the rivers and streams of the county of Rockbridge as is prohibited by section 1 of this act.

I do not think that because the board of supervisors adopted this act and thereby made it a law, that it would have any effect as to its provisions in applying to the citizens of the city of Buena Vista. Of course, I have not seen the charter of said city, but unless there is something in said charter which peculiarly applies to the case in question, this law, in my judgment, applies to all citizens, not only of the county and city of Buena Vista, but likewise to all citizens of the State so far as the rivers and streams of the county of Rockbridge are concerned.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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#### DIGGING OF CHANNEL BY GOVERNMENT OVER OYSTER ROCKS.

RICHMOND, VA., *April 30, 1918.*

SENATOR CLAUDE A. SWANSON,  
*Washington, D. C.*

MY DEAR SENATOR:

Mr. J. Hoge Tyler, Jr., whom you know well, and who is a member of the State Board of Fisheries, is now in the office. He is coming to Washington this afternoon, and will lay before you a situation which has arisen between the United States government and the State of Virginia, and which situation comes within the jurisdiction of the Board of Fisheries. He will explain the matter to you fully. He will exhibit to you a diagram and also a letter from the War Department.

You will see from this diagram that the United States government is about to dig a channel from the government pier head line in Norfolk county out to the ship channel line on Elizabeth river, which distance is about eighteen hundred feet. This is done in order that ships may reach the wharf now being erected by the government from the channel.

Where this channel is to be dug will be across natural oyster rocks upon which there are a great many oysters. Necessarily, this work will destroy all of these

oysters. Mr. Tyler tells me it is estimated that at least fifty thousand bushels will be destroyed, which, of course, represents a good deal of money value.

I do not believe that the government has a right to do this thing because the area over which this channel is dug is unquestionably the property of the State and certainly the United States government would have no right to take this property without the proper proceeding and payment to the State for damage done thereby.

At this time I would not deem it wise for the State of Virginia to enter into litigation with the United States government, even though we might maintain our position in court. I have, therefore, suggested to Mr. Tyler, in which view my associate and assistant, Mr. Hank, concurs, that he go to Washington and see you; that you take this matter up with the proper authorities, and have some understanding with them whereby the State of Virginia will be compensated for this damage.

It is the idea of some parties, which idea you will observe is expressed in the letter from the War Department, that the Board of Fisheries take up these oysters and sell them before they are destroyed. The board would certainly have no right to do this, because all oyster beds, rocks and shoals are held in trust by the State for all of the citizens thereof, and they would have no right, in my judgment, to dispose of them in this manner.

I feel sure, though, that this is a matter, which, through you and Congressman Holland, can be amicably adjusted with the government, and I would be very glad if you would confer with him. I am taking the liberty of sending him a copy of this letter. While the Board of Fisheries has no right to sell these oysters, it is probable that the War Department can sell them rather than to see them go to waste, as I am advised they can easily be removed without interfering with the dredging or delaying the work.

With my kindest regards, and feeling sure you will take pleasure in adjusting this matter, I am,

Yours very sincerely,

JNO. R. SAUNDERS,

*Attorney General.*

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DESTRUCTION OF OYSTERS BY GOVERNMENT IN DIGGING CHANNEL.

RICHMOND, VA., *May 8, 1918.*

MR. J. H. TYLER, JR.,  
*Roanoke, Va.*

MY DEAR SIR:

I have just returned here from Gloucester court, and found your letter of May 2nd, and also copy of your letter of the same date to Hon. Walter E. Hathaway, Chairman of the Fish Commission, both of which letters are relative to the matter of the United States government digging a channel from one of their wharves out to deep water. You ask whether, in my opinion, the Board of Fisheries would be justified in getting out an injunction against Colonel Butler, restraining him from continuing this digging.

You will recall that we talked this matter over very thoroughly when in the office last Thursday, and we both concluded that it would not be wise at this time for the State of Virginia to go into litigation over this matter with the United States government. The work now being done by the government, I presume, is necessary in order that vessels or ships may be able to reach the pier for the purpose of transporting goods to our soldiers.



Virginia, of course, is deeply interested in the outcome of this great struggle, and I do not think at this time she would interfere or do anything which would in any manner obstruct and hinder the government in its prosecution of the war.

I have read very carefully the copy of the letter which you wrote to Hon. Walter E. Hathaway, and I think the views entertained by you and expressed by you in that letter, are correct, and if they can be carried out, will be a very happy solution of this matter. I have no doubt but what the government will be perfectly willing to compensate the State for the destruction of these oysters, and I believe that Mr. Hathaway, your commissioner, could settle the matter in a very few moments by a conference with Col. Butler.

If there is any assistance I can render the board in this matter, I will cheerfully do so. I feel sure, though, it can be much better settled by a conference rather than by litigation.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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OYSTERS AT BUSH BLUFF, HAMPTON ROADS.

RICHMOND, VA., June 6, 1918.

HON. F. NASH BILISOLY,

*Shellfish Commissioner,*

*Norfolk, Va.*

MY DEAR SIR:

Your letter of June 5th just received, and I will reply at once. You state that the Commissioner of Fisheries advertised through the press that all oysters on the oyster rock, platted as No. 2 on the Baylor Survey, located near Bush Bluff in Hampton Roads, would be offered for sale by sealed bids, which bids were to be opened in the office of the Commission on May 30th at noon.

You further state that there were several bidders, and that the highest bidder was Mr. H. K. Swann, who offered \$1,060.00 for said oysters. You also state that it is the desire of the Commissioner of Fisheries to conserve this quantity of food for the people rather than have them destroyed by the United States government.

You ask if it is proper for the Commissioner of Fisheries to enter into an agreement with the successful bidder at once, selling the oysters to him and permitting him to proceed at once to transfer the oysters under said agreement, which work is to be completed by December 1st. I have had a conference with the Governor in reference to this matter since receiving your letter. He and I agree that this is the wisest thing to be done. While, of course, it is contrary to the law for the Commissioner of Fisheries or any individual to disturb the natural oyster rocks during the closed season, at the same time it is very much better that the Commission should pursue the course which it has adopted in this particular, than to allow these oysters to be destroyed by the government.

I would state, however, that it seems to me that from now until the 1st day of December is a much longer time than is really necessary to transfer these oyster. The price of \$1,060.00 would indicate that there are not a great many oysters there, and it would appear that the purchaser could remove them in a very much shorter time. However, that is a matter which addresses itself to the good judgment and discretion of the Commission. It would be very much better, though, if it could be so arranged to shorten the time. My opinion, in this matter, of course, is based

upon the fact that we are at war, and the course pursued by your Commission is the best thing which could be done under the circumstances.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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POWERS OF BOARDS OF SUPERVISORS.

RICHMOND, VA., *June 17, 1918.*

MR. D. H. RUCKER, JR.,  
*Buena Vista, Va.*

DEAR SIR:

I acknowledge receipt of your letter in which you refer to a copy of a letter written by me to Hon. Walter E. Hathaway, concerning chapter 151 of the Acts of Assembly, 1914, pp. 252-3, which deals with the question of setting nets, etc., in the rivers of Rockbridge county.

You ask to be advised "Whether the board of supervisors of Rockbridge county had a right to change the law as enacted by the legislature, viz: to ratify it or not to ratify it, and also if the council of the city of Buena Vista was not empowered with the same rights as the board of supervisors for Rockbridge county."

By reference to chapter 151 of the Acts of 1914, pp. 253-4, you will find that the third paragraph reads as follows:

"This act shall be and become effective and in force only after the *Board of Supervisors of Rockbridge county* shall have adopted and ratified the same by matter of record. \* \* \* And said board shall have the right at any time to *modify* this act as to the kind of nets or seines that may be used and *as to the period of time* during the year the law shall remain in force."

You will observe from reading this act that the board of supervisors of Rockbridge county were acting within their authority when they adopted the act in a modified form, and that it has no reference to the city of Buena Vista. The act does not authorize the city of Buena Vista to do anything in connection therewith, and whatever action has been taken by the board of supervisors of Rockbridge county is binding on the city of Buena Vista.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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CERTIFICATES OF APPOINTMENT FOR GAME WARDENS.

RICHMOND, VA., *July 31, 1918.*

HON. F. NASH BILISOLY,  
*Commissioner of Fisheries,*  
*City.*

DEAR SIR:

Acknowledgment is made of your letter of July 30, 1918, in which you state it will be your pleasure to retain some of the special game wardens appointed by your predecessors in office. You desire to know whether or not it will be necessary to issue new certificates of appointment, or whether it will be sufficient to simply notify these men that they will be retained in service.

Section 14 of chapter 148 of the Acts of Assembly, 1916, provides for the appointment of county and city game wardens, and in the latter part of the said section, this language is used: "and shall hold office during the pleasure of the commission appointing them and until their successors are duly appointed."

As the provisions of this section provides that game wardens hold their office during the pleasure of the commission and until their successors are appointed, I see no reason why new certificates of appointment should be issued and a letter addressed to such of the wardens as you wish to retain, notifying them that there will be no change in their county or city, and that they will be retained in service, will be sufficient.

Yours very truly,  
F. B. RICHARDSON,  
*Law Assistant.*

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#### CATCHING BLACK BASS IN NETS.

RICHMOND, VA., *August 28, 1918.*

MR. E. ROLLINS,  
*Will, Va.*

DEAR SIR:

I am in receipt of your letter of the 26th, in which you ask whether black bass can be caught in nets from June 15th to March 15th. You further state that the game warden says black bass cannot be caught in nets at any time.

Section 2108 of the Code of Virginia, as amended by Acts of Assembly, 1918, p. 497, sub-section 2, reads as follows:

"It shall be unlawful to kill or capture river bass (commonly called black bass or black perch) or pond bass (commonly called Southern chub) between the fifteenth day of March and the fifteenth day of June of each year, or to shoot, spear, trap or net the same at any time; \* \* \*"

You will therefore see that it is unlawful to catch black bass in nets at any time, whether during open or closed season.

Yours very truly,  
JNO. R. SAUNDERS,  
*Attorney General.*

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#### FISH DEALERS.

RICHMOND, VA., *September 12, 1918.*

HON. F. NASH BILISOLY,  
*Commissioner of Fisheries,*  
*Norfolk, Va.*

DEAR SIR:

Acknowledgment is made of your letter of September 6, 1918, relating to chapter 210, sub-section 6, as amended by the last legislature. This section has no change except the words "or dealer," inserted in the last sentence. You desire a ruling from this office on the question of whether or not a dealer who has in his stall less

than 5% of all the fish there, shall be construed as having violated the law and subjects himself to the penalties provided for in the act. The last sentence of the act reads as follows:

"And whenever any fisherman or dealer is found to have as much as five per centum of the bulk of *his catch* under the minimum sizes whether or not prescribed, he shall be deemed guilty of violating the provisions of this act."

We cannot believe that the legislature intended to impose a penalty upon a dealer who happens to buy a box of fish containing less than 5% under the minimum sizes prescribed in the act. A dealer, in the strictest sense of the word, cannot know what sized fish are in the box he purchases until it has been opened and a large quantity of fish disposed of. I think the act was really intended to cover cases in which a dealer is also a fisherman, as I understand that there are some dealers who do their own fishing and consequently must be aware of the various sizes of fish contained in their catch. The word "catch" certainly cannot refer to a man who does not fish, but only buys fish already boxed up from a "fisherman."

It follows, therefore, that unless a dealer is also a fisherman he should not be fined under the provisions of this act for having in his possession fish under the minimum sizes prescribed in the act.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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DISPOSITION OF BOATS BY COMMISSION OF FISHERIES.

RICHMOND, VA., *October 11, 1918.*

HON. F. NASH BILISOLY,  
*Commissioner of Fisheries,*  
*Norfolk, Va.*

MY DEAR SIR:

I am in receipt of your letter in which you ask that, should the commission desire to dispose of any of its boats or vessels, could it hold the proceeds from such sale until a favorable opportunity arose to purchase new boats, or would this fund revert to the State Treasury.

Section 7, chapter 501 of the Act of the General Assembly, approved March 23, 1916, reads as follows:

"The Commission of Fisheries is authorized to purchase or rent such boats, nets, and other equipment as may be necessary to enable them and their assistants to perform the duties imposed upon them by law; and the said commission is also authorized to sell, exchange or repair any boats or other equipment belonging to the service; and in the case of sale or exchange, to reinvest the proceeds in another boat or boats or equipment, or to use the said proceeds in addition to the appropriation now authorized by law, for carrying on the work of protecting and promoting the fisheries of the State."

I am of the opinion that it will not be necessary to reinvest the money derived from the sale of any boat immediately by the commission, but it would have the authority to use said money later on for the purchase of other boats, and this money will not revert to the State Treasury. Only the proceeds derived from the sale

should be paid into the State Treasury, but there is no reason why it cannot be checked out at a later date should the commission so desire.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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TAKING GAME INTO ANOTHER COUNTY.

RICHMOND, VA., November 16, 1918

MR. M. D. HART, *Chief Clerk,*  
*Department of Game and Inland Fisheries,*  
*Richmond, Va.*

DEAR SIR:

Acknowledgment is made of your letter of November 15, 1918, asking whether or not a person who has taken out a State license can hunt and kill birds or game in season in counties other than his own, and take with him out of the county such birds or game.

It appears from your letter that the board of supervisors of Bedford county has passed a resolution prohibiting non-residents of the county from taking game out of Bedford county.

Sub-section 5 of section 2070a of the Code provides that the board of supervisors of any county shall have the power to shorten the open season in their county, and, by resolutions not inconsistent with the provisions of section 2070a, may further protect the game within their said county.

Chapter 152, Acts of 1916, provides that any person who has been a *bona fide* resident of this State for six months next preceding the date of application, may procure a State hunter's license for himself by making application as provided for by the preceding section, and by paying to the clerk the sum of \$3.00, which entitles him to a State hunter's license, and shall authorize him to hunt in any county in this State. It is true that the board of supervisors has a right to shorten the open season for the hunting of game in their counties, but I cannot believe that the legislature, by granting this power to the various boards of supervisors, intended to authorize them to prohibit the carrying out of their counties game which has been legally killed therein by persons non-resident of those counties.

To hold this would bring about a rather curious result. For instance:

If A has complied with the State law with regard to a State license in B county, and he goes over into C county and hunts on his own land or the lands of another, as he may do by complying with the game laws, he may kill such game as is provided under the game laws, but if a resolution of the board of supervisors is valid, such as the one we are now dealing with, it would mean that he could eat the game in the county in which he killed it, but he could not carry it out of that county into his home county.

No such resolution was ever contemplated by the legislature, and I am of the opinion that when a citizen of this State complies with the law regarding a State hunter's license, he may hunt in any county in the State, and take from there such game as he may kill, not in violation of the law.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

## FINE ASSESSED BY PRIVATE CITIZEN.

RICHMOND, VA., *November 16, 1918.*

MR. F. NASH BILISOLY, *Commissioner,*  
*Department of Game and Inland Fisheries,*  
*Richmond, Va.*

DEAR SIR:

Acknowledgment is made of your letter November 15, 1918, in which you state that you have received from a private citizen a check for \$5.00, this being a fine assessed by the said private citizen against a violator of the game law. You state that the citizen, to whom you refer, is not a game warden.

Under the laws of this State, a private citizen has no power to arrest a violator of the game law, nor to assess a fine against such violator.

I would suggest that you return the \$5.00 to the "private citizen," as it cannot legally be turned into the State Treasury.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

## POWERS OF LOCAL BOARDS OF HEALTH TO EXCLUDE CHILDREN FROM SCHOOL.

RICHMOND, VA., *April 4, 1918.*

HON. HARRIS HART,  
*Superintendent of Public Instruction,*  
*City.*

DEAR SIR:

Acknowledgment is made of your letter of March 28th in which you call attention to a rule adopted and enforced by the Board of Health of the city of Richmond, providing that all children who have had measles shall be excluded from school twelve days if they live in a home where there is a case of measles, and asking whether or not this rule should prevail.

Section 1496 of the Code of Virginia provides:

"Persons suffering from contagious diseases shall be excluded from public free schools while in that condition."

The rules and regulations for the protection of public health adopted by the State Board of Health of Virginia in May, 1916, p. 106, section 25, provides:

"Children shall not be admitted to school from homes in which there are cases of any of the following diseases: whooping cough (unless the child has had the disease) measles or (until seven days after known exposure), diphtheria, scarlet fever, and smallpox."

Section 1713-d (5) after providing for the constituting and appointing of local boards of health, provides as follows (Virginia Code, Volume 3, p. 253):

" \* \* \* Such local boards of health shall have charge of the sanitary affairs of the respective cities, counties or towns for which they are appointed, and shall, subject to the provisions of this act, have control of the prevention and eradication of contagious and infectious diseases, the removal and quarantine of suspects; \* \* \* They shall likewise have power to adopt and enforce such reasonable rules and regulations as they may deem necessary to attain these ends; \* \* \* "

It will be noted from the last above quotation that the local boards of health are given power to adopt and enforce such reasonable rules and regulations as they may deem proper in respect to contagious and infectious diseases.

I am of the opinion, therefore, that, under the section last above quoted, the local boards of health have the right to adopt and enforce a rule preventing children who have had measles from attending school for twelve days if they live in a house where there is a case of measles.

I do not think there is any necessary conflict between this rule of the local board of health and section 25 of the rules of the State Board of Health, because section 25 does not expressly give the right to attend school to children who have had measles when they live in a house where there is a case of measles. But, be that as it may, I am of the opinion that the local board of health of the city of Richmond, has the right under the authority given them by section 1713-d (5) of the Code of Virginia, to adopt and enforce the rule in regard to which you make inquiry.

Yours truly,

J. D. HANK, JR.,  
*Assistant Attorney General.*

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#### PUBLIC HEALTH NUISANCES.

RICHMOND, VA., *April 22, 1918.*

DR. ENNION G. WILLIAMS,  
*State Health Commissioner,*  
*Richmond, Va.*

MY DEAR SIR:

Acknowledgment is made of your letter of April 19th, in which you state that in various sections of the State there are certain pools of stagnant water on private property, which are a menace to public health, and, therefore, are common nuisances, and you ask how such nuisance can be removed, and whether or not the owners of the property upon which they exist can be required to abate them.

Section 1729a of the Code of Virginia provides as follows:

“(1) When complaint is made to the circuit, corporation, or hustings court of any county, city or town of this State, by five or more citizens of any county, city or town, setting forth the existence of a public or common nuisance, the court of such county, city or town, or the judge thereof in vacation, shall summon a special grand jury, in the mode now provided by law, to the next term of such court, to specially investigate the complaint made as aforesaid.

(2) If upon a full investigation of such complaint the grand jury is satisfied that the nuisance complained of is of a public nature, it shall proceed to make presentment against such person or persons as they may find have created or caused such nuisance; provided, however, that if any such nuisance be upon premises the owner of which did not create or cause such nuisance, but permitted its continuation, such owner shall, for the purposes of this act, be deemed responsible for such nuisance, and if such owner be not a resident or citizen of this State, or one whose residence is not known, such presentment shall be against the premises upon which such nuisance is.

(3) Upon any such presentment the court shall order a copy thereof to be served upon the person or persons presented, or whose property is presented, in the manner prescribed by law as to the service of notices. To any such proceeding, if it be in rem, any person interested, or for and in behalf of the owner of such premises, may make defense.

(4) Upon the trial of any such presentment the person or persons who have created, caused, or permitted the continuation of such nuisance, if found guilty, shall be fined, in the discretion of the jury, not more than five thousand dollars; and upon such verdict the judgment of the court shall be for the amount of fine imposed and the costs of such proceeding, and also that such nuisance be forthwith removed and abated. Every such judgment, whether the proceeding in which it is rendered be in personam or in rem, shall have the force and effect of a judgment rendered in any other proceeding at law.

(5) Be it further enacted, That an act approved March fifth, eighteen hundred and eighty-eight, entitled 'an act to provide for abating public nuisances and for disposing of fines imposed therefor,' be, and the same is hereby, repealed."

It will be noted that, by this act, complaint should be made by five or more citizens of any county, city or town of the existence of a public or common nuisance to the judge of the circuit, corporation or hustings court of such county, city or town in which such nuisance exists, and, upon the filing of such petition, the judge of such court shall summon a special grand jury to investigate the complaint and make presentments against the persons who have created the nuisances if they are of a public nature.

In answer to your question as to who shall be required to abate the nuisances, you will note that the statute above quoted provides that presentments shall be against the persons who created or caused the nuisances, but if a nuisance be upon premises the owner of which permits its continuation, such owner shall be responsible for such nuisance.

In the cases mentioned in your letter, it appears that the nuisances have been continuing for some time, and, therefore, I am of the opinion that the complaint should be made against the owners of the property, and if they did not create the nuisances their remedies are against the creator thereof, because it is manifest from the wording of the statute that the owner is just as guilty if he allows a nuisance to continue upon his property after it is created as if he created it himself.

During the conversation I had with your office to-day, I was asked to advise as to what legal assistance you could command in such cases. As a public nuisance is a misdemeanor under the laws of our State, it is the duty of the Commonwealth's attorney of any county, city or town in which such nuisance exists to prosecute the same, and I am sure the Commonwealth's attorneys of the various counties, cities and towns of our State will be very glad to assist your board in any way they can in abating any menace to the public health, within their respective jurisdictions.

If I can be of any further service to you in this matter, I trust you will call upon me as I will be very glad to render you any assistance possible in the work you are doing for the State.

Very truly yours,

J. D. HANK, JR.,  
*Assistant Attorney General.*

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#### RULES FOR PROTECTION OF PUBLIC HEALTH.

RICHMOND, VA., *June 28, 1918.*

DR. E. G. WILLIAMS,  
*Health Commissioner,*  
*Richmond, Va.*

MY DEAR SIR:

You called my attention to chapter 404 of the Acts of Assembly, 1918 (Acts of Assembly, 1918, page 670), providing for the examination of persons convicted of



certain crimes, and also to a regulation (Rule 3) of the Health Department providing for the examination of persons reasonably suspected of having certain diseases set out in the said rule, and asked my opinion as to whether or not the said chapter of the Acts of 1918 abrogates the right to enforce Rule 3 above referred to.

It is true that chapter 404 provides only for the examination of persons who have already been convicted of one of the crimes enumerated in the act, and makes no provision for the examination of suspects, but there is nothing in this act which forbids the examination of persons suspected of having the disease referred to in Rule 3. Rule 3 of the Board of Health is not necessarily in conflict with the said chapter 404, and this chapter does not, therefore, abrogate the right of the Board of Health to promulgate the said rule.

If, therefore, the Board of Health has a right to adopt said Rule 3, the same can be enforced. Chapter 179 of the Acts of 1910 (Acts of Assembly, 1910, pages 269-270), among other things, authorizes the Board of Health "to make separate orders and rules to meet any emergency, not provided for by general rules and regulations, for the purpose of suppressing nuisances dangerous to the public health and communicable, contagious and infectious diseases and other dangers to the public life and health."

Under this provision, it is manifest that the Board of Health was authorized to adopt Rule 3, as it is evident that this rule was promulgated to meet just such an emergency as is in question here, for I know of no general rules and regulations providing for the emergency arising which makes it necessary that persons suspected of having the diseases enumerated in Rule 3 shall be examined, upon their being reasonably suspected, in order to protect public life and health.

It might further be noted that chapter 404 above referred to, has reference entirely to court proceedings, whereas, the Board of Health is given powers to make rules and regulations for the prevention of the spread of disease and the protection of public health, regardless of the commission of crime or court proceedings.

I am, therefore, of the opinion that there is nothing in said chapter 404 which invalidates or repeals the said rule, and that the same can be enforced by your board.

Yours truly,

J. D. HANK, JR.,  
*Assistant Attorney General.*

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TRACHOMA HOSPITAL AT COEBURN.

RICHMOND, VA., *September 4, 1917.*

DR. ENNION G. WILLIAMS,  
*State Health Commissioner,*  
*City.*

DEAR SIR:

In the absence of the Attorney General, I am replying to your letter of August 23rd, in which you call attention to the fact that the Acts of Assembly, 1916, in making appropriations for the fiscal year 1917-1918, provides \$1,200.00 "For Trachoma Hospital at Coeburn," and ask whether, in case the hospital shall be moved from Coeburn to Norton, the Auditor would be authorized to pay the \$100.00 per month provided as above set out, for the support of the hospital at Norton.

The act making the above appropriation provides, at page 939, that "none of the moneys in this act shall be expended for any other purpose than that for which they are specifically appropriated."

I am therefore of the opinion that the Auditor would not be authorized to pay the \$100.00 a month above provided for, for the support of a hospital at Norton.

Yours very truly,

J. D. HANK, JR.,  
*Assistant Attorney General.*

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BUILDING OF PIEDMONT SANATORIUM.

RICHMOND, VA., *September 13, 1918.*

DR. ENNION G. WILLIAMS,  
*State Health Commissioner,*  
*Richmond, Va.*

DEAR SIR:

I acknowledge receipt of your letter of September 13, 1918, enclosing a copy of a letter written by you to Hon. C. Lee Moore, Auditor of Public Accounts, and a copy of his reply to you, all of which correspondence relates to the question of whether or not the Auditor would be authorized to pay, from the appropriation made for the State Board of Health for general expenses, several thousand dollars, due by the State Board of Health to contractors for building the Piedmont Sanatorium, and to re-imburse the general appropriation above referred to by taxes assessed and collected under chapter 384, Acts of Assembly, 1918.

By a reading of the general appropriation bill appropriating money for your department, I find the words "for general expenses" used, and, by reading chapter 384, Acts of Assembly, 1918, it will be seen that the income to be derived from the provision of the act is intended for the purpose for which you desire to use the money at the present time. I do not believe that the General Assembly intended that any portion of the \$40,000.00 appropriated "for general expenses" should be expended for paying obligations made for building the Piedmont Sanatorium.

While there would be no serious objection to using a sufficient sum from the appropriation for the general expenses of your office for the purpose you mention, and re-imburse that fund from collections made under chapter 384, Acts of 1918, yet there is no express authority in the law which would permit the Auditor to comply with your request, and I cannot advise you to use any portion of the fund appropriated for the general expenses of your office toward paying a debt contracted for the building of the Piedmont Sanatorium.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

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PAYMENT BY SCHOOL BOARD FOR MEDICAL ASSISTANCE.

RICHMOND, VA., *December 9, 1918.*

MR. D. D. HULL, JR.,  
*603 Payne Building,*  
*Roanoke, Va.*

DEAR SIR:

I acknowledge receipt of your letter of December 6, 1918, in which you state that, during the recent influenza epidemic, a large number of the students of one of

the State normal schools were ill at the same time, and that it became necessary to secure outside medical assistance; that due to the scarcity of physicians, and in the emergency, the president of the institution in question found it necessary to call on a doctor who was a member of the Virginia Normal School Board; that he responded to the call of the president, and for some days rendered valuable assistance in looking after the welfare of the students.

You raise the question as to whether or not the Virginia Normal School Board has the right to pay this doctor for his services, since he was a member of the board.

I think, under the circumstances, there should be no question raised as to the legality of the action of the Virginia Normal School Board in authorizing the payment to this physician of a reasonable fee for his services. Under ordinary circumstances, perhaps, it would be unwise, but, in the case you cite, where physicians were very scarce and over-worked, I think it entirely proper that the Virginia Normal School Board should provide adequate payment for the services of the doctor in question.

Very truly yours,  
JNO. R. SAUNDERS,  
*Attorney General.*

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CONSTITUTIONALITY OF HOUSE BILL NO. 319.

RICHMOND, VA., *March 2, 1918.*

HON. P. H. DREWRY,  
*Senate Chamber,*  
*City.*

DEAR SIR:

Acknowledgment is made of your letter enclosing House Bill No. 319, which provides for the abolishment of the poorhouse in Dinwiddie county and the superintendent of the poor for said county, and requesting my opinion as to the legality of this bill.

Section 110 of the Constitution of Virginia provides, among other things, as follows:

"There shall be appointed for each county, in such manner as may be provided by law, one superintendent of the poor and one county surveyor."

It is manifest, therefore, that the second section of the said bill provides "after the expiration of the present term of the superintendent of the poor for said county, no other superintendent shall be appointed," is not in accordance with the provision of the Constitution above set out, and I am therefore of the opinion that the said bill is unconstitutional.

It is therefore unnecessary to answer the other questions asked by you. If the bill is changed, and you desire any further information I will be glad to furnish such as I can.

Yours truly,  
J. D. HANK, JR.,  
*Assistant Attorney General.*

## STATUS OF INDIAN TRIBES UNDER SELECTIVE SERVICE DRAFT ACT.

RICHMOND, VA., *January 25, 1918.*

*His Excellency, H. C. STUART*  
*Governor of Virginia,*  
*City.*

DEAR SIR:

Acknowledgment is made of your letter of January 24, 1918, enclosing communication from the chief of the Mattaponi tribe of Indians, together with a copy of the tribal law, in which you say:

“Kindly refer to the recent rulings of Attorney General Pollard concerning the Pamunkey tribe and its status in relation to the Selective Draft, and give me your opinion as to the status of the Mattaponi.”

From the information before me it appears that the Mattaponi tribe of Indians is a branch of the Pamunkey tribe; that this tribe has a reservation in King William county, in which resides about seventy members of the tribe. They maintain a separate government, and have their own code of laws enforced by their own authorities.

The legislature, as late as 1893-4 recognized the existence of the Mattaponi reservation, and provided for the appointment of trustees for this tribe. Acts of Assembly, 1893-4, pages 973-4.

On June 26, 1917, Honorable Leslie C. Garnett, Assistant Attorney General, gave Honorable C. Lee Moore, Auditor of Public Accounts, an opinion in which it was held that the tribes of Pamunkey and Mattaponi Indians were exempt from all taxes, State, local and otherwise, and that so long as they follow up their pursuits upon the reservations, they are governed by their own tribal laws, and are not subject to taxes by the State of Virginia.

In view of these facts, I am of the opinion that the members of the Mattaponi tribe of Indians come within the ruling of Attorney General Pollard in his opinion to you dated December 10, 1917, in reference to the exemption of the members of the Pamunkey tribe of Indians from service under the Selective Draft Act.

Yours very truly,

LEON M. BAZILE,  
*Assistant Attorney General.*

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PROTECTION OF INDIAN TRIBES.RICHMOND, VA., *June 4, 1918.*

*To His Excellency, HON. WESTMORELAND DAVIS,*  
*Governor of the State of Virginia,*  
*Richmond, Va.*

MY DEAR GOVERNOR:

I have before me your letter of May 25, 1918, enclosing certain correspondence that you have had with the trustees of the Mattaponi tribe of Indians, concerning a trespass committed by the Chesapeake Pulp and Paper Company, Inc., on the Mattaponi reservation.

You desire to be advised whether or not the State, through this office, or the trustees, through their own counsel, should proceed to protect the interest of the reservation.

I have considered this matter very carefully, and in reading the opinion of the Attorney General dated July 21, 1917, referred to in your letter of May 13, 1918, to Mr. Everd Edwards, Sweet Hall, Va., I am of the opinion that the trustees of the Mattaponi tribe should proceed to protect the said tribe through counsel of their own choosing.

I do not consider that this is a case in which the State of Virginia should prosecute or defend a suit. While the Mattaponi tribe is given some concessions by the State in the way of exemption from taxes, etc., and living on the State land, yet they exist very largely under their own laws, and I feel it proper that the trustees should take such action through such counsel as they are advised necessary to employ to defend the interest of this tribe.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

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TAX ON PREMIUMS OF INSURANCE COMPANIES.

RICHMOND, VA., *March 27, 1918.*

HON. JOSEPH BUTTON,  
*Commissioner of Insurance,*  
*Richmond, Va.*

DEAR SIR:

Acknowledgment is made of your communication of March 26, 1918, referring to me letter of the Home Life Insurance Company, dated March 23, 1918, with the request that I advise you if the tax to be paid by the life insurance companies on their gross premiums under section 23 of the Virginia Tax Bill, as amended, is to be computed on the total premiums to which an insurance company is entitled, or whether it is to be computed on the premiums to which such insurance company is entitled, less the dividends paid to its policy holders.

It is provided by section 23 of the Tax Bill, in the first paragraph thereof, that every person, partnership, company or corporation which contracts on his or their account to issue policies or contracts for certain enumerated kinds of insurance, among which is life insurance, "shall pay an annual license tax based on the gross premium income derived from the business in this State during each year, ending the 31st day of December, prior to the year for which such license tax is to be paid, for the privilege of doing business in this State."

It is further provided by said section in the third paragraph thereof, as follows:

" \* \* \* every such person, partnership, company or corporation which contracts on his, their, or its account to issue policies or contracts for or agreements for life insurance, and all like insurance, shall pay into the State Treasury, as hereinabove provided, a license tax of two and one-fourth per centum upon the gross amount of all premiums, assessments, dues and fees collected, received or derived, or obligations taken therefor, from business in this State during each year ending the thirty-first day of December, *without any deduction for dividends paid or deduction or any other account*, except for premiums returned upon cancelled policies, and premiums paid for re-insurance upon business in this State in companies duly authorized to do business in this State. \* \* \*"

It will be seen from the above-quoted provisions of section 23 of the Virginia Tax Bill that the tax therein provided for must be paid upon the gross amount of all premiums, assessments, dues and fees collected, received or derived, or obligations taken therefor from business in this State by such companies "without any deduction for dividends paid."

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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LICENSE TO WRITE MORE THAN ONE KIND OF INSURANCE.

RICHMOND, VA., *April 5, 1918.*

COL. JOSEPH BUTTON,  
*Commissioner of Insurance,*  
*City.*

DEAR SIR:

I am just in receipt of your letter dated to-day, in which you enclose me a copy of a letter written to Honorable John Garland Pollard on December 19, 1916, in which you ask for certain information concerning the Virginia Casualty Company, Incorporated, and as to its authority to do a certain class of insurance business in the State of Virginia.

You state that this company was duly chartered by the State Corporation Commission for the purpose of transacting a general life insurance business and in general "to make all contracts whatsoever pertaining to the business of insuring lives or the granting of annuities or endowments; to do a general health, accident, casualty and indemnity insurance business."

You further state that the company has a paid-up capital of \$25,000.00, and was licensed as a casualty company under chapter 6 of the Virginia insurance laws writing accident and health insurance. I find, by reference to this chapter under section 2, there is a provision which prescribes the class or classes of business to be written by companies chartered in pursuance of this act. After enumerating the classes of business they are authorized to write, under the second paragraph of section 2, there is contained this provision:

"No company doing business in this State, save an industrial life insurance company doing a sick benefit business, shall undertake to do more than one of the several kinds of insurance named in this section, unless said company shall first have a paid up capital, either in cash or invested in solvent securities permitted by this act, of one hundred thousand dollars."

It would seem from this provision of the law that a company doing a casualty business would not be authorized to write a sick benefit insurance business unless said company had a paid up capital of \$100,000.00.

You ask whether the license can be amended so as to include industrial sick benefit business with only \$25,000.00 capital and if the charter would have to be amended in order for this company to transact industrial sick benefit business. Unless I had the charter of this company before me I could not tell whether its terms are sufficiently broad to enable it to write industrial sick benefit insurance. Therefore, I cannot tell whether it is necessary to amend its charter or not, but I do not think it has the authority to write sick benefit insurance with only a capital of \$25,000.00, because when it undertakes to write that class of insurance, it would be doing "more than one of the several kinds of insurance named in this section."

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## RIGHT OF SCHOOL TRUSTEE TO WRITE INSURANCE.

RICHMOND, VA., July 24, 1918.

MR. W. FRANK GARRETT,  
Leesburg, Va.

DEAR SIR:

I beg leave to acknowledge receipt of your letter of July 20th, in which you ask the question whether a school trustee who is engaged in the insurance business has a right to write a policy of insurance on public school buildings.

Section 1472 of the Code, as amended by the Acts of Assembly, 1918, among other things, contains the following provision:

"It shall be unlawful for any such trustee or officer to sell, convey or deliver any goods, wares, merchandise or supplies of any kind to its school board or a committee of such board, or to receive, directly or indirectly, any profit or emolument from any contract with, or sale to, such board or a committee thereof, except as provided in this section. \* \* \*"

Major Anderson, former Attorney General, in an opinion dated March 6, 1906, to Hon. J. D. Eggleston, Jr., Superintendent of Public Instruction, stated that it would be far better and safer for a Commonwealth's attorney who is *ex-officio* a member of the school electoral board of his county, not to have any contract whatever with the school authorities for insuring school property or anything else.

Judge C. B. Garnett, former Assistant Attorney General, in an opinion given to Mr. J. N. Hillman on September 17, 1914, stated that it would probably be unlawful for a school trustee to enter into a contract to insure a public school building.

I am frank to say that the language of the statute is not altogether clear, and perhaps does not plainly prohibit a trustee from writing a policy of insurance, but inasmuch as there is a doubt about the matter, I would say that it is safer for a school trustee not to write fire insurance policies on school property.

Yours very truly,

JNO. R. SAUNDERS,  
Attorney General.

## TAX ON DIVIDENDS OF INSURANCE COMPANIES.

RICHMOND, VA., April 25, 1918.

HON. JOSEPH BUTTON,  
Commissioner of Insurance,  
City.

DEAR SIR:

I beg leave to acknowledge receipt of your letter in which you ask if the State of Virginia should require a life insurance company to pay the tax of  $2\frac{1}{4}\%$  on the dividends which have been declared by said company to its policy holders, said dividends being used by the policy holders in part payment of annual premiums, and the same being termed as "premium abatements."

By an act of the legislature of Virginia, approved March 11, 1915 (extra session, p. 106) the rate of  $2\frac{1}{4}\%$  was fixed by this State as a tax on insurance premiums. This act amended section 23 of the former act of the legislature. The first paragraph of section 23 reads as follows:

"Every person, partnership, company or corporation, which contracts on his, their or its account to issue policies or contracts for or agreements

for life, fire, marine, surety, guaranty, fidelity, employer's liability, credit, health, accident, live stock, plate glass, tornado, automatic sprinkler, burglary, steam boiler, and all like insurance, shall pay an annual license tax based on the gross premium income derived from business in this State during each year ending the thirty-first day of December prior to the year from which such license tax is to be paid for the privilege of doing business in this State."

and near the close of the third paragraph of section 23, beginning with the word "provided," I find the following language:

" \* \* \* provided, however, that the license tax to be paid by each of the above described persons, partnerships, companies or corporations for the license year commencing May first, nineteen hundred and fifteen and ending April thirtieth, nineteen hundred and sixteen, shall be based upon the gross amount of all premiums, assessments, dues and fees collected, received or derived, or obligations taken therefor, from business in this State during the year beginning January first, nineteen hundred and fourteen, and ending December thirty-first, nineteen hundred and fourteen, both dates inclusive without any deduction for dividends payed or deduction on any other account except for premiums returned upon cancelled policies, and premiums paid for re-insurance upon business in this State in companies duly authorized to do business in this State, which State license tax shall be paid into the State Treasury on or before the first day of April, nineteen hundred and fifteen."

You will see from this language that the license tax is based upon "*the gross amount of all premiums, assessments, dues and fees collected, received or derived, or obligations taken therefor,*" without any deduction for dividends paid or deduction on any other account except for premiums returned upon cancelled policies and premiums paid for re-insurance upon business in this State.

The intent of the law is, therefore, plain that an insurance company should not be allowed a credit for dividends paid to policy holders or deduction on any other account except for premiums returned upon cancelled policies.

In reading the opinion of the Supreme Court of the State of Kansas, which was handed you by the Home Life Insurance Company and submitted to me by you, in which opinion it was held that "premium abatements" are not liable to taxation under the taxing statute of that State, I find by reference to the law of the State of Kansas, which was quoted in said opinion, and a comparison of the statute of that State with the act of the Virginia legislature of 1915, referred to above, you will see that the language of our statute is entirely different from that of the State of Kansas. I am therefore of the opinion that dividends allowed policy holders as a credit on the payment of their premiums, and designated by the company as "premium abatements," are liable to the  $2\frac{1}{4}\%$  tax.

Yours very truly,

JNO. R. SAUNDERS,  
Attorney General.

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SOLICITATION OF INSURANCE WITHOUT LICENSE.

RICHMOND, VA., December 31, 1918.

COL. JOSEPH BUTTON,  
Commissioner of Insurance,  
City.

DEAR SIR:

Acknowledgment is made of your letter of December 30th, in which you state that a member of a firm of New York brokers is transacting insurance business in



Virginia without a license. I understand from your letter that you had a warrant sworn out for this party for soliciting business in Norfolk, and that he was fined for transacting business without a license, and that the same party is now attempting to solicit insurance from several different parties carrying large amounts of insurance for a certain stipulated salary, and agreeing that if his commissions on the insurance placed amounts to the figure named as his salary or exceeds that amount, the party for whom he is placing the insurance will not be required to pay the amount of salary agreed upon.

It seems very plain from the facts set out in your letter that this party is endeavoring to evade the insurance laws of Virginia by soliciting this insurance on a salary basis. I am firmly of the opinion that his actions are such as would warrant you in having him again arrested for transacting business without a license.

Section 83 of the insurance laws, found on page 80 of the booklet issued by your department, provides that every person who shall solicit for compensation, directly or indirectly, any insurance, unless he is a duly authorized agent of such company authorized to do business in Virginia, he shall be deemed an insurance broker.

The act further provides that any person acting as insurance broker without a license, shall be subject to a fine of not less than \$50.00, nor more than \$500.00. There can be no doubt about the fact that if this party receives a salary or commissions for the placing of insurance, he is a person soliciting for compensation, and unless he is clothed with a license, he is subject to the penalties described in said section.

I have said nothing in this letter with reference to what is necessary for foreign insurance companies to do to qualify in Virginia, nor as to who shall act as agent for such companies when qualified, as the section bearing on that question is familiar to you, and was referred to in your letter.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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#### DISPOSITION OF ARTICLES MANUFACTURED BY CONVICTS.

RICHMOND, VA., *June 17, 1918.*

HON. J. B. WOOD,  
*Superintendent of State Penitentiary,*  
*City.*

DEAR SIR:

Acknowledgment is made of your letter enclosing copy of Senate Bill No. 294, with reference to the working of prisoners. You call especial attention to that part of the act found on page 3, commencing with the word "provided" in line 2, and wish to know if you can make any other articles other than those mentioned for the State Convict Road Force and other State institutions, to be disposed of as surplus.

The act provides, on page 3:

" \* \* \* and provided, further, that convicts actually confined within the penitentiary shall be used, *as far as possible*, in the making of clothes, shoes and other necessary articles required by the State convict road force and other institutions of the State. \* \* \* And any surplus of manufactured articles not required by the State convict road force and the other institutions of the State may be disposed of by the penitentiary board as it may deem best."

There seems to be nothing used in this act except perfectly plain language, and I see no objection whatever to the questions raised in your letter. It would seem perfectly proper to make any other style shoe than those worn by the prisoners and inmates of other institutions, or to make some other kind of clothing besides clothing worn by the prisoners and inmates of other institutions, where the making of these different styled shoes and clothing become necessary by reason of the fact that they need to be disposed of as surplus.

I see no objection to your contracting to furnish the surplus to one particular firm rather than selling the same to the general public. I am of the opinion that all of these matters are left very largely in the discretion of the Penitentiary board.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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#### RELEASE OF PRISONERS.

RICHMOND, VA., *September 27, 1918.*

HON. GEO. P. COLEMAN

*State Highway Commissioner,  
Richmond, Va.*

DEAR SIR:

Acknowledgment is made of your letter of September 20, 1918, in which you state that it has come to your attention recently that in some of the cities of the State men have been sentenced to jail for a definite length of time, and in some instances sentenced to pay a fine, and that these men have, after remaining in jail for several days, been released without having served their sentence or having paid their fine. You wish to be advised who has the authority to remit the fines or to commute the sentences of the prisoners so committed.

Justices of the peace have no authority under the law of this State to grant new trials, remit fines, or commute sentences. Appeals may be allowed, however, from justices of the peace any time within ten days after imposing a fine or sentence, or both.

Section 73 of the Constitution provides that the Governor shall have power to remit fines and penalties under such rules and regulations as may be prescribed by law.

Section 124 of the Code provides that

"No court shall remit any fine except for a contempt, which the court, during the same term, may remit either wholly or in part. This section shall not impair the judicial power of the court, set aside a verdict or judgment, or grant a new trial."

Section 124, however, does not apply to a justice of the peace because a justice has no right to grant a new trial.

Sections 738, 739, 740, 741, 742 and 743 provide remedies whereby fines may be remitted by the Governor, who is the only person authorized by statute to remit fines or commute the sentence imposed upon prisoners.

From the facts mentioned in your letter, I am forced to say that the persons

released from jail without serving their sentence or paying their fine, have been released without any authority under the law unless the procedure provided for and mentioned herein, had been fully complied with.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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DESIGNATION OF JUDGE TO PASS UPON CERTIFICATE OF GOOD CHARACTER.

RICHMOND, VA., *February 21, 1918.*

*His Excellency, WESTMORELAND DAVIS,*  
*Governor of Virginia,*  
*Richmond, Va.*

DEAR SIR:

Acknowledgment is made of the vacation order entered in the corporation court of Danville, February 16, 1918, by Judge William Leigh, in the matter of the application of William E. Cunningham for certificate of good character for bar examination, which order you have referred to me with your endorsement, as follows:

"What about this?"

The order reads as follows:

"The petitioner having filed in this matter a petition that exhibits a spirit that is calculated to and might influence and bias the action of the presiding Judge, William Leigh, to the prejudice of the said William E. Cunningham, the Governor is therefore respectfully requested to designate some other judge to hear and pass upon the application of said petitioner."

This order was entered under the provisions of the second paragraph of section 3049 of the Code of Virginia, 1904, which, so far as is applicable thereto, reads as follows:

"If the judge of any circuit or city court is connected with the accused or party injured in any criminal case pending in his court, or if such judge is so situated as to render it improper, in his judgment for him to decide any case or proceeding, or to preside at any trial, civil or criminal, pending therein, unless said case or proceeding is removed as provided by law, the fact shall be entered of record by the clerk of said court, and at once certified by him to the Governor, who shall designate a judge of some circuit court or of some city court, for a city of the first class, to preside at the trial of such cause, or hold such term. \* \* \*"

It will be observed that under this statute, the judge of any circuit or city court, when so situated as to render it improper in his judgment for him "to decide any case or proceeding" pending in his court, is authorized to have entered of record such fact by the clerk of said court and certified to the Governor. Upon receipt of the certificate of such order from the clerk, the Governor, it is provided, "shall designate a judge of some circuit court or of some city court, for a city of the first class, to preside at the trial of such cause, or hold such term."

It is provided by section 3191 of the Code of Virginia, 1904, as amended, that the State Board of Law Examiners "shall make, with the approval of the Supreme Court of Appeals, such rules and regulations" relative to the examination of appli-

cants as to them may seem proper. Under the provisions of this statute, the Board of Law Examiners have prescribed certain rules and regulations for the licensing of persons to practice law, among which is the provision that every person over twenty-one years of age, applying for a license to practice law, must first obtain from the circuit court of the county or the corporation court of the city wherein he resides, a certificate that he is a person of honest demeanor, is over the age of twenty-one years, and has resided in this State the preceding six months. It is then provided by said rules that said certificate shall be obtained in the following manner (111 Va. p. XI):

• "The application for such certificate shall be in writing, addressed to the court, specifying the day of the month when the motion therefor to the court will be made, and be accompanied by the written recommendation of two members of the bar of his judicial circuit, who are practicing attorneys in the Supreme Court of Appeals, speaking of their personal knowledge, that he is of good moral character and a proper person to be licensed to practice law. Such application and recommendation shall be filed with the clerk of such circuit or corporation court ten days before the day on which the court will be asked to grant the said certificate, and a copy thereof forthwith delivered by the clerk to the judge of the court."

The procedure in the case of applicants over nineteen and under twenty-one years of age with certain additional requirements, is substantially the same.

Under the provisions of section 3191, Code of Virginia, 1904, as amended, and the rules and regulations prescribed by the Board of Law Examiners under the authority of this statute and approved by the Supreme Court of Appeals, I am of the opinion that the application of Mr. Cunningham for a certificate of good character for the purpose of being admitted to examination before the Board of Law Examiners, is such a proceeding as is contemplated by the terms of section 3049 of the Code of Virginia, 1904, and, therefore, you should designate some other judge to hear and pass upon the application of the petitioner.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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#### SALARY OF JUDGE FILLING UNEXPIRED TERM.

RICHMOND, VA., *March 21, 1918.*

HON. GEO. LATHAM FLETCHER, *Judge,*  
*26th Judicial Circuit,*  
*Warrenton, Va.*

DEAR SIR:

Acknowledgment is made of your letter of March 18th, in which you state that you were appointed and commissioned by Governor Stuart as judge of the 26th judicial circuit, "from January 1, 1917, to thirty days after the convening of the next session of the General Assembly to fill the vacancy caused by the resignation of Hon. Edward S. Turner."

Your letter further calls attention to the fact that on January 31, 1918, an act increasing the salaries of the circuit judges, was approved by the Governor, and that the third sub-division of this act provides a salary of \$3,000.00 per year to the judges "of circuit courts, whose terms of office, whether elected to fill regular or unexpired terms, begin after the passage of the act." You then request of me an opinion as to whether or not you come within the third sub-division of the act just above quoted.

Section 73 of the Constitution of Virginia provides, among other things, that the Governor shall have power "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 commission, to expire at the end of thirty days after the commencement of the next session of the General Assembly."

From the above, it is manifest that you were appointed by the Governor under the authority granted him by the Constitution of the State, as judge of the 26th judicial circuit, for a term expiring thirty days after the General Assembly of 1918. Therefore, your term under such appointment, expired on the 8th day of February, 1918 (this being thirty days after the commencement of the session of the General Assembly next succeeding your appointment), and you took office under the election of the General Assembly above referred to, beginning on that day, namely: February 8, 1918. As the term for which the legislature elected you, therefore, began after the passage of the act increasing the salaries of the circuit judges was approved, I am of the opinion that you would come within the provisions of the third sub-division of this act, and that your salary from February 8, 1918, should be \$3,000.00.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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DESIGNATION OF JUDGE OF CORPORATION COURT.

RICHMOND, VA., *April 24, 1918.*

*His Excellency, WESTMORELAND DAVIS,*  
*Governor of Virginia,*  
*City.*

DEAR SIR:

A few days ago Colonel LeRoy Hodges, your secretary, submitted a request to this office for an opinion as to the legality of your designating a judge of the corporation court of a city of the second class to sit in a circuit court or corporation or other city court in cities of the first class.

I am also in receipt of a letter from Judge Goolrick, judge of the city court of Fredericksburg, in which he submits the same question to me for an opinion. I have this day answered his letter, and am herein enclosing you copy of my reply, which, I think, fully covers this question. I have reached the conclusion which I believe is a correct one, that since the act of the legislature which was approved March 23, 1916, you have the power to designate the judge of a city court, whether said city be a city of the first or second class, to hold the circuit courts of any county and the circuit courts of any city.

I quote the amendment to section 3049 as approved March 23, 1916, which is as follows:

"If the judge of a circuit court or of any city court be absent or be unable or fail to attend any regular or special terms of his court, or if he be absent or fail to sit during the whole of any regular or special term, or any part thereof, or if, owing to absence or sickness, he be unable or fail to perform or discharge during the vacation of such court any official duty or function authorized or required by law, he may procure a judge of a circuit court or a judge of a city court to hold the said court for the whole of such regular or special term or for any part thereof, or to discharge during vacation such duty or function."

Prior to this amendment, the words "of the first class" followed the words "of a city court," the legislature by this amendment having eliminated the words "of the first class"; and section 99 of the Constitution, not restricting the legislature from enacting such a law, the legislature had the authority so to do.

I am, therefore, of the opinion that this act of the legislature is not in conflict with section 99 of the Constitution. In other words, where the Constitution does not, in express terms or by strong implication, restrict the legislature from enacting a law when the legislature sees fit so to do, then such a law is not unconstitutional. Our Court of Appeals has so held in the case of *Commonwealth, et als, v. United Cigarette Machine Co., Limited*, 120 Va. 884, where it is said:

"The legislature represents the sovereign authority of the people, except so far as restrictions are enforced by the Constitution in express terms or by strong implication. We look to the Constitution of the State, not for grants of power, but for limitations. When the prohibition is not found in the language of that instrument, or in its framework and general arrangement, there is no solid ground to pronounce the enactment void. The infractions must be clear and palpable."

A similar conclusion was also reached by our court in the case of *Town of Danville v. Pace*, reported in 25 Grattan, p. 1.

Yours very truly,  
JNO. R. SAUNDERS,  
*Attorney General.*

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JUDGE OF CITY COURT MAY SIT AS JUDGE OF CIRCUIT COURT.

RICHMOND, VA., April 24, 1918.

JUDGE JOHN T. GOOLRICK,  
*Fredericksburg, Va.*

MY DEAR JUDGE:

You ask the question whether you, as judge of the city court of Fredericksburg (which city is a city of the second class) are qualified to hold court in a judicial circuit of the State. I have read your letter very carefully, and am satisfied that you are qualified to sit as such.

Section 99 of the Constitution closes with this paragraph:

" \* \* \* The judges of city courts in cities of the first class may be required or authorized to hold the circuit courts of any county and the circuit courts of any city."

As you state in your letter, section 3049 of the Code of Virginia, was amended by an act approved March 23, 1916, and in this amendment, as stated in your letter, the words "of the first class" which came after the word "city" were left out by the amendment approved March 23, 1916.

By a careful reading of the last paragraph of section 99 of the Constitution of Virginia, which has just been quoted above, you will observe it does not restrict the legislature from enacting a law which would authorize the judges of the city courts to hold the circuit courts in any county and the circuit courts of the city. In other words, I do not regard the said language as being imperative or as prohibiting the legislature, which represents the sovereign authority of the people, from enacting a law rendering judges of city courts eligible to sit as judges of the circuit courts; and

where the Constitution does not, in its language, prohibit the legislature in express terms from enacting a law, then the legislature has the authority to do so.

I quote the following language from the decision of the Supreme Court of Appeals of Virginia in the case of *Commonwealth, et als, v. United Cigarette Machine Co., Limited*, 120 Va. 844, which opinion was delivered by Judge Kelly:

"The legislature represents the sovereign authority of the people, except so far as restrictions are enforced by the Constitution in express terms or by strong implication. We look to the Constitution of the State, not for grants of power, but for limitations. When the prohibition is not found in the language of that instrument, or in its framework and general arrangement, there is no solid ground to pronounce the enactment void. The infractions must be clear and palpable."

By reference to the decision of our court in the case of *Town of Danville v. Pace*, 25 Gratt. 1, you will find that this same opinion was held by the court in that case.

Inasmuch, therefore, as the legislature of Virginia is not restricted by the Constitution in enacting a law which permits judges of the city courts to sit as judges of the circuit courts of any county or city, I am of the opinion that you are eligible to act as such, and the Governor can so designate you.

I will further state that I will inform the Governor of my views in this matter.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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PAYMENT OF EXPENSES OF JUDGE SKEEN.

RICHMOND, VA., May 27, 1918.

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

MY DEAR SIR:

I am in receipt of your letter in which you enclose me a letter from Hon. H. A. W. Skeen, judge of the 24th Judicial Circuit, and also a copy of your reply to his letter.

I have examined his account of \$46.70, which represents the expenses incurred by Judge Skeen in holding court in the county of Wise. I note from your letter to the judge that you have declined to pay this account of \$46.70, because it is for expenses, as stated above, incurred during the session of the court of the county in which the judge resides.

I believe your construction of the law is correct, and, while I agree with you that this works a great hardship upon the judge, due to the fact that he does not reside at the county seat and necessarily his expenses are as great in attending that court as they would be in attending the court of the adjoining county, at the same time, the language of the Appropriation Bill is so plain and so clear, I do not see how it can be interpreted to mean other than it states, namely:

" \* \* actual traveling expenses and hotel bills of the judges of the circuit courts while in attendance in their circuit in courts other than courts of the counties or cities in which said judges reside, five thousand dollars."

Even though the legislature may have intended that this appropriation should cover an expense of this kind, at the same time it is impossible, as I see it, to place any other construction upon it. I am sending you a copy of my letter to Judge Skeen, as you request.

Very truly yours,  
JNO. R. SAUNDERS,  
*Attorney General.*

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GOVERNOR CANNOT APPOINT JUSTICE OF PEACE.

RICHMOND, VA., *February 25, 1918.*

*His Excellency, WESTMORELAND DAVIS,*  
*Governor of Virginia,*  
*City.*

DEAR SIR:

I beg leave to acknowledge receipt of the communication of Colonel Hodges of the 22nd, enclosing a letter from Mr. S. L. Lupton, concerning the re-appointment of Mr. W. L. Fultz as justice of the peace.

In reply thereto, I will state that the Governor has no authority to appoint a justice of the peace. This office is filled by an election of the people. The statute provides that the judge of the circuit court in certain cases may appoint a justice of the peace, but no such authority is conferred upon the Governor.

Yours very truly,  
JNO. R. SAUNDERS,  
*Attorney General.*

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RELEASE BY JUSTICE OF GIRL FROM DETENTION HOME.

RICHMOND, VA., *June 6, 1918.*

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

MY DEAR SIR:

I acknowledge receipt of your letter of June 5, 1918, in which you state that a certain police justice committed to the Virginia Home and Industrial School for Girls a young girl sixteen years of age, the commitment being in due form signed by the said police justice, and that the same was forwarded to the Virginia Home and Industrial School for Girls. You state also that an agent of the school went to the jail of that city on June 1, 1918, and found that the young girl had been released that morning and given to her mother who had moved from that city to a neighboring city. You state that the release and delivery of the girl was by order of the afore-said justice of the peace.

You desire to know whether or not this justice had the authority to release the girl.

Chapter 350 of Acts of Assembly, 1914, found on page 696 of the said acts, deals with the question you have in mind, and section 8 of the said act, so far as is necessary to be referred to here, reads in part as follows:

“ \* \* \* \* If sufficient to justify a conviction or to send the child on to a grand jury or to require the giving of security for good behavior,



then the court is empowered to act under the provisions of this statute as to the disposition of said child; provided, that the child shall have the same right of appeal from any order entered by such court or police justice or justice of the peace as is provided by law or an appeal from any judgment of conviction entered by any such court. In case of any such appeal the court to which such appeal is taken, or in case of any such child being sent on to a grand jury, the court to which the child is so sent shall, after the trial had in conformity with the requirements of law, have, if the child is held guilty of crime, the power to act under the provisions of this statute as to the disposition of the child."

It will be seen from this part of section 8 that a justice has no authority to even grant a new trial, and it is certain that he has no right, after committing a child to the Virginia Home and Industrial School for Girls, to release her from custody. The act provides for an appeal to the proper court having jurisdiction in said city for this class of cases, and if there is no appeal taken, there is nothing left for the police justice to do in the matter.

In view of the facts in this case, as related in your letter, and the law bearing on the question, I am of the opinion that the police justice acted without authority in releasing the girl referred to and delivering her into the custody of her mother.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

---

BAILING OF PERSONS BY JUSTICE OF PEACE.

RICHMOND, VA., *June 20, 1918.*

JUDGE E. S. ROBINSON,  
*Civil and Police Justice,*  
*Newport News, Va.*

DEAR SIR:

I beg leave to acknowledge receipt of your letter in which you ask for an opinion relative to justices of the peace bailing persons after they have been arrested and enrolled on the police blotter.

You further state that it frequently happens that justices of the peace, after parties have been arrested and so enrolled, bail such parties for a nominal sum, after which they fail to put in their appearance in court.

You further ask if a justice of the peace, under such circumstances, has a right to bail such parties. I am of the opinion that they have no such right.

If you will read section 2960 of the Code of Virginia, which fully sets forth under what circumstances a justice of the peace has the authority to bail a person, you will find that it is contemplated by the law that the justice so bailing is the justice before whom the party charged with crime is brought. I quote the first sentence of this section:

"A justice before whom a person is charged with an offense not punishable with death or confinement in the penitentiary or of which, if it be so punishable, only a light suspicion of guilt falls on him, may, pending examination before him, or upon committing such person for trial, admit him to bail."

It would seem from the language of this paragraph of the law, that it was clearly intended that only the justice before whom such person was brought for trial, had the authority to admit for bail. Certainly, it would not be proper for a justice of

the peace, after your court had obtained jurisdiction over him, to take cognizance of the case and bail a man for a small amount, which he would forfeit rather than to appear for trial, and thereby defeat the ends of justice.

I fully agree with you and the Commonwealth's attorney that any justice of the peace who does this, is acting contrary to the law.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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PAYMENT OF FEES TO JUSTICE OF PEACE.

RICHMOND, VA., *August 7, 1918.*

HON. C. G. KIZER,  
*Commissioner of Labor,*  
*City.*

DEAR SIR:

Acknowledgment is made of your letter of August 6th, asking whether or not, under the laws of Virginia, a justice of the peace can demand and require the payment of his fees as a condition precedent to his issuing and trying warrants for alleged violations of the State statute, the enforcement of which comes under the jurisdiction of your department.

A justice of the peace has no right to require the payment of his fees before the issuing and trying of a criminal warrant.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

---

AUTHORITY OF POLICE JUSTICE TO PLACE PERSON ON PROBATION.

RICHMOND, VA., *October 7, 1918.*

DR. J. T. MASTIN, *Secretary,*  
*State Board of Charities and Corrections,*  
*City.*

DEAR SIR:

I acknowledge receipt of a letter signed by William Hodges Mann, Jr., one of the representatives of the Navy Department, Commission on Training Camp Activities, Norfolk, Va., asking whether or not a police justice is authorized to place persons under probation after the day on which their trial and conviction took place under paragraph 2 of the Probation Law, approved March 16, 1918, found on page 528, Acts of Assembly, 1918.

I do not believe that the act referred to restricts the right of a police justice to place a person convicted upon probation only to the time of the trial, but I believe it gives a police justice the right, in his discretion, to exercise this authority any time after the trial and conviction takes place.

Yours very truly,

F. B. RICHARDSON,  
*Law Assistant.*

## CIVIL JURISDICTION OF JUSTICE.

RICHMOND, VA., *October 30, 1918.*HON. DEANE HUNDLEY,  
*Dunnsville, Va.*

MY DEAR SIR:

Please pardon my delay in replying to your letter of October 24th. It reached here when I was in Middlesex, and since my return I have not had the opportunity of replying.

You ask whether the civil jurisdiction of a justice extends over a county or is it confined to the district for which he is elected. I cannot find any decisions of our Supreme Court which bear directly on this question, but I am satisfied that the civil jurisdiction of a justice of the peace does extend over the entire county, and is not limited to the district in which the justice resides.

Section 2940 of Pollard's Code, to which there has been no amendment, provides how a warrant is issued, directed and returnable where executed, etc. If you will read that section very carefully, and section 2942, which provides how and when the warrant is tried and judgment given, etc., I think these sections show that a justice of the peace has civil jurisdiction throughout the county. It is true that he cannot summon a party defendant out of the district in which said party resides, but you will observe that section 2942 provides that the justice who issued the warrant, upon application of the defendant, shall associate with himself two other justices of the peace of the county.

You will notice that language permits these two justices to come from anywhere in the county. That being true, and if those two justices should agree and the justice who issued the warrant should differ in his opinion from that of the two associate justices, of course the opinion of the associate justices (that being a majority of the court) would prevail. Therefore, if an associate justice has jurisdiction anywhere in the county, surely the jurisdiction of the justice who issued the warrant would not be limited to the district in which he resides.

Of course, you will understand I am simply reasoning by analogy, and, so far as I know, the question has never been settled by any court. I think the election of three justices of the peace in each magisterial district is done more as a convenience to parties litigant, rather than with a view of limiting their jurisdiction to the particular district for which they are elected.

Yours very truly,  
JNO. R. SAUNDERS,  
*Attorney General.*

## REMOVING JUSTICE OF PEACE FROM OFFICE.

RICHMOND, VA., *December 6, 1918.*JUDGE WM. R. BARKSDALE,  
*Houston, Va.*

MY DEAR JUDGE:

I am in receipt of your letter of December 3d to which I will reply at once. You ask whether, in my opinion, a justice of the peace can be removed under the "Ouster Act." I am of the opinion that a justice of the peace is such an officer as

comes within the purview of this statute. A part of the first section of the statute known as the "Ouster Act" approved March 26, 1916, reads as follows:

"That every person holding any office of trust or profit under and by virtue of any of the laws of the State of Virginia, either State, county or municipal, except such officers as are by the Constitution removable only and exclusively by methods other than those provided by this act, who shall knowingly or wilfully misconduct him in office or who shall knowingly or wilfully neglect to perform any duty enjoined upon such officer by any law of the State of Virginia. \* \* \*"

You will observe that it provides that every person holding any office of trust or profit under and by virtue of any of the laws of the State of Virginia, either State, county or municipal, except such officers as are by the Constitution removable only and exclusively by methods other than those provided by this act. There can be no doubt but that a justice of the peace holds an office of trust by virtue of the laws of the State of Virginia. Section 108 of the Constitution provides:

"The General Assembly shall provide for the appointment or election and for the jurisdiction of such justices of the peace as the public interests may require."

In compliance with said section of the Constitution, the General Assembly has made such provision. I do not think there can be any doubt but that a justice of the peace is a State officer. I do not know that any ouster proceedings against any justice of the peace under this statute, has been passed upon by any court.

I confess that I have never given this question any careful study, as it has never been called to my attention before, but viewing it from a common sense standpoint, I am under the impression that I am correct in the opinion herein expressed.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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#### TRIAL JUSTICE FOR ALEXANDRIA COUNTY.

RICHMOND, VA., *December 31, 1918.*

HON. M. D. HART, *Chief Clerk,*  
*Department of Game and Inland Fisheries,*  
*City.*

DEAR SIR:

I beg leave to acknowledge receipt of your favor of the 30th, in which you enclosed a letter from Mr. E. C. Hall, Game Warden of Alexandria county. I have read Mr. Hall's letter very carefully.

If you will read chapter 347 of the Acts of 1912, you will find the law creating the trial justice for the county of Alexandria. You will observe that that act provides that in all counties of the State having a population greater than three hundred inhabitants per square mile, there should be appointed by the judge of the circuit court for such county a trial justice, if, in his discretion, he deems it necessary, etc.

The law further provides that the said trial justices shall have concurrent jurisdiction with justices of the peace in all civil cases, and shall have the same jurisdiction in criminal cases as is vested by general laws in the police justices of cities. The act also provides that nothing in it shall be construed to interfere with

or abridge the rights of justices of the peace to issue warrants and subpoenas in criminal cases, which said warrants and subpoenas shall be returnable to said trial justices for action thereon.

There is no reason why the game warden for Alexandria county cannot report any violation of the game law to any justice of the peace in said county, and the said justice can issue a warrant for the arrest of such person, but the warrant must be returnable to the trial justice of Alexandria county.

So far as the constitutionality of the law creating this trial justice is concerned, the Court of Appeals decided that question in the case of *ExParte Settle*, 114 Va. 715, in which case it was held that the law creating this office is constitutional.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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LICENSE TAX ON SEWING MACHINE COMPANIES.

RICHMOND, VA., *February 2, 1918.*

HON. C. LEE MOORE,  
*Auditor of Public Accounts,*  
*City.*

DEAR SIR:

Acknowledgment is made of your communication of February 2, 1918, enclosing correspondence from John N. Sebrell, Jr., Esq., attorney for the Singer Sewing Machine Company. In his letter, Mr. Sebrell says:

"The Singer Sewing Machine Company here uses an automobile for the exclusive purpose of delivering sewing machines. They pay a license tax of \$200.00 imposed upon sewing machine companies for 'selling and delivering sewing machines,' and section 135 of the tax bill provides that 'such payment shall be in lieu of any additional State, county, city or town license tax or levy.' An additional license is now sought to be put upon this automobile used exclusively in delivering their sewing machines. The question arises, is the company liable for this additional tax in view of the provision of section 135 of the tax bill?"

Section 135 of the Virginia tax bill, so far as is applicable to the question here under consideration, namely: the license tax paid by a manufacturer for the privilege of selling, offering to sell, or of selling and delivering sewing machines manufactured by him, provides as follows:

"First. No manufacturer or other person, whether he be licensed as a peddler, merchant or sample merchant, or not, shall canvass any county, town or city, for the purpose of selling or offering to sell, or shall actually sell or deliver, sewing machines and accessories, unless he be licensed as provided in this section.

Second. Any manufacturer desiring the privilege of selling, or offering to sell, or of selling and delivering sewing machines manufactured by him and accessories to sewing machines, throughout the Commonwealth shall apply to the Auditor of Public Accounts for a license, and it shall be the duty of the Auditor of Public Accounts, upon the payment into the State Treasury of the sum of two hundred dollars for the privilege of transacting such business, to grant such license, and such payment shall be in lieu of any additional State, county, city or town license tax or levy.

The name of the manufacturer shall be stated in the license and such license shall be a personal privilege to the manufacturer to whom it is granted, and shall not be transferable, but any one representative of such manufacturer can sell thereunder for the said manufacturer; should such manufacturer desire to employ more than one representative, such manufacturer so licensed may obtain from the Auditor of Public Accounts separate certificates for as many agents as he may desire to employ in selling and offering to sell, or selling and delivering sewing machines manufactured by him, and accessories to sewing machines upon the payment of five dollars into the State Treasury for each certificate, and such certificate shall state the name of the manufacturer, and shall entitle such agent to sell, or offer to sell, or to sell and deliver, sewing machines manufactured by such manufacturer and accessories to sewing machines throughout the Commonwealth, without the payment of any additional State, county, city or town tax or levy."

It will be seen from the above that it is provided by this section of the tax bill that such license tax therein imposed "shall be in lieu of any additional State, county, city or town license tax or levy," and that the things authorized to be done by a manufacturer or his agent so licensed, may be done "without the payment of any additional State, county, city or town tax or levy." This statute, as it exists at present, was enacted by the General Assembly by an act approved March 19, 1915, chapter 148 of the Acts of 1915, p. 232, 265-6-7.

It is provided by section 2 of chapter 326 of the Acts of 1910, as amended by chapter 522 of the Acts of 1916, page 939, so far as is applicable to the question here under consideration, as follows:

"Every owner of a machine on or before the first day of January, in each year, or before he shall commence to operate his machine, shall register and obtain license to operate the same by making application to the Secretary of of the Commonwealth for a certificate of registration and license to operate. \* \* \*"

It is provided by section 5 of the above act that

"On and after February first in each and every year every dealer, owner or chauffeur who shall operate an automobile or motor cycle over the roads or streets of the State, without first obtaining from the Secretary of the Commonwealth a license to operate the same, and display the license as provided by law, shall be guilty of a misdemeanor and fined not less than ten dollars nor more than twenty dollars. Each day's use of the machine without license shall constitute a separate offense in the discretion of the magistrate or other court trying the case. \* \* \*"

It will be seen from the above-quoted statutory provisions that every owner of a machine before he shall commence to operate it, is required to register and obtain a license to operate the same, and that any person who operates an "automobile over the roads or streets of the State without first obtaining the license provided by law to operate the same, is guilty of a misdemeanor," and that each day's use of the machine without license constitutes a separate offense. This license is not a property tax but a privilege or license tax required by the State for the operation of automobiles over the public highways, and is not such a tax as is contemplated by the provisions of section 135 of the Virginia tax bill, which latter section refers to license taxes or levies imposed for the sale and delivery of sewing machines. The automobile license tax is required, not for the sale and delivery of sewing machines, but for the use and operation of such machines over public highways, and, therefore, is not such a tax as is contemplated by the provisions of section 135 of the tax bill. This is perfectly plain from a reading of the above-quoted statutes, but if this were not so, my conclusion would be the same, as chapter 326 of the Acts of 1910, as

amended and re-enacted by chapter 522 of the Acts of 1916, is a later statute than section 135 of the Virginia tax bill, and under the well-settled rule of statutory construction, the provisions of the two statutes being in conflict, if the content on of Mr. Sebrell be true, the latter must necessarily prevail.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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LICENSE FOR DEALERS.

RICHMOND, VA., *February 28, 1918.*

HON. B. O. JAMES,  
*Secretary of the Commonwealth,*  
*City.*

DEAR SIR:

Acknowledgment is made of your letter of February 27, 1918, in which you say:

"The Harper Overland Company is an automobile dealer in this city, and applied for and obtained license. This concern also has a place of business in the city of Roanoke. They contend that they are authorized to use the dealers license issued them for the city of Richmond in Roanoke or as many places as they care to obtain sales room. I will appreciate your opinion as soon as possible on this point."

On October 25, 1916 (Report of Attorney General, 1916, page 38) you were advised by Hon. Leslie C. Garnett, then Assistant Attorney General as to a similar question, that the license required of a dealer was placed on the dealer or agent, and not on the place of business, and, therefore, that a dealer licensed by you under section 3-B of chapter 522 of the Acts of 1916, was entitled to maintain more than one place of business on the license issued him under this section. In his opinion, Mr. Garnett said:

"This section seems to place the license tax on the manufacturer's agent or dealer and not on the place of business; therefore, I am of the opinion that manufacturer's agent or dealer is entitled to maintain more than one place of business on the license issued him under section 3-b of chapter 522 of the Acts of 1916. If, however, the two establishments are not under the exclusive ownership of the licensed person, I am of the opinion that separate license would be required."

I concur in this opinion.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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ADDITIONAL LICENSE TAX FOR AUTOMOBILES.

RICHMOND, VA., *April 26, 1918.*

HON. C. LEE MOORE,  
*Auditor of Public Accounts,*  
*City.*

DEAR SIR:

I beg leave to acknowledge receipt of two letters of Mr. C. A. Hubbard, the commissioner of the revenue for Warwick county, in which he desires to know whether

or not persons operating automobiles for hire in the county of Warwick, should pay an additional license tax for such privilege when they have already obtained a license in another county or city for the privilege of conveying passengers in said city or county.

I also beg leave to acknowledge receipt of the copy of your letter addressed to Messrs. Hart & Hart, attorneys, Roanoke, Va., written on September 29, 1917, in which you fully discuss the same question.

Sections 20 and 21 of the Acts of Assembly, 1916, page 947, to license and regulate the running of automobiles and other vehicles and conveyances, etc., reads as follows:

Sec. 20—"Every person, for the privilege of running an automobile, taxicab or motor vehicle of any kind for hire, in the transportation of merchandise or passengers in cities or towns of less than five thousand inhabitants shall for each machine operated pay the sum of ten (\$10) dollars, this fee to be paid in addition to the registration and license tax hereinbefore provided for. These to be the only State license taxes to be paid for the privilege of running an automobile, taxicab or motor vehicle of any kind for hire in the transportation of merchandise or passengers."

Sec. 21—"Any person, firm, association or corporation, licensed under this act, shall pay a license tax in the corporation or county in which such automobile, locomobile, or other vehicle is, or in which such garage is located, but in no case shall any person pay a license tax in more than one city or county."

If you will read section 134 of the Virginia tax laws, you will find about midway of said section, the following language:

"Every person, for the privilege of running a single hack, carriage, cab or other vehicle for carrying passengers for hire, shall pay ten dollars, except that a license of two dollars and fifty cents only shall be imposed on persons running such conveyances solely in the country or in town of not more than one thousand inhabitants. \* \* \*

I think, in deciding this question, sections 20 and 21 of the automobile law, referred to above, and the portion of section 134 which I have just quoted, should be construed together, in order to draw the distinction in the case submitted by Mr. Hubbard.

Section 20 requires the payment of a State license tax of \$10.00 upon each automobile run upon roads and streets for transporting passengers for compensation in cities or towns of less than five thousand inhabitants.

Section 21 of the same act states that persons licensed under the act shall pay this license tax in the corporation or county in which such automobile is, but in no case pay a license tax in more than one city or county. I think that section clearly means this: That a man who has an automobile, and who has paid a license in the city or county in which said automobile is, for the privilege of carrying passengers, can transport a passenger going from either the city or county into any portion of the State without paying an additional license tax for so doing, regardless of the fact that he passes through other counties or other cities in the State; but if a man who resides in one county, even though he has paid a license tax in said county for the privilege of transporting passengers anywhere in said county or to other parts of the State, goes into another county and transports passengers from that county, then he would be required, in my judgment, to pay the additional license tax of \$2.50 which is required by section 134 and in accordance with the language taken from said section and quoted above.



I am, therefore, of the opinion that persons operating automobiles in the county of Warwick for the privilege of transporting persons from said county to another section of the State, are required to obtain the license of \$2.50 from the commissioner of the revenue of said county, regardless of the fact that they may have obtained a license for the privilege of so doing in other counties or towns of the State.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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LICENSE FOR RUNNING AUTOMOBILES.

RICHMOND, VA., *June 10, 1918.*

HON. B. O. JAMES,  
*Secretary of the Commonwealth,  
City.*

DEAR SIR:

I am in receipt of your letter of June 10th in which you enclose a letter from yourself to Mr. J. D. Hamilton, a justice of the peace at Warm Springs, Va., and a letter from Mr. Hamilton, of June 8th in reply to your letter.

You ask whether a private owner has a right to use a dealers number after the machine has been delivered to him, and whether or not he has the right to operate his machine "with a paper tag."

The last paragraph of sub-section (a) of section 5 of the act of the General Assembly, regulating the running of automobiles, locomobiles, etc., which was approved March 24, 1916, reads as follows (page 106, Virginia Tax Laws):

"On and after February first in each and every year every dealer, owner or chauffeur who shall operate an automobile or motor cycle over the roads or streets of the State without first obtaining from the Secretary of the Commonwealth a license to operate the same, and display the license as provided by law, shall be guilty of a misdemeanor and fined not less than ten dollars nor more than twenty dollars. Each day's use of the machine without license shall constitute a separate offense in the discretion of the magistrate or other court trying the case. And all licenses issued before this act goes into effect shall expire on the thirty-first day of January, nineteen hundred and seventeen."

You will see from the reading of the above section that there is no provision in the law permitting the use of a machine without first obtaining a license therefor.

I would say that this section should be liberally construed, however, and that a conviction under it should depend largely upon the circumstances of the particular case involved.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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SELLING COUNTRY PRODUCE WITHOUT LICENSE.

RICHMOND, VA., *June 14, 1918.*

WILLING BOWIE, ESQ.,  
*Attorney-at-Law,  
Bowling Green, Va.*

MY DEAR MR. BOWIE:

I have for acknowledgment your letter of June 12, 1918, in which you wish to be advised whether or not, under the tax laws of Virginia, a man has the right to

buy beef, butter, eggs, poultry and other produce throughout the county, and either sell them in the same county or ship them out of the county or State without paying a license.

I think section 51 of the tax laws, as amended and approved March 19, 1915 (Acts of Assembly, 1915, page 232, Pollard's Code, Volume IV, page 601), applies in the case to which you refer. There can be no doubt about a person buying such articles as you mention in your letter, but when he attempts to make sale of them, he places himself within the terms of this act, and, I think, is required to pay a license. The act provides in part as follows:

" \* \* \* except that the tax on peddlars of ice, wood, meat, milk, butter, eggs, poultry, fish, oysters, game, vegetables, fruits or other family supplies of a perishable nature *not grown or produced by them*, shall be \$25.00 for each vehicle used in such peddling, except that no State license shall be charged for peddling fish and oysters in the country, or in an incorporated town, nor shall this section apply to persons who are engaged in selling melons from a car or cars in the country and in towns where the same does not remain for more than 24 hours at any one place \* \* \*."

You will observe that this part of the section above referred to, uses the words "not grown or produced by them." It is plain, therefore, that if the party to whom you refer does not grow or produce the articles which he offers for sale, he must pay a license of \$25.00 for each vehicle used in such peddling. Of course, if the party to whom you refer transacts a general mercantile business, and pays a regular merchant's license, based on his purchases, then the peddler's license of \$25.00 a year does not apply. In such case, that is of a merchant, I think it would be within the law to buy such articles throughout the county and sell them at his store or ship them out of his county.

If the party to whom you refer ships such produce as he may buy out of the State, it becomes interstate commerce, and I am of the opinion that the peddler's license would not apply. I presume, however, that his sales are made within the State of Virginia, in which case he must have a license.

Trusting that this is the information you desire, and assuring you that I am very glad to be of service to you, I am,

Very truly yours,  
JNO. R. SAUNDERS,  
*Attorney General.*

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LICENSE FOR SOLICITING SUBSCRIPTIONS.

RICHMOND, VA., *August 20, 1918.*

MR. B. MORGAN SHEPHERD, *Business Manager,*  
*The Southern Planter,*  
*City.*

DEAR SIR:

I acknowledge receipt of your letter of August 20, 1918, in which you state that your solicitors are frequently held up from working in some of the smaller cities and towns, and asked to pay a license for soliciting subscriptions, your contention being that no publication has to pay a license for doing business in this State. You desire to have my opinion on this matter.

Section 1038a of the Code reads as follows:

"The councils of any incorporated city or town, or board of supervisors of any county in this State, shall not require a license to be obtained for the privilege or right of printing or publishing any newspaper in said cities, towns or counties. But this act shall be in no manner construed so as to exempt those so engaged in the publication of newspapers from the payment of tax upon the plant, machinery, capital, or other property so used in such business, or upon the income derived therefrom."

It will be seen from a reading of this section that no license shall be required for the privilege or right of printing or publication of any newspaper in said cities, towns or counties.

Section 1048 of the Code reads as follows:

"Nothing contained in this chapter, in conflict with any provision of the charter of any city or town, shall be construed to repeal such provision, except sections ten hundred and thirteen a, ten hundred and fifteen b, ten hundred and fifteen c, ten hundred and fifteen d, ten hundred and fifteen e, ten hundred and fifteen f, ten hundred and fifteen g, ten hundred and fifteen h, ten hundred and twenty-eight a, ten hundred and thirty-two a, ten hundred and thirty-three, ten hundred and thirty-three b, ten hundred and thirty-three c, ten hundred and thirty-three d, ten hundred and thirty-three e, ten hundred and thirty-three f, ten hundred and thirty-three g, ten hundred and thirty-three h, and ten hundred and forty a, which shall be construed to repeal any provision of the charter of any city or town in conflict with the provisions of said sections, or any of them, anything in the said charter to the contrary notwithstanding."

From a reading of this section, you will see that nothing contained in the chapter relating to cities and towns in conflict with the charter of any city or town shall be construed to repeal such provision. This section does not except from its provisions section 1038-a first above quoted.

In the case of *City of Norfolk, et als v. Norfolk Landmark Pub. Co., et als*, reported in 95 Virginia, the court held that a municipality may tax all subjects within its jurisdiction not withheld from taxation by the legislature, whether the State taxes them or not.

I am, therefore, of the opinion that if the charter of any city or town in this State sufficiently provides for a license tax for the publishing and printing of a newspaper, the same may be imposed under authority of the case just cited.

You will observe that the statutes and the case above cited refer to the printing and publishing of newspapers. Your question refers to the right of solicitors to solicit subscriptions for a newspaper in cities and towns. I find nothing in the law prohibiting cities and towns from imposing a license tax upon persons who solicit subscriptions to newspapers, and I am of the opinion that if any cities or towns in this State, by proper ordinance, impose a license tax for soliciting subscriptions, they can enforce the payment of the same.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## LICENSE FOR SELLING PICTURE FRAMES.

RICHMOND, VA., *August 27, 1918.*

THOS. H. HOWERTON, ESQ.,  
*Commonwealth's Attorney,*  
*Waverly, Va.*

DEAR SIR:

Acknowledgment is made of your letter of August 26, 1918, in which you call my attention to section 121 of the tax bill, found in Volume IV of Pollard's Code, page 633, in connection with a certain party arrested in your town for soliciting orders for the enlarging of pictures for the Chicago Portrait Company without a license. You desire to know whether or not the justice, who has the case under advisement, should acquit the accused, or impose a fine upon him for doing business without a license.

If you will refer to the case of *Roselle v. Commonwealth*, reported in 110 Virginia, page 235, you will find a case practically the same as the one you mention. This case was affirmed by the United States Supreme Court, and reported in 223 U. S., 716, 56 L. Ed. 627.

You will observe that this case raises particularly the question of selling picture frames. It appears from the facts in this case that the company's agent secured orders in writing, stipulating that, upon a certain date named in the contract, the company would deliver a finally finished portrait for a certain sum of money which was set out in the contract. The contract concluded with a paragraph with reference to the delivery of a suitable frame, for which the purchaser agreed to pay wholesale price. The evidence showed that the sale of the picture frame was not concluded until the time of delivery, and the purchaser was under no obligation to take the frame unless he desired to do so. Upon that state of facts, the court held that the company was properly chargeable with a license for selling picture frames.

The soliciting of orders for enlarging pictures, however, is not a violation of the law, and no license can be required, unless, as in the case of the picture frames, the sale is not concluded until the picture is delivered.

The test which determines whether the transaction is to be regarded as interstate commerce or intrastate commerce is whether the property which is offered for sale is within the jurisdiction of the State at the time the sale is made.

I will not lengthen this opinion by a further discussion of the facts, because you can refer to the case above cited, which will disclose very plainly whether or not the party to whom you refer should pay a license.

Very truly yours,  
JNO. R. SAUNDERS,  
*Attorney General.*

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LOAN SHARK LAW CONSTRUED.RICHMOND, VA., *May 16, 1918.*

HON. C. C. BARKSDALE, *Chief Examiner,*  
*State Corporation Commission, Banking Division,*  
*City.*

DEAR SIR:

I beg leave to acknowledge receipt of your letter of May 11th, in which you enclose me copy of the "Loan Shark" Law. You ask whether it would be legal

under section 14 and sub-sections (a) and (a) for persons and corporations doing a small loan business and having qualified under the law to do such business, to charge a notary fee in addition to the compensation as set forth in section 14. The latter part of sub-section (a) reads as follows:

“ \* \* \* In addition to the charges herein provided for, no further or other charge, or amount whatsoever for any examination, service, brokerage, commission, fine or other thing, or otherwise shall be directly or indirectly charged, contracted for or received, except the lawful fees, if any, actually and necessarily paid out by the licensee to any public officer, for filing, or recording in any public office any instrument securing the loan, which fees may be collected when the loan is made or at any time thereafter.”

The language of this section is not entirely clear, and it is a matter of doubt whether it would be proper to charge a notary fee or not, but section 18 provides that any person, co-partnership or corporation who shall violate any of the provisions of section 14 shall be guilty of a misdemeanor and may be punished by a fine not exceeding \$500.00 or by imprisonment not more than six months, or by both such fine and imprisonment in the discretion of the court. You will see from this section, that the penalty for doing anything which is prohibited under section 14 is very heavy. Inasmuch as it is questionable, I would, therefore, say that the wisest thing to do is not to charge a notary fee in addition to the other charges. Of course, that section would have no application to any notary who took an acknowledgment to a deed, and who was not connected with the corporation. Certainly, he is not precluded under this section from charging his usual fee in such cases.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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LAWS FOR PROTECTION OF SOLDIERS AND SAILORS.

RICHMOND, VA., *January 24, 1918.*

HON. JOHN W. WILLIAMS, *Clerk,*  
*House of Delegates,*  
*Richmond, Va.*

DEAR SIR:

Acknowledgment is made of the following resolution of the House of Delegates:

“Whereas, doubt is expressed as to whether the legislature can pass a valid law for the protection of the civil rights of soldiers and sailors in active military and naval service, as recommended by the Governor:

Therefore, be it resolved by the House of Delegates of Virginia that the Attorney General be, and he is hereby requested to advise whether, in his opinion, such a law is constitutional.”

The provision of the Governor's message relating to this question is found on page 5 of Senate Document No. 1, 1918 session, and reads as follows:

“In this connection I recommend the passage of suitable legislation, in accord with Federal enactment, for the protection of the civil rights of soldiers and sailors in the military or naval service of the United States, so that while they are risking their lives for their country, their property may not be needlessly sacrificed at home.”

From the above, and from conversation had with the Governor's office, it appears that the recommendation contemplated the enactment of suitable legislation to stay the collection of debts due by men in the military and naval service while engaged in such service.

Section 194 of the Virginia Constitution provides as follows:

"The General Assembly is hereby prohibited from passing any law staying the collection of debts, commonly known as 'stay laws.'"

I am forced, therefore, to the conclusion that any law passed by the legislature staying the collection of debts, would be unconstitutional.

Permit me to say, however, I feel that the principle underlying the recommendation of His Excellency, the Governor, is a most admirable one, and the matter should receive the serious consideration of your Honorable Body; and unless, after an investigation, you deem the present law to amply protect the property of our soldiers and sailors, it would be proper to consider what additional constitutional legislation can be enacted for their protection.

I assure you that I will gladly render you any service looking to this end that you may desire.

Yours very truly,

J. D. HANK, JR.,  
*Attorney General.*

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IS JUDGE OF JUVENILE COURT STATE OFFICER.

RICHMOND, VA., *February 15, 1918.*

JUDGE JAMES HOGE RICKS,  
*Domestic and Juvenile Relations Court,*  
*1112 Capitol Street,*  
*Richmond, Va.*

MY DEAR SIR:

Acknowledgment is made of your letter of February 8, 1918, in which you ask whether you are a State officer within the meaning of section 79, Rule 12, subsection (a) of the Selective Service Regulations.

On December 24, 1917, Hon. Jno. Garland Pollard gave an opinion to General W. W. Sale, Adjutant General of Virginia, a copy of which I am herein enclosing you.

The position which you hold is judge of the juvenile and domestic relations court of the city of Richmond. I am informed that your court is practically in session continuously. Such being the case, I would regard you as an officer coming within the meaning of this regulation, and would, therefore, say that you are exempt from military service under the Selective Service Regulations. If you will read the opinion as expressed by Mr. Pollard and the citation of authorities as given by him, I am sure you will see that the courts sustain me in this conclusion.

Of course, you will understand that should the Federal government make a different ruling, the opinion which I now express to you would be superseded. It is very difficult to find any law which is entirely clear and accurate in matters of this kind. One must, therefore, rely upon common sense and public policy, to a large extent, in determining matters of this nature.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## COMMISSIONERS IN CHANCERY AND ELECTORAL BOARD MEMBERS ARE STATE OFFICERS.

RICHMOND, VA., *June 1<sup>st</sup>, 1918.*

HON. HUNTER J. PHLEGAR,  
*Attorney-at-Law,*  
*Christiansburg, Va.*

DEAR MR. PHLEGAR:

You will recall the fact that some time in March of this year, we have some correspondence in which you asked the question whether commissioners in chancery and members of electoral boards were judicial and executive officers of the State within the meaning of the Selective Service Draft Law. I replied that I so regarded them.

Since writing that letter, you have called my attention to the fact that on December 24, 1917, my predecessor, the Hon. Jno. Garland Pollard, gave an opinion to Hon. W. W. Sale, then Adjutant General of Virginia, in which he defined and classified certain officers as being exempt from military service.

You ask me if I had read the opinion of Mr. Pollard at the time I wrote you. In reply, I will state that I had read Mr. Pollard's opinion very carefully. I noticed that he was not asked the question whether commissioners in chancery and members of electoral boards were exempt, therefore, he did not express an opinion as to these officers.

However, I am firmly of the opinion that my views as to these officers being exempt, as contained in my former letter to you, are correct for the following reasons:

*Commissioners in Chancery.*

In the Rules and Regulations prescribed by the President on the 30th day of June, 1917, and under authority vested in him by the act of May 18, 1917, the President, in defining who is an officer, uses the following language:

"The word 'officers' shall be construed for the purpose of said act of Congress and these rules and regulations, to mean any person holding legislative, executive or judicial offices, created by the Constitution or the laws of the United States, or of any of the several States or territories."

In Virginia, the office of commissioner in chancery, is recognized in section 105 of the State Constitution, and is created by section 3319 of the Code of Virginia. Commissioners in chancery have always been regarded as important judicial assistants to certain courts of our State. They have a number of judicial functions to perform both with reference to the administration of justice and as conservators of the peace.

In the case of *Bowers' Administrator v. Bowers, et als*, which is found in 29 Gratt., page 700, the court uses the following language in reference to a commissioner in chancery:

"That the office of commissioner in chancery is one of the most important known in the administration of justice, will be universally conceded. His duties are of a grave and responsible nature; he is the assistant to the chancellor. There is no question of law or equity, or of disputed fact, which he may not have to decide, or respecting which he may not be called upon to report his opinion to the court. \* \* \*"

Among the various powers which commissioners in chancery are, by statute, expressly authorized to exercise, may be named the following:

(a) To take acknowledgments to deeds which the Supreme Court of Appeals of Virginia has decided is a judicial act, and it cannot be collaterally impeached.

(b) To act as conservators of the peace, and, as such, to require of persons not of good fame, bonds for their good behavior.

(c) To adjourn their proceedings to any other county or corporation in the State.

(d) To compel the attendance of witnesses before them by summons or attachment issued by themselves, with power to impose fines for failure to attend.

(e) To receive and act upon petitions filed to perpetuate testimonies.

(f) To examine judgment debtors on oath as to whether they own property liable to the levy of executions.

He is the only officer before whom depositions can be taken in divorce suits. They also render valuable assistance to courts in the execution of decrees directing accounts and inquiries. In fact, a commissioner in chancery has been properly termed "the right arm of the court."

Not only is the county or corporation in which a commissioner in chancery resides, but the State at large also is concerned in the exercise of his duty, by which he helps courts to determine legal rights settling controversies and conserving the peace. In doing these things, a commissioner in chancery is a part of the State government as distinguished from county or municipal governments.

#### *Members of Electoral Boards.*

I regard these officers as executive officers of the State of Virginia within the meaning, spirit and letter of section 4 of said draft law, which exempts State executive officers from draft, for the following reasons:

A member of an electoral board is an executive officer of the State of Virginia, and comes within the definition of the word "officers" as laid down by the President in section 18 (a), page 24 of said Rules and Regulations, which definition has already been quoted by me above.

Electoral boards are created both by section 31 of the Constitution of Virginia and by section 64 of the Code of Virginia. The manner of their appointment is therein provided for; their terms of office are fixed; their duties, powers and oaths are prescribed either by the Constitution or by statute, or both. Among the several duties which they have to perform, may be mentioned the following:

To appoint judges, clerks, registrars of election; to remove any or all of these appointees for certain causes; to provide voting places; to prepare, count officially, seal and distribute ballots before elections; and to provide for new registration of voters and for the purging of registration books when, in their judgment, it is deemed necessary. In a large measure, electoral boards have general supervision of the holding of all elections, local, State and national.

It is the duty of electoral boards to execute and carry into effect many of the election laws of the State, and some of them have definite times which are expressly prescribed by statute. Nor does the law make any provision whereby their duties may be discharged by others. They exercise independent judgment and discretion under the law in the performance of their functions; and when done within the scope of their power, their acts are final. Their powers and duties extend to all elections, local, State and national, and the discharge of their duty is an exercise of the sovereignty of the State of Virginia, as distinguished from county or municipal authority.



(e) That note 1, section 79, Rule XII (a), page 39, of the said Selective Service Regulations, issued by the President, prescribes that "State officers must be determined by reference to local law." Neither the said Selective Service Draft Law, nor the Rules and Regulations thereunder which the President prescribed (including especially his said definition of the word "officers"), nor anything in the said Selective Service Regulations, nor anything in the laws of the State of Virginia, as far as my knowledge goes, makes the test or classification of State officers depend upon entirety of time devoted to the service of the State, or upon the continuity or regularity of such service. Which test or classification, I, therefore, respectfully submit, is arbitrary and unwarranted. In fact, the President's definition of "officers" is "*any person holding a legislative, executive, or judicial office created by the Constitution or laws— of any of the several States or territories.*" And, according to my understanding of the laws of the State of Virginia, as laid down by the Supreme Court of Appeals of Virginia in several cases (notably in *Burch v. Hardwicke*, 30 Gratt., page 24), the real and true test of State officers is that they are officers who, for the time being, exercise a part of the sovereignty of the State for the benefit of the people of the State. I am of the opinion that commissioners in chancery and members of electoral boards easily meet this test; and that they are, respectively, judicial and executive officers of the State of Virginia under the laws of said State, under the President's aforesaid definition of the word "officers," and within the meaning, spirit, and letter of section 4 of said draft law, which exempts State judicial, and executive officers from draft.

I respectfully submit that to make the test of State officers depend upon entirety of time devoted to the service of the State, or upon continuity or regularity of such service, is to engraft upon the said draft law a limitation which neither Congress nor the President, in their wisdom, have seen fit to place there—indeed a limitation which the laws of the State of Virginia do not contain, in my knowledge, and which those laws do not impose upon the said draft law.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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MEMBER OF BOARD OF HEALTH NOT STATE OFFICER.

RICHMOND, VA., *June 20, 1918.*

COL. LEROY HODGES,  
*Secretary to the Governor,*  
*City.*

DEAR SIR:

I acknowledge receipt of your letter of June 19, 1918, enclosing a letter from Captain Guy R. Harrison, of the Dental Reserve Corps, stationed at Camp Lee, in which he desires to be advised relative to an act passed by the last legislature, concerning State officers and employees who are in the service of the United States.

The act to which he refers is chapter 363, found on page 540 of the Acts of 1918. Since you, no doubt, have a copy of the acts before you, I will not quote the act itself. You will notice that the act uses the word "officer" or "employee."

Since members of the State Board of Health receive no compensation for their services, I am inclined to the view that Dr. Harrison would not be considered a State officer or employee within the meaning of the act.

However, the power of appointment is in the Governor, and whenever he makes an appointment to fill the place of Dr. Harrison, there could be no objection to his having an understanding with the new appointee that his appointment will terminate whenever Dr. Harrison returns or terminates his services with the United States.

Yours very truly,  
JNO. R. SAUNDERS,  
*Attorney General.*

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#### LEAVE OF ABSENCE TO STATE OFFICERS DURING WAR.

RICHMOND, VA., *June 28, 1918.*

*His Excellency, THE HONORABLE WESTMORELAND DAVIS,*  
*Governor of Virginia,*  
*Richmond, Va.*

DEAR SIR:

Acknowledgment is made of your letter of June 27, in which you enclose a letter from Mr. Benjamin L. Purcell, Dairy and Food Commissioner, requesting a leave of absence for the period of the war, in order that he may engage, at the request of the United States government, in the war service of that government. Your letter asks the Attorney General's opinion on the legality of granting the request of Mr. Purcell.

It is provided by the Acts of Assembly, 1918, page 540, as follows:

" \* \* No State, county or municipal officer or employee shall forfeit his title to office or position or vacate the same by reason of engaging in the war service of the United States; and any such officer or employee who voluntarily or otherwise enters such war service may notify the officer or body authorized by law to fill vacancies in his office, of such fact, and thereupon be relieved from the duties of his office or position during the period of his war service; and the officer or body authorized to fill vacancies shall designate some suitable person to perform the duties of such office as acting officer during the period the regular officer is engaged in war service, and during such period the acting officer shall be vested with all the powers, authority, rights and duties of the regular officer for whom he is acting.  
\* \* "

Mr. Purcell is undoubtedly a State officer under the meaning of this act.

Chapter 188, Acts of 1908, section 2, provides that in case of a vacancy in the office of the Dairy and Food Commissioner for any cause, the Governor shall appoint his successor.

I am, therefore, of the opinion that, by virtue of the act of 1918 above quoted, Mr. Purcell may be relieved from his office during the period of his war service, and that you are authorized to designate some suitable person to perform the duties of his office, as acting officer, during the period he is engaged in the war service.

Yours truly,  
J. D. HANK, JR.,  
*Assistant Attorney General.*

## TRANSPORTATION OF TROOPS.

RICHMOND, VA., *July 5, 1918.*

COL. JO LANE STERN,  
*Adjutant General,*  
*Richmond, Va.*

DEAR SIR:

Acknowledgment is made of your letter regarding the transportation of troops, in which you ask whether or not the provisions of a publication issued by the State Corporation Commission would be applicable to the transportation of troops, and applies when the troops are on duty, in aid of civil authorities, for the State.

Section 305 of the Code of Virginia, as amended by Acts of Assembly, 1916, page 870, reads, in part, as follows:

“ \* \* \* and it shall be the duty of the Adjutant General to contract annually with the various railroad companies of the State, for rates of transportation, should there be occasion for it, provided such rates shall not exceed any maximum that may hereafter be fixed by law. \* \* \* ”

There has been no act of the legislature repealing section 305, or any of its provisions, so far as I am advised, and I am of the opinion that the provisions of this section are applicable now just as they have been heretofore.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## ORGANIZATION OF HOME GUARDS.

RICHMOND, VA., *July 8, 1918.*

COL. JO LANE STERN,  
*Adjutant General,*  
*Richmond, Va.*

DEAR SIR:

Acknowledgment is made of your letter, in which you refer to an act of the last legislature, this being chapter 322, entitled “An act to organize home guard companies.”

Your first question is:

“Who is a commissioned officer of a city or county contemplated in the first section of that law, as a person to superintend elections?”

It is impossible to say what commissioned officer the legislature had in mind when it said “they are hereby authorized, under the superintendence of a commissioned officer of a city or county, \* \* .” However, this should not be a very troublesome question since the Governor, by the terms of the act, may designate some person to superintend elections.

Your second question is:

“Who are the persons authorized to elect a major, as provided in section 3 of the act?”

From the reading of the third paragraph of the act, it seems plain that the members of the company are the persons authorized to elect a major, since the act reads "Whenever two or more companies shall be organized in a city or county, they may elect a major, etc."

Your third question is:

"What fund shall be charged with the payment for the rations authorized in section 4?"

Paragraph 4 of the act provides that troops shall be furnished with rations authorized by law when in actual service, and that the Governor shall provide them with such ammunition as the exigency of the service shall require. I know of no appropriation out of which these funds can be paid, unless the Governor sees fit, in his discretion, to use a part of the \$50,000 appropriation found on page 730 of the Acts of 1918, under the heading, "Military Funds."

Your fourth question is answered in the above paragraph.

Your fifth and sixth questions are:

"What form of bonds shall be given, and to whom payable, as provided in sections 4 and 5" and

"What form of oath shall be administered to the members of these companies, and shall there be a different oath for the officers; if so, what?"

The act does not provide what form of bond shall be given, nor to whom payable. In the absence of any provision to the contrary, I would suggest that any bonds, in form satisfactory to you and payable to the Commonwealth of Virginia, would be sufficient. The act does not provide what form of oath shall be administered, and I am unable to say what form should be administered.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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#### COMPATIBILITY OF OFFICES.

RICHMOND, VA., *October 25, 1918.*

HON. WESTMORELAND DAVIS,  
*Governor of Virginia,*  
*Richmond, Va.*

MY DEAR GOVERNOR:

I acknowledge receipt of your letter of October 18th, enclosing a letter from Major E. W. Nichols, dated October 5th, transmitted to your office through Col. Jo Lane Stern, the Adjutant General of Virginia, requesting me to give you my opinion regarding the points about which Major Nichols inquires.

It appears that Major Nichols and the staff of officers to whom he refers, have been commissioned in the National Guard of Virginia, and have also received Federal commissions during the period of the war. He desires to know the status of these officers so far as relates to their National Guard connections.

Major Nichols' letter is not quite clear to me as to just why this information is desired. I presume, however, that the question in his mind is raised by section 164 of the Code, as amended by chapter 315 of the Acts of Assembly, 1918, which deals with the subject of incompatibility of offices. He is doubtless under the impression that accepting a commission under the Federal government automatically vacates

the commissions held by the National Guard of Virginia. If this is the question he desires answered, I will state that section 164 of the Code, so far as it need be quoted here, reads as follows:

"The preceding section shall not be construed to prevent any person holding an office or post of profit, trust or emolument, civil, legislative, executive or judicial, under the government of the United States, from being a member of the militia, or holding an office therein. \* \* \*"

I think the language of this section is broad enough to be construed so as to permit the persons whom Major Nichols refers to holding commissions under the Federal government, and, at the same time, retaining commissions in the National Guard of Virginia.

I can see no good reason why this should not be so. In addition to the provisions of the section above quoted, chapter 363 of the Acts of Assembly, 1918, provides, in substance, that no State, county, or municipal officer shall forfeit his title to his office or post, or vacate the same by reason of engaging in the war service of the United States.

The conducting of military schools appears to me to be as much a part of the war service of the United States at this time, as many other branches of the service considered essential to the winning of the war, and I think the language of this chapter (chapter 363) is broad enough to be construed to permit the holding of both Federal commissions and commissions in the National Guard of Virginia at the same time.

If this letter does not convey the information required by Major Nichols, and you will communicate with me further in regard thereto, I shall be very glad to render any further assistance within my power.

Yours very truly,  
JNO. R. SAUNDERS,  
*Attorney General.*

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MINERAL LANDS IN SPOTSYLVANIA.

RICHMOND, VA., *September 16, 1918.*

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

MY DEAR JUDGE RHEA:

I acknowledge receipt of your letter in which you refer to large deposits of gravel in Spotsylvania county, which is being very extensively mined and used in all character of concrete work, as well as for ballast and railroad tracks. I note that this property has heretofore been assessed as agricultural land, and you desire to know whether or not it should be assessed as mineral land instead of agricultural land.

I have before me a volume entitled "Mine Taxation in the United States." On pages 10 and 11 of said book, the author states that "mineral" is now defined broadly to include "every description of stone and rock deposits, 'whether metallic substances or entirely non-metallic.'" Young on Mine Taxation, page 10.

He also defines mineral as

"Such a substance (other than the mere surface which may be used for agricultural purposes) as possesses economic value for use in trade, manu-

facture, the sciences, or in the mechanical or ornamental arts; And it is demonstrated that such substance exists thereon or therein in such quantities as render the land more valuable for the purpose of removing and marketing the substance than for any other purpose, and the removing and marketing of which will yield a profit; or it is established that such substance exists in the lands in such quantities as would justify a prudent man in expending labor and capital in the effort to obtain it."

Bouvier's Law Dictionary defines mineral as

"All fossil bodies or matters dug out of mines or quarries, whence anything may be dug; such as beds of stone which may be quarried. \* \* \* \*

Any natural production, formed by the action of chemical affinities, and organized when becoming solid by the powers of crystallization. \* \* \* \*

The term mineral has been defined as 'every substance which can be got from underneath the surface of the earth, for the purpose of profit.' L. R. 7 Ch. App. 699; \* \* \* \* It has been held to include \* \* \* \* stone for road making or paving; L. R. 4 Eq. 19. \* \* \* \*"

From the foregoing definitions contained in Bouvier's Law Dictionary and from the authorities quoted by Young in his work on mine taxation, it would seem that gravel comes within the definition of the term mineral.

I am, therefore, of the opinion, from the examination that I have made, that lands containing large deposits of gravel, which are being mined, should be taxed as mineral lands and not as agricultural lands.

Very truly yours,

JNO. R. SAUNDERS,

*Attorney General.*

NOTARY FOR COUNTY CAN TAKE ACKNOWLEDGMENTS IN CITY LOCATED IN COUNTY.

RICHMOND, VA., *March 16, 1918.*

MR. S. M. LAWRENCE,  
*Suffolk, Va.*

DEAR SIR:

Acknowledgment is made of your letter of March 15th, addressed to the Attorney General, in which you request him to advise you whether a notary for the county of Nansemond is authorized to take acknowledgments in the city of Suffolk which is located wholly within the county of Nansemond.

This question is answered by section 923 of the Code of Virginia, 1904, as amended, Volume 4, page 252, where it is provided, so far as is applicable to the question here under consideration, as follows:

" \* \* \* 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 and city."

Yours very truly,

LEON M. BAZILE,

*Law Assistant.*

## NOTARY CANNOT EXERCISE POWER OF JUSTICE.

RICHMOND, VA., *August 7, 1918.*

*His Excellency, WESTMORELAND DAVIS,*  
*Governor of Virginia,*  
*City.*

MY DEAR GOVERNOR:

I acknowledge receipt of your letter of August 1st, enclosing a letter from Mr. I. A. Balisok. You desire to be advised as to the question raised in his letter.

It appears from Mr. Balisok's letter that he desires to exercise the powers of a justice of the peace. Section 923 of the Code provides for the appointment of notaries public by the Governor, and reads, in part, as follows:

" \* \* \* and who shall exercise the powers and functions of conservators of the peace and who shall be removable by the Governor at will for misconduct, incapacity or neglect of official duty. \* \* \* "

Section 3912 of the Code provides that justices, commissioners in chancery, notaries public and county surveyors, while in the performance of their duties of office shall be conservators of the peace, but by reference to section 3915 of the Code it appears that the duties of conservators of the peace extend only to requiring a recognizance of such person or persons as are brought before them on a charge of a breach of the peace or an attempt at breach of the peace. I find no law in this State authorizing a notary to try criminal cases and imposing fines, such as is provided for justices of the peace. His authority can extend only so far as is set out in the statute law of the State.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

## GOVERNMENT EMPLOYEES AS NOTARIES.

RICHMOND, VA., *September 27, 1918.*

*HONORABLE WESTMORELAND DAVIS,*  
*Governor of Virginia,*  
*Richmond, Va.*

MY DEAR GOVERNOR:

Acknowledgment is made of your letter of September 11, 1918, in which you ask what class of persons employed by the Federal government can be commissioned as notaries public under the existing Virginia laws.

Section 164 of the Code, as amended by chapter 315, Acts of Assembly, 1918, governs in the appointment of notaries public who are employed by the Federal government. The act, in so far as it is applicable here, paraphrased, would read as follows:

"The preceding section (section 163) shall not be construed to exclude from offices of the State, officers or soldiers on account of the recompense they may receive from the United States when called out in actual duty; or to prevent United States commissioners, United States census enumerators, or 4th class postmasters from acting as notaries public; or to prevent any United States rural mail carrier from being appointed and acting as a notary public."

I am of the opinion, therefore, that officers and soldiers, while called out in actual duty, United States commissioners, United States census enumerators, fourth class postmasters, and United States rural mail carriers may be appointed notaries public without violating the provisions of section 164 above referred to.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General of Virginia.*

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NOTARY FOR COUNTY CAN TAKE ACKNOWLEDGMENT IN CITY IN THAT COUNTY.

RICHMOND, VA., *October 17, 1918.*

JUDGE ALVIN T. EMBREY,  
*Fredericksburg, Va.*

MY DEAR JUDGE:

I beg leave to acknowledge receipt of your letter of October 16th, in which you ask the question whether a notary public, commissioned by the Governor for the county of Spotsylvania, could validly take an acknowledgment to a deed within the incorporated limits of the city of Fredericksburg.

Section 923 of the Code of Virginia, Volume 4, which provides for the appointment of notaries public, contains the following paragraph:

‘ \* \* \* and he (Governor) 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 and city. \* \* \* ’

I am, therefore, of the opinion, from the reading of the above paragraph, that a notary public in Spotsylvania county would have authority to take acknowledgments in the city of Fredericksburg.

I notice from an opinion expressed by Attorney General Anderson, on February 10, 1902, to Governor Montague, that he holds a similar view. I quote the following language from his opinion:

“A notary public resident in either the city of Roanoke or the county of Roanoke, would have authority to act as such in either locality.”

With kindest regards of the writer, I am,

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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PARDON OF VIOLATOR OF PROHIBITION ACT.

RICHMOND, VA., *March 7, 1918.*

*His Excellency,* WESTMORELAND DAVIS,  
*Governor of Virginia,*  
*City.*

DEAR SIR:

Acknowledgment is made of the communication of your secretary, dated March 1, 1918, enclosing papers in the case of Oscar Adams, colored, who is an applicant for pardon as a violator of the Prohibition Act.



It appears that Adams, after being convicted of a violation of the prohibition law, was required by the trial court to give a bond as provided for by section 43 of chapter 146 of the Acts of 1916, conditioned that he would not violate any of the provisions of that act for the term of one year. Your secretary says in his communication:

"The Governor desires to have you advise him as to whether he has authority to relieve this man of the bond that has been imposed upon him by the court."

The pardoning powers of the Governor are found in section 73 of the Virginia Constitution, 1902, which, as to this subject, reads as follows:

" \* \* \* He 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 offenses committed prior or subsequent to the adoption of this Constitution, and to commute capital punishment. \* \* \* "

The requiring of a bond by the trial court under section 43 of chapter 146, of the Acts of 1916, is not a punishment for a violation of this act, but a proceeding for the purpose of preventing a further violation of the law by the defendant. Therefore, it is not such a proceeding from the consequences of which the Governor is directly authorized by the Constitution to pardon.

Therefore, any authority in the Governor to *relieve* this man of the bond imposed upon him by the court would have to be conferred upon him by an act of the legislature.

As there is no statute authorizing the Governor to relieve a person of a bond required by a court of a person for his good behavior, I am of opinion that the Governor has no such power.

Yours very truly,  
JOHN R. SAUNDERS,  
*Attorney General.*

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IMPRISONMENT FOR FAILURE TO GIVE BOND.

RICHMOND, VA., *March 20, 1918.*

*His Excellency*, WESTMORELAND DAVIS,  
*Governor of Virginia,*  
*City.*

DEAR SIR:

Acknowledgment is made of the communication of your secretary, requesting further advice in the matter of the application of Oscar Adams, colored, for a pardon from the imprisonment consequent upon his failure to give a bond as required by the circuit court of Rockingham county under the provisions of section 43 of chapter 146 of the Acts of 1916.

The specific question on which you desire my advice is whether you have the power to pardon this man from the imprisonment consequent upon his failure to give the bond required by the circuit court under the provisions of section 43 of chapter 146 of the Acts of 1916.

It is provided by section 43 of chapter 146 of the Acts of 1916, as follows:

"In addition to the penalties imposed by this act for the violation of any of its provisions, the court may, in its discretion, after conviction is had, for the first offense, and shall after every subsequent conviction, require the defendant to execute bond with approved security, in the penalty of not less than five hundred, nor more than five thousand dollars, conditioned that the said defendant will not violate any of the provisions of this act, for the term of one year. And if said bond shall not be given, the defendant shall be committed to jail until it is given, or until he is discharged by the court, provided that he shall not be confined for a longer period than six months."

As was said in my opinion to you of March 7, 1918:

"The requiring of a bond by the trial court under section 43 of chapter 146 of the Acts of 1916, is not a punishment for a violation of this act, but a proceeding for the purpose of preventing a further violation of the law by the defendant. \* \* \*"

Whether you have such power is governed by the provisions of the Virginia Constitution and the statutes enacted by the legislature in furtherance of the pardoning powers conferred upon the Governor. The constitutional provisions read as follows (section 73):

" \* \* \* He 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 offenses committed prior or subsequent to the adoption of 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 remitted, of reprieve or pardon granted, and of punishment commuted, with his reasons for remitting, granting, or commuting the same."

Under a similar provision contained in section 5 of Article 4 of the Constitution of 1867, it was held by the Court of Appeals in *Wilkerson v. Allan*, 23 Gratt. (64 Virginia) 10 (1873), that all that the Governor "could do under the powers with which he was invested, by law, was to remit the sentence of the court ordering the imprisonment of the defendant for the term of four months," and that, therefore, the Governor had neither the power to relieve a person from a fine assessed against him nor from the imprisonment consequent upon the failure of the defendant to pay the fine so assessed against him. Speaking for the court, Christian, J., said (page 18):

"The Governor went to the extent of his authority in remitting the four months' imprisonment. *His action did not, and could not, remit the fine, or in any way affect the remedies given by law to the Commonwealth, to enforce the payment.*"

I think it is clear, therefore, that under the general pardoning powers of the Governor, you have no authority to pardon one imprisoned for failure to give the bond required by the trial court under the provisions of section 43 of chapter 146 of the Acts of 1916. Therefore, I am of the opinion that any authority in the Governor to relieve one from the imprisonment consequent upon the failure to give

such bond would have to be conferred upon him by an act of the legislature. It is provided by section 738 of the Code of Virginia, 1904, as follows:

"The Governor shall have power, in his discretion, to remit, in whole or in part, fines and penalties, whether heretofore or hereafter imposed, in all cases of felony or misdemeanor, after conviction, except where judgment shall have been rendered against any person for contempt of court, for non-performance of or disobedience to some order, decree or judgment of said court, or where the fine or penalty has been imposed by the State Corporation Commission, or where the prosecution has been carried on by the House of Delegates; provided, in the opinion of the Governor, the evidence accompanying such application warrants the granting of the relief asked for. But the provisions of sections seven hundred and thirty-nine, seven hundred and forty, seven hundred and forty-one, and seven hundred and forty-three of the Code of Virginia shall be complied with as a condition precedent to such action by the Governor; provided, that where the party against whom the fine has been imposed and judgment rendered therefor has departed this life leaving a widow and children surviving, the Governor may remit such fine upon the certificate of the judge of the circuit court of the county, or the city court of the city wherein such fine was imposed and judgment rendered, that to enforce the same against the estate, real or personal, of the said decedent would impose hardship upon his widow and children."

This statute, it will be seen, gives to the Governor the power in his discretion, to remit in whole or in part, fines and penalties with certain exceptions. While the imprisonment consequent upon the failure to give the bond is not a fine, it is undoubtedly a penalty.

*Huntington v. Atrill*, 146 U. S. 657; 36 L. Ed. 1123.

I am, therefore, of opinion that under the provisions of section 738 that you are authorized, in your discretion, to remit in whole or in part, the imprisonment consequent upon the failure of a person to give the bond in the case under consideration, provided the necessary steps provided for in this section and the sections of the Code referred to, are complied with.

Yours very truly,

JNO. R. SAUNDERS,  
Attorney General.

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SUPERVISOR SHOULD NOT HOLD RAILROAD PASS.

RICHMOND, VA., June 17, 1918.

MR. T. A. PROCTOR, *Chairman*,  
*Drakes Branch, Va.*

DEAR MR. PROCTOR:

I acknowledge receipt of your letter in which you wish to be advised as to whether or not Dr. C. H. Tucker, who holds and uses a pass on the Southern Railroad, can be elected and hold the office of supervisor for your county.

Section 161 of the Constitution of Virginia, which govern this question, reads as follows:

"No transportation or transmission company doing business in this State shall grant to any member of the General Assembly, or to any State, county, district or municipal officer, except to members and officers of the State Corporation Commission for their personal use while in office, any frank, free pass, free transportation, or any rebate or reduction in the rates charged by such company to the general public for like services. \* \* \*"

In view of the statements in your letter, I cannot say that Dr. Tucker could hold the office of supervisor and still hold and use a pass over the Southern Railroad. While it is very probably true that Dr. Tucker uses the pass in the sense of an attache of the company, at the same time, I feel that the above section of the Constitution should be strictly construed so that there could be no possibility of any officer of the State, county, district or municipal officer feeling himself under obligations to the railroad company while such officer, and if such officer were permitted to hold passes, they would necessarily be, to some extent, biased in favor of the railroad.

There are now pending several cases involving the very question about which you write, but they have not yet been decided, and I would advise that you elect some person who does not hold a pass as a member of your board of supervisors.

Trusting that this will be of some service to you, and with kindest regards, I am,

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

#### PRACTICE OF FORTUNE TELLING FOR COMPENSATION.

RICHMOND, VA., *September 21, 1918.*

MR. R. T. WILSON,

*Attorney-at-Law,*

*Petersburg, Va.*

DEAR SIR:

Acknowledgment is made of your letter of September 16, 1918, referring to chapter 144, page 264 of the Acts of Assembly, 1918, which provides that it shall be unlawful for any company of gypsies or other strolling company of persons, to receive compensation or reward for pretending to tell fortunes or practice any so-called magic art.

You state that you have a client who is a Brazilian by birth, but who was naturalized at Jacksonville, Florida, May 26, 1910. You desire to know whether or not your client can practice the art of phrenology without violating the provisions of the act above referred to.

Unless your clients are "gypsies" or "strolling companies or persons," they do not come within the provisions of this act, and will not violate its provisions by practicing phrenology.

Of course, the question as to whether or not they are gypsies or whether they are "other strolling companies or persons" is a question of fact which we cannot pass upon.

Yours very truly,

F. B. RICHARDSON,

*Law Assistant.*

#### CONTRACT OF SOUTHERN PRINTING COMPANY.

RICHMOND, VA., *January 24, 1918.*

HON. DAVIS BOTTOM,

*Superintendent of Public Printing,*

*Richmond, Va.*

DEAR SIR:

Acknowledgment is made of your letter of January 17, 1918, enclosing communication from Mr. A. R. Holderby, receiver for the Southern Printing Company, dated January 17, 1918, relating to this company's contract for State printing.

In this letter, after stating that the Southern Printing Company is unable to continue the performance of its contract, Mr. Holderby states:

"As receiver, I am under bond to complete a contract for printing for the State. If you will agree to a transfer of this contract from the Southern Printing Company to the Richmond Press, that concern will undertake to complete all of the work which was awarded to the Southern Printing Company at the price and under all the conditions of the contract."

In your communication you request me to advise you as to your duty in the matter, and how you may properly safeguard the interests of the State.

Section 273 of Pollard's Code (4th Volume) does not seem to contemplate a contingency of this kind. It appears that this is a case in which a successful bidder finds himself unable to complete his contract with the State of Virginia, but has found another contractor who will carry out the contract, and to which he desires to sub-let the work.

I do not think that the State of Virginia should raise any objection to such an arrangement under the circumstances. Of course, the new contractor must agree to complete the work at the same price and upon the same terms contracted for by the original contractor, and should enter into a written contract and give security for the execution of the contract; and, in recognizing the sub-letting of the contract in question, care should be taken that the original contractor and his surety are not released from their liability on the contract until completed in full in accordance with the terms thereof, and it will be necessary that the surety on the bond of the original contractor give its consent, in writing, to the sub-letting of the contract.

You also inform me in your communication that several weeks ago, in making settlement with the receiver for the Southern Printing Company, an error was made in calculation by your office, as a result of which the receiver of the Southern Printing Company was overpaid the sum of \$300.00, the re-payment of which sum has been ordered by the court. I would advise you not to consent to a change of your contract with the receiver of the Southern Printing Company and his surety, until this money has been returned to the treasury.

Yours very truly,

J. D. HANK, JR.,

*Attorney General.*

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PRINTING OF REPORT OF JOINT COMMITTEE ON PUBLICATIONS.

RICHMOND, VA., *January 29, 1918.*

HON. DAVIS BOTTOM,  
*Superintendent of Public Printing,  
City.*

DEAR SIR:

Acknowledgment is made of your letter in which you request me to advise you whether the cost of printing the report of the Joint Committee on Publications, as authorized by chapter 199 of the Acts of 1916, is to be paid out of the appropriation for public printing or out of the appropriation provided for the Joint Committee on Publications by said act.

It is provided by section 2 of chapter 199 of the Acts of 1916, that the committee shall prepare a report with such recommendations as they may deem proper, and any bills that they may think necessary to carry their recommendations into effect, and that

"The Superintendent of Public Printing shall cause one thousand copies of the same to be printed and mailed to the members of the General Assembly, the officers of the State government and to the other citizens of the State who may apply for them."

Section 6 of the act provides:

"For the purpose of carrying on the provisions of this act, the sum of five hundred dollars, or so much thereof as may be necessary, is hereby appropriated, to be paid out of any funds in the treasury of the Commonwealth, not otherwise appropriated."

As one of the provisions of the act for the printing of the report and section 6 provides the sum of \$500.00 for carrying out the provisions of the act, I am of the opinion that the cost of printing the report referred to in your letter should be paid out of the appropriation provided for in section 6 of said act.

Yours very truly,

J. D. HANK, JR.,

*Attorney General.*

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PRINTING OF JOURNALS FOR LIBRARY BOARD.

RICHMOND, VA., *May 17, 1918.*

DR. H. R. MCILWAINE,  
*State Librarian,*  
*City.*

MY DEAR SIR:

The writer begs leave to acknowledge receipt of your letter, which is accompanied by a contract made between the State Library Board and the Everett Waddey Company as of the 16th day of April, 1906, and also certain letters which passed between yourself and the Everett Waddey Company in reference to the printing of the journals of the Council for your board.

The contract referred to above has reference, according to its terms, to the printing of the journals of the House of Burgesses of Virginia. The letters have reference to the printing of the journals of the Council.

I understood from my conversation with you that so far as the contract pertaining to the printing of the journals of the House of Burgesses are concerned, that the Everett Waddey Company have completed the printing of these journals according to the terms of that contract. I find a letter from Mr. Whitehead, the president of the Everett Waddey Company at the time the said letter was written, namely, October 9, 1916, in which he uses the following language:

"Referring to the conversation several days since relative to the publication of the remaining two volumes of the journals, I beg to state that I have to-day ascertained from the paper company the cost and probability of our being able to secure some paper for these remaining volumes."

My understanding is that the journals referred to in that letter have reference to the journals of the Council.

I note from a copy of your letter, in response to this letter, dated October 17, 1916, that you direct the Everett Waddey Company, in accordance with the terms set forth in the letter of October 9, 1916, written by Mr. Whitehead, to proceed with the printing of the journals of the Council. I further understand from you that they did proceed with such work, and that two volumes of these journals were completed in accordance with the price named in the letter of October 9, 1916, but, owing to the fact that these two volumes should contain what was desired to put in them, it would make them too bulky and heavy. It was, therefore, determined between yourself and the Everett Waddey Company that an additional volume should be printed. There seems to be a break in the correspondence, as I find no letter between October 17, 1916, which letter you wrote, and one written by the Everett Waddey Company dated April 5, 1918.

I further understood from my conversation with you, that after these two volumes of the journals had been printed by the Waddey Company, owing to circumstances and conditions over which you had no control, you were unable to furnish them the data for the third volume until some time early in the year 1918. In the letter of April 5, 1918, from Waddey Company to you, you were advised that to print this additional volume and have it bound, would cost about 25% more than it would have cost a year and a half ago. I find in a letter from Waddey Company, dated April 29, 1918, the following language:

"To be very frank with you, since October, 1916, we have had the following advances in our factory costs: type composition 33%, bindery labor 40%, bindery materials 100%, cylinder presswork 40%, paper 40%."

They further state in that letter that they will be perfectly willing to undertake this work at 10% over factory cost of sheets, time and material, and guarantee that the same would not amount to more than their estimate in their letter of April 5, 1918.

In view of the fact that the contract of April 16, 1916, between you and the Waddey Company has expired, and it being very questionable to my mind whether you can hold them under the letters which you enclose me, inasmuch as you were unable to give them the manuscript to go on with this work in the fall of 1916, I dare say the wisest thing for your board to do is to accept the offer of the Waddey Company to do this work at actual cost, and allow them a 10% profit. This is a matter which, it seems to me, should be compromised under the existing conditions, and especially so when it is very doubtful as to whether you could hold them to their former agreement by any court procedure. I think if your board will reflect over this matter carefully, it will agree with me.

Yours very truly,

JOHN R. SAUNDERS,

*Attorney General.*

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PAYMENT FOR PRINTING WORK OF WORKMEN'S COMPENSATION COMMISSION.

RICHMOND, VA., *August 6, 1918.*

HON. DAVIS BOTTOM,  
*Superintendent of Public Printing,  
City.*

DEAR SIR:

Acknowledgment is made of your letter of July 26th, enclosing certain correspondence relating to a bill of the William Byrd Press, Incorporated, for \$26.00 for

the printing of 1,000 twenty-page booklets for the Workmen's Compensation Commission, asking whether or not you would be justified in paying the bill out of the printing fund appropriated for your office.

The appropriation bill for 1918 discloses an appropriation for the purpose of paying the expenses of this Commission, and this item should have been included in that amount, and if there are not sufficient funds in that appropriation, I know of no way that the claim can be paid except by an act of the General Assembly authorizing the same.

I do not believe that it would be proper for you to pay this bill out of the appropriation made for public printing. However, it is unjust to make the William Byrd Press, Incorporated, wait practically two years more for this money. The failure of the legislature to make sufficient appropriation to cover this item, was no fault of the William Byrd Press, and, while I do not think it proper that this amount should be paid out of the printing fund, yet the item is so small, I do not believe that you would so far exceed your authority in paying the same as to cause any unjust criticism of you for doing so.

If you see fit to pay the claim out of the Public Printing Fund, you may use this letter as authority for so doing.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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CONTRACT WITH HILL PRINTING COMPANY.

RICHMOND, VA., *October 2, 1918.*

HON. DAVIS BOTTOM,  
*Superintendent of Public Printing,  
Richmond, Va.*

DEAR SIR:

I acknowledge receipt of your letter of October 1, 1918, enclosing certain correspondence which you have had with the W. C. Hill Printing Company, relating to the contract awarded the W. C. Hill Printing Company for five million fertilizer tags for the Department of Agriculture.

I have examined the correspondence which you enclosed, and am of the opinion that the W. C. Hill Printing Company is obligated to furnish the fertilizer tags in accordance with the offer contained in their letter of August 31, 1918, which was accepted by you by a letter under date of September 7, 1918.

The correspondence sent you by the Hill Printing Company, which they have had with the Denny Tag Company, of West Chester, Pennsylvania, has nothing to do with the contract existing between the W. C. Hill Printing Company and the State of Virginia. If the W. C. Hill Printing Company refuses to carry out the contract on its part, that is, to furnish the five million tags as it agreed to do for 62 cents per thousand, I would suggest that you place the contract elsewhere; at the same time, advising the W. C. Hill Printing Company that they will be held responsible for any difference in cost which the State of Virginia will be forced to pay by reason of their failure to furnish the tags as agreed upon.

I should make it very plain to the W. C. Hill Printing Company that your office can take no part in a discussion between the W. C. Hill Printing Company



and the Denny Tag Company, and that the W. C. Hill Printing Company, alone will be held responsible for the breach of its contract.

I will be glad to be of any further service to you in this matter that I can.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

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SALARY OF PROBATION OFFICER.

RICHMOND, VA., November 20, 1918.

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

DEAR SIR:

Acknowledgment is made of your letter of November 19, 1918, asking whether or not the council of a city, or the board of supervisors of a county can nullify the provisions of chapter 349, Acts of Assembly, 1918, by naming a salary so small that a probation officer, appointed under the provisions of said chapter, cannot afford to work for the same; or whether the provisions of said chapter make it obligatory upon the council of a city or the board of supervisors of a county, as the case may be, to provide a salary for such probation officer sufficient for the support of himself and his family.

Chapter 349, Acts of Assembly, 1918, provides for the appointment of one or more reputable persons, male or female, to act as probation officers, under the direction of the court making such appointment. The chapter further provides that the appointment shall be made upon the recommendation of the State Board of Charities and Corrections. The second paragraph of the chapter referred to reads as follows:

"Upon the request of the judge making an appointment under this act, the council of the city or board of supervisors of the county within which such court is located shall fix the amount of salary which the probation officer so appointed shall receive, and shall make provision for its payment."

It is, no doubt, true that upon a request from the judge appointing the probation officer, the council of a city or the board of supervisors of a county must provide a salary for such probation officer, and must make provision for its payment; but, since the said chapter does not fix the amount of salary, it would necessarily be left to the discretion of the council of the city, or the board of supervisors of the county, and I do not believe that any action could be taken to force the council of a city or the board of supervisors of a county to provide a salary in excess of what, in their judgment, they thought proper.

It may be, as you suggested, that this, in effect, might nullify the law, but I do not see how it can be remedied except by appeal to the council of the city or the board of supervisors of the county in which an appointment has been made, and the salary appears too small. I am certain that the legislature intended that a salary commensurate with the duties of such probation officer should be provided for by the council of the city or board of supervisors of the county.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

## LICENSE FOR DISPENSING SOFT DRINKS.

RICHMOND, VA., *February 12, 1918.*

HON. J. SIDNEY PETERS,  
*Commissioner of Prohibition,*  
*City.*

DEAR SIR:

Acknowledgment is made of your letter of February 12th, in which you call attention to section 64-b of the Acts of Assembly providing for the issuance of licenses to dispense "soft drinks," and asking what notice is necessary to be given the public before an application for such licenses will be considered by the court.

Section 64-b, so far as is pertinent to your inquiry, is as follows:

"It shall be unlawful for any person, firm or corporation to dispense soft drinks without first obtaining a license to do so ( for which no additional tax shall be charged) from the circuit court of the county, or corporation or hustings court of the city in which county or city the privileges are to be exercised. Any citizen may appear personally or by counsel in opposition to the granting of said license, and the court may in its discretion refuse to grant such license if convinced that the person applying is not a suitable person to exercise the said privilege, and the court may revoke such license after giving to the holder of the same an opportunity to be heard in opposition to such revocation; provided it shall not be necessary to obtain such license to sell soft drinks at any place for benevolent or charitable purposes.  
\* \* \*

It will be seen that this section provides that any citizen may appear in opposition to the granting of such a license, and, therefore, it is evident that the section contemplates some notice to the public before a license is granted. But, as the act itself does not state what is necessary to be done in order to give sufficient notice before making application, the sufficiency of the notice in each case must be determined by the circuit court to whom the application is made. It has been customary in this State in such cases to cause notices to be posted at the courthouse door, and I am of the opinion that the posting of a notice ten days prior to the time at which application is to be made, at the front door of the place where the business is to be conducted, and also at the door of the courthouse where the application will be made, is sufficient notice upon which to base an application for a license to sell soft drinks.

Yours very truly,

J. D. HANK, JR.,  
*Assistant Attorney General.*

## LICENSE OF DRUG COMPANY TO DISPENSE ARDENT SPIRITS.

RICHMOND, VA., *May 23, 1918.*

MR. STAFFORD G. WHITTLE, JR.,  
*Martinsville, Va.*

DEAR SIR:

I beg leave to acknowledge receipt of your letter of the 20th, and will reply at once.

You state that your circuit court, at its April term, granted a license to the Central Drug Company, Incorporated, to dispense ardent spirits. You state that at that time, Dr. L. B. Montague was the manager of the corporation, and executed

the bond required by law on behalf of the corporation. You further state that a change of managers has since taken place, Dr. J. F. McEindoe succeeding Dr. Montague. You wish to know whether it will be necessary for the court to grant a new license to this corporation on account of the change in its managers, and whether Dr. McEindoe can proceed to dispense ardent spirits under the license formerly granted.

Before I could answer your questions in an intelligent manner, I would like to see a copy of the license which was granted to the corporation, and also a copy of the bond executed by Dr. McEindoe. If you will kindly send me these, I shall be very glad to give you my views in the matter. So far as I know, this question has not arisen in any other section of the State.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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LICENSE FOR DISPENSING ARDENT SPIRITS.

RICHMOND, VA., May 27, 1918.

MR. STAFFORD G. WHITTLE,

*Martinsville, Va.*

DEAR SIR:

I am in receipt of your letter of May 24th, in which you enclose me the bond and license of the Central Drug Company, Incorporated. I have read them both over carefully, and have reached the conclusion that Dr. McEindoe, who, you state, has succeeded Dr. Montague in the management of this corporation, should make application for a license to dispense ardent spirits.

My reason for so stating is this:

The second and third paragraphs of the bond read as follows:

"The condition of the above obligation is such, That, whereas, the above bound L. B. Montague was on the 5th day of April, 1918, by the circuit court of the county of Henry granted a license as a Retail Druggist for the term ending April 30, 1919, at Martinsville in Henry county;

(A) Sell at retail ardent spirits on prescriptions, or pure fruit, etc.,  
\* \* "

By reference to the license, it states:

"The court doth grant a license to the said L. B. Montague, manager for the Central Drug Company, to sell ardent spirits on prescription; or pure fruit, etc., \* \* "

From the language of the bond and the license, it is clearly shown that this privilege was granted to Dr. L. B. Montague. Inasmuch as Dr. Montague has retired as manager of this drug company, and the license having been issued to him as manager, I would say that the wisest thing to do is for the new manager to obtain another license for the privilege of dispensing ardent spirits. I think you will agree with me if you will carefully read the bond and the license.

Very truly yours,

JNO. R. SAUNDERS,

*Attorney General.*

## ANALYSES OF ARDENT SPIRITS.

RICHMOND, VA., *June 27, 1918.*

HON. G. W. KOINER,  
*Commissioner of Agriculture,*  
*City.*

DEAR SIR:

I have for acknowledgment your letter of June 17, 1918, in which you desire to know whether or not you are authorized to use any part of the appropriations made for your office in paying for the analyses of ardent spirits as required of your commission under section 30½ of chapter 388 of the Acts of 1918.

Section 30½ above referred to seems to make it the duty of your commission to make analyses of ardent spirits as set forth in the said section, but there is no provision for the payment of any expense incident to any such analyses.

I find by referring to the appropriation bill, that none of the appropriations made for your office can be used for paying for analyses made of ardent spirits for for the Prohibition Commissioner. All appropriations are made for specific purposes, and are set forth specifically in the appropriation bill.

It seems to me that the appropriation bill made for the Commissioner of Prohibition, is broad enough to cover and justify that commission in paying for such analyses of ardent spirits as it may deem necessary from time to time to call on you to make. The language of the appropriation bill for the Commissioner of Prohibition is general in its terms, and states that it is for the purpose of carrying into effect the act of the General Assembly relating to ardent spirits as therein defined.

I am, therefore, of the opinion that the Commissioner of Prohibition would have authority under this act to re-imburse your office for any analyses made by you for him.

Yours very truly,  
JNO. R. SAUNDERS,  
*Attorney General.*

## DISPOSITION OF LIQUORS BY PROHIBITION COMMISSIONER.

RICHMOND, VA., *June 28, 1918.*

HON. J. SIDNEY PETERS,  
*Prohibition Commissioner,*  
*Richmond, Va.*

MY DEAR SIR:

Acknowledgment is made of your letter of June 26, 1918, in which you ask the following questions:

"1. May I, as Commissioner of Prohibition, sell ardent spirits legally turned over to me for disposition, to licensed druggists, who may legally fill prescriptions for ardent spirits, outside of the State of Virginia?

2. May I sell ardent spirits to industrial enterprises outside of the State of Virginia to be manufactured into alcohol?

3. May I sell ardent spirits to industrial enterprises outside of the State of Virginia to be manufactured into denatured alcohol?"

Section 36-a of the prohibition act (Acts of Assembly, 1918, page 603) provides as follows:

" \* \* Whenever by the terms of this act, any ardent spirits, containers, stills, still caps, worms, tubs, fermenters or other appliances used, or which can be used in connection with any still for the manufacture of ardent spirits, shall be seized by any officer for violation of this act and forfeited to the Commonwealth, the same shall be turned over to the Commissioner, who shall in his discretion cause the ardent spirits to be destroyed, or manufactured into alcohol and disposed of for scientific, mechanical, or medicinal purposes; or he may sell the ardent spirits so turned over to him or alcohol distilled therefrom to any officer, drug store, hospital, laboratory, industrial enterprise, physician, dental or veterinary surgeon, Lee Camp Confederate veterans, and any other eleemosynary institution of the State having the legal right to purchase the same. \* \* "

It is thus seen that you are authorized to sell ardent spirits turned over to you, or the distilled alcohol therefrom, to any officer, drug store, hospital, laboratory, industrial enterprise, physician, dental or veterinary surgeon.

There is no provision in the act limiting the persons and enterprises above enumerated to persons and enterprises in Virginia, and I am therefore of the opinion that you are authorized to sell ardent spirits to licensed druggists outside of the State; to industrial enterprises outside of the State to be manufactured into alcohol, and to industrial enterprises outside of the State to be manufactured into denatured alcohol.

The broad power granted you should, of course, be exercised with great care, and I am sure that you will use your very best judgment and discretion in making any such sales.

Very truly yours,

JNO. R. SAUNDERS,

*Attorney General.*

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#### REDEMPTION OF STAMPS ISSUED UNDER PROHIBITION ACT.

RICHMOND, VA., *July 9, 1918.*

HON. J. SIDNEY PETERS,  
*Commissioner of Prohibition,*  
*Richmond, Va.*

DEAR SIR:

Acknowledgment is made of your letter of July 8, 1918, in which you wish to be advised as to whether or not the provisions of the prohibition law (Acts of Assembly, 1918) should be construed so as to authorize the redemption of stamps issued under the prohibition act of 1916.

The prohibition act of 1918 is a new, separate and distinct act from that of 1916. It is not an amendment of the 1916 Act, but repeals it. Since there was no provision under the Act of 1916 for the redemption of stamps issued by the Commissioner of Prohibition, and the provision in the Act of 1918, relating to the redemption of stamps, refers especially to "all stamps purchased under this section," I am inclined to the view that the Auditor of Public Accounts would have no authority to redeem stamps issued under the provisions of the Act of 1916.

It may have been the intention of the legislature that such stamps as have been issued under the Act of 1916 should be redeemed under section 67 of the present

act, but it does not so specifically state, and I can only construe the section as it is written. The present act provides only for the redemption of stamps issued "under this section," if done before September 1, 1918. There is no provision for the redemption of stamps after that date.

It is suggested that, since stamps will be constantly required on all prescriptions and affidavits, the parties holding the same be advised to keep them for future use, instead of asking that they be redeemed.

Yours very truly,  
J. D. HANK, JR.,  
*Assistant Attorney General.*

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TAX FOR SHIPPING ALCOHOL TO STATE INSTITUTIONS.

RICHMOND, VA., *August 29, 1918.*

HON. J. SIDNEY PETERS,  
*Commissioner of Prohibition,*  
*City.*

DEAR SIR:

I acknowledge receipt of your letter of August 27th, in which you state that upon an application made by the Owens & Minor Drug Company for a permit to ship four and one-half gallons of alcohol to the Eastern State Hospital, you did not at that time, collect the 50 cents tax, as provided in section 62, chapter 388 of the Acts of Assembly, 1918, and you desire to know whether or not you are required to collect this 50 cent permit from this and other State institutions when such permits are issued. The last paragraph of section 62 of the Act referred to, is found on page 616, and reads as follows:

"For every permit issued by the commissioner shall be paid to him a fee of fifty cents, except that retail druggists shall not be required to pay for permits for having alcohol transported under the provisions of this act for medicinal, pharmaceutical and mechanical purposes."

From the reading of this act I am of the opinion that you should collect the 50 cent tax from the Eastern State Hospital, and from any other State institution to which permits may be issued. The only exception from the statute applies to retail druggists, and then only with reference to the shipment of alcohol for medicinal, pharmaceutical and mechanical purposes.

Yours very truly,  
JOHN R. SAUNDERS.  
*Attorney General.*

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PERMIT TAX FOR SHIPMENT OF ARDENT SPIRITS.

RICHMOND, VA., *August 29, 1918.*

HON. J. SIDNEY PETERS,  
*Commissioner of Prohibition,*  
*City.*

DEAR SIR:

I acknowledge receipt of your letter of August 27, 1918, enclosing certain correspondence from the National Soldiers' Home, Hampton, Va., raising the

question whether or not you should charge a 50 cent permit tax in connection with a shipment of ardent spirits to that institution. Section 62 of chapter 388, last paragraph, reads as follows:

"For every permit issued by the Commissioner shall be paid to him a fee of fifty cents, except that retail druggists shall not be required to pay for permits for having alcohol transported under the provisions of this act for medicinal, pharmaceutical and mechanical purposes."

Since the National Soldiers' Home does not come within the exception set out in the statute, I am of the opinion that you should collect the 50 cent permit tax referred to in the above section.

The question raised by the treasurer of the National Soldiers' Home can have no bearing on the Virginia prohibition act. The blank form he encloses refers to the Federal tax and not to the Virginia prohibition law.

The correspondence you enclosed is herewith returned.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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#### TAX ON WINE USED FOR SACRAMENTAL PURPOSES.

RICHMOND, VA., *September 7, 1918.*

HON. J. SIDNEY PETERS,  
*Commissioner of Prohibition,*  
*City.*

DEAR SIR:

Acknowledgment is made of your letter of September 5th, in which you state that you grant permits to transport wine for sacramental purposes, and ask whether or not you should exact a tax of 50 cents for the issuance of such permits. The prohibition act, section 62, last paragraph, provides:

"For every permit issued by the Commissioner shall be paid to him a fee of fifty cents, except that retail druggists shall not be required to pay for permits for having alcohol transported under the provisions of this act for medicinal, pharmaceutical and mechanical purposes."

This section is broad, requiring a fee for permits in all cases except those of retail druggists transporting ardent spirits for medicinal, pharmaceutical and mechanical purposes. It is clear, therefore, that the transportation of wine for sacramental purposes, not being excluded from the provisions of this act, I am of the opinion that you should exact a tax of 50 cents for the issuance of permits for such purposes.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## COMMISSIONER OF PROHIBITION AIDING MAYOR.

RICHMOND, VA., *October 25, 1918.*

HONORABLE WESTMORELAND DAVIS,  
*Governor of Virginia,  
Richmond, Va.*

MY DEAR GOVERNOR:

Acknowledgment is made of your letter of October 21, 1918, enclosing a letter from A. A. Moss, mayor of Newport News, to Honorable J. Sidney Peters, Prohibition Commissioner, and Dr. Peters' letter to you, both of which raise the question as to whether or not the Prohibition Commissioner is authorized to place at the disposal of the mayor of the city of Newport News the sum of \$200.00, to be used in the city of Newport News in aid of the prohibition law.

I have examined the language of the appropriation bill, and find that it does not specifically authorize the Commissioner of Prohibition to use any portion of the funds in the manner which he has indicated, nor does the language of the bill specifically prohibit him from so using any portion of the funds. I am of the opinion, in view of the uncertainty of the act, that it would be an exceedingly unwise precedent to establish, and that the request of the mayor of the city of Newport News be not complied with.

If any portion of the appropriation made for the office of the Prohibition Commissioner were used in this instance, it would establish a precedent whereby other cities of the State would have a right to demand the same treatment at the hands of the Commissioner of Prohibition, and it might so deplete the appropriation as to hinder the work of the prohibition department.

I feel, in view of these circumstances, that no authority should be given such as is requested by the mayor of the city of Newport News.

The enclosures with your letter are herewith returned.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General of Virginia.*

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REMOVAL OF WHISKEY FROM STATE.RICHMOND, VA., *December 9, 1918.*

HON. J. SIDNEY PETERS,  
*State Prohibition Commissioner,  
Richmond, Va.*

DEAR SIR:

Acknowledgment is made of your letter of December 2, 1918, in which you state that you have been requested by the Seaboard Bank of Baltimore, Md., to permit them to remove from the United States bonded warehouse near Staunton, Va., 217 barrels of whiskey, to be shipped to them at Baltimore. You state also that there are other deposits of whiskey, consisting of about 14,000 gallons, in United States bonded warehouses, and that you anticipate applications being made by interested parties for the removal of this also.

You desire to know whether or not it is lawful to remove these spirits from a point within the State of Virginia to a point outside the State of Virginia. I under-



stand from your letter that this liquor was placed within the custody of the United States government under a contract, to be held by the government in bond for a period not exceeding eight years, and that it was placed in the warehouses before the prohibition law became effective on November 1, 1916.

It would seem to me that, since the liquors are under the control of the United States government, having been placed in these bonded warehouses at a date prior to November 1, 1916, the State would have no right to interfere with the removal of the same out of the State.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

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POWER OF BOARD OF SUPERVISORS TO ADOPT ROAD LAWS.

RICHMOND, VA., *June 18, 1918.*

HON. S. L. FERGUSON,  
*Commonwealth's Attorney,*  
*Appomattox, Va.*

MY DEAR SIR:

I have for acknowledgment a letter from Mr. J. R. Horsley, clerk of your circuit court, dated June 12, 1918, in which he writes regarding road laws in your county. The information desired seems to be whether or not your board of supervisors can adopt paragraph 12 of the special road law of Sussex county, found on page 160 of Acts of Assembly, 1916.

The Acts of Assembly, 1916, page 776, in the last paragraph thereof, provides that the board of supervisors of any county which now has a special road law may, by a recorded vote, adopt the special road law of any other county, or any part or parts thereof, so that it is within the power of your board of supervisors to adopt paragraph 12 of the Sussex county road law above referred to, but when you consider the question of levying a tax of 70 cents on \$100.00, you must read, in connection with the act referred to, section 944-a, paragraphs 11 and 12 of the fourth volume of Pollard's Code, and also Acts of Assembly, 1915, page 121. This act (1915, page 121) provides that when the board of supervisors decides to levy a tax under this and the preceding sections exceeding 50 cents on \$100.00 worth of property, then before such tax can be levied, the question of the tax shall be submitted to the people of the county or district affected, as to whether such tax shall be levied.

By adopting paragraph 12 of the Sussex county road law does not mean that your board of supervisors can levy a 70 cent tax without referring the same to the people to be voted on. You will observe that such section reads, in part, as follows: "which tax shall not exceed 70 cents," so that in order for the Sussex county board of supervisors or supervisors of any other county to levy a tax in excess of 50 cents on \$100.00 worth of property, section 944-a, paragraphs 11 and 12, must be complied with.

The laws regarding taxation are strictly construed, and no levy except such as expressly authorized by law can be made.

I am, therefore, of the opinion that before your board of supervisors can enforce the collection of a levy of 70 cents on \$100.00 worth of property in your county for road purposes, the same must be submitted to the people of the county or district affected, as to whether such tax shall be levied, according to the provisions of section 944-a of the Code, above referred to.

Assuring you of my willingness to be of service to you in this regard, and trusting that this letter will convey the information desired, I am,

Very respectfully yours,

JNO. R. SAUNDERS,  
*Attorney General.*

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CERTIFICATES FURNISHED IN CONNECTION WITH PAYMENT OF ROAD FUNDS.

RICHMOND, VA., June 24, 1918.

HON. GEO. P. COLEMAN,  
*State Highway Commissioner,*  
*City.*

DEAR SIR:

Acknowledgment is made of your letter of June 20, 1918, enclosing correspondence you have had with Mr. W. B. Smith, clerk of Mathews, Va., with reference to certain certificates furnished by your commission to G. E. T. Lane, treasurer, in connection with the payment of joint State and county road funds in his hands, as treasurer. You desire to be advised whether or not the practice heretofore followed by your department in issuing one certificate covering disbursements represented by several warrants, is a proper and sufficient compliance with the law.

Section 7 of chapter 76 of the road law, as amended in 1916, provides that funds shall be paid out

"By the treasurer 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 such certificates 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 certificates when presented to such treasurer for payment and when sought to be used by him as vouchers."

While it may cause some inconvenience in your office to issue separate certificates for each warrant, yet I believe it is the only way in which you can strictly comply with the law. For instance, if there were, say, three warrants issued—one payable to A. B. and C., all living in different sections of the State, and these warrants were presented for payment on different dates, it is manifest that the one certificate issued by your department could not accompany each warrant, and without such a certificate the treasurer would not be authorized to make payment of any one of them, as the section above referred to plainly provides that no payment shall be made by the county treasurer unless such warrants be accompanied by a certificate from your department. I am of the opinion, therefore, that a separate certificate should be furnished for each warrant authorized under the above section.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## CONTRACT IN RE FALMOUTH BRIDGE.

RICHMOND, VA., *July 22, 1918.*

HON. GEO. P. COLEMAN,  
*State Highway Commissioner,*  
*City.*

DEAR SIR:

Acknowledgment is made of your letter enclosing a letter addressed to you from Mr. G. B. Wallace, attorney-at-law, Fredericksburg, Va., also a copy of a contract executed February 9, 1886, between certain citizens of Stafford county as bridge commissioners, and the Ficklen heirs, all of which relate to the lease by the county of Stafford of the "Falmouth Bridge," over the Rappahannock river.

You stated in your letter that this bridge was partially destroyed last year, and it is now proposed that the State take it over and reconstruct it, inasmuch as it is on the main State highway system. You desire to be advised before agreeing to this what would be the status of the State of Virginia under this contract.

I have examined the contract very carefully, and it appears to be one perpetually binding on the people of Stafford county to pay the sum of \$1,000.00 per year as rental for the said bridge, and the duty of keeping the bridge in repair is placed upon Stafford county.

Beginning with the last paragraph on page 8 and continuing on page 9 of the contract, there appears to be a forfeiture clause in the contract whereby the county of Stafford should be released and discharged from the performance of the covenants in the same if default should be made in the payment of the annual charge referred to in the contract. So long as the county of Stafford meets the obligation by paying the rental, the county will undoubtedly have the right to use the bridge, but it will still remain the property of the Ficklen heirs.

The position of the State of Virginia could be no better than that of Stafford county. If the State of Virginia took over the contract from Stafford county, it would be bound by the terms of the agreement to pay the Ficklen heirs \$1,000.00 per year as set forth in the contract.

It would seem to me to be a more plausible thing to do to have the county of Stafford or the State of Virginia, if it has the authority through your office, to negotiate for the purchase outright of all the interest of the Ficklin heirs in this property, so that there would be no question of an annual fixed charge for the use of the same.

Either this should be done, or if the property is now in such condition as not to be of benefit as a public highway, have the same condemned, and pay such damages as might be determined to be fair and just by commissioners to be appointed as provided by law. I certainly cannot advise, under the existing conditions, that the State of Virginia take over this bridge and assume the burden of paying perpetually \$1,000.00 for the use of the same, and, at the same time, obligate itself to keep the bridge in repair.

I have written this letter, assuming that a proper deed has been executed by the Ficklen heirs, such as is referred to in the contract. Of course, the wording of the deed would be effective rather than the contract should there be any difference in the language of these two instruments.

If your office contemplates any further action in this connection, I would advise that you have the records of Stafford county searched, so as to ascertain all the facts in connection with this bridge, whether it be a deed, contract or any other paper in writing that might have been recorded, affecting the property.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## PAYMENT OF LABOR USED ON STATE ROADS.

RICHMOND, VA., *October 1, 1918.*

MR. GEORGE P. COLEMAN,  
*State Highway Commissioner,  
Richmond, Va.*

MY DEAR MR. COLEMAN:

I beg leave to acknowledge receipt of your letter of September 30, 1918, concerning the payment of your labor used on State roads. You state that you have been making drafts on the Auditor of Public Accounts in favor of each name appearing on the pay roll; and that these drafts have been sent out with receipts attached, with the request that the receipts would be signed and returned. You further state that it is practically impossible to have these receipts returned, and, therefore, your office is without a proper voucher for the disbursement of these funds, due to the fact that the checks or drafts which are used in payment for this labor are returned to the office of the State Treasurer.

I have noted very carefully the suggestion contained in your letter, namely, to place in convenient banks, to the credit of certain of your resident engineers and superintendents, who now act as paymasters, sufficient funds to cover their immediate pay roll requirements. You further suggest that, when this is done, these engineers and superintendents should be bonded, they, of course, to be required to furnish your office with receipts for the payments made out of these funds.

I doubt very much whether this arrangement could be carried out under the provisions of the law, which is that

"Warrants for the expenditures of the funds appropriated for the construction and maintenance of "The State Highway System" shall be issued by the Auditor of Public Accounts upon certificates of the State Highway Commissioner that the parties are entitled thereto and shall be paid by the State Treasurer out of funds appropriated for that purpose."

You will see, from this section of the law, that it is contemplated that the warrants shall be issued by the Auditor of Public Accounts upon your certificates, and the same shall be paid by the State Treasurer.

In discussing this matter with you and the Auditor, the Auditor makes a suggestion, the adoption of which is, in my opinion, authorized by the provisions of the law hereinbefore quoted. I concur in this suggestion, which is as follows:

That the Highway Commissioner will estimate the cost of labor to be used for thirty days in the various pieces of work under his control, and will draw on the Auditor for that amount, which said amount is to be paid out on the pay rolls under the department of the Highway Commissioner, he, of course, taking receipts or vouchers for all payments.

I fully realize how difficult it is for you to obtain labor at this time, and how necessary it is that your labor shall be paid regularly. It has, therefore, become necessary to adopt some such plan as the above in order to meet the exigencies of the occasion.

Very truly yours,  
JNO. R. SAUNDERS,  
*Attorney General of Virginia.*

## GRAVEL NEEDED FOR ROADS AND HIGHWAYS.

RICHMOND, VA., *December 13, 1918.*

HON. GEORGE P. COLEMAN,  
*State Highway Commissioner,*  
*Richmond, Va.*

MY DEAR MR. COLEMAN:

Acknowledgment is made of your letter of November 29, 1918, enclosing a copy of a letter from Mr. C. B. Scott, bearing date of November 18, 1918, relating to certain gravel, belonging to Mr. B. Johnson, between North Anna river and Teman, which gravel is needed for the maintenance of the highway in question. I gather from Mr. Scott's letter that no agreement can be reached with Mr. Johnson as to the proper price to be paid for the gravel, and he desires to know what procedure to adopt in order to secure the same.

Clause 21 of section 944-a of the Code of Virginia provides that the superintendent of roads, among other things, may take from the most convenient lands so much wood, stone, gravel, or earth as may be necessary to be used in constructing or repairing any road, bridge or causeway therein; that he shall take such earth from the most convenient and closest place so as to save the expense of hauling such earth any distance.

Clause 22 of section 944-a of the Code reads in full as follows:

"If the owner or tenant of any such land shall think himself injured thereby, and the superintendent of roads, or his deputy, can agree with such owner as to the amount of damage, they shall report the same to the board of supervisors, or, if they cannot agree, a justice, upon application to him, shall issue a warrant to three freeholders, requiring them to view the said land, and ascertain what is a just compensation to such owner or tenant for the damage to him by reason of anything done under the preceding section. The said freeholders, after being sworn according to the provisions of section three of this act, shall accordingly ascertain such compensation and report the same to the board of supervisors. Said board may allow the full amount so agreed upon, or reported by said freeholders, or so much thereof as upon investigation they may deem reasonable, subject to such owner or tenant's right of appeal to the circuit court as in other cases."

You will observe from clause 22 that if the superintendent and the owner of the land cannot agree upon the price, application is made to a justice of the peace, who issues a warrant to three freeholders, requiring them to view the land and ascertain what is just compensation to the owner for damage to him by reason of the taking of the gravel, etc., such as is referred to in section 21. The said freeholders report their findings to the board of supervisors, who may allow the amount so reported by the freeholders, or such amount as may appear to the said board to be reasonable. The owner, however, if he is dissatisfied with the amount reported by the freeholders and allowed by the board of supervisors, may appeal to the circuit court of his county.

If Mr. Scott will follow the procedure provided for in the twenty-second clause of section 944-a above referred to, he should be able to secure the gravel in question without any further complications.

Very truly yours,  
JNO. R. SAUNDERS,  
*Attorney General.*

## EXPENSES OF REPRESENTATIVES ATTENDING CONVENTION.

RICHMOND, VA., *December 17, 1918.*

MR. C. B. SCOTT, *Secretary-Treasurer,*  
*Virginia Good Roads Association,*  
*Richmond, Va.*

DEAR SIR:

Acknowledgment is made of your letter of December 5, 1918, calling my attention to the Eighth Annual Convention of your association, to be held in Richmond on January 14th, 15th and 16th, 1919.

I understand from your letter that a number of the boards of supervisors make it a practice to send representatives to your conventions, and pay their expenses, but there are some, however, who are doubtful as to the legality of their doing so, and, for that reason, do not provide for the payment of the expenses of representatives to such conventions. You desire to be advised, on behalf of the association, on the question as to whether or not the boards of supervisors are authorized to pay the expenses of their respective representatives when attending your conventions, with the understanding that you are to send copies of my letter to the boards of supervisors of this State.

I have examined the statute very carefully with relation to the powers and duties of boards of supervisors, and I am unable to find any express authority authorizing the boards of supervisors to expend any portion of the funds under their control for the purpose you mention. However, the boards of supervisors throughout the State practically have control over the highways of their respective counties, and any money which they might desire to expend which could be considered in the way of improving county roads might be authorized by implication. It is certain that attendance upon an association where the question of good roads is discussed, and where the various representatives would gain valuable information which would be useful to them in improving the roads in their respective counties, would be profitable, and any money expended for this purpose would be considered a wise investment in improving highways.

The expenditure of money for the purpose mentioned in your letter, of course, is one which does not affect the State Treasury, such payments as are made being made, of course, from the county funds, and the various boards of supervisors should consult with and be governed by the advice of their Commonwealth's attorneys.

Personally, if I were a Commonwealth's attorney, I would not hesitate to advise the board of supervisors of the county which I represented that the expenditure of a reasonable sum for the purpose of paying the expenses of a representative to a convention of the Good Roads Association would be a proper and profitable investment of such funds.

Very truly yours,  
JNO. R. SAUNDERS,  
*Attorney General.*

## IS COMMONWEALTH'S ATTORNEY SCHOOL OFFICER?

RICHMOND, VA., *January 25, 1918.*

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

DEAR SIR:

Acknowledgment is made of your letter of January 24, 1918, enclosing a copy of letter which you have received from superintendent A. C. Cooper, Toano, Va., asking whether or not a Commonwealth's attorney is considered a school officer, and whether or not a Commonwealth's attorney has the right, under the law (Code section 1472) referred to, to perform legal school duties, and then present his bill and expect payment for same by the district school board.

Answering the first question as to whether or not a Commonwealth's attorney is considered a school officer, I beg to hand you herewith a copy of an opinion rendered by Attorney General William A. Anderson on March 6, 1906, to Hon. J. D. Eggleston, Jr., then Superintendent of Public Instruction.

This opinion of former Attorney General Anderson seems to cover both of your questions, but I would refer you to section 1486 of the Code, which is found on page 35 of Virginia School Laws, 1915, which reads as follows:

"The county school board shall have power, and it shall be its duty, in the event of any delinquency or irregularity in the acts of any treasurer, district board of trustees, or of any officer or member thereof, to take such steps and institute such legal proceedings as may be necessary and proper in order to secure a complete settlement of the accounts of such treasurer, board of trustees, officers, or member thereof, and a full and clear exhibit of the transactions of said officer or board in connection with the receipts and disbursements of any funds for public school purposes, and to compel the payment of any balance that may be in the hands of such treasurer, board of trustees, officer, or member thereof. The county school board shall have power, and it shall be its duty, to take such steps and institute such legal proceedings as may be necessary and proper to secure a complete settlement of the accounts of any trustees to whom any funds or other property for the purpose of common school education shall have been entrusted, and to secure a full and proper administration of the said trusts; and to this end it may apply to the courts for the removal, for good cause shown, of the old trustees, and for the appointment of new trustees, either in place of those so removed or to fill vacancies, and to institute such suits or actions as may be necessary to compel the payment of any balances in the hands of the old trustees so removed, or to correct any defect or irregularity whatever in the administration of such trust fund or other property. It shall be the duty of the attorney for the Commonwealth to act as attorney for the said county school board, and to institute such legal proceedings as the said board may think proper and necessary."

The last sentence of this section provides that it shall be the duty of the attorney for the Commonwealth to act as attorney for the said county school board, and to institute such legal proceedings as the said board may think proper and necessary; and I find nothing in the school laws which would authorize the payment of such bill for services rendered by the Commonwealth's attorney in this connection.

Yours very truly,

J. D. HANK, JR.,  
*Attorney General.*

## AGE FOR ADMISSION OF CHILDREN IN PUBLIC SCHOOLS.

RICHMOND, VA., *March 27, 1918.*

REV. THOS. R. REEVES,  
421 Clay St.,  
Norfolk, Va.

DEAR SIR:

Answering your letter in regard to the age limit for the admission of children in the public schools in the State of Virginia, I beg to advise that the Acts of Assembly, 1912, page 648, reads as follows:

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

The Acts of Assembly, 1914, page 141, provides:

"That the public free schools of this State shall be free to any child six years of age, provided that in the opinion of the teacher and the division superintendent that said child shall have reached such a stage of maturity as to render it advisable to permit him to enter school."

It is thus seen that a child of six years can only enter the free schools of Virginia in case the teacher and the division superintendent are of the opinion that the child has reached such a stage of maturity as to render it advisable to allow him to enter school. The only question left, therefore, is whether a child becoming six years of age after the session begins, can be allowed to enter the school provided he fulfils the conditions as above set out.

I have taken this question up with the Superintendent of Public Instruction, and he advises me it is a matter left entirely with the local school authorities; that if such authorities think that such child can be allowed to enter after the session begins without interfering with the school work, the local authorities have power to admit him.

But if, on the other hand, the local authorities rule that no child not of the proper age at the beginning of the session can enter the school during that session, then this is final so far as the Board of Education is concerned.

Kindly call on me if I can be of any further service.

Yours truly,

J. D. HANK, JR.,  
*Assistant Attorney General.*

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APPEAL FROM DISTRICT SCHOOL BOARD.RICHMOND, VA., *July 5, 1918.*

HON. N. S. TURNBULL, JR.,  
*Attorney-at-Law,*  
*Victoria, Va.*

DEAR SIR:

Acknowledgment is made of your letter of July 3, 1918, regarding an appeal taken by certain citizens of your county to the school trustee electoral board, from an action of the district school board in refusing to move a certain school building. You express doubt as to whether or not the school trustee electoral board has a right to consider this matter.



The last paragraph of section 1455 of the Code provides,

“ \* \* \* The said board is hereby constituted a permanent board of appeal to hear and determine all complaints that may be referred to it under the provisions of section fourteen hundred and eighty-seven of this chapter.”

Section 1487 reads as follows:

“Any five interested heads of families, residents of the district, who may feel themselves aggrieved by the action of any district school board, may, within thirty days after such action, state their complaint in writing to the division superintendent of schools, who, if he cannot within ten days after the receipt of the said complaint satisfactorily adjust the same, shall grant an appeal to the school trustee electoral board, which shall meet in the district where such complaint originated, and shall summon witnesses and decide finally all questions at issue. Any action taken or had by this board shall be recorded in its minutes and also in the record book of the district board whose action is reviewed.”

Unless there has been some action already taken by the district school board, I am of the opinion that there can be no appeal to the school trustee electoral board. I am not quite certain, from the reading of your letter, just what action, if any, has been taken by the district school board. If the question of moving a certain school building has been brought up and discussed in a meeting of the district school board, and a vote has been taken on the question, deciding whether or not the district school board will order the removal of the school building, I am of the opinion that said “action of the district school board” is sufficient to justify the granting of an appeal to the school trustee electoral board. In passing on this question, the school trustee electoral board’s authority extends only to affirm the decision of the district school board, or reverse it. In other words, the school trustee electoral board would have no authority to enter such judgment as it might think that the district school board should have entered.

I know of no way in which the decision of the school trustee electoral board could be enforced should it decide that the school building should be moved. Certainly, the school trustee electoral board would have no authority to say that the district school board must provide funds for the moving of the building, when the district board has no funds with which to comply with the decision.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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FINALITY OF DECISION OF ELECTORAL BOARD.

RICHMOND, VA., *August 26, 1918.*

HON. HARRIS HART,  
*Superintendent of Public Instruction,  
Richmond, Va.*

MY DEAR MR. HART:

I acknowledge receipt of your letter of August 21, 1918, asking me to look up sections 1455 and 1487 of the Code. You state:

“A district board locates a school house. Five heads of families, feeling aggrieved by such action, appeal to the trustee electoral board, this electoral board confirming the action of the district board.”

You desire to know whether or not, in such case, the patrons have any right of appeal from the trustee electoral board to the State Superintendent of Public Instruction, and from the State Superintendent to the State Board of Education.

Section 1455 of the Code refers to the school trustee electoral board, the last paragraph of which reads as follows:

"The said board is hereby constituted a permanent board of appeal to hear and determine all complaints that may be referred to it under the provisions of section 1487 of this chapter."

Section 1487 reads as follows:

"Any five interested heads of families, residents of the district, who may feel themselves aggrieved by the action of any district school board, may, within thirty days after such action, state their complaint in writing to the division superintendent of schools, who, if he cannot within ten days after the receipt of the said complaint satisfactorily adjust the same, shall grant an appeal to the school trustee electoral board, which shall meet in the district where such complaint originated, and shall summon witnesses and decide finally all questions at issue. Any action taken or had by this board shall be recorded in its minutes and also in the record book of the district board whose action is reviewed."

You will note that at the close of the first sentence of this section, these words are used, "and shall summon witnesses and *decide finally all questions at issue.*"

From the reading of these two sections, I am of the opinion that the decision of the school trustee electoral board on appeal from a district school board relating to the question of the location of a schoolhouse, is final, and there could be no further appeal from the action of the school trustee electoral board to the Superintendent of Public Instruction or to the State Board of Education.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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#### DEED FOR SCHOOL LAND.

RICHMOND, VA., *August 29, 1918.*

HON. HARRIS HART,  
*Superintendent of Public Instruction,*  
*Richmond, Va.*

MY DEAR MR. HART:

I acknowledge receipt of your letter of August 28th, asking me to give you my opinion regarding the legality of a deed vesting title in a school board by having a reverting clause.

I gather from your letter and from the copy enclosed that a party desires to convey land to the Amherst school board, but will do so only if allowed to insert in the deed "exclusively for school purposes and not in fee," and that the property should revert to the owner in case school property is abandoned.

It would be very unwise to accept title to any school property in the State where the same is granted conditionally.

There could be no loan made from the loan fund on any school property where the title was other than fee simple, and I am of the opinion that no property should be acquired by purchase, gift or otherwise, except where the fee simple title is conveyed absolutely.

I know that the practice and custom of a great many circuit court judges is to approve such deeds only where the fee simple title is granted.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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APPOINTMENT OF RELATIVES BY CHAIRMAN OF SCHOOL BOARD.

RICHMOND, VA., *August 30, 1918.*

MR. A. G. CROCKETT, JR.,  
*Max Meadows, Va.*

DEAR SIR:

I acknowledge receipt of your letter of the 29th, in which you ask if it is in accordance with the law for the chairman of the district school board, along with the other members, to appoint his son-in-law principal of the high school in his town, and his son-in-law's sister and his own niece teachers in the same school.

In reply to your question, I would state that a part of sub-section 2 under section 49 of the Virginia school law, published in 1915 and found on page 38, reads as follows:

" \* \* \* and provided further, that no district school board shall employ or pay any teacher from the public funds if said teacher is the brother, sister, wife, son, or daughter of any member of said board. \* \* \* "

And it further provides

" \* \* \* Any member of the district board who shall violate any of these provisions shall be personally liable to refund any public funds paid in violation of this section, etc. \* \* \* "

You will see from the above provisions of the law that there is no inhibition against a member of the school board employing his son-in-law, his son-in-law's sister, or his niece as public school teachers.

You also asked the question whether I regard it as good public policy to make the appointments referred to in your letter. You can readily understand that, without knowing the circumstances of the particular case to which you refer in your letter, it, perhaps, would be improper for me to express any opinion as to the policy of the matter. Of course, you realize that it is very difficult now to obtain teachers in the public schools, and it may be that this difficulty, to a very large extent, controlled the actions of the school board in the case to which you have reference.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General of Virginia.*

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TRANSPORTATION OF PUPILS AT MILLBORO.

RICHMOND, VA., *September 13, 1918.*

HON. HARRIS HART,  
*Superintendent of Public Instruction,  
Richmond, Va.*

DEAR SIR:

I acknowledge receipt of your letter of September 12, 1918, regarding the school situation at Millboro, Bath county, Virginia.

I gather from your letter that the trustees of the Millboro district are not now operating a school wagon, transporting pupils from Hotchkiss to Millboro, due to the necessary increase in the expense of maintenance, etc. I also note the language of the formal notice served on the Millboro school board regarding the building of a school house at Hotchkiss, or making some arrangement for the transportation of school children to Millboro. You desire to know whether or not any legal procedure could be taken which could force the school board to act in accordance with the notice received from the citizens of Hotchkiss.

The resolution of the Millboro school board, a copy of which you enclosed with your letter, and which I am returning herewith, shows that the school district is already confronted with a large debt, and that it is unable to build a schoolhouse at Hotchkiss. They, however, are willing to furnish a teacher for Hotchkiss if the citizens of that place will provide a suitable building for school purposes, or, in lieu thereof, they will pay \$45.00 a month toward the salary of a suitable teacher, chosen by the citizens of Hotchkiss, providing the term does not exceed nine months.

It appears to me that the school board of Millboro district has offered to do all that it can, under the circumstances. Certainly the school board cannot be charged with the duty of raising revenue for the support of public free schools, and they can expend only such money as is placed at their disposal by the proper authority. They would have no right, of their own accord, to further burden the county of Bath with a debt for the purpose of building a school house at Hotchkiss.

Unless the citizens of Hotchkiss can show that there are sufficient funds at the disposal of the district school board for the purpose of erecting a school building at Hotchkiss, or for running a school wagon, I see no way whereby the citizens of Hotchkiss could gain anything by any legal procedure which they might be advised to institute.

Very truly yours,

JNO. R. SAUNDERS,

*Attorney General.*

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ANNEXATION CASE IN NEWPORT NEWS.

RICHMOND, VA., *September 21, 1918.*

HON. HARRIS HART,

*Superintendent of Public Instruction,*

*Richmond, Va.*

MY DEAR MR. HART:

The Attorney General has asked me to acknowledge receipt of your letter of September 18th, enclosing certain court orders bearing on the annexation case in Newport News, Va. You desire to know whether, under the circumstances, the apportionment of the city of Newport News should be made this fall on the basis of a new school population according to the boundaries fixed in annexation proceedings or on the basis of the former population.

Paragraph 9 of the Rules and Regulations of the State Board of Education, found on page 157 of the Virginia School Laws, 1915, provides that

"He (the Superintendent of Public Instruction) shall annually, and as often besides as he may deem necessary, prepare a scheme for apportioning the money appropriated by the State for public free school purposes among the several counties and cities, on the basis of the number of children between the ages of seven and twenty years in each school district, as ascertained from the census last taken, or, in default of that, from the latest and best official authority accessible to him. \* \* \*

Section 43 of the School Laws, found on page 36 of the same book provides that the clerk of each district school board, during the months of April and May, 1910, and every five years thereafter, shall in proper person or by deputies approved by the division superintendent of schools, take a census of all persons between the ages of seven and twenty-one years, residing within the school district, etc.

Section 45, found on page 36 of the Virginia School Laws, provides that

“Whenever the boundaries of any school district or districts are changed, it shall be the duty of the division superintendent of schools to cause a census to be taken by some person selected by him of the school children of the territory or territories concerned. \* \* \*”

Section 45, when read in full, shows in what manner the census shall be taken, etc.

Newport News, having annexed certain portions of the county of Warwick known as Newport district, it is manifest that both boundaries of that portion of Newport News which has been annexed from Warwick county, and the boundaries of the former school district in Warwick county, have been changed to such an extent as to affect the manner in which the apportionment of school funds is to be made. If the apportionment be made without the new census, it would mean that the city of Newport News would not receive the proper sum in proportion to the population added, and, at the same time, the county of Warwick would receive a sum larger than it should, because the apportionment would be based on the old school population.

I am of the opinion, therefore, that a new school census should be taken under the provisions of section 45 of the Virginia School Law, page 37, so as to correctly record the number of school children in that portion of Newport News which was annexed from Warwick county, and that a new school census should be taken for the remaining portion of the district in Warwick county, so that the apportionment to Warwick county would be based on the school census at this time.

The court orders enclosed in your letter are herewith returned.

Yours very truly,

F. B. RICHARDSON,

*Law Assistant.*

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CONSTITUTIONALITY OF SENATE BILL NO. 146.

RICHMOND, VA., *February 20, 1918.*

THE SENATE FINANCE COMMITTEE,  
*Senate Chamber,*  
*Richmond, Va.*

GENTLEMEN:

A request has been submitted to this office for an opinion as to the constitutionality of Senate Bill No. 146, the title of which is as follows:

“To enable the rector and board of visitors of the Virginia Agricultural and Mechanical College and Polytechnic Institute to provide needed accommodations and equipment for students, to issue bonds and borrow money therefor, and to appropriate money to provide for interest and a sinking fund for such purpose.”

The only sections of the Constitution, so far as I have been able to apply them, which would have any bearing upon the point in question, are as follows:

"Section 184. No debt shall be contracted by the State except to meet casual deficits in the revenue, to redeem a previous liability of the State, to suppress insurrection, repel invasion, or defend the State in time of war. No scrip, certificate, or other evidence of State indebtedness, shall be issued except for the transfer or redemption of stock previously issued, or for such debts as are expressly authorized in this Constitution."

"Section 185. Neither the credit of the State, nor of any county, city, or town, shall be, directly or indirectly, under any device or pretence whatsoever, granted to or in aid of any person, association, or corporation;  
\* \* \*

"Section 187. \* \* \* Every law hereafter enacted by the General Assembly, creating a debt or authorizing a loan, shall provide for the creation and maintenance of a sinking fund for the payment or redemption of the same."

By a comparison of these sections with the provisions of the Constitution of 1869, it will be seen that they are practically the same as sections 7, 12 and 13 of the Constitution of 1869, which are as follows:

"Section 7. No debt shall be contracted by this State except to meet casual deficits in the revenue, to redeem a previous liability of the State, to suppress insurrection, repel invasion, or defend the State in time of war.  
\* \* \*

"Section 12. The credit of the State shall not be granted to or in aid of any person, association or corporation."

"Section 13. No scrip, certificate, or other evidence of State indebtedness shall be issued, except for the redemption of stock previously issued, or for such debts as are expressly authorized in this Constitution."

The bill in question is practically the same as three several Acts of the General Assembly which were enacted as follows:

"Act approved January 23, 1869, (Acts of 1895-6, p. 159) authorizing the rector and visitors of the University of Virginia to issue \$200,000.00 of 4% bonds for the rebuilding of certain buildings at the University after the fire of 1895.

Act approved March 5, 1900, (Acts of 1899-1900, p. 844) authorizing the rector and visitors of the Virginia Agricultural and Mechanical College and Polytechnic Institute to issue \$100,000.00 of 5% bonds for enlargement and betterment, and

Act approved March 10, 1906 (Acts of 1906, p. 229) authorizing the rector and visitors of the University of Virginia to issue \$200,000.00 of 4% bonds with which to refund the previously authorized 5% bond issue of like amount."

An examination of these several Acts of the General Assembly of Virginia shows that the two institutions referred to in the three acts were authorized by the General Assembly of Virginia to do just what is contemplated by Senate Bill, No. 146.

It is true that the act approved January 23, 1896, and the one approved March 5, 1900, were passed while the Constitution of 1869 was in force and effect, but the act passed March 10, 1906, was passed since the new Constitution became effective. At the time of the passage of these acts, both institutions bore exactly the same relation to the State as they now do; each of these acts as does the pending bill providing for annual appropriation of a fixed sum for the payment of interest, and to provide a sinking fund for said bonds, and the constitutionality of these acts have not been questioned.

The Virginia Agricultural and Mechanical College and Polytechnic Institute is governed by an incorporated board appointed by State authority, and under the sole control of the General Assembly. All its property is the property of the State, and is wholly dedicated to public use. It is, in the strictest sense, a public institution. This has been directly held as to the University of Virginia in *Phillips v. University of Virginia*, reported in 97 Virginia, pp. 472-5, where the court stated the following:

"It is plain that the University of Virginia is in the strictest sense a public institution, and that its grounds and buildings are public property, the property of the State; that it is governed and controlled solely by the State; that its grounds and buildings are wholly dedicated to public uses; and that the interest of the public constitutes its ends and aims."

A similar view was held by the court in the case of *Maia v. Eastern State Hospital*, 97 Virginia, pp. 507-9.

In the decision of *Phillips v. University*, page 476, the court made a special reference to the Act of January 23, 1896, which authorized the issuance of \$200,000.00 in bonds for the purposes as set out in said act. Had that act been deemed in conflict with the Constitution, it would seem that the court, in rendering its opinion, would have so stated.

It is true that section 184 of the Constitution provides that

"No debt shall be contracted by the State except to meet casual deficits in the revenue, to redeem a previous liability of the State, to suppress insurrection, repel invasion, or defend the State in time of war. No scrip, certificate, or other evidence of State indebtedness, shall be issued except for the transfer or redemption of stock previously issued, or for such debts as are expressly authorized in this Constitution."

I would state that, in my opinion, Senate Bill No. 146 is not in conflict with this provision of the Constitution, for the reason that while the Virginia Agricultural and Mechanical College and Polytechnic Institute is a State institution, owned entirely by the State of Virginia, at the same time, the authority which is sought to be conferred upon the rector and board of visitors of that institution, does not come within the purview of the said section.

The bonds authorized to be issued under the provisions of Senate Bill No. 146 do not, in my judgment, represent the classes of debt referred to in the foregoing sections of the Constitution, but will be a credit based upon the value of the property of this particular institution, and which said property, and no other property of the State, is solely liable therefor.

A question might arise as to whether section 2 of the said bill exempting the bonds from taxation is constitutional.

All three of the acts of the General Assembly above referred to contained a similar provision, and under section 183 of the Constitution, which provides what property shall be exempt from taxation, I am of the opinion that the legislature has the right to exempt the said bonds from taxation.

Respectfully submitted,

JNO. R. SAUNDERS,  
Attorney General.

## CONSTITUTIONALITY OF SENATE BILL NO. 184.

RICHMOND, VA., *March 1, 1918.*

*His Excellency, WESTMORELAND DAVIS,*  
*Governor of Virginia,*  
*Richmond, Va.*

DEAR SIR:

Acknowledgment is made of the letter of Colonel Hodges, of March 1st, in which I am requested to advise you as to the constitutionality of Senate Bill No. 184, which provides for the disbursement of an unexpended balance arising from the sale of road bonds for Totaro magisterial district, in Brunswick county, Va.

You call attention to the statement in the letter of Hon. E. P. Buford, in regard to this bill, which states as follows:

"I have grave doubt as to the power of the legislature to require the supervisors of the county to use the money otherwise than as directed by the order of court under which the election issuing the bonds was held."

I have conferred with Senator Jeffreys, the patron of the bill, and he advises me that the Main street, in the town of Lawrenceville, upon which it is proposed by this bill to use the unexpended balance, is a part of the system of roads which was originally designated by the court in its order directing the expenditure of money derived from the sale of these bonds. Such being true, I would say that the bill is not unconstitutional.

I am herewith returning the papers sent me.

Yours very truly,  
JNO. R. SAUNDERS,  
*Attorney General.*

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## CONSTITUTIONALITY OF SENATE BILL NO. 116.

RICHMOND, VA., *March 8, 1918.*

*His Excellency, WESTMORELAND DAVIS,*  
*Governor of Virginia,*  
*City.*

DEAR SIR:

I have just been handed Senate Bill No. 116, with the request from you that I advise you whether the first three lines of section 5, which read as follows, are constitutional or not:

"Fifth. If the recommendation of said board be adverse to the appointment of said receiver, the court shall refuse to appoint the receiver prayed for."

In response to your inquiry, I would state that I believe that part of the bill is unconstitutional, as it would be depriving the courts of their jurisdiction, and denying the rights of parties to go into court to have their claims litigated.

Yours truly,  
JOHN R. SAUNDERS,  
*Attorney General.*



## EXAMINATION OF ACCOUNTS OF CORPORATION COMMISSION.

RICHMOND, VA., *February 27, 1918.*

HON. C. B. GARNETT, *Chairman,*  
*State Corporation Commission,*  
*City.*

DEAR SIR:

Acknowledgment is made of your letter of February 26th, in which you ask, at the request of Col. LeRoy Hodges, secretary to His Excellency, the Governor, whether it is the duty of the Governor to examine the accounts for the necessary contingent expenses of the State Corporation Commission.

Your letter calls attention to the various sections of the Constitution and the Code of Virginia relating to the subject. Section 1313-a, clause 44, provides as follows:

"The Commission shall, by order entered upon the records of its proceedings, make all allowances to be paid out of the public treasury for expenses, witness fees, and mileage, and for service of process, and when so allowed and certified by its clerk to the Auditor of Public Accounts, the last-named officer shall draw his warrant for the payment of the amount of any such allowance out of the public treasury; "

From this provision it is manifest that the Auditor of Public Accounts is authorized to pay allowances made by the State Corporation Commission out of the public treasury, when allowed by the commission and certified by its clerk to the Auditor. As the Auditor is authorized to pay such allowances when and so soon as certified to him by the clerk of the State Corporation Commission, it is clear that it is not necessary that these allowances should be certified by the Governor.

It is true that the accounts of the Commissioner of Railroads, under section 238 of the Code of Virginia, could not be paid until examined and certified by the Governor, and that under section 156 of the Constitution, the State Corporation Commission was given all the rights and powers, and required to perform all the duties devolving upon the Railroad Commissioner and given possession of all his books and records, but there is nothing in this provision of the Constitution which, even by implication requires the expenses of the Corporation Commission to be checked or certified in the same manner as those of the Commissioner of Railroads, the framers of the Constitution evidently and properly leaving the method of checking and certifying the accounts of the Corporation Commission to the legislature.

The legislature, by section 1313-a, clause 44, has made provision for the payment of contingent expenses of the Commission, and they should be paid upon the provisions of this clause being complied with. Sections 238 of the Code, providing for the examination and certification of the contingent expenses of the Commissioner of Railroads by the Governor, has been, with little change, on our statute books since 1917, and has referred to a Commissioner of Railroads for many years, certainly since 1878 (Acts of Assembly 1878, page 174), and we cannot think that the plain provision contained in section 1313-a, clause 44, can in any way be affected by section 238 of the Code.

I am, therefore, of the opinion that the Governor is not required to examine the accounts for the necessary contingent expenses of the State Corporation Commission, nor to certify them for payment, but that the Auditor of Public Accounts is authorized to pay the same when allowed by the commission and certified by its clerk.

Yours very truly,

J. D. HANK, JR.,  
*Assistant Attorney General.*

## ELEVATOR CONDUCTORS AT CAPITOL.

RICHMOND, VA., July 17, 1918.

*His Excellency, WESTMORELAND DAVIS,  
Governor of Virginia,  
City.*

DEAR SIR:

Acknowledgment is made of your letter of July 15, 1918 raising a question as to whether or not a night elevator conductor should be required to remain on duty as night guard at the Capitol building until relieved in the morning.

You refer to section 288 of the Code, as amended by Acts of Assembly, 1906, page 365, and state that the Superintendent of Buildings and Grounds, by an order issued by former Governor Mann, arranged that the elevator service in the Capitol building should be maintained during the day by the day conductor, whose hours are from eight o'clock in the morning until three in the afternoon, and that the night service is maintained by the night conductor, whose hours are from three in the afternoon until ten at night.

I have examined section 288 very carefully, and am unable to find any authority vested in the former Governor, Honorable Wm. Hodges Mann, to authorize the Superintendent of Buildings and Grounds to change the hours of duties of the conductors and watchmen in the Capitol building from that set out in the Code. These employees are appointed by the Superintendent of Buildings and Grounds, and the statute reads, in part, as follows:

" \* \* \* He shall have the appointment and control of the following employees: \* \* \* one night elevator conductor for the elevator at the Capitol, who shall also be night guard at the Capitol building and shall make such rules for the governing and control of his appointees during their term of office. \* \* \*"

There seems to be no provision in this section of the Code for the employment of an elevator conductor during the day. However, the general appropriation bill is as follows:

"Two conductors of the elevator at the Captiol—one for day duty, and one for night duty—who shall also act as guards. Salary of \$1,200.00 each per annum, and a sufficient sum to employ a substitute during fifteen days leave of absence with pay."

From the reading of section 288 of the Code, and the wording in the general appropriation bill for the maintenance of elevator conductors and guards in the Capitol building, it was evidently intended that the night elevator conductor should remain on duty throughout the night, and act as a guard to the Capitol building.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## SUBSTITUTE ELEVATOR CONDUCTOR AT CAPITOL.

RICHMOND, VA., *July 18, 1918.*

COL. JNO. W. RICHARDSON,  
*Register of the Land Office,*  
*Richmond, Va.*

DEAR SIR:

Acknowledgment is made of your letter of July 17, 1918, asking to be advised whether or not it will be your duty or that of the Governor, to appoint a substitute during vacation for the day elevator conductor at the Capitol; whether or not one conductor can be appointed to substitute another, or whether or not a substitute so employed must be from the outside and having no connection with State service.

You state that the day elevator conductor of the Capitol building is an appointee of the Governor. Without expressing any opinion as to who has the authority to appoint a day elevator conductor, I should say that inasmuch as he is appointed by the Governor, as stated in your letter, it would be proper for the Governor to appoint a substitute for him during the vacation period referred to in your letter.

I find no objection to the appointment of one conductor as substitute for another if any such arrangement can be made, so that the service in the building will not be impaired, and I see no reason why such a substitute should come from without the State service.

Yours very truly,  
J. D. HANK, JR.,  
*Assistant Attorney General.*

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APPOINTMENT OF STATE ACCOUNTANT.RICHMOND, VA., *August 6, 1918.*

*His Excellency,* WESTMORELAND DAVIS,  
*Governor of Virginia,*  
*City.*

MY DEAR GOVERNOR:

Acknowledgment is made of your letter of August 1, 1918, in which you write concerning the appointment of a State Accountant.

The office of State Accountant was created by an Act of Assembly, approved March 14, 1910, being chapter 156 of the Acts of 1910. Section 1 of the act provides that

"There shall be appointed by the Governor, upon the recommendation of the joint auditing committee, a person whose official title shall be the State Accountant. \* \* \* The said State Accountant may, at any time, be removed from office by the Governor for malfeasance or misfeasance in office or incompetency; a vacancy so occasioned or otherwise occurring shall be filled by appointment of the Governor."

From the reading of this section of the act, it seems that the intent of the legislature was to make the duty of the Governor purely ministerial, and, in reality, the appointment of the State Accountant is made by the joint auditing committee, since the act provides that the appointment shall be made upon the recommendation of the joint auditing committee.

I do not believe that the Governor would be justified in refusing to appoint such person as the joint auditing committee should recommend to him, unless it was clearly evident that such person was wholly incompetent or unfit for the position. It is true that the act provides for the removal of the State Accountant by the Governor for malfeasance or misfeasance in office or for incompetency, and provides that the vacancy so occasioned, or otherwise occurring, shall be filled by an appointment of the Governor. You ask whether or not these disqualifications are to be ascertained and fixed by the Governor, or are they a matter for judicial determination.

It would seem, from the reading of the act, that it is contemplated by the legislature that a person named by the joint auditing committee is presumed to be a competent person at the time of his nomination, and, while the Governor has a right to remove for incompetency, malfeasance or misfeasance in office, it is contemplated that the Governor in so doing will exercise judicial discretion, and a party so removed would, no doubt, have a right to have the court pass upon these disqualifications, if so removed.

You ask "whether or not the Governor has a right to request the recommendation of other persons in succession until a person, in his judgment, suitable to occupy the position is found."

The act does not seem to contemplate that it is the duty of the joint auditing committee to recommend more than one person for this position, nor does it seem to give the authority to the Governor to request that more than one person be recommended.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General of Virginia.*

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LEAVE OF ABSENCE OF E. G. SWEM TO ENGAGE IN WAR WORK.

RICHMOND, VA., *August 29, 1918.*

DR. H. R. MCILWAINE,  
*State Librarian,*  
*Richmond, Va.*

DEAR SIR:

Acknowledgment is made of your letter of August 29th, in which you ask whether or not the State Library Board has a right to grant a leave of absence with full pay, or any pay, for three months or for any time whatsoever, with the exception of the vacation leave, to a member of the staff of the Virginia State Library.

You further state that the question has arisen on the request made by the American Library Association that Mr. E. G. Swem, Assistant State Librarian, be allowed a leave of absence with full pay or part thereof, in order that he may engage in library war service, a service undertaken at the request of the United States government.

Chapter 363 of the Acts of Assembly, 1918, page 540, provides:

"No State, county or municipal officer or employee shall forfeit his title to office or position or vacate the same by reason of engaging in the war service of the United States; and any such officer or employee who voluntarily or otherwise enters such war service may notify the officer or body authorized by law to fill vacancies in his office, of such fact, and thereupon

be relieved from the duties of his office or position during the period of his war service; and the officer or body authorized to fill vacancies shall designate some suitable person to perform the duties of such office as acting officer during the period the regular officer is engaged in war service, and during such period the acting officer shall be vested with all the powers, authority, rights and duties of the regular officer for whom he is acting."

It will thus be seen that where an officer or employee desires to engage in war service, he may be relieved from the duties of his office or position during the period of war service, but some other person shall be designated to perform the duties of such office during the period the regular officer is engaged in war service.

It is clear, therefore, that upon granting a leave of absence to an employee of the State government in order that he may engage in war service, the act contemplates that some one shall be employed to fill his position during his absence, which naturally would carry to such person a salary of the officer whose position he is filling.

I know of no law which would allow the State to pay an employee who is rendering no service to the State government. I am, therefore, of the opinion that your board has not the right to grant leave of absence with full pay or any pay (with the exception of vacation leave) to a member of the State Library.

Yours very truly,

J. D. HANK, JR.,  
*Assistant Attorney General.*

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ENGAGING IN WAR SERVICE.

RICHMOND, VA., *October 24, 1918.*

HONORABLE ALEXANDER FORWARD,  
*State Corporation Commission,*  
*Richmond, Va.*

MY DEAR JUDGE FORWARD:

I am this moment in receipt of your letter of the 24th, in which you ask whether over-sea service of the American Red Cross constitutes "engaging in war service of the United States," within the meaning of chapter 363 of the Acts of Assembly, 1918.

The title to the act in question is as follows:

"An act to permit public officers to engage in war service without thereby vacating their offices, and to provide for the designation of acting officers to temporarily perform the duties of regular officers while so engaged."

The act provides as follows:

"No State, county or municipal officer or employee shall forfeit his title to office or position or vacate the same by reason of engaging in the war service of the United States; \* \* \*"

Prior to the passage of the above act by the legislature of 1918, any officer of the State who accepted any office, post, trust or emolument under the United States government, *ipso facto* vacated his office. There can be no question but that the object and purpose of this act was to remedy just such a situation as would be likely to occur in time of war.

To be engaged in "war service" within the meaning of the act approved March 16, 1918, does not necessarily mean that one must be actually engaged in fighting or a soldier in the army, but that he may be engaged in any service in connection with the United States government which, in any manner, helps to win the war. There can be no doubt but that the American Red Cross is rendering a great service to our nation at this particular time, and I am of the opinion that one who is engaged in over-sea service in connection with the American Red Cross would come within the meaning of the above statute, and, by reason of such service, does not forfeit his title to any office or position held under our State government.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General of Virginia.*

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LEAVE OF ABSENCE TO ENGAGE IN WAR WORK.

RICHMOND, VA., *October 30, 1918.*

HON. ALEXANDER FORWARD,  
*State Corporation Commission,  
Richmond, Va.*

MY DEAR JUDGE FORWARD:

I am just this moment in receipt of your letter of October 30th, to which I will reply at once.

You state that it is your desire to leave the State of Virginia to-day to engage for a limited period, in the overseas service of the American Red Cross.

You further request me to give you my opinion as to whether the Constitution makes provision for a temporary appointee on the State Corporation Commission under any circumstances, whether caused by the prolonged illness of one of its members, or absence from the State on war or other service, and whether, in the absence of such constitutional provision, the Governor has the power to designate some suitable person to perform the duties of your office during the period you are engaged in war service.

Chapter 363 of the Acts of Assembly, 1918, by an act approved March 16, 1918, in my judgment, clearly covers your case. It reads as follows:

"No State, county or municipal officer or employee shall forfeit his title to office or position or vacate the same by reason of engaging in the war service of the United States; and any such officer or employee who voluntarily or otherwise enters such war service may notify the officer or body authorized by law to fill vacancies in his office, of such fact, and thereupon be relieved from the duties of his office or position during the period of his war service; and the officer or body authorized to fill vacancies shall designate some suitable person to perform the duties of such office as acting officer during the period the regular officer is engaged in war service, and during such period the acting officer shall be vested with all the powers, authority, rights and duties of the regular officer for whom he is acting."

There can be no doubt but that the legislature of Virginia not only intended, but did, by clear and explicit language of this act, provide that no officer, State or municipal, or employee, should forfeit his title to such office or position or vacate he same by reason of engaging in the war service of the United States.

It further made ample provision for the designation of some one to temporarily perform the duties of such office during the absence of the party so engaged in war service, which person so temporarily designated shall act in the place and stead of the regular officer and perform the duties of such office.

The question, therefore, resolves itself into this: Whether the act above referred to is within the limitation of the Constitution. It has been decided time and time again by the Court of Appeals of Virginia that

"The legislature represents the sovereign authority of the people, except so far as restriction are enforced by the Constitution in express terms, or by strong implication. We look to the Constitution of the State, not for grants of power, but for limitations. When the prohibition is not found in the language of that instrument, or in its framework and general arrangement, there is no solid ground to pronounce the enactment void. The infractions must be clear and palpable." See *Town of Danville v. Pace*, 25 Gratt. 1. Also *Commonwealth v. United Cigarette Machine Co.*, 120 Va. 835.

Again, the legislature of Virginia has plenary power, and every enactment of that body is presumed to be constitutional, except where the Constitution of the State or of the United States, forbids, and only in those cases where the statute in question is plainly repugnant to some provision of the Constitution, can courts declare it to be null and void. See *Ex Parte Settle*, 114 Virginia, 715. Also *Iverson Brown's Case*, 91 Virginia, 762. Even though there may be a reasonable doubt as to the constitutionality of a law, such doubt must be solved in favor of the validity of the law. In my judgment, the act approved March 16, 1918, page 540, and above quoted, is clearly constitutional, and does not come within any restrictions or inhibitions of that instrument.

I am therefore of the opinion that the Governor has the authority under the act approved March 16, 1918, to designate some suitable person to perform the duties of your office during the period of time you are engaged in war service, and such person so designated will be vested with all the powers, authority, rights and duties of yourself, for whom he is acting.

I am further of the opinion that during the period of time that you are so engaged in war service, there is no vacancy created in your office, and so soon as you cease to engage in war service, you unquestionably have the right to re-assume your duties as a member of the State Corporation Commission.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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#### SALARIES OF MEMBERS OF INDUSTRIAL COMMISSION.

RICHMOND, VA., November 8, 1918.

HON. R. H. TUCKER, *Chairman,*  
*Industrial Commission,*  
*Richmond, Va.*

DEAR SIR:

I beg leave to acknowledge receipt of your letter of October 30th, in which you enclose a copy of a letter from Hon. C. Lee Moore, Auditor of Public Accounts, concerning the salaries to be paid the members of the commission. I have carefully noted your letter, as well as that of Mr. Moore. I am of the opinion that the

salaries of the members of this commission should commence on the first day of October, 1918, which, you state, is the date of the commissions held by the members of this commission.

The statute provides that each member of this commission shall receive a salary of \$3,600.00 per year, payable in the same manner as the salaries of other State officers.

You state in your letter that the members of the commission did not qualify until the 16th day of October. While it is true that the law contemplates that all officers elected or appointed shall qualify before they enter upon the performance of their public duties, at the same time it seems to be contemplated by the law that an officer shall have a reasonable time in which to qualify. In fact, it provides for a period of thirty days for the qualifications of a number of officers.

The act creating the Industrial Commission of Virginia, is silent as to the qualification of its members, and, therefore, no limited time is prescribed therein for their qualification. Such being the case, I believe that the qualification of the commissioners on the 16th day of October was in ample time, and that the term of the members of the commission should date back to October 1, 1918, and salaries should begin as of that date.

I have discussed the matter with Mr. Moore, the Auditor of Public Accounts, and am sending him a copy of my letter to you.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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APPOINTMENT OF SUBSTITUTE FOR JUDGE FORWARD.

RICHMOND, VA., *November 8, 1918.*

HON. WESTMORELAND DAVIS,  
*Governor of Virginia,*  
*Richmond, Va.*

MY DEAR GOVERNOR:

In pursuance of your request this morning, I herewith submit my views as to your authority to designate a member of the State Corporation Commission, who shall act in the place and stead of Judge Alexander Forward, he having notified you that he desires to be relieved from the duties of his office during the period he is engaged in war service.

I do not think there can be any question as to your authority to designate some one to fill his place during the time he is so engaged. Such authority is vested in you by virtue of an act of the legislature of 1918, approved March 16, chapter 363, page 540, which reads as follows:

"No State, county or municipal officer or employee shall forfeit his title to office or position or vacate the same by reason of engaging in the war service of the United States: and any such officer or employee who voluntarily or otherwise enters such war service may notify the officer or body authorized by law to fill vacancies in his office, of such fact, and thereupon be relieved from the duties of his office or position during the period of his war service; and the officer or body authorized to fill vacancies shall designate some suitable person to perform the duties of such office as acting officer during the period the regular officer is engaged in war service, and during such period the acting officer shall be vested with all the powers, authority, rights and duties of the regular officer for whom he is acting."



You will observe from a reading of this statute that no State officer or employee of the State shall forfeit his title to such office or vacate the same by reason of engaging in the war service of the United States. It further makes ample provision for the designation of some one by you to temporarily perform the duties as a member of the State Corporation Commission, during the absence of Judge Forward, such person to act in his place and stead and with full authority to perform the duties of said office.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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UNITED STATES BONDS AS STATE SECURITIES.

RICHMOND, VA., *October 23, 1918.*

HON. CHAS. A. JOHNSTON,  
*Treasurer of Virginia,*  
*Richmond, Va.*

DEAR MR. JOHNSTON:

In answer to your verbal request made of me this morning as to whether banks used by you as State depositories can give as security United States bonds, I beg leave to state the following:

At this season of the year, your deposits with the banks used by you as depositories in the city of Richmond, will necessarily be larger than usual, owing to the large amount of taxes which will be paid into the State Treasury for the next sixty days.

I do not think it will be necessary to require such banks to give bonds for a year, but if such banks as used by you will give a temporary bond sufficiently large to cover the period of time during which these large deposits will be with them, it will be entirely satisfactory. And should such banks desire to give United States bonds as security to cover these temporary bonds, it will be entirely satisfactory.

I happen to have before me a bond executed by the First National Bank of Virginia to Mr. Urner, your predecessor in office, which bond was executed last fall. That bond seems to be in good form and properly executed, and if this form is adopted by any bank which gives United States bonds as security, I regard it as entirely satisfactory.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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CONVEYANCE OF LUNATICS TO STATE HOSPITALS.

RICHMOND, VA., *October 22, 1918.*

DR. J. S. DEJARNETTE,  
*Superintendent of Western State Hospital,*  
*Staunton, Va.*

DEAR DR. DEJARNETTE:

I am just in receipt of your letter of October 17th, concerning the conveyance of a lunatic from Campbell county to the Western State Hospital at Staunton. In

the same mail I received a letter from Mr. Perrow, sheriff of Campbell county, concerning the same matter.

The last paragraph of section 1672 of Pollard's Code of Virginia, which pertains to the disposition of lunatics after commitment, provides as follows:

"All persons applying for admission to any hospital shall be, when so required by the superintendent of such hospital, delivered to the agent of such hospital at the nearest or most convenient railroad station or steamboat landing at the expense of the county or corporation, or the insane person, if there be any estate."

It is very difficult to tell, from the reading of the above law, whether it means that the patient should necessarily be delivered at the nearest railroad station, or whether at the most convenient railroad station. In fact, I think it is a matter which should be determined according to the circumstances of the particular case. To illustrate:

One railroad station might be nearer, and, at the same time, might not be as accessible as another railroad station. In that case, the second railroad station would be regarded as most convenient.

There can be no doubt but that Rustburg is the nearer and more convenient railroad station to the sheriff of Campbell county. Such being the case, I do not think you could require the sheriff of Campbell county to take this patient to Lynchburg unless the county is willing to pay Mr. Perrow's expenses, or you pay them. Certainly, it would not be incumbent upon him to take this patient to Lynchburg and pay the cost himself.

The appropriation made to the various hospitals in the State contemplated certain expenses which necessarily occur in the administration of their affairs, and should Mr. Perrow bring this patient to Lynchburg rather than deliver him at Rustburg, I believe it would be your duty, as superintendent of the hospital, to pay this additional expense. However, it does seem to me that it is a matter which you and Mr. Perrow could easily adjust between yourselves.

Very sincerely yours,

JNO. R. SAUNDERS,

*Attorney General.*

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STOCKHOLDERS IN VALLEY TURNPIKE COMPANY.

RICHMOND, VA., *June 14, 1918.*

R. GRAY WILLIAMS, ESQ.,

*Attorney-at-Law,*

*Winchester, Va.*

MY DEAR MR. WILLIAMS:

I acknowledge receipt of your letter of June 8, 1918, in which you state that you are counsel for the Valley Turnpike Company, and that Mr. H. F. Byrd, president of the company, has requested you to write me concerning chapter 397, Acts of 1918, which relates to the transfer of the Valley Turnpike Company to the State of Virginia.

You ask two questions:

First: "In order to obtain a quorum of the stockholders meeting, can the stock held by the State and represented by State proxies, be counted?"

Second: "Will the rights of the minority stockholder to object to the fixing by the General Assembly of an arbitrary value upon the property, be concluded by a majority vote of the stockholders to make the transfer upon the terms and conditions set forth in said bill?"

The position of the State of Virginia as a stockholder in the Valley Turnpike Company can be no different from that of a private or individual stockholder. Stock held by the State is of the same value as that held by private or individual stockholders, and, while counting the number of shares of stock necessary to constitute a quorum, it will be necessary to count the stock held by the State of Virginia and represented by the proper proxies.

Answering your second question, I would refer you to clause 5 of section 1105-D of the Code, which was amended by an act of the Assembly on February 17, 1916, and is found on page 49 of the 1916 Acts, also on page 283 of Pollard's Code, Volume IV. This section of the Code provides in what manner a corporation may sell, exchange, convey, re-invest or encumber its property, the vote required, notice required, etc. By an examination of this section, you will see that if a corporation desires to dispose of its real property, it must be sanctioned by a vote of the majority of the members of such corporation, having voting power present at a meeting of the members, called by its trustees, directors or manager for that purpose. It provides three methods of notice: first, by publication; second, by personal service; and, third, by mail.

It is plain from the reading of this section that a corporation may sell its real property by a majority vote of its stockholders, as set forth in the said section, whenever the requirements of the section are fully complied with. It remains now whether or not a majority vote of the stockholders of the Valley Turnpike Company will be conclusive as against the minority vote of the stockholders, on the question of the General Assembly fixing an arbitrary value, if any has been fixed, on the Valley Turnpike Company.

By a careful reading of the act, chapter 397, section 1, on page 634, it will be seen that the General Assembly has provided a method by which the stockholders of the Valley Turnpike Company can dispose of property. The act reads in part:

" \* \* \* That should the stockholders of the Valley Turnpike Company within sixty days of July 1, 1918, authorize by proper and legal resolution the conveyance of, \* \* \* "

The passage of this act is not a fixing by the legislature of an arbitrary value on the property of the Valley Turnpike Company. It is in the nature of an offer. It simply states that the stockholders of the Valley Turnpike Company within sixty days of July 1, 1918, authorize by proper and legal resolution the conveyance of its property, as set forth in the said act; then the State of Virginia is willing and ready to release whatever right she may have in the surplus of \$45,000.00 now in the hands of the company. In other words, the State of Virginia is willing to take over the property and release her right in the surplus of \$45,000.00, leaving the same for distribution among private or individual stockholders.

If at a meeting of the stockholders of the Valley Turnpike Company, held and conducted in pursuance of clause 5 of section 1105-D, above referred to, resolutions are passed by the majority vote for the transfer of the property of the Valley Turnpike Company to the State of Virginia, I am of the opinion that such action by the said stockholders is binding and conclusive as against the minority stockholders.

If this does not sufficiently answer your questions and you wish to be further advised in this regard, I shall be very glad to render you any assistance I can.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

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SUPERINTENDENT OF POOR IS AMENABLE TO BOARD OF SUPERVISORS.

RICHMOND, VA., *December 12, 1918.*

MR. J. O. GREEVER, *Supervisor,*  
*Lexington, Va.*

MY DEAR SIR:

I am this morning in receipt of a letter from Col. B. O. James, Secretary of the Commonwealth, enclosing me your letter to him of December 7th, which letter he refers to me for reply.

You state that you are a member of the board of supervisors of Rockbridge county. You ask the question if the superintendent of the poor is amenable to the board of supervisors for everything he does in any capacity. You further ask if the board has the authority to demand a strict account for all funds and expenditures thereof by the said superintendent.

Section 95 of the Code of Virginia provides that the judge of the circuit court, or the judge thereof in vacation, upon the recommendation of the board of supervisors for each county, shall appoint the superintendent of the poor. If you will read sections 868, 869 and 872 of the Code of Virginia, you will see that it is clearly intended that the superintendent of the poor is amenable to the board of supervisors for all of his acts, and the conduct of his office, and that the said board has a right to require him to make a complete and detailed report of his acts and doings to the said board.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General of Virginia.*

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PAYMENT OF LICENSE FEE TO TREASURER.

RICHMOND, VA., *January 29, 1918.*

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

DEAR SIR:

Acknowledgment is made of your letter of January 29, 1918, in which you enclose copy of an order entered at the December term, 1917, of the Bedford circuit court, which is as follows:

"Virginia: In Bedford Circuit Court:  
December Term 1917.

*Commonwealth of Virginia:*  
against  
*De La Tena Circus.*

It having been agreed between the attorney for the Commonwealth and the defendant that the question of liability of the said defendant for a

license tax under section 109 of the Tax Bill, Pollard's Supplement 1912, page 178, should be submitted to this court for its decision; and the court having heard the evidence, is of opinion and doth decide that the said defendant is liable for a license tax as is provided for by section 109 of said Tax Bill, and doth fix the amount of said tax at \$200.00. And it appearing that the said defendant has paid to the treasurer of the county of Bedford, Virginia, the sum of \$30.00 on account of said license, and has deposited with the attorney for the Commonwealth the sum of \$170.00, which said last mentioned sum was deposited under protest; the court doth direct that the said attorney for the Commonwealth do pay said sum of \$170.00 to the clerk of this court, less the sum of \$25.00, which sum shall be retained by the said attorney for the Commonwealth for his services in collecting said license tax.

And the said clerk shall account for said sum of \$145.00 to the Auditor of Public Accounts of this State.

Teste:

S. M. BOLLING, *Clerk.*

You call attention to the fact that the law does not authorize the attorney for the Commonwealth to collect license fees, and ask

1. Whether the court should have ordered the money paid to the treasurer of the county; and

2. Whether it is proper to authorize a fee of \$25.00 to the Commonwealth's attorney out of the license tax collected?

Answering the first question, section 554 of the Code of Virginia provides as follows:

"The tax on every license issued in pursuance of law, shall, unless otherwise provided, be paid to the treasurer of the county or city wherein the licensed issued, or to his deputy."

It is clear, therefore, that the license fee in question should have been paid to the treasurer of Bedford county. The order does not show the facts of the case, and I, of course, do not know why the defendant paid the \$170.00 referred to, to the Commonwealth's attorney. It would appear to have been proper to have ordered the defendant to have paid the \$170.00 to the treasurer of the county, as this would be in accordance with the section above set out.

As to the allowance of a fee to the attorney for the Commonwealth for collecting the tax, I call your attention to section 577 of the Code of Virginia, which provides;

" \* \* \* In all actions of debt or prosecutions for any violation of the revenue laws, the attorney for the Commonwealth, in case there be a judgment for the Commonwealth, shall be entitled to a fee of ten dollars, to be taxed in the bill of costs and paid by the defendant. No attorney or officer shall be entitled to the payment of any fees out of the treasury for services rendered in any proceedings authorized by this chapter. \* \* \*"

(The chapter referred to is the chapter relating to the collection of taxes.)

It is thus manifest that the Commonwealth's attorney is prohibited from receiving a fee out of the treasury for services rendered in any proceedings authorized by chapter 24 of the Code, which relates to the assessment of the State's revenues; and, as he cannot receive a fee out of the treasury, he cannot receive a fee out of the license tax, which the law required to be paid into the treasury of the State through the local treasurer.

I am sure that, as you say, the court and Commonwealth's attorney overlooked the above provisions of the Code in entering the order above set out, and that upon your calling their attention to the error the same will be promptly corrected.

Yours very truly,

J. D. HANK, JR.,  
*Attorney General.*

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TAX FOR RECORDATION OF CONTRACTS.

RICHMOND, VA., *January 31, 1918.*

HON. C. LEE MOORE,  
*Auditor of Public Accounts,*  
*City.*

DEAR SIR:

Acknowledgment is made of your communication referring to this office for consideration, the letter of W. L. Dennis, Esq., clerk of the circuit court of Buchanan county, together with the eight agreements between the Honaker Lumber Company, Inc., and the White Oak Lumber Company, a corporation. The question you wish determined is what tax should be required for the recordation of these instruments.

I have examined the same with a great deal of care, and am of the opinion that under the provisions of section 13 of the Virginia tax bill that the tax therein imposed should be required for the recordation of each of these instruments, and should be based on the consideration or actual value of each agreement. From an examination of these papers, it is impossible to determine, however, what is the real consideration or actual value of any one of the agreements submitted. Therefore, it will be necessary to obtain this information from evidence extrinsic of the instruments themselves.

As you have been advised by this office before, it is the duty of the clerk to obtain this information and collect the tax for recording the same prior to the admitting such papers to record.

As the Supreme Court of Appeals held in *Pocahontas Collieries Co. v. Commonwealth*, 113 Va. 108 (1912) that the payment of the tax imposed by this section of the tax bill is a condition precedent to the right to have such an instrument recorded, it is the right and the duty of the clerk to refuse to admit such papers to record until the person offering the same for record discloses the real consideration in order that the full amount of the tax may be collected.

Yours very truly,

LEON M. BAZILE,  
*Assistant Attorney General.*

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TAX ON GOODS BELONGING TO GOVERNMENT.

RICHMOND, VA., *March 8, 1918.*

MR. FRANK G. WOODSON,  
*Commonwealth's Attorney,*  
*Fincastle, Va.*

MY DEAR SIR:

I am in receipt of your letter of March 6th in which you submit to me for answer the following question:

You state that some time in the fall of 1917, the United States government wrote to the tomato packers of your county, and required them to hold a certain amount of their pack for the government. Whereupon, there was a contract between them and the government, in which the government agreed to buy from the tomato packers so many cases of tomatoes. The price, you state, was stipulated in said contract, also the amount of storage which was to be paid by the government and the amount of interest to be paid until the government directed the goods to be shipped.

You further state that on account of the condition of the roads, the packers were unable to deliver these goods to the railroad, but still had them in their possession on February 1, 1918. Your inquiry is, then, whether these canned goods should be assessed for taxes as of February 1st or whether they should be regarded as the property of the United States government.

My opinion is that these goods should not be given in for taxation by the canners. The fact that they had entered into a contract with the government for a sale, and the government having agreed to pay storage as well as interest on the money due them, would show that the sale was complete, and the title to the property was really in the government. Such being the case, I do not think they should be assessed by the commissioner of the revenue.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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LICENSE FOR CARNIVAL GIVEN BY SAMIS GROTTTO.

RICHMOND, VA., *March 8, 1918.*

HON. C. LEE MOORE,  
*Auditor of Public Accounts,*  
*City.*

DEAR SIR:

Acknowledgment is made of your communication in reference to the license tax assessed and collected by the commissioner of the revenue of the city of Richmond for the shows exhibited in this city in the spring of 1917 by the Kennedy Shows Company acting in conjunction with and under the auspices of the Samis Grotto, a fraternal organization.

It appears that in order to raise money for its own purposes, the Samis Grotto held a series of entertainments for one week, which series of entertainments it called a carnival. In connection with these entertainments, the Samis Grotto engaged from the Kennedy Shows Company five exhibitions which were to be shown under the authority and for the sole benefit of the Samis Grotto, and for each one of which a separate admission fee was charged.

It also appears that the Kennedy Shows Company decided to take advantage of the occasion on its own account, and brought to Richmond for that week thirty-five other exhibitions which were entirely independent of the Samis Grotto. These thirty-five shows had separate owners and managers, to whom all admission receipts went, but they co-operated under the name of the Kennedy Shows Company or the United Exhibition Company.

The commissioner of the revenue for the city of Richmond, in the absence of any ruling from the Auditor on section 109 of the Virginia tax bill, imposed the tax

of \$15.00 provided by section 106 of the Virginia tax bill, as amended, on each of said forty shows, which amounted in the aggregate, to \$600.00.

It is your contention that the commissioner of the revenue should have imposed upon all forty shows collectively, the tax of \$150.00 per day provided by section 109 of the Virginia tax bill for "a carnival or other like show," which would have amounted to \$900.00. You, therefore, have deducted the difference between the tax required by the commissioner of the revenue and the tax you claim he should have assessed and collected, and now desire me to advise you on the following question submitted for my opinion:

"Am I correct in the view of the law that the State license for these shows given under canvas in the open air should have been issued under section 109 of the tax laws, or is the commissioner of the revenue correct in classing these shows, for the purpose of license, as theatrical performances, etc., under sections 105 and 106 of the tax laws?"

It is provided by section 105 of the Virginia tax bill, as amended, so far as is applicable to the question here under consideration, as follows:

"No person shall, without a license authorized by law, exhibit for compensation any theatrical performance, or any performance similar thereto, panorama, or any public performance or exhibition of any kind, lectures, literary readings, and performances, except for benevolent or charitable or educational purposes. \* \* \* Every license shall be for each performance, but a license for a theatrical performance or panorama may, if the person applying for the same desire it, be for the term of one week. \* \* \*"

It is provided by section 106 of the Virginia tax bill that

"On every theatrical performance or any performance similar thereto, panorama, or any public performance or exhibition of any kind, except for benevolent or charitable or educational purposes, there shall be paid five dollars for each performance or fifteen dollars for each week of a continuous performance;"

except in towns or cities of less than four thousand inhabitants.

It is provided by section 109 of the Virginia tax bill, as amended, so far as is applicable to the question under consideration, as follows:

"In a city, or within five miles thereof, of more than ten thousand inhabitants, unless the same be exempt from taxation by the terms of section one hundred and seven hereof, there shall be paid for each day's exhibition or performance of a side (or like) show a license tax of fifteen dollars; on a carnival (or other like show) a license tax of one hundred and fifty dollars; on a dog and pony (or either) (or like) show, on a trained animal (or like) show, or a wild west (or like) show, or a circus or circus and menagerie (or like) show for each day or part of a day, a license tax as follows: \* \* \*"

Section 109 of the Virginia tax law of 1916, is a part of the revenue act approved March 19, 1915 (Acts of 1915, pp. 257-8). Section 106 is a part of the act approved March 22, 1916, amending said act of March 19, 1915 (Acts of 1916, pp. 806-7).

There is great uncertainty as to what is meant by the word "carnival" in section 109. The legislature of Virginia has failed to give any definite meaning to this word, nor has any ruling been made by the Auditor as to what constitutes a carnival. The mere fact that persons exhibiting a show should style it as a "carnival" would not necessarily mean that it is a carnival within the meaning of the legal



definition as to what constitutes a carnival. Such being the case, and the language of section 106 being sufficiently broad to include the particular shows in question, I can readily understand why the commissioner of the revenue taxed said shows according to said section.

Again, if the terms of section 106 are in conflict with the terms of section 109, it would look as if section 106 might govern because it is the latest expression of legislative intent. The terms of these sections are so confusing, I can easily understand how the commissioner of the revenue, in construing them, made an error (if, in reality, an error was made) for which he should not be penalized as is provided for by section 553 of the Code, which said section provides:

"If a commissioner in his list of licenses to be furnished the Auditor of Public Accounts, charge or extend in any case a tax less than the law requires, the said Auditor shall deduct the amount omitted to be charged or extended, from the compensation of such commissioner. \* \* \*"

I am of the opinion that this statute was not intended to apply to a *bona fide* mistake made by commissioners of the revenue, where the law was so ambiguous and doubtful, as in the case under consideration. This statute, I think, was intended to apply only to cases where the law was unambiguous and free from doubt, or where, after a ruling thereon, the ruling of the Auditor is intentionally or otherwise disregarded by commissioners of the revenue.

I am further of the opinion that in the absence of any such ruling on the part of the Auditor in reference to these sections of the law, and there seeming to be grave doubt as to which one of these sections applied to the case in question, that, therefore, the commissioner of the revenue of the city of Richmond, should not be penalized to the extent of the \$300.00 difference, which you claim should have been collected by him in this particular case.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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#### REGISTRATION FEE AND FRANCHISE TAX.

RICHMOND, VA., *April 13, 1918.*

L. A. McMURRAN, ESQ.,  
*Newport News, Va.*

DEAR SIR:

At the request of the Attorney General, I am replying further to your letter of March 15th, in regard to the payment of the registration fee and franchise tax for the year 1918, by the Law Building Corporation which, according to the information contained in your letter, dissolved some time after January 1, 1918, and prior to February 1, 1918.

After mature consideration of this matter, I am of the opinion that the ruling of Hon. Leslie C. Garnett, Assistant Attorney General, on February 15, 1917, a copy of which is enclosed in your letter, is correct. Section 41 of the tax bill requires the Corporation Commission to annually assess a registration fee and franchise tax against corporations as of the first day of January of each year, and, of course, all corporations in existence on that day must, under this act, be assessed. I find nothing in the law which relieves a corporation from paying the registration fee and

franchise tax for the current year after it has been assessed because before the first of February of such year such corporation dissolves.

It is true that chapter 518 of the Acts of 1916 provides that no corporation dissolving prior to the first day of February of any year shall be required to pay the registration fee and franchise tax for that year, as a condition precedent to the making of an order of dissolution by the Corporation Commission, but I think this provision does not exclude such corporation from paying the fee and tax assessed against it for the current year. If it had been the intention of the legislature to relieve such corporation from the payment of the registration fee and franchise tax for the current year, it would have said so. It is manifest to my mind that the intention of the legislature was to allow corporations to dissolve prior to February 1st of any year without compelling them to pay the current fee and tax assessed against them at an earlier date than other corporations are compelled to pay the current fee and tax.

The above views are materially strengthened by the incontrovertible principle of law that exemption from taxation is looked upon with extreme disfavor, and such exemption from taxation must be by express provision and not by implication.

Very truly yours,

J. D. HANK, Jr.,  
Assistant Attorney General.

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#### RELIEF OF ERRONEOUS ASSESSMENTS.

RICHMOND, VA., June 5, 1918.

Hon. J. O. HEFLIN,  
City Attorney,  
Hopewell, Va.

MY DEAR MR. HEFLIN:

I have your letter of June 3, 1918, concerning a question of the correction of erroneous assessments of certain lots or lands within the corporate limits of the city of Hopewell.

The act of 1916, to which you refer, is found on page 514, and, after setting out the procedure thereunder, you will observe that paragraph 5 reads as follows:

“ \* \* \* That any person feeling himself aggrieved by such assessment shall have all of the rights and remedies provided by general law for relief from erroneous assessments.”

Section 444 of the Code as amended by Acts of Assembly, 1915, page 123, in the first paragraph thereof, provides:

“Any person feeling himself aggrieved by the assessment of his lands or lots, may, upon giving five days' notice to the assessor and to the Attorney for the Commonwealth, apply to the circuit court of the county or to the corporation or hustings court of the city or to the circuit court of the city which has no other court of record, wherein such lands or lots may be situated, at any time prior to the first day of February of the second year after such assessment and not thereafter, \* \* \* \*”

It will be seen from the reading of this section (444) that the person feeling himself aggrieved must take such steps, if taken at all, at some time prior to the first day of February of the second year after such assessment and that he cannot do so thereafter.

The assessments to which you refer, having been made in 1916, became effective as of February 1, 1917, and February 1, 1918, was the beginning of the second year after the assessments were made, so unless proper action was brought on or before February, 1918, I am of the opinion that no application can now be filed for the correction of any of those assessments alleged to be erroneous.

Very truly yours,

JNO. R. SAUNDERS,

*Attorney General.*

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REAL ESTATE DELINQUENT FOR NON-PAYMENT OF TAXES.

RICHMOND, VA., *June 17, 1918.*

HON. C. LEE MOORE,  
*Auditor of Public Accounts,*  
*City.*

DEAR SIR:

Acknowledgment is made of your letter enclosing a letter from Hon. Wm. A. Smith, attorney for the Commonwealth of Cumberland county, relating to the assessment of taxes referred to in Mr. Smith's letter, which letter is herewith returned.

Section 611 of the Code, provides as follows:

"The clerk of the county or corporation or hustings court, shall record in a book, to be kept for the purpose, the list of real estate delinquent for the non-payment of taxes and levies thereon, mentioned 'Secondly' in section 605, and index the same in the names of the persons against whom such taxes and levies are assessed."

Unless land returned delinquent is listed and indexed in the delinquent land book provided for in the above section, I am of the opinion that the omission from the land book is not sufficient notice to a purchaser who has no other notice.

The case in question is one where the commissioner of the revenue has omitted to list the land to the land owner and in the name of the land owner on the land books, and hence no tax has been paid for the years in which the land was not listed. I do not think that the purchaser of property will be required to make an investigation any further than the delinquent land books to ascertain whether or not the taxes have been paid.

A reference to section 508 of the Code as amended by the last General Assembly, being chapter 254, provides for the assessment of omitted property, which includes real estate, but no assessment can be made for more than three years next preceding the time in which the omitted property is ascertained. This is an emergency act and is now in force. Its only connection in this particular matter is that if it were possible to charge the purchaser of property with omitted taxes, he cannot be charged with more than three years next preceding, under section 508 of the Code, so that if the omitted taxes occurred prior to 1915, by reason of the land being left off the land book by the commissioner of the revenue, no taxes can now be collected under any circumstances.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

## ASSESSMENT OF TAXES IN HARRISON'S EXECUTOR V. COMMONWEALTH.

RICHMOND, VA., July 20, 1918.

D. C. O'FLAHERTY, ESQ.,  
1105-6 Mutual Bldg.,  
City.

DEAR SIR:

Your letter of July 18th, enclosing copies of letter from the Auditor of Public Accounts and also the treasurer of New Kent county, have been received.

You call my attention to the decision of the Supreme Court affirming the judgment of the lower court in the matter of *Harrison's Executor v. Commonwealth*, and assessing damages against the plaintiff-in-error in the sum of \$30.00; and also to the letter of the Auditor, calling for interest upon the taxes involved in this case, to the time of payment thereof, and asking whether or not I am of the opinion that section 3486 of the Code of Virginia provides for the damages to take place of this interest.

I have examined this section carefully, but am of the opinion that it does not relieve the plaintiff-in-error from paying interest upon the taxes in question until they are paid.

The case above referred to was a motion for relief against the payment of interest and penalties assessed against the plaintiff-in-error, which relief the lower court refused, and in affirming this judgment, the Court of Appeals refused relief from the payment of the interest and penalties. The judgment does not order the payment of money, but only refused to relieve from the interest and penalties, and the court was plainly right in entering judgment for damages under section 3486.

On the other hand, the interest called for by the Auditor is in conformity with the tax laws that all persons must pay interest upon the taxes assessed against them until paid, and we do not think the action of the Supreme Court in affirming the decision of the lower court which refused to relieve the plaintiff-in-error from the taxes *as assessed*, and assessing damages called for by section 3486, affects the duty of the tax payer to pay interest upon the taxes assessed against him until they are paid.

We presume that the case is being settled, and we desire to call your attention to the fact that the clerk of the Supreme Court has advised us that the balance of the costs in that court, amounting to \$22.59, has not been paid, and if you will send me check for this balance, I will see that it is properly distributed.

Yours very truly,

J. D. HANK, JR.,  
Assistant Attorney General.

## TAX ON DEEDS OF CONVEYANCE.

RICHMOND, VA., August 14, 1918.

HON. JOHN W. ADDISON,  
Eastville, Va.

MY DEAR MR. ADDISON:

I am just in receipt of your letter of August 12th, in which you ask me to give you the correct amount of tax to be assessed by a clerk of the court under section 13 of the tax bill, which said section pertains to the tax on deeds.

The section reads as follows:

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

The concrete question which you state is as follows:

"A" conveyed a tract of land to "B" for \$10,000.00, \$1,000.00 of which is paid in cash, and the residue, \$9,000.00 is secured by a deed of trust on the same tract of land. The tax on the deed of bargain and sale should be \$10.00, and the tax on the deed of trust securing the \$9,000.00 should be \$9.00, making a total of \$19.00, to be paid when the two deeds are recorded.

For some time the Auditor ruled, and the clerks of the courts in accordance with his ruling, collected a tax on the face of the bonds secured by a deed of trust with interest added. In other words, the bonds and interest were taken as a basis for taxation. The Court of Appeals, however, held, in the case of *Virginia Blue Ridge Railway v. E. L. Kidd, Clerk*, which case is reported in 120 Va., page 426, that this was error, and that the tax should be computed upon the principal amount of the bond or other obligations secured by deeds of trust or mortgages.

Trusting that I have made myself clear, I am,

Very truly yours,

JNO. R. SAUNDERS,

*Attorney General.*

#### CONSTRUCTION OF UNIFORM SMALL LOAN ACT.

RICHMOND, VA., June 3, 1918.

HON. C. C. BARKSDALE,

*Chief Bank Examiner,*

*Richmond, Va.*

DEAR SIR:

I beg leave to acknowledge receipt of your favor of the 28th, in which you ask my opinion on the following provisions of the "Uniform Small Loan Act," as approved March 23, 1918. I shall take up the questions in your letter, and answer them in the order in which they come.

1. You ask if section 1<sup>c</sup> of the said act wholly exempts building and loan associations from the operation of this law, and if they may charge rates in excess of those allowed by this law without incurring the penalties of the law.

This section provides that

"No license shall be required under this act for loan transactions of any person, co-partnership, corporation, bank, or association doing business under any law relating to banks, trust companies, building and loan associations and licensed pawnbrokers of this State, or of the United States, as they are already regulated by appropriate laws; \* \* \*"

I am of the opinion that this law does not affect building and loan associations so long as they operate as such and under the laws governing such associations, nor does it repeal any laws under which they operate. I would state, however, that should a building and loan association seek to obtain the benefits under this act, then it would have to take out a license under the said act and conform to the provisions of the same.

2. You ask if interest and charges in excess of those allowed by this act, but which have been contracted for or earned prior to the passage of this act, be collected or received after this act became effective, without being subject to the provisions of sections 1 and 18 of this act.

Sub-section (a) under section 18, reads as follows:

"No loan for which a greater compensation for interest, fees, expenses or losses, at a greater rate than is allowed by this act, has been charged, contracted for or received, wherever made, shall be enforced in this State and any person in any wise participating therein in this State shall be subject to the provisions of sections one (1) and eighteen (18) of this act."

I am of the opinion that the sub-section just quoted above prohibits the collection of interest and charges in excess of this act, regardless of whether they were charged or contracted for prior to the time this law becomes operative.

3. You ask whether an attorney's fee could be provided for in the note for collection in the event of non-payment at maturity.

I see no reason why the note cannot contain this provision, but the attorney's fee so provided could only be collected in the event that suit had to be brought against the maker in order to collect the same.

4. You ask whether expenses of foreclosure could be provided for in a chattel mortgage.

This can be done, but such expenses could be collected only in the event that the property was sold.

5. You ask if, in my opinion, section 19 wholly exempts private banks from the provisions of this act.

The first six lines of section 19 read as follows:

"No license shall be required under this act for loan transactions of any person, co-partnership, corporation, bank, or association doing business under any law relating to banks, trust companies, building and loan associations and licensed pawnbrokers of this State, or of the United States, as they are already regulated by appropriate laws; \* \* \* \*"

You will observe that there is no reference in this section to private banks, the word "bank" only being used. I would say that if a private banker seeks to do business in accordance with the provisions of this act, and charges a higher rate than that allowed by law, then he would come under the provisions of this law, and would be required to obtain a license in order to do this class of business.

There is one other question you asked me when in my office, but which, I notice, your letter does not contain, namely: whether a notary's fee can be collected.

In reply to this, I would say that all notary's fees which are allowed by law for acknowledgments taken to any paper, which, under the law is required to be acknowledged, can be collected, but this fee must go to the notary taking the acknowledgement, and not to the corporation or partnership or company making the loan. In other words, it must be a distinct and separate transaction in connection with the loan.

I trust I have made myself clear in these matters.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

## PENALTIES UNDER UNIFORM SMALL LOAN ACT.

RICHMOND, VA., June 4, 1918.

HON. C. C. BARKSDALE,  
*Chief Bank Examiner,*  
*City.*

DEAR SIR:

I beg leave to acknowledge receipt of your letter of June 1st, in which you ask this question:

"Does section 19 of the 'Uniform Small Loan Act' exempt building and loan associations from the provisions of the said act, although said building and loan associations are loaning money on personal security rather than on real estate?"

In reply to this, I beg leave to state the following: That the law contemplates building and loan associations shall lend money on real estate security, but I am informed that a number of building and loan associations frequently lend their surplus on personal security, and often times on single named paper for loans.

This is permissible under the statute, but should a building and loan association lend money on personal security at a higher rate of interest than that allowed by the law governing the rate of interest for building and loan associations; or should any corporation designate itself as a building and loan association and lend its money exclusively on personal security at a higher rate of interest than that allowed by law, in my judgment, they would come under the provisions of this act, and be liable to the penalties provided for in the same.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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"EMPLOYERS" AS USED IN WORKMEN'S COMPENSATION ACT, DEFINED.

RICHMOND, VA., June 5, 1918.

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

MY DEAR MR. COLEMAN:

I have for acknowledgment your letter of June 1, 1918, in which you desire to be advised as to the standing of the various working forces of your department under the employer's liability act. I presume you refer to the Virginia workmen's compensation act.

The act in question is chapter 400, found on page 637, Acts of Assembly, 1918, sub-section (a) of section 2, and reads as follows:

" 'Employers' shall include the State and any municipal corporation within the State or any political division thereof, and any individual, firm, association or corporation, or the receiver or trustee of the same, or the legal representative of a deceased employer, using the service of another for pay. If the employer is insured it shall include his insurer so far as applicable."

The act provides also that an employer or an employee may relieve himself of the provisions of the act by giving proper notice, etc. These conditions are found in sections 4, 5, 6, and 18, but section 8, which has reference to the State, reads as follows:

"Neither the State, nor any municipal corporation within the State, nor any political sub-division thereof, nor any employee of the State or of any such corporation or sub-division shall have the right to reject the provisions of this act relative to payment and acceptance of compensation; and the provisions of sections five, six, sixteen, seventeen and eighteen shall not apply to them."

It will be seen from the reading of this section that the State cannot reject the provisions of the act, and thereby relieve itself from the payment to its employees as provided in the act.

This act becomes effective on January 1, 1919, so there is no immediate necessity for giving yourself any concern as to the persons employed by the State Highway Commission.

Trusting that this answers your question, I am,

Very truly yours,

JNO. R. SAUNDERS,

*Attorney General.*

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#### RECIPROCAL INSURANCE.

RICHMOND, VA., *September 21, 1918.*

COL. JOSEPH BUTTON,

*Commissioner of Insurance,*

*Richmond, Va.*

DEAR SIR:

I acknowledge receipt of your letter of September 19, 1918, addressed to the Attorney General, referring to chapter 396 and chapter 400 of the Acts of Assembly, 1918, the first of which relates to reciprocal or inter-insurance, and the latter to the workmen's compensation act.

You desire to know whether or not reciprocals or inter-insurers are authorized to write workmen's compensation insurance under chapter 396.

Chapter 396 seems to refer exclusively to fire insurance companies or associations, and does not cover companies or associations writing workmen's compensation insurance.

Chapter 400, section 68, provides that every employer who accepts the provisions of this act relative to the payment of compensation, shall insure and keep insured his liability thereunder in some corporation, association, organization or State insurance fund authorized to transact the business of workmen's compensation insurance in this State or in some mutual insurance association formed by a group of employers so authorized, etc., so that if there is any company or association qualified to write workmen's compensation insurance in this State, they may write insurance such as is provided for in the workmen's compensation act.

Yours very truly,

F. B. RICHARDSON,

*Law Assistant.*



## CONVICTS NOT WITHIN PROVISIONS OF WORKMEN'S COMPENSATION ACT.

RICHMOND, VA., *October 11, 1918.*

HON. J. B. WOOD,  
*Superintendent of the Penitentiary,*  
*Richmond, Va.*

DEAR MR. WOOD:

Acknowledgment is made of your letter of October 10, 1918, asking whether or not the provisions of what is known as the workmen's compensation law, found on page 637, Acts of Assembly, 1918, apply to the State Penitentiary, State farm, State convict road camps and the two lime grinding plants. Sub-sections (a) and (b) of section 2, read as follows:

"(a) 'Employers' shall include the State and any municipal corporation within the State or any political sub-division thereof, and any individual, firm, association or corporation, or the receiver or trustee of the same, or the legal representative of a deceased employer, using the service of another for pay. If the employer is insured it shall include his insurer so far as applicable.

"(b) 'Employee' shall include every person, including a minor, in the service of another under any contract of hire or apprenticeship, written or implied, except one whose employment is not in the usual course of the trade, business occupation or profession of the employer. Any reference to an employee who has been injured shall, when the employee is dead, include also his legal representatives, dependents and other persons to whom compensation may be payable."

I gather from the reading of these two sections that the act applies to the State and any municipal corporation within the State or any political sub-division thereof, but sub-section (b) above referred to, defining the word "employee" seems to include only persons in the service of another *under any contract of hire or apprenticeship*. The convicts in the State Penitentiary and those working on the State farm, the State convict road camps and the two lime grinding plants, are not persons in the service of another under a contract of hire or apprenticeship, and, therefore, are not entitled to the benefits and provisions of the workmen's compensation act.

However, all paid employees who are working under a contract of hire for any of the places above-named, come within the provisions of the act and are entitled to its benefits.

Yours very truly,  
JNO. R. SAUNDERS,  
*Attorney General.*

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## SCHOOL TEACHERS WITHIN PROVISIONS OF WORKMEN'S COMPENSATION ACT.

RICHMOND, VA., *November 27, 1918.*

HON. HARRIS HART,  
*Superintendent of Public Instruction,*  
*Richmond, Va.*

DEAR SIR:

Acknowledgment is made of your letter of November 16, 1918, asking just what application the workmen's compensation act would have to the public school teachers of Virginia; also whether, in case a city desires to carry its own risk under this act, if the school board may participate in such an arrangement.

Section 8 of the act, found on page 639 of the Acts of Assembly, 1918, provides that:

"Neither the State, nor any municipal corporation within the State, nor any political sub-division thereof, nor any employee of the State or of any such corporation or sub-division shall have the right to reject the provisions of this act relative to payment and acceptance of compensation; and the provisions of sections five, six, sixteen, seventeen and eighteen shall not apply to them."

It therefore appears that the State and all municipal corporations within the State and all political sub-divisions thereof, are required to accept the provisions of the act. School teachers would come within the provisions of the act either as employees of the State or of the county, and under the act are entitled to the benefits of the same. However, I express no opinion as to how the benefits are to be obtained when there has been no appropriation out of which these monies might be paid.

Relating to your second inquiry as to whether school boards might participate in the local arrangements of a city desiring to carry its own risk, I would suggest that since cities—political sub-divisions of the State—are forced to accept the terms of the act, the provision for the payment of any benefits to be derived thereunder would have to be made by the city councils, and as the school boards are only agents of the city, and designated for a specific and limited purpose, I would not consider that it would be necessary that they participate in any such arrangement. The workmen's compensation act has raised a great many questions that are not clear, and I may not have expressed to you fully what you desire to know. If I have not, and can give further assistance, I would be very glad to do so.

Yours very truly,

F. B. RICHARDSON,  
Law Assistant.

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SECTION 68 OF WORKMEN'S COMPENSATION ACT CONSTRUED.

RICHMOND, VA., December 11, 1918.

COL. JOSEPH BUTTON,  
Commissioner of Insurance,  
Richmond, Va.

DEAR SIR:

Acknowledgment is made of your letter of November 20, 1918, relating to section 68 of the workmen's compensation act. Paragraph 2 of section 68 reads as follows:

"Provided that *it shall be satisfactory proof of the employer's financial ability to pay direct the compensation in the amount and manner when due, as provided for in this act, and acceptable security, indemnity or bond to secure the payment of compensation liabilities as they are incurred, if the employer shall show to the industrial commission that he is a member of an association or group of employers and as such is exchanging contracts of insurance with the employers of this and other States, through a medium as specified and located in their agreements between each other, and shall further file with said industrial commission a certificate of authority issued by the insurance department of any State to said group of employers or association, together with a sworn financial statement showing said group of employers or association to be in solvent condition, but this proviso shall in no wise restrict or qualify the right of self insurance as hereinbefore authorized.*"

It would seem from a reading of this act that large discretion is vested in the Industrial Commission, and that if an employer furnished to the commission evidence as set forth in that portion of section 68 quoted above, the commission may or may not, in its discretion, accept the same.

However, there might be some question raised as to the enforcement of the claim against an association who is not authorized to do business in Virginia by reason of the fact that if suit were necessary there might arise complications which could not be easily overcome.

Due to these facts, I think the Industrial Commission should very closely scrutinize all associations who are offered by employers of this State as security for their ability to pay direct the compensation provided in this act where such association is a foreign association and has no agent in Virginia, and is not authorized to do business in Virginia.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

### Statement

*Showing the Current Expenses of the Office of the Attorney General from January 3, 1918, to January 1, 1919.*

Telegrams.....	\$ 12 10
Telephone service and tolls.....	177 45
Subscriptions to and purchases of law books.....	239 25
Postage stamps.....	140 00
Towels, drinking water, office supplies, binding reports.....	331 61
Total.....	\$ 900 41

### Statement

*Showing Amounts Expended from the Appropriation for Traveling Expenses from January 3, 1918, to January 1, 1919.*

1918.			
Jan.	7.	J. D. Hank, Jr., expenses to Williamsburg, <i>Armour Case</i> .....	\$ 41 03
	29.	J. D. Hank, Jr., expenses to Warrenton, <i>Wolfe v. Commonwealth</i> .....	17 13
Feb.	1.	J. D. Hank, Jr., expenses to Washington, <i>Dalton and General Railway Signal Cases</i> .....	24 85
	13.	J. D. Hank, Jr., expenses to Hampton, <i>Terry v. Commonwealth</i> .....	15 02
	21.	J. D. Hank, Jr., and Jno R. Saunders, expenses to Washington, re Food Conservation.....	39 72
	21.	J. D. Hank, Jr., expenses to Hopewell, <i>Leo Wise Case</i> .....	2 00
March	9.	J. D. Hank, Jr., expenses to Washington in <i>Dalton and General Railway Signal Cases</i> .....	34 83
	12.	Jno. R. Saunders, expenses to Petersburg, <i>Leo Wise Case</i> .....	2 60
	12.	J. D. Hank, Jr., expenses to Washington in <i>Dalton and General Railway Signal Cases</i> .....	23 62
April	1.	J. D. Hank, Jr., expenses to Hopewell, <i>Leo Wise Case</i> .....	11 65
	22.	J. D. Hank, Jr., expenses to Petersburg, <i>Leo Wise Case</i> .....	3 35
May	29.	J. D. Hank, Jr., expenses two trips to Hopewell, <i>Leo Wise Case</i> .....	5 95
June	10.	J. D. Hank, Jr., expenses to Wytheville court.....	38 60
	17.	Jno. R. Saunders and J. D. Hank, Jr., expenses to Washington in re <i>Virginia Debt Case</i> .....	34 21
	18.	J. D. Hank, Jr., expenses to Hopewell, <i>Leo Wise Case</i> .....	1 40
July	2.	J. D. Hank, Jr., expenses to Washington, <i>Commonwealth v. Royal</i> .....	22 29
	24.	Jno. R. Saunders, expenses to Harrisonburg re <i>Valley Turnpike matter</i> .....	9 00
Aug.	9.	Jno. R. Saunders, expenses to Washington re <i>Virginia Debt Case</i> .....	37 23
	16.	J. D. Hank, Jr., expenses to Alexandria, <i>Commonwealth v. Davis</i> .....	43 97
	27.	J. D. Hank, Jr., expenses to North Garden, <i>Southern Railway Case</i> .....	12 91
Sept.	12.	Jno. R. Saunders, expenses to Staunton court.....	17 39
	20.	J. D. Hank, Jr., expenses to Staunton court.....	18 82
Nov.	6.	J. D. Hank, Jr., expenses to Williamsburg, <i>Marie Marshall Case</i> .....	6 47
	6.	F. B. Richardson, expenses to Petersburg, re <i>Hazel Smith Case</i> .....	1 56
	29.	Jno R. Saunders, expenses to Washington, <i>Virginia Debt Case</i> .....	24 98
Total.....			\$490 58

### Statement

*Showing Amounts Expended from Appropriation for Additional Clerical Services from January 3, 1918, to January 1, 1919.*

1918.			
Feb.	5.	F. B. Richardson, extra work.....	\$ 16 65
	26.	L. M. Bazile, extra work.....	25 00
Dec.	19.	O. L. Shewmake, extra work.....	25 00
Total.....			\$ 66 65

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