

ANNUAL REPORT

OF THE

ATTORNEY GENERAL

TO THE

GOVERNOR OF VIRGINIA

FOR THE

YEAR 1919

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RICHMOND:  
DAVIS BOTTOM, SUPERINTENDENT OF PUBLIC PRINTING  
1920

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## ATTORNEYS GENERAL OF VIRGINIA.

*From 1775 to 1920*

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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

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

### 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>
ELISE S. FITZWILSON .....	<i>Secretary</i>
LILLIE GAINES PHILLIPS.....	<i>Stenographer</i>



# REPORT

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COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *January 23, 1920.*

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

MY DEAR GOVERNOR:

I beg leave, as is required by law, to submit the following report for the work of this office for the year ending December 31, 1919.

I beg to state that the opinions embraced in this report by no means represent all which have been given from this office, but I have selected only those which seem to bear upon questions of greater importance.

Yours respectfully,

JNO. R. SAUNDERS,  
*Attorney General.*

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

1. *Bragg, Talbot Darby v. Weaver & 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. Decided in favor of the Commonwealth.

2. *Twohy, Executor, v. E. J. Doran, et al.* Erroneous assessment of taxes. In error from the Supreme Court of Appeals of Virginia. Decided in favor of the Commonwealth.

3. *Wise, Trustee, v. Commonwealth*. Erroneous assessment of taxes. In error from the Supreme Court of Appeals of Virginia. Decided in favor of the Commonwealth.

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

1. *Royster Guano Co. v. Commonwealth*. Erroneous assessment of taxes. In error from the Supreme Court of Appeals of Virginia.

2. *Sickel v. Commonwealth*. Violation of the prohibition law. From the Supreme Court of Appeals of Virginia.

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

1. *Ball v. Commonwealth*. Larceny. From the circuit court of Grayson county. Error confessed.

2. *Broaddus v. Commonwealth*. Rape. From the circuit court of Page county. Affirmed.

3. *Bryan v. Commonwealth*. Violation of the prohibition law. From the circuit court of Rockingham county. Reversed.

4. *Bowen v. Commonwealth*. Taxation. From the circuit court of Clarke county. Affirmed.
5. *Buchanan County et al. v. W. M. Ritter Lumber Co.* Taxation. From the circuit court of Buchanan county. Affirmed.
6. *Burks v. Commonwealth*. Violation of fish and game laws. From the circuit court of Rockbridge county. Affirmed.
7. *Byrd v. Commonwealth*. Use of vulgar and abusive language. From the corporation court of the city of Hopewell. Reversed.
8. *Cheatwood v. Commonwealth*. Murder. From the circuit court of Botetourt county. Error confessed.
9. *Cicchini v. Commonwealth*. Rape. From the hustings court of the city of **Richmond**. **Error confessed.**
10. *Commonwealth v. Bryan*. Violation of the prohibition law. From the circuit court of the city of Harrisonburg. Reversed.
11. *Commonwealth v. Perrow*. Illegal solicitation of labor. From the circuit court of Buckingham county. Writ dismissed.
12. *Commonwealth v. Smallwood Memorial Institute*. Taxation. From the circuit court of Surry county. Affirmed in part; reversed in part.
13. *Edwards v. Commonwealth*. Felony. From the circuit court of Pittsylvania county. **Error confessed.**
14. *Gottlieb v. Commonwealth*. Violation of the prohibition law. Error confessed.
15. *Hutzel, Henry, v. Commonwealth*. Taxation. From the circuit court of the city of Richmond. Affirmed.
16. *Irvine v. Commonwealth*. Sanitary regulations of office buildings. From the corporation court of the city of Norfolk. Reversed.
17. *Johnson v. Commonwealth*. Violation of the prohibition law. From the circuit court of Augusta county. Reversed.
18. *Karnes v. Commonwealth*. Murder. From the corporation court of the city of Roanoke. Reversed.
19. *Landers v. Commonwealth*. Forfeiture of automobile under the prohibition law. From the circuit court of Hanover county. Affirmed.
20. *Leuchan v. Commonwealth*. Violation of the prohibition law. From the hustings court of the city of Richmond. Error confessed.
21. *Loyd Corporation v. Commonwealth*. Taxation. From the circuit court of Washington county. Reversed.
22. *Lufty v. Commonwealth*. Rape. From the corporation court of the city of Roanoke. Affirmed.
23. *Martin & White v. Commonwealth*. Violation of the prohibition law. From the corporation court of the city of Roanoke. Reversed.
24. *McCoy v. Commonwealth*. Murder. From the circuit court of Dickenson county. Reversed.
25. *Mullins v. Commonwealth*. Desertion. From the circuit court of Giles county. Error confessed.
26. *Neal v. Commonwealth*. Violation of the prohibition law. From the circuit court of Lunenburg county. Reversed.
27. *Pinkard v. Commonwealth*. Practice of medicine without license. From the corporation court of the city of Roanoke. Affirmed.

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

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

30. *Southern Railway Co. v. Commonwealth*. In the matter of an underpass at North Garden. From the State Corporation Commission. Affirmed.

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

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

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

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

35. *Willinzig v. Commonwealth*. Violation of Mapp Act. From the corporation court of the city of Richmond. Error confessed.

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

1. *Brodt's Executors v. Commonwealth, et als*. Taxation. From the circuit court of Fairfax county.

2. *Buchholz v. Commonwealth*. Forfeiture of automobile under prohibition law. From the hustings court of the city of Richmond.

3. *Commonwealth, et als, v. Agnes Mayo Carter*. Taxation. From the circuit court of Clarke county.

4. *Commonwealth et al. v. Kernochan, Committee for Marie Marshall*. Taxation. From the circuit court of the city of Williamsburg.

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

6. *Heth v. Commonwealth*. Taxation. From the circuit court of Montgomery county.

7. *Hunt v. Commonwealth*. Violation of prohibition law. From the corporation court of the city of Norfolk.

8. *Hutzler v. Commonwealth*. Violation of prohibition law. From the hustings court of the city of Richmond.

9. *King v. Commonwealth*. Forfeiture of automobile under prohibition law. From the hustings court of the city of Richmond.

10. *Martin's Exors v. Commonwealth*. Recovery of excess fees. From the circuit court of the city of Richmond.

11. *Pennington & Ricker v. Commonwealth*. Forfeiture of automobile under prohibition law.

12. *Southern Ry. Co. v. Commonwealth*. Re-location of station at North Garden. From the State Corporation Commission.

13. *Vance's Admr. v. Commonwealth*. Taxation. From the hustings court of the city of Richmond.

### **Virginia v. West Virginia.**

By an act of a special session of the West Virginia legislature, approved April 1, 1919, satisfactory arrangements were made for the settlement of the judgment obtained by Virginia against West Virginia.

A suit is now pending in the circuit court of the city of Richmond, under the style of Commonwealth, at the relation of the Virginia Debt Commission v. Eugene Delano and others, which said suit was brought for the distribution of the funds received in said settlement among the parties entitled thereto. All money and bonds provided for by said act are deposited in the First National Bank of Richmond, Virginia, to the credit of the court in this suit. The bank has given ample security for this deposit and is paying three per cent interest on the fund so deposited.

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

1. *Arrington & Rose v. Commonwealth*. Taxation.
2. *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.

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

1. *Commonwealth v. O. B. Thomas, Treasurer of Fluvanna County, et als.* Official bond.
2. *Commonwealth v. G. P. Barr, Treasurer of Washington County, et als.* Official bond.
3. *Commonwealth v. W. M. Gray and J. J. Geisler, Washington County*, 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. Brown, 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. Trchy.* 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*. Creditor's bill.
8. *Commonwealth v. Illinois Surety Co.*
9. *Commonwealth v. Empire State Surety Co.*
10. *Blue Ridge Overalls Co. v. State Penitentiary.*
11. *Talbott, Minton W., v. 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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## AGRICULTURE—LAWS RELATING TO INSECTICIDES AND FUNGICIDES.

RICHMOND, VA., *June 30, 1919.*

N. E. FEALY, Esq., *Executive Assistant,*  
*Department of Agriculture,*  
*Washington, D. C.*

DEAR SIR:

Acknowledgment is made of your letter of June 24, 1919, in which you request me to inform you whether Virginia has any laws relating to insecticides and fungicides, including Paris green and lead arsenate.

Chapter 291, Acts of 1908, as amended (Va. Code, Vol. 3, page 815 et seq.), contains several provisions relating to this subject. The provisions referred to are found in sections 10 and 20 of the act, and in regulation 13 of the State Board of Pharmacy, which regulation is found on page 20 of the pamphlet issued by the State Board of Pharmacy, containing the Virginia Pharmacy and Drug Act and the rules and regulations adopted by the Board of Pharmacy pursuant to authority contained in said act.

For your information I am enclosing herewith a copy of this pamphlet.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

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## AGRICULTURE—VIOLATION OF AGRICULTURAL SEED LAWS.

RICHMOND, VA., *April 30, 1919.*

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

DEAR SIR:

I beg leave to acknowledge receipt of your letter enclosing copy of the Agricultural Seed Law, and calling attention to certain violations of the same by the Wetsel Seed Company of Harrisonburg, Virginia.

I very carefully read your letter and the pamphlet enclosed and would say that the Wetsel Seed Company is technically guilty of violating the law, but whether or not you would be able to obtain conviction in the event of prosecution, I am unable to say, due to the fact that they would claim that after the proper analysis cards had been received by them, there was no criminal intent on their part, as they thought the law had been complied with.

However, if you feel disposed to have this firm prosecuted, the act provides that you or your duly authorized agent or agents, may institute proceedings in a court of competent jurisdiction.

Perhaps, in this particular case it might be well to call their attention to the fact that they have violated the law and impress upon them that in the future they should not sell any seed until after they have had it examined by one of your inspectors.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

ALIENS—OWNERSHIP OF REAL ESTATE.

RICHMOND, VA., *April 30, 1919.*

HON. RAMON P. DENEGRI, *Mexican Consul General,*  
*San Francisco,*  
*Cal.*

DEAR SIR:

Honorable Westmoreland Davis, Governor of Virginia, has asked me to communicate direct to you my view with regard to the law in Virginia relative to aliens purchasing land or receiving compensation from their employers in case of injury.

Section 43 of our Code provides that—

"Any alien, not an enemy, may acquire by purchase or descent and hold real estate in this State; and the same shall be transmitted in the same manner as real estate held by citizens."

You will gather from a reading of this section that an alien, not an enemy, is not prohibited from purchasing land in this State.

I know of no State law prohibiting an alien from receiving compensation from an employer in case of injury.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

AUTOMOBILES—DEALERS.

RICHMOND, VA., *February 12, 1919.*

HON. B. O. JAMES,  
*Secretary of the Commonwealth,*  
*City.*

DEAR SIR:

Acknowledgment is made of your letter of February 11, 1919, enclosing a letter from Mr. Edw. R. Turnbull, Lawrenceville, Virginia, in which he asks for a construction of section 3-b, chapter 324 of the Acts of 1910, page 758, volume 4, Pollard's Code. His question is as follows:

"A has a contract with a dealer in the city of Petersburg, Virginia, to sell cars for him in Brunswick county. A sells a car, then buys a license, puts it on the car, and delivers the car to B. The purchaser,

B, then has the license transferred to him. Is A a dealer under said section? What has been the ruling of the Attorney General on this point?"

Section 3-b, above referred to, reads as follows:

"Every manufacturer, agent, or dealer in automobiles, locomobiles, motorcycles or motor bicycles, or other vehicles of like kind, on or before the first day of January in each year, or before he commences to operate machines to be sold by him, shall make application to the Secretary of the Commonwealth for a dealer's certificate of registration and license. The application shall state the make of the machines handled by the manufacturer, agent, or dealer, and the probable number that will be disposed of during that year, and on the payment of the fee of fifty dollars, the Secretary of the Commonwealth shall issue to such dealer a certificate of registration and license in form as follows: \* \* \*"

My construction of this section is that if "A" is a manufacturer, agent, or dealer, he is required to comply with the provisions of the above section of the act. If "A" has a contract with "B" for the sale of cars in Brunswick county, Virginia, evidently "A" receives a commission or compensation in some manner for his services as agent, and the method used by "A" if permitted with all agents and dealers throughout the State, would deprive the State of a large amount of revenue which it should properly collect.

It follows, therefore, that my opinion is that under the facts stated in Mr. Turnbull's letter, "A" is such an agent under section 3-b above referred to, so far as to require a dealer's certificate of registration and license.

I am herewith returning Mr. Turnbull's letter.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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AUTOMOBILES—DEALERS.

RICHMOND, VA., May 16, 1919.

MESSRS. BRUCE & WHITE,

*Scottsville, Va.*

GENTLEMEN:

A few days ago you were in my office and discussed with me the question of automobile licenses. My view about the matter is as follows:

If a party is engaged as a dealer in automobiles and devotes his time to the selling of his machines, I do not believe it would be necessary for him to take out a license where he occasionally uses for pleasure one of the cars which he keeps in stock; but if, on the other hand, he simply has capital invested in the automobile business and he himself is engaged in other business, I would say that he should take out a license for the privilege of using the cars he has in stock for pleasure.

I failed to ask you when in my office whether you gentlemen devoted

your time to the automobile business or whether you were engaged in other business and simply had capital invested in the automobile business.

Trusting I have made myself clear in this matter, I am,

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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AUTOMOBILES—DEALERS.

RICHMOND, VA., *June 23, 1919.*

HON. JOHN A. LESNER,  
*Norfolk, Virginia.*

MY DEAR SENATOR:

A reply to your letter of June 10 has been prevented because of my absence from the city.

You ask the following question:

"One of our members, trading under the name of a company, handles Ford cars. He has, however, a Stutz as well, also owned by the company and used for the company's benefit, but which he is not demonstrating or selling. Is it necessary for him to have a separate license tag for this car, or can he use one of his dealer's license tags?"

The act regulating the running of automobiles—known as the Automobile License Tax Law—contained in Acts of Assembly, 1916, page 939 et seq., provides in section 3-b that a dealer in automobiles each year shall make application to the Secretary of the Commonwealth for a dealer's certificate of registration and license. The application must state the name of the machines handled by the dealer, and the probable number that will be *disposed of* during that year. On the payment of a fee of \$50.00, the Secretary of the Commonwealth is required to issue to such dealer a certificate of registration and license, which certifies that he is a dealer in ..... machines, and is licensed to operate the machines to be *sold by him* in this State for the year ....., under the registration and license No. ....

It is thus manifest that a dealer's license only applies to machines to be operated for the purpose of selling them, and his license only covers machines to be sold by him. It would, therefore, not apply to the Stutz car referred to in your question, as you state that it is neither to be used for demonstration nor for the purpose of selling.

For this car, it is necessary for the company which owns it to secure a license in the same manner as if it owned no other car, and was not a dealer in automobiles. In other words, the company owning the Stutz must secure a separate license for it, just as any individual secures a license for his car; for the dealer's license tag cannot be used on this car.

You also ask the following question:

"If the car did not belong to the company but was his individual property, would it be necessary for him to have a separate license for it?"

This question must clearly be answered in the affirmative. There is no distinction in the law above referred to between the owning of a machine by a company and the owning by an individual. Every company and every individual must pay a license on each car owned, save and except that a dealer pays one license for all the cars operated by him for the purpose of selling the same.

Where a dealer in automobiles, whether an individual or a company, owns and operates a car not for the purpose of sale as a dealer, he must pay a separate license upon such car.

Yours truly,

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

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AUTOMOBILES—DEALERS.

RICHMOND, VA., *July 1, 1919.*

HON. W. P. LIPSCOMB,  
*Commonwealth's Attorney,*  
*Suffolk, Va.*

MY DEAR MR. LIPSCOMB:

Acknowledgment is made of your letter of June 30 with reference to an opinion that I rendered the Hon. John A. Lesner, of Norfolk, Virginia, in regard to the use of a dealer's license.

The letter written by me to Mr. Lesner only considered the question asked, namely: Whether a dealer's license could be used on a car owned by the dealer, not for demonstration or sale.

I do not think the fact that the dealer sells Stutz cars entitled him to use thereon a dealer's license secured under an application stating that he is a dealer in Ford cars. In other words, when the Secretary of the Commonwealth issues a dealer's license to a dealer in Ford cars, secured upon an application stating that he is a dealer in Ford cars, such dealer cannot use this license on Stutz cars even though he is also a dealer in such cars.

I concur with you in the view that under section 3-b of the automobile law, a dealer selling two makes of cars cannot secure a dealer's license for one make of cars and then use it for another make, but he must secure from the Secretary of the Commonwealth a license for the second make of car before he can operate it.

If I have not made myself clear or if there is any other angle to this matter upon which you would like my views, I trust you will feel free to advise me.

Yours truly,

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

## AUTOMOBILES--DEALERS.

RICHMOND, VA., *July 7, 1919.*

HON. W. P. LIPSCOMB,  
*Commonwealth's Attorney,*  
*Suffolk, Va.*

MY DEAR MR. LIPSCOMB:

Your letter of July 2, referring further to the question of a dealer's license on automobiles, has been received.

I have taken this matter up personally with the Office of the Secretary of the Commonwealth, and am advised that that office has already written you, suggesting that you ascertain from the manufacturer of the Stutz car whether he has given to the dealer in question the right, as an agent, to make sale of such car.

It appears that, under the ruling of the Secretary of the Commonwealth, one dealer's license is allowed to be used for several makes of cars. I understand that this has been remedied in the new Code, which comes into effect next year, though I have not had an opportunity to investigate it.

Personally, I am inclined to agree with your interpretation of the law, but as this is contrary to the ruling and custom of the Secretary of the Commonwealth, I doubt that such an interpretation should be enforced.

With kindest regards, I am,

Yours truly,

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

## AUTOMOBILES--LICENSE.

RICHMOND, VA., *June 5, 1919.*

MR. H. W. WOODALL,  
*South Boston, Va.*

DEAR SIR:

I am in receipt of yours of the 2nd instant in which you ask whether a person who places upon an automobile just purchased a card bearing the words, "License applied for," may operate his automobile prior to the receipt of his license.

Section 2 of chapter 362 of the Acts of 1910 as amended, provides, in paragraph 2, in part, 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 a license to operate the same by making application to the Secretary of the Commonwealth for a certificate of registration and license to operate."

I can find no exception to this provision and I am, therefore, constrained to hold that persons who have not obtained the license required under the section quoted therein are not authorized to operate automobiles.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

## AUTOMOBILES—LICENSE FOR.

RICHMOND, VA., *September 18, 1919.*

MR. J. ED. OGDEN, *Treas.,*  
*Corporation of Berryville,*  
*Berryville, Va.*

DEAR SIR:

Acknowledgment is made of your letter of September 15, in which you request my opinion on the following statement of facts:

"The corporation has a small truck used for municipal purposes, and used almost entirely in the corporate limits, occasionally going to the town reservoir, etc. Does the corporation have to take out State license and use a license tag the same as individuals? If so, we of course want to do so. If not, we would like to know so if any question should arise we would know how to reply to it. I will greatly appreciate your ruling on the matter."

It is provided by section 2 of chapter 326 of the Acts of 1910 as amended, Virginia Code, volume 4, page 757, 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 the Commonwealth for a certificate of registration and license to operate. The application must contain the name of the applicant, his residence and postoffice address, and the county in which he resides, and if a corporation, its place of business, giving the name, factory number, if any, fixed by its maker, a brief description showing the style of machine, source of power, number of cylinders and horsepower."

Under the broad terms of this act, I am of opinion that your town is required to obtain a license for the operation of its automobile, but the same will be issued without cost.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## AUTOMOBILES—LICENSE IMPOSED BY CITY OR TOWN.

RICHMOND, VA., *July 24, 1919.*

C. W. PETTIT, ESQ.,  
*Dendron, Virginia.*

DEAR SIR:

Acknowledgment is made of your letter of July 19, 1919, with reference to the power of a town to impose a license tax on the owner of a private automobile who resides within the town limits.

In an opinion given the Secretary of the Commonwealth by Hon. John Garland Pollard, August 18, 1916, *Opinions of the Attorney General, 1916, page 35*, he expressed the opinion that, under section 1042 of the Code, the council

of a town would have the authority to impose a license tax on the owners of automobiles residing in the town. I agree with this view of the law.

Your attention is also called to *White Oak Coal Co. v. Manchester*, 109 Va., 749.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

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AUTOMOBILES—SPEED VIOLATION BY FEDERAL MAIL CARRIER.

RICHMOND, VA., *February 8, 1919.*

HON. WILBUR C. HALL,  
*Leesburg, Virginia.*

MY DEAR MR. HALL:

I beg leave to acknowledge receipt of your letter of February 3, and have carefully noted the contents.

You ask the question whether the mail carrier who drives an automobile truck of the Postoffice Department, operating from Washington city to Winchester, Virginia, and who is charged with a violation of the automobile speed ordinance of the town of Leesburg, is amenable to punishment under said ordinance, or whether, due to the fact that he is a mail carrier, the United States would have jurisdiction over the matter and the town of Leesburg would not.

I am of the opinion that this party, if guilty, is clearly liable to be punished under your municipal ordinance, and that the United States does not have jurisdiction over the matter. The mere fact that a man engaged in a Federal business or performing the duties of a Federal office commits an offense does not cause it to follow that it is a Federal offense and punishable by the Federal court. The law is this:

Sec. 711 of the R. S. of the U. S., now section 256 of the Judicial Code:

"The jurisdiction vested in the courts of the United States in the cases and proceedings hereinafter mentioned, shall be exclusive of the courts of the several States:

First. Of all crimes and offenses cognizable under the authority of the United States."

That statute, in my judgment, simply means that where the United States has created an offense by statute and provided a punishment for it, the State courts cannot take cognizance of the offense. In the case mentioned by you, I do not know any special statute that covers it. The United States government has no jurisdiction to try such an offense. It is purely an offense against the sovereignty of the State, and this is invariably the test whether or not the State courts can try a criminal case, or the jurisdiction is exclusive to the Federal courts. If it is an offense against the United States, then, of course, the United States would have jurisdiction; if an offense against the sovereignty of the State, then the State would have jurisdiction.

For instance, some acts constitute two offenses; one against the United States and one against the State. Take our liquor laws for example. The

State prohibits the sale of any liquor at all. Each sale is an offense, and the law is based upon moral considerations. The United States government permits the sale of liquor, provided a license tax is paid, so if a man sells liquor in the State of Virginia without a Federal license tax, he, by the same act, offends against both jurisdictions and is liable to punishment in the State court and in the Federal court for the same act; one offense being against the State law, and the other against the Federal law.

Another example, for instance, is where an officer of a National bank commits a forgery, falsifying the books of the bank in order to deceive the Federal bank examiners. Such a case could be prosecuted in the State court for forgery, which is a violation of the criminal laws of the State, and also in the Federal courts for the falsifying of the books, which is a violation of the Federal law. The case of *Cross v. North Carolina*, 132 U. S. 131, treats on this subject.

Another case which might be of interest to you is the case of *U. S. v. Gibson*, 47 Fed. 833. There the question arose whether or not a State could prosecute for bribery where a man offered a bribe to a United States revenue officer to set fire to a still. In that case the court held that setting fire to a distillery did not violate a statute of the United States, but did violate the criminal laws of the State in which the offense was committed.

Then again, in *Pettibone v. U. S.*, 148 U. S. 197, it is said that the courts of the United States have no jurisdiction over offenses not made punishable by the Constitution, laws or jurisdiction of the United States.

In the case of the mail carrier in question, there has certainly been no violation of any laws of the United States, by his going through the town of Leesburg at more than a certain speed.

You might also find the case of *Crossley v. State of California*, 168 U. S. 640, where the court held that the murder committed by derailing a mail train is punishable as such in the State courts, notwithstanding the fact that the derailment of the train was also an offense against the laws of the United States.

In the case of *Sexton v. California*, 189 U. S. 319, the court held that a State court had jurisdiction of the violation of a State statute against extortion committed by threats of prosecution for violation of the internal revenue laws.

I think these authorities will be of assistance to you, and certainly, since there is no United States statute, so far as I know, making it an offense for any person in its employment to travel in excess of a certain rate of speed, and since the State of Virginia and its municipalities do regulate speed of automobiles, I am clearly of the opinion that this man is liable to prosecution before the mayor of your town, and if the evidence shows that he did exceed the speed limit, he can be punished therefor.

I regret the delay in this letter, but this is the first opportunity I have had to give the same consideration. I trust that it will reach you in ample time for your purposes.

With kindest personal regards, I am,

Very truly yours,

JNO. R. SAUNDERS,

*Attorney General.*

## BAIL BOND—FORFEITURE OF.

RICHMOND, VA., *February 21, 1919.*

MR. R. E. WOOLWINE,  
*Commonwealth's Attorney,*  
*Stuart, Va.*

DEAR SIR:

Acknowledgment is made of your letter of February 20, 1919, in which you state that one Norman Quinn was indited for murder at the September term of your court, 1917, and gave bond for his appearance at the December term of your court, 1917, in the sum of \$2,000, with J. M. J. Sigman as his surety. You state that Norman Quinn did not appear at the December term of your court, 1917, that "the usual orders were entered," and that now his surety, Mr. Sigman, is attempting to prevent judgment on his bail bond.

I do not quite understand what you mean by the clause, "the usual orders were entered." If Quinn failed to appear at the December term of your court, 1917, it appears to me that at that time the court should have entered judgment against his surety. However that may be, I do not see what benefit Mr. Sigman is entitled to under chapter 228, Acts of Assembly, 1918, page 408, because that act was not passed until March 15, 1918, and did not become effective until June 21, 1918, or ninety days after the adjournment of the legislature. Therefore, at the time the bail bond was forfeited there was no law in force which would have prevented the court from entering judgment against Quinn and his surety at the December term of court, 1917.

In case, however, the judge of your court takes the view that the surety in this case is entitled to the benefits of chapter 228 above referred to, I should say that the burden of proof would rest upon the surety to show that he comes within the provisions of that act. After he has done this, by showing that Quinn was drafted into the service of the United States army, you could, of course, introduce evidence, if you have any, to show that Quinn was excused from military service so that he might attend his trial. It would then be a question for the court to decide.

Trusting this answers your letter satisfactorily. I am,

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

## BANK EXAMINER—QUALIFICATIONS OF.

RICHMOND, VA., *January 31, 1919.*

HON. R. E. WILLIAMS, *Chairman,*  
*State Corporation Commission,*  
*Richmond, Va.*

DEAR MR. WILLIAMS:

Acknowledgment is made of your letter of January 30, 1918, bringing to my attention section 1169-a of the Code, which authorizes the Commission to appoint examiners of banks providing their qualifications, etc.

Your letter asks for my opinion on the question of whether or not such person may be appointed by the Commission should he at some time actually

have been employed for five years in some bank. You ask the specific question as to whether or not a person who had been employed as chief clerk of a banking department of this State for seven years and who had, during that time, done a great deal of work in examining banks, and who had, since January 1, 1917, occupied the position of national bank examiner, would be eligible to appointment as an examiner of banks under the laws of this State.

When I first read your letter I was under the impression that the seven years' experience as chief clerk of a banking division would be sufficient, but after examination of section 1169-a, I am of the opinion that such experience does not meet with the requirements of the statute. That section of the Code, so far as is material here, reads as follows:

"The State Corporation Commission, for the purpose of carrying out the provisions of this chapter, may appoint one chief examiner at a salary of not more than \$3,000.00 per year, one assistant and such clerks, stenographers and other assistants as in its judgment may be necessary for the discharge of the several duties imposed upon it by this chapter; provided that the persons appointed for the examination of banks and other institutions *shall be citizens of this State, experienced and skilled in the science of bookkeeping and shall have had at least five years' service in some bank.* \* \* \*

The two mandatory requirements or qualifications for the appointment referred to are, first, that such person must be a citizen of this State, and, second, in addition to his experience and skill in the science of bookkeeping, he must have had at least five years' service in some bank.

I think the object of the law was to provide that the appointee should not only be experienced, theoretically, in the science of banking, but that such appointee should have had actual "service" in some bank, so that his experience would give him the actual workings in the banking business in all of its practical daily details, an experience which could be obtained only by actual service in some bank.

It follows, therefore, that my opinion is that such person as your Commission may appoint, *must be a citizen of this State*, and in addition to his experience and skill in the science of bookkeeping, *must have had at least five years' service in some bank.*

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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BONUS LAW.

RICHMOND, VA., December 4, 1919.

DR. WM. A. GRUMFIELD,  
*State Board of Health,*  
*Richmond, Va.*

DEAR SIR:

Acknowledgment is made of your communication of recent date in which you request me to advise you whether the employees of the Division of Venereal Diseases of the State Board of Health, located at the seat of gov-

ernment, are entitled to the 10 per cent increase in salary provided for by chapter 88 of the Acts of 1919. The employees of this division of the State Board of Health are employed by the Commonwealth and are paid out of its treasury from a fund contributed jointly by the Federal government and the Commonwealth under the provisions of section 9188¼-F of the United States Compiled Statutes.

It is provided by chapter 88 of the Acts of 1919 "that every employee of the State government now in its service at the seat of government be, and is hereby granted an increase of ten per centum of the aggregate amount of the salary or wages to be drawn by said employees from September 1, 1919, to February 31, 1920."

It is further provided that such employees are to be paid this increase on the proper voucher of the head of his or her department, drawn on the Auditor of Public Accounts; provided, however, that employees of those departments who are now paid out of the funds of or to the credit of their departments particularly set aside or created by statute, shall receive the said increase out of the general treasury, provided those funds are sufficient to permit the payment of the increase.

It is provided by Section 9188¼-F of the U. S. Compiled Statutes, Supplement 1919, so far as is applicable to the question here under consideration, as follows:

"There is hereby appropriated, out of any moneys in the treasury not otherwise appropriated, the sum of \$1,400,000 annually for two fiscal years, beginning with the fiscal year commencing July first, nineteen hundred and eighteen, to be apportioned as follows: The sum of \$1,000,000, which shall be paid to the States for the use of their respective boards or departments of health in the prevention, control and treatment of venereal diseases; this sum to be allotted to each State, in accordance with the rules and regulations prescribed by the Secretary of the Treasury, in the proportion which its population bears to the population of the continental United States, exclusive of Alaska and the Canal Zone, according to the last preceding United States census, and such allotment to be so conditional that for each dollar paid to any State the State shall specifically appropriate or otherwise set aside an equal amount for the prevention, control and treatment of venereal diseases, except for the fiscal year ending June thirtieth, nineteen hundred and nineteen, for which the allotment of money is not conditioned upon the appropriation or setting aside of money by the State, provided, that any State may obtain any part of its allotment for any fiscal year subsequent to June thirtieth, nineteen hundred and nineteen, by specifically appropriating or otherwise setting aside an amount equal to such part of its allotment for the prevention, control, and treatment of venereal diseases. \* \* \*"

It will be seen that the fund contributed to the Commonwealth by the Federal government for the prevention, control and treatment of venereal diseases when the condition of this section has been complied with by the Commonwealth, becomes a fund which is the property of the State to be used in the prevention, control and treatment of venereal diseases.

The fund from which Dr. Brumfield and the employees of his division of the State Board of Health are paid, being a State fund which is deposited in the State Treasury and paid out of the same, I am of the opinion that you and the members of your division of the State Board of Health are employees

of the State government within the meaning of chapter 88 of the Acts of 1919, and as such are entitled to the extra compensation provided for therein from September 1, 1919, to February 29, 1920, to be paid out of the funds to the credit of your department, if sufficient to meet such additional increase.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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BONUS LAW.

RICHMOND, VA., December 4, 1919.

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

DEAR SIR:

Acknowledgment is made of your letter of December 3, in which you ask the following questions:

"1. Are employees who were in the service prior to September 1, but who have withdrawn from the service on or after September 1, at any time prior to December 9, the date the act becomes operative, entitled to the ten per cent authorized by the act.

"Are employees who came into the service on and after September 1, at any time up to December 9, the date the act becomes operative, entitled to the ten per cent provided by the act, from the date they entered the service of the State?

"2. Section 2 of this act provides that "the word 'employees' as used in this act shall be construed to include all persons in the service of the State at the seat of government, other than heads of various departments and agencies of the State government," exclusive of those engaged in any special or temporary work. Kindly advise me if the following employees should receive the increase provided in this act:

"Governor's secretary, Assistant Attorney General, clerk and bailiff for the State Corporation Commission, Assistant Highway Commissioner, Assistant State Accountant, clerks of the circuit and hustings courts at Richmond, Assistant Commissioner of Insurance, Assistant Librarian, State Archivist, secretary Industrial Commission, counsel and executive assistant State Tax Board, and second assistant State Tax Board."

The preamble to chapter 88 of the Acts of 1919, reads as follows:

"Whereas, owing to the excessive prices of food and other necessities of life, the employees of the State at the seat of government, under existing rate of compensation, have had, and are still having, difficulty in maintaining themselves and their families,"

after which it is provided:

" \* \* \* That every employee of the State government, now in its service at the seat of government be, and is hereby, granted an increase of ten per centum of the aggregate amount of the salary or wages to be drawn by said employees, from September first, nineteen hundred and nineteen, to February twenty-ninth, nineteen hundred and twenty, said increase to be paid in the manner hereinafter provided. \* \* \*"

By the second section of the act, it is provided:

"This act shall not apply to any person who has been or is engaged in any special or temporary work for the State, but shall be construed to apply only to permanent employees; and the word 'employees,' as used in this act, shall be construed to include all persons in the service of the State at the seat of government, other than heads of the various departments and agencies of the State government."

The legislature, in enacting this statute, recognized the fact, as recited therein, that due to the excessive price of food and other necessities of life, the employees of the State at the seat of government under the existing rate of compensation, have had, and are still having difficulty in maintaining themselves and their families, because of which the increase provided for therein was made.

It was recognized that all persons in the employment of the State at the seat of government were affected by living conditions on the first of September, 1919, and that all persons in the employment of the State from that time to February 29, 1920, would likewise be so affected. The purpose of the act, therefore, was to provide an additional compensation for any person in the employment of the State on September 1, 1919, or subsequently in the employment of the State between that date and February 29, 1920. As the emergency which required the enactment of the act is equally applicable to employees who leave the service of the State between the first of September, 1919, and February 29, 1920, and persons who are employed in the service of the State between those dates for such time as they are in the employment of the State, provided they are engaged in permanent work, they are entitled to the additional compensation therein provided for.

I am, therefore, of the opinion that employees who came into the service of the State prior to September 1, but who withdrew from such service subsequent to September 1 and prior to December 9, the date the act becomes operative, are entitled to the 10 per cent authorized by the act for such time as they were in the employment of the State subsequent to September 1, 1919.

I am further of the opinion that employees who came into the service of the State on or after September 1, 1919, at any time up to February 29, 1920, are entitled to the 10 per cent provided by the act from the date they entered the service of the State, provided, however, that such employees are not engaged in any special or temporary work, but are engaged as permanent employees within the meaning of the act.

In reply to your second question, I am of the opinion that the Governor's secretary, Assistant Attorney General, clerk and bailiff for the State Corporation Commission, Assistant Highway Commissioner, Assistant State Accountant, clerks of the circuit and hustings courts at Richmond, Assistant Commissioner of Insurance, Assistant Librarian, State Archivist, secretary Industrial Commission, counsel and executive assistant State Tax Board, and second assistant State Tax Board, are not heads of their departments and as such are entitled to the increase in their salary, provided for by chapter 88 of the Acts of 1919.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

## BONUS LAW.

RICHMOND, VA., *December 15, 1919.*

HON. JOS. H. BUTTON,  
*Commissioner of Insurance,*  
*City.*

MY DEAR COLONEL:

Acknowledgment is made of your letter asking whether you are entitled to the 10 per cent bonus allowed employees of the State government at its extraordinary session, known as the "Bonus Bill."

The act provides that "employees," as used in the act, shall be construed "to include all persons in the service of the State at the seat of government, other than heads of the various departments and agencies of the State government." The specific question, therefore, is whether or not you are a head of a department, or the head of an agency of the State government.

The Constitution (section 155) provides that "the General Assembly may establish within the department and subject to the supervision and control of the Commission, subordinate divisions, or bureaus, of insurance," etc. In conformity with this provision, the legislature in 1906 (Acts of Assembly 1906, page 122) established a bureau of insurance "within the department and subject to the supervision and control of the State Corporation Commission." Under these provisions you were elected the Commissioner of Insurance under the "supervision and control of the State Corporation Commission."

It is, therefore, apparent that you are neither the head of a department or a head of an agency of the State government, but that the Bureau of Insurance, of which you are in charge, is a "subordinate division" of the State Corporation Commission.

I am, therefore, of the opinion that you come within the definition of "employee" as used in the bonus act.

Yours very truly,

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

## BONUS LAW.

RICHMOND, VA., *December 11, 1919.*

COL. B. L. PURCELL,  
*Dairy and Food Commissioner,*  
*Richmond, Va.*

MY DEAR SIR:

I beg leave to acknowledge receipt of your letter of December 10, 1919, in which you ask the question whether you come under the provisions of chapter 88, page 147, of the Acts of 1919, commonly known as the "10 per cent Bonus Act": in other words, whether you are entitled to the extra compensation as allowed by the provisions of said act.

I have carefully examined Chapter 188 of the Acts of Assembly, 1908, approved March 11, 1908, whereby the office of Dairy and Food Commissioner was created. A portion of section 1 of this act reads as follows:

"That within thirty days after this act shall take effect, the Governor, by and with the consent of the General Assembly in joint session, shall appoint a suitable person to be Dairy and Food Commissioner, *which office is hereby created within the Department of Agriculture and Immigration.* \* \* \*

I am of the opinion that the office of Dairy and Food Commissioner is simply a branch or subdivision of the Department of Agriculture and Immigration, and, therefore, that you are not the head of one of the various departments and agencies of the State government as contemplated in section 2 of the Bonus Act. Such being the case, I am of the opinion that you do come within the provisions of this act, and that you are entitled to share in the compensation therein provided.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

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BONUS LAW.

RICHMOND, VA., *December 10, 1919.*

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

DEAR SIR:

In reply to the request that I advise you whether the employees of the War History Commission and the State Council of Defense, are entitled to the 10 per cent increase provided for by chapter 88 of the Acts of 1919, I am of the opinion that the War History Commission and the State Council of National Defense are both special or temporary, and, therefore, that the employees thereof are expressly excepted from the benefits of the act by the provisions of section 2 thereof, which reads as follows:

"This act shall not apply to any person who has been or is engaged in any special or temporary work for the State, but shall be construed to apply only to permanent employees; and the word 'employees,' as used in this act, shall be construed to include all persons in the service of the State at the seat of government, other than heads of the various departments and agencies of the State government."

Yours very truly,

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

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BONUS LAW.

RICHMOND, VA., *December 9, 1919.*

HON. JO LANE STERN,  
*Adjutant General of Virginia,*  
*Richmond, Va.*

DEAR SIR:

Acknowledgment is made of your communication of December 8, 1919, in which you request my opinion as to the right of certain employees of your

department to receive the additional compensation provided for in chapter 88 of the Acts of 1919. The facts upon which you desire my opinion are specifically these:

"(a) An employee who was engaged on special work and terminated her service with the office October 14th by marriage. This employee was engaged in preparing roster and records of troops who volunteered in the war against Germany, and her employment would have been permanent until completion of such records.

"(b) An employee who reported for duty October 15th, to fill the position occupied by the party referred to in sub-paragraph (a), and whose permanency will depend upon the completion of records, which may take six months or a year from date of her employment.

"(c) An office boy employed subsequent to September 1st, and whose permanency depends upon his good behavior."

It is provided by the second section of chapter 88 of the Acts of 1919 as follows:

"This act shall not apply to any person who has been or is engaged in any special or temporary work for the State, but shall be construed to apply only to permanent employees; and the word 'employees,' as used in this act, shall be construed to include all persons in the service of the State at the seat of government, other than heads of the various departments and agencies of the State government."

It will be seen that the legislature expressly excepted from the benefit of the statute any person who has been or is engaged in any *special or temporary* work for the State and limited its application only to *permanent* employees. Although the preparation of roster and records of troops who volunteered in the war against Germany may, as you say, last from six months to a year, it is, nevertheless, a special or temporary work, as the employment of the person therein engaged will cease upon the completion thereof. I am, therefore, of the opinion that the employee engaged in this work is a special employee of the State and as such is expressly excluded from the benefits of the act by the second section thereof.

In the case of the office boy, the permanency of whose position depends upon his good behavior, I am of the opinion that he is a permanent employee within the meaning of the act, and as such is entitled to the benefits thereof. *Carrig v. Carr*, 167 Mass. 544; 35 L. R. A. 512; 6 Words & Phrases, page 5311, Title "Permanent Employees;" Bouvier's Law Dictionary, volume 3, page 2568, Title "Permanent Employment."

As was held in *Lord v. Goldberg*, 22 Pac. 1126, 1128; 81 Calif. 126; 15 Am. St. Rep. 82, "an agreement to give a person permanent employment, means nothing more than that employment is to continue indefinitely and until one or the other of the parties wishes, for some good reason, to sever the relation.

Yours very truly,

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

## BONUS LAW.

RICHMOND, VA., December 10, 1919.

DR. W. W. PLECKER,  
*Registrar of Vital Statistics,*  
*City.*

DEAR SIR:

Acknowledgment is made of your letter of December 9, in which you request this office to advise you on the following statement of facts:

"Please advise as to whether or not I, as State Registrar of Vital Statistics, am entitled to the 10 per cent addition to the salary as provided for by the last legislature. Our bureau is a part of the State Health Department, with Dr. Ennion G. Williams as head of the department. The Bureau of Vital Statistics and State Registrar are under the supervision of Dr. Williams."

It is provided by the first section of chapter 181 of the Acts of 1912, as amended, that "the State Board of Health shall have charge of the registration of births and deaths; shall prepare necessary forms and blanks for the preserving and retaining of such records, and shall insure the faithful registration of the same in each local registration district as constituted by this act and in the central Bureau of Vital Statistics at the capital of the State." This act also charges the State Board of Health with the enforcement of the law throughout the State and gives it general supervision over the Bureau of Vital Statistics. It is provided by section 2 of the act as follows:

"That the State Board of Health shall have general supervision over the Bureau of Vital Statistics, which is hereby authorized to be established by said board, and which shall be under the immediate direction of the State Registrar of Vital Statistics, whom the State Board of Health shall appoint. Salary of the registrar of vital statistics shall be fixed by the State Board of Health from the day of his entering upon the discharge of the duties of his office. The State Board of Health shall provide suitable apartments for the Bureau of Vital Statistics at Richmond, which shall be properly equipped with fireproof vaults and filing cases, for the permanent and safe preservation of all records made and returned under this act."

It clearly appears from the above-quoted provisions of the act that the Bureau of Vital Statistics is a branch of the State Board of Health, and, therefore, the Registrar of Vital Statistics is not the head of a department within the meaning of chapter 88 of the Acts of 1919.

I am, therefore, of the opinion that the Registrar of Vital Statistics is entitled to the 10 per cent increase provided for by chapter 88 of the Acts of 1919.

Yours truly,

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

## BONUS LAW.

RICHMOND, VA., *December 18, 1919.*

HON. S. M. O'BANNON,  
*Office of Auditor of Public Accounts,*  
*City.*

DEAR MR. O'BANNON:

In response to your question as to whether or not the employees of the Prohibition Department are entitled to the 10 per cent increase under the provisions of chapter 88 of the Acts of 1919 (extra session), commonly known as the Bonus Bill, I beg leave to state that a few days ago Mr. Dunford, who is attorney for the Prohibition Department, came to my office to see me in reference to this matter.

I consulted with Hon. C. Lee Moore, Auditor of Public Accounts, about this, and he expressed the opinion to me that he thought that inasmuch as all of the employees of the Prohibition Department received their instructions from Commissioner Peters, whose office is at the seat of government, that, therefore, they were practically in the service at the seat of government and were entitled to share in the extra compensation provided for in the act above referred to. In this opinion, as expressed by Mr. Moore, I concur.

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

## BONUS LAW.

RICHMOND, VA., *December 16, 1919.*

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

DEAR SIR:

I beg leave to acknowledge receipt of your favor of recent date in which you ask the question whether the director of the Divisions of Markets and his assistant come within the provisions of chapter 88 of the Acts of 1919, known as the Bonus Bill.

I am of the opinion that as this office is created within the Department of Agriculture and Immigration and is administered under the supervision of the Commissioner of Agriculture and Immigration, that the director and his assistant are not at the heads of any departments of the State government or agencies thereof, and are, therefore, entitled to this increase.

I note further that you state that this division is carried on in co-operation with the Federal Bureau of Markets and that there is allotted to Virginia by the Federal government the sum of \$2,100.00, which said amount is applied towards the payment of the salaries of the director and his assistant. I do not think that this fact has any special bearing on the case, but that the bonus

to which these parties are entitled should be based upon the salaries which are fixed by the State Board of Agriculture, namely: \$2,500.00 and \$2,000.00 per annum, respectively.

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

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BONUS LAW.

RICHMOND, VA., *December 17, 1919.*

COL. LEROY HODGES,  
*Aide to the Governor,*  
*City.*

MY DEAR COLONEL HODGES:

I beg leave to acknowledge receipt of your letter of December 16, in which you ask whether you and Mr. J. H. Bradford are entitled to the increased pay allowed under the act approved September 10, 1919, chapter 88, page 147, known as the Bonus Bill.

I have very carefully noted the facts stated in your letter and from these I am of the opinion that the work in which you and Mr. Bradford are engaged is not temporary within the meaning of the statute and that you both are therefore entitled to share in the extra compensation allowed by this act.

I have also read the opinion expressed by Mr. Morrissett in reference to this and concur therein.

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

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BOUNDARIES—LAND UNDER WATER.

RICHMOND, VA., *March 24, 1919.*

MR. L. B. TUTTLE,  
*Jamestown, Va.*

DEAR SIR:

Acknowledgment is made of your letter of March 17, 1919, asking whether or not the State controls land under water to high water mark or only to low water mark.

Section 1339 of the Code of Virginia provides, among other things, that the limits or bounds of the several tracts of land lying on the bays, rivers, creeks and shores and rights and privileges of the owners of such lands shall extend to low water mark, except where the creeks or rivers, or some part thereof, is comprised within the limits of a lawful survey.

Very truly yours,

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

## CITIES AND TOWNS—BONDS.

RICHMOND, VA., *July 11, 1919.*

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

DEAR SIR:

Acknowledgment is made of your communication of recent date, in which you request me to advise you on the following state of facts:

"The town of Bedford, Va., desires to issue bonds for the purpose of making certain additions to its water system, which additions can be made to produce a revenue. The amount of bonds necessary for this work added to the present bonded indebtedness of the town exceeds 18 per cent of the assessed value of real estate in the corporation. Can such bonds be lawfully issued?

It is provided by section 127 of the Constitution of Virginia, 1902, as follows:

"No city or town shall issue bonds or other interest-bearing obligations for any purpose, or in any manner, to an amount which, including existing indebtedness, shall, at any time, exceed eighteen per centum of the assessed valuation of the real estate in the city or town subject to taxation, as shown by the last preceding assessment for taxes; provided, however, that nothing above contained in this section shall apply to those cities and towns whose charters existing at the adoption of this Constitution authorize a larger percentage of indebtedness than is authorized by this section; and provided further, that in determining the limitation of the power of a city or town to incur indebtedness, there shall not be included the following classes of indebtedness:

"(a) Certificates of indebtedness, revenue bonds or other obligations issued in anticipation of the collection of the revenue of such city or town for the then current year; provided, that such certificates, bonds or other obligations mature within one year from the date of their issue, and be not past due, and do not exceed the revenue for such year.

"(b) Bonds authorized by an ordinance enacted in accordance with section one hundred and twenty-three, and approved by the affirmative vote of the majority of the qualified voters of the city or town voting upon the question of their issuance, at the general election next succeeding the enactment of the ordinance, or at a special election held for that purpose, for a supply of water or other specific undertaking from which the city or town may derive revenue; but from and after a period to be determined by the council, not exceeding five years from the date of such election, whenever and for so long as such undertaking fails to produce sufficient revenue to pay for cost of operation and administration (including interest on bonds issued therefor, and the cost of insurance against loss by injury to persons or property), and an annual amount to be covered into a sinking fund sufficient to pay, at or about maturity, all bonds issued on account of said undertaking, all such bonds outstanding shall be included in determining the limitation of the power to incur indebtedness, unless the principal and interest thereof be made payable exclusively from the receipts of the undertaking."

It will be observed that this section provides that, in determining the limitation of power of a city or town to increase indebtedness, there shall not be included "bonds authorized by an ordinance enacted in accordance with section one hundred and twenty-three, and approved by the affirmative vote

of the majority of the qualified voters of the city or town voting upon the question of their issuance, \* \* \* for a supply of water or other specific undertaking from which the city or town may derive a revenue; \* \* \*

It will further be seen, however, that this exception is limited by the further provision that "all such bonds outstanding shall be included in determining the limitation of the power to incur indebtedness, unless the principal and interest thereof be made payable exclusively from the receipts of the undertaking."

It, therefore, follows that I am of the opinion that, provided the bonds in question are authorized in the manner prescribed by section 127 of the Constitution and in accordance with section 123 of the Constitution, and that in such procedure all of the provisions of these sections are strictly followed, the town in question has the authority to issue the bonds for making additions to its water system from which the town may derive a revenue, unless there is some provision in the charter of the town which would render illegal the issuance of such bonds.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

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#### CITIES AND TOWNS—BONDS.

RICHMOND, VA., November 29, 1919.

JAMES P. REARDON, ESQ.,  
*Commonwealth's Attorney,*  
Winchester, Va.

DEAR SIR:

Acknowledgment is made of your letter, in which you ask whether a city can issue bonds for a greater amount than is allowed by its charter, which bonds are to be used for current indebtedness instead of refunding a previous bonded indebtedness.

Section 127 of the Constitution of Virginia provides:

"No city or town shall issue bonds or other interest-bearing obligations for *any purpose*, or in any manner, to an amount which, including existing indebtedness, shall, at any time, exceed eighteen per centum of the assessed valuation of the real estate in the city or town subject to taxation, as shown by the last preceding assessment for taxes; provided, however, that nothing above contained in this section shall apply to those cities and towns whose charters existing at the adoption of this Constitution authorize a larger percentage of indebtedness than is authorized by this section; and provided further, that in determining the limitation of the power of a city or town to incur indebtedness, there shall not be included the following classes of indebtedness:

"(a) Certificates of indebtedness, revenue bonds or other obligations issued in anticipation of the collection of the revenue of such city or town for the then current year; provided, that such certificates, bonds or other obligations mature within one year from the date of their issue, and be not past due, and do not exceed the revenue for such year.

"(b) Bonds authorized by an ordinance enacted in accordance with section one hundred and twenty-three. \* \* \*" (*Italics supplied.*)

It is to be noted that the 18 per centum does not apply to cities whose charters authorize a larger percentage of indebtedness. In such case the whole matter is governed by the wording of the charter of the city, and unless it is expressly provided for in the charter, the bonds cannot be issued for any purpose to an amount exceeding the bonding capacity provided in the charter.

As you do not state the provisions of the charter with regard to the issuance of bonds, I cannot, of course, advise you more specifically.

If I can be of any further service to you, I trust you will call on me.

Yours truly,

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

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CITIES AND TOWNS—LICENSES.

RICHMOND, VA., *August 1, 1919.*

DR. A. P. BOHANNON,  
*Virgilina, Va.*

MY DEAR DOCTOR:

Acknowledgment is made of your letter of recent date, a reply to which has been delayed on account of the great bulk of work in the office in preparing cases for the recent term of the Court of Appeals, and other State matters.

You have requested my opinion as to whether, in the absence of a State license law applying to physicians in incorporated towns such as Virgilina, an incorporated town is authorized to levy a tax upon them.

It is provided by section 1042 of the Code of Virginia, 1904, as follows:

"In addition to the State tax on any license, the council of a city or town may, when anything for which a license is so required is to be done within the city or town, impose a tax for the privilege of doing the same, and require a license to be obtained therefor; and in any case in which they see fit, require from the person licensed bond, with sureties, in such penalty and with such condition as they may deem proper, or make other regulations concerning the same. They may also impose a tax and require a license to be obtained for the privilege of keeping in the city or town for hire any wheeled carriage."

By chapter 84 of the Acts of 1916, all physicians are required to obtain a license before beginning the practice of their profession, which license is obtained by examination or otherwise, as provided for therein. A physician being first required to obtain a State license other than a revenue license to practice his profession, it would appear that the council of a city or town may impose a tax for the privilege of practicing within the city or town, and require a license to be obtained therefor.

Of course, you are aware of the fact that the Attorney General is made the legal adviser of the officers and boards located at the seat of government

only, and, therefore, what I have stated here is unofficial, and expressed merely as a matter of courtesy to you. ●

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

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CONSTITUTIONAL LAW—DEBT CONTRACTED BY THE STATE. •

RICHMOND, VA., *April 15, 1919.*

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

MY DEAR GOVERNOR:

I beg leave to acknowledge receipt of your letter of April 2, in which you ask the following question:

"In the event that the General Assembly of Virginia, in regular session in 1920, should make an appropriation of money to be used in the construction of the State highway system, such appropriation to be paid out of the revenue arising from a special property tax imposed for that purpose, and the act making such appropriation and imposing such a tax made effective from its passage and it being clear that the money to be derived from that source would not be actually available until the following November or December, would it be lawful for the State to borrow an amount of money approximating the sum to be derived from the source aforesaid in order that such fund might be available for the purpose mentioned?"

It is true, as stated in your letter, that section 184 of the Constitution of Virginia provides, among other things, 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. \* \* \*"

You further ask if in the situation above outlined "Would such a debt suggested be contracted by the State to meet a 'casual' deficit in the revenue within the meaning of the Constitution?"

In reply I beg leave to state that I am of the opinion that should the legislature of Virginia at its regular session in 1920 make an appropriation for the construction of the State highway system and at the same time pass an act setting forth in its provisions the fact that such appropriation had been made and likewise that taxes had been imposed in order to meet the said appropriation and at the same time authorize the State to borrow an approximate sum in anticipation of the coming in of the revenues so provided for, I see no reason why the State would not have the authority to borrow this money, and I believe that in so doing it would be a debt contracted to meet a casual deficit in the revenue.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## CONSTITUTIONAL LAW—AMENDMENTS TO THE CONSTITUTION.

RICHMOND, VA., *May* 1, 1919.

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

DEAR SIR:

I beg leave to acknowledge receipt of your letter of April 29, concerning a resolution passed by the General Assembly at its session of 1918, which said resolution was signed on March 4, 1918. This resolution proposed an amendment to section 186 of the Constitution of Virginia.

You call my attention also to the fact that in the passage of this resolution, a part of the section of the Constitution was left out. You further ask that inasmuch as a part of this section was omitted, should you proceed to publish the same as is required by law.

In reply I will state that a publication of this, in my judgment, would amount to practically nothing and the only thing to do is to refer it to the next legislature and have it properly passed. It would be a useless expenditure of money to publish this in its present form.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General*.

## CONTEMPT OF COURT—PUNISHMENT OF.

RICHMOND, VA., *June* 11, 1919.

MR. ROBERT LECKY, JR., *Chairman*,  
*Virginia Home and Industrial School for Girls*,  
*City*.

DEAR SIR:

I am in receipt of yours of the 3rd instant in which you inform me that persons interfering with girls at the Virginia Home and Industrial School for Girls have been arrested and haled before the justice of Chesterfield county. You desire to know whether the criminal courts of Chesterfield county have jurisdiction over these persons or whether merely those courts which committed the particular girl annoyed must be resorted to.

Section 9 of chapter 350 of the Acts of 1914 reads as follows:

"It shall be unlawful for any person to interfere with or to obstruct any probation officer, policeman, constable or other officer in the discharge of his duty under this act, or for any person to remove or conceal or cause any child to be removed or concealed in order that it may not be brought before court, or for any person to interfere with or remove or attempt to remove any child who is in the custody of the court or of an officer or who has been committed to any organization by any court or justice of the peace under the provisions of this act; and any person committing any one of the offenses herein enumerated shall be deemed guilty of contempt and may be punished by a fine not exceeding fifty dollars or by imprisonment not exceeding three months, or both."

It is undoubtedly true that as a general rule, contempts may only be punished by the particular court offended. Section 3768 of the Code provides for attachments for contempt in five cases not necessary here to enumerate. Those cases, however, may be summarized by saying that in every one of them the offense is either against the court or against what we may term an "arm of the court."

In this case, however, the act is very broad. It not only covers probation officers, policemen, constables or other officers, but any person concealing a child in order that it may not be brought before a court, or concealing a child who has been committed to any organization.

Under such circumstances, it would seem that in the use of the word "contempt" the legislature did not intend contempt of court as used in the ordinary case as under the Code section above quoted, but merely created offenses, defined punishments therefor and labeled the offenses "contempt."

Besides this, the particular contempt here is punished differently from the general provisions concerning contempts. Doubtless, had the legislature intended to make this contempt of court in the same sense as those other contempts, it would have required procedure and punishments under those general provisions rather than created new offenses and prescribing punishments therefor.

Another cogent circumstance tending to show the correctness of the above conclusion is, as you suggest, the fact that under this act persons are committed to all parts of the State.

I am, therefore, of the opinion that it is proper for you in the case you mention, to have these trespassers punished under this section in the criminal court of Chesterfield county.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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CORPORATIONS—TRANSFER OF STOCK BY.

RICHMOND, VA., May 1, 1919.

WINSTON, STRAWN & SHAW,

*First National Bank,*

*Chicago, Ill.*

GENTLEMEN :

I beg leave to acknowledge receipt of your letter of April 24, in which you ask if, under the laws of the State of Virginia, any consent is required by any officer of the State for the transfer of certain stocks mentioned in your letter.

In reply, I will state that no such consent or authority is necessary, and these stocks can be transferred as may be desired.

I have not a pamphlet of the inheritance tax law, but I will ask the counsel for the State Tax Board to forward you one if he has a copy.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

## COUNTIES—APPROPRIATIONS FOR COUNTY FAIRS.

RICHMOND, VA., March 8, 1919.

MR. WILLING BOWIE,  
*Commonwealth's Attorney,*  
*Bowling Green, Va.*

DEAR SIR:

I acknowledge receipt of your letter of March 7, 1919, addressed to the Attorney General, and in his absence I am taking the liberty of answering the same.

You ask whether or not the board of supervisors of Caroline county, Virginia, has authority to appropriate out of the county funds the sum of \$1,500 to be used in the construction of a building on county property in Bowling Green, to be used for the purpose of exhibiting agricultural products raised and grown in Caroline county. I understand that this building is to be used in connection with the county fair.

You, of course, understand that my opinion in this matter is unofficial and can be worth very little to you as a guide. The levying, collecting and disposition of county taxes is one exclusively within the jurisdiction of the board of supervisors, and there is no interest to the State at large affected. For that reason, I cannot give you an official answer to your question. The board of supervisors will, in the end, have to be guided by your advice in the matter.

However, as a matter of courtesy to you, I am directing your attention to the first paragraph of section 834 of the Code, which section provides what the board of supervisors may do at any of its meetings. A portion of this paragraph reads as follows:

"The board of supervisors of each county shall have power at their regular meeting, or at any other legal meeting:

First. To buy, sell and so forth, corporate property; how sale made; provide farm for poor; control the courthouse; to sell or exchange and convey the corporate property of the county; *to purchase any such real estate as may be necessary for the erection of all necessary county buildings; \* \* \**"

It would seem to me that the question of necessity would determine whether or not the board of supervisors could appropriate the money for the purpose you mention. You will see that it is contemplated in the above quotation that the board of supervisors has the authority to purchase such real estate as may be *necessary* for the erection of all *necessary county buildings*. I gather from that language that the board of supervisors is the proper body to pass upon the necessity of such real estate as is needed for "necessary county buildings." Certainly, if this board is authorized to purchase real estate which, in their judgment, is "necessary for the erection of county buildings," it would carry with it the authority to expend money for the purpose of erecting a building on that property.

These are my personal views, and you may use them for what they are worth.

Very truly yours,

F. B. RICHARDSON,  
*Law Assistant.*

## COURTS—JUSTICES' COURTS.

RICHMOND, VA., *January 29, 1919.*

MR. CHAS. G. MEARS,  
*Newport News, Va.*

DEAR SIR:

Acknowledgment is made of your letter of January 27, replying to mine of January 25, all of which relates to the question as to whether or not the civil and police court of the city of Newport News is the court of record, and whether or not it is the proper court in which to institute habeas corpus proceedings.

Section 3029 of the Code provides as follows:

"The writ of habeas corpus ad subjiciendum shall be granted forthwith by any circuit court or corporation court, or any judge of either in vacation, to any person who shall apply for the same by petition, showing affidavits or other evidence probable cause to believe that he is detained without lawful authority."

You will see from the reading of this section that, in the case you mention, the corporation court of the city of Newport News would be the proper court in which to file a petition for a writ of habeas corpus. I know of no law authorizing such a proceeding in a police court, or a justice of the peace court.

Very truly yours,

F. B. RICHARDSON,  
*Law Assistant*

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CRIMES—APPEAL BY THE COMMONWEALTH.RICHMOND, VA., *September 18, 1919.*

HON. GROVER C. HOFF,  
*State's Attorney,*  
*Clinton, Ill.*

DEAR SIR:

Acknowledgment is made of your letter of September 16, 1919, addressed to the Attorney General, in which you request him to answer the following questions:

"Does the law of the State of Virginia provide for the right of appeal on behalf of the people in a criminal case? If so, what are the conditions? Or, I would be pleased to have a copy of such provision of your law if it is convenient to send same."

The State has no appeal in criminal cases, except where the prosecution is for the violation of a law relating to the State's revenue, or where a law of the State has been declared unconstitutional. Virginia Constitution, 1902, section 8.

Section 4052 of the Code of Virginia, 1904, provides as follows:

"A writ of error shall lie in a criminal case to the judgment of a circuit court or the judge thereof, or of a corporation court or of a hustings court from the court of appeals. It shall lie in any such case for the accused, and if the case be for the violation of law relating to the State revenue, or for the violation of a law therein declared to be unconstitutional, it shall lie also for the Commonwealth."

Very truly yours,

LEON M. BAZILL,  
*Law Assistant.*

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CRIMES—VENUE.

RICHMOND, VA., *March 19, 1919.*

DR. W. A. PLECKER,  
*Richmond, Va.*

DEAR DR. PLECKER:

I am in receipt of your letter of the 17th inst., to which I will reply at once.

You state that an undertaker from Clarke county went to Staunton in his automobile hearse and removed a corpse from the State Hospital without filing a certificate with the health officers of Staunton. You further state in your letter that a physician from Staunton attended a birth in Albemarle county without reporting it. You desire to know where these violators of the law should be prosecuted.

I would say that in the case of the undertaker, the prosecution should be in Staunton, and in the case of the physician, it should be in Albemarle county.

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

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DENTAL EXAMINERS—EXTRA EXAMINATIONS.

RICHMOND, VA., *October 10, 1919.*

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

MY DEAR GOVERNOR:

I am in receipt of a letter from Miss McDougall, your assistant secretary, in which she states that many appeals have been made to you asking that the State Board of Dental Examiners hold an extra examination for men who were in the service of the United States at the time of the regular examination in June, 1919. She further inquires as to whether, under the law, the said board may grant temporary certificates to expire when the board holds its next regular meeting.

In reply to this letter, I beg leave to state that I see no reason why

the State Board of Dental Examiners should not hold an extra examination for these young men who were in the service, in order that they may not have to wait until the next regular examination in June, 1920.

Section 3 of the act approved March 27, 1914, defining the practice of dentistry, the creation of the Board of Dental Examiners, etc., provides that the "said board shall meet at least once in each year or oftener if necessary, in the discretion of the board, and at such times and places as it may deem necessary." You will therefore see under this provision of the law that they have a perfect right to hold a special examination.

Sub-section B of section 1 of the act provides that it shall be unlawful for any person to engage in the practice of dentistry except he shall have passed the examinations provided for by this act. Under this provision of the law, it is doubtful whether the board has the authority to grant a temporary certificate to practice dentistry. I would therefore suggest that you call the attention of the Board of Dental Examiners to the conditions existing, and request them to arrange for a special examination in order that these young men who have served their country may take this examination and not have to wait until the regular examination to be held next June. I should think that the board would have no hesitation in taking speedy action in the matter.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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DEPARTMENTS OF GOVERNMENT—CROP PEST COMMISSION.

RICHMOND, VA., June 11, 1919.

HON. W. J. SCHOENE,

*State Entomologist,*

*Blacksburg, Va.*

DEAR SIR:

I am in receipt of yours of the 6th inst., in regard to the question as to whether the State Crop Pest Commission is a department of the government of Virginia, so as to entitle it to a second class mailing permit.

I am of the opinion that this is a question for the consideration of the Postoffice Department of our Federal government, and that it would be obviously improper for me to attempt to dictate to them as to what should be the proper construction of the law.

In order to assist you, however, I would suggest, if you have not already done so, that you send the Postoffice Department a copy of the law regarding your commission, and explain to the Federal authorities in a general way just what your relationship to the State government is. It may be that the Federal authorities would be willing to take the opinion of this office as to whether you are so related to the State government as to entitle you to such a permit. If so, do not hesitate to advise this office, in order that we may assist you.

Very truly yours,\*

JNO. R. SAUNDERS,

*Attorney General.*

## ELECTIONS—ABSENT VOTERS LAW.

RICHMOND, VA., *April 24, 1919.*

MR. F. C. HILLMAN,  
*County Chairman,*  
*Clintwood, Va.*

DEAR SIR:

I have for acknowledgment your letter of April 20, in which you ask whether or not a man who is not able to go to the polls on election day by reason of affliction, can cast his ballot by mail in the same way that a man who is absent from his county may do so.

Chapter 369 of the Acts of Assembly, 1916, page 633, provides in section 1 "that any voter, *only* when required by his regular business and habitual duties to be absent from the city or county and precinct in which he is registered, may vote," etc.

You will observe from a reading of this section that there is only one class of voters who may vote under the provisions of this chapter and they are such persons as are required by *regular business* and *habitual duties* to be absent from the county or city and precinct in which he is registered. •

It follows, therefore, that a person who is prevented from going to the polls on election day by reason of affliction, cannot vote as an absent voter if he is in the city or county and precinct in which he is registered.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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ELECTIONS—BALLOTS.RICHMOND, VA., *October 27, 1919.*

J. G. HIDE, ESQ.,  
*Attorney-at-Law,*  
*Culpeper, Va.*

DEAR SIR:

I am in receipt of your letter of October 25, to which I will reply at once. As stated in your letter, I advised Captain Grimsley a few days ago that I thought it was legal to use rubber stamps in order to save the voter the trouble of writing the name of the party for whom he desired to vote for clerk, on the official ballot. Several of my predecessors in office have ruled that this is legal and I have no doubt but that it is correct.

These rubber stamps should be in the custody of the judges, and in my judgment, should be furnished at the expense of the parties who are candidates for office, though there is no provision in the law in reference to this and it really would be a matter to be determined by the electoral board.

I presume when the voter comes in to cast his ballot, the several rubber stamps will be convenient and he can secure the one he desires; take it into the election booth and stamp his ballot. As I understand the law, while the

voter has the opportunity of casting a secret ballot, at the same time he has a perfect right to announce, if he so desires, for whom he is voting.

Trusting I have made myself clear and with kindest regards, I am,

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

#### ELECTIONS—BALLOTS.

RICHMOND, VA., *May 9, 1919.*

MR. WM. H. MARTIN,

*Leesburg, Va.*

DEAR SIR:

I am in receipt of your letter of May 7, in which you desire my opinion as to the legality of the use by a voter of a rubber stamp for the purpose of stamping on the official ballot the name of a candidate for whom he desires to vote and whose name does not appear on the printed ballot.

In my judgment this is legal and there can be no objection to it. In fact, this question was raised in a hotly contested election case in the legislature of Virginia a number of years ago and the committee on privileges and elections decided that it was legal to do this.

I do not know that this question has ever been decided by our courts, but some of my predecessors in office have ruled similarly.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

#### ELECTIONS—BOND ISSUE.

RICHMOND, VA., *December 10, 1919.*

THOMAS W. EVANS, ESQ.,

*Concord Depot, Va.*

DEAR SIR:

Acknowledgment is made of your letter of December 6, addressed to the Attorney General, which reached this office this morning. You state that you are about to have an election as to whether bonds shall be issued for road improvement, and you desire to know whether all registered voters can vote or if the electors are restricted to freeholders. You do not state whether the election is a county or a magisterial election or whether the bonds are to be issued for the county roads generally or for the roads of the magisterial district.

Chapter 284 of the Acts of 1916 provides in the case of elections held to determine whether a bond issue shall be made for the improvement of the county roads and bridges generally, as follows:

“ \* \* \* the qualified voters at any special election held under this act, until otherwise provided by general law, shall be those qualified to vote at the preceding regular November election and those who

may have come of age and registered since said preceding regular November election, except those who by commission of crime or removal from the district or county have disqualified themselves to vote."

Chapter 108 of the Acts of 1918 relating to the issuance of bonds for the improvement of roads in magisterial districts, provides as follows:

"\* \* \* the qualified voters at any special election held under this act, until otherwise provided by general law, shall be those qualified to vote at the preceding regular November election and those who may have come of age and registered since said preceding regular November election, except those who by commission of crime or removal from the district or county have disqualified themselves to vote."

If the election is to be held in pursuance of either one of the chapters above referred to, then those persons can vote in such election as are designated in the excerpt above taken from the chapter under which the election is to be held. If the election is to be held by virtue of some other act of the Assembly than one of those mentioned above, I would be very glad to advise you with reference to the qualification of voters in such election if you will inform me in pursuance of what chapter the election is to be held.

There is a general provision contained in section 62 of the Code of Virginia (Pollard's Code 1910, page 19) as to the necessary qualification of voters at special elections, but I am of the opinion that this section does not apply to elections held under Chapter 289 of the Acts of 1916 and chapter 108 of the Acts of 1918, because these chapters especially provide the qualification of voters "until otherwise provided by general law," and the provision in section 62 of the Code above referred to, was passed in 1908. There seems to have been no further legislation under that section since that time.

Therefore, Chapter 284 having been passed in 1916 and chapter 108 having been passed in 1918, it is clear that section 62 above referred to would have no application to these acts.

Yours very truly,

J. D. HANK, Jr.

*Assistant Attorney General.*

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ELECTIONS—CANDIDATES.

RICHMOND, VA., *July 2, 1919.*

B. RICHARDS GLASCOCK, ESQ.,  
*Secretary Fauquier Electoral Board,*  
*Warrenton, Va.*

DEAR SIR:

Acknowledgment is made of your communication of June 19, 1919, in which you request my opinion on a great many questions relating to the election laws of this State.

Of course, you are aware of the fact that the Attorney General is by law made the legal adviser of the heads of departments and certain boards located at the seat of government, and, therefore, that any opinion expressed

by me to you on these questions would be unofficial, and expressed merely as a courtesy to you.

Your first question is:

"Can a registrar act as clerk—

(a) In a primary election?

(b) In a general election?

It is provided in section 67 of the Virginia Election Laws, pages 19 and 20, that a registrar "shall not hold any office by election or appointment during his term." It is a matter of doubt whether a clerk of election holds an "office" within the meaning of this section, and in as much as the election has not been held, I shall not attempt to answer this question, as it can easily be avoided by appointing someone other than the registrar to act as clerk in the election.

In your second question you request me to advise you whether a registrar who resigned in May, 1919, but who had registered no voter since the general election of November, 1918, is disqualified, under section 77 of the Virginia Election Laws, from being a candidate for nomination for the office of supervisor at the primary to be held August 5, 1919.

As the question whether this candidate is qualified or not is one for the courts to determine, it would be improper for me to express an opinion thereon, and, therefore, I must decline to do so.

You further request me to advise you whether the electoral board has the authority to print the name of this candidate on the ballots to be used in the primary election.

If he has complied with the provisions of the law entitling him to have his name printed on the ballots, I am of the opinion that his name should appear thereon.

Your third question is:

"If a voter's name appears on the ballot for a primary election as one to be designated at that election for a member of the Democratic county committee, does that fact disqualify such voter from acting as a judge of election at that primary under section 118, page 47, or under any other section? Is the position of a member of such a committee an 'office' within the meaning of this section?"

It was never intended by the laws of this State that any man should sit in judgment on his own case, and, therefore, I am of the opinion that it would be highly improper for any person to act as a judge of election in any primary or election in which his name appears on the ballot as a candidate.

Your fourth question is:

"Does the requirement of section 117, page 46, that judges of election must be 'qualified voters' mean that they must have paid their taxes in time to vote at the election at which they are appointed to serve as judges?"

I am of the opinion that it does. This section (Virginia Election Laws, page 46) provides that the electoral board, in appointing judges of election, shall appoint competent citizens who are "qualified voters."

Section 18 of the Virginia Constitution provides that "every male citizen of the United States, 21 years of age, who has been a resident of the State for 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, 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 elected by the people. \* \* \*

Section 21 of the Virginia Constitution provides that, unless exempted by section 22 thereof, any person registered under the Constitution "shall, as a prerequisite to the right to vote after the first day of January, nineteen hundred and four, personally pay, at least six months prior to the election, all State poll taxes assessed or assessable against him, under this Constitution, during the three years next preceding that in which he offers to vote. \* \* \*

Therefore, one who has not paid his poll taxes as required by law, unless falling within the exception found in the Constitution, is not a qualified voter.

As was said by the Supreme Court of North Carolina, in *Pace v. Raleigh*, 140 N. C., 65, 67 (1905), speaking through that eminent jurist, Clark, C. J., in construing a constitutional provision very similar to that found in the Virginia Constitution:

"\* \* \* Before one is lawfully a voter he must be 'entitled to vote,' and from the above it is plain that being registered does not entitle one to vote, for it is added, both as to those whose names are upon the ordinary, and the permanent roll, and before they are entitled to vote, they shall have paid their poll tax (if liable for poll tax under article V., section 1, of the Constitution)."

Very truly yours,

JNO. R. SAUNDERS,

*Attorney General.*

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#### ELECTIONS—CANDIDATES.

RICHMOND, VA., *June 21, 1919.*

MR. T. A. SAUNDERS,

*Chairman County Committee,*

*Ivor, Va.*

DEAR SIR:

I am in receipt of yours of the 10th instant, in which you ask what course you should pursue in declaring candidates nominees of the parties when such candidates have no opposition in the primary. Section 22, chapter 307, of the Acts of 1912, commonly known as the Primary Law, provides as follows (page 105):

"Whenever within the time prescribed by this act there is only one declaration of candidacy for the nomination for any office, the name of the person filing such declaration shall be declared the nominee of his party for the office for which he has announced his candidacy. No primary shall be held for the nomination of candidates to offices, the nomination to which the party authorities, acting within the discretion vested in them by this act, shall require to be made otherwise."

While this section is not very clear or definite, I am constrained to believe that it was intended that the Democratic committee of your county should declare persons without opposition who have duly filed their declaration of candidacy as the candidates of the party in the November election.

I am frank to say, however, that I see no reason why it is not sufficient to have the county committee meet at such time as is necessary to get the names of these candidates on the ballot in the general election in November and declare them the choice of the Democratic primary.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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ELECTIONS—CANDIDATES.

RICHMOND, VA., *June 9, 1919.*

MR. R. S. BRENT, *Clerk,*  
*Heathsville, Va.*

MY DEAR MR. BRENT:

I am in receipt of yours of the 6th instant, in which you have asked my opinion as to the last day upon which the declaration of candidacy may be filed by those running for office in the primary to be held on the 5th day of August.

Section 9 of the Primary Law, Acts of 1916, chapter 307, requires the filing of a written declaration of candidacy "at least sixty days before the primary."

Section 5, paragraph 8, of the Virginia Code, referring to the computation of time, requires that the time before or after a given date, shall be computed by excluding the first day and including the last day of the period.

Under these sections by mere mathematical computation, it is obvious that the last day upon which these declarations may be filed is June 5.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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ELECTIONS—CANDIDATES.

RICHMOND, VA., *May 28, 1919.*

HON. JOHN S. PATTON, *Librarian,*  
*University of Virginia,*  
*University, Va.*

DEAR SIR:

I am in receipt of yours of the 27th, which contains the following:

"I am librarian of the University of Virginia, and receive a salary. Whether I am eligible to election as a member of the legislature has become a practical question, which it is desirable to have answered authoritatively. I respectfully ask your opinion as to whether I am disqualified under section 44 or any other provision of the Constitution."

Upon the facts as stated above, I have carefully examined the authorities as to your eligibility for membership in the General Assembly as affected by holding the position of librarian at the university. In answering this letter I have assumed that your services are obtained either by the president or board of visitors of the university for a definite or indefinite period, as the case may be, and that you are at all times subject to their orders and to removal by them for sufficient reasons. The opinion I give, therefore, is based on such an assumption.

So far as is here material, section 44 of the Constitution of Virginia, provides as follows:

"But no person holding a salaried office under the State government, and no judge of any court, attorney for the Commonwealth, sheriff, sergeant, treasurer, assessor of taxes, commissioner of the revenue, collector of taxes or clerk of any court, shall be a member of either house of the General Assembly during his continuance in office, and the election of any such person to either house of the General Assembly, and his qualification as a member thereof, shall vacate any such office held by him, and no person holding any office or post of profit or emolument under the United States government or who is in the employment of such government, shall be eligible to either house."

Section 45 of the Constitution, so far as is here material, provides as follows:

"\* \* \* No member during the term for which he shall have been elected, shall be appointed or elected to any civil office of profit in the State except offices filled by election by the people."

Obviously, the questions following arise in regard to your being librarian and a member of the General Assembly at the same time:

1. Is the librarian of the University of Virginia a salaried officer under the State government?
2. Is the position of librarian a civil office of profit?

In answer to the first question I am clearly of the opinion that the librarian of the university is not a salaried officer of the State government.

In answer to the second question, I have carefully examined the authorities on the subject as to who are officers as distinguished from employees, and am of the opinion that the librarian of the University of Virginia is not an officer within the meaning of such provision, but is rather an employee. It would therefore seem that you are not ineligible to be a member of the General Assembly by virtue of being a librarian at the University of Virginia.

In arriving at the above conclusion, I have consulted a note in 17 An. & Eng. Ann. Cas. 449, as to the distinction between officer and employee. The cases lay down that the following requisites tend to show that a person is an officer rather than an employee:

1. Exercise of some position of sovereign power in which the public is concerned.
2. Definite tenure of office.
3. The giving of official bond.
4. The fixing of salary by law.

In the case of *Butler v. The Regents of the University*, 32 Wis. 124, a professor in a State university appointed for a stated term with a fixed salary, has been held not to be a public officer in such a sense as would prevent his employment from creating contractual relations between himself and the regents.

For all these reasons I am of the opinion as above expressed.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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ELECTIONS—CANDIDATES.

RICHMOND, VA., *April 21, 1919.*

MR. JOHN A. BARNES:

*Diascond, Va.*

DEAR MR. BARNES:

I beg leave to acknowledge receipt of your letter of April 15, in which you state that the Democratic committee of your county has decided that persons who are candidates for the various district offices (supervisors, magistrates, etc.) shall not be required to file a petition with the signatures of fifty qualified voters, inasmuch as some of the districts have not as many as fifty qualified voters. You ask whether or not this is legal.

In reply, I will state that I think the county committee has a right to determine this matter.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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ELECTIONS—CANDIDATES.

RICHMOND, VA., *January 6, 1919.*

HON. ROBERT D. YANCEY,

507 *Krise Bldg.*,  
*Lynchburg, Va.*

DEAR MR. YANCEY:

I have carefully noted the contents of your letter in which you ask the question whether the various candidates who are seeking the nomination for Congress in your district on the 18th of January, will have to pay a primary fee of 2 per cent of their first year's salary to the Auditor of Public Accounts. In reply, I will state that under the Primary Law, these candidates, in my opinion, will not have to pay the fee to the Auditor. If you will read section 6 of the Primary Law, which is found in the 1916 supplement to the Code, page 874, you will find the following language:

"This act shall not apply to the nomination of presidential electors or to the nomination of candidates to fill vacancies."

There being a vacancy in the Sixth Congressional District, the provisions of the Primary Law will not apply.

Section 7 provides as follows:

"Each party shall have the power to make its own rules and regulations, call conventions to proclaim a platform or ratify a nomination, or for any other purpose, and perform all functions inherent in such organizations. Each party shall have the power to provide in any way it sees fit for the nomination of its candidates, *and the nomination and election of its candidates for office in case of any vacancy.* \* \* \*

I presume the district committee was acting under this section when they fixed the date for the primary and assessed the several parties who are candidates. Of course, inasmuch as the State does not pay the expenses of this primary, it is necessary that the costs thereof should be paid by the candidates. As to the amount of assessment which has been made by the committee, of course I could not express an opinion, as I do not know what will be the cost of conducting this special primary. I presume, of course, if the assessment is more than sufficient to pay the costs of conducting the primary, the excess will be returned to the candidates.

Trusting that I have made myself clear, I am,

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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ELECTIONS—CANDIDATES.

RICHMOND, VA., October 24, 1919.

MESSRS. GRIMSLEY & MILLER,  
*Culpeper, Va.*

GENTLEMEN:

I acknowledge receipt of your letter of October 23, in which you state that there was only one person who announced his candidacy for clerk of court for your county and filed his notice in time to have his name placed on the official ballot. You further state that this gentleman died a few days ago, which, of course, prevents the name of anyone being printed on the official ballot.

You also state that there are a number of candidates now for the position and the question is much discussed as to whether the names of the different candidates will have to be written on the different ballots or whether they can be placed thereon with a rubber stamp.

In reply, I will state that my opinion is that it is legal to use a rubber stamp and thereby avoid the necessity of the voters writing the name of the candidate for whom they desire to vote on the official ballot. Of course, only one ballot can be used and that is the official ballot. On this, I presume, there will be a blank space for the names of the parties to be designated. The rubber stamps should be in the custody of the judges of the election.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## ELECTIONS—CANDIDATES.

RICHMOND, VA., *October 21, 1919.*

J. POWELL ROYALL, Esq.,  
*Attorney at Law,*  
*Tazewell, Va.*

MY DEAR ROYALL:

I am in receipt of your letter of October 20, in which you state that you have decided to enter the race as an independent Republican candidate for the State Senate. You further state that there was no convention, primary nor caucus, but that you simply announced your candidacy about the 30th of September. You ask if it is necessary for you to comply with section 145-a of the Virginia Election Laws in reference to filing an expense account.

In reply to your question, I would say that it is necessary for you to file your expense account. The first part of sub-section 3 of section 145-a of the Election Laws reads as follows:

"Every person who shall be a candidate before caucus or convention or at any primary election, or at *any election* for any State, county, city, township, district or municipal office, or for Senate or member of the House of Delegates of Virginia, or for Senate or representative in the Congress of the United States shall, within thirty days, file a statement in writing as to expenses," etc.

You will see from a reading of this that the law provides that every person who shall be a candidate at *any election* should do this.

Yours very sincerely,

JNO. R. SAUNDERS,  
*Attorney General.*

## ELECTIONS—CANDIDATES.

RICHMOND, VA., *September 29, 1919.*

MR. WILLIAM R. DUNCAN,  
*Rossllyn, Va.*

MY DEAR SIR:

I beg leave to acknowledge receipt of your letter of September 23, in which you have filed notice of your candidacy for the office of "county clerk," and ask if this is the proper title.

If you will examine section 110 of the Constitution and section 93 of Polard's Code, 1904, you will find the law bearing on this question.

Of course, I have not read your notice of candidacy, but, in my judgment, the words "county clerk" used by you in such notice are sufficient to designate the office for which you ~~are~~ a candidate.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

## ELECTIONS—CANDIDATES.

RICHMOND, VA., *September 3, 1919.*

T. MORRIS WAMPLER, ESQ.,  
*Attorney at Law,*  
*Washington, D. C.*

DEAR SIR:

Acknowledgment is made of your letter of August 29, 1919, in which, after propounding the following statement of facts, you request my opinion thereon:

"Our friend and fellow-citizen, Mr. Frank P. Stone, is a candidate for supervisor in Alexandria county, Virginia, and was registrar and resigned as such on May 18th. On May 27th an election was held in which the Hon. R. Walton Moore was elected to Congress to fill the vacancy caused by the resignation of Mr. C. C. Carlin. Mr. Stone is an estimable gentleman and all of us desire his election as supervisor, but some question has been raised as to his eligibility.

"In my view of the law, concurred in by Mr. Moore, the election which was held on May 27th would be the one disqualifying a registrar under the section of the law above quoted, and Mr. Stone would be eligible at the coming election this fall."

This is not a question which comes within the province of the Attorney General, as I have written one or two persons heretofore, who have propounded a similar question to me. My view of the matter is that the question whether a candidate is qualified or not, is one for the courts to determine, and, therefore, it would be improper for me to express an official opinion thereon.

As a matter of courtesy to you, however, I will say that it is my belief that the election referred to in section 77 of the Virginia Election Laws, quoted in your letter to me, does not refer to a special election. I think this section contemplated only the regular elections provided by law, and not elections which might or might not take place, depending upon the exigencies of a special occasion. Special elections occurring on extraordinary occasions I do not think were intended to be included within the meaning of section 77 of the Virginia Election Laws.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

## ELECTIONS—CANDIDATES.

RICHMOND, VA., *August 12, 1919.*

MR. JOHN R. CAMPBELL,  
*Newland, Va.*

DEAR SIR:

I am in receipt of your letter of August 1, to which I will reply at once. Section 77 of the Election Laws reads as follows:

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

My predecessor in office, Attorney General Pollard, held that a registrar who registered a voter since the November general election, was not eligible as a candidate at the next primary election.

You ask if a registered voter whose name does not appear on the paid tax list, but who has paid his taxes, can vote at the primary by exhibiting his tax receipt. The law provides that where the name of a voter is left off the treasurer's list, he can, within thirty days from the time the list is posted by the treasurer, apply to the court or the judge thereof in vacation, and have his name put upon the list. There have been instances where the judges permitted a party to vote on his tax receipt although his name did not appear on the list. The legality of such action would have to be determined by a court, and an opinion from me would be merely advisory and not a finality.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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ELECTIONS—EXPENSES OF CANDIDATES.

RICHMOND, VA., August 29, 1919.

HON. WM. M. JOYCE,  
*House of Delegates,*  
*City.*

DEAR SIR:

Acknowledgment is made of your letter of August 28, in which you state that a certain person was candidate for the House of Delegates in a certain county in Virginia in a recent election; that desiring to be at several different precincts for a while on election day, the candidate hired a car for the purpose of taking him from one precinct to another, but that during the time it was not needed for this purpose, it was used to bring a few voters from their homes to the polls and take a few of them from the polls to their houses, and that all the men brought to the polls were members of the same political party as the candidate. Upon this statement of fact you ask as to the legality of the conduct of the candidate.

I understand that the election to which you refer was a general election and not a primary. This being true, I am of the opinion that there was nothing illegal in the action of the candidate. Section 145-a of the Election Law provides that a candidate shall not expend any money or other valuable thing to influence voters in his behalf, or permit the same to be used, with his knowledge and consent, by his friends or adherents in any election. I do not think that the acts of the candidate in question could be construed as influencing voters in his behalf, as the bringing of them to the polls still allows them to exercise the right of suffrage as they deem proper, and the mere giving them a facility to exercise that right, does not, in my opinion, come within the scope of the statute.

Yours truly,

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

## ELECTIONS—CAPITATION TAXES.

RICHMOND, VA., *January 9, 1919.*

MR. JOSEPH E. WRIGHT,  
*Commissioner of Revenue,*  
*Leesburg, Va.*

MY DEAR MR. WRIGHT:

I acknowledge receipt of your letter of January 8, 1919, asking whether or not soldiers who have been in the allied armies in France will be permitted to vote without paying capitation taxes.

There is no exemption, so far as I know of, applying to soldiers who are in the allied armies now in France, and the requirement that poll taxes shall be paid applies to soldiers as well as to civilians. Sections 20, 21, 22 and 23 of the Constitution of Virginia deal with the question of persons who are entitled to vote, and prescribe the methods by which they shall qualify. You are doubtless convenient to some lawyer's office where you will be able to find these sections of the Constitution and can there read them in full.

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

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ELECTIONS—REQUIREMENTS AS TO PAYMENT OF CAPITATION TAXES.RICHMOND, VA., *March 6, 1919.*

MR. T. H. MEREDITH,  
*Lawrenceville, Va.*

MY DEAR SIR:

Your letter of March 5 just received, to which I will reply at once.

You ask whether soldiers engaged in the late war will be permitted to vote in the next election without paying the poll tax required by the Constitution.

In reply, I will state that the Constitution does not exempt them from the payment of this tax, and it will be necessary for them to pay their poll taxes before they can vote.

The only class of soldiers exempted under the Constitution from paying poll taxes are those who served in the late war between the States. While this may appear as a great hardship, at the same time it is a matter which is controlled by the Constitution.

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

## REPORT OF THE ATTORNEY GENERAL.

## ELECTIONS—CAPITATION TAX.

RICHMOND, VA., *March 19, 1919.*MR. CLAUDE T. BEVERLY,  
*Norton, Va.*

DEAR SIR:

I beg leave to acknowledge receipt of your letter of the 14th inst., in which you ask whether men who are registered and who served in the United States army during the recent war have to pay their poll taxes six months before the election in order to vote.

In reply, I will state that under the provisions of the Election Laws it will be necessary to do this as a prerequisite to voting. This, of course, looks like a hardship, but at the same time the law so provides.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

## ELECTIONS—CAPITATION TAX.

RICHMOND, VA., *April 14, 1919.*MR. EDGAR D. MILLER,  
*Fort Monroe, Va.*

DEAR SIR:

I acknowledge receipt of your letter of April 12, 1919, in which you desire to know whether or not the poll tax will be required of discharged soldiers before they can vote.

Section 22 of the State Constitution exempts only such persons who served in the army or navy of the United States, or the army or navy of the Confederate States during the War Between the States. There is no exemption from the payment of poll taxes for any service in the army or navy except that above referred to. You, therefore, will be required to pay your poll tax just as any other person voting.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

## ELECTIONS—CAPITATION TAX.

RICHMOND, VA., *June 9, 1919.*MR. C. J. MEETZE,  
*Manassas, Va.*

DEAR SIR:

Replying to yours of the 7th inst., I beg to advise you that the only persons exempted under our Constitution from the payment of all capitation taxes assessed or assessable against them six months prior to an election, as required by section 22 of the Constitution, are the veterans of the Civil War.

Under our Constitution, therefore, as unfortunate as it may seem, men returning from service in the present war are not qualified to vote unless they have complied with the requirements as to payment of poll taxes, as found in section 21 of the Constitution.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

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ELECTIONS—CAPITATION TAX.

RICHMOND, VA., *June 5, 1919.*

MR. W. J. MAYES,  
*Jarratt, Va.*

DEAR SIR:

I am in receipt of yours of the 4th inst.

In reply thereto, I share the common regret that the boys who have been in the service have not been provided for in regard to the payment of capitation taxes.

Under section 21 of the Constitution, as a prerequisite to a right to vote, a person must pay all capitation taxes assessed or assessable against him six months prior to the election at which he desires to vote. Therefore, unless these taxes have been paid by him six months prior to the November election, he is ineligible to vote in the August primary.

There is an express exception in our Constitution in regard to payment of these taxes in favor of Civil War veterans, but there is none that would except men who have served in the present war.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

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ELECTIONS—CAPITATION TAX.

RICHMOND, VA., *April 5, 1919.*

MESSES. ELLIOTT & ELLIOTT,  
*Attorney at Law,*  
*Norfolk, Va.*

GENTLEMEN:

Acknowledgment is made of your letter of April 4, in which you inquire whether persons who served in the war between Germany and the United States are entitled to register by reason of their having served in this war; or, in other words, whether such persons are relieved of the requirements placed upon other applicants for registration.

I am of the opinion that the persons referred to by you would have to fulfill the same requirements in order to register that are required of other applicants, as there is no provision in our law making exception of persons who have been engaged in war.

Yours truly,

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

## ELECTIONS—REQUIREMENTS AS TO PAYMENT OF CAPITATION TAXES.

RICHMOND, VA., July 12, 1919.

HON. WM. BULLITT FITZHUGH,  
*Machipongo, Va.*

MY DEAR MR. FITZHUGH :

Acknowledgment is made of your letter, in which you request me to advise you if something cannot be done to permit the soldiers who have returned to Virginia too late to pay their poll taxes within the time prescribed by law to vote in the coming primary election, which will be held on the 5th of next August.

As you say, it is greatly to be regretted that these men who have suffered and made every sacrifice for their country are not entitled to vote in the primary election on their return home. Unfortunately for our returning soldiers, however, the Constitution of Virginia, 1902, section 21, prescribes that, as a prerequisite to the right to vote after the first day of January, 1904, one must personally pay at least six months prior to the election, all State poll taxes assessed or assessable against him under this Constitution, during the three years next preceding that in which he offers to vote.

Section 22 of the Virginia Constitution permits the veterans of the late War Between the States to vote without the prepayment of the capitation taxes assessed or assessable against them. This section, however, is limited in its application to the veterans of the War Between the States, and cannot be invoked in the case here under consideration.

Section 35 of the Virginia Constitution provides as follows:

"No person shall vote at any legalized primary election for the nomination of any candidate for office unless he is at the time registered and qualified to vote at the next succeeding election."

You will, therefore, see that section 21 of the Constitution of Virginia prevents one from voting in a general election unless his taxes are paid in the time prescribed therein, and that section 35 prohibits any person from voting in a *legalized* primary election unless he is registered at the time, and "qualified to vote at the next succeeding election."

Attorney General Anderson held, in an opinion rendered August 13, 1903, Report of the Attorney General for 1903, page 16, that section 35 of the Constitution of Virginia did not apply to a party primary, but that if the primary in question was a legalized primary, as a prerequisite to vote, one must comply with the terms thereof and be qualified to vote at the next succeeding election.

It is possible that if the legislature had been in session at the time this question arose, arrangements could have been made to permit the holding of a party primary instead of a primary under chapter 307 of the Acts of 1914 (Virginia Primary Election Laws, page 88 et seq.). As the legislature will not assemble, however, until after the date fixed for the primary, the same will have to be conducted in accordance with the provisions of the pri-

mary election laws, which render such election a legalized primary, and, therefore, falling within the meaning of section 35 of the Virginia Constitution.

Very truly yours,

JNO. R. SAUNDERS,

*Attorney General.*

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ELECTIONS—REQUIREMENTS AS TO PAYMENT OF CAPITATION TAXES.

RICHMOND, VA., *July 22, 1919.*

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

MY DEAR GOVERNOR:

Acknowledgment is made of your letter of July 21, 1919, which is in the following terms:

"Numbers of our soldiers, sailors and marines, while in the military service of the United States during the war with Germany and Austria-Hungary, failed to pay their poll taxes, and now, having been discharged and returned home, are confronted with the question of their right to vote, not only in the general election to be held in November of the present year, but in the primary election to be held on next August 5th as well. The question is one of great importance and apparently depends upon a construction of sections 21, 22 and 35 of the Constitution of Virginia (1902) and of section 62 of the Code (Supp. 1910), to which references are made for convenience.

"I desire your opinion on the following questions:

"1. May soldiers, otherwise qualified, who have not paid, at least six months prior to the November election, all State poll taxes assessed or assessable against them, under the Constitution, during the three years next preceding, vote therein?

"2. May such soldiers vote in the primary election to be held on next August 5th?

"3. If such soldiers cannot, under the law now in force, vote in the coming primary and general elections, could the General Assembly, if in session previous thereto, enact valid legislation, after failure to pay poll taxes in time, so as to permit such soldiers to participate in the elections named, or either of them?"

Your first question is answered by section 21 of the Constitution of Virginia (1902), which reads as follows:

"Any person registered under either of the last two sections shall have the right to vote for members of the General Assembly and all officers elective by the people, subject to the following conditions:

"That he, unless exempted by section twenty-two, shall, as a prerequisite to the right to vote after the first day of January, nineteen hundred and four, personally pay, at least six months prior to the election, all State poll taxes assessed or assessable against him, under this Constitution, during the three years next preceding that in which he offers to vote; provided that, if he register after the first day of January, nineteen hundred and four, he shall, unless physically unable, prepare and deposit his ballot without aid, on such printed form as the law may prescribe, but any voter registered prior to that date may be aided in the preparation of his ballot by such officer of election as he himself may designate."

Section 22 of the Constitution, which provides an exception to the provisions of section 21, reads as follows:

"No person who, during the late War Between the States, served in the army or navy of the United States, of 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."

This section, however, is limited in its application to the veterans of the "late War Between the States," and has no application to those who were engaged in the military or naval service of the United States in the recent World War.

It will, therefore, be seen that, under the provisions of the Virginia Constitution, your first question must be answered, "No."

The answer to your second question is governed by the provisions of section 35 of the Virginia Constitution, and by chapter 307 of the Acts of 1912, as amended, which latter act is commonly known as the Virginia Primary Election law.

Section 35 of the Constitution reads as follows:

"No person shall vote at any legalized primary election for the nomination of any candidate for office unless he is at the time registered and qualified to vote at the next succeeding election."

Chapter 307 of the Acts of 1912, as amended, provides for a legalized primary, and the primary to be held on next August 5, being called and conducted under the provisions of that act, will be a legalized primary. Therefore, persons disqualified to vote at the next succeeding election (November, 1919) are not entitled to vote in the primary to be held August 5, 1919.

In reply to your third question, I am of the opinion that the General Assembly has no authority to enact valid legislation which could waive the provisions of section 21 of the Virginia Constitution so as to permit persons who have failed to pay their poll taxes in the time required by law to vote in the general election to be held in November, 1919, as the constitutional provision is mandatory and paramount to any law that the legislature could enact, and this is true even though the legislature were to convene prior to August 5, the date for the holding of the primary.

Of course, the Primary Law could be temporarily repealed by the legislature, and the party authorities could hold a primary according to rules and regulations prescribed by them.

It is indeed unfortunate that those who have served their State and their country so well, on their return home, are unable to participate in the elections to be held this year by the reason of non-payment of their capitation taxes. I regret this unfortunate situation as much as you, but the provisions of the Constitution are inflexible, and there are no means by which the same can be altered, within the time necessary, to affect the general and special elections to be held this year.

Very truly yours,

JNO. R. SAUNDERS,

*Attorney General.*

## ELECTIONS—REQUIREMENTS AS TO PAYMENT OF CAPITATION TAXES.

RICHMOND, VA., *August 4, 1919.*

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

MY DEAR GOVERNOR:

I beg leave to acknowledge receipt of your letter of August 1, 1919, in which you enclose a communication from Mr. Morton L. Wallerstein, secretary of the American Legion, Richmond Post No. 1.

I have read very carefully the contents of Mr. Wallerstein's letter, and am of the opinion that the legislature of Virginia has no authority to dispense with any of the constitutional qualifications and confer the elective franchise upon other classes than those to whom it is given by the Constitution.

Section 2, 15 Cyc., page 281, reads as follows:

"While the elective franchise is a privilege rather than a right and may be taken away by the power which conferred it, yet when it has been granted by the Constitution it cannot be abridged by the legislature, and all laws in regulation of the same must be reasonable, uniform and impartial. Where the Constitution of a State fixes the qualifications and determines who shall be deemed qualified voters in direct, positive and affirmative terms, these qualifications cannot be added to by legislative enactment. Any provisions which would impose upon a particular class of citizens conditions and requirements not imposed upon all others are void. Neither is it within the power of the legislature to dispense with any of the constitutional qualifications and confer the elective franchise upon other classes than those to whom it is given by the constitution; for the enlargement and deprivation of the right of suffrage are equally obnoxious to the Constitution. In short, it is not within the power of the legislature to deny, abridge, or extend the constitutional right of suffrage; or in any way to change the qualifications of voters as defined by the Constitution of the State. \* \* \*"

You will see from the above authority that, in as much as the Constitution of Virginia requires the prepayment of all poll taxes assessed or assessable against a voter six months prior to the election before an elector can vote, it is, therefore, not within the province of the legislature of Virginia to alter or change this requirement.

As stated to you in a former letter, I deeply regret that circumstances are such that the young men who served our country overseas are not permitted to vote, at the same time I can only construe the law as it is written.

I am returning Mr. Wallerstein's letter.

Very truly yours,

JNO. R. SAUNDERS,

*Attorney General.*

## ELECTIONS—CAPITATION TAX.

RICHMOND, VA., *July 9, 1919.*

MR. A. E. KELLAM,  
*Princess Anne, Va.*

DEAR SIR:

Acknowledgment is made of your letter, in which you state that a citizen of another State came to Virginia in March, 1917; that he was assessed for capitation taxes for 1918; that he paid the capitation taxes for 1918 six months prior to the election, and that he is on the treasurer's certified list for 1918. You ask whether such a person is entitled to vote in the November election, 1919.

I enclose a copy of a letter, which I have just written to Mr. F. C. Hillman, of Clintwood, Va., in which I have discussed this question at some length, and reached the conclusion that, under the circumstances you mention, a citizen can vote in the November election of 1919.

The conclusion is reached from the fact that the Constitution provides that the only State poll taxes which must be paid as a prerequisite to voting in an election are the taxes assessable against the proposed voter for the three years preceding the year in which the election is held. As the citizen referred to by you did not come to Virginia until March, 1917, he was not assessable for State poll taxes until February, 1918, and, therefore, having paid all the taxes assessable against him for the years preceding the 1919 election, he is qualified to vote in the November election of 1919.

Any further information I can give you in regard to this matter will be gladly furnished.

Yours truly,

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

## ELECTIONS—CAPITATION TAX.

RICHMOND, VA., *July 9, 1919.*

MR. F. C. HILLMAN,  
*Clintwood, Va.*

DEAR SIR:

Acknowledgment is made of your letter, in which you ask what capitation tax must be paid by a person moving to Virginia from another State in order for him to vote.

Section 18 of the Constitution (section 62 of the Code of 1910) provides that "every male citizen of the United States, 21 years of age, who has been a resident of the State two years, the county, city or town one year, and of the precinct in which he offers to vote thirty days next preceding the election at which he offers to vote, has been registered, and has paid his poll taxes as hereinafter required, shall be entitled to vote." It is clear, therefore, that, in order for a person to vote, he must have been, at the time he offers to vote, 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.

I take for granted, from your letter, that the proposed voter will have lived in Virginia two years, in the county, city or town one year, and the precinct in which he offers to vote thirty days next preceding the election at which he offers to vote; that there is no question as to his registration, and that the only question at issue is what poll taxes a person who has lived in this State only two years must pay in order to vote.

Section 21 of the Constitution provides that any person registered under section 20 shall have the right to vote, provided he has paid, at least six months prior to the election, all State poll taxes assessed or assessable against him under the Constitution during the three years next preceding that in which he offers to vote. The question arises, therefore, what poll taxes are assessable against the person who has been in the State two years when he offers to vote?

Poll taxes are assessable as of the first of February of each year, under the laws of Virginia (Virginia Code, section 491). Therefore, a person who makes Virginia his residence on or before the first day of February of any year is assessable with a State poll tax for that year; but a person who makes Virginia his residence after the first day of February in any year is not assessable with a State poll tax until the year following. So, as a person, in order to vote, only has to pay the taxes that are assessable against him for the three years prior to the year in which he offers to vote, if a person becomes a resident of Virginia subsequent to the first of February, 1917, he would be qualified to vote in the elections to be held in 1919, provided he has paid, six months prior to the election in which he offers to vote, the poll tax for 1918, and provided further, of course, that when the election is held he has lived in the State for two years. For, while a person who came to Virginia in September, 1917, would only be assessable with a 1918 State poll tax, he would not be qualified to vote in the August primary, 1919, because he would not have lived in the State two years. But, if he came to the State in March, 1917, he could vote in the August primary, 1919, provided he had paid, six months prior to the election, his 1918 poll tax, because he has paid all State poll taxes assessable against him for the three years prior to the year in which the election is held, and would have fulfilled the requirement that he should have lived in the State two years. On the other hand, a person who came to Virginia on or before the first of February, 1917, could not vote in any of the elections held in 1919, unless he had paid, six months prior thereto, the State poll taxes for 1917 and for 1918.

It is thus seen that the claim, which you say is made by certain of your citizens, that a man may vote by paying one year's poll tax after moving to Virginia from another State is too general for determination of the validity of the claim, for every person must pay all the poll taxes assessable against him for the three years next preceding the election, and it depends upon when a person came to the State with the intention of making it his residence, as to how many years' taxes are assessable against him; that is, whether he came before the first of February of any year, or after the first of February of any year.

Of course, in no case is it necessary for him to have paid the 1919 taxes, because the only taxes that he must pay are those assessable against him for the years preceding that in which he offers to vote.

If the above is not clear, or if I can furnish you any further information on this subject, I will be glad for you to call upon me.

Very truly yours,

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

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ELECTIONS—CAPITATION TAX.

RICHMOND, VA., *June 23, 1919.*

MR. WM. H. DAVIS,  
*Norfolk, Va.*

DEAR SIR:

Acknowledgment is made of your letter of June 20, in which you state that you paid your capitation tax for 1918 on the 5th day of May, 1919, and that you have been advised that you cannot vote in the election to be held on November 4, 1919. You ask that you be placed on the list of voters qualified for this election.

I regret that neither I nor your local officers are authorized to place you on the certified list as qualified to vote in the election of November 4, 1919. The Constitution of Virginia provides that no person shall be qualified to vote who has not paid his capitation taxes at least six months prior to the election in which he offers to vote. This is an inflexible mandate of the Constitution, and no one has the authority to do otherwise than to obey it, until it is changed by an amendment to the Constitution.

In paying your taxes on the 5th day of May, 1919, you did not pay them "at least six months prior" to November 4, 1919, and, therefore, your treasurer was correct in leaving you off the list. I regret that I am unable to do anything for you in this matter, but, as I stated above, I know of no law by which you can be placed upon the certified list of those qualified to vote in the November election.

Yours truly,

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

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ELECTIONS—CAPITATION TAX.

RICHMOND, VA., *June 20, 1919.*

MR. D. J. HOLEMBE,  
*Danville, Va.*

DEAR SIR:

I am in receipt of yours of the 19th instant, in which you desire to know whether a person, by reason of non-payment of poll taxes, is rendered ineligible to vote in the primary election, may legally become a member of the House of Delegates. Section 44 of the Constitution provides, in part, as follows:

"Any person may be elected a member of the House of Delegates who, at the time of the election, is actually a resident of the house district and qualified to vote for members of the General Assembly."

You will therefore see that unless a person is a qualified voter at the time of the election for the House of Delegates, he cannot legally be elected a member thereof.

In addition to the above quoted section, section 32 provides that every person qualified to vote shall be eligible for any office of the State or of any county, city, town or any other sub-division of the State, etc. This has been construed by the Supreme Court of Appeals as forbidding the addition of a freehold qualification as a prerequisite to members on a road board. *District Road Board v. Spilman*, 117 Va. 201.

It would therefore seem clear that if the legislature cannot add qualifications it cannot subtract them.

Trusting this gives you the information you desire, I am,

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

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ELECTIONS—CAPITATION TAX.

RICHMOND, VA., June 6, 1919.

MR. GEORGE W. HUNTLEY,  
*Covington, Va.*

MY DEAR MR. HUNTLEY:

Upon my return from the Supreme Court of Appeals at Wytheville this morning, I found your letter of June 2, asking whether persons who paid their poll taxes in January can vote at the election to be held on June 1, and also the reply of my law assistant, Mr. Wallerstein.

The conclusion reached in his letter to you is the conclusion which I reached sometime ago, and have so advised all inquiring of me in regard to this matter.

Section 86-c of the Virginia Code of 1904, as amended by the Acts of 1908, page 162, which amendment is found in Pollard's Code Supplement, 1910, page 23, fully sustains the position that only those can vote in the June election who have paid their poll taxes six months prior thereto. Therefore, in the election which you hold on June 10, no one is qualified to vote who did not pay his poll taxes on or before December 10, 1918.

If I can be of any further assistance to you in this or any other matter, feel free to call upon me.

Yours truly,

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

## ELECTIONS—CAPITATION TAX.

RICHMOND, VA., *April 29, 1919.*

MR. P. D. CAMP,  
*Franklin, Va.*

MY DEAR MR. CAMP:

I acknowledge receipt of your letter of April 28, 1919, in which you ask whether or not soldiers who have been in the service overseas can pay their capitation taxes after May 3, when they have not been assessed.

Section 21 of the Constitution provides, among other things, that capitation taxes must be paid six months before the election at which the person offers to vote. If for any reason the name of the person has been left off of the commissioner's books for last year, that fact alone would not disqualify him from voting, provided he pays all capitation taxes assessed or assessable against him.

In other words, if A, who has been overseas, returns to Virginia and finds that the Commissioner of Revenue, during his absence last year, failed to list his name, he could, notwithstanding this, pay his capitation tax at any time six months prior to the November election, and he would be qualified then to vote in the August primary and in the regular election in November.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

## ELECTIONS—CAPITATION TAX.

RICHMOND, VA., *May 10, 1919.*

HON. B. GRAY TUNSTALL,  
*City Treasurer,*  
*Norfolk, Va.*

MY DEAR MR. TUNSTALL:

On my return to my office from a tour on behalf of the Victory Loan, I found your letter of May 6 in regard to the last day for the payment of poll taxes for qualification in the November election.

Your wire of May 3 in regard to this matter was received about 11 o'clock on Saturday, May 3, and before noon of that day I replied to you as follows:

"Last day for payment of poll taxes for qualification November election is May third. Reasons for this conclusion will be given if desired."

Of course I do not know why the telegram was not delivered to you promptly. I am glad to give you my reasons for the conclusion reached by me.

Section 21 of the Constitution of Virginia provides that no person shall vote at an election unless he has paid *at least six months prior to the election*, all State poll taxes assessed or assessable against him under the Constitution, during three years next preceding that in which he offers to vote.

The November election falls on November 4. As a prerequisite to a person voting in that election, the Constitution provides that he must have paid his taxes at least six months prior to November 4. A person paying his taxes on the 5th of May does not pay his taxes "at least six months prior to the election" and therefore he has not complied with the conditions placed on him as a prerequisite to voting.

As Mr. Pollard, the former Attorney General, wrote you on December 12, 1917, this provision of the Constitution (section 21) requiring as a prerequisite to voting, the payment of poll taxes "at least six months prior to the election," is inflexible. No one, not even the legislature itself, can extend that time.

Whether it was an oversight by the framers of the Constitution in not providing for a case where the last day falls on a Sunday, I do not know, but there is no provision in the Constitution making any such exception.

Nor has the legislature attempted to make any extension. An examination of the acts of the legislature shows that the acts excluding Sunday in the computation of time are found in Virginia Code, section 1790-b, clause 10, providing that Sunday should not be reckoned in fixing a fine for a violation of that act; section 2841-a, clause 194, providing that where the last day for doing an act under the negotiable instruments law, falls on Sunday, the act may be done on the next succeeding business day; section 7143 providing that where the term of a convict expires on Sunday, the superintendent may discharge him on the day before, but the legislature has never even attempted to change the mandate of the Constitution that a person can vote who has not paid his poll taxes *at least six months prior to* the time when he offers to vote.

I note what you say in regard to an opinion written by Mr. Pollard to you on December 14, 1915. At the time that I wired you I had not seen his opinions, but I find that on April 10, 1916, Mr. Pollard wrote to Thomas Newman, treasurer of Newport News, a letter as follows:

"Yours of April 6 received. The election falls this year on November 7, and six months before that date is May 7—Sunday. I believe the courts would decide that the last day upon which the tax can be paid is Saturday, the 6th. This precise question, however, has never been decided by our court of last resort."

On June 2, 1917, this office wrote a letter to B. A. Banks, Esq., of Norfolk, in response to an inquiry in regard to the payment of poll taxes, which says:

"I beg to enclose you copy of the letter of the Attorney General on this question, which holds that where the last day upon which the payment of the poll tax falls due, should come on Sunday, the taxpayer, in order to qualify himself to vote in the next election, would have to qualify himself on the Saturday before."

From this it would seem that Mr. Pollard, in 1916 and again in 1917, reversed his ruling to you contained in his letter of December 14, 1915.

I am under the impression that while I was Attorney General, the matter came before me and my ruling then was the same as that contained in my telegram to you of May 3.

I note what you say in regard to a number of voters paying their poll taxes to you on Monday, the 5th, under the impression that they were in time to vote in the November election, and your desire to place their names upon the qualified list in order that they may not be prevented from exercising the right of suffrage, is most commendable as would naturally be expected of you.

I concur with you in wishing there was some way in which these persons paying their poll taxes on the 5th might be included in the list certified by you to the clerk, but as has been said, the Constitution is inflexible and section 21 bears only one interpretation—that unless one paid his poll taxes on or before May 4, he cannot vote on November 4.

I have been advised that my telegram to you appeared in one of your papers there, and I would appreciate your doing me the kindness to give this letter also to the paper in order that my position may be clearly understood. To allow a person to vote at an election on November 4, who did not pay his poll taxes until May 5, would undoubtedly be extending the time provided by the Constitution.

Yours truly,

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

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#### ELECTIONS—CAPITATION TAX.

RICHMOND, VA, April 21, 1919.

MR. W. R. DOOLEY, *Treasurer,*  
*Bedford, Va.*

DEAR SIR:

I beg leave to acknowledge receipt of your letter of April 17, in which you ask my opinion as to what is the last day for the payment of capitation taxes in order to qualify for the November election which is on November 4 next.

As stated in your letter, six months preceding the November election would be Sunday, May 4. You ask if a voter is required to pay his capitation tax on Saturday or would he be permitted to pay the same the Monday following, which would be May 5. I am of the opinion that it is necessary that such capitation tax shall be paid not later than Saturday, May 3, for the reason that if it were paid on Monday, May 5, it would not be six months preceding the November election.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## ELECTIONS—PAYMENT OF CAPITATION TAXES.

RICHMOND, VA., *December 26, 1919.*

MR. JNO. L. F. KING, *Business Secretary,*  
*Young Business Men's Club,*  
*Petersburg, Va.*

DEAR SIR:

Acknowledgment is made of your letter, in which you ask:

1. The last day upon which poll taxes can be paid to qualify persons to vote in the spring election;
2. The date upon which candidates for local offices may last declare themselves; and,
3. The date of the election.

Answering your questions in reverse order, the election to which I presume you refer is the election provided for by section 98 of the Code, which provides for an election on the second Tuesday in June. The second Tuesday in June in 1920 falls on June 8.

With respect to your second question, of course, a person may declare himself a candidate at any time, but I presume your question relates to the time of filing a notice of candidacy with the electoral board. Section 122-a of the Code (Pollard's Code, volume IV., 1916, page 130) provides that any person who intends to be a candidate for any office other than a State or national office, shall give notice at least thirty days before such election to the county clerk or clerks of the corporation or hustings courts of the county or counties, or of the city or cities whose electors vote for such office, and it is further provided that no person not so announcing his candidacy shall have his name printed on ballots provided for such election.

With reference to your first question, the Constitution and statutes of this State provide that no person, unless he has paid at least six months prior to the election all State poll taxes assessed or assessable against him during the three years next preceding the election in which he offers to vote shall be qualified to vote in such election. Under this provision, no person can vote on June 8, 1920, who has not paid on or before December 8, 1919, all poll taxes assessed or assessable against him for the three years next preceding June 8, 1920. Of course, this requirement does not apply to a young man just becoming of age.

This has been the ruling of this office time and again, which ruling has been tested in court and sustained.

It may be of interest to call your attention to Acts of 1916, page 508, which provides that, unless otherwise provided by the statute or contract under consideration, the time from or after which, or within which an act may be done, or the time before or after a given date may be computed by excluding the first day and including the last day of the period.

Yours truly,

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

## ELECTIONS—PAYMENT OF CAPITATION TAXES.

RICHMOND, VA., December 15, 1919.

MR. J. B. PACE, *City Treasurer,*  
*Richmond, Va.*

DEAR SIR:

Acknowledgment is made of your letter, in which you state that you have received poll taxes—within the time required by law—from various persons who have not been assessed, and also that you have received, within this time, delinquent poll taxes from other persons. You ask what is the proper position for you to take in the premises.

In the case of *Smith v. Bell*, 113 Va. 667, it was held that:

“Under the provisions of section 21 of the Constitution, persons who are assessable with poll taxes, and have paid them to the treasurer, are not disfranchised simply because they had not previously been assessed by the Commissioner of Revenue and obtained his certificate of assessment.”

I am of the opinion, therefore, that you should include in your certified list of the persons who have paid their poll taxes in time to vote at the election to be held on June 8, 1920, those persons who paid their poll taxes to you on or before the 8th of December, 1919, even though they have not been assessed for the years for which they paid these taxes.

With reference to the payment to you of delinquent poll taxes for the years 1917 and 1918, it was decided in *Smith v. Bell* as follows:

“Section 608 of the Code provides that taxes appearing on the delinquent list may be paid to the clerk, or to the auditor, but that they cannot be collected by the treasurer. If, however, delinquent poll taxes are paid by voters to the treasurer, and he pays them over to the auditor, the payment is as valid as if it had been made to the auditor in the first instance. While the State has plenary power to devise adequate means of assessing, levying and collecting its revenue, subject only to such limitations as may be imposed by the Constitution, the statute may not be so interpreted and enforced as to abridge the elective franchise as guaranteed by the Constitution.”

At the time this case was decided, delinquent poll taxes could not be paid to the treasurer, but were paid to the clerk or the auditor. Section 608 of the Code, providing for the payment of delinquent poll taxes, was amended in 1914, and now they must be paid to the clerk of the corporation or hustings court.

Under this amendment, such delinquent taxes as have been paid to you will be turned over to the clerk of the hustings court of the city of Richmond. Under the ruling in the case of *Smith v. Bell*, set out in the last above excerpt therefrom, I am of the opinion that you should include in your certified list of those who have paid their poll taxes, as required by the Constitution, those persons who paid to you delinquent State poll taxes on or before the 8th of December, 1919.

In rendering you this opinion, I do not want it understood that you are compelled to accept delinquent poll taxes tendered to you, but when they are

tendered, you may refuse to accept them on the ground that they should be paid to the clerk of the hustings court. However, where they are paid or transmitted to you and are not returned by you, together with your reasons for not accepting them, before the time expires on which they could be paid in order to qualify one to vote in the next election, I am of the opinion that it is your duty to retain them, turn them over to the clerk of the hustings court, and include the names of the persons in your certified list of persons who have paid their poll taxes on or before December 8, 1919.

Yours truly,

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

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ELECTIONS—PAYMENT OF CAPITATION TAXES.

RICHMOND, VA., November 26, 1919.

MR. THOS. P. BRYAN,  
*President of Civic Association,*  
*Richmond, Va.*

DEAR SIR:

Acknowledgment is made of your letter in which you ask whether a treasurer is authorized to refuse to accept the payment of a person's State poll tax, on the ground that such person does not, at the same time, offer to pay all other State taxes assessed against him.

The Constitution of Virginia makes the payment of the State poll tax a prerequisite to the right to vote. So far as the payment of taxes is concerned, the payment of the State poll tax is the only prerequisite to the right to vote.

When one tenders to the treasurer his State poll tax not less than six months prior to an election, in order to qualify himself to vote in such election, and the treasurer refuses to accept such State poll tax unless he pays all other State taxes, or any other State tax assessed against him at the same time, the treasurer adds a condition to the right to vote not prescribed by the Constitution.

I am, therefore, of the opinion that a treasurer is not authorized to refuse to accept State poll taxes tendered by persons, because such persons do not, at the same time, pay such other State taxes as may be assessed against them.

It may be of interest to know that this very question came up in a certain city. Persons tendered to the treasurer of that city their State poll taxes within the time prescribed by the Constitution in order to qualify themselves to vote in the ensuing election. The treasurer refused to accept the State poll taxes unless there were paid at the same time other State taxes assessed against the persons offering to pay such State poll taxes. At the request of certain persons, the reception of whose State poll taxes had been declined by the treasurer, because they would not pay other State taxes assessed against them at the same time, I applied to the corporation court of the city for a mandamus to compel the treasurer to receive such State poll taxes without requiring the payment, at the same time, of the State property taxes. The court immediately entered an order granting the mandamus, and said that

to place *any condition* upon the acceptance of the State poll taxes tendered was to add a prerequisite to the right to vote not prescribed by the Constitution of the State, and, therefore, was plainly unlawful.

Yours truly,

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

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ELECTIONS—PAYMENT OF CAPITATION TAXES.

RICHMOND, VA., *September 22, 1919.*

MR. B. GRAY TUNSTALL,  
*City Treasurer,*  
*Norfolk, Va.*

DEAR SIR:

Acknowledgment is made of your letter of September 20, 1919, in which you request that you be advised as to the last day in December upon which poll taxes can be paid so as to qualify voters for an election to be held in Norfolk on the second Tuesday in June, 1920.

This election is one of the elections provided for by the Constitution, section 122. The Constitution, section 21, provides that, in order to vote, poll taxes must be paid at least six months prior to the election. As the election you mention comes on the 8th day of June, six months prior thereto would be the 8th day of December, 1919.

I am, therefore, of the opinion that in order for a person to vote on the 8th day of June, 1920, he must pay all poll taxes assessed or assessable against him for 1917, 1918 and 1919 on or before December 8, 1919.

Yours truly,

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

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ELECTIONS—CAPITATION TAX.

RICHMOND, VA., *December 4, 1919.*

MR. W. V. MARTIN,  
*Box 354,*  
*Hopewell, Va.*

DEAR SIR:

Acknowledgment is made of your letter of December 3, 1919, in which you request me to advise you if you are required to pay a city capitation tax in addition to the State capitation tax as a prerequisite to the right to register and vote.

On November 29, 1906 (Opinions of Attorney General, 1906, page 171), Attorney General Anderson held that the only poll tax, the payment of which is or can be made a prerequisite to the exercise of the right to vote, is the State capitation tax. I concur in this opinion.

I am returning herewith your tax receipts.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## ELECTIONS—REQUIREMENTS AS TO PAYMENT OF CAPITATION TAXES.

RICHMOND, VA., *October 16, 1919.*

HON. ROBERT R. RUFF,  
*Commonwealth's Attorney,*  
*Lexington, Va.*

MY DEAR SIR:

Acknowledgment is made of your letter of October 10, in which you request my opinion as to the right of Samuel Arpia to vote in the November, 1919, election. You further state that Arpia is a naturalized citizen of the United States and that he was not granted his naturalization papers until February 20, 1917. Arpia, you state, has paid his capitation taxes only for the years 1917 and 1918. On this statement of facts, you desire the opinion of this office as to the right of this man to vote in the November, 1919, election.

In an opinion given Hon. C. Lee Moore on January 2, 1917, by Hon. John Garland Pollard, then Attorney General of Virginia, it was held that every male inhabitant of the State who has attained the age of twenty-one years, except those pensioned by the State for military service, is liable for the capitation tax of \$1.50 provided for in section 5 of the Virginia Tax Bill, and in response to the question submitted by the delinquent capitation tax collector of the city of Richmond:

"Can I collect from foreigners who claim they have not been naturalized and are not citizens, although some have lived here more than ten or more years?"

Mr. Pollard said (Report of Attorney General, 1917, page 284):

"In response to this question, I call your attention to section 5 of the Virginia Tax Bill, Va. Code, volume 4, page 545, which reads as follows:

"Upon every male person, classified in schedule A, there shall be a tax of one dollar and fifty cents, of which one dollar shall be paid for aid of the public free schools, and fifty cents shall be returned and paid into the treasury of the county or city in which it shall have been collected."

"Every male inhabitant of the State who has attained the age of 21 years, except those pensioned by the State for military services, is liable for the capitation tax of \$1.50 provided for in section 5 of the tax bill.

"Therefore, persons who have not been naturalized but who are inhabitants of this State, are required to pay the capitation tax provided for in section 5 of the Virginia Tax Bill."

Upon an examination of the statute referred to by Mr. Pollard, I am of the opinion that his conclusion is correct and I therefore concur therein. You will see from an examination of the Virginia Tax Bill that the classification under schedule A upon which the capitation tax is based, is upon that of *male inhabitants* who have attained the age of twenty-one years, except those pensioned by the State for military services. The term "inhabitant" is much broader than that of "citizen," and in my opinion includes every male person in this State above the age of twenty-one years who lives within the State, unless he is pensioned by the State for military service.

Unnaturalized persons, therefore, being subject to the payment of the capitation tax provided for by law, such a person who subsequently becomes naturalized, is within the meaning of section 21 of the Virginia Constitution, which provides that unless exempted by section 22, any person, as a prerequisite to the right to vote, shall have "personally paid, at least six months prior to the election, all State poll taxes assessed or assessable against him under this Constitution, during the three years next preceding that in which he offers to vote."

The man in question, if an inhabitant of this State for the three years preceding the election, is assessable with capitation taxes for these years, and, therefore, having paid taxes for only two years six months prior to the November, 1919, election, he is not entitled to vote therein.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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ELECTIONS—CONVICTION OF CRIME.

RICHMOND, VA., March 20, 1919.

MR. R. J. SUMMERS,  
*Commonwealth's Attorney,*  
*Abingdon, Va.*

DEAR SIR:

I beg leave to acknowledge receipt of your letter of March 15, in which you ask the question whether the verdict of the jury, rendered in Washington county on the first day of July, 1897, whereby Ellis Pope was found guilty of an unlawful assault and his punishment was fixed at ten months' confinement in the county jail, was such a conviction as disfranchises him.

I presume that this party was indicted under section 3671 of the Code of Virginia, which is commonly known as the "Maiming Act"; I judge this from the language of the verdict of the jury.

Section 3879 of the Code reads as follows:

"Offenses are either felonies or misdemeanors. Such offenses as are punishable with death or confinement in the penitentiary are felonies; all other offenses are misdemeanors."

The fact that the jury was allowed a discretion under section 3671, under which Pope was indicted, whereby they could either send him to the penitentiary or imprison him in the county jail, does not make the crime for which he was indicted a misdemeanor instead of a felony. Our court has held, in the cases of *Benton v. Commonwealth*, 89 Va. 507, and *Quillin's Case*, 105 Va. 874, that if the punishment prescribed for an offense charged in an indictment may be death or confinement in the penitentiary, it is a felony, notwithstanding the jury, upon conviction, actually imposes a less penalty by virtue of a discretion allowed them.

I am, therefore, of the opinion that Pope cannot vote until his disabilities have been removed.

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

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## ELECTIONS—JUDGES.

RICHMOND, VA., *June 18, 1919.*

MR. R. T. LOFTIS,  
*Alton, Va.*

DEAR SIR:

I am in receipt of yours of the 16th inst., in which you ask two questions, which I shall answer in their order.

First, you desire to know whether a person serving as judge of election may be removed because he is a near relative of one of the candidates. In reply thereto, I refer you to section 69 of the Virginia Code of 1904, which provides that the electoral board shall have power to remove from office any and every judge of election upon notice, who fails to discharge the duties of the office according to the law. Section 64 of the Code prohibits employees and officers of the United States government from serving as judges of election, but makes no reference to relatives of a candidate. I am, therefore, of the opinion that this is a matter which is proper for your electoral board to pass upon, and that it would be obviously improper for me to express any opinion.

In the second place, you ask as to whether a voter who is registered in one magisterial district but moves into another may retain his citizenship in the district from which he moved. In answer thereto, I would advise you that citizenship is largely a matter of a man's intention, and if this man still intends the district from which he moved to be his home, he may retain his citizenship there, although at the present time he may be in fact living elsewhere.

Trusting that I have sufficiently answered your inquiries, I am,

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

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## ELECTIONS—JUDGES.

RICHMOND, VA., *July 14, 1919.*

MR. R. T. LOFTIS,  
*Alton, Va.*

DEAR SIR:

I beg leave to acknowledge receipt of your letter of July 12 in which you ask the following question:

"Is a man eligible to serve as judge of election either in a primary or general election, who already is holding a public office?"

In reply to your question, I beg leave to refer you to the last paragraph of section 64 of the Virginia Election Laws, found on page 19, and section 118 of the Election Laws found on page 47 thereof.

In reply to your second question as to whether a primary election is conducted under the general election laws or under a separate and distinct law, I would state that the legislature of Virginia some years ago enacted a primary election law, copy of which you will also find in the Virginia Election Laws, and all elections are conducted in accordance with this law.

Your third question is as follows:

"Has a candidate in a primary election a right to be present or have a representation and see the ballots opened, canvassed and counted."

In answer to this, I would say that I can see no objection to a candidate or his representative being present when the ballots are opened and counted, and I feel sure that the judges conducting the election would not object to this.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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ELECTIONS—JUDGES.

RICHMOND, VA., July 7, 1919.

MR. P. F. TUCK, *Chairman,*  
*Democratic Executive Committee, Halifax County,*  
*South Boston, Va.*

DEAR SIR:

Acknowledgment is made of your letter of July 3, asking whether it will be necessary to have two sets of judges and two ballot boxes on August 5, to take care of the special election and the Democratic primary to be held on that day.

I am enclosing a copy of a letter, written by this office, to Hon. J. N. Brenaman, secretary of the State Democratic Committee, which expresses the view that it will be necessary to have two sets of judges, because the special election calls for judges from each of the two dominant political parties, while the primary provides that the judges shall be from the party holding the primary. It is, therefore, apparent that the judges in the special election cannot act in the primary.

There being two sets of judges, and one of the elections being an election in which all parties can participate, it will be necessary to have two ballot boxes.

Any other information which I can give you will be gladly furnished.

Yours truly,

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

## ELECTIONS—JUDGES.

RICHMOND, VA., *July 7, 1919.*

HON. M. B. BOOKER,  
*Houston, Va.*

MY DEAR MR. BOOKER:

On Saturday I replied to your telegram, asking whether the same judges could act in the primary and special elections to be held in August, by stating that the same judges could not act in each of the elections, and advised you also that I would write you a letter today. I did not write you on Saturday because none of the stenographers were here.

I am enclosing a copy of a letter written to Hon. J. N. Brenaman, secretary of the State Democratic Committee, which sets out the views of this office on this question.

You will notice that the special election calls for judges from each of the two political parties, while primaries provide that the judges shall be from the party holding the primary. It is, therefore, apparent that the judges in the special election should not act in the primary.

If I can give you any further information in regard to this matter, kindly feel free to call on me.

Yours truly,

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

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## ELECTIONS—MUNICIPAL ELECTIONS.

RICHMOND, VA., *April 4, 1919.*

MR. GUY L. PUGH,  
*St. Paul, Va.*

DEAR SIR:

I beg leave to acknowledge receipt of your letter of the 2nd in which you ask the question:

"If a man is qualified to vote in the November election for county and State officers, does that fact alone qualify him to vote in a June election in an incorporated town for aldermen and mayor?"

My answer to your question is no. The law requires that before one can vote in either a June election held in an incorporated town or in the November election for the election of county and State officers, such person must pay his capitation taxes six months prior to the time he offers to vote in either the November or June elections.

You can readily see that if a party pays his taxes in May he will be eligible to vote in the November election, but would not be eligible to vote in the June election held in an incorporated town unless he had paid his capitation taxes six months preceding the election.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## ELECTIONS—MUNICIPAL ELECTIONS.

RICHMOND, VA., May 26, 1919.

MR. H. P. WILDER,  
*South Boston, Va.*

MY DEAR SIR:

I beg leave to acknowledge receipt of your letter of May 24 concerning the question as to who is qualified to vote in a regular town election to be held in South Boston next month. This letter was written after our conversation over telephone last Friday. In that conversation I requested you to disregard the opinion expressed by me on May 19, which was written in response to your letter pertaining to the same question on May 14.

I stated in my letter of May 19 that Mr. Pollard, my predecessor, had decided that a person who was qualified to vote in the November election was also qualified to vote in a town election to be held in June. I am constrained to believe that I was in error in confirming this opinion of Mr. Pollard for reasons I will give in this letter.

Section 20 of the Constitution provides as to who may register after 1904. Section 21 of the Constitution provides the conditions for voting, part of which I will now quote to you:

"Any person registered under either of the last two sections shall have the right to vote for members of the General Assembly and all officers elected by the people, subject to the following conditions: That he, unless exempted by section 22 (which section exempts persons who were engaged in the late war between the States from paying capitation taxes as a prerequisite to voting) shall, as a prerequisite to the right to vote after the first day of January, 1904, personally pay *at least six months prior to the election*, all State poll taxes assessed or assessable against him under this Constitution during the three years next preceding that in which he offers to vote. \* \* \*

You will see from a reading of this section of the Constitution that all State poll taxes for three years must be paid at least six months prior to the election at which the elector offers to vote. This rule, as laid down by the Constitution, in my judgment, is inflexible.

Section 1021 of the Code of 1904 as amended, provides that in every town there shall be elected every two years on the second Tuesday in June, one elector of the said town who shall be denominated the mayor and not less than three nor more than nine electors who shall be denominated the councilmen of said town. The mayor and councilmen shall constitute the council of said town.

Section 1022, as far as applicable to this question, provides that the electoral board shall, not less than fifteen days before any town election, appoint one registrar and three judges of election who shall act as commissioners of election, and that said registrar shall, before any election in said town, register all voters who are residents of such town and who shall have previously registered in the county or either of them in which said town is situated, and none others.

Section 1023 provides as follows:

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

Section 86-c of the Code (as amended by the act of March 3, 1909) provides as follows:

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

Section 1024 of the Code provides as follows:

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

It therefore seems to me that one must come to the conclusion after reading the section of the Constitution above quoted, and likewise the statutes referred to, that in order for one to qualify to vote in a town election, the following requisites must be complied with:

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

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

Now, in reference to the other part of your letter which pertains to the soldiers overseas. Unfortunately, there is no provision in the law which exempts them from complying with the provision of having paid their capitation taxes six months prior to the time at which they offer to vote.

I agree with you that considerable confusion exists in our election laws and a clear interpretation of them is not always easy.

Of course, you understand that the question raised in your letter could not be finally determined save by a decision of court of competent jurisdiction, and while I may be in error in my construction of the law, at the same time I believe I am correct.

Please do me the kindness to state my position in this matter.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## ELECTIONS—MUNICIPAL ELECTIONS.

RICHMOND, VA., *June 3, 1919.*

GEORGE W. HUNTLEY, JR., ESQ.,  
*Covington, Va.*

DEAR SIR:

In the absence of the Assistant Attorney General, Mr. J. D. Hank, Jr., who is for the better part of the week at the Wytheville term of the Court of Appeals in Commonwealth cases, I am taking the liberty of answering your letter of June 2, addressed to him.

In your letter you state that you wish to be advised regarding the eligibility of voters in the municipal election to be held on the 10th of June.

This office has many times ruled that, under section 21 of the Constitution, requiring personal payment of capitation taxes at least six months prior to the election, only those are eligible to vote in the June municipal election who have paid their poll taxes six months prior to the day of the June election.

In this we are upheld by the former Attorney General, as you will see by an examination of the report of the Attorney General for 1914, pages 30 and 31. I may also refer you to section 86-c of the Virginia Code, 1904, as amended, which confirms this opinion.

Trusting this sufficiently answers your inquiry, I am,

Very truly yours,

MORTON WALLERSTEIN,

*Law Assistant.*

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ELECTIONS—PRIMARY.RICHMOND, VA., *January 13, 1918.*

MR. J. HOGE WOOLWINE,  
*Blacksburg, Va.*

DEAR SIR:

Acknowledgment is made of your letter of January 10, 1919, asking whether or not a Republican can vote in the Democratic primary to be held in February, for the purpose of electing a successor to the Hon. Carter Glass from the Sixth District.

Paragraph B of section 8 of the Primary Law, amended by the General Assembly of 1914, reads as follows:

"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 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 follows from the reading of this section that, before a Republican can vote in the coming primary you mention, it must appear that he voted

for the nominee of the Democratic party in the last preceding general election. If he did not do this, of course, he cannot vote under the above section.

Very truly yours,

F. B. RICHARDSON,

*Law Assistant.*

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ELECTIONS—PRIMARY.

RICHMOND, VA., May 7, 1919.

MR. W. E. HOGG,

*Attorney at Law,*

*Tampico, Va.*

DEAR SIR:

I beg leave to acknowledge receipt of your letter of May 5 in which you ask the question whether or not the Democratic Committee of York county has a right to decline to hold a primary in your county for the nomination of county officers.

It has been the custom in a number of counties in the State where there were no Republican candidates for counties not to have a primary, but to let all of the candidates run in the general election.

I do not think the primary law compels the county committee to hold a primary for the nomination of county officers.

The Attorney General is only required to give his opinions to the various departments of State government. I am, therefore, expressing this opinion to you as a matter of courtesy, and not officially.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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ELECTIONS—PRIMARY LAW.

RICHMOND, VA., June 7, 1919.

MR. C. W. SMITH,

*Secretary of Democratic Executive Committee,*

*Appomattox County,*

*Appomattox, Va.*

DEAR SIR:

Acknowledgment is made of your letter of June 6th, calling attention to section 24-a of chapter 307 of the Acts of Assembly, 1914, known as the Primary Election Law, and especially that portion of the said section providing for the payment by all candidates of an entrance fee to the treasurer of the county in which they reside; and asking the opinion of the Attorney General as to the proper disposition of such entrance fees so paid, in case the candidates paying them have no opposition in the primary for which they paid the entrance fees.

The legislature of 1918 answered this question by amending the section above cited (24-a) and providing that "In the event the candidate who has paid the fee is not opposed, the treasurer shall pay back the fee." Acts of Assembly, 1918, page 97.

Therefore, the treasurer should return to those candidates in the primary having no opposition the entrance fees paid by them.

If I can serve you further in this matter, do not hesitate to call on me.

Yours truly,

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

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#### ELECTIONS—WHEN PRIMARY FOR COUNTY OFFICERS NOT HELD, EFFECT.

RICHMOND, VA., *August 4, 1919.*

MR. R. O. GARRETT,  
*Cumberland, Va.*

MY DEAR MR. GARRETT:

Your special delivery letter of July 29 did not reach me until this morning, due to the fact that I was in Middlesex last week attending the Rappahannock Association, and did not return to my office until today.

You state in your letter that a number of your friends had urged you to place your name for county clerk on the ticket in tomorrow's primary. You further state that sometime ago the county committee decided not to have a primary, but that you regarded such action as illegal, due to the fact that a majority of the committee was not present, and the absent members voted by proxy.

I cannot see any good to be accomplished by having your name on the ticket at tomorrow's election. Certainly it would not prevent your having opposition in the general election. Mr. Sanderson was in my office last Friday and discussed this matter with me. I expressed the same opinion to him.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

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#### ELECTIONS—REGISTRATION BOOKS.

RICHMOND, VA., *October 27, 1919.*

MR. C. W. DICKINSON, JR.,  
*Cartersville, Va.*

MY DEAR MR. DICKINSON:

Acknowledgment is made of your letter of the 16th, in which you request my opinion on three separate questions, first, as to the right of a candidate for a county office to demand to see and make copies of the registration books, or of a list of the registered voters as shown on the books of the several registrars.

It was decided by the Supreme Court of Appeals in *Gleaves v. Terry*,

93 Va. 491 (1896), that so much of the record of the proceedings of electoral boards as relates to the appointment and removal of judges and commissioners of election and registrars, or the ordering of any registration, is a public record, open to inspection by any citizen and voter of the county in which the record is kept, and he may take therefrom at and within a reasonable time, in the presence of the secretary of the board, memoranda or notes of the proceedings of the board as to which no secrecy is enjoined, but that this right did not extend to that part of the records as relates to the preparation, printing, certifying and distribution of the official ballots, as the law contemplated secrecy in this latter matter.

In *Walker v. Stone*, 96 Va. 667, the Court of Appeals held that a party interested had the right to inspect the poll books and to take therefrom, at and within a reasonable time, in the presence of the clerk, memoranda and notes such as are proper to be made as declared in *Gleaves v. Terry*, *supra*.

Your second question is as follows:

"Is it possible for the treasurer of a county to make a voting list of all persons paying capitation taxes for 1916, 1917 and 1918 before May 1, 1919, correctly if he only uses *old voting lists* to prepare this 1919 list? To state it differently, is it not very likely that quite a number of persons may pay 1916 and 1917 taxes after May 1, 1917, and after May 1, 1918, but in plenty of time to be put on the *voting list for 1919*?

It is prescribed by section 86-b of the Code (Virginia Election Laws), page 32, so far as is applicable to this question, 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 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."

You will see from this that it is the duty of the treasurer in making up his list, to place thereon the names of all persons who have paid, not later than six months prior to the election, the State poll taxes required by the Constitution of the State during the three years next preceding that in which such election is held. Therefore, all persons who have paid their State capitation taxes for the three years preceding the election, six months prior thereto, should be placed on the list by the treasurer, regardless of whether or not these taxes were paid at the time when they ought to have been paid or were later paid, as the list for prior years had been made.

The list, however, made and posted as required by section 86-b of the Code, is by the third sub-section thereof, made conclusive evidence of the facts therein stated for the purpose of voting, and those qualified voters whose names are left off of the list are not entitled to vote unless in the manner prescribed therein unless they have applied to the court and had their names placed on the tax list.

Your third question is as follows:

"Will a person paying 1918 taxes in Cumberland before May 1, 1919, who has lived more than a year in Cumberland be allowed to vote by showing 1916 and 1917 tax receipts from another county in Virginia where he was living at that time. His name is shown on Cumberland voting list as having paid 1918 tax before May 1, 1919, and he has had his transfer registered before October 4 in Cumberland."

This question is answered by the provisions of 86-d of the Code (Virginia Election Laws, page 35), which reads as follows:

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

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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ELECTIONS—REGISTRATION OF VOTERS.

RICHMOND, VA., *September 18, 1919.*

MR. T. Z. BENTON, *Registrar,*  
*Gate City, Va.*

DEAR SIR:

Acknowledgment is made of your letter of September 13, in which you request my opinion on the following statement of facts:

"I am registrar for Gate City precinct, Estillville district, Scott county, Virginia, and am writing you for some information which I trust you will give me by return mail, as the matter is of considerable importance. We have a good many negroes in this district and some of them have tried once to register and failed. They are now demanding another trial, and I suppose if they fail they will still want other trials. I feel that this is not right and this is why I am asking you for this information."

This question is governed by section 20 of the Constitution of Virginia, 1904, which 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 eighteen, shall be entitled to register, provided:

"First. That he personally paid to the proper officer all State poll taxes assessed or assessable against him, 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 handwriting, without aid, suggestion or memorandum, in the presence of the registration officers, stating therein his name, age, 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."

Under this section of the Constitution, any person who possesses the qualifications provided in the Constitution, is entitled to register. The fact that a man has been rejected for registration because he could not meet the conditions prescribed by the Constitution, does not prevent him from subsequently registering, provided at the time he possesses the qualifications prescribed by the Constitution.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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ELECTIONS—REMOVAL OF DISABILITIES OF VOTERS.

RICHMOND, VA., *October 24, 1919.*

I. M. CLINGENPEEL, ESQ.,  
*Attorney at Law,*  
*Martinsville, Va.*

DEAR SIR:

Acknowledgment is made of your letter of October 22, in which you request my opinion on the following statement of facts:

"Some time last year a citizen of this county (Henry) was convicted in the United States Court at Danville, Va., charged with illicit distilling, and sentenced to the penitentiary for one year and one day, and after serving about five months was paroled. Is this man disqualified from voting on account of said conviction?"

It is provided by section 23 of the Virginia Constitution that "persons convicted after the adoption of this Constitution, either within or without this State, of treason, or of any felony, bribery, petty larceny, obtaining money under false pretences, embezzlement, forgery or perjury," etc., shall be excluded from registering and voting in this State.

Section 62 of the Code, which enacts into statute law the provisions of section 23 of the Constitution, contains a similar provision. A like provision is also found in section 73 of the Code. It is provided by section 3879 of the Code of Virginia, 1904, as follows:

“Offenses are either felonies or misdemeanors. Such offenses as are punishable with death or confinement in the penitentiary are felonies; all other offenses are misdemeanors.”

The man in question, having been sentenced to the penitentiary, was convicted of a felony. I am of opinion that section 23 of the Virginia Constitution and the statutes that have been enacted in pursuance thereof, apply to persons convicted in the Federal courts as well as to persons convicted in the State courts. It therefore follows that the man in question is disqualified from voting on account of the conviction mentioned in your letter until such time as his disabilities shall have been removed in the manner provided by law.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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ELECTIONS—REMOVAL OF NAMES FROM REGISTRATION BOOKS.

RICHMOND, VA., *July 24, 1919.*

HON. ROLAND E. CHASE,

*Clintwood, Va.*

MY DEAR ROLAND:

Acknowledgment is made of your letter of recent date, in which you request to be advised on the following state of facts:

“My friend, F. C. Hillman, the registrar at this precinct, has gotten out a blank form of an application to register—I enclose a copy—and he registered some new voters of each political party, who filled out these blanks, before his attention was called to the fact that this violated section 20 of the State Constitution. Now, our difficulty is as to what is the proper thing to be done with these registered voters that filled out these blank forms. My opinion is that their names should be erased and they required to return and register on an application filled out as required by section 20 of the Constitution.”

This question is governed by the provisions of section 86 of the Code of Virginia, 1904, as amended. You will also find the amended statute in the Acts of 1914, page 430.

You will see from reading this statute that, where the name of any person is improperly on the registration books, three qualified voters of the election district may proceed in the manner set out in the act for the removal of the name of such person from the registration book.

With my best wishes, I am,

Very sincerely yours,

JNO. R. SAUNDERS,

*Attorney General.*

## ELECTIONS—RESIDENCE.

RICHMOND, VA., *July 9, 1919.*

MR. ROBERT A. WADE,  
*Turbeville, Va.*

DEAR SIR:

Acknowledgment is made of your letter of recent date in which you request me to advise you on the following state of facts:

"It is a much disputed point in my community whether a voter has the right to vote in a precinct in which he has not lived for five years. According to my interpretation of the Constitution of Virginia, article II., section 18, such a person does not have the right to vote in a precinct in which he has not lived for five years. Please let me know at your earliest convenience how you construe the Constitution on this point, and whether the said party has the right to vote in a precinct from which he has been absent for five years."

Of course, a man who is not a resident of the precinct in which he offers to vote, as provided by section 18 of the Constitution of Virginia, is not entitled to vote at such precinct.

Your letter, however, fails to state such facts as would enable me to determine whether the man in question was a resident of the precinct or not, and it is therefore impossible for me to express my opinion on the question propounded in your letter.

In 1917, Hon. Leslie C. Garnett, then Assistant Attorney General, wrote an opinion bearing on this subject, a copy of which I am sending you.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## ELECTIONS—RESIDENCE.

RICHMOND, VA., *May 24, 1919.*

MR. W. C. AYLOR,  
*Bristow, Va.*

DEAR SIR:

I am in receipt of your letter of the 23rd instant in which you state that on May 1, 1919, you moved from Culpeper, Va. in Culpeper county, to Bristow, Va., in Prince William county. You desire to know in which county you are entitled to vote.

Section 18 of the Constitution provides as a prerequisite to the right to vote, a year's residence in the county, city or town and a thirty days' residence in the precinct in which you offer to vote.

Under this section I am of the opinion that since you have not been a resident of either county for one year next preceding either the primary or the general election, you are not entitled to vote in either place.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## ELECTIONS—RESIDENCE.

RICHMOND, VA., *January 15, 1919.*

MISS MATTIE S. WISE,  
1006 *Brantley Avenue*,  
*Baltimore, Md.*

MY DEAR MISS WISE:

I acknowledge receipt of your letter of January 13, 1919, in which you state that your brother, who at one time lived in South Carolina, returned to Virginia in June, 1917, and has since that time made his home in Accomac county. You desire to know whether or not, so far as residence is concerned, he is eligible to become a candidate for the office of commissioner of revenue of Accomac county in the primary election to be held in August, 1919.

For one to be eligible for any office, he must be a qualified voter in the State of Virginia. Section 62 of the Code provides, among other things, that every male citizen of the United States 21 years old, who has been a resident of a State two years, of a county, city or town one year, of the precinct in which he offers to vote thirty days next preceding the election, who has been duly registered and has paid his State poll taxes, and is otherwise qualified under the Constitution and laws of this State, shall be entitled to vote for all officers elected by the people.

In order for your brother to become a qualified voter it will be necessary, I think, for him to pay the poll taxes for the years 1917 and 1918, which would be done six months before the date of the primary election to be held in August. He should then apply to the registrar of the precinct in which he desires to become a voter during the month of May, at which time the registrar sits at a place advertised for the purpose of registering voters. After he has complied with these requirements he will then become a qualified voter, and, of course, will be eligible to become a candidate for the office of commissioner of revenue.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

## ELECTIONS—RESIDENCE.

RICHMOND, VA., *December 15, 1919.*

DR. D. R. ANDERSON, *Executive Secretary*,  
*Civic Association of Richmond*,  
*Richmond, Va.*

DEAR SIR:

Acknowledgment is made of your letter, asking whether a person who has not been a resident of the State of Virginia for two years, has a right to register provided before the next regular election he will have been a resident of this State two years.

Section 26 of the Constitution provides:

"Any person who, in respect to age or residence, would be qualified to vote at the next election, shall be admitted to registration, notwith-

standing that at the time thereof he is not so qualified, and shall be entitled to vote at said election if then qualified under the provisions of this Constitution."

It is manifest, therefore, that any person who, in respect to age and residence, would be qualified to vote at the next election has a right to be admitted to registration, even though he is not so qualified at the time he offers to register.

You also ask whether a registrar can be compelled to register a person who fulfills the above condition.

This question must be answered in the affirmative, because the Constitution provides that a person who, in respect to age and residence, would be qualified to vote at the next election *shall be admitted* to registration, though at the time he offers to register he is not so qualified.

This provision is mandatory, and any person who fulfills the above qualification cannot be lawfully refused registration because he has not, at the time he offers to register, been a resident of the State two years.

Yours truly,

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

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ELECTIONS—RESIDENCE.

RICHMOND, VA., *December 4, 1919.*

MR. W. E. DUVAL, *Clerk,*  
*Hustings Court, Part II.,*  
*Richmond, Va.*

DEAR SIR:

Acknowledgment is made of your request for an opinion on the following statement of facts:

A became a resident of Virginia subsequent to February, 1917. He has resided in this State for two years, with the intention of making Virginia his home. If he pays his capitation tax for the years 1918 and 1919, six months prior to the municipal election to be held in Richmond next spring, will he be eligible to vote?

In answering this question, I assume that all the qualifications for voting required of a voter by the Constitution, exist in this case, and that the only question upon which my opinion is desired is as to the number of years for which capitation taxes must be paid in order to entitle the man in question to vote.

It is provided by section 21 of the Constitution that unless a person is exempted by section 22 thereof, that he shall, as a prerequisite to the right to vote, personally pay at least six months prior to the election, all State poll taxes assessed or assessable against him under this Constitution, during the three years next preceding that in which he offers to vote. As was said, however, by Attorney General Anderson in an opinion rendered March 25, 1917 (Opinions of the Attorney General, 1917, page 66), it will be observed that the voter "must have paid, not only the poll taxes assessed against him, but

those with which he was assessable for each of these three years; but it is only required that he shall have paid such taxes as he was lawfully assessable with. For instance, if he has only been of age during one or two of those three years, he would be assessable with these taxes for one or two years, as the case may be; and so, if a person moving into Virginia from another State, has been a resident of this State for only two years, he would only be required to pay his capitation taxes for such two years."

Therefore, if the man in question possesses the other qualifications required of a voter by the Constitution, he is entitled to vote in the election to be held next June, provided he has paid six months prior thereto, the capitation taxes assessable against him and has registered within the proper time.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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ELECTIONS—RESIDENCE.

RICHMOND, VA., *October 31, 1919.*

MR. D. B. PURKS,  
*Comorn, Va.*

DEAR SIR:

I am in receipt of your letter of October 29, in which you state that you are one of the judges of election to be held on November 4. You ask whether a man who has paid his taxes in King George county prior to the third of May, 1919, and has moved from said county to Alexandria, Va., can vote in King George county in the coming election.

In reply to your question, I would say that it would depend entirely upon the circumstances connected with the case. If the party intended to retain his legal residence in King George county so as to vote in the November election, there is no reason why he cannot do so. The question of residence is a question of intention taken in connection with the declarations and acts on the part of the voter. If the party left King George county with the intention of making Alexandria his home and with no intention of retaining his legal residence in King George county, of course he cannot vote.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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ELECTIONS—RESIDENCE.

RICHMOND, VA., *October 24, 1919.*

F. P. EASTMAN, ESQ., *Deputy Clerk,*  
*Saluda, Va.*

DEAR SIR:

Acknowledgment is made of your communication of recent date, in which you say that a certain magisterial district is composed of two voting precincts; that a person was registered and lived for years in one of said

precincts, but that recently he sold his property in the precinct in which he was registered, and moved with his family into the other precinct of the district several months prior to the general election, but did not transfer to the precinct in which he is now living.

You then say: "The question about which I wish an opinion is, is the person a qualified voter anywhere in the magisterial district in which he lives; that is, can he vote in the precinct from which he removed several months before the election, and if he cannot, is he eligible to be elected to a district office in the said magisterial district?"

Of course, you will realize that the questions propounded by you are questions primarily for the courts, and, therefore, anything that I say on the subject is unofficial and is written merely as a matter of courtesy to you.

It is provided by section 18 of the Constitution of Virginia 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."

You will see, from the above quoted provision of the Constitution, that one is not required to actually live in a precinct in order to vote there. All that is necessary is that he "has been a resident" for the required period.

It was decided by the Supreme Court of Appeals in *Williams v. Commonwealth*, 116 Va. 272 (1914):

"The meaning of the words 'resident' or 'residence' is to be determined from the facts and circumstances taken together in each particular case. For the purpose of voting and holding office a man cannot have more than one legal residence. A legal residence once acquired by birth or habitation is not lost by temporary absence for pleasure, health or business, or while attending to duties of a public office. Where a man has two places of living, which is his legal residence is to be determined largely, where the right to vote or hold office is involved, by his intention. When he acquires a new legal residence he loses the old, but to effect this there must be both act and intention."

In so holding, the court, speaking through Judge Buchanan, said (page 277):

"For the purpose of voting and holding office, a man cannot have more than one legal residence. \* \* \* When he acquires a new legal residence he loses the old, but to effect this there must be both act and intention. \* \* \*"

It will be seen from this that one having once acquired a legal residence for the purpose of voting does not lose the same unless, in addition to removal, he has also the legal intent required to change his voting residence. This, of course, as the court said, is to be determined from the acts, declarations and statements of the man in question.

In the case stated by you, it would appear that the man in question has for many years been a resident of a certain precinct, and is there registered. The very fact that he failed to apply for a transfer to another precinct is in itself evidence of an intention to retain his legal residence at the place where it has heretofore been.

Under these circumstances, if the man in question says that it was not his intention in moving to acquire a new *legal* residence for the purpose of voting in the other precinct, but that he intended when he moved to retain his legal residence in the former precinct, I am of the opinion that he is entitled to vote in the precinct where he is registered.

From the foregoing, I assume that it will be unnecessary for me to answer your question with reference to the eligibility of such person to be elected to a district office in the magisterial district in which he lives.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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ELECTIONS—RESIDENCE.

RICHMOND, VA., *October 21, 1919.*

HON. ASA S. RICE,  
*Heathsville, Va.*

DEAR SIR:

I acknowledge receipt of your letter of October 17th, in which you ask whether a duly registered voter, under conditions as set forth in your letter, can vote in the coming election to be held November 4, 1919.

First of all, I presume that this party is a resident of Northumberland county and is simply in Connecticut temporarily on business. You state that the letter in which the person in question made application to the registrar for ballot, bore date of September 16, but did not reach the registrar until October 6, which, of course, is not thirty days prior to the election and which said time is required by the statute for absent voters.

However, I would say this: That if this letter was put in the United States mail in ample time to reach the registrar thirty days prior to the election, this party should be permitted to vote. Certainly if the failure of his letter to reach the registrar within the required time was due to any delay in the mails, it is no fault of his. Of course, the envelope would indicate just when the letter was mailed.

I think the policy of the law is to permit persons to vote provided they have complied with the conditions, rather than to deny them this privilege.

Yours very sincerely,

JNO. R. SAUNDERS,  
*Attorney General.*

## ELECTIONS—RESIDENCE.

RICHMOND, VA., *September 18, 1919.*

MR. T. W. CAMPBELL,  
*Abingdon, Va.*

DEAR SIR:

Acknowledgment is made of your letter of September 15, in which you request my opinion on the following statement of facts:

"I have for several years been a registered and tax paid voter of Bristol, Va., which city is a part of Washington county, Va., and now for about ten months in November, 1919, I have lived in Abingdon, Washington county, Va., and want to know if I will be entitled to vote in Washington county if I get my transfer."

It was held by the Court of Appeals in *Supervisors v. Saltville Land Co.*, 99 Va. 640; 39 S. E. 704, that a city is no part of a county for governmental purposes. Therefore, the city of Bristol is not a part of Washington county, although built on what was once a part of Washington county, but is a separate and distinct jurisdiction.

I am, therefore, of the opinion that your residence in the city of Bristol cannot be counted as a part of the necessary residence in Washington county required by section 18 of the Virginia Constitution.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## ELECTIONS—RESIDENCE.

RICHMOND, VA., *September 16, 1919.*

MR. FRENCH FLEMING,  
*Lorton, Va.*

DEAR SIR:

Your letter of September 16 has just been handed me by Hon. R. C. L. Moncure. In this letter you state that you are a resident of Stafford county; that you pay your capitation tax there and have been voting there all your life. You further state that you were foreman at the State Farm, but continued to pay your taxes in Stafford county, and while holding this position continued to vote in said county.

You also state that while at the State Farm you married, and as your salary was not sufficient for you to maintain a wife, Hon. R. C. L. Moncure obtained a position for you at Occoquan Farm, at which place you now temporarily reside, still continuing to pay your capitation tax in Stafford county. You further state that the tax on your personal property is paid in Prince William county, due to the fact that your property is located there.

The question of residence is a question of intention. If you still regard Stafford county as your home and still pay your capitation tax in said county, the mere fact that you are temporarily residing elsewhere does not,

in my judgment, debar you from the right of suffrage in Stafford county. I am, therefore, of the opinion that you are entitled to vote in Stafford county.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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ELECTIONS—RESIDENCE.

RICHMOND, VA., July 26, 1919.

MR. A. E. KELLAM,

*Princess Anne, Va.*

MY DEAR MR. KELLAM:

Acknowledgment is made of your letter of July 24, in which you state that Dr. Kellam, though practicing medicine in Louisa county, Va., since 1915, has claimed Princess Anne as his home, is registered there, and has regularly paid his capitation taxes in that county. You ask whether or not he has a right to vote there in the primary of August 5.

From the facts stated by you, it is clear that Dr. Kellam has never changed his residence; that he still considers himself a resident of Princess Anne. This being true, he has a right to vote there in the August primary.

Yours truly,

J. D. HANK, JR.,

*Assistant Attorney General.*

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ELECTIONS—RESIDENCE.

RICHMOND, VA., July 26, 1919.

MR. A. E. KELLAM,

*Princess Anne, Va.*

DEAR SIR:

Acknowledgment is made of your letter of the 25th, in which you state that a resident of another State bought a farm in Virginia in October, 1917, intending to move thereon immediately, but was delayed and did not come to Virginia until February, 1918. You ask whether or not this person can vote in the election of 1919.

The Constitution of Virginia (section 18) provides only those persons who have been residents of this State two years can vote. In *Griffin v. Woolford*, 100 Va. 473, it is said that "residence or inhabitancy (for they seem to have the same meaning) is defined to be the place of abode, dwelling or habitation for some continuance of time."

As the person to whom you refer did not dwell in Virginia until 1918, he will not have been a resident of Virginia two years when the general election in November, 1919, takes place. I am, therefore, of the opinion that he could not vote in this election.

Yours truly,

J. D. HANK, JR.,

*Assistant Attorney General.*

## ELECTIONS—RESIDENCE.

RICHMOND, VA., *July 31, 1919.*

F. C. HILLMAN, ESQ.,  
*Clintwood, Va.*

DEAR SIR:

Acknowledgment is made of your letter of July 28, in which you request me to advise you on the following statement of facts:

"We have a man who has lived in Virginia more than two years, but held a county office in the State of Kentucky up to the first of the year, 1918. He insists that he has a right to register in this State and vote this fall. I have ruled that he cannot register, from the fact that he held an office in another State up to the first of last year. Would you please inform me if I am right in my ruling?"

Residence is largely a question of intention. If a man leaves his original residence with no intention of returning, and occupies another with the intention of remaining there permanently, his first residence is lost, but if he leaves his original residence with the intention of returning and claims the same as his residence, the original residence continues in law, notwithstanding his temporary absence.

The fact that a man held an office in Kentucky until the first of 1918, and performed the duties thereof, shows, in my opinion, an intention on his part to remain a citizen of Kentucky until the time he ceased to be such officer at least. This being true, the time spent in Virginia during which he continued in office in Kentucky could not be taken into consideration as giving him a residence in Virginia for the purpose of registering and voting in this State.

Yours truly,

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

## ELECTIONS—RESIDENCE.

RICHMOND, VA., *July 31, 1919.*

JOHN W. WHITMORE, ESQ.,  
*Virgilina, Va.*

DEAR SIR:

Acknowledgment is made of your letter of July 23, 1919, in which you request me to advise you on the following statement of facts:

"Our town is situated on the border of North Carolina. On last December 26 I was forced to move over into North Carolina, just over the line, on account of my landlord wanting his house, and on June 22 I moved back into this State, which made me living in North Carolina not quite six months. I have been in business in this State for eight months, and have always lived here except for the short time stated above. My poll taxes are paid to date. Am I entitled to vote in the coming election?"

Residence is largely a question of intention. If one leaves his original residence with no intention of returning, and occupies another with the intention of remaining there permanently, his first residence is lost; but if he leaves his original residence with the intention of returning, the original residence continues in law, notwithstanding his temporary absence.

Therefore, if you moved from Virginia into North Carolina merely for a temporary purpose, with the intention of maintaining your residence in Virginia, did not claim North Carolina as your residence, but continued to claim Virginia as your residence, and paid your capitation taxes here, I am of the opinion that you did not lose your residence in this State for the purpose of voting therein.

As you see, however, your letter does not give me sufficient facts to answer your question definitely. Therefore, I can only broadly state the general principles governing cases of this kind.

Very truly yours,

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

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ELECTIONS—RESIDENCE.

RICHMOND, VA., *July 21, 1919.*

HON. C. J. MEETZE,  
*Alexandria, Va.*

MY DEAR MR. MEETZE:

I beg leave to acknowledge receipt of your letter of the 17th inst., in which you state that there are several hundred men at Quantico who have been living there for two years or more, and that many of them desire to register and vote. You ask whether or not these men have a right to register and vote.

It would be impossible for me to give you an intelligent answer to your question without knowing all of the facts connected with this matter. Many of these parties may have gone to Quantico simply to work, without any intention of changing their residence. Of course, such persons could not vote. Many of them may have gone there from other sections of the State. If they did, and failed to pay all capitation taxes assessed or assessable against them six months prior to next November, of course, they could not vote.

I am sure, if you will ascertain all of the facts connected with this matter and will examine the election laws contained in pamphlet form and published in 1916, you will be able to answer your own question without any difficulty.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

## ELECTIONS—RESIDENCE.

RICHMOND, VA., *July 19, 1919.*

MR. R. O. GARRETT,  
*Clerk of Circuit Court,  
Cumberland Court House, Va.*

DEAR MR. GARRETT:

Acknowledgment is made of your letter of July 16, 1919, in which you request my opinion on the following state of facts:

"A lives in Amherst county and is assessed with capitation taxes and personally pays them there, and teaches school in Cumberland in the winter, beginning in the fall and ends in the spring, and as soon as school is out he leaves and returns at next session. He boards while teaching.

"Where would you call this man's residence? Would he have a right to vote in Cumberland or in Amherst?"

From facts stated in your letter, it would appear that the man in question regards Amherst county as his place of residence, in view of the fact that he lives there and has himself assessed with capitation taxes in that county. It is very difficult, however, to define residence, and it is largely a question of intention. If a man leaves his original residence with no intention of returning and occupies another with the intention of remaining there permanently, his first residence is lost, but if he leaves his original residence with the intention to return, the original residence continues in the law, notwithstanding his temporary residence. (Report of Attorney General, 1917, page 58.)

Very sincerely yours,

JNO. R. SAUNDERS,  
*Attorney General.*

## ELECTIONS—RESIDENCE.

RICHMOND, VA., *August 2, 1919.*

MR. SAMUEL B. WALKER, JR.,  
*Lexington, Va.*

DEAR SIR:

Acknowledgment is made of your letter of July 29, 1919, in which you state that H. M. Thomas, a resident of Glasgow, Va., for twenty years, on April 1, 1917, took his family to Clifton Forge, where he lived until April 15, 1918, and at that time moved back with his family to Glasgow; that he registered in Glasgow and has never been transferred to Clifton Forge. You ask whether, under such conditions, he can vote at Glasgow.

So far as his residence is concerned, a voter must have lived in the State two years, in the county, city or town one year, and in the precinct in which he offers to vote thirty days next preceding the election at which he offers to vote.

There is no doubt that Mr. Thomas has been a resident of the State a sufficient time, and, as he moved back to Glasgow on April 15, 1918, he has been there one year; therefore, if he has been in the precinct in which he

offers to vote thirty days, this fulfills the requirements of the statute as to residence. If, in addition to this, he paid all capitation taxes for 1916, 1917 and 1918 on or before May 3, 1919, he can vote in the primary to be held next Tuesday, and also in the general election to be held in November.

Yours truly,

J. D. HANK, JR.

*Assistant Attorney General.*

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ELECTIONS—SPECIAL ELECTIONS.

RICHMOND, VA., May 3, 1919.

CHARLES T. JESSE, ESQ.,  
*Rosslyn, Va.*

DEAR SIR:

Acknowledgment is made of your letter of May 2, asking the opinion of this office in regard to certain questions arising on account of the special congressional election to be held in the Eighth district on May 27. Your questions are as follows:

1. Who is qualified to vote in the special congressional election to be held in the Eighth Virginia district on May 27, 1919? I particularly wish to know what pre-payment of capitation taxes the law requires.
2. What, if any, capitation lists are to be furnished the judges of election, to be used in said special election?
3. What are the duties of the clerk, treasurer, sheriff and other officers in respect to the preparation, certification, posting and delivery of such capitation lists, and how should the expenses thereof be paid?
4. Would it be sufficient for the clerk to furnish the judges of the election existing capitation lists, showing the payment of taxes for 1915, 1916 and 1917, supplemented by an additional list prepared by the treasurer showing who had paid 1918 taxes prior to December 10, 1918, or should there be one list showing those who had paid taxes for 1916, 1917 and 1918, prior to December 10, 1918?

In regard to your first question, section 62 of the Code of Virginia, as amended in 1908 (Pollard's Code, volume III., page 19), provides that at any special 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 election is held."

It is manifest, therefore, that, in the special election referred to by you, all persons will be qualified to vote who have paid, on or before December 10, 1918, all State poll taxes assessed or assessable against them for 1916, 1917 and 1918. Of course, persons coming of age after 1916 would only have to pay for the succeeding years.

Replying to your next question as to what capitation lists are to be furnished the judges of election, I am of the opinion that a certified list should be furnished the judges of each precinct, showing those persons who have paid their poll taxes for the years 1916, 1917 and 1918 on or before December 10, 1918. (Pollard's Code, volume III., section 86-b, page 22.)

In regard to the duties of the various officers referred to in your letter,

their duties are clearly set out in the section of the Code just above cited, namely, section 86-b, as amended in 1918. From this section it will be noted that the treasurer of each county and city is required, at least five months before the second Tuesday in June, to file with the clerk of the circuit court of his county, or the corporation court of his city, a list of all persons in his county or city who have paid their poll taxes not later than six months prior to the second Tuesday in June—in this case, not later than December 10, 1918.

Thereupon the clerk, within ten days, is required to make and certify a sufficient number of copies of these lists, and deliver to the sheriff of the county or sergeant of the city, one copy for each voting place in the county or city. It is the duty of the sheriff or sergeant, thereupon, to post, within ten days from its receipt, one copy at each voting place, and make return on oath to clerk as to the places where and the dates on which the copies were posted. The duty is further imposed upon the clerk to cause to be delivered, with the poll books, at a reasonable time before every election, to one of the judges of election of each precinct, a certified copy of the lists.

Section 86-b of the Virginia Code provides that the fees for performing the duties above referred to shall be paid out of the treasury of the county or corporation wherein such lists are made.

Answering your last question, I understand that some of the treasurers did not file with the clerks of their respective courts the lists five months prior to the second Tuesday in June, 1919, and that they have not yet complied with the law by furnishing such lists to their respective clerks.

In such cases, the treasurers who failed to file the lists five months before the second Tuesday in June, 1919, as required by law, should at once file with their respective clerks, lists of those persons who paid their poll taxes for 1918 on or before December 10, 1918. These lists should include any persons who paid their poll taxes for 1916 and 1917 subsequent to the time at which they must have paid them to be included in the lists, and prior to December 10, 1918. If such treasurers can now prepare the lists for 1916, 1917 and 1918, which they should have turned over to the respective clerks five months before the second Tuesday in June, in time for them to be of service in this special election, it should be done. However, if the time is too short to make a single list for use in this special election, I am of the opinion that it would be perfectly proper to deliver to the judges for use, the lists which have already been made for 1915, 1916 and 1917, supplemented by a list of those who have paid their poll taxes for 1918 prior to December 10, 1918, and including those persons who, prior to December 10, 1918, paid their 1916 and 1917 poll taxes, but do not appear upon the certified lists made out for 1915, 1916 and 1917.

The object of the law, so far as the judges of election are concerned, is to put into their hands proper evidence of the persons who are qualified to vote by the payment of their poll taxes within the prescribed time, and where, as in the instant case, this information cannot be furnished them in a single list, I am of the opinion that the spirit and object of the law is met by means of the supplemental lists used in connection with the lists which had been previously made up.

I am further of the opinion that it is the duty of the treasurer, where he cannot make up now the original list which he should have filed with the clerk five months before the second Tuesday in June, to immediately make up such supplemental lists as above referred to and turn the same over to the clerk.

Yours truly,

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

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ELECTIONS—SPECIAL ELECTIONS.

RICHMOND, VA., May 7, 1919.

MR. WM. H. GAINES,  
*Attorney at Law,*  
*Warrenton, Va.*

DEAR SIR:

I beg leave to acknowledge receipt of your letter of May 1, in which you ask who will be eligible to vote in the special election to be held on May 27 in the Eighth Congressional district.

If you will examine Pollard's Supplement, 1910, to the Code, page 19, section 62, which provides for the qualification of the voters, etc., you will find that a portion of paragraph 2 of said section reads as follows:

"The qualifications of voters at any special election or any local option election, shall be such as are hereinbefore prescribed for voters at general elections; 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 who 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. \* \* \*

The second Tuesday in June of this year comes on the 10th day of the month.

You will therefore see that in the election referred to by you, all persons will be qualified to vote who have paid, on or before December 10, 1918, all State poll taxes assessed or assessable against them for 1916, 1917 and 1918. Of course, persons coming of age after 1916 would only have to pay taxes for the years 1917 and 1918.

Trusting I have made myself clear, I am,

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## ELECTIONS—SPECIAL ELECTIONS.

RICHMOND, VA., *May 8, 1919.*

MR. L. B. MASON, *Clerk,*  
*Circuit Court,*  
*King George, Va.*

DEAR SIR:

I beg leave to acknowledge receipt of your letter of the 7th, in which you ask who is qualified to vote in the special election to be held in the Eighth Congressional district on May 27, 1919.

Section 62 of the Code of Virginia, as amended by the Acts of 1918, page 3, provide, among other things, as follows:

“\* \* \* That at any 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.”

You will therefore see from a reading of that part of section 62 that all persons will be eligible to vote on May 27 who were eligible to vote in the November election of 1918 and all those who have since paid their capitation taxes prior to the second Tuesday in June.

Inasmuch as the second Tuesday in June comes on the 10th of June, the 10th of December was the last day on which such capitation taxes could be paid.

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

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## ELECTIONS—SPECIAL ELECTIONS.

RICHMOND, VA., *July 2, 1919.*

HON. J. N. BRENAMAN, *Secretary,*  
*State Democratic Committee,*  
*Richmond, Va.*

DEAR SIR:

Acknowledgment is made of your letter of June 24, 1919, in which you request me to advise you on the following state of facts:

“I have been appealed to as secretary of the Democratic State Committee to know whether the judges in the special elections to fill vacancies in legislative and senatorial districts, ordered by the Governor for August 5th, the date set by the primary law for primary elections, the judges of election in special elections, shall also sit as judges of election in the primaries.

“Section 31 of the general election laws provides that the two dominant parties shall each have a representative at each precinct in the State as one of the judges of election.

"I cannot conceive that it was the intention of the lawmakers that a Republican judge should act as judge in the Democratic primary."

It is provided by section 31 of the Virginia Constitution so far as is applicable to this question :

"Each electoral board shall appoint the judges, clerks and registrars of election for its county or city; and, in appointing judges of elections, representation as far as possible shall be given to each of the two political parties which, at the general election next preceding their appointment, cast the highest and next highest number of votes."

A similar provision is also found in section 117 of the Code of Virginia, 1904.

By section 146 of the Code of Virginia, 1904, it is provided that "all special elections, all local option elections, and all elections to fill vacancies in offices shall be superintended and held, notice thereof given, returns made and certified, votes canvassed, results ascertained and made known, and commissions and certificates of election given by the same officers under the same penalty, and subject to the same regulations as prescribed for general elections, except so far as may be otherwise provided. \* \* \*"

From this it will be seen that, in those cases where a vacancy exists in a legislative or senatorial district, the election to fill such vacancy must be conducted subject to the same regulations as are prescribed for general elections.

It is provided by section 4 of chapter 307 of the Acts of 1912 (Virginia Primary Election Laws), so far as is applicable to this question, as follows:

"The primaries herein provided for shall be held by three judges appointed for each party participating and from members of that party by the electoral boards of the respective cities and counties in the State, upon application made by the duly constituted authorities of the party or parties desiring to hold a primary under this law, in such manner as may be provided by the party plan of such party or parties, one of which judges so appointed shall act as clerk in the conduct of such primary to be held, at each of the several precincts as designated at the passage of this act or hereafter, may be provided by law.

"Provided the said primaries shall be held by three judges and two clerks, appointed as above provided, for each party participating in said primary, if in the judgment of said board the two clerks are necessary in order to have the vote cast at any voting place.

"Provided further, that the judges so appointed for each party shall conduct the primary for that party."

In view of the requirement of the law that representation, so far as possible, be given each of the two dominant political parties in all general elections and all elections conducted subject to the same regulations as prescribed for general elections, and in view of the above quoted provisions of the Virginia Primary Law, I am of the opinion that, where such vacancies are to be filled, it will be necessary to appoint separate election officials to conduct the special election and the Democratic primary.

Very truly yours,

JNO. R. SAUNDERS,

*Attorney General.*

## ELECTIONS—TAX LIST.

RICHMOND, VA., May 3, 1919.

MR. F. W. RICHARDSON, *Clerk,*  
*Circuit Court of Fairfax County,*  
*Fairfax, Va.*

MY DEAR SIR:

Acknowledgment is made of your letter of May 2 calling attention to the fact that there is to be a special election to be held in the Eighth Virginia Congressional district on May 27, 1919, and asking whether you are required to furnish the judges of election with a copy of the list of persons who have paid their capitation taxes.

Section 86-b of Pollard's Code, volume 3, page 22, provides that the clerk shall cause to be delivered, with the poll books, at a reasonable time before every election to one of the judges of election of each precinct in his county or city, a certified copy of the list of those qualified to vote.

It is manifest, therefore, that it is your duty to furnish such list.

In response to your question as to whether the county treasurer should furnish the list of those who paid their 1918 capitation taxes prior to December 10, 1918, I beg to state that this list should be furnished to you and you should furnish a certified copy to the judges of election.

I am herein enclosing a copy of a letter which I have written to Mr. Charles T. Jesse, secretary of the Electoral Board of Alexandria county, which deals with this question at some length, which I am enclosing for your information.

Yours very truly,

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

## ELECTIONS—TAX LIST.

RICHMOND, VA., December 13, 1919.

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

DEAR SIR:

Acknowledgment is made of your letter, in which you state that, on account of the unusual rush in the payment of poll taxes and the extension of time given by the legislature for the payment of property taxes, you will be unable to prepare and deliver a list of the persons paying their poll taxes not later than December 8, 1919, to the clerk of your court by January 8, 1920, and ask if there is any way that you can secure additional time for this work.

While the statute expressly provides that the treasurer of each county or 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 the persons in the 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, at the same time, I do not think the statute contemplates practically an impossibility.

Therefore, if the unprecedented rush on your office for the purpose of paying poll taxes by the 8th of December and the continuance of this rush until the 31st of December, because of the fact that an extension of time to that date has been allowed for the payment of property taxes without subjection to penalties, prevents you from filing the list above referred to with your clerk by January 8, 1920, in such case, if you deliver the list to the clerk of your court as soon as you can do so by using due diligence, I am of the opinion that you will not be subject to the penalty provided by section 86-b of the Code, for the failure to file the list not less than five months prior to the second Tuesday in June.

Yours truly,

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

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ELECTIONS—TAX LIST.

RICHMOND, VA., *October 30, 1919.*

MR. H. BABCOCK,  
*Appomattox, Va.*

DEAR SIR:

Acknowledgment is made of your letter of October 28, in which you request me to advise you on the following question:

"Is it not true that the eligible list issued by the county treasurer two months prior to the election, is conclusive evidence of a citizen's right to vote? That is, in the generality of cases? I understand the exception which is made in the case of a newly acquired residence, etc."

It is provided by the second paragraph of chapter 38 of the Constitution of Virginia that (page 13, Election Laws):

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

You will see from the above quotation that the tax list furnished to the judges of election of each precinct is by the Constitution made conclusive evidence of the facts stated therein for the purpose of voting. If a man's name appears on the tax list as having paid his taxes for the required number of years, if otherwise qualified, he is entitled to vote. If his name does not appear on the list as having paid his capitation taxes for the re-

quired number of years, he is not entitled to vote, although he may have paid his taxes within the proper time, unless, as is provided in the first paragraph of section 38 of the Constitution, such person has applied to the court or judge within the proper time to have the same corrected and an order has been entered by the court or judge correcting the list to accord with the facts.

In view of the fact that it is provided by the first paragraph of section 38 of the Constitution, that after the treasurer's list has been posted, that any person who shall have paid his capitation tax, but whose name is omitted from the list, shall, within thirty days after the list has been posted, after five days written notice to the treasurer, apply to the circuit court of a county or the corporation court of a city, or the judge thereof in vacation, to have the same corrected, and his name entered thereon, and such list, by the second paragraph of section 38 of the Constitution, is made "conclusive evidence of the facts therein stated for the purpose of voting," which list the clerk is required to certify "with such corrections as may have been made by order of the court or judge."

I am of opinion that the only person who has authority to correct or in any manner alter the list after it has been posted, is the court or judge thereof, in the manner provided by law. Therefore, neither the treasurer nor anyone else, after the list has been posted, has the right to either add to, subtract from, or alter in any manner the list. Of course, what I have said above with reference to the tax list, does not apply in the case of newly acquired residence, young men just becoming of age, etc., who are provided for by other sections of the statutes.

You also ask the following question:

"Can a man whose initials are wrong on the certified list, vote? If his identity is unquestionable, can he vote? If a man's initials are E. V., and the certified list has it E. W., for instance, would such mistake disqualify a voter?"

Where such mistakes occur it is clearly an error, and where the identity of the person is established beyond dispute, I am of the opinion that the man is unquestionably entitled to vote.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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ELECTIONS—TAX LIST.

RICHMOND, VA., *October 22, 1919.*

MR. H. B. POWELL,  
*Stuart, Va.*

DEAR SIR:

Acknowledgment is made of your letter of October 16, in which you request me to advise you whether a man who has paid his capitation taxes for the three years preceding the November, 1919, election more than six months prior thereto, but whose name does not appear on the tax list as

having paid his taxes within the proper time, can be permitted to vote on his tax receipts. You further inquire as to whether or not there is any case in which a man can vote upon his tax receipts without his name appearing on the treasurer's list as having paid his capitation taxes for the three preceding years more than six months prior to the election in which he offers to vote.

It is provided by section 38 of the Constitution of Virginia, that the tax list "shall be conclusive evidence of the facts therein stated for the purpose of voting." Therefore, unless one's name appears upon the tax list as having paid the taxes required by law, he is not entitled to vote, although he may have paid his capitation taxes within the proper time and have receipts showing that he did so. An exception to this, however, is found in section 56 d of the Code of Virginia, which provides as follows:

"In any case where a voter has been transferred from one city or county to another city or county, and has paid his State poll taxes for the three years next preceding that in which he offers to vote, or for any of said years, in any county or city in this State, such voter may exhibit to the judges of election the certificate of the treasurer of the city or county wherein the said taxes were paid, showing such payment, and that the same was made at least six months prior to the election, by the person offering to vote, such certificate shall be conclusive evidence of the facts therein stated for the purpose of voting.

Where, however, the voter has resided in the county in which he offers to vote for the three years preceding the election at which he offers to vote, he is not entitled to vote unless his name appears on the tax list as being qualified.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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ELECTIONS—TAX LIST.

RICHMOND, VA., October 29, 1919.

MR. W. C. FRANKLIN,  
*Pamplin, Va.*

DEAR SIR:

I am in receipt of your letter of the 28th, in which you ask if the treasurer can add to or amend in any particular the list of voters who have paid their capitation taxes six months prior to the election after he has posted the list, except by order of the circuit court or judge in vacation.

I am of the opinion that the law permits no person save the circuit court of a county, or the judge thereof in vacation, to add a name to this list after it has been made out by the treasurer and posted as the law requires.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## ELECTIONS—TAX LIST.

RICHMOND, VA., *July 23, 1919.*

MR. S. B. DREWRY,  
*Treasurer Southampton County,*  
*Boykins, Va.*

DEAR SIR:

Acknowledgment is made of your letter of July 18, 1919, in which you state that, in making up the voting list, names of certain persons who had paid their capitation taxes within the time permitting them to vote, were omitted, due to the fact that your predecessor in office failed to enter the same on the books of the office by which you were guided in making up the list of persons entitled to vote in the coming election.

You request me to advise you as to what may be done to remedy the omission of these names from the tax list.

This question is governed by the provisions of section 86-b, Code of Virginia 1904, which is found in the Virginia Election Laws, 1916, pages 32 and 33. The first section of this act provides for the making up by the treasurer and filing of a list of all persons in his county or city who have paid their State poll taxes required by the Constitution and within the proper time.

The second section of the act governs this question, and reads as follows:

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

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

## ELECTIONS—TAX LIST.

RICHMOND, VA., *August 1, 1919.*

MR. J. C. DRAKE,  
*Judge of Election,*  
*Capron, Va.*

DEAR SIR:

Acknowledgment is made of your letter of July 30, 1919, in which you ask whether a person whose name is not on the list of qualified voters can vote in an election, on the production of a tax receipt or certificate from the treasurer.

Sub-section 3 of section 86-b of the Code of Virginia makes the certified list conclusive evidence as to qualification to vote, so far as payment of capitation taxes is concerned.

Section 86-d of the Code provides that the only case (except as to a young man just becoming of age) in which a person can vote on the production of a certificate of the treasurer, is when a voter has been transferred from one

city or county to another city or county, and has paid a portion of his poll taxes in the county or city from which he has been transferred.

Yours truly,

J. D. HANK, JR.

*Assistant Attorney General.*

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ELECTIONS—TAX LIST.

RICHMOND, VA., *July 31, 1919.*

MR. E. E. RAWLINGS,  
*Capron, Va.*

DEAR SIR:

Acknowledgment is made of your letter of July 30, 1919, asking what remedy qualified voters have when their names are left off of the lists posted at the various voting precincts pursuant to the election laws. You also ask whether such voters can vote upon producing certificates from the treasurer, showing that they have paid the necessary capitation taxes within the prescribed time.

The remedy of such voters is prescribed by section 86-b (2) of the Virginia Code (Pollard's Supplement, 1910), which provides that within thirty days after the list has been posted, any person who has paid his capitation taxes, but whose name is omitted from the certified list may, after five days' written notice to the treasurer, apply to the circuit court of his county or corporation court of his city, or the judge thereof in vacation, to have his name entered thereon, which application the court or judge shall promptly hear and determine.

This is the only remedy given to the qualified voters whose names have been left off the lists, because sub-section 3 of section 86-b provides that the clerk shall cause to be delivered to one of the judges of each voting precinct a certified copy of the lists, which shall be conclusive evidence of the facts therein stated for the purpose of voting. It is clear, therefore, that if a qualified voter whose name has been omitted from the list does not take advantage of the remedy prescribed by sub-section 2 of section 86-b, thereby having his name added, the judges of election cannot allow him to vote on the production of a certificate from the treasurer that he has paid such taxes in time to vote, because sub-section 3, above referred to, makes the certified list, as amended by proceedings under sub-section 2, conclusive evidence as to the qualification to vote, so far as payment of capitation taxes is concerned.

This is also manifest when sub-section 3 is read in connection with section 86-b, which provides the only case (except as to a young man just becoming of age) in which a person can vote on the production of a certificate of the treasurer, namely, where a voter has been transferred from one city or county to another city or county, and has paid a portion of his poll taxes in the county or city from which he has been transferred.

Yours truly,

J. D. HANK, JR.

*Assistant Attorney General.*

## ELECTIONS—TAX LIST.

RICHMOND, VA., *August 2, 1919.*

S. M. NOTTINGHAM, ESQ.,  
*Culpeper, Va.*

DEAR SIR:

Acknowledgment is made of your letter of August 1, 1919, in which you ask whether or not a qualified voter whose name has been inadvertently omitted from the treasurer's list, which omission has not been discovered in time to have the judge order the name listed, has a right to vote in the coming primary on the production of a treasurer's receipt showing that his capitation taxes have been paid as required by statute.

Sub-section 3 of section 86-b of the Code of Virginia makes the certified list conclusive evidence as to qualification to vote, so far as payment of capitation taxes is concerned.

Section 86-d of the Code provides that the only case (except as to young men just becoming of age) in which a person can vote on the production of a certificate of the treasurer, is when a voter has been transferred from one city or county to another city or county, and has paid a portion of his poll taxes in the county or city from which he has been transferred.

It is clear, therefore, that if a qualified voter whose name has been omitted from the list does not take advantage of the remedy prescribed by sub-section 2 of section 86-b of the Code, namely, that after five days' written notice to the treasurer, he shall apply to the circuit court of his county or corporation court of his city, or the judge thereof in vacation, to have his name entered on the certified list, the judges of election cannot allow him to vote on the production of a certificate from the treasurer that he has paid his capitation taxes in time to vote.

Very truly yours,

LEON M. BAZILE,  
*Law Assistant.*

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ELECTIONS—TAX LIST.RICHMOND, VA., *July 28, 1919.*

MR. F. M. GATES,  
*Ararat, Va.*

MY DEAR SIR:

I am in receipt of your letter of the 25th, in which you ask the question whether a voter who has registered and paid all poll taxes as required by law can vote if the treasurer has left his name from the list of those who have paid their capitation taxes.

The law provides that any voter who has paid his capitation taxes, and whose name is left off the treasurer's list, can apply to the circuit court, or the judge thereof in vacation, within thirty days after the treasurer publishes his list, and have his name placed on the tax list.

It has been the custom of some of the judges conducting elections to permit persons to vote on production of their tax receipts showing that they have paid their poll taxes. This seems to be a matter which is left largely in the discretion of the judges conducting the election.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

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ELECTIONS— TAX RECEIPTS.

RICHMOND, VA., June 30, 1919.

HON. LANDON LOWBY,  
*Commonwealth's Attorney,*  
*Bedford, Va.*

DEAR SIR:

Acknowledgment is made of your letter of June 26, 1919, in which you ask what it is necessary for a citizen to do in order to vote who has lived, for the last year, in Bedford county and paid his 1918 capitation taxes there, but his 1916 and 1917 taxes in the county from which he moved to Bedford county.

I am enclosing you a copy of a letter which I recently wrote to Mr. A. L. Lancaster, who desired information of a similar nature, which letter answers your question.

It will be seen from this letter that the law allows such voter to vote upon the certificate of the treasurer showing that he paid his taxes for 1916 and 1917 in the county or city from which he moved. Of course, the treasurer of Bedford county can only place him on the list for 1918, and it was evidently in acknowledgment of this fact that section 86-d of the Code of Virginia was enacted.

If the voter has not paid 1918 capitation taxes in Bedford county, he is either delinquent in that county or has not lived in it a year; in either of which cases he cannot vote in that county. But, if he has paid 1918 taxes in Bedford county six months prior to the fall election, of course, the treasurer's list should show it, and the judges of election, upon this evidence and the certificate of the treasurer of the county from which the voter removed, showing that the 1916 and 1917 taxes were paid in that county, are required by law to allow him to vote.

If there is any further information I can give you in this matter, kindly call upon me.

Yours truly,

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

## ELECTIONS—TRANSFER OF VOTERS.

RICHMOND, VA., *September 10, 1919.*

MR. F. L. SUTHERLAND,  
*Tiny, Va.*

DEAR SIR:

Acknowledgment is made of your letter of September 8th, to which I will reply at once.

You state that a voter obtained his transfer from one county to another county, which transfer was delivered to the registrar in the county to which he was transferred.

You further state that the said voter has moved back to the county from which he was transferred. The only thing to do is for the voter to obtain a transfer from the registrar in the county to which he has been transferred, and in that way he would be transferred back to the county from which he originally came.

Of course you understand that a person must live in a county at least twelve months before he can vote, and if the party referred to by you changed his residence, of course he would have to remain in the county to which he came back at least twelve months before he would be able to vote.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

## ELECTIONS—TRANSFER OF VOTERS.

RICHMOND, VA., *October 28, 1919.*

MR. D. C. DEANE,  
*Standardsville, Va.*

DEAR SIR:

Acknowledgment is made of your letter of October 25, in which you request my opinion on the following statement of facts:

"D. L. Haney, a citizen of this county, and a voter in McMullan precinct, this county, having changed his residence to Stanardsville precinct, this county, applied in the latter part of September, about ten days before registration closed, by mail to the registrar of McMullan precinct, for a transfer to Stanardsville precinct. The application was promptly received by the registrar, who forwarded in the next mail the requested transfer. The date of the transfer shows that it was executed within the time limit, and if it had promptly reached Mr. Haney, he would have had ample time to have his name enrolled by the registrar of Stanardsville precinct. Instead, the transfer miscarried and did not reach Mr. Haney until the time limit had expired. The registrar refused to place his name on the voting list. Mr. Haney had his taxes paid, and but for this miscarriage of his mail, would be in a position to vote in the November elections."

It is provided by section 125 of the Code of 1904 (Va. Election Laws, p. 59-60), so far as is applicable to the question here under consideration, as follows:

"\* \* \* where a registered voter has changed his place of residence from one election district to another in the same county, and has resided for thirty days in the election district in which he offers to vote, if he has a certificate showing that he was duly registered in his former election district in said county, and that his name has since removal been erased from the registration books of said election district, it shall be sufficient evidence to entitle him to a vote in the district in which he resides, and his name shall be registered in the registration book by the registrar, if he be present, or by one of the judges of election if he not be present. \* \* \*"

Under this part of section 125 of the Code, all that Mr. Haney will have to do is to present his transfer which was obtained prior to the date the books are required to be closed and it will be the duty of the registrar, if present, to register his name in the registration book, or if he be not present, the duty of one of the judges of election to register his name in the book and permit him to vote, assuming, of course, that he is otherwise qualified to vote.

I am taking for granted that Stanardsville precinct is not in a town containing over 2,000 inhabitants.

Yours very truly,

J. D. HANK, JR.

*Assistant Attorney General.*

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ELECTIONS—TRANSFER OF VOTERS.

RICHMOND, VA., October 31, 1919.

MR. JESSE EWELL, JR.,  
*Ruckersville, Va.*

DEAR SIR:

I am in receipt of your letter dated September 27, but I presume you intended it as October 27, as it did not reach the office until this morning.

You state that in June, 1918, you returned from Norfolk to Ruckersville, where you have resided ever since. You also state that you wrote for a transfer from Norfolk about two months ago and about two weeks ago you received the transfer, at which time the registration books were closed. You failed to state whether you had paid all capitation taxes required, but I presume you have done so.

The law requires that the registration books shall be closed thirty days before the election, therefore the registrar could not act upon your transfer, and it is my opinion that you cannot vote in the coming election.

Had you moved from one precinct to another precinct in the county in which you reside, you could vote on your transfer, but having moved from Norfolk, which is in a different county from the county in which you now reside, you would not be permitted to use your transfer on the day of election.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

## ELECTIONS—TRANSFER OF VOTERS.

RICHMOND, VA., *October 23, 1919.*

HON. N. B. EARLY,  
*Dawsonville, Va.*

MY DEAR SENATOR EARLY:

Acknowledgment is made of your letter of October 21, in which you request my opinion on the following statement of facts:

(1) "D. L. Haney, who was duly registered at McMullan precinct, removed to the Stanardsville precinct in the same magisterial district, some months ago. On the 26th of September, he applied for a transfer, which was sent him by mail, but for some unknown cause, the letter was sent to Baltimore and he failed to get it before the 4th of October. The registrar at Stanardsville refuses to register him."

This case is governed by the provisions of section 125 of the Virginia Election Laws, pp. 59-60, which so far as is applicable thereto provides as follows:

"\* \* \* where a registered voter has changed his place of residence from one election district to another in the same county, and has resided for thirty days in the election district in which he offers to vote, if he has a certificate showing that he was duly registered in his former election district in said county, and that his name has since his removal been erased from the registration books of said election district, it shall be sufficient evidence to entitle him to a vote in the district in which he resides, and his name shall be registered in the registration books by the registrar, if he be present, or by one of the judges of election, if he not be present. \* \* \*"

This man's name should be registered in the registration book by the registrar, if he be present, or by one of the judges of election if he not be present, on the day of election, and this will permit him to vote.

(2) You also request my opinion as to the right of a "young man who will be twenty-one in a few days and who has had himself assessed and paid \$1.50 to the treasurer, but the registrar has refused to register him."

If this young man had himself assessed and paid the capitation tax of \$1.50 and applied to the registrar for registration prior to the time the registration books closed, he should have been registered. If, however, he waited until after the books had closed, it is too late for him to register.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## ELECTIONS—TRANSFER OF VOTERS.

RICHMOND, VA., *June 21, 1919.*

MR. A. L. LANCASTER,  
*Blacksburg, Va.*

DEAR SIR:

Acknowledgment is made of your letter of June 20, in which you state that you are a resident of Montgomery county, having lived there a year, that you paid your 1918 capitation taxes in that county, but that you paid your 1916 and 1917 capitation taxes in the city of Roanoke where you then lived. You further state that your name appears upon the treasurer's list of Montgomery county for 1918, but not for 1916 and 1917, and you ask what you must do in order to vote in the coming elections.

Section 86d of the Code of Virginia provides:

"In any case where a voter has been transferred from one city or county to another city or county, and has paid his State poll taxes for the three years next preceding that in which he offers to vote, or for any of said years, in any county or city in this State, such voter may exhibit to the judges of election the certificate of the treasurer of the city or county wherein the said taxes were paid, showing such payment, and that the same was made at least six months prior to the election, by the person offering to vote, such certificate shall be conclusive evidence of the facts therein stated for the purposes of voting. \* \* \*

Therefore, upon offering to vote, you shall call the attention of the judges to the fact that you have only been a resident of the county for a little over a year, and that they will find in the treasurer's list that you have paid your 1918 taxes six months prior to the election. You should then produce the certificate of the treasurer of Roanoke city, showing that you paid your 1916 and 1917 capitation taxes in Roanoke city, where you then lived, more than six months prior to the election in which you offered to vote. Upon these facts being shown to the judges, you should be, under the statute above quoted, allowed to vote.

If there is any further information I can give you in this matter, kindly advise me.

Yours truly,

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

## ELECTIONS—VOTERS.

RICHMOND, VA., *September 3, 1919.*

HON. THOMAS A. FISHER, *Mayor,*  
*Alexandria, Va.*

MY DEAR SIR:

Acknowledgment is made of your letter of September 2, 1919, stating that a special election will be held in your city on September 23, 1919, for the purpose of determining whether or not there shall be a change in the

form of the government of your city. You ask what payment of poll taxes is necessary in order to qualify one to vote in this election.

Section 62 of the Code of Virginia (3 Pollard's Code, p. 19) provides that qualification of voters at any special election shall be such as prescribed for voters at general elections; provided that, at any such special 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 election is held; and, provided, that at any such special election held after the second Tuesday in June in any year any person shall be qualified to vote who is or was qualified to vote at the regular election held on the Tuesday after the first Monday in November of that year.

As this election comes subsequent to the second Tuesday in June, persons are qualified to vote who are qualified to vote in the general election to be held on the 4th of November of this year. In other words, so far as the payment of poll taxes as a prerequisite to voting in the special election is concerned, all persons are qualified to vote therein who paid on or before the 3rd day of May, 1919, all poll taxes assessed or assessable against them for the years 1916, 1917 and 1918.

Of course, under the law, a young man becoming of age after February 1, 1918, and before February 1, 1919, can, by paying his poll taxes for 1919 and registering, qualify himself to vote in your special election, because there were no poll taxes assessable against him until the year 1919. If he has become of age since February 1, 1919, then he must pay his poll tax for 1920, as the Constitution, section 20, provides that if a person becomes of age at such time that no poll taxes shall have been assessable against him for the year preceding the year in which he offers to register, he can register by paying \$1.50 in satisfaction of the first year's poll tax assessable against him. The right to register manifestly carries with it the right to vote, and it is evident that the first year's poll tax assessable against him would be for the year 1920.

Such young man can pay this poll tax and register any time before the election. The payment by him of this tax six months prior to the election is not required.

Any further information I can give you on this matter will be gladly furnished upon your request.

Yours truly,

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

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ELECTIONS—VOTERS IN PRIMARY.

RICHMOND, VA., *August 1, 1919.*

MR. JAMES W. BAILEY, *Judge of Election,*  
*Dundas, Va.*

DEAR SIR:

Acknowledgment is made of your letter of July 31, 1919, asking that you be advised what voters are eligible to vote in a strictly Democratic primary.

The primary law provides that all persons qualified to vote at the election for which the primary is held, and not disqualified by reason of the requirements of the party to which they belong, may vote in the primary.

To vote in the election for which this primary is held, the voter (unless a young man just becoming of age) must have paid, on or before May 4, 1919, all capitation taxes assessed or assessable against him for the years 1916, 1917 and 1918; he must have lived in the State two years, in the city or county one year, and in the precinct in which he offers to vote thirty days next preceding the election for which the primary is held; and he must also be registered.

The law of the Democratic party requires that all voters shall be white, and provides that no person will be permitted to vote in the August primary unless in the last next preceding general election he voted for the Democratic nominee for the House of Representatives, or its nominee for Governor, or its nominee for the House of Delegates; but 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 Democratic party, he shall be entitled to vote.

The above contains the information you desire. It is, of course, too late to give any information with reference to the primary law in more detail than is set out above.

Yours truly,

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

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ELECTIONS—VOTERS.

RICHMOND, VA., *July 31, 1919.*

W. F. MYERS, ESQ., *Registrar,*  
*Lincoln Precinct, Va.*

DEAR SIR:

Acknowledgment is made of your letter of July 29, 1919, received this morning. You request my opinion on the following questions:

"1. Can a Republican who voted in the 'special election' in this district last May for Republican candidates for Congress, vote in the coming Democratic primary, although he agrees to support the nominee at the fall election?

"2. Can a resident of Washington who spends two or three months in this State during the summer, vote in the State election? Although he owns real estate and pays taxes in the county in which he spends his vacations, he has been living and attending to business in Washington for twelve or fifteen years. He registered prior to January 1, 1904.

"3. Can a qualified voter at a certain precinct in one district where he owns a farm and keeps a furnished room for his especial use, but who also owns a farm in an adjoining district, where he also has a room (these different farms being run by tenants), vote where first qualified, or should he get a transfer to the other district?"

Your first question is governed by sub-section (b) of section 8 of chapter 307 of the Acts of 1912, as amended, commonly known as the Virginia Primary Election Law, Virginia Election Laws, pp. 93, 94, which reads as follows:

"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."

If the man in question voted in the last general election for any other candidate than the nominee of the Democratic party, he is not entitled to vote in the Democratic primary to be held next August 5. If, however, the man did not vote in the last general election, he will be entitled to vote in the Democratic primary to be held next August 5 "upon his declaration that he will support at the ensuing election the nominee of the" Democratic primary.

In reply to your second question, if the man is in fact *a resident of Washington*, as you say he is, of course, he is not entitled to vote in Virginia. There is a wide difference, however, between a legal residence such as will permit a man to vote in this State, and a man's actually living therein. You have failed to state sufficient facts to enable me to determine whether or not the man in question has a legal residence in Virginia such as would permit him to vote, and therefore, I am unable to answer this question.

Your third question is also subject to the same objection. You have not stated sufficient facts for me to pass on the question submitted.

Yours truly,

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

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ELECTIONS—VOTERS.

RICHMOND, VA., *January 29, 1919.*

MR. A. B. RICHARDS,  
*Leesburg, Va.*

DEAR SIR:

Acknowledgment is made of your letter asking what qualifications are necessary to entitle men now in the service, those at home and those coming from France, to vote in the August primary.

The qualifications for men in service and those coming from France are no different from those of the ordinary voters, which qualifications are that the party offering to vote must have been a resident of the State two years, of the county, city or town one year, and of the precinct thirty days, that he must have paid all poll taxes assessed or assessable against him for the

three years preceding the one in which he desires to vote six months prior to the date of the election, and, of course, must be duly registered.

If this letter does not cover the question as fully as you desire, I would suggest that you consult your Commonwealth's Attorney, who will be able to refer you to the section of the Code giving in detail the requirements, which are entirely too long to be copied in this letter.

Very truly yours,

F. B. RICHARDSON,

*Law Assistant.*

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ELECTIONS—VOTERS.

RICHMOND, VA., *April 15, 1919.*

MR. F. L. DUNN,

*R. F. D.,*

*Crewe, Va.*

DEAR SIR:

Acknowledgment is made of your letter of April 14, 1919, asking whether or not the primary election laws of Virginia, which became effective January 1, 1915, have been amended. I beg to advise that there are no material amendments that I recall, but if you will address a letter to Hon. B. O. James, Secretary of the Commonwealth, he will furnish you with the latest publication from his office.

Your next question is whether or not a person who came to Virginia on November 1, 1917, and has paid his poll taxes for 1918 is entitled to vote.

Section 18 of the Constitution provides that a voter must be 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, and that he must have been registered and must have paid his State poll taxes, as provided for in section 20 of the Constitution. The provision in this last named section is that he must personally pay to the proper officer all poll taxes assessed or assessable against him for the three years next preceding that in which he offers to vote. Section 26 of the Constitution provides that such person shall be admitted to register, notwithstanding that, at the time he offers to register, he is not qualified to vote, provided he is entitled to vote at the next regular election.

I gather from these references to the Constitution that if this party moved to Virginia on November 1, 1917, he will be entitled to vote in the next regular November election, provided he has been a resident of the county, city or town in which he offers to vote one year, and of the precinct thirty days next preceding the election in which he offers to vote, that he has registered, and has paid such poll taxes as are assessed or assessable against him under the Constitution for the three years next preceding that in which he offers to vote.

If this party moved into Virginia on November 1, 1917, the first poll tax which could be assessed against him would be February 1, 1918, which, I understand, was assessed and has been paid. The next assessment of poll taxes against this party would be February 1, 1919, this latter poll tax,

however, not being due until December 1, 1919, so that he would not be required to pay that. My view, therefore, is that the only poll tax which the party to whom you refer would have to pay would be the one assessed against him on February 1, 1918, which, I understand, has already been paid.

You referred to two persons who registered several years ago, but have been out of the State, one of whom has kept his poll taxes paid up, and the other has not. Neither of the persons, however, have transferred their registration elsewhere.

If these two persons to whom you refer have all the while been residents of Virginia, they have only to pay all back poll taxes assessed against them to entitle them to vote.

In answering your last question, the primary election law provides that no person shall vote at a legalized primary election for the nomination of any candidate for office, unless he is, at the time, registered and qualified to vote at the next succeeding election.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

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ELECTIONS—YOUNG MAN COMING OF AGE.

RICHMOND, VA., *June 11, 1919.*

MR. ROBT. C. HART, *Secretary,*  
*Bonilton, Va.*

DEAR SIR:

I am in receipt of yours of the 5th instant in which you desire to know whether the opinion of the Attorney General's office that a young man becoming of age before the November election has a right to register on or before the primary in August by paying one year's poll taxes before the date of registration, may vote in the primary, has been changed.

In reply thereto, I would state that it has not, so that any young man becoming of age on or before the 5th day of November, 1919, by registering and paying a year's poll taxes may vote in the August primary.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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ELECTIONS—YOUNG MAN COMING OF AGE.

RICHMOND, VA., *July 14, 1919.*

MR. T. W. CARPER,  
*Clerk of Circuit Court of Franklin County,*  
*Rocky Mount, Va.*

DEAR SIR:

Acknowledgment is made of your letter of July 8, 1919, addressed to the Attorney General, in which you request me to advise you on the following state of facts:

"If a young man becomes of age any time between now and the election and pays his poll tax at the time he becomes of age, can he vote in the primary in August? Of course, this tax would not be paid six months before the election, but would be paid before the election."

I am of the opinion that such young man would be entitled to vote in the August primary, provided he had himself assessed with the capitation tax assessable against him for the ensuing year, by reason of his becoming of age after the first of February of this year, in accordance with chapter 362 of the Acts of 1910, that he personally paid the same prior to the date of said primary, and that prior to said primary he registered as provided for by law.

For your information, I am enclosing you an opinion written by Hon. J. D. Hank, Jr., Assistant Attorney General, on June 28, 1919, to Hon. Landon Lowry, of Bedford, Va., which deals with the subject under consideration.

Yours very truly,

LEON M. BAZILE,

*Law Assistant.*

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ELECTIONS—YOUNG MAN COMING OF AGE.

RICHMOND, VA., *June 6, 1919.*

MR. M. A. TROUT, *Clerk,*  
*Warren County,*  
*Front Royal, Va.*

DEAR SIR:

Your letter of the 5th received. You ask the question whether or not a young man who becomes of age after February 1, 1919, has to pay his poll tax six months before the election in which he offers to vote.

You further suggest this case. Should a young man become of age this month, namely, June, has he the right to pay his tax now and register and vote in the November election. In reply I will state that any young man who becomes of age this month has a right to vote in the November election provided he registers and pays his first year's poll tax.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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ELECTIONS—YOUNG MAN COMING OF AGE.

RICHMOND, VA., *July 7, 1919.*

MR. G. H. EPES,  
*Blackstone, Va.*

DEAR SIR:

Acknowledgment is made of your letter of July 5, stating that a certain person who became of age March 15, 1918, desires to register and vote

in the primary this year and asking whether he can now pay his capitation tax and qualify to vote in the coming primary.

I had occasion to pass upon this question a short while ago, and am enclosing a copy of the letter stating my conclusions of the law.

You will see from this letter that such young man can pay \$1.50 poll tax for 1919 at any time during the year; that he is entitled to be registered as soon as he has paid this tax, provided, of course, it is paid before the registration books are closed, that is thirty days before the general election, and he is entitled to vote as soon as he is registered.

If there is any further information that I can give you on this subject, kindly advise me.

Yours truly,

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

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ELECTIONS—YOUNG MAN COMING OF AGE.

RICHMOND, VA., *June 28, 1919.*

HON. LANDON LOWRY,  
*Bedford, Va.*

DEAR SIR:

Acknowledgment is made of your letters, asking the right of a young man becoming of age after February 1, 1918, to register and vote in the elections held in 1919; the specific question being whether he is required to pay his poll taxes six months prior to the election in order to register and vote.

In considering this question, we take for granted that the proposed voter fulfills all the requirements of the Constitution and statutes as to qualification for voting, save registration and payment of poll taxes. In other words, there is no question of his ability to make application for registration and to answer the questions required under oath.

From an act approved March 18, 1910, (Acts of Assembly, 1910, page 584) it will be seen that a person becoming of age after the 1st of February in any year is not assessable for taxes for that year, but for the ensuing year. Therefore, persons becoming of age after February 1, 1918—which is the case you cite—are not assessable with capitation taxes for 1918, but for 1919.

Section 18 of the Constitution provides that a person otherwise qualified shall be entitled to vote if he has registered and paid his State poll taxes "as hereinafter required."

Sub-section 1 of section 20 of the Constitution provides that, in order to register, a person must have paid all State poll taxes assessed or assessable against him for the three years next preceding that in which he offers to register; or, *if he comes of age at such time that no poll taxes shall have*

*been assessable against him for the year preceding the year in which he offers to register, has paid \$1.50 in satisfaction of the first year's poll taxes assessable against him.*

The provision above in italics is also contained in section 73 of the Code of Virginia (Pollard's Code, 1904, page 72).

It is manifest in the case now under consideration that so soon as the young man coming of age after February 1, 1918, has been assessed for 1919, and has paid \$1.50 in satisfaction of the poll taxes for 1919, he is entitled to register.

Section 21 of the Constitution provides that any person registered under section 20 shall have the right to vote, provided he has paid, at least six months prior to the election, all State poll taxes assessed or assessable against him, under the Constitution, during the three years next preceding that in which he offers to vote. As there are no poll taxes assessable against the young man to whom you refer, for the three years next preceding that in which he proposes to offer to vote, namely, 1919, it is not necessary for him to pay his taxes six months prior to the election. Nor is this changed by the statutes, because they only provide for the payment, not later than six months prior to the election, of the poll taxes required by the Constitution during the three years next preceding that in which the election is held.

I am of the opinion, therefore, that any time before an election in 1919, a young man becoming of age after the 1st of February, 1918, may cause himself to be assessed by the commissioner of revenue with the capitation tax for the year 1919, under chapter 362 of the Acts of 1910 (Acts of Assembly, 1910, page 584), and pay such capitation tax, amounting to \$1.50, to the treasurer, and by so doing he becomes entitled to register and vote at such election.

In other words, such young man is not required to pay the \$1.50 (which section 20 of the Constitution requires him to pay as a prerequisite to voting) six months before the election at which he offers to vote. He is entitled to be registered at any time after he has paid this tax, provided, of course, it is before the registration books are closed, i. e., thirty days prior to the election; and he is entitled to vote as soon as he is registered.

In regard to your request for a copy of Attorney General Anderson's report for the year 1907, I regret to say that I have tried in every possible way to obtain a copy of this report for you, but find that there are none available.

Yours truly,

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

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ELECTIONS—YOUNG MAN COMING OF AGE.

RICHMOND, VA., November 19, 1919.

MR. JAS. M. ROSE,  
*Roseville, Va.*

DEAR SIR:

Acknowledgment is made of your letter of November 18, 1919, in which you state that a young man became of age after February 1, and wishes to

vote in the succeeding November election. You then ask me if it is necessary for him to pay \$1.50 six months prior to the November election or could he pay it at any time up to thirty days prior to the November election.

The young man, having just come of age, could pay his capitation tax any time prior to the closing of the registration books before the election, and vote. His name, not being on the voting list, it is provided in this particular case that the exhibition of his tax receipt is all that is necessary to entitle him to vote, provided, of course, he is otherwise qualified and has registered prior to the closing of the poll books.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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ELECTIONS—YOUNG MAN COMING OF AGE.

RICHMOND, VA., October 24, 1919.

HON. J. F. SERGENT,

*Attorney at Law,*

*Gate City, Va.*

DEAR SIR:

Acknowledgment is made of your letter of October 22, in which you request my opinion on the following statement of facts:

"Is a person who became of age after February 1, 1918, and before February 1, 1919, qualified to register and vote in the November election, 1919, without having paid his poll tax six months prior to the election to be held on November 4, 1919?"

The person in question, having come of age after February 1, 1918, is not assessable with a capitation tax for that year. The first capitation tax assessable against him is for the year 1919. Such a person can pay \$1.50 to the treasurer for the 1919 tax any time during the year up to thirty days before the election and register and vote.

Of course, the registration books being closed thirty days before the election, he could not register after that time, and if not registered prior thereto, he could not vote. Up to the time the registration books are closed, he can pay one year's capitation tax, register and vote in the November, 1919, election.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

## ELECTIONS—YOUNG MAN COMING OF AGE.

RICHMOND, VA., *October 27, 1919.*

MR. THOS. C. HERNDON,  
*Ruckersville, Va.*

DEAR SIR:

Acknowledgment is made of your undated letter received a day or two ago, in which you request my opinion as to several matters arising under the Virginia Election Laws.

You ask me first, if a young man just becoming of age can register ten days before the election. He cannot. The registration books must be closed between the registration day before the November election and the election day and no exception exists in the case of a young man attaining his majority between those dates, unless he has had himself assessed with his capitation tax for one year more than thirty days prior to the November election and has registered at that time or on the regular registration day before the election.

Your next question is: If a man becomes of age in August, 1917, and pays his capitation tax in that year and also in the year 1918, but the 1918 tax bill is dated 1917 so that it appears from the tax receipts that the capitation taxes were both paid in 1917, has a right to vote in the November, 1919, election? This depends upon how his name appears on the tax list. The date of his receipts and the fact of having receipts is immaterial, so far as his right to vote in the November, 1919, election is concerned.

It is provided in sub-section 3 of section 86-b of the Code of Virginia (Election Laws, page 33), that the tax list "shall be conclusive evidence of the facts therein stated for the purpose of voting." This man, having come of age in August, 1917, was not assessable with capitation taxes for that year. The first capitation tax with which he was assessable was the 1918 tax. If his name appears on the tax list as having paid his capitation tax for 1918 and he is duly registered and otherwise qualified to vote, he has the right to vote. Otherwise he has not.

You also ask me if a person moves from one county to another less than twelve months prior to the election, but more than thirty days prior thereto, has he a right to vote in the county he moved from. It is impossible for me to answer this question, owing to your failure to give me the necessary facts on which to base an opinion. If the man in question has moved from the county with the intention of changing his residence, of course he cannot vote in the county from which he moved, since moving therefrom, plus the intention to acquire a new residence elsewhere, operates as an abandonment of his former residence. If, however, the person has gone out of the county with the intention of returning thereto, and not with the intention of acquiring a new residence elsewhere, then his legal residence in the first county is still retained and he is entitled to vote.

On last Friday I wrote Hon. Sidney T. Deane, of Ruckersville, an opinion with reference to this latter question, which I have no doubt he will be glad to show you.

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

## ELECTIONS—YOUNG MAN COMING OF AGE.

RICHMOND, VA., *October 27, 1919.*

MR. H. M. MOIR,  
*Stuart, Va.*

DEAR SIR:

Acknowledgment is made of your letter of the 25th, in which you state that a voter who has become of age since last February and has been registered, has applied to you to pay his capitation tax in order that he may vote in the next election. You ask if he is entitled to vote.

The law provides that any young man who became of age after February 1, 1919, should apply to the commissioner of revenue of his county, have himself assessed and then pay to the treasurer one year's capitation tax, after which he has the right to register and vote in the November election.

The payment of his capitation tax, however, is a prerequisite to his registering. Judging from your letter, the young man in question registered before he paid his capitation tax. Such being true, he was not legally registered.

The law is that the registration books shall be closed thirty days prior to the election, therefore it would be too late now for this young man to register even after paying his capitation tax to you.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## ELECTIONS—YOUNG MAN COMING OF AGE.

RICHMOND, VA., *September 25, 1919.*

E. H. McCONNELL,  
*County Secretary, Democratic Committee,*  
*Gate City, Va.*

DEAR SIR:

Acknowledgment is made of your letter of September 24, 1919, in which you request my opinion on the following statement of facts:

"Where a man comes of age in March, 1917, and is, therefore, not assessable with 1917 taxes, could he pay his taxes in the month of September, 1919, register and vote in the election to be held in November, 1919?"

The man in question, having arrived at the age of 21 years after February 1, 1917, namely, in March, 1917, is not assessable with capitation taxes for the year 1917. However, having reached the age of 21 years prior to February 1, 1918, he is assessable with capitation taxes for the year 1918, which were payable on or before November 30, 1918. These taxes not having

been paid until the month of September, 1919, the man in question is not entitled to vote in the election to be held in November, 1919, as September, 1919, is not six months prior to November, 1919.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

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ELECTIONS—YOUNG MAN COMING OF AGE.

RICHMOND, VA., *September 25, 1919.*

MR. DONALD McRAE,  
*Cumberland, Va.*

DEAR SIR:

Acknowledgment is made of your letter of February 23, 1919, in which you request my opinion on the following statement of facts:

"When should a man pay his capitation tax in order to vote next November if he became of age December, 1918? In other words, would he have to pay six months before the election?"

This man having come of age after February 1, 1918, is assessable for the first time with capitation taxes for the year, 1919, which are payable on or before November 30, 1919. However, in order for him to vote in the November, 1919, election, it will be necessary for him to pay one year's poll taxes prior to the election.

In order for him to register, it will be necessary that this tax be paid more than thirty days before the election, as the election books are required to be closed thirty days preceding the election.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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ELECTIONS—YOUNG MAN COMING OF AGE.

RICHMOND, VA., *July 26, 1919.*

MR. W. E. RAGSDALE,  
*DeWitt, Va.*

DEAR SIR:

Acknowledgment is made of your letter of July 24, in which you state that you will become of age on the 25th of October, 1919, that in April you paid the first year's poll tax assessable against you, and that you registered on the 5th of July. You ask whether, under such circumstances, you have a right to vote in the primary to be held on the 5th of August, 1919.

The primary law (Acts of Assembly, 1914, page 516), provides that all persons qualified to vote at an election for which the primary is held, and not disqualified by reason of other requirements in the law of the party to which he belongs, may vote at the primary. You are undoubtedly quali-

fied to vote at the election for which the primary will be held. We presume you are either a Democrat, or, in accordance with the primary law, will declare that you will support, at the ensuing election, the nominee of the party at the primary.

These things being true, you are undoubtedly entitled to vote at the primary to be held August 5, 1919.

Yours truly,

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

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ELECTIONS—YOUNG MAN COMING OF AGE.

RICHMOND, VA., *July 31, 1919.*

W. L. MAUPIN, ESQ., *Clerk,*  
*Charlottesville, Va.*

DEAR SIR:

Acknowledgment is made of your letter of July 30, 1919, addressed to the Attorney General, in which you request his opinion on the following statement of facts:

"There is a young man here who was born on the 12th day of February, 1998, and was twenty-one on the 12th day of February, 1919. What year's tax should he pay in order for him to register and vote this year?"

I assume that the year of the young man's birth was 1898, instead of 1998, as stated in your letter.

From an act approved March 18, 1910, Acts of Assembly, 1910, page 584, it will be seen that a person becoming of age after the first day of February in any year is not assessable with capitation taxes for that year, but for the ensuing year. Therefore, persons becoming of age after February 1, 1919, which is the case you cite, are not assessable with capitation taxes for 1919, but are assessable for 1920.

Section 18 of the Constitution provides that a person otherwise qualified shall be entitled to vote if he has registered and paid his State poll taxes "as hereinafter required."

Sub-section 1 of section 20 of the Constitution provides that, in order to register, a person must have paid all State poll taxes assessed or assessable against him for the three years next preceding that in which he offers to register; or, *if he comes of age at such time that no poll taxes shall have been assessable against him for the year preceding the year in which he offers to register, has paid \$1.50 in satisfaction of the first year's poll taxes assessable against him.*

The provision above underscored is also contained in section 73 of the Code of Virginia, 1904.

Section 21 of the Constitution provides that any person registered under section 20 shall have the right to vote, provided he has paid, at least six months prior to the election, all State poll taxes assessed or assessable against him, under the Constitution, during the three years next preceding that in

which he offers to vote. As there are no poll taxes assessable against the young man to whom you refer, for the three years next preceding that in which he proposes to offer to vote, namely, 1919, it is not necessary for him to pay his taxes six months prior to the election. Nor is this changed by the statutes, because they only provide for the payment not later than six months prior to the election, of the poll taxes required by the Constitution during the three years next preceding that in which the election is held.

Under these conditions, I am of the opinion that the young man should have himself assessed by the commissioner of the revenue for the district of the county or for the city in which he lives with such capitation taxes as shall become assessable against him for the ensuing year (1920) by reason of his becoming of age after the first of February, as is provided for by chapter 362 of the Acts of 1910. When this is done and the tax has been paid to the treasurer, the young man, if otherwise qualified, will be entitled to register and vote.

Yours truly,

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

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ELECTIONS—YOUNG MAN COMING OF AGE.

RICHMOND, VA., *July 29, 1919.*

MR. BLANTON P. SEWARD,  
*Suffolk, Va.*

MY DEAR SIR:

Your letter of July 28 has just been received.

You ask whether a person who became twenty-one years old last July, and did not pay his capitation taxes until June of this year can vote in the primary and general election in November.

In reply, I will state that such person cannot vote, as he should have paid his capitation taxes six months prior to the November election. The Constitution says that all poll taxes which are assessed or assessable against a person should be paid six months prior to the election in order to entitle that person to vote in that election. The party referred to by you, having become of age last July, of course, his capitation taxes were assessable on the 1st of February. It was, therefore, his duty to have himself assessed and pay such capitation taxes before the 5th of May of this year.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

## ELECTIONS—YOUNG MAN COMING OF AGE.

RICHMOND, VA., July 21, 1919.

HON. THOS. J. COLES, *Treasurer,*  
*Pittsylvania County,*  
*Chatham, Va.*

MY DEAR MR. COLES:

I am just in receipt of your letter of July 17, to which I will reply at once.

You ask if you can issue a capitation tax receipt this month to a man who will not become 21 years of age until next September, and thereby permit him to vote in the coming August primary.

The act of Assembly, approved March 18, 1910, to which you refer on the back of your letter, provides that any person who will be assessable with capitation taxes for the ensuing year, by reason of his becoming of age after the 1st of February in any year, may apply to the commissioner of the revenue for the district of the county or city in which he resides and have himself assessed with such capitation taxes; and it shall be the duty of the commissioner of the revenue to assess such person with such capitation taxes and to give such person a certificate of such assessment, and thereupon the treasurer shall receive from such person the capitation taxes set out in such certificate.

You will, therefore, see that such person will be entitled to vote and you are authorized to receive his capitation taxes.

I beg leave to refer you also to sub-section 1 of section 20 of the Constitution of Virginia, which contains practically the same provisions as above set out.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

## EXTRADITION.

RICHMOND, VA., August 22, 1919.

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

*In the Matter of Extradition of A. S. Hanley.*

MY DEAR GOVERNOR:

I am returning all the papers in connection with the above matter, which you delivered to me with the request that I give you an opinion as to whether under the provisions of section 123, article 27, of the Maryland Code, as amended by the laws of Maryland, 1914, chapter 281, page 420, you should honor the requisition made on you by the Governor of Maryland for the extradition of A. W. Hanley.

I desire to state that I have very carefully gone over the evidence which was presented to you in connection with this matter. The Maryland statute reads as follows:

"Every person who, with the intent to cheat and defraud another, shall obtain money, credit, goods, wares or anything of value by means of a check, draft or any other negotiable instrument of any kind drawn upon any bank, person, firm or corporation *not indebted to drawer*, or where he has not provided for the payment or acceptance and the same be not paid upon presentation, shall be deemed to have obtained such money, credit, goods or things of value by means of false pretense, and upon conviction, shall be fined or imprisoned, or both, as provided in section 112 of this article, at the discretion of the court. \* \* \*

You will see from a reading of the above statute that the gravamen of the offense is the drawing of a check upon a bank, firm or corporation not indebted to drawer, with intent to cheat, etc.

The evidence in this case discloses the fact that at the time the check in question was drawn by A. W. Hanley on the Niagara County National Bank of Lockport, New York, there was more than a sufficient balance in the bank to meet the payment thereon. The evidence discloses the fact that the payment on this check was stopped for the purpose of protecting M. Piowaty & Sons, Inc., against an alleged breach of contract on the part of the payee, Kemp. I am, therefore, of the opinion that this is a matter which should be adjusted in the civil courts and is not an act which makes it a crime according to the provisions contained in the Maryland statute.

Under these circumstances, I am of the opinion that you should not honor the application for the extradition of A. W. Hanley.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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FEES—CLERKS OF COURTS.

RICHMOND, VA., December 30, 1919.

MR. F. W. RICHARDSON,  
*Clerk of the Circuit Court,*  
*Fairfax, Va.*

DEAR SIR:

I am just in receipt of your letter of December 29, in which you ask certain questions concerning your office as clerk for Fairfax county.

You state in this letter that you have made your regular settlements with the Auditor for the years 1916, 1917 and 1918, and that during these years you have never received the maximum amount allowed you by law, namely, \$4,000.00. You then ask if, in your settlement for the fees collected by you in 1919 for the years 1916, 1917 and 1918 you are entitled to retain a sufficient amount of the fees for these years to insure your getting the full amount due you, namely, \$4,000.00.

I gather from your question that, during the year 1919, you have collected certain fees which were due you for services rendered in 1916, 1917 and 1918. Such being the case, I am of the opinion that you are entitled to retain these fees and apply them to the years during which they were earned until

you have reached the maximum amount allowed by law, namely \$4,000.00. As stated by you in your letter, until you receive this amount, of course, the State and county get no part of the fees.

Very truly yours,

JNO. R. SAUNDERS,

*Attorney General.*

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FEES—CLERKS OF COURTS.

RICHMOND, VA., June 26, 1919.

MR. A. H. CRISMOND,

*Clerk of Circuit Court,  
Spotsylvania, Va.*

MY DEAR MR. CRISMOND:

My reply to your letter of the 18th is delayed on account of the fact that for the past several days I have been engaged with the State Board of Education.

You ask whether, under chapter 331 of the Acts of 1918, the fees of the clerks of courts for recording the names of soldiers who were inducted into the army in the recent war with Germany, should come out of the county treasury.

I have read this act very carefully and, as stated in your letter, it fails to designate from what source these fees are to be paid. However, I believe they should be paid out of the county treasury.

You also ask in your letter what fees should be allowed the clerk for performing this duty. If you will read section 86-b of the Code of Virginia, you will find that the duties imposed by that section are somewhat similar to those embraced in the act in question.

By the provisions of section 86-b, the clerk, for performing the duties required of him, is paid 2 cents for each ten words, counting initials as words for the first copy, and ½ cent for each ten words for all other copies required to be made (Supplement of 1910).

However, I would say it would be entirely right and proper for your board of supervisors to agree with you as to what compensation should be allowed you for doing this work. The legislature, in enacting the law, should have made provision for the payment of fees of clerks and at the same time specified from what source they were to be paid. I am informed that the Auditor has expressed an opinion in a similar case that clerks should be paid out of the county treasury.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

## FEES—COMMISSIONER OF THE REVENUE.

RICHMOND, VA., *December 30, 1919.*

MR. F. W. RICHARDSON,  
*Clerk of Circuit Court,*  
*Fairfax, Va.*

DEAR SIR:

I beg leave to acknowledge receipt of your letter of December 29, in which you ask the question whether the incoming commissioner of revenue for Fairfax county, who was elected November last, is entitled to the transfer fees on deeds and wills collected by you as clerk during the year 1919, or whether such fees should go to the old commissioners of the revenue, who go out of office on December 31, 1919.

I am herewith enclosing you a copy of an opinion rendered by Mr. C. B. Garnett, Assistant Attorney General, on April 20, 1916, in which he decides this very question. I have read this opinion very carefully, and am satisfied that Mr. Garnett is correct.

As the transfers for 1919 are not made until 1920, and the compensation is allowed for making these transfers, you can see it is very clear that the party performing the work should receive the compensation.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

## FEES—COMMISSIONER OF THE REVENUE.

RICHMOND, VA., *November 25, 1919.*

HON. SIDNEY T. DEANE,  
*Commissioner of the Revenue,*  
*Ruckersville, Va.*

DEAR SIR:

Acknowledgment is made of your letter of November 24, in which you say that the board of supervisors of your county contend that you have no right to charge over 5 cents for assessing dogs, and that you understand you are entitled to 15 cents on each dog. You ask the opinion of this office on the question.

The law in question only fixes the maximum fee for the commissioner of revenue for listing dogs. The amount of his compensation is left entirely to the discretion of the board of supervisors of the county in which the commissioner lives, the fee not to exceed 15 cents.

While it might have been a better policy for the legislature to have provided that the commissioner of revenue in each county should receive the same compensation, yet the legislature, not having seen fit to provide such a stipulation in the law, there is no authority compelling a uniformity of fees for such work in the various counties of the State.

Yours truly,

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

## FEES—COMMISSIONER OF THE REVENUE.

RICHMOND, VA., April 10, 1919.

MR. A. PLUMMER PANNILL,  
*Commissioner of Revenue,*  
*Norfolk, Va.*

DEAR SIR:

Acknowledgment is made of your letter of April 9, 1919, in which you state that you have not demanded of each dog owner 15 cents at the time of registration, construing that the law provides that the payment was to be made by the city treasurer out of the sum collected for registration, under the act approved March 20, 1918, known as the "dog law."

Section 2 provides that "every dog above six months of age shall be liable to a license tax, \* \* \* such tax to be in lieu of all other taxes at present imposed by State and local county laws, \* \* \*" and that such tax shall be paid to the treasurer of the county, city or town wherein the owner of the dog resides. It is, therefore, manifest that you should not charge the owner of the dog with 15 cents for listing. Further in the same section is the provision for paying the commissioner of revenue not more than 15 cents for listing each dog.

Section 6 provides that "all moneys arising from dog license taxes shall be kept in a separate fund by the treasurer and used for the payment of damages and fees unless herein otherwise provided."

I am of the opinion, therefore, that your fee for registering dogs should be paid by the city treasurer out of the money arising from the dog license tax.

Yours truly,

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

## FEES—COMMISSIONER OF THE REVENUE.

RICHMOND, VA., March 29, 1919.

MR. J. F. DAVIS,  
*Commissioner of Revenue,*  
*Blanton, Caroline County, Va.*

DEAR SIR:

Acknowledgment is made of your letter of March 27, calling attention to the fact that what is known as the dog law provides that the commissioner of revenue shall not receive more than 15 cents for listing each dog, and inquiring whether each county should not pay the same per head for listing each dog.

The law in question only fixes the maximum fee for the commissioner of revenue for listing dogs. The amount of his compensation is left entirely to the discretion of the board of supervisors of the county in which the commissioner lives, the fee not to exceed 15 cents.

While it might have been a better policy for the legislature to have provided that the commissioner of revenue in each county should receive the

same compensation, yet the legislature, not having seen fit to provide such a stipulation in the law, there is no authority compelling a uniformity of fees for such work in the various counties of the State.

Yours truly,

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

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FEES—COMMONWEALTH'S ATTORNEY.

RICHMOND, VA., *January 24, 1919.*

ROBERT D. YANCEY, ESQ.,  
*Commonwealth's Attorney,*  
*Lynchburg, Va.*

DEAR SIR:

Acknowledgment is made of your letter of January 23, 1919, asking certain questions relating to fees of Commonwealth's attorneys in cases prosecuted by them before justices of the peace.

I know of no specific cases in which the Commonwealth's attorney is required by law to appear in a justice's court in misdemeanor cases. Section 3528 of the Code, however, as amended by Acts of 1918, chapter 385, does provide for certain fees in misdemeanor cases which are prosecuted in circuit courts, and a portion of this provision seems to imply that in all cases if the Commonwealth's attorney prosecutes a case, a fee may be taxed by the justice, to be paid by the defendant to the Commonwealth's attorney.

I think the question of appearing in a justice's court is one largely in your discretion, but not required under the law of Virginia so far as I have been able to find.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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FEES—COMMONWEALTH'S ATTORNEY.

RICHMOND, VA., *February 12, 1919.*

MR. R. B. STEPHENSON,  
*Attorney at Law,*  
*Covington, Va.*

DEAR SIR:

Acknowledgment is made of your letter of February 11, 1919, referring to section 3528 of the Code as amended by the General Assembly of 1918, which amendment, among other things, provides for a fee for the Commonwealth's attorney for the prosecution by him before any court or justice, of any county or city for misdemeanors "which he is required by law to prosecute."

This question has been presented to us several times and our answer has been that so far as we know, a Commonwealth's attorney is not required by law to prosecute a misdemeanor case before a justice of the peace, and hence no fee is payable out of the public treasury.

However, I see no objection to the appearance by a Commonwealth's attorney before a justice's court in misdemeanor cases, and in such cases as have been prosecuted by a Commonwealth's attorney before a justice, the justice is authorized under the act to tax a fee of \$5.00 in the costs and enter judgment against the accused for such sum.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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FEES—COMMONWEALTH'S ATTORNEY.

RICHMOND, VA., *April 14, 1919.*

HON. C. LEE MOORE,

*Auditor of Public Accounts,*

*Richmond, Va.*

DEAR MR. MOORE:

Mr. S. M. O'Bannon brought to my office this morning the account of Hon. Hugh H. Kerr, Commonwealth's attorney, against the Commonwealth of Virginia, for services rendered by him in certain criminal cases. In this account he includes four items of \$10.00 each for services rendered in trials of forfeitures of automobiles, and also an item of \$5.00 for prosecuting the case against Tucker Carroll, which was a felony case, and for which the statute provides that he should be paid.

You will recall that we discussed this matter personally and reached the conclusion that Mr. Kerr is entitled to these fees, but Mr. O'Bannon tells me that you desire a written opinion from me to this effect. It is needless for me to assign my reasons for this opinion, as I have already given you these reasons, and you concurred in them.

Very truly yours,

JNO. R. SAUNDERS,

*Attorney General.*

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FEES—COMMONWEALTH'S ATTORNEY.

RICHMOND, VA., *November 29, 1919.*

MR. S. C. COGGIN, *Clerk,*

*Campbell County,*

*Rustburg, Va.*

DEAR SIR:

Acknowledgment is made of your letter advising me you were instructed by the board of supervisors to inquire whether or not the attorney for the Commonwealth of your county is entitled to extra compensation from the county for defending the annexation proceedings against the county by the city of Lynchburg, looking to the annexation by said city of certain territory now in said county.

As you say, by section S36 of the Code, it is the duty of the Commonwealth's attorney to represent the county before the board of supervisors and

to resist the allowance of any claim which is unjust or not before the board in proper form, or which for any other reason, ought not to be allowed, and also to represent the county in appeals from decisions of the board to the circuit court. It is also the duty of the Commonwealth's attorney to be present at each meeting and give his legal opinion when required by the board on the question arising before it.

Section 834 (4) and section 834-f of the Code provides for the annual allowance to be made to the Commonwealth's attorney. These sections clearly pertain to the fixing of the compensation of the Commonwealth's attorney for the service he must render the board of supervisors as set out in the sections first above referred to, unless some understanding is had with the board of supervisors that he should render other services.

Of course, I do not know what arrangement was had with your Commonwealth's attorney as to what services he should render for the \$600.00 which you advise me is annually paid your Commonwealth's attorney. Section 1014-a, sub-section 2, provides that any county whose territory is affected by annexation proceedings, may be represented by counsel, but I do not find any provision placing the duty to represent the county in such proceedings upon the Commonwealth's attorney. His right to compensation, therefore, must be determined by the understanding which you had with him when he represented you in the annexation proceedings referred to in your letter.

Any further information or suggestions I can give you on this matter will be gladly furnished upon being acquainted more fully with the facts.

Yours truly,

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

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#### FEES—COMMONWEALTH'S ATTORNEY.

RICHMOND, VA., November 21, 1919.

HON. ROBT. D. YANCEY,  
*Commonwealth's Attorney,*  
*Lynchburg, Va.*

MY DEAR MR. YANCEY:

Pardon my delay in replying to your letter of November 8, but for the past week we have been busily engaged in the Court of Appeals.

I am under the impression that in the cases referred to in your letter and which you prosecuted in the mayor's court, you are entitled to a fee of \$5.00 in each case. You have stated that the defendants have agreed to pay this. It would, therefore, be entirely proper for a judgment to be entered against them for your fee as a part of the costs, and the amount to be turned over to you.

You further ask if, when a justice requests you to prosecute a felony to be tried in his court and the felony charge is dismissed but the party convicted of a misdemeanor, if you are entitled to your fee. I am of the opinion that you are. I have discussed this matter with the Auditor of Public Accounts and he concurs in these views.

I confess I do not understand what is meant by the following language found in paragraph 2 of the act approved March 16, 1918, page 573: "which he is required by law to prosecute."

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

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## FEES—EXAMINER OF RECORDS.

RICHMOND, VA., *September 19, 1919.*

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

DEAR SIR:

Acknowledgment is made of your letter of recent date, in which you state that G. Carlton Jackson, examiner of records for the tenth judicial circuit, has ascertained and reported to the local board of review of Richmond city, taxable values which relate in a large measure to taxpayers who made no tax returns to the commissioner of revenue for the year 1919, and for which taxpayers the commissioner of the revenue had returned no interrogatories made out by himself, and that such values were certified to the commissioner of the revenue of the city for assessment.

You further state that this work was done by the examiner of records under the instructions of the said local board of review, which directed him to ascertain whether or not interrogatories of all persons taxable in Richmond city had been submitted to the board, and if not, to make up such interrogatories upon the best information he could obtain. You ask whether or not the said examiner of records should be paid for this work.

It was clearly the policy of the law and the intent of the legislature in creating the local board of review and extending the duties of the examiners of records, to eliminate the omission of property from the tax roll. In other words, the machinery was thereby created for the purpose of seeing that all taxable property was assessed. It was also clearly the intention of the legislature to pay those officers who brought about the placing upon the tax roll of property which would otherwise be omitted and give them fair compensation for the services rendered the Commonwealth.

I am, therefore, of the opinion that inasmuch as Mr. Jackson acted under the direction of the local board of review and has thereby discovered taxable property the assessment of which might otherwise have been omitted and the assessment of which would enure to the benefit of the State, he should be paid for the services rendered.

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

## FEES—OF JUSTICES IN MISDEMEANOR CASES.

RICHMOND, VA., *December 24, 1918.*

MR. P. EILSHOE,  
*Weems, Va.*

DEAR SIR:

I acknowledge receipt of your letter of December 16, 1918, relating to certain fees which you claim are due you by the Commonwealth for your services in misdemeanor cases.

The only change in the act to which you refer, Acts of Assembly, 1916, page 856, is that it provides a fee of \$1.00 for admitting any person to bail, and all of that act amending section 3530 of the Code must be read in connection with section 3527 then in force, which provides that only one-half of the fees of a justice in misdemeanor cases should be paid by the Commonwealth. Therefore, if the services for which you claim fees were rendered prior to June 21, 1918, you are entitled to only one-half of the fees as provided for in section 527 of the Code.

However, sections 3527 and 3530 were both amended by the General Assembly in 1918, Acts of Assembly, page 627, so that the services of a justice rendered since June 21, 1918, the date when the act became effective, a justice is entitled to full fees paid by the Commonwealth in such cases as are provided for in the amended section. If the services rendered were prior to June 21, the provision of the old act providing for one-half of the fees is the one under which you will have to collect your fees.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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FEES—OF OFFICERS.

MR. W. I. GILKESON, *Clerk,*  
*Corporation and Circuit Courts,*  
*City of Hopewell, Va.*

DEAR SIR:

I acknowledge receipt of your letter of February 10, 1919, in which you state that you have had some conversation with Mr. S. M. O'Bannon, auditing clerk in the office of the Auditor of Public Accounts, relating to the construction of section 3527 of the Code of Virginia as amended by the Acts of Assembly, 1918, which act relates to the fees of attorneys for the Commonwealth, clerks, etc., your contention being that full fees are provided for under that act where a nolle prosequi is entered, etc. Mr. O'Bannon's view is that no fees are payable in such cases because section 3529 provides a fee in felony only when tried in his court.

While it is true that section 3527 as amended and referred to above, states that fees of attorneys for the Commonwealth, clerks, etc., *in all cases in which the defendant is indicted* for a felony, shall be paid out of the State treasury and certified, etc., *whether an indictment is found or not.* The two

phrases underscored seem contradictory. However, your letter raises more particularly the question as to whether or not the clerks' fees should be paid in a case where a nolle prosequi is entered.

It is true the act provides a full fee shall be paid by the Auditor of Public Accounts and certified as heretofore required, but nowhere in section 3527 is any fee named for such services so that in order to ascertain the fees of a clerk in a felony case, we have to look to section 3529 which provides a fee for each case of felony tried in his court to be charged only once the sum of \$2.50. No fee is stated in cases where a nolle prosequi is entered.

It may have been the intention of the legislature to provide a fee in such cases, but since they have not done so, I cannot construe section 3527 as providing a fee when none is stated in that section.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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FEES—PROSECUTIONS FOR VIOLATION OF DOG LAW.

RICHMOND, VA., August 28, 1919.

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

DEAR SIR:

Acknowledgment is made of your communication of August 28, in which you request me to advise you as to certain questions propounded by Mr. R. A. Siddon, game warden, in his letter to you of August 23, 1919. The effect of the rather lengthy statement of Mr. Siddon is to request an opinion as to what are the proper fees to be paid to the officers in prosecutions under chapter 390 of the Acts of 1918, the Virginia dog law. It is provided by section 7, chapter 390, of the Acts of 1918, as follows:

"Any person failing to list with the commissioner of the revenue and to pay a license tax on any dog which he may own, have under his control or on his premises, or who shall otherwise violate the provisions of this act, shall be guilty of a misdemeanor, and on conviction shall be fined not less than five dollars, nor more than one hundred dollars for each offense."

This section, it will be seen, makes the non-payment of the license tax on a dog a misdemeanor.

In a prosecution under the dog law, the justice of the peace, sheriff, constable or game warden, are allowed the same fees and are paid in the same way as officers are paid in other misdemeanor cases.

The provisions of chapter 152 of the Acts of 1916 have no application to prosecutions for violations of chapter 390 of the Acts of 1918, and the only fee the payment of which is provided for by chapter 390 of the Acts of 1918 is the fee given a warden by section 4 of chapter 390 of the Acts of 1918 for killing a dog as therein provided.

The fees in such prosecutions being the same and being payable out of the same funds and in the same manner as in other misdemeanor cases where

the party accused is acquitted, the officers are governed as to the fees they shall receive in such matter by the general law which limits the amount to be paid out of the public treasury to one-half of what the fees would be if judgment had been obtained and the amount collected out of the accused.

Yours very truly,

LEON M. BAZILE,  
*Law Assistant.*

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FEES—SEIZURE OF STILL.

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

DEAR SIR:

Acknowledgment is made of your communication enclosing a letter from Hon. F. H. Combs, Commonwealth's attorney of Buchanan county, addressed to Hon. J. Sidney Peters, Commissioner of Prohibition, on which my opinion is requested on the following facts as stated by Mr. Combs:

"Under our prohibition law, section 21½, last paragraph, there is a provision for paying the officer seizing an illicit distillery and arresting the party operating the same a fee of \$50.00. Will you please inform me whether this fee is paid out of the State Treasury and the proceedings necessary for a sheriff to obtain this fee, in a case where he has captured an illicit distillery in operation and arrested the parties operating the same."

It is provided by the last paragraph of section 21½ of chapter 388 of the Acts of 1918 as follows:

"Nothing herein contained shall be construed to permit the issuance of general warrants whereby an officer may be commanded to search suspected places without evidence of a fact committed, or to seize any person or persons not named, or whose offense is not particularly described and supported by evidence."

It is provided by the same section (paragraph 1 thereof) that all stills, with certain exceptions, are contraband and shall be subject to seizure by any officer charged with the enforcement of the law, which officer shall forthwith notify the commissioner and turn over to him all still caps, worms, tubes, fermenters and other appliances to be disposed of as required by this act.

By section, 36-a of the same act, it is provided that whenever a still or part thereof, or article used in connection therewith for the manufacture of ardent spirits, is seized by an officer for the violation of the act and forfeited to the Commonwealth, the same shall be turned over to the Commissioner of Prohibition, who after so mutilating the stills, etc., as to render them unfit for the manufacture of ardent spirits, shall sell the same with the other instruments used in connection therewith and shall turn over the proceeds thereof "to the Treasurer of the State for the benefit of the Literary Fund."

It is provided by section 55, chapter 388, of the Acts of 1918, as follows:

"It shall be the duty of all chiefs of police, police boards, police justices, special officers, sheriffs, attorneys for the Commonwealth, deputies, justices of the peace for the counties and cities, and all mayors, sergeants and their deputies, justices of the peace and police of the cities and towns of this State, to enforce all of the provisions of this act, and the neglect, failure or refusal of such officers so to do shall be deemed misfeasance in office.

"For official services rendered in connection with violations of this act all said officers, including police officers of cities and towns, clerks of courts having jurisdiction to try such cases, and witnesses summoned on behalf of the Commonwealth shall be entitled to and shall be paid the same fees as are now allowed by law in felony cases, said fees to be paid as are now or hereafter prescribed by law in felony cases other than violations of the revenue laws."

It will be seen from the above-quoted sections that there is no provision in the law by which the fee of \$50.00 provided for the seizure of a still as provided by section 21½ of chapter 388 of the Acts of 1918, can be paid out of the public treasury, and it is equally as clear from the above-quoted provisions that the proceeds arising from the disposition of such still and its attachments, cannot be used in the payment of this fee, as it is provided that the same must be paid to the Treasurer of the State for the benefit of the Literary Fund.

The terms of section 36-a of the act are perfectly clear as to this, it even being doubtful whether the Commissioner of Prohibition is authorized to deduct therefrom the cost of transportation, storage and disposition of the same, in view of the peculiar wording of that section.

Section 55 of the act which provides for the payment of fees arising out of prosecutions under the act, creates no authority for the payment of this fee out of the public treasury, but on the other hand, indicates an intention upon the part of the legislature that the same was not to be paid out of the public treasury.

This fee not being payable out of the public treasury or out of the proceeds arising from the disposition of the still and equipment, I am of the opinion that the only remedy of an officer who seizes a still and arrests the owner or operator thereof, is to recover the same by way of a personal judgment against the person owning or operating the same.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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FEES—TREASURER.

RICHMOND, VA., May 28, 1919.

HON. J. REID WILLS,  
*Treasurer of Louisa County,*  
*Louisa, Va.*

MY DEAR MR. WILLS:

I am in receipt of yours of the 21st inst., in which you ask the following question:

Under the law fixing your compensation at a sum not exceeding \$4,000, are you, as county treasurer, debarred from receiving, in addition to said \$4,000, one-fourth of one per cent commission on a \$60,000 bond issue for roads in Mineral district of your county?

Acts of 1914, chapter 352, as amended by Acts of 1918, page 220, provide, as far as is material here, as follows:

"No \* \* \* treasurer \* \* \* shall receive, directly or indirectly, as his total annual compensation for his services, including all his salaries, allowances, commissions and fees, whether derived from the State, or any political sub-division thereof, or from any person or corporation, an amount in excess of the sums hereinafter named. \* \* \*"

In counties with a population under 32,000, such compensation shall not exceed \$4,000 per annum.

I am of the opinion that the intention of the legislature, as appears from the fact of the act, was to limit the total annual compensation of treasurers to the sum of \$4,000 in counties the size of yours, regardless of the source from which received, so long as it is for services incident to the office of treasurer, as is clearly the case with bond issues.

In arriving at the conclusion that your compensation is limited to \$4,000, I have carefully examined chapter 225, paragraph 6, Acts of 1912, providing, in part, as follows:

" \* \* \* The said treasurer shall receive as compensation for his services hereunder, one-fourth of one per centum of the amount thus coming into his hands \* \* \*"

I am frank to say that it seems that the act limiting your compensation applies equally to funds that would come into your hands through district bond issues, under the 1912 act quoted from above.

It is, therefore, my opinion that the limit of \$4,000 includes compensations arising from district bond issues for roads, and that you are not entitled to receive this one-fourth of one per cent commission in addition to your total of \$4,000 per annum.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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#### FINES—DISPOSITION OF.

RICHMOND, VA., *January 6, 1919.*

MR. R. C. JONES,  
*State Forester,*  
*Charlottesville, Va.*

DEAR SIR:

Acknowledgment is made of your letter of December 21, 1918, replying to a letter from this office dated December 9, relating to fines recovered from violation of the forest laws.

I note your reference to Mr. C. Lee Moore's letter in which he states that the fines under consideration are paid into the treasury to the credit of

the Literary Fund; also your reference to fines recovered under the game laws, and to that part of the game law which provides that the game warden in certain cases is entitled to one-half of the fine imposed.

Section 134 of the Constitution provides, among other things, that all fines collected for offenses committed against the State shall be set apart by the General Assembly as a permanent and perpetual Literary Fund. Therefore, Mr. Moore's construction of section 26 of the forest laws is correct, and his contention that all fines collected for offenses against the State are paid into the treasury to the credit of the Literary Fund is also correct. This is true, of course, with reference to fines collected under the game laws.

It is also true that in certain cases game wardens are paid one-half of the fines collected for offenses committed under the game laws, which is constitutional. Section 715 of the Code contemplates that this should be done in certain cases and provides how the endorsement shall be made on the indictment or warrant as the case may be.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

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#### FINES—PAYMENT OF.

RICHMOND, VA., May 19, 1919.

MR. W. H. MORRIS,  
*Justice of the Peace,*  
*Wythe District, Hampton, Va.*

DEAR SIR:

In answer to yours of the 14th inst., as to whether fines collected under a town ordinance are payable to the treasurer of the town or the clerk of the county, I quote herewith from section 717 of the Code, as follows:

“ \* \* \* If security be given and a payment is not made to the clerk of the court, or, in case the fine be imposed by the mayor of a town chartered as aforesaid, for the violation of a town ordinance, to the proper collecting officer of such town, the clerk of the court, where such fine is imposed by a justice, shall issue execution against the person again.”

This section, I presume, sufficiently answers your question.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

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#### GAME AND FISH—DOG LAW.

RICHMOND, VA., January 23, 1919.

MR. R. T. CORBELL,  
*Department of Game and Inland Fisheries,*  
*City.*

DEAR SIR:

I beg leave to acknowledge receipt of your letter of January 16, in which you ask whether cities and towns have the right to impose an additional

tax on dogs in addition to that provided for under chapter 390, Acts of Assembly, 1918, known as the Baker dog law. I have read this statute a number of times. It is not entirely clear to my mind whether a city or town has this right or not, but I am of the opinion that it was clearly intended by the legislature that a city or town should not impose an additional license tax on dogs. The first seven lines of section 2 of said act 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 observe that the law provides that said tax is to be in lieu of all other taxes at present imposed by State and local county laws. You will further observe that the license tax on dogs is greatly increased—the license tax on a male dog being doubled and that on a female dog tripled. The old law put a tax of fifty cents on male dogs and \$1.00 on female dogs. Moreover, the law provides that the license tax is to be paid to the treasurer of the county, city or town wherein the owner of the dog resides, thereby giving to the locality the benefit of the license tax so collected.

The law further provides in section 6 that all funds remaining in the hands of the treasurers after the payment of fees and damages shall be used by any county, city or town for either the public schools or the public roads, as the boards of supervisors may direct, and may be used in the cities or towns for such purposes as the city or town council or other government body may direct.

I therefore cannot see any necessity for a city or town levying additional taxes on dogs, inasmuch as they receive the revenue, and I do not think, as above stated, that the legislature intended to give them the authority to do so.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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#### GAME AND FISH—DOG LAW.

RICHMOND, VA., *January 27, 1919.*

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

DEAR SIR:

Acknowledgment is made of your letter of January 25, 1919, enclosing a copy of a letter from S. B. Drewry, treasurer of Southampton county, Virginia, in which he desires to know whether or not he should accept dog taxes from owners of dogs and issue license cards and license tags therefor when he has not been furnished a list of dog owners by the commissioner of revenue.

If you will read paragraph 1, chapter 390, you will see that it becomes the duty of the dog owners to list their dogs with the commissioner of revenue, and that no duty is imposed on the commissioner of revenue to secure the names of the dog owners. I do not find in the dog law any specific duty imposed on the commissioner of revenue to furnish a list such as he may have to the treasurer, though such duty could be implied.

The second paragraph of the dog law provides that a license tax must be paid to the treasurer of the county, city or town wherein the owner of the dog resides, and that such dog owner, upon payment of such tax, is entitled to receive a receipt card and a metal license tag from the treasurer.

I cannot say, from a reading of the act, that the treasurer would be forced to accept the tax offered him by the dog owner, but I would, if I were the treasurer, not hesitate to collect the taxes and issue the receipt cards and license tags regardless of whether I had been furnished a list by the commissioner of revenue.

Unless the various officers who are charged with the enforcement of the dog law work in harmony in connection with the license taxes to be collected, there is likely to arise much confusion. Likewise, if every person affected by the dog law should abide strictly by the letter of the law, it would be the means of defeating its purpose. With these views before you, I trust you will not hesitate to recommend to the treasurer that he collect dog taxes, and issue license cards and license tags, regardless of whether he has been furnished a list of dog owners by the commissioner of revenue.

Very truly yours,

F. B. RICHARDSON,

*Law Assistant.*

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GAME AND FISH—DOG LAW.

RICHMOND, VA., *February 10, 1919.*

MR. F. H. HUDDLESTON,

*Treasurer,*

*Fairfax, Va.*

MY DEAR SIR:

I beg leave to acknowledge receipt of your letter of February 8, to which I will reply at once.

You state that there are four incorporated towns in the county of Fairfax, each town having its own governing body and town treasurer. You ask whether, under the new dog law, the treasurers of these towns shall collect the dog taxes and sell the tags within the corporate limits of the towns, or whether you, as treasurer of the county, shall collect the taxes within the limits of the incorporated towns.

Section 2 of the dog law reads 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 from an examination of this part of section 2 that it is the duty of the treasurers of the several towns to collect the dog taxes within the corporate limits of said towns. It is also the duty of the town council to provide license tags.

Hoping I have made myself clear in this matter, I am,

Very truly yours,

JNO. R. SAUNDERS,

*Attorney General.*

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GAME AND FISH—DOG LAW.

RICHMOND, VA., *April 3, 1919.*

MR. D. H. KEISTER, *Mayor,*  
*Blacksburg, Va.*

DEAR SIR:

I have just received from Lieutenant Governor B. F. Buchanan a letter written by you to him under date of March 20, 1919, in which you ask certain questions relating to the license tax under the new dog law.

If you will refer to chapter 390, page 622, Acts of Assembly, 1918, you will find the new dog law which, upon inspection, you will see provides that the license tax in towns and cities is collected and paid into the town or city treasury, and that the disposition of the money, after paying the damages provided for in the act, is under the control of the town or city council.

We have had a good many inquiries relating to the same question, and it has been the ruling of this office that all taxes collected from the sale of license tags in the counties of the State are paid into the county treasury, all taxes collected from the sale of license tags in incorporated towns are paid into the town treasury, and all taxes collected in the cities from the sale of license tags are paid into the city treasury.

Your opinion, therefore, that your town is entitled to the license taxes received from the sale of tags for dogs within the corporate limits of your town, and that this should be paid into the town treasury is correct.

Very truly yours,

JNO. R. SAUNDERS,

*Attorney General.*

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GAME AND FISH—DOG LAW.

RICHMOND, VA., *April 24, 1919.*

MR. B. KEYSER, ESQ.,  
*Attorney at Law,*  
*Luray, Va.*

DEAR SIR:

I have for acknowledgment your letter of April 19, 1919, calling my attention to section 5 of the dog law, being chapter 390 of the Acts of 1918, asking whether or not your board of supervisors could allow compensation to parties whose fowls have been killed or injured by dogs where the fowls

have not been assessed for taxes. Section 5 of the dog law to which you have referred, reads as follows:

"Any person who shall have any stock or fowls killed or injured by any dog shall be entitled to receive compensation therefor in the manner now provided by law, and in addition thereto he shall recover from the owner of such dog or the person having such dog under his control at the time the damage is done in an appropriate action at law, the difference between the assessed value of such stock or fowls."

You will observe it provides that compensation shall be paid "in the manner now provided by law," and that the owner of the stock or fowls in an appropriate action at law may recover the difference between the assessed value and the full value of such stock or fowls.

A careful examination of the index to each volume of the Code and the 1918 supplement, does not throw any light on the phrase "in the manner now provided by law" except that it seems to refer to past acts of the Assembly relating to dogs, all of which provide that the recovery shall be based on the assessed value of the stock. The word "fowls" was only added in the act of 1918 and the words "assessed value" are used in section 5 above quoted.

I have no doubt that the legislature intended that the recovery from the county to be provided by the board of supervisors, should be limited to the assessed value of the stock or fowls, and if fowls which have been killed or injured by dogs, have not been listed for purposes of taxation, I doubt if the board of supervisors would be authorized to provide payment for the killing or injuring of such fowls. However, this does not prevent the owner of such fowls from instituting an appropriate action at law for the recovery of damages.

The dog law, as you know, is somewhat confused in its various provisions and I do not care to have you follow my advice unless you are inclined to the same view, particularly because my opinion to you in this matter is not official. You understand, of course, that the Attorney General's official opinions are rendered only to the various heads of the departments at the seat of government.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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GAME AND FISH—DOG LAW.

RICHMOND, VA., July 31, 1919.

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

DEAR SIR:

Acknowledgment is made of your letter of recent date, in which you request me to advise you on the following statement of facts:

"The department is in receipt of a communication from a game warden in Greene county, stating that he had killed a dog running at

large wearing a Madison county metal license tag, and asks whether his pay comes from Madison county or from Greene county. We would like to have your opinion upon this."

It is provided by section 4 of chapter 390 of the Acts of 1918, as follows:

"It shall be the duty of any game warden, regular, special or ex-officio, or the privilege of any person who may find or know of a dog roaming at large unmuzzled in the night time at any time of the year (without a license tag, as above described), to immediately notify the owner thereof, if known to him, and if such dog be again found or be known to the warden to be running at large, contrary to the provisions of this act, or if upon the first occasion of finding such dogs so at large the owner be not known to the warden, or if any dog be found killing, injuring or chasing sheep, or injuring or killing any domestic animals or fowls, it shall be the duty of the warden to kill such dog in any manner he may see fit, for which he shall be paid two dollars and a half out of the funds arising from dog licenses, and any person finding a dog killing sheep shall have the right to kill said dog, or if any warden or other person shall not find a dog killing sheep, but have reason to believe that such dog is killing sheep, he shall apply to a magistrate of the county wherein such dog may be, who shall issue a warrant requiring the owner, if known, to appear before such magistrate at a time and place therein named, at which time evidence shall be heard, and if it shall appear that such dog is a sheep killer, the dog shall immediately be ordered to be killed, which the warden shall do. If any dog be running at large on which license has not been paid, and has no known ownership it shall be the duty of the game warden to kill such dog on sight. Any warden failing or refusing to perform the duties as herein defined shall be deemed guilty of a misdemeanor and upon conviction thereof be fined not less than five, nor more than twenty dollars. Any person or officer killing a dog under this act shall bury or burn the same."

From this section it will be seen that game wardens are required to kill dogs under certain circumstances, "for which," it is provided, "they shall be paid two dollars and a half out of the funds arising from dog licenses."

Section 6 of chapter 390 of the Acts of 1918, reads as follows:

"All moneys arising from dog license taxes shall be kept in a separate fund by the treasurer and used for the payment of damages and fees unless herein otherwise provided. In the event the same are not sufficient for the payment of all such fees and damages, they shall be paid in the order the claims are presented, and any persons whose claims are not paid in any one year by reason of lack of money to the credit of the dog license fund shall be paid out of the first money coming into that fund after his claim is reached. And funds remaining in the hands of the treasurer, as shown by his report, to be made to the supervisors or city or town councils at the beginning of each year, unused for such purpose at the end of any year, shall be used by any county, city or town for either the public schools or the public roads as the boards of supervisors may direct, provided the board of supervisors of Fauquier county may pay for hawk scalps out of said fund and may be used in the cities or towns for such purposes as the city or town council or other governing body may direct."

This section, which designates the fund out of which fees are to be paid, likewise fails to specifically provide for a case such as is mentioned in your letter.

While it is true, as will be seen from the above-quoted provisions of chapter 390 of the Acts of 1918, that no express provision is found in the law which designates the county to which the warden must look for his fee, considering the purposes of the act, which are to protect the public generally from the depredations of dogs running at large, I am of the opinion that the warden's fee should be paid out of the special fund arising from dog license taxes of the county in which the dog was killed, as the warden, in killing the dog, was engaged in protecting the people of the county in which the dog was killed.

Very truly yours,

JNO. R. SAUNDERS,

*Attorney General.*

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GAME AND FISH—DOG LAW.

RICHMOND, VA., August 18, 1919.

R. J. SUMMERS, Esq.,  
*Attorney at Law,*  
*Abingdon, Va.*

DEAR SIR:

Acknowledgment is made of your letter of recent date, in which you request an opinion on the following questions as stated by you:

"There is a question under the dog law which I wish to ask you. If a man is fined for not listing and paying tax on his dog, and after he is fined the dog is killed, can you put him in jail for refusing to pay fine and costs, and can you collect the fine and costs of him by *capias pro fine*, or does the killing of the dog relieve him of the fine and costs? And out of what funds does the magistrate and sheriff receive their pay for issuing and trying the warrants, or how do they proceed to get it?"

It is provided by section 7, chapter 390, Acts of 1918, as follows:

"Any person failing to list with the commissioner of the revenue and to pay a license tax on any dog which he may own, have under his control or on his premises, or who shall otherwise violate the provisions of this act, shall be guilty of a misdemeanor, and on conviction shall be fined not less than five dollars, nor more than one hundred dollars for each offense."

This section makes the non-payment of the license tax on a dog a misdemeanor. It is provided by section 2, chapter 390, Acts of 1918, that it shall be the duty of the city or town game wardens on the first day of July, or as soon thereafter as is practicable, to obtain from the treasurer of his city or county, a list of all the dogs in his county, city or town on which a license has not been paid, and that he 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. This section then provides:

"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."

The killing of the dog is an extra or additional penalty imposed by the law for the failure to immediately pay the fine, costs and tax by the person so convicted, and the killing of the dog in no manner relieves the party so convicted of the consequences of being convicted for a misdemeanor. Such person may be proceeded against for the collection of the fine and costs imposed in the case as in any other misdemeanor case.

The justice of the peace, sheriff or constable receive the same fees and are paid in the same way as they are paid in other misdemeanor cases. The provisions of chapter 152 of the Acts of 1916 have no application to prosecutions for violations of chapter 390 of the Acts of 1918. The only fee the payment of which is provided by chapter 390 of the Acts of 1918, is the fee given a warden by section 4 of chapter 390 of the Acts of 1918, for killing a dog as therein provided.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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GAME AND FISH—DOG LAW.

RICHMOND, VA., August 14, 1919.

S. E. EVERETT, Esq.,  
*Attorney at Law,*  
*Suffolk, Va.*

DEAR SIR:

Acknowledgment is made of your letter of August 13, addressed to the Attorney General. In the necessary absence of the Attorney General from the office, I am replying to the same. The questions upon which you desire to be advised are thus stated in your letter:

"Near the bottom of page 81 of the 'Game, Fish and Dog Laws,' in the book compiled by Lewis H. Machen, you will find this language: 'If such party or parties be convicted, he, or they, shall pay fine and costs as herein provided, and unless such fine and costs, as well as tax, be forthwith paid, such dog shall be killed by the game warden, or the officer serving said warrant.'"

"Suppose the party was to appeal this case. Does this mean that the dog would have to be killed even if he had then paid the dog tax?"

"I take it that possibly this law is not exactly clear and without your opinion I would instruct the justice to put the fine on these people and collect such fine as he would in any other case, and kill the dog if they do not pay the tax on him."

"Now, what are the fees for the officer in this dog case? Would the fees in the game laws approved March 11, 1916, apply to the dog law?"

It is provided by section 2 of chapter 390 of the Acts of 1918, so far as is applicable to your first question, as follows:

"\* \* \* 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 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 the warrant."

While it is true that the statute says that unless the fine and costs, as well as the license tax, "be forthwith paid, and such dog shall be killed by the game warden or officer serving said warrant," I am of the opinion that it was not intended that the dog should be killed where an appeal is taken by the accused. Under the general laws of the State, all persons convicted of criminal offenses before justices of the peace are entitled to appeal from such judgment to the circuit or corporation court having jurisdiction over such appeals. Section 4106, Code of 1904 as amended, and section 4107 of the Code of 1904, et seq.

The law is well settled that the payment of the fine and costs operates as a bar to an appeal from a judgment imposing the same. 12 Cyc., page 807, where it is said:

"As the appellate court will not determine a merely speculative question, it will not consider an appeal from a sentence which has been acquiesced in. Hence, the accused, by voluntarily paying the fine imposed on him, waives his right of appeal or to have a review by certiorari." *Batesbury v. Mitchell, et al.*, 58 S. C. 564, 37 S. E. 36.

While the Court of Appeals declined to pass on this question in *Commonwealth v. Bass*, 113 Va. 760 (1912), as not being necessary to a decision in that case, the cases of *Shumate v. Spilman*, 1 Va. Cas. 604, and *Andrews v. Norton*, 110 Va. 147 (civil cases), would indicate that the same doctrine is approved by our court. Certainly, it is supported by the overwhelming weight of authority, and in my opinion, the above-quoted section from Cyc. correctly propounds the law.

The killing of the dog provided for in the above-quoted provision of section 2, chapter 390, of the Acts of 1918, is imposed as an additional penalty upon a person refusing to pay the fine, costs and tax, and I am therefore of the opinion that the dog is to be killed only in the case where the matter has been finally adjudicated. To hold otherwise would be to deprive the person charged with a violation of the law, of his right to appeal in one case, or unjustly penalize him for exercising the rights given to him by law in taking an appeal from the decision of a justice to the circuit or corporation court having jurisdiction of appeals from such justice.

Replying to your last question: It was held by Attorney General Polard in an opinion given Hon. John S. Parsons, Commissioner of Game and Inland Fisheries, on January 12, 1917, Report of Attorney General, 1917,

page 138, that the fee of \$2.50 provided for by section 38, chapter 158, of the Acts of 1916, can be taxed only in prosecutions for a violation of the game and fish laws, and does not apply to dog and forestry laws. There has been no change made in this section, and I am of the opinion that the fee provided for in that section cannot be taxed in a prosecution for a violation of the dog law.

In a prosecution for the non-payment of the license tax prescribed by chapter 390 of the Acts of 1918, I am of the opinion that the costs to be taxed are the same as in other misdemeanor cases.

Yours very truly,

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

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GAME AND FISH—DOG LAW.

RICHMOND, VA., August 12, 1919.

HON. F. NASH BILISOLY, *Commissioner,*  
*Department of Game and Inland Fisheries,*  
*City.*

DEAR SIR:

Acknowledgment is made of your communication of August 8, 1919, enclosing a letter from L. H. Kemp, treasurer of Henrico county, dated July 26, 1919, requesting an opinion in reference to the list of unpaid dog taxes to be furnished to the game wardens by the treasurer. The specific question on which an opinion is desired is thus stated by Mr. Kemp:

"Should this office furnish a list of unpaid dog taxes as of July 1, or should the list contain the names of those who have not paid up to the time the commissioner of the revenue delivers his list of dogs assessed to the treasurer? The reason for this request is that the commissioner of the revenue for what is known as the upper district of Henrico county turned in his list of dogs assessed on July 7th, while the commissioner of the lower district has not as yet made his report."

It is provided by section 1, chapter 390, of the Acts of 1918, that every person owning or having under his control or on his premises, any dog over six months of age, shall list the same with the commissioner of the revenue of the jurisdiction in which he resides, for taxation, and "to pay on or before the first day of February of each year, a license tax on such dog as hereinafter provided, or in event such dog shall become six months of age or come in possession of any person after the first of February, such license shall be paid forthwith."

If this were the only provision on this subject found in the statute, it would appear that a person would become liable for the penalties provided for in the act upon the non-payment of the tax on or before the 1st day of February. In section 2 of the act, however, this provision is found:

"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 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 the warrant."

While the law is far from clear, it would appear from the above-quoted part of section 2 of the act that penalties imposed for the failure to pay a license tax on the dog accrues from the first day of July of the year in which the tax is required to be paid.

Therefore, the list made up by the treasurer should contain the names of all persons who are delinquent on the first day of July. The fact that the list is made up or completed at a subsequent date, cannot affect this, as all persons delinquent on that date are subject to the fine and penalties imposed by the act.

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

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GAME AND FISH—DOG LAW.

RICHMOND, VA., *September 4, 1919.*

W. M. BROWN, Esq.,  
*Justice of the Peace,*  
*Konnarock, Va.*

DEAR SIR:

Acknowledgment is made of your letter of September 3, in which you request me to advise you as to whether or not a person should be fined under chapter 390 of the Acts of 1918, the Virginia dog law, for failure to pay his dog tax on or before the first of February in the year in which the tax is due. In the case which you cite in your letter, the tax was paid April 17, 1919, although under the provisions of chapter 390 of the Acts of 1918, it was payable on or before the first day of February, 1919.

It is provided by section 1, chapter 390, of the Acts of 1918, that every person owning or having under his control or on his premises, any dog over six months of age, shall list the same with the commissioner of the revenue of the jurisdiction in which he resides, for taxation, and "to pay on or before the first day of February of each year, a license tax on such dog as hereinafter provided, or in event such dog shall become six months of age or come in possession of any person after the first of February, such license shall be paid forthwith."

If this were the only provision on this subject found in the statute, it would appear that a person would become liable for the penalties provided for in the act upon the non-payment of the tax on or before the first day of February. In section 2 of the act, however, this provision is found:

"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."

While the law is far from clear, it would appear from the above-quoted part of section 2 of the act that penalties imposed for the failure to pay a license tax on the dog, accrues from the first day of July of the year in which the tax is required to be paid.

I am, therefore, of the opinion that one should not be prosecuted for or convicted on a warrant charging the non-payment of the license tax on a dog, required by chapter 390 of the Acts of 1918, unless the same was unpaid on or after the first day of July of the year in which the tax should have been paid.

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

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GAME AND FISH—DOG LAW.

RICHMOND, VA., October 1, 1919.

HON. LANDON LOWRY,  
*Attorney at Law,*  
*Bedford, Va.*

DEAR MR. LOWRY:

I beg leave to acknowledge receipt of your letter of October 1, in which you ask certain question relating to violations of the dog law. You state that—

"A justice of the peace of Bedford county has recently tried a number of parties accused of violating this law, and some of these parties were acquitted."

You ask whether the justice and sheriff should be paid out of the funds provided for in this law or should they be paid under the general law by the State, as in other misdemeanor cases.

I am of the opinion that in the case stated by you, the justice and the sheriff should be paid the same fees as are provided for in other misdemeanor cases where there is an acquittal, namely, one-half, and that these fees should be paid by the State as is provided for in all other misdemeanor cases.

Section 7 of the dog law provides that any person violating the provisions of said act shall be deemed guilty of a misdemeanor. Such being the case, it is my opinion that all fees should be paid as is provided for in the general law in other misdemeanor cases.

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

## GAME AND FISH—DOG LAW.

RICHMOND, VA., *October 11, 1919.*

HON. R. J. SUMMERS,  
*Attorney for Commonwealth,*  
*Abingdon, Va.*

DEAR SIR:

Acknowledgment is made of your letter of October 9, 1919, in which you request my opinion upon the following statement of facts:

"Under the Baker dog law, should a man be fined who killed his dog in June, 1919, believing that he either had to kill the dog or pay the license *by July 1, 1919?*"

"We have a man who honestly believed that he was complying with the law by killing his dog in June. In July, 1919, a warrant was sworn out against him, he was tried by a justice of the peace and fined \$5.00 and costs, making a total of \$8.25."

It is provided by section 1 of chapter 390, of the Acts of 1918, that every person owning or having under his control or on his premises any dog over six months of age shall list the same forthwith with the commissioner of revenue of the county, city or town wherein he resides, for taxation, and shall "pay on or before the first day of February of each year a license tax on such dog as is hereinafter provided. \* \* \*"

It is provided by section 7 of the act as follows:

"Any person failing to list with the commissioner of the revenue and to pay a license tax on any dog which he may own, have under his control or on his premises, or who shall otherwise violate the provisions of this act, shall be guilty of a misdemeanor, and on conviction shall be fined not less than five dollars, nor more than one hundred dollars for each offense."

It will be seen from the last quoted provision of chapter 390, Acts of 1918, that the failure to pay the license tax on a dog is made a misdemeanor. Due to the peculiar wording of the latter portion of section 2 of chapter 390, of Acts of 1918, in a previous opinion I have construed the law to mean that only those persons delinquent in the payment of their license tax after July 1 have incurred the penalty provided by the act, and, therefore, that one who pays his tax after February 1 and prior to July 1 is not subject to prosecution under this statute.

This question, however, does not arise in the particular matter I have here under consideration. Where the dog has been properly assessed, the tax is due and owing by the owner regardless of what subsequently happens to the dog, and although the owner may subsequently have gotten rid of the dog, this does not relieve him from the payment of the license tax. The tax having been properly assessed, the failure to pay the same on or before the first of July constitutes a violation of the statute.

Therefore, I am of the opinion that the fact that the owner got rid of the dog prior to July 1 does not relieve him of the consequence for the non-payment of the tax.

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

## GAME AND FISH—DOG LAW.

RICHMOND, VA., October 30, 1919.

MR. ROBERT C. HART, *Secretary,*  
*Farmers Educational and Co-operative Union,*  
*Pendleton, Va.*

DEAR SIR:

Acknowledgment is made of your letter of recent date in which you request me to advise you whether turkeys and chickens which are not assessed for taxes are covered by the provisions of section 5 of chapter 390, of the Acts of 1918. It is provided by section 5 of chapter 390, of the Acts of 1918, as follows:

"Any person who shall have any stock or fowls killed or injured by any dog shall be entitled to receive compensation therefor in the manner now provided by law, and in addition thereto he shall recover from the owner of such dog or the person having such dog under his control at the time the damage is done in an appropriate action at law, the difference between the assessed value and the full value of such stock or fowls."

It will be observed that fowls are specifically provided for in this section, but the method by which they are to be paid for is limited to "the manner now provided by law." Certainly, there is no method found in chapter 390, of the Acts of 1918, by which damages for the same can be ascertained or machinery created by which such fowls can be paid for out of the fund arising from the dog license tax created by the act.

The only method by which such fowls can be paid for, if at all, is by reference to some other law. The phrase, "in the manner now provided by law," manifestly refers to the provisions of section 219 of the Acts of 1912.

It is provided by section 5 of that act that in appraising the amount of damages sustained by the owner of sheep, lambs or other stock which have been killed or wounded by dogs (not his own), such damages shall not "exceed the assessed value of said sheep, lambs or other stock and when said sheep or other stock were not in possession of said owner at the time of assessment, the damage shall be the assessed value of sheep, lambs or other stock of like grade or quality in the community where such sheep, lambs or other stock are killed or crippled."

It is true that it is also provided in the latter part of this section that an appraisement may be dispensed with "in all cases where the owner \* \* \* or agent shall produce before the board of supervisors, satisfactory proof to them of the amount of his damages and his right to the benefit of this act, and upon such proof the board of supervisors shall enter in their books an allowance of said damages." This provision, however, has reference to the assessed value of the animals killed, or which were injured, as it was not the intention of the act, in dispensing with any appraisement, to permit the owner to recover a value in excess of that provided for where an appraisement was made merely by proceeding directly before the board of supervisors instead of before a justice of the peace for the purpose of ascertaining the value of the animals for the purpose of obtaining compensation as provided for by this act.

Turkeys, chickens and other fowls are not assessed for taxation in this State. Therefore, within the meaning of chapter 219 of the Acts of 1912, they have no assessed value which is used in that act as meaning the value assessed for purposes of taxation. Having no such assessed value, there is no method provided for by law by which their value can be ascertained and paid for as in the case of sheep, lambs and other animals. In other words, there is no "manner now provided by law" for compensation in such cases.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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GAME AND FISH—DOG LAW.

RICHMOND, VA., *October 20, 1919.*

HON. F. NASH BILISOLY,

*Commissioner of Game and Inland Fisheries,*  
*City.*

DEAR SIR:

Acknowledgment is made of your letter of October 18, which is in the following terms:

"We are of the opinion that, under chapter 390, Acts of 1918, the dog license tax for 1920 is due and payable on February 1, 1920, and desire to get out a notice to dog owners to this effect. We would like to know, in view of the previous opinions rendered by your office, whether this department should send out such a notice."

In an opinion given you on August 12, 1912, I held that, while the provisions of chapter 390 of the Acts of 1918, relating to the question raised in your letter, are far from clear, it would appear from section 2 of the act that the penalty imposed for the failure to pay a license tax on the dog, accrues from the first day of July of the year in which the tax is required to be paid, and that, therefore, the list made up by the treasurer should contain the names of all persons who are delinquent on the first day of July.

It is clear that the tax is due on February 1 and should then be paid, but as I have before said, I am of the opinion that no penalty attaches for non-payment of the license tax unless the tax is delinquent on or after the first of July. Therefore, one should not be prosecuted for or convicted on a warrant charging the non-payment of the dog license tax required by chapter 390 of the Acts of 1918, unless the same was unpaid on or after the first day of July in the year in which the tax should have been paid.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

## GAME AND FISH—DOG LAW.

RICHMOND, VA., October 28, 1919.

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

DEAR SIR:

In response to your request for an opinion as to what are the proper fees to be paid to the officers in prosecutions under chapter 390 of the Acts of 1918, known as the Baker dog law, I beg leave to state the following: It is provided by section 7 of chapter 390 of the Acts of 1918, as follows:

"Any person failing to list with the commissioner of the revenue and to pay a license tax on any dog which he may own, have under his control or on his premises, or who shall otherwise violate the provisions of this act, shall be guilty of a misdemeanor, and on conviction shall be fined not less than five dollars, nor more than one hundred dollars for each offense."

This section, it will be seen, makes the non-payment of the license tax on a dog a misdemeanor. In a prosecution under the dog law, the justice of the peace, sheriff, constable or game warden is allowed the same fees and is paid in the same way as officers are paid in other misdemeanor cases. The provisions of chapter 152 of the Acts of 1916 have no application to prosecutions for violations of chapter 390 of the Acts of 1918, and the only fee the payment of which is provided for by chapter 390 of the Acts of 1918 is the fee given a warden by section 4 of chapter 390 of the Acts of 1918 for killing a dog as therein provided.

The fees in such prosecutions being the same and being payable out of the same funds and in the same manner as in other misdemeanor cases where the party accused is acquitted, the officers are governed as to the fees they shall receive in such manner by the general law.

Yours very truly, .

JNO. R. SAUNDERS,  
*Attorney General.*

## GAME AND FISH—DOG LAW.

RICHMOND, VA., August 7, 1919.

T. S. HARRIS, Esq.,  
*Justice of the Peace,*  
*Harris Grove, Va.*

DEAR SIR:

Acknowledgment is made of your communication of July 30, 1919, which is as follows:

"Kindly advise me what amount of costs should be taxed against a party who failed to pay his dog tax on or before July 1, and what, if any, costs should be taxed for the clerk of the court. Is the clerk entitled to \$1.25 in misdemeanor cases?"

"Does the county game warden have the right to execute any warrants, if so, in what connection?"

The failure of a person to pay the license tax on his dog within the time prescribed by law constitutes a misdemeanor. The costs of the prosecution in such a case are the same as they are in other misdemeanor cases.

In such a case, the clerk of the court is entitled to \$1.25, which is provided by law.

Replying to your last question, under section 13 of chapter 152 of the Acts of 1916, game wardens are authorized to serve original and mesne processes as sheriffs and constables in all matters arising from violations of the game, fish, forestry and dog laws of this State.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

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GAME AND FISH—DOG LAW.

RICHMOND, VA., December 13, 1919.

HON. F. NASH BILISOLY,  
*Commissioner of Game and Inland Fisheries,*  
*City.*

DEAR SIR:

I beg leave to acknowledge receipt of your letter of December 6, in which you ask the question whether or not it is the duty of dog owners to list their dogs each year as other personal property is listed.

In reply, I will state that I am of the opinion that dogs should be listed each year for taxes just as all other property is listed. Unless this is done, it would be impossible for the treasurer to collect taxes on this class of property.

To illustrate: A man might not have a dog this year and the next year he might have one. Or a dog listed for the current year might be dead next year. I think the act clearly contemplates that this shall be done.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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GAME AND FISH—DOG LAW.

RICHMOND, VA., December 18, 1919.

MR. G. D. M. HUNTER,  
*Justice of the Peace,*  
*Louisa, Va.*

DEAR SIR:

Acknowledgment is made of your letter of December 15, in which you ask me to advise you on three questions propounded therein. You first ask me if it is a misdemeanor for one to fail to pay his dog tax as provided for by chapter 390 of the Acts of 1918, on or before the first of July. It is,

Your second question is whether the payment of such tax after the first of July relieves the owner of the dog from liability incurred by the non-payment of his tax prior to the first of July.

Your third question is as follows:

"The treasurer furnished the warden on the first of November with all dogs on which tax and tags were paid for after the first day of July. Now in order to find out non-payment under section 7 or whether the dogs have just arrived at six months old, is it not the duty of the justice to issue warrants on same in order to find out the status in each case?"

It is not your duty to issue warrants to find out the status in each case. You or the game warden should first find out the status of each case and if the law has been violated, then proceed against the offender, but it would be highly improper for you to issue warrants wholesale against everybody who had paid a dog license tax after the first of July, in the hope that some of them had been law offenders and not persons who were paying their tax in the proper time on dogs which had just become of age.

It is provided by the latter portion of the second section of chapter 390 of the Acts of 1918, 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 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. \* \* \*"

Under this provision of chapter 390 of the Acts of 1918, it is the duty of the game warden to apply to the treasurer and obtain from him on the first day of July, or as soon thereafter as practicable, a list of all dogs on which the tax has not been paid by the first of July, and it is the duty of the treasurer to furnish the game warden with such list on the first day of July or as soon thereafter as practicable, which means without unnecessary or unreasonable delay. When such list is furnished him, it is the duty of the game warden to immediately apply to a justice of the peace for a warrant against the party or parties whose names have been furnished by the treasurer in such list, but the law never contemplated that warrants should be issued against persons merely because they have paid their license tax after July 1, because not even a presumption of guilt arises in that case, as the law makes it the duty of one owning a dog just becoming six months of age, to pay the tax provided for on such dog forthwith, and in all probability such persons were merely paying the license tax on dogs just becoming of age.

The list upon which the game warden is required to obtain warrants is the list of persons who have not paid their license tax prior to July 1, and not a list of persons who have paid their taxes subsequent to July 1, whether the list be furnished by the treasurer or not.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

## GAME AND FISH—DOG LAW.

RICHMOND, VA., *February 5, 1919.*

MR. R. L. COSBY,  
*Commissioner of Revenue,*  
*Newport News, Va.*

DEAR SIR:

I acknowledge receipt of your letter of February 3, 1919, in which you state that there has arisen a question with your city treasurer as to how and by whom fees for listing dogs under the new State law should be paid.

My construction of the new dog law is that dogs owned by persons living in incorporated towns and cities are listed with the commissioner of the revenue or other listing officer, and the license is paid to the treasurer of the town or city for the benefit of the town or city, and does not become a part of the funds of the State of Virginia.

A portion of section 2 reads:

" \* \* \* the treasurer of the counties and cities shall not receive more for handling the funds arising from the taxes imposed by this act than they receive for handling other county funds; nor shall the commissioners of the revenue receive more than fifteen cents for listing each dog, but neither the treasurer nor the commissioner of the revenue shall receive compensation for their services in issuing license and tags herein provided for. \* \* \* "

A portion of section 6 provides that:

"All moneys arising from dog license taxes shall be kept in a separate fund by the treasurer and used for the payment of damages and fees unless herein otherwise provided. \* \* \* "

My view is that your fees should be paid out of the licenses received from the sale of tags, and that your compensation should be fixed by the city council, that body being the proper one to expend funds received under the act

Trusting this letter will serve your purposes, I am,

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

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GAME AND FISH—DOG LAW.RICHMOND, VA., *February 6, 1919.*

MR. T. W. ARTMAN,  
*Deputy Treasurer,*  
*Suffolk, Va.*

DEAR SIR:

Acknowledgment is made of your letter of February 5, in which you ask whether or not the dog owners, under the new dog law, are required to pay the fees due the commissioners of revenue for listing dogs in addition to the license tax of \$1.00 and \$3.00 provided for in the act.

This same question has been presented to me before and my ruling was that the net amount to be paid by the owners of dogs is \$1.00 for males and \$3.00 for females, as provided in the said act. The commissions to be paid to the commissioners of revenue and treasurers should be paid out of the fees derived from dog licenses, and the amount of such fees, as I understand it, should be fixed by the board of supervisors of your county.

Very truly yours,

JNO. R. SAUNDERS,

*Attorney General.*

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GAME AND FISH—DOG LAW.

RICHMOND, VA., *March 19, 1919.*

MR. GILBERT L. DIGGS,

*Commissioner of the Revenue,*

*Bohannon, Va.*

DEAR SIR:

I beg leave to acknowledge receipt of your letter of March 17, which I will answer at once.

You state that you made out books on the first of February, containing a list of all dogs that had been assessed up to that time, under the Baker dog law, and delivered the same to the treasurer of your county. You further state that there are a number of citizens who, not knowing the law, failed to list their dogs before the books were delivered, but are now desirous of doing so.

I see no reason why you could not make out another list and deliver it to the treasurer; or, perhaps, the best way would be for the citizens to pay the license tax direct to the treasurer in cases where the dogs have not been listed. I am sure Mr. Lane would give the parties tags and receipts.

I would suggest, however, that you consult your Commonwealth's attorney and treasurer about this matter, and you three could agree upon the best plan to adopt.

Very truly yours,

JNO. R. SAUNDERS,

*Attorney General.*

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GAME AND FISH—DOG LAW.

RICHMOND, VA., *January 23, 1919.*

HON. F. NASH BILISOLY,

*Commissioner of Fisheries,*

*City.*

DEAR SIR:

Acknowledgment is made of your letter of January 23, 1919, in which you ask my opinion as to whether or not a game warden who kills a dog because of the failure of the owner to pay the license on the listed dog, as

provided in the latter part of section 2, chapter 390, Acts of 1918, would be entitled to receive a fee of \$2.50. That part of section 2 to which you refer provides that game wardens the first day of July, or as soon as practicable thereafter, must obtain from the treasurer of the county, city or town, as the case may be, a list of all dogs on which the license has not been paid, and that the warden shall immediately apply to a justice of the peace against the party or parties whose names have been furnished by the treasurer, and if they be convicted, they shall pay the fine and costs provided in the act, and unless the same is paid forthwith, such dog shall be killed by the game warden or the officer serving the warrant.

There seems to be no provision in this section which would entitle the game warden to the fee of \$2.50 such as is provided for in section 4, where he is authorized to kill dogs roaming at large unmuzzled in the night time, without a license tag, or where a dog is found killing, injuring or chasing sheep, etc.

In order for the game warden to entitle himself to the fee of \$2.50 for killing a dog, he must do so under the provisions and conditions set forth in paragraph 4 of the act.

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

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GAME AND FISH—EXPENSES OF OFFICIALS OF THE GAME DEPARTMENT.

RICHMOND, VA., *July 14, 1919.*

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

MY DEAR GOVERNOR:

Acknowledgment is made of the communication of your secretary, under date of July 2, 1919, in which you request my opinion on the following state of facts:

"From the payroll of the Department of Game and Inland Fisheries for June, 1919, two items were maintained, each for the amount of fifty dollars (\$50) in advance to officers of that department to defray their traveling expenses.

"The Governor directs that I inquire if in your opinion these items are legal and the advance can be made under law." •

It is provided by section 6 of chapter 152 of the Acts of 1916, as follows (Virginia Code, volume IV., page 1136):

"At the end of each calendar month said commissioner shall file with the Governor an itemized statement, under oath, of all sums of money received or *expended by him in the discharge of his official duty*, including clerical services, salaries and expenses while traveling, as hereinafter provided, postage, stationery and other necessary incidental expenses." (*Italics supplied.*)

Traveling expenses constitute one of the authorized items for which the Department of Game and Inland Fisheries is permitted to make expenditures. I do not think that it was intended by the law that the employees of the department should be required to advance, for the State, the expenses incurred in the necessary performance of their duties.

Therefore, I am of the opinion that the Commissioner of Game and Inland Fisheries has the authority to advance the necessary traveling expenses of officials of his department, when such expenses are incurred in a manner entitling such officials to compensation from the State therefor.

Very truly yours,

JNO. R. SAUNDERS,

*Attorney General.*

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GAME AND FISH—DESTRUCTION OF FISH.

RICHMOND, VA., *June 14, 1919.*

MR. J. W. A. VAUGHAN,  
*Independence, Va.*

DEAR SIR:

I beg leave to acknowledge receipt of your letter of June 11, in which you state that sawmill men are destroying fish in your mountain streams by putting sawdust from their mills into the streams.

Section 2108 of sub-section 4 of the Code of 1904, prohibits anyone from casting any noxious substance or matter into any water course of this State above tidewater, by which the fish therein may be destroyed. As to whether or not the placing of sawdust in the streams above tidewater is a violation of this law, depends on whether or not the sawdust is a noxious substance or matter by which fish may be destroyed. This, of course, is a question of fact and not a question of law. If the sawdust does kill the fish, I would say it is a violation of the law and I would suggest that you communicate with your Commonwealth's attorney, who is your legal adviser in matters of this nature.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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GAME AND FISH—FISH.

RICHMOND, VA., *February 5, 1919.*

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

DEAR SIR:

Acknowledgment is made of your letter of February 4, 1919, enclosing a letter from Game Warden Roland Buchanan, of Norfolk, Va., asking for my opinion of section 2086, sub-section 6, of the Code, as amended by Acts of Assembly, 1918, page 357, which relates to the size of fish which may be caught and sold.

The last sentence of the act, which reads as follows, seems to cover the question propounded in Mr. Buchanan's letter:

"\* \* \* 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 herein prescribed, he shall be deemed guilty of violating the provisions of this act."

My opinion is, therefore, that before any fisherman or dealer should be deemed guilty of violating the provisions of this act, five per centum of the bulk of all the fish in his possession should be found undersize. I do not think the act contemplates that if a fisherman or dealer has in his possession five per centum of a particular kind of fish undersize and various other fish which are oversize he should be deemed guilty under the act. For instance, a fisherman or dealer might have his bulk of fish made up of rock fish, trout, blue fish, and various and sundry other kinds and species of fish, all of which measure in length more than the law requires, and he may have in the same bulk five salmon trout, two of which measure under ten inches in length. These two salmon trout measuring less than ten inches in length could not possibly be five per centum of the bulk of his catch, though they would comprise five per cent of the salmon trout in his possession.

Trusting that this answers your inquiry satisfactorily, I am,

Very truly yours,

JNO. R. SAUNDERS,

*Attorney General.*

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#### GAME AND FISH—FISHING SEASON.

RICHMOND, VA., *June 7, 1919.*

JAS. P. REARDON, Esq.,  
*Commonwealth's Attorney,*  
*Winchester, Va.*

DEAR SIR:

I am in receipt of yours of the 5th instant, relative to the fishing season for bass in the Shenandoah river. In answer thereto, I refer you to chapter 163 of the Acts of 1906, which provides, in part, as follows:

"It shall not be lawful to kill or capture in the Shenandoah river or its tributaries, black bass or pond bass by any manner or means between the 1st day of April and the 1st day of June."

Chapter 341 of the Acts of 1912 makes it unlawful for any person to catch or destroy in the waters of any counties west of the Blue Ridge mountains, or have in his possession, any black bass between the 1st day of January and the 1st day of July following.

The following counties are expressly excepted from the provisions of this act: Floyd, Washington, Botetourt, Bland, Giles, Highland, Augusta, Smith, Craig and Rockbridge.

I am of the opinion that the 1912 act insofar as it is in conflict with the 1906 act, by virtue of being a later act, overrules the latter. Especially

does this seem to be the case on account of the exception of certain counties to the general rule by express enactment.

I am, therefore, of the opinion that it is illegal to catch, destroy or have in one's possession black bass, large or small mouth, between the 1st day of January and the 1st day of July in counties west of the Blue Ridge, not expressly excepted in the 1912 act.

I am further of the opinion that it is unlawful to kill or capture in the Shenandoah river or its tributaries, black bass or pond bass between the 1st day of April and the 1st day of June.

Summarized, the acts seem to provide that in the Shenandoah river or its tributaries in any county west of the Blue Ridge, it is unlawful to fish for black bass, large or small mouth, from January 1 to July 1, and that as to pond bass, it is unlawful to fish for them between the 1st day of April and the 1st day of June. In thus summarizing, I have assumed that the fishing would be done with a hook and line.

Of course, in those counties noted above as expressly excepted from the provisions of the 1912 act, the 1906 act will be in full force and effect.

Yours very truly,

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

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GAME AND FISH—FISHING SEASON.

RICHMOND, VA., *June 9, 1919.*

JAS. P. REARDON, ESQ.,  
*Commonwealth's Attorney,*  
*Winchester, Va.*

DEAR SIR:

I am in receipt of yours of the 5th instant, relative to the apparent conflict between a 1906 act and a 1912 act as far as it concerns the fishing season for bass in the Shenandoah river.

In answer thereto, I refer you to chapter 163 of the Acts of 1906, which provides, in part, as follows:

"It shall not be lawful to kill or capture in the Shenandoah river or its tributaries, black bass or pond bass by any manner or means between the 1st day of April and the 1st day of June."

Chapter 341 of the Acts of 1912 makes it unlawful for any person to catch or destroy in the waters of any counties west of the Blue Ridge mountains, or have in his possession, any black bass between the 1st day of January and the 1st day of July following.

The following counties are expressly excepted from the provisions of this act: Floyd, Washington, Botetourt, Bland, Giles, Highland, Augusta, Smith, Craig and Rockbridge.

I am, therefore, of the opinion that in those counties noted above as expressly excepted from the provisions of the 1912 act, the 1906 act will be in full force and effect.

I am further of the opinion that, assuming the Shenandoah with its tributaries is west of the Blue Ridge, and further assuming that by "fishing" you mean doing so with hook and line, the 1912 act supersedes the 1906 act. Such being the case, fishing for *black* bass in the Shenandoah river is not permitted between January 1 and July 1, while fishing for pond bass is illegal between April 1 and June 1. You will, of course, understand that I have simply consulted the two acts you mention.

Very truly yours,

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

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GAME AND FISH—GAME WARDENS.

RICHMOND, VA., June 9, 1919.

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

DEAR SIR:

I am in receipt of yours of the 6th instant, in which you request my opinion as to whether a city game warden who has recently been appointed a high constable for a city, can continue his position as game warden under salary from your department.

In reply thereto, I quote paragraph 18 of chapter 152 of the Acts of 1916, which provides as follows:

"All sheriffs, deputy sheriffs, marshals, constables, policemen, members of the Commission of Fisheries, oyster police captains, and oyster police inspectors, or other peace officers of this State shall be *ex-officio* game wardens."

Under that act it was the obvious intention of the legislature that **high** constables as a part of the duties incident to that position, should be clothed with the powers of game wardens, and, therefore, by implication, their holding the position of game wardens under your department is **for-**bidden.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

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GAME AND FISH—GAME WARDENS.

RICHMOND, VA., July 2, 1919.

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

DEAR SIR:

Acknowledgment is made of your communication of July 1, 1919, in which you request my opinion on the following question:

"We would like to have your opinion as to whether ex-officio game wardens can be appointed regular game wardens and special game wardens *on salary* by this department, without having to relinquish the offices which they now hold as ex-officio game wardens."

It is provided by section 14 of chapter 152 of the Acts of 1916 that the Commissioner of Game and Inland Fisheries shall appoint from a list of ten suitable persons furnished to him by the board of supervisors of each county, or the council or similar governing body of each city, "such regular and special game wardens in each county and city of this State, as he may deem necessary to enforce the laws, which appointments shall be based upon a practical knowledge of the animal, bird and fish life and game laws of this State, and such persons so appointed shall be known as game wardens, and shall hold office during the pleasure of the commissioner appointing them, and until their successors are duly appointed; provided, however, there shall be not less than one regular warden in each county."

By section 18 of chapter 152 of the Acts of 1916, it is provided:

"All sheriffs, deputy sheriffs, marshals, constables, policemen, members of the Commission of Fisheries, oyster police captains, and oyster police inspectors, or other peace officers of this State shall be ex-officio game wardens."

It is to these ex-officio game wardens that you refer in your above-quoted request for my opinion.

From an examination of the above-quoted provisions of chapter 152 of the Acts of 1916, it will be seen that the law provides for the appointment of regular and special game wardens by the Commissioner of Game and Inland Fisheries. In addition to such regular and special game wardens appointed by your department, the law provides that certain county and city officers, charged with the enforcement of the police laws of the State, shall be ex-officio game wardens charged with the enforcement of the provisions of the game and inland fish laws of this State.

These officers having been made ex-officio game wardens, and as such charged with the enforcement of the game and inland fish laws of this State, I am of the opinion that the legislature intended that the regular and special game wardens appointed by you under the provisions of chapter 152 of the Acts of 1916, should be made from a class other than ex-officio game wardens, as such persons are chargeable with the enforcement of the game and fish laws by virtue of the provisions of chapter 152 of the Acts of 1916, and of the office which they hold, and it could never have been intended, in the absence of unmistakable words to the contrary, that one who is already charged with the enforcement of the game and inland fish laws, by reason of the office which he holds, should be appointed a regular or special game warden, and given extra compensation for doing that which he is already required to do.

Very truly yours,

JNO. R. SAUNDERS,

*Attorney General.*

## GAME AND FISH—HUNTING DEFINED.

RICHMOND, VA., *March 27, 1919.*

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

DEAR SIR:

Replying to your letter of March 27th in regard to what is meant by the word "hunting" in chapter 152 of Acts of 1916, I beg to state that it clearly appears that the word "hunting" is used in this act to designate the pursuing, catching or killing of wild animals. This definition of "hunting" is contained in Bouvier's Law Dictionary, and is approved by the Supreme Court of Appeals of Virginia in the case of *Bailey v. Commonwealth*, recently decided.

This interpretation is apparent when we remember that the whole act was passed for the express purpose of producing revenue for the State and, at the same time, of giving proper protection to the wild animals and birds of the Commonwealth.

Yours truly,

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

## GAME AND FISH—HUNTING.

RICHMOND, VA., *November 14, 1919.*

D. F. SHEPHERD,  
*Game Warden,*  
*Berryville, Va.*

DEAR SIR:

Acknowledgment is made of your letter of November 9, 1919, in which you request me to advise you whether a man has to post notices on his place before he can have one hunting thereon without permission arrested.

It is provided by section 33 of chapter 152 of the Acts of 1916 as follows:

"If the owner of any premises shall post notices thereon, in conspicuous places, stating that hunting thereon without written permission is prohibited, then any person who hunts on such lands, during that current year, without first having obtained from the owner or agent thereof permission in writing to do so, shall be guilty of a misdemeanor, and on conviction, shall be fined not less than five nor more than twenty-five dollars; provided, that if the owner or agent of such lands shall at the trial request the remittance of the penalty, the trial judge shall so order. Provided that this section shall not apply to coon, opossum, beaver, skunk, fox or deer hunters."

Where the owner has posted written notices upon his land in accordance with this section of the game law, one hunting thereon without written permission violates the law. Where, however, the land has not been posted in the manner prescribed by section 33 of the game law, section 2071 of the Code of Virginia, 1904, governs.

This section reads as follows:

"If any person, without the consent of the owner or tenant, shoot, hunt, range, fish, trap or fowl on or in the lands, waters, mill ponds, or private ponds of another, which are enclosed, or the boundaries of which, or the streams adjacent to which, constitute a lawful fence, or on any lands, waters, mill ponds, or private ponds of another, east of the Blue Ridge, or in the waters on said land, he shall be deemed guilty of a trespass, and upon conviction thereof shall be fined not less than five dollars nor more than fifty dollars, and in addition thereto shall be liable in an action for damages; and if any person, after being warned not to do so by the owner or tenant of any premises, shall go upon the lands of the said owner or tenant, he shall, in addition to the liabilities imposed under this section, be deemed guilty of a misdemeanor, and upon conviction thereof, punished by a fine not exceeding fifty dollars or imprisoned in the county jail not exceeding sixty days, or both, in the discretion of the justice or jury trying the case."

Section 2071 of the Code and section 33 of chapter 152 of the Acts of 1916 are not in conflict, except in the case where land has been posted as prescribed in section 33 of chapter 152, Acts of 1916, and section 2071 of the Code, therefore, has not been repealed so far as it applies to hunting upon land which has not been posted.

Very truly yours,

JNO. R. SAUNDERS,

*Attorney General.*

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GAME AND FISH—HUNTING LICENSES.

RICHMOND, VA., *September 23, 1919.*

MR. P. D. CAMP,  
*Franklin, Va.*

DEAR SIR:

Acknowledgment is made of your letter of September 22, 1919, in reply to my letter of September 20, in which I stated that a license was necessary in order to hunt deer anywhere in Virginia. You call my attention to section 33 of the game and fish laws of Virginia, and again ask the question whether or not it is necessary to have a license to hunt deer.

I assure you that I did not write you that it was necessary to have a license to hunt deer except with full knowledge of the law referred to by you, especially of the section you mention.

There is nothing in section 33, quoted in your letter, which allows the hunting of deer without a license. This matter came before the Supreme Court of Appeals of Virginia in the case of *Commonwealth v. Bailey*, in which the question arose as to whether a fox hunter was compelled to have a license. The case was decided on January 16, 1919, the court sustaining my position that it was necessary for a fox hunter to have a license. The court, referring to section 33, said:

" \* \* \* the exception to the above section (section 33) is manifestly intended to make available to the class of hunters to which it applies the benefit of the license which they are required to obtain. For it is

a matter of common knowledge that if the animals referred to in the exception could not be followed beyond the limits of the premises upon which they are started, in most cases the chase would be bootless and the license without value to the possessor."

You will see, therefore, that this section in no way relieves a person from obtaining a license in order to hunt deer. The exceptions contained in this section do not apply to the question of obtaining a license to hunt, but apply simply to the question of entering upon another person's premises. In other words, section 33 in no way affects section 32, which requires a license in order to hunt. The exception contained therein simply provides that a person hunting coon, opossum, beaver, skunk, fox or deer with a license is not guilty of a misdemeanor when he hunts on posted land without the permission of the owner.

In answer, therefore, to your question, under the decision of the Supreme Court of Appeals of Virginia, it is necessary to have a license in order to hunt deer.

Yours truly,

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

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#### GAME AND FISH—HUNTING LICENSES.

RICHMOND, VA., August 1, 1919.

HON. F. NASH BLISOLY, *Commissioner,*  
*Department of Game and Inland Fisheries,*  
*Richmond, Va.*

DEAR SIR:

Acknowledgment is made of your communication of recent date, in which you request me to advise you on the following statement of facts:

"We would like to have your opinion as to whether this department should furnish the clerks of the circuit courts of Accomac, Northampton and Princess Anne counties blank forms of hunting licenses, as are furnished the other counties in the State,—see sections 22, 27, 31, 41 and 42, Acts 1916, chapter 152, and an act to incorporate the Eastern Shore Game Protection Association of Virginia, approved March 5, 1894."

It is provided by section 22 of chapter 152 of the Acts of 1916, so far as is applicable to the question here under consideration, as follows:

"All hunting licenses shall be numbered consecutively at the time they are printed; they shall be printed on linen in such form as the commissioner may prescribe, and resident and non-resident blanks shall be furnished by the commissioner to the clerks having authority to issue said licenses."

From this section, it will be seen that the Commissioner of Game and Inland Fisheries is required to furnish such license blanks to the clerks having authority to issue said licenses.

By section 32 of chapter 152 of the Acts of 1916, it is made a misdemeanor for any person to hunt outside of the limits of his own or the adjoining property, except as provided in section 29 of the act, without first obtaining a license permitting him to do so. It is also made a misdemeanor, by the same section, for any non-resident of the State, or alien, to hunt in the State except on his own land without a license, as provided for in the act. It will, therefore, be seen that a hunting license is required in all parts of the State by any person who hunts, unless he comes within one of the exceptions noted.

Section 27 of the act provides that the clerk of the court of any county shall have authority to issue hunters' licenses provided for by this statute, which licenses shall be issued under the teste of his office to all persons complying with the provisions of the law and must be signed by the clerk.

From these sections, it will be seen that persons who hunt in this State, whether in the county of Accomac, Northampton and Princess Anne, or other counties, must obtain licenses before being permitted to hunt, unless they fall within one of the exceptions of the statute. In such cases, the licenses under section 27 of the act are to be issued by the clerk of the circuit court of the respective counties.

This being so, the clerks of the circuit courts of Accomac, Northampton and Princess Anne counties are such clerks as have authority to issue hunting licenses, and, therefore, blank forms for the same must be furnished them by the Commissioner of Game and Inland Fisheries, as required by section 22 of the act.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

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HABEAS CORPUS—EFFECT OF BAIL.

RICHMOND, VA., August 12, 1919.

HON. HUGH A. WHITE,  
*Attorney at Law,*  
*Lexington, Va.*

MY DEAR HUGH:

Acknowledgment is made of your letter of August 9, relating to the habeas corpus proceedings of Mr. W. F. Eads, which reached me this morning.

The law seems to be well settled by the overwhelming weight of authority that habeas corpus cannot be invoked in a case where the petitioner is on bail. In 3 R. C. L. under the title "Bail and Recognizance," section 36, page 31, the rule is thus stated:

"After the admission of a person to bail he cannot be considered as suffering such a restraint of his liberty as to entitle him to a discharge on habeas corpus. An actual or physical restraint is required and not a mere moral one. But if the accused is in jail at the time of the presentation of an application to an appellate court, the application will not be dismissed upon the ground that he was not in jail at the time of the making of a former application to the lower court which was dismissed. He must, however, remain in custody during the prosecution of the appeal. One who has been admitted to bail cannot by voluntarily pro-

curing his surrender into custody by his sureties avoid the effect of his liberation on bail so as to assure him of the right to a writ of habeas corpus."

In the article on habeas corpus in 12 R. C. L. section 10, pages 1187-88, the same rule is laid down. This section is too long to quote in full. However, the following portion thereof is especially pertinent to the question here under consideration:

" \* \* \* There must be a duress or restraint of a person whereby he is prevented from exercising the liberty of going when and where he pleases. Mere moral restraint is not sufficient. In other words, the petitioner must be in such control or custody of the person against whom the petition is directed, that his body can be produced at the hearing by the said custodian or restrainer. It is accordingly well settled that a person out on bail is not so restrained of his liberty as to be entitled to a writ of habeas corpus, though it has been held that habeas corpus proceedings are not abated, however, by the release of the petitioner on bail pending his appeal from an order denying the writ. \* \* \* "

In *Palmer v. State*, 170 Ala. 102, 54 Sou. 211, Ann. Cas. 1912-c, 950 (1910), the court held that a person who had been admitted to bail is not entitled to a writ of habeas corpus against the clerk of court who approved his bond, because he is not restrained of his liberty within the meaning of the statute authorizing writs of habeas corpus. In discussing the question, the court said (page 104):

" \* \* \* An actual or physical restraint, and not a mere moral one, is necessary to warrant interference by habeas corpus; but any restraint which precludes freedom from action is sufficient, and actual confinement in jail is unnecessary. Persons under bail are not restrained of their liberty, so as to be entitled to a discharge on habeas corpus. 21 Cyc. 289, and cases cited in note 41; 15 Am. & Eng. Enc. of Law (2d ed.), 159, and cases cited in note 3. Indeed, we do not find a case in the books holding that a person out under bail is so restrained as to entitle him to the writ."

In an extensive note to this case in Ann. Cas. 1912-c, page 951, it is said in part:

"The holding of the reported case is in line with the well-settled rule that a person out on bail is not so restrained of his liberty as to be entitled to a writ of habeas corpus. \* \* \* "

In a note in 5 A. & E. Ann. Cas. page 552, it is said:

"It is a well-settled general rule that a person out on bail is not so restrained of his liberty as to be entitled to a writ of habeas corpus. \* \* \* "

"The reason for this rule is that the restraint of a person under bail is generally considered a mere moral restraint. The restraint of liberty, which is made the subject of inquiry by the writ of habeas corpus, is a confinement, custody and illegal restraint of the personal liberty of the person applying for the benefit of the writ. It must be a duress or restraint of the person whereby he is prevented from exercising the liberty of going when and where he pleases. Mere moral restraint is not sufficient. *Territory v. Cutler, McCahon* (Kan.) 152. \* \* \* "

I fully agree with you that the case of *Davis v. Davis*, 112 Va. 904 (1911), is not an authority on the question, as the question here under consideration does not appear to have been raised in that case and was certainly not passed upon by the court in its decision.

I also desire to call your attention to the case of *Ex Parte Ford*, 35 L. R. A. N. S. 882, which deals with this subject.

It is true, as you say in reference to the jurisdiction of a justice of the peace under chapter 416 of the Acts of 1918, page 759, that the act does not express confer jurisdiction on a justice of the peace, but the offenses created by the act being violations of the criminal laws of the State, it would seem that they would fall within the provisions of sections 3955-8 of the Code of Virginia 1904.

As the legislature will be in session at the time this cause is heard, it will be impossible for me or anyone from my office to appear at the hearing of the cause in question.

I have not had the time today to examine the law as to the right of an appeal by the Commonwealth in a case of this kind in the event the decision is adverse to its contentions. I will examine the law as to this, however, within the next few days and if an appeal lies in such a case, I will be glad to assist you in the preparation of a petition to the Court of Appeals if the same becomes necessary.

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

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#### HEALTH—BIRTH CERTIFICATES.

RICHMOND, VA., *October 24, 1919.*

DR. N. THOMAS ENNETT,  
*Richmond, Va.*

DEAR SIR:

Acknowledgment is made of your letter of October 23, in which you request me to advise you as to whether osteopaths and chiropractors licensed to practice in this State, have the legal right to sign birth and death certificates.

It is provided by chapter 181 of the Acts of 1912 as amended, the Virginia law providing for the registration of births and deaths in this State, that in the case of death the certificate shall be made and signed by the physician, if any, last in attendance on the deceased (section 7).

It is provided that in the case of still-born children "the medical certificate of the cause of death shall be signed by the attending physician, if any. \* \* \*" (Section 6), and in the case of births, it is provided that the same shall be filed by "the attending physician or midwife" (section 13).

I am of the opinion that an osteopath or chiropractor who is in attendance upon the deceased, in the one case, or the mother in the other, are physicians within the meaning of chapter 181 of the Acts of 1912, as amended, for the purpose of filing birth and death certificates.

See *State v. Zechman* (Iowa), 135 N. W. 387, 389.

*Bandell v. Department of Health*, City of N. Y., 11 N. Y. S. 431; 127 App. Div. 382; 85 N. E. 1056, 1068; 193 N. Y. 133; 21 L. R. A. (N. S.) 49.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

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INDIANS—TRESPASS ON RESERVATION OF.

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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INFANTS—CHILD LABOR LAWS.

RICHMOND, VA., April 24, 1919.

MR. J. A. WHITMAN,  
*Wytheville, Va.*

DEAR SIR:

Acknowledgment is made of your letter of April 22, asking whether or not under the child labor law, you are permitted to work boys under fourteen years of age for two and one-half hours per week.

If you will refer to chapter 204 of the Acts of Assembly, 1918, page 347, you will find by reading the second paragraph of section 1, that no child under the age of fourteen years is permitted to work in any factory, workshop, cannery, mercantile establishment, laundry, bakery, brick or lumber yard.

My construction of this law is that you cannot work boys under fourteen years of age in your printing establishment.

Yours very truly,

F. B. RICHARDSON,

*Law Assistant.*

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INSANE ASYLUMS—SALE OF ELECTRIC CURRENT.

RICHMOND, VA., November 28, 1919.

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

MY DEAR GOVERNOR:

Acknowledgment is made of your communication with reference to the sale of electric current to a citizen of Williamsburg by the Eastern State Hospital. You request me to advise you whether the authorities of the hospital have the right to do this.

I have carefully examined the law relating to this question and have been unable to find any direct authority which either permits or prohibits such action by the hospital authorities. An act of the legislature at its extra session of 1915, approved March 18, 1915, section 9, gives the board of directors of the Eastern State Hospital authority to enter into a contract with the city of Williamsburg to furnish water to said city and for connection with the water mains, etc. It may be that the board of directors of the hospital construed this as authority also to furnish electric light in the case referred to by you.

An examination of the statutes relating to the insane asylums of the State shows that these sections of the Code contemplate the receipt of funds by such institutions other than the appropriations made by the General Assembly, and as I have said, where such institution has a surplus of electric current, I can see no impropriety in its disposing of the same.

However, concerning the matter about which you wrote me some time ago and in which Mr. Blacknall made complaint that the hospital was furnishing light to Mr. Wolf, who conducted a moving picture show, I would state that this matter has been adjusted by Mr. Blacknall and Mr. Wolf and I understand that the hospital now is furnishing current for the motor, which is done with the approval and consent of Mr. Blackwell, who at present has no complaint about this.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

## INSANE PERSONS—CONVICTS

RICHMOND, VA., December 8, 1919.

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

MY DEAR GOVERNOR:

Acknowledgment is made of your request for an opinion on the following statement of facts:

"A man was tried for felony in the circuit court of Pittsylvania county, convicted and sentenced to the penitentiary for a term of eight years. Subsequent to the date of his conviction and sentence, but prior to his being taken to the penitentiary, the man became insane and is still in the jail of the county in which he was convicted. The court before whom he was convicted has adjourned for the term. What must be done to have this man sent to the insane asylum at Marion instead of the penitentiary?"

It is provided by section 4123 of the Code of Virginia, 1904, so far as is applicable to the question here under consideration, as follows:

"\* \* \* If at any time there is reasonable ground to doubt the sanity of a convict, the superintendent shall report it to the Governor, who shall order such convict to be brought before the circuit court of the city of Richmond, which is hereby charged with the trial of the fact as to his sanity, in the manner provided in section 4032, and if the jury find him insane he shall be transferred to one of the lunatic asylums, as provided in sections 1672 and 1673, and when restored to sanity, he shall be returned to the penitentiary in the manner prescribed in section 4033."

If the man in question had not been sentenced, I am of the opinion that under the provisions of section 4032 of the Code of Virginia, 1904, and section 1682 of the Code of Virginia, 1904, as amended, that the trial court would have had jurisdiction to empanel a jury to inquire into the fact of the man's sanity and to commit him to an asylum if found insane. As it is, however, the man having been sentenced, he is a convict, although he has not been as yet transferred to the penitentiary, and in my opinion the provisions of section 1682 of the Code of 1904, as amended (volume 4, pages 345-7), are to be construed in connection with the above-quoted provision of section 4123 of the Code, and that the procedure therein prescribed must be followed, in having this man committed to the insane asylum.

Prior to the amendment of section 1682 of the Code, it contained a provision requiring one becoming insane during the term for which he had been convicted and sentenced to the penitentiary, to be confined and treated in a special ward in the penitentiary to be set aside and reserved for insane criminals.

Attorney General Anderson, in an opinion given Hon. Claude A. Swanson, Governor of Virginia, March 29, 1906 (Opinions of Attorney General, 1906, page 26 *et seq.*), held that this provision of section 1682 of the Code was in conflict with the above-quoted provision of section 4123 of the Code, and that section 4123 of the Code having been enacted subsequent to section 1682.

the former was controlling and that the provision of section 1682 of the Code must be construed to mean that such insane person sentenced to confinement in the penitentiary should be confined and treated in a special ward of the penitentiary until he could be removed to a State hospital for the insane in the manner expressly required by section 4123 of the Code, and then removed to the hospital as therein directed.

Since this opinion was written, section 1682 of the Code has been amended several times, and this provision is no longer found therein, nor in my opinion is it at present in conflict with section 4123 of the Code.

I am, therefore, of the opinion that the procedure to be followed in this case must be under and in compliance with the terms of section 4123 of the Code quoted above.

Yours very truly,

LEON M. BAZILE,  
*Law Assistant*

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INSANE PERSONS—DISPOSITION OF.

RICHMOND, VA., *February 18, 1919.*

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

DEAR DR. MASTIN :

Your letter of February 17, in which is contained extracts from the report of your agent on the inspection of the Norfolk city jail, just received.

This report shows that it is the custom to keep certain persons in the Norfolk jail after a commission of lunacy has been held and they have been adjudged lunatics. This, it seems, is due to the fact that such parties continue to show marked improvement, and they are, therefore, held in jail and treated instead of being sent to an asylum. The report further shows that at times the commission, upon examination of a patient, finds that there is a probability that such patient may recover and therefore postpones action for a week or ten days.

If you will read sections 1669 and 1670 of the Code of Virginia, you will find the law providing for the manner in which a commission of lunacy is held, and the duties imposed upon such commission. The law contemplates that just so soon as a person is adjudged a lunatic, he shall be forthwith delivered to the care and custody of the sheriff of the county, or sergeant of the city, to be safely kept and confined in the jail until he is conveyed to a hospital for the insane or otherwise discharged from custody. It further provides that if any responsible person will give bond, with surety, that he will take proper care of such insane person without cost to the Commonwealth, then the judge or justice may, in his discretion, deliver such insane person to the custody of such person.

I do not think it is contemplated in the law that after a person has been adjudged a lunatic that such insane person shall be kept in jail, there to be treated by any physician for lunacy, but he should be kept there only until he can be conveyed to one of the asylums of the State. It is presumed

that such treatment should be given the patient at the asylum rather than in one of the jails of the Commonwealth.

I think that the law contemplates that when a commission of lunacy is called it should act at once in accordance with section 1669.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

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INSURANCE—IRREGULAR STOCK INCREASE BY INSURANCE COMPANY.

RICHMOND, VA., August 28, 1919.

COL. JOSEPH BUTTON,  
*Insurance Commissioner,*  
*Richmond, Va.*

DEAR SIR:

I have examined the papers submitted to me relative to the legality of certain transactions of the Union Central Life Insurance Company with reference to their last increase of capital stock.

I think there can be no doubt that the proceedings under which the stock was increased was irregular and not in keeping with the proceedings contemplated by the statute with reference to such increases. Manifestly, it does not carry out the purpose of the statute. A provision in the statute that when the company requires a larger amount of capital than that fixed by its articles of incorporation, it may proceed to have the same increased, clearly contemplates that a larger amount of capital is needed for carrying on the work of the company and not in order to divide such increase of stock among the stockholders as in the instant case.

I, therefore, think that you are justified in ignoring an increase of stock secured in the manner and for the purposes set forth in the statement of facts submitted to me. I am herewith returning the papers given me.

Yours truly,

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

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INTOXICATING LIQUORS—ADVERTISEMENTS.

RICHMOND, VA., June 4, 1919.

MR. S. B. WOODFIN,  
*Office of Commissioner of Prohibition,*  
*City.*

DEAR SIR:

I just returned to my office from Wytheville, where I was attending the session of the Supreme Court of Appeals, and found your letter of the 30th ult., which letter contains certain advertisements of the Virginia Supply Company, Portsmouth, Va., as to the sale by them of recipes for making intoxicating beverages, and you desire my opinion as to the legality of such advertisements.

Under section 19 of chapter 146 of the Acts of 1916, generally known

as the prohibition act, it is made unlawful "to advertise \* \* \* by circular, poster \* \* \* or otherwise, within this State, ardent spirits; or to advertise \* \* \* the person from whom or the firm or corporation from which, or the place where, or the price at which, or the method by which the same, or any of them, may be obtained."

Under this section it seems to me that advertisements of recipes by which intoxicating liquors may be made, are methods by which ardent spirits may be obtained within the meaning of this act. At least, it must be said that the language would warrant the prosecution of persons sending out such literature in order that the matter may be tested once and for all in our courts.

In addition, it would also seem to be an "aid in procuring ardent spirits," as appears under paragraph 3 of the same act.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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INTOXICATING LIQUORS—FUNDS OF PROHIBITION DEPARTMENT.

RICHMOND, VA., *February 19, 1919.*

DR. J. S. PETERS,  
*Commissioner of Prohibition,*  
*City.*

DEAR DR. PETERS:

I beg leave to acknowledge receipt of your letter of February 18, enclosing me certain correspondence in reference to the shooting of Aleck Puryear, a moonshiner.

I have read this correspondence very carefully and am of the opinion that you would have no authority to use any funds in your office to pay Dr. S. R. Jordan for medical services.

While it is true that Mr. Shelton, one of your inspectors, assured the doctor that he would be paid for services rendered, and while it would work a hardship on him to have to pay it, still this was a liability which he assumed and one for which your office can in no manner be responsible.

I would very much regret to see Dr. Jordan lose this bill, but at the same time, as stated above, you would have no right to pay it.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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INTOXICATING LIQUORS—SEARCH WARRANTS UNDER FEDERAL LAW.

RICHMOND, VA., *July 18, 1919.*

DR. DAVID HEPBURN, *Superintendent,*  
*Anti-Saloon League,*  
*Richmond, Va.*

DEAR SIR:

Acknowledgment is made of your letter enclosing a copy of section 26 of what is known as the law enforcement bill now before the United States

Congress, and especially to that part of said section which provides for the issuing of a search warrant under the public acts of the United States (act of June 15, 1917, chapter 30, title XI.), and asking whether or not this would be effective in carrying out the purpose of the search and seizure provided by said act.

An examination of the United States public act approved June 15, 1917, above mentioned, shows that it provides that a search warrant may be issued by a judge of the United States district court or by a judge of the State or territorial court of record, or by a United States commissioner for the district wherein the property sought is located.

In those localities where there is not easy access to an officer as provided in the act, it is manifest that the purpose of a search warrant may be thwarted before access to such officer is obtained. Moreover, the act of June 15, 1917, provides that a search warrant thereunder must issue to a civil officer of the United States authorized to enforce or assist in the enforcement of any law thereof or to a person so duly authorized by the President of the United States.

It is clear that in many cases, such a civil officer or person would be reached too late to be of any service in such cases. I am of the opinion, therefore, that section 26 of the enforcement bill will be materially strengthened and the purpose thereof greatly assisted, if there were added to the bill the right to have a search warrant issue under and as provided by the laws of the State in which the search is to be made. By adding this provision to section 26 of the enforcement bill in question, an officer attempting such enforcement could apply to a Federal judge or a judge of a State or territorial court of record, or a commissioner of the United States under the act of June 15, 1917, but it would also give him the right where immediate action was necessary and none of the above-mentioned officers could be reached, to apply to a magistrate or some other convenient State officer authorized under the State law to issue a search warrant, and the warrant could be served by a convenient and proper local State officer.

In providing that such warrants can be issued and served by State officers, a provision could be made that the same should, however, be returned to a Federal officer such as the United States commissioner or a Federal judge. In other words, by having the search warrant issued by a State officer returnable to the Federal authorities, there could be no question affecting the jurisdiction of the Federal court over the violation of the act in question.

In conclusion, I am of the opinion that the provision where a search warrant is to be issued by a State officer, should be an addition to the right of search under the United States public act of June 15, 1917, rather than as a substitute therefor.

Yours truly,

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

## JAILS—KEYS OF.

RICHMOND, VA., *February 18, 1919.*

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

DEAR DR. MASTIN :

I beg leave to acknowledge receipt of your letter of the 15th, in which you state that in two of the city jails in the State prisoners are permitted to carry the keys and have access to all of the cells and are permitted to show visitors through the jails. You ask in your letter if this is not a violation of section 928-a of the Code of Virginia.

Section 928-a referred to reads as follows:

"It shall be unlawful for any person other than the officers of the law in charge of the prisoners, the counsel of the prisoner, or such other persons as may be authorized by the court in whose custody said prisoner may be, to hold any communication, by word, sign or writing, with said prisoner or prisoners confined in any jail in the Commonwealth of Virginia except in the presence of the sheriff or his deputies or of the jailer regularly in charge of said prisoner or prisoners, and any person violating or attempting to violate this act, or any sheriff, deputy or other person in charge of said prisoner or prisoners knowingly allowing any violation of the same shall be guilty of a misdemeanor, and upon conviction thereof be fined not less than five nor more than fifty dollars."

You will see from this section that no person is permitted to hold any communication with a prisoner in any jail in the Commonwealth except in the presence of a sheriff, his deputy, or the jailer regularly in charge of such prisoners. It is clearly contemplated by the above section that no person other than the sheriff, his deputy or the jailer has any authority to carry the keys of the jail, nor should any one be permitted to hold any communication with the prisoners save in the presence of one of the three mentioned parties.

I am, therefore, of the opinion that for a prisoner to be permitted to carry the keys of a jail and to show visitors around is plainly in violation of this section.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

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JAILS AND PRISONERS—STATE CONVICT ROAD FORCE.RICHMOND, VA., *November 19, 1919.*

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

MY DEAR MR. COLEMAN :

Acknowledgment is made of your letter of November 17, with reference to the practice in certain counties and cities of sending prisoners sentenced

under State statutes to their county or city jails, county or city quarries, or to county or city chain gangs.

On March 25, 1913, Hon. Samuel W. Williams, then Attorney General of Virginia, in an opinion given the Auditor of Public Accounts, the Secretary of the Board of Charities and Corrections, the Superintendent of the Virginia Penitentiary and the State Highway Commissioner, discussed this question at great length, and in this opinion answered the questions raised in your letter. I have examined this opinion and concur therein. I am, therefore, sending you a copy of the same.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

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JURISDICTION—EXTRA TERRITORIAL ACTS OF DOMESTIC CORPORATIONS.

RICHMOND, VA., November 7, 1919.

A. F. DUFFY, Esq., *Manager, Safety Section,*  
*U. S. R. R. Administration, Division of Operation,*  
*Washington, D. C.*

DEAR SIR:

Acknowledgment is made of your communication of recent date, with reference to the signs manufactured by the Lynchburg Sign Company, of Lynchburg, Va., which represent the standard railroad crossing sign.

It is provided by chapter 70 of the Acts of 1918 as follows:

"1. Be it enacted by the General Assembly of Virginia, That no device or sign which is in the form of a railway crossing sign board shall be erected or permitted to remain on or near any of the public roads of this State, except as required by section forty-nine of chapter four of the act entitled an act concerning public service corporations, approved January eighteenth, nineteen hundred and four.

"2. Any person who shall erect such a device or sign, as aforesaid, and every sign owner who shall permit such a device or sign to remain on or near the public roads of this State, and every land-owner or tenant in possession who shall knowingly permit such a sign to remain on his land in view of any public road, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than five nor more than one hundred dollars."

From an examination of this statute, you will see that it is limited in its application to the erection of such signs and to permitting the same to remain on or near the public roads of this State. There is nothing in this statute which would prohibit the manufacture of such signs in Virginia for use elsewhere, and it is needless for me to call your attention to the fact that the laws in this State have no extra territorial effect. The signs having been erected in Kentucky, I am of the opinion that the Virginia act above referred to has not been violated.

It is probable that the State of Kentucky has a statute similar to the Virginia statute, and if this is true, the offender could be reached through the Kentucky courts, as the offense, if any, was committed in that State.

If the Lynchburg Sign Company is erecting similar objectionable signs in Virginia, it can be reached through the courts of this State by taking the matter up with the Commonwealth's attorney of the county in which the sign is erected.

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

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JUDGES—CHARGES AGAINST.

RICHMOND, VA., *January 31, 1919.*

GOVERNOR WESTMORELAND DAVIS,  
*Richmond, Va.*

MY DEAR GOVERNOR:

I beg leave to acknowledge receipt of your letter of January 24, 1919, enclosing certain correspondence between Judge Walter L. Devaney, Jr., of Hopewell, Va., and Dr. J. Sidney Peters, Prohibition Commissioner, all relating to certain charges against Judge Robertson.

In the first place, I do not believe that this is a matter with which you or I should be concerned at present. If Judge Robertson has been guilty of violating any of the criminal laws of the State, there is no reason why proceedings could not be instituted in court against him as well as against any other person.

Clause 7 of section 3214 of the Code of Virginia, referred to in this correspondence by Judge Devaney, is, in my judgment, not applicable to this case, because that has especial reference to civil actions and not to criminal actions. If criminal proceedings are instituted they should begin in the corporation court of the city of Hopewell. In lieu of any criminal procedure, charges could be preferred under sections 54 or 104 of the Constitution of Virginia, which charges, of course, should be heard and passed on by the General Assembly.

If Judge Devaney has faith in the charges covered in his correspondence, it appears to me that it becomes his duty as a private citizen to go before the grand jury of the city of Hopewell, and to cause such other persons as he might know to be in possession of the facts bearing on this case to be summoned before the grand jury to give evidence. It would then become the duty of the Commonwealth's attorney of the city of Hopewell to prosecute the case should the grand jury find an indictment.

If I may be permitted to advise you, I would suggest that the correspondence be returned to Judge Devaney, advising him to communicate his knowledge to the Commonwealth's attorney of the city of Hopewell for such action as he may be advised is proper.

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

## JUDGMENTS—PRIORITY OF.

RICHMOND, VA., *April 9, 1919.*

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

DEAR SIR:

In accordance with your request, I have read the letter of April 7, addressed to you by J. C. Shockley, in which he says that he desires to purchase a piece of property owned by certain heirs, but finds that a judgment in favor of the Commonwealth appears upon the records in the clerk's office against one of the heirs, as surety on the bond of the treasurer of the county; that a deed was given, conveying the interest of this heir before the judgment was docketed, but was not recorded until after the docketing of the judgment. He wishes you to advise him which has precedence.

I am of the opinion that the judgment, being entered in the clerk's office prior to the time of the filing of the deed for record, has precedence over the deed.

Yours truly,

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

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JUSTICES OF THE PEACE.RICHMOND, VA., *December 26, 1918.*

MR. F. H. COMBS,  
*Commonwealth's Attorney,*  
*Grundy, Va.*

DEAR SIR:

Acknowledgment is made of your letter of December 21, in which you ask whether or not a justice of the peace to whom an indictment found by a grand jury for a misdemeanor has been certified for trial may, under section 2942 of the Code, associate two other justices of the peace of the county with him in the trial of the case.

To better understand the meaning of section 2942, it would be well to consider why this section was enacted. It seems to me that the purpose of this section was to insure at all times a fair and impartial trial to a person brought before a justice of the peace for a hearing. Usually when a justice of the peace issues a warrant he hears from the complaining party only one side of the evidence, and it might be said that to some extent this statement of the complaining party more or less creates an opinion in the mind of the justice issuing the warrant at the time it is issued, and that section 2942 was evidently intended to cover just such cases as that, so that upon the application of a defendant two other justices who have not known any of the facts in the case are called in to hear and determine the issue upon the warrant.

From my view point, section 2942 is a very wise provision in the statute in cases where the warrant is originally issued by the justice of the peace. How-

ever, I cannot see that it has any effect upon section 4106, where a person has been indicted by a grand jury, and the same has been certified by the court to some justice in the district to be tried, because in that case the justice to whom the indictment has been certified is necessarily not familiar with the evidence, not having heard the complaint nor issued the warrant.

It follows, therefore, that my opinion is that a person indicted by a grand jury for a misdemeanor and such indictment having been certified by the court to a justice for trial, the person accused under the indictment is not entitled to have associated with such justice two other justices of the peace under the provisions of section 2942.

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

Very truly yours,

F. B. RICHARDSON,

*Law Assistant.*

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LABOR—SEMI-MONTHLY PAY LAW.

RICHMOND, VA., *April 29, 1919.*

MISS MARY J. SCHAILL,

*Director of Woman's Division,*

*Richmond, Va.*

DEAR MADAM:

I acknowledge receipt of your letter of April 24, 1919, asking to be advised whether or not the semi-monthly payment law, chapter 389, Acts of 1918, applies to office employees in large manufacturing corporations, or only to those employed in actual manufacturing.

The first paragraph of section 1 of the law found in the pamphlet which you enclosed in your letter apparently was not intended to cover employees in offices of manufacturing plants. You will observe by reading this section that it does apply to persons, firms, companies, corporations or associations engaged in maintaining railroad and steamship offices, but where it provides for mining coal, ore or other minerals, or mining and manufacturing them, it seems to apply only to employees engaged in the employments aforesaid, which employments are mining coal, ore or other minerals, or mining and manufacturing them.

Very truly yours,

F. B. RICHARDSON,

*Law Assistant.*

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LEE CAMP CONFEDERATE VETERANS—PROPERTY OF.

RICHMOND, VA., *October 20, 1919.*

*His Excellency, WESTMORELAND DAVIS,*

*Governor of Virginia,*

*City.*

MY DEAR GOVERNOR:

I beg leave to acknowledge receipt of your letter of recent date concerning the terms by which the State took over the Soldiers Home from the Lee

Camp of the Confederate Veterans. You state in your letter that the State Accountant has informed you that there is a fund of \$25,000 which is not being held in the treasury of Lee Camp, which said fund is on deposit in the National State and City Bank, and that it is his opinion that this amount should be included among the assets of the Soldiers' Home as the property of the Commonwealth.

In reply to your letter, I beg leave to state the following:

The legislature of Virginia, by an act approved March 3, 1892, which said act is found in the Acts of Assembly, 1891-92, page 978, made an annual appropriation to the Confederate Soldiers' Home, in consideration of which R. E. Lee Camp agreed to execute, deliver and have recorded a deed conveying the twenty-five acres of ground then owned by it and used as a soldiers' home, and the improvements thereon or hereafter erected thereon, to the Commonwealth of Virginia, the said deed to contain a condition that possession and control of said property would not be divested from the grantor (unless said grantor consented) as long as said property was used for the purposes for which it was used, and which it was agreed would be twenty-two years from the passage of the act. This provision is contained in section 3 of the act referred to above.

The legislature of Virginia, by an act approved March 7, 1912, (Acts of Assembly, 1912, page 169) amended section 3 of the Act of 1892, and extended the time for thirty years from March 3, 1892, thereby making the time of expiration 1922.

The only property which was agreed to be conveyed by R. E. Lee Camp to the State of Virginia was the twenty-five acres of ground and all improvements thereon. No mention is made of any other assets belonging to the R. E. Lee Camp. I am, therefore, of the opinion that the deed of conveyance from R. E. Lee Camp to the State of Virginia does not include the \$25,000 in question. I understand that this is no part of the State's appropriation.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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LICENSES—BROKER.

RICHMOND, VA., December 2, 1919.

THOMAS B. GAY, ESQ.,  
*Richmond, Va.*

DEAR SIR:

Acknowledgment is made of your letter of November 26, 1919, in which you state that you have had a conference with Hon. George E. Wise, Commonwealth's attorney for the city of Richmond, with reference to an indictment pending against the National City Company for failure to pay a broker's license for the year 1919.

In your letter, you state that Mr. Wise stated to you that any conclusion reached by me in this matter would be acceptable to him, and that he authorized you to request me to consider the facts, addressing him a letter expressing my opinion in the matter. I am, accordingly, forwarding him a copy of this letter.

The facts upon which my opinion is desired are as follows:

The National City Company is incorporated under the laws of the State of New York, and has its principal place of business in New York City. Its business consists principally of purchasing and selling, on its own account, corporate securities. It does not buy or sell on a commission basis. It has a representative in the State of Virginia solely for the purpose of soliciting orders for the purchase of securities owned by itself. This agent keeps no securities on hand for delivery to customers, nor does he effect or have authority to effect sales for the company. His sole function is to solicit orders for securities and forward the orders to the company's office in New York city. All orders received by him are subject to confirmation by the company, which is at perfect liberty to reject any order for any reason. If an order is accepted, the securities are sent to the purchaser either directly or through a local bank, and payment therefor is made to the company in the same manner. The agent neither delivers the securities nor receives payment therefor. His connection with each transaction terminates with the forwarding of the order to the company. This, I am informed, has always been the unvarying practice.

Assuming that the foregoing statement of facts is correct, I am of the opinion that the National City Company is engaged in interstate commerce, and, therefore, is not liable for the broker's license tax required by section 75 of the Virginia tax bill.

Of course, you are aware of the fact that this matter is, at present, solely within the jurisdiction of Mr. Wise, and I would hesitate to express an opinion thereon had he not requested the same. As it is, if Mr. Wise differs with me as to the liability of the National City Company, I do not wish him to feel bound by what I have said here, as the same is expressed merely as a matter of courtesy to you and to him in response to your request.

Very truly yours,

JNO. R. SAUNDERS,

*Attorney General.*

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LICENSES—COLLECTION AGENT.

RICHMOND, VA., *September 18, 1919.*

MR. J. G. DAUGHERTY,  
*Hampton, Va.*

DEAR SIR:

Acknowledgment is made of your letter of September 8, 1919, addressed to the Attorney General, in which you state that you wish to establish a collection agency in Hampton, Va., and operate the same under the style of "Peninsular Creditor's Agency."

You then request that you be advised whether there are any restrictions in this State relative to the use of such a title by an individual, and if so, what. There seems to be no restriction as to the use of a trade name by an individual unless the same already belongs to someone else, in which event, you would have no right to use the same.

Before engaging in the business of collection agent, it would be necessary for you to procure a license under section 86½ of the Virginia tax bill, as amended.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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LICENSES—COMMISSARY.

RICHMOND, VA., *May* 13, 1919.

THE HUTTER-COOKE LUMBER CO., INC.,  
*Sheppards, Va.*

GENTLEMEN:

I beg leave to acknowledge receipt of your letter of May 12, in which you ask whether, under the laws of Virginia, it will be necessary for you to obtain a license in order to operate a commissary at your saw mill. You state it is your intention to carry a full line of groceries, shoes, shirts and other merchandise usually carried by country stores.

Section 47 of the tax law provides that—

“Every railroad company or other incorporated company in this Commonwealth, whether such privilege be granted in its charter or not, which shall sell any mineral or forest product or any other article, shall be taxed as other merchants dealing in like commodities. This act shall apply to companies keeping commissaries, or having agents for the sale of any other article than their own products. \* \* \*

You will see from a reading of the above law that you will be required to obtain a merchant's license in order to conduct this commissary.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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LICENSES—CRAB AND OYSTER PACKERS.

RICHMOND, VA., *May* 9, 1919.

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

DEAR SIR:

I am in receipt of your letter of May 3, in which you desire to be advised whether a crab packer or oyster packer doing business in the city of Norfolk who pays a special license to the State of Virginia through your department, can be assessed as other merchants are assessed in Norfolk, with State taxes by the commissioner of the revenue.

Your letter is not entirely clear to me, as you do not state what kind of business in Norfolk the crab packer or oyster packer is doing. If he is only engaged in the class of business mentioned in section 13, page 127, of

the laws relating to fisheries of tidal waters, then I would say he does not have to pay another license.

However, if you will write me fully, I will be very glad to give you my opinion.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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LICENSES—MERCHANTS.

RICHMOND, VA., July 9, 1919.

HON. C. LEE MOORE,

*Auditor of Public Accounts,  
City.*

DEAR SIR:

Acknowledgment is made of your communication in regard to the letter of A. A. Eskridge, commissioner of the revenue, Staunton, Va., requesting my opinion on the following state of facts:

"Can a farmers' union keep or order a carload of sugar and sell it to their members at an advance of 25 cents on the dollar, or, in fact, can they keep a regular stock and sell it to members of the association. The union here, I understand, is ordering sugar and other groceries by the carload and selling them at an advance. Would they not be liable to pay a merchant's license?"

In an opinion given you on March 19, 1917, by Hon. Leslie C. Garnett, then Assistant Attorney General, Report of Attorney General, 1917, page 291, it was held that no merchant's license tax is required of parties who combine to buy food products for their own use and that the money used by them in the purchase of these products was not capital employed in business, in which I concur.

In the case under consideration there, however, it appeared that while the goods ordered were to be shipped to one individual being a party to the agreement, that before they were ordered the parties to such agreement placed an order for a specific amount of food and on the arrival of such food at the residence of the party to whom it was shipped, such other parties came forward, paid their portion of the original cost only, no profit being retained by the party to whom the shipment was made by the producer, and took the food ordered by them.

In the case here under consideration, the facts are entirely different. The union or association in question, it appears from the letter of Mr. Eskridge, is buying goods in a wholesale amount and then disposing of them at a price in advance of the cost price.

Under such circumstances, I am clearly of the opinion that such association is engaged in the business of a merchant within the meaning of sections 45-6 of the Virginia tax bill as amended, and should be required to pay the license tax in such cases provided.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

## LICENSES—MERCHANTS.

RICHMOND, VA., July 14, 1919.

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

DEAR SIR:

Acknowledgment is made of your communication of recent date, in reference to the operations of an association which has a store room or warehouse, and employs an agent on a percentage basis who takes orders from the members of the association for supplies of various kinds which are usually bought by the association in carload lots, the agent delivering mostly from the car, although sometimes from a wareroom recently erected by the association. In the state of facts upon which my opinion is requested, it is stated:

"\* \* \* this agent frequently disposes of left over stock, such as sugar, corn, bran, chop, fertilizers, etc., to parties who may not be members, and without having previously obtained orders therefor."

In an opinion given you on March 19, 1917, by Hon. Leslie C. Garnett, then Assistant Attorney General, Report of the Attorney General for 1917, page 291, it was held that no merchant's license tax is required of parties who combine to buy food products for their own use, and that the money used by them in the purchase of these products is not capital employed in business.

From the opinion, it appears that, in the case then under consideration, a number of parties desiring to buy food cheaper than it could be obtained by individual purchasers, combined for the purpose of buying desired articles in wholesale lots; that, pursuant to such agreement, shipments of specific amounts of food were to be made by the producers to one of the consumers who was a party to the agreement, by whom such articles were distributed to the other members of the association. It appears, however, that beforehand an order for a specific amount of food which was shipped had been placed by the parties desiring the same, and that on the arrival of the food at the residence of one of the parties to the agreement, the other parties paid their portion of the original cost only, and that no profit was retained by the party to whom the shipment was made by the producer.

In the case here under consideration, however, while the facts are not entirely clear, it would appear from the above-quoted paragraph of the letter upon which my opinion is sought, that the association, through its agent, purchases stock in excess of that ordered by the members of the association, and disposes of the same by selling to persons who are not members of the association.

Under these circumstances, I am of the opinion that the association is engaging in the business of a merchant, and as such should be required to obtain the license required by law. *Morris & Co. v. Commonwealth*, 116 Va. 912 (1914).

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

## LICENSES—MERCHANTS.

RICHMOND, VA., *June 5, 1919.*

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

DEAR SIR:

I am in receipt of yours of the 2nd inst., the first paragraph of which reads as follows:

"Mr. R. W. Merchant, secretary-treasurer of the Renters' and Consumers' Protective Association of Richmond, writes me under date of June 2, 1919, that the charter obtained by that corporation, amongst other powers, confers upon it the authority to buy and sell commodities needful to the members, such business to be conducted absolutely without profit to the Association, and he desires me to inform him if any State license is required of the corporation to engage in the business of buying and selling, absolutely without profit to the association, goods, wares and merchandise, family supplies, fuel, etc., etc., to its members."

I am of the opinion that the precise question you propound has been the subject of a previous opinion from this office, which you will find in the Report of the Attorney General for 1915, page 83. In this opinion, the former Assistant Attorney General, Hon. Christopher B. Garnett, stated that a corporation was a distinct entity from the stockholders, and, therefore, the fact that it might sell exclusively to its stockholders did not exempt it from the merchants' license, as required by sections 45 and 46 of the tax bill. I am constrained to follow this opinion.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

## LICENSES—MERCHANTS.

RICHMOND, VA., *July 19, 1919.*

W. A. DOGGETT, Esq.,  
*Wecms, Va.*

DEAR SIR:

Acknowledgment is made of your letter of July 16, 1919, in which you request me to advise you on the following state of facts:

"Will you kindly advise me the privileges that are legally allowed 'Farmers' Unions' in this State? There is a union here which buys and sells paint, hardware, groceries, etc., and advertises cost on items which are handled by merchants at a living profit. Our merchants pay taxes as allotted to us by our State."

Any person, corporation or association who engages in the business of a merchant is required to pay the State license tax for doing business as such.

I know of no law which would prevent one from advertising the costs on items which are handled by merchants.

Very truly yours,

JNO. R. SAUNDERS,

*Attorney General.*

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LICENSES—MERCHANTS.

RICHMOND, VA., *February 21, 1919.*

MR. J. H. OVERHOLT,  
*Clerk of Council,*  
*Covington, Va.*

DEAR SIR:

I acknowledge receipt of your letter of February 19, 1919, in which you ask whether or not a druggist who pays a regular merchant's license is required, under the law, to also obtain a license for the purpose of serving hot biscuit and ham sandwiches.

The soda fountain license covers only the operation of a soda fountain and the sale of such drinks as are usually sold at a soda fountain. If the party to whom you refer wishes to sell hot biscuit, ham sandwiches, cakes and pie, he would be required, under the tax laws, to obtain an eating house license.

Mr. L. M. Wills, who operates the Wills' Pharmacy in Covington, Va., on February 14 addressed a letter to the Auditor of Public Accounts, asking a question similar to that contained in your letter. The Auditor replied to Mr. Wills' letter on February 17 as follows:

"Your letter of February 14th has been received. License to sell soft drinks from soda fountain does not permit the sale of food such as hot biscuit, ham sandwiches, etc. For this privilege, eating house license is required, in addition to the license to sell soft drinks from a fountain."

I do not know whether this is the party to whom you refer or not. However, the opinion expressed in Mr. Moore's letter is correct, and we concur in his construction of the tax law under consideration.

Very truly yours,

JNO. R. SAUNDERS,

*Attorney General.*

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LICENSES—PEDDLERS.

RICHMOND, VA., *July 25, 1919.*

HON. WILLING BOWIE,  
*Commonwealth's Attorney,*  
*Bowling Green, Va.*

MY DEAR MR. BOWIE:

I beg leave to acknowledge receipt of your letter of July 24, 1919, in which you state that a man is traveling through your county, claiming to be

representing a Baltimore house, and selling goods. You further state that at the time the sale is made, he collects for the goods and delivers them.

Unquestionably this party, according to section 50 referred to by you, is a peddler, and should be required to take out a peddler's license.

Under the overwhelming weight of authority, the person in question cannot excuse himself on the ground that he is selling for a non-resident corporation, as it has been determined time and again by the Supreme Court of the United States that persons selling as you state this person does, are amenable to the State laws.

g.

Very truly yours,

JNO. R. SAUNDERS,

*Attorney General.*

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LICENSES—SOFT DRINKS.

RICHMOND, VA., *April 21, 1919.*

MR. R. T. HUBARD,

*Commonwealth's Attorney,*

*Salem, Va.*

DEAR SIR:

I have for acknowledgment your letter of April 19, 1919, asking whether or not soft drink licenses issued under section 64-b of chapter 388, Acts of 1918, should be renewed or whether or not they are continuous.

I have carefully examined section 64-b, and my opinion is that the licenses when granted are continuous licenses, subject to revocation by the court granting the same, but shall be good until suspended or revoked by such court. However, licenses granted under the prohibition act of 1916, in my opinion, should be renewed. It follows, therefore, that any license granted under the Acts of 1918 is a continuous license until suspended or revoked by the court granting the same, and that unless the persons to whom you refer secured their licenses under the Acts of 1918, I am of the opinion that they should follow the requirements set out in the Acts of 1918, and secure such licenses as are therein required.

Very truly yours,

JNO. R. SAUNDERS,

*Attorney General.*

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LOTTERIES.

RICHMOND, VA., *March 15, 1919.*

MAJOR C. A. SHERRY,

*Chief of Police,*

*Richmond, Va.*

DEAR SIR:

Acknowledgment is made of your letter of March 15th, asking me to advise you my construction of statute section 3826 in regard to conducting a lottery or raffle where a sale is made of a commodity and where a chance

or number is given the purchaser to enable him to participate in a prize offered to the person holding the lucky number, to be determined by a revolving wheel, etc.

The section referred to provides that: "If any person set up or promote, or be concerned in managing or drawing a lottery or raffle, for money or other thing of value \* \* \* or, for himself or another person, or with intent to exchange, negotiate or transfer, or aid in selling, exchanging, negotiating or transferring a chance or ticket in or share of a ticket in a lottery, or any such writing, certificate, bill, token or device, he shall be confined in jail not exceeding one year and fined not exceeding five hundred dollars."

I do not think this statute would apply to a case where a commodity is sold at a fair price, the commodity being numbered and the purchaser of the commodity holding a certain number is given an additional property on account thereof.

Yours truly,

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

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LOTTERIES.

RICHMOND, VA., November 12, 1919.

HON. GEO. E. WISE,  
*Commonwealth's Attorney,*  
*Richmond, Va.*

MY DEAR SIR:

Acknowledgment is made of your letter of even date in which you ask three questions of me.

First, as to what constitutes lottery under section 2836 of the Code.

To give any hard and fast rule as to what is lottery, is almost impossible. I am of the opinion that probably there is as good a definition in 25 Cyc., page 1633, as can be found, where it is said:

"A lottery is a species of gaming, which may be defined as a scheme for the distribution of prizes by chance among persons who have paid, or agree to pay, a valuable consideration for the chance to obtain a prize."

Many authorities in dictionaries say that lottery is a scheme for the distribution of prizes by chance.

Your second question is as follows:

"Do you regard the following state of facts as a violation of the law against lottery: When by means of tickets or chances and the turning of a wheel, or other device, the holder of one of the tickets wins a turkey, a teddy bear, a blanket or other thing of greater value than the cost of the ticket, which cost, for instance, is ten cents or twenty-five cents, and the other ticket holders receive, either before or after the turn of the wheel, a lead pencil, a picture postal card, a strip of chewing gum or other prize, gift or purchase of value, whether such and all transactions of a like kind, do not come within the definition of lottery and are in violation of the law?"

Under the state of facts given by you in which you state that twenty-five cents is paid for purchases of trifling value, it is manifest that such an arrangement is a mere subterfuge to violate the statute, and would therefore be a violation thereof.

In a letter to the chief of police of Richmond on March 15, 1919, I stated that I did not think the statute would apply in a case where a commodity was sold at a fair price, the purchaser of the commodity being given additional property if he held a certain number, but the statement of facts given by you do not come within the purview of that principle, for to pay twenty-five cents for something of *trifling* value would plainly not be selling the commodity at a fair price.

In reply to your third question as to whether or not I have given my opinion on this subject to any other official or person, I desire to say that I have expressed no opinion save that in my opinion to the chief of police on March 15, 1919.

With reference to the statement appearing in the morning's paper, I think you must concur with me in the statement that, on yesterday, I did not pass judgment on any of the cases pending before your police justice, but being asked in regard to them, I stated that I could not, nor would I give any opinion with reference to the cases then pending, because I did not know the true facts.

Yours very truly,

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

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MARRIAGE—FIRST COUSINS—LICENSE.

RICHMOND, VA., *June 9, 1919.*

*His Excellency, GOVERNOR WESTMORELAND DAVIS,*  
*Richmond, Va.*

MY DEAR GOVERNOR:

I am in receipt of yours of the 9th inst., enclosing a letter from Miss Catherine VanDyke, of Mattoon, Wis., asking whether, under the laws of our State, the fact that persons desiring to marry are first cousins prohibits the granting to them of a license to marry, and if it is necessary for these persons to live a certain length of time in a county or city of this State before a license to marry can be granted.

In answering her first question, I beg to advise you that there is no statute in this State which would prohibit the intermarriage of first cousins.

In regard to the second question, I refer you to section 2216 of the Code, which provides in part as follows:

"Every license for a marriage shall be issued by the clerk of the circuit court of the county, or of the corporation or hustings court of the corporation in which the female to be married usually resides; and in case the latter is a non-resident of the State, then by the clerk of the circuit court of the county or of the corporation or hustings court of the corporation in which the marriage is to be solemnized; \* \* \*"

It would, therefore, seem that, under this section, if the persons desiring to marry are not residents of this State, the license must be issued by the clerk of the circuit court of the county or corporation of the city in which the marriage is to be solemnized.

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

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**MILITIA—POWER OF GOVERNOR WITH REFERENCE TO.**

RICHMOND, VA., *November 21, 1919.*

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

MY DEAR GOVERNOR:

Acknowledgment is made of your request as to the powers of the Governor of this State with reference to calling out the militia of the State.

Section 73 of the Constitution provides that the Governor "shall be the commander-in-chief of the land and naval forces of the State; have power to embody the militia to repel invasion, suppress insurrection and enforce the execution of the laws."

Section 211 of the Code provides:

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

Section 212 provides:

"Whenever the Governor shall call forth the militia, whether by virtue of the Constitution or the preceding section, he shall issue such orders and take such measures for procuring and transporting the detachments as to him shall seem best, and for their accommodation, equipment and support shall appoint such quartermasters, commissaries and other staff, as to him shall seem proper."

Section 213 provides:

"Such orders shall be sent to such officers and in such manner as the Governor may deem expedient, with a notification of the place of rendezvous. And the officers to whom the orders are sent shall proceed immediately to execute the same."

Section 368 of the Code, as amended by the Acts of the Assembly, 1912, page 627, provides that, in case of any breach of the peace, tumult, riot or resistance of the law, or imminent danger thereof, it shall be lawful for the sheriff of any county or the mayor of any city, to call upon the Governor for aid, and, in cases where the emergency is such as not to admit of this

delay, to call upon the commanding officer of any division, brigade, regiment, separate battalion, company or troop, and it shall be the duty of such commanding officer to order out, in aid of the civil authorities, the military force under his command, or any part thereof. The same section provides the form of the summons calling for such aid, and stipulates that it shall be signed by the sheriff or mayor, as the case may be. The section further provides that a copy of the summons shall be immediately forwarded to the commander-in-chief, and that the officer to whom the order of the commander-in-chief or summons is directed, shall forthwith order the troops therein called for to assemble. Moreover, such troops shall appear at the time and place appointed, armed, equipped and with ammunition, and *shall obey and execute* such orders as they may then and there receive according to law.

Section 369 provides that all orders from civil officers must be in writing, etc. Furthermore, this section requires that such orders shall set forth the purposes to be accomplished by the military officer to whom they are addressed, but shall not prescribe the military measures to be employed nor the orders to be issued by such officer, who shall use such measures and issue such orders as he may deem necessary to accomplish the purpose indicated.

I have drawn extensively from sections 368 and 369 of the Code because these sections, being amended and re-enacted in 1912, have at times been attempted to be construed as superseding sections 211 and 212, above quoted, as well as section 73 of the Constitution. But, manifestly, such is not the case. While section 368 deals mainly with causing the militia to be called out because of the desire of the sheriff of a county or the mayor of a city that it shall come to his aid in enforcing the law, there is nothing in section 368, when properly construed, that in any way interferes with the powers of the Governor—the chief executive—nor is it logical to presume that it was so intended by the legislature. For the legislature was—because of section 73 of the Constitution—without power to take away from the chief executive of the State a power expressly given him by the Constitution. This section (368) only confers upon certain local officers the right to call upon the Governor, or upon the commanding officer of a division, etc., where an emergency exists, to aid him in the execution of the law. But this, in no way deprives the Governor of the right given him by the Constitution itself to exercise the executive powers and functions so given.

I am of the opinion that the sections must be read together and as parts of a scheme adopted by the legislature for the proper enforcement of the laws of the State.

If the militia is called out by the local officer of the law, it receives its orders from such civil officer calling it to its aid; if by the Governor, then such orders come from the Governor. Such a conclusion is apparent when the various sections above referred to are read together.

Furthermore, section 369 provides a fine on any military commander for refusing or neglecting to obey the proper orders of *the civil officer* requesting his aid.

The territory over which such militia shall operate must, of course, be determined by the civil authorities seeking its aid, such authority exercising

a sound discretion in the matter and the exigencies of each case will solve the problem of the territory to be covered.

Yours truly,

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

NOTARIES PUBLIC—FEDERAL OFFICIALS.

RICHMOND, VA., *April 3, 1919.*

HON. WESTMORELAND DAVIS,  
*Governor of Virginia,*  
*Richmond, Va.*

DEAR GOVERNOR:

I beg leave to acknowledge receipt of a letter of April 2 from Miss Hunter, your secretary, in which she enclosed a letter dated March 31, 1919, from Mr. David T. Williams.

Mr. Williams states that he was appointed a notary public by you on the 24th of last June. He further states that, on September 1 following, he was appointed a member of the local exemption board of Pittsylvania county. His inquiry is as to whether his services as a member of the local exemption board vacates his office as notary public.

I am of the opinion that such service does not vacate his office as notary public, and that he can re-assume the duties of his office without being re-appointed by you. My opinion is based on the act of the legislature of Virginia, which was approved March 16, 1918, and found on page 540 of the Acts of Assembly, 1918. This act 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. \* \* \*"

There can be no doubt that a notary public comes within the class of officers mentioned in this law, and service on the local exemption board was certainly "war service of the United States."

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

NOTARIES PUBLIC—FEDERAL EMPLOYEES.

RICHMOND, VA., *April 24, 1919.*

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

MY DEAR GOVERNOR:

Yours enclosing letter from Mr. Wm. R. Seay, of Lynchburg, Va., received. Mr. Seay desires to know if he can act as notary public while receiving

\$60.00 a year from the Federal government, which said sum is paid to him as a member of the United States naval reserve force.

I am of the opinion that Mr. Seay is not eligible to the office as notary public, due to the fact that he receives compensation from the United States government. He does not come within the class of persons who are exempted while engaged in war service.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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NOTARIES PUBLIC—FEDERAL EMPLOYEES.

RICHMOND, VA., June 28, 1919.

J. P. JOHNSON, ESQ.,

*Public Works Department, Naval Operating Base,  
Hampton Roads, Va.*

DEAR SIR:

Acknowledgment is made of your letter of June 20, 1919, written me at the suggestion of the secretary to the Governor.

In your letter you state that you desire to make application for a commission as notary public, but that you are unable to fill out that part of the form which required you to certify that you are not in the employment of the United States, and that you receive no compensation in any form or manner from the government of the United States. You state that you are employed by the Navy Department as chief clerk in the public works department, Naval Operating Base, Hampton Roads, Norfolk, Va., and request me to advise you whether, while holding such position, you can be commissioned as a notary public by the Governor of Virginia.

All offices of honor, profit or trust, under the Constitution of Virginia, are subject to the qualifications prescribed by section 163 of the Code of Virginia, 1904, which section reads as follows:

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

There are certain exceptions to the provisions of section 163 of the Code, which are found in section 164 of the Code of Virginia, 1904, as amended. This latter statute, however, does not except from the provisions of section 163 of the Code of Virginia, 1904, a person holding a position such as yours.

I am, therefore, of the opinion that, while holding your present position, you fall within the disability of section 163 of the Code of Virginia, 1904, and cannot be lawfully commissioned as a notary public.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

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NOTARIES PUBLIC—ELIGIBILITY OF FEDERAL EMPLOYEES.

RICHMOND, VA., November 28, 1919.

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

MY DEAR GOVERNOR:

Acknowledgment is made of the letter of Miss V. E. McDougall, your assistant secretary, enclosing a file in the matter of the appointment as notary public of Albert S. J. Jakeman, with the request that he be advised as to the eligibility of Mr. Jakeman for a commission as notary public.

Mr. Jakeman states in his letter of November 22, 1919, that he is a civilian employee of the government of the United States. I am of opinion that as such he is ineligible for appointment as a notary public.

It is provided by section 163 of the Code of Virginia, 1904, that no person shall be allowed to hold any office of honor, profit or trust under the Constitution of Virginia who is in the employ of the United States or who receives from it in any way any emolument whatever. Section 164 of the Code of Virginia, 1904, as amended, contains certain exceptions, but civilian employees of the Federal government do not fall within the exceptions thereto, so far as relates to the office of notary public.

The clipping referred to by Mr. Jakeman in his letter and enclosed therewith, is a ruling made by the authorities of the Federal government as to what State and county officers are incompatible with services as employees of the Federal government. The question with which we have to deal in the present matter is the converse of that proposition, namely: whether employment in the service of the Federal government is incompatible with a commission as a notary public.

Of course, I realize the inconvenience that is occasioned in this matter and in numerous other cases involving the same question which have been referred to this office within the past few months. However, the only relief that I can suggest is an appeal to the legislature to amend the law so as to render eligible for appointment persons in the service of the Federal government.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## NOTARIES PUBLIC—ELIGIBILITY OF FEDERAL EMPLOYEES.

RICHMOND, VA., November 7, 1919.

MR. H. GUILMETTE, *Supply Officer,*  
*Naval Torpedo Station,*  
*Alexandria, Va.*

DEAR SIR:

Acknowledgment is made of your letter of recent date with reference to Charles L. Adams, chief clerk in the supply department, Naval Torpedo Station, Alexandria, Va. In your letter you inform me that Mr. Adams, who is a citizen of Virginia and a resident of Alexandria county, without knowing that Federal employees were ineligible for appointment as notaries public, applied for and obtained a commission from the Governor of Virginia as a notary for the county of Alexandria on May 22, 1919. You request me to advise you, first: Whether Mr. Adams while holding his position as employee of the Federal government, can act as a notary public, and, second: That if he cannot act as such, whether the Commonwealth will reimburse him for the fee paid for his commission and the costs incurred by him in qualifying, etc.

It is provided by section 163 of the Constitution that no person shall be capable of holding any office or post of honor, profit, trust or emolument, civil, military, legislative, executive or judicial, under the government of the United States, or who is in the employ of such government or who receives from it in any way any emolument whatever.

Section 164 of the Code of 1904 as amended, contains certain exceptions to this statute, but none of these exceptions affect the case of Mr. Allen. Being a civil employee of the Federal government at the time of his appointment and continuously so to the present time, I am of the opinion that he has no authority to exercise the powers of a notary public, although commissioned as such, it appearing that his occupation was not disclosed in the application and that it was issued through an error. It is well established in this State that unless the statutes expressly provide for the payment of claims out of the treasury, the Auditor must decline to pay the same (Opinions of Attorney General, 1916, page 61). As I find no statute authorizing the refund of the fee paid by an applicant for a commission which is issued under such circumstances, I am of the opinion that Mr. Allen's only relief would be to have the same refunded by an act of the legislature.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## NOTARIES PUBLIC—ELIGIBILITY OF FEDERAL EMPLOYEES.

RICHMOND, VA., August 6, 1919.

E. J. MARRIN, Esq., *Assistant Secretary,*  
*Governor's Office,*  
*Richmond, Va.*

DEAR SIR:

Acknowledgment is made of your letter of August 2, 1919, in which you request me to advise you whether a commission as notary public can be

issued to R. L. Allen, who is in charge of the United States Public Health Service Hospital at Norfolk.

It is provided by section 163 of the Code of Virginia, 1904, as follows:

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

This section is qualified by section 164 of the Code of Virginia, as amended (Pollard's Biennial, 1918, page 7), which reads as follows:

"The preceding section shall not be construed to prevent members of Congress from acting as justices of the peace, visitors of the University of Virginia and Virginia Military Institute, or from holding offices in the militia; or to exclude from offices under the State on account of any pension from the United States a person to whom such pension has been granted in consequence of an injury or disability received in war, or to exclude from such office or post officers or soldiers on account of the recompense they may receive from the United States when called out in actual duty; or be construed to prevent United States commissioners or United States census enumerators or fourth-class or third-class postmasters from acting as notaries, school trustees, justices of the peace or supervisors, or from holding any district office under the government of any county, or as councilman of any town or city in this State; or to prevent any United States rural mail carrier from being appointed and acting as notary public; or to prevent any United States commissioner from holding the office of commissioner in chancery, bail commissioner, jury commissioner, commissioner of accounts, or assistant commissioner of accounts; or 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 office therein; or from being a director in a State institution; or be construed to prevent foremen, quartermen, leading men, artisans, clerks or laborers employed in any navy yard or naval reservation in Virginia from holding any office under the government of any town, county or city in this State, or to prevent any United States government clerk from holding any office under the government of any town or city in this State; or to prevent any United States postmaster from being a member of the State Board of Health."

If the man in question is an officer or soldier in the service of the United States, I am of the opinion that as such he is not disqualified from being commissioned as a notary public, as section 164, as amended, provides that section 163 of the Code shall not "exclude from such office or post officers or soldiers on account of recompense they may receive from the United States when called out in actual duty."

If, however, the man in question is other than an officer or soldier in the military service of the United States, I am of the opinion that he is not eligible for appointment as a notary public.

Very truly yours,

JNO. R. SAUNDERS,

Attorney General.

## NOTARIES PUBLIC—RESIDENCE.

RICHMOND, VA., June 9, 1919.

*His Excellency, GOVERNOR WESTMORELAND DAVIS,*  
*Richmond, Va.*

MY DEAR GOVERNOR:

I am in receipt of yours of the 9th inst., enclosing a letter from Mr. Carroll Myers, a resident of the city of Portsmouth, requesting that he be informed as to whether he may be commissioned as a notary public for the city of Norfolk.

I am of the opinion that you have the authority to appoint Mr. Myers a notary public for the city of Norfolk, notwithstanding the fact that he is a resident of the city of Portsmouth, and will state that the fee of five dollars (\$5.00) is all that is necessary.

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

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OFFICERS—COMPATABILITY OF OFFICES.

RICHMOND, VA., July 14, 1919.

DR. W. R. SMITHEY, *Secretary,*  
*State Board of Education,*  
*Richmond, Va.*

MY DEAR DR. SMITHEY:

I am just in receipt of your letter of July 14, in which you ask the following question:

"Is a person who is principal of a high school in a county eligible to appointment on the school trustee electoral board in the same county? In other words, can he hold both positions at the same time?"

In reply, I will state that I do not believe that a high school principal is eligible to appointment on the school trustee electoral board in the same county in which he teaches, for the following reasons:

The school trustee electoral board elects the members of all the district school boards in a county. The district school board in each district of the county elects the teachers of that particular district.

You will, therefore, readily see that should a high school principal be appointed by a judge as a member of the school trustee electoral board in the same county in which he is teaching, while not directly electing himself as principal of the school, at the same time he would certainly be in a position to control the situation.

Again, suppose a matter of controversy should arise between the high school principal and the district school board, and the district school board should decide against the contention of the high school principal. The high school principal would then have a right to appeal to the school trustee

electoral board of the county of which board he is a member. Surely, the law does not contemplate that one should be in a position whereby he would be judge in his own case.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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OFFICERS—COMPATABILITY OF OFFICES.

RICHMOND, VA., May 24, 1919.

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

DEAR MR. HART:

I am in receipt of yours of the 23rd instant, in which you ask whether a commissioner in bankruptcy is eligible for the office of school trustee.

Section 163 of the Virginia Code provides for the general disability of persons holding Federal positions accepting positions under the State and its various sub-divisions.

Section 164 of the Virginia Code, as amended by the Acts of 1918, page 448, provides that section 163 shall not be construed "to prevent any United States commissioner \* \* \* from acting as \* \* \* school trustees."

Section 1538 of the Virginia Code, 1904, as amended by the Acts of 1906, page 513, provides as follows:

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

I am, therefore, clearly of the opinion that by the express provisions of our statutes as above quoted, a commissioner in bankruptcy is eligible for the position of school trustee.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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OFFICERS—COMPATABILITY OF OFFICES.

RICHMOND, VA., April 14, 1919.

MR. M. L. A. MOSELEY,  
*Tucker, Va.*

DEAR SIR:

Acknowledgment is made of your letter of April 10, 1919, in which you ask whether or not a justice of the peace and a school trustee can be appointed a member of your county electoral board. You call my attention to section 64 of the election law.

The last paragraph of section 64 answers your question and is very explicit. I quote it here for your information:

"No person, nor the deputy of any person, holding any office or post of profit or emolument under the United States government, or who is in the employment of such government, or holding any elective office of profit or trust in the State, or in any county, city or town thereof, shall be appointed a member of the electoral board or a registrar or judge of election."

You will observe that it provides that no person holding any elective office of profit or trust in this State, or in any county, city or town shall be appointed a member of an electoral board, or registrar or judge of election. The office of justice of the peace is an elective office, and a justice is not eligible to appointment on the electoral board.

A school trustee is not elected by the people of the county, but is appointed by the school trustee electoral board. Therefore, I do not believe there could be any objection to a school trustee being a member of the county electoral board.

Very truly yours,

JNO. R. SAUNDERS,

*Attorney General.*

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OFFICERS—COMPATABILITY OF OFFICES.

RICHMOND, VA., *September 16, 1919.*

MR. A. T. BROOKE,

*Loretta, Va.*

MY DEAR MR. BROOKE:

Acknowledgment is made of your letter of September 13, 1919, in which you request me to advise you if you can hold, at the same time, the offices of postmaster and deputy commissioner of revenue.

Commissioners of revenue and their deputies are not district officers. Therefore, you do not come within the provisions of section 164 of the Code of Virginia, as amended, and you cannot hold both offices at the same time.

Very truly yours,

JNO. R. SAUNDERS,

*Attorney General.*

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OFFICERS—COMPATABILITY OF OFFICES.

RICHMOND, VA., *October 16, 1919.*

HON. A. L. BENNETT,

*Division Superintendent of Schools,*

*Charlottesville, Va.*

MY DEAR MR. BENNETT:

Acknowledgment is made of your letter of October 15, in which you request my opinion as to the right of a member of the district school board in your county to be employed by the treasurer of the county to collect taxes in one of the districts.

It is provided in section 1459 of the Code of Virginia, 1904, as amended, that no Federal, State or county officer, or any deputy of such officer, shall be allowed to act as district school trustee. If this man is not a deputy of the treasurer, he is not disqualified from acting as a school trustee. If, however, he is the deputy of the treasurer, he cannot act as school trustee.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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OFFICERS—COMPATABILITY OF OFFICES.

RICHMOND, VA., November 19, 1919.

MR. C. R. COLEMAN,  
*Snell, Va.*

MY DEAR COLEMAN:

I am just in receipt of your letter of November 17, in which you ask whether a person can serve as district school trustee, who is a member of the local board of review. Section 1459 of the Code provides as follows:

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

You will see from a reading of this section that a county officer is prohibited from acting as a school trustee. Under this section, which is broad in its scope, as it expressly excepts county superintendents of the poor and notaries public, it would seem that a member of the local board of review cannot act as school trustee.

However, if any person in your county is holding both of the offices referred to by you his eligibility would be a question to be determined by the court.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

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OFFICERS—COMPATABILITY OF OFFICES.

RICHMOND, VA., November 26, 1919.

HON. WILLING BOWIE,  
*Bowling Green, Va.*

DEAR SIR:

Acknowledgement is made of your letter, in which you ask, first, whether a supervisor of a district can act as deputy treasurer of the same magisterial district, and second, whether a constable can act as a deputy game warden for his district.

I am of the opinion that it would be extremely poor policy for the supervisor of a district to act as deputy treasurer when, under the law, the supervisor of a county must audit the books of the treasurer of the county.

As to your second question, there is no provision for a deputy game warden. The act known as the Game and Inland Fisheries act does not provide for deputy wardens but only provides for regular and special wardens. Moreover, section 18 of this act provides that all constables shall be ex-officio game wardens.

Yours truly,

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

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OFFICERS—COMPATABILITY OF OFFICES.

RICHMOND, VA., *December 29, 1919.*

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

DEAR SIR:

I beg leave to acknowledge receipt of your letter of December 23rd, in which you ask whether in my opinion, a commissioner of the revenue can be appointed and hold office as assessor of lands.

In reply, I will state that I do not think a commissioner of revenue can be appointed assessor of lands. The two offices, in my judgment, are incompatible and I cannot see how one person can fill both.

Section 110 of the Constitution creates the office of the commissioner of the revenue. Section 171 of the Constitution states that the General Assembly shall provide for re-assessment of land in the year 1905 and every fifth year thereafter. Such provision has been made by the General Assembly and it was never contemplated by the legislature or the Constitution that anyone should hold both offices.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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OFFICERS—COMPATABILITY OF OFFICES.

RICHMOND, VA., *December 31, 1919.*

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

MY DEAR GOVERNOR:

Acknowledgement is made of your letter of December 2nd, with which you enclosed a letter addressed by Edward R. Turnbull, Esq., to I. W. Davis, Esq., member of the Highway Commission, and request my opinion upon the question discussed therein.

In his letter to Mr. Davis, Mr. Turnbull informs him that in his opinion, under section 2702 of the Code of Virginia 1919, Mr. Davis is not eligible to hold the office of county supervisor and at the same time that of a member of the Highway Commission. It is provided by section 2702 of the Code of 1902, as follows:

"No person holding the office of county treasurer, sheriff, attorney for the Commonwealth, county clerk, commissioner of the revenue, superintendent of the poor, county surveyor or supervisor, shall hold any other office, elective or appointive, at the same time, and if any person shall be elected or appointed to two or more offices, his qualification in one of them shall be a bar to his right to qualify in any of the offices above enumerated, and if any person while holding any of such offices shall be appointed or elected to any other office, his qualification in such office shall thereby vacate any of the above offices he then holds."

Under this section, I am of the opinion that a member of the Highway Commission cannot at the same time hold the office of county supervisor. Moreover, aside from the statute that the two offices are manifestly incompatible, as you can readily see, occasions may arise, and no doubt will frequently occur, where a supervisor's interest and duty to his community would interfere with the impartiality and judgment required of the members of the Highway Commission.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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OFFICERS—CLERKS OF COURT.

RICHMOND, VA., *July 9, 1919.*

WM. MCK. WOODHOUSE, Esq.,  
*Attorney at Law,*  
*Norfolk, Va.*

DEAR SIR:

Acknowledgement is made of your letter of July 2, 1919, in which you request my opinion as to the following question:

"Would the acceptance of the office of clerk of the corporation and circuit courts of Hopewell preclude me from appearing as attorney in other courts except the corporation court of Hopewell in such cases as may be now pending or for which I have already been retained."

In your letter you state that you have a number of cases pending in other courts in which you have been retained, which you desire to prosecute to a conclusion. It is provided by section 3199 of the Code of Virginia as follows:

"If any clerk, sheriff or sergeant or any deputy of either or any person interested in the profits of any such office which act as attorney at law in any case in any court of which such clerk, sheriff or sergeant is a member, he shall forfeit \$100.00."

In *Ex Parte Collins*, 2 Va. Cas. 222 (1820), the general court held that a clerk could not be permitted to practice as an attorney at law in the court of which he is clerk notwithstanding his license to practice law in all the courts of the Commonwealth, the reason being given that the duties of clerk of a court and of counsel and attorney in the same court, are incompatible with each other and that they interfere so much one with the other, that there is danger lest they might not both be executed with impartiality and honesty. It is well settled, therefore, that a clerk cannot practice in the court or courts of which he is clerk.

There seems to be no prohibition, however, which would prevent you from handling your cases now pending in other courts.

In *Carlyle v. Dodge*, 5 N. H. 386, (1831), the Superior Court of Judicature of New Hampshire, in a well-considered opinion, held that a constitutional provision which declared that no "clerk shall act as an attorney or be counsel in any cause in the court of which he is clerk, nor shall he draw any writ originating in a civil action" left a clerk at liberty to act as attorney or counsel in any other court than the court of which he is clerk and that the last clause in the above quoted constitutional provision must be construed to mean writs originating in the courts of which the party was clerk.

See also *Reifel v. Interboro Horse Exchange*, 148 N. Y. S., 337 (1914), and *Kirkland v. Texas Express Co.*, 57 Miss. 316 (1879).

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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OFFICERS—DEPUTY CLERKS.

RICHMOND, VA., *January 13, 1919.*

MR. G. TAYLOR GWATHMEY,  
*Clerk of Circuit Court of Norfolk County,*  
*Portsmouth, Virginia.*

DEAR SIR:

I acknowledge receipt of your letter of January 10, 1919, asking whether or not a woman may serve as a deputy clerk under section 32 of the Constitution of Virginia.

As stated in your letter, the legislature of 1916 passed an act expressly providing that women might serve as deputy clerks. However, before this act was passed women had been serving as deputies in various parts of the State, and I think properly so. I do not construe the Constitution so as to prohibit women serving as deputy clerks even in the absence of the act of 1916.

I do not recall that an opinion has been rendered by this office touching this case, and for that reason I am unable to send you a copy of such an opinion.

Very truly yours,

F. B. RICHARDSON,  
*Law Assistant.*

OFFICERS—EXPENSE OF

RICHMOND, VA., *January 29, 1919.*

HON. W. W. SPROUL, *Chairman,*  
*Department of Agriculture and Immigration,*  
*City.*

DEAR SIR:

I acknowledge receipt of your letter of January 24th, in which you ask whether or not a State official whose salary is fixed by the legislature, may charge to his expense account items covering railroad fare, etc., expended in payment of traveling expenses to and from his home.

I am of the opinion that items representing railroad fare except when a State official is traveling on business for the State, is an item of personal expense and should not be charged in an expense account against the State.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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OFFICERS—PRACTICE OF LAW BY.

RICHMOND, VA., *April 23, 1919.*

HON. JOHN HIRSHBERG,  
*Commissioner of Labor,*  
*Richmond, Va.*

DEAR SIR:

Acknowledgment is made of your letter of April 17, 1919, asking for the opinion of the Attorney General with reference to the Labor Commissioner being allowed to practice law and receive compensation therefrom while he is holding the position of Commissioner of Labor.

I have very carefully examined the index to the four volumes of the Code and all of the reference therefrom, relating to the Commissioner of Labor, and I have not found anything which would prohibit you from practicing law while you are Commissioner of Labor.

Very truly yours,

F. B. RICHARDSON,  
*Law Assistant.*

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OFFICERS—REMOVAL OF.

RICHMOND, VA., *October 29, 1919.*

JUDGE T. B. RICHARDSON,  
*Hopewell, Va.*

MY DEAR SIR:

I beg leave to acknowledge receipt of your letter of October 27. You state that you have made an effort to close the moving picture theatres in your town on Sunday, but that the police justice dismisses the cases when

heard. You further state that you had one of these cases tried before a jury in your court, and in spite of the instructions, the jury acquitted the party.

Of course, you are familiar with sections 3799 and 3800 of the Code of Virginia, the former providing as to how violations of the Sabbath shall be punished, and the latter making an exception as to those persons who conscientiously believe that the seventh day of the week ought to be observed as the Sabbath, and actually refrain from all secular business and labor on that day, etc.

I presume that these parties were prosecuted under the above provision of the law. Of course, it would be impossible for me to advise you as to any particular case without knowing the facts and circumstances connected therewith. Nor do you advise me in your letter why the police justice dismissed the cases which he tried. So far as the case which was tried by the jury is concerned, no man can tell what the verdict of a jury will be.

However, section 821 of the Code provides for the removal of all county, city and district officers who are guilty of malfeasance, misfeasance, etc., and surely a police officer who wilfully discharges a criminal, knowing he is guilty, would come within the provisions of section 821.

Trusting I have made myself clear in this matter, I am,

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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PARDONS—CONVICTION IN FEDERAL COURT.

RICHMOND, VA., *October 2, 1919.*

HON. T. G. BURCH,  
*Martinsville, Va.*

MY DEAR SIR:

I beg leave to acknowledge receipt of your letter of recent date in which you write me concerning the removal of the disabilities of Mr. Henry C. Eanes, who was convicted and sentenced to one year and one day in the Federal penitentiary for illicit distilling.

I am of the opinion, in fact, I do not think there is any doubt about the fact that the Governor has the right to remove the disabilities of this party.

At first I was under the impression that due to the fact that Eanes was convicted in a Federal court, the Governor would have no authority to remove his political disabilities, but section 73 of the Constitution provides that the Governor has a right "to remove political disabilities consequent upon convictions for offenses committed prior or subsequent to the adoption of the Constitution."

This language, in my judgment, includes convictions for offenses both against the State and the Federal government. The proper thing, therefore, for you to do, in my judgment, is to make application to the Governor for the removal of the political disabilities of Mr. Eanes.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

## PARDONS—EFFECT OF.

RICHMOND, VA., *November 29, 1919.*

LOUIS F. JORDAN, ESQ.,  
*Waynesboro, Va.*

DEAR SIR:

Acknowledgment is made of your letter in which you state that in 1913 a client of yours was convicted and sentenced to the penitentiary, but received a conditional pardon in April, 1915, which pardon you enclosed. You ask whether this pardon restores him to citizenship and the right to vote. I have read the pardon and find no such provision.

Section 72 of the Constitution of Virginia gives the Governor a right, first, to grant retrieves and pardons after conviction, and, second, to remove political disabilities consequent upon conviction. The exercise of the first right is not necessarily an exercise of the second right.

In *Edwards v. Commonwealth*, 78 Va. 39, the court, in discussing the effect of a pardon, said (page 44):

“By the pardon in question, therefore, the plaintiff in error was not only relieved of the punishment annexed to the offense for which he had been convicted, but of all penalties and consequences, except *political disabilities growing out of his conviction and sentence.*” (Italics supplied.)

I am, therefore, of the opinion that the pardon sent me does not restore to your client any political disabilities that he suffered because of his conviction.

Yours truly,

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

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PARDONS—REMISSION OF FINE OR PENALTY.RICHMOND, VA., *November 15, 1919.*

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

MY DEAR GOVERNOR:

Acknowledgment is made of the application of B. C. Coleman, of the city of Danville, to be released from a judgment entered against him in the corporation court of Danville at the December term, 1910, for the sum of \$500.00, with costs amounting to \$6.94, on a forfeited recognizance, which has been referred to me for attention.

In his petition, Mr. Coleman states that he was surety for one Lillie Baker, charged with grand larceny, and at the time fixed for her trial she failed to appear, and has not since been heard of, as a result of which judgment was entered against him on the bond given for her appearance. He further states that in 1911 he was forced into involuntary bankruptcy and was discharged from all debts which then existed, including the above mentioned judgment of the Commonwealth.

The corporation court of the city of Danville certifies in the order attached to this proceeding, that the judgment above referred to was not listed in the bankruptcy schedule of debts, but that the Commonwealth's attorney for the city of Danville at that time had actual notice of the proceedings, and that on December 22, 1911, the petitioner was discharged from all debts and claims which were made provable by the act of bankruptcy against his estate, and which existed on May 29, 1911, the day he was forced into bankruptcy, except such debts as were excepted by law from the operation of such discharge, and further certifies: "Upon this statement of facts, the court doth recommend that the relief prayed for in this petition be granted, and that the Governor be requested to make such order as to His Excellency may seem proper." The Commonwealth's attorney has endorsed on the record as presented to the Governor, the following:

"Having been convinced that the facts above set forth are true, I approve and concur in the recommendation of the judge of the corporation court of Danville."

Under the statute by which Mr. Coleman is proceeding, the remittal of the penalty in this case is a matter which is within your discretion. I desire, however, to call your attention to the fact that Mr. Coleman is not entitled to this relief as a matter of law on the ground that he has been adjudicated a bankrupt and discharged as such.

The Federal bankruptcy act does not operate to discharge judgments in favor of the Commonwealth against individuals, and so far as his bankruptcy proceedings are concerned, the judgment is valid and subsisting. As I have said, however, the exercise of your right to remit this penalty is a matter which is alone within your discretion.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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PARENT AND CHILD—NEGLECT OF CHILD BY PARENT.

RICHMOND, VA., *July 11, 1919.*

DR. W. A. PLECKER,  
*Registrar of Vital Statistics,*  
*Richmond, Va.*

DEAR SIR:

Acknowledgment is made of your communication of July 1, 1919, in which you request my opinion on the following state of facts:

"We have an inquiry from our local registrar at Martinsville, Va., enclosing a certificate of death of a child with the statement that this family are 'Holy Jumpers.' One of their beliefs is that it is not right to employ a physician.

"We have had a number of complaints of children being permitted to die with preventable and curable diseases without any medical attention and without any means being used to prevent spread of the disease.

"I am enclosing the note which came with the certificate, which kindly return with your reply, as to what answer should be given to the local registrar."

It is provided by section 3795-c of the Code of Virginia, 1904, so far as is applicable to the question here under consideration, as follows:

"Any person who shall, without just cause, desert or wilfully neglect to provide for the support of his wife or minor children in destitute or necessitous circumstances, shall be deemed guilty of a misdemeanor, and shall be punished by imprisonment in jail not exceeding one year. \* \* \*"

Under similar statutes in other jurisdictions, it has been held that the term "support" includes necessary medical attendance, and that, under such a statute, a parent is required to furnish medical treatment in such a manner and on such occasions as an ordinarily prudent person, solicitous for the welfare of his child, and anxious to promote his recovery, would provide, and that the failure to furnish such medical attendance which results in the death of the child, subjects the parent to conviction for manslaughter. It further appears to be well settled that the religious belief of a parent is no excuse for failing to provide medical attendance to his child in a prosecution for a violation of a statute similar to the Virginia statute.

In *Reg. v. Senior*, I. Q. B. (1899), 283, the court had under consideration a statute, the material words of which are as follows:

"If any person over the age of sixteen years, who has the custody, charge or care of any child under the age of sixteen years, wilfully assaults, illtreats, neglects, abandons or exposes such child, or causes or procures such child to be assaulted, illtreated, neglected, abandoned or exposed, in a manner likely to cause such child unnecessary suffering, or injury to its health (including injury to or loss of sight, or hearing, or limb, or organ of the body, and any mental derangement), that person shall be guilty of a misdemeanor."

In sustaining the conviction of a parent who had permitted his child to die for want of medical attention because of a religious belief that medical aid should not be procured, Lord Russell, C. J., said (pages 290-291):

"\* \* \* Whether the words in the statute, 'wilfully neglect,' are taken together, or, as the learned judge did in directing the jury, are taken separately, the meaning is very clear. 'Wilfully' means that the act is done deliberately and intentionally, not by accident or inadvertance, but so that the mind of the person who does the act goes with it. Neglect is the want of reasonable care—that is, the omission of such steps as a reasonable parent would take, such as are usually taken in the ordinary experience of mankind—that is, in such a case as the present, provided the parent had such means as would enable him to take the necessary steps. I agree with the statement in the summing up, that the standard of neglect varied as time went on, and that many things might be legitimately looked upon as evidence of neglect in one generation, which would not have been thought so in a preceding generation, and that regard must be had to the habits and thoughts of the time. At the present day, when medical aid is within the reach of the humblest and poorest members of the community, it cannot reasonably be suggested that the omission to provide medical aid for a dying child

does not amount to neglect. Mr. Sutton contended that because the prisoner was proved to be an affectionate parent, and was willing to do all things for the benefit of his child, except the one thing which was necessary in the present case, he ought not to be found guilty of the offense of manslaughter, on the ground that he abstained from providing medical aid for his child in consequence of his peculiar views in the matter; but we cannot shut our eyes to the danger which might arise if we were to accede to that argument, for where is the line to be drawn? In the present case the prisoner is shown to have had an objection to the use of medicine; but other cases might arise, such, for instance, as the case of a child with a broken thigh, where a surgical operation was necessary, which had to be performed with the aid of an anaesthetic; could the father refuse to allow the anaesthetic to be administered? Or take the case of a child that was in danger of suffocation, so that the operation of tracheotomy was necessary in order to save its life, and an anaesthetic was required to be administered."

An interesting note on this subject will be found in Ann. Cas. 1913 B, page 1221, *et seq.*, and another note in 13 Ann. Cas., pages 42 and 43.

While it will be seen, from an examination of the authorities, that there is some conflict, the weight of authority supports the view that religious belief constitutes no defense to a prosecution for failure to furnish medical attendance, and, in my opinion, the rule laid down in *Reg. v. Senior, supra*, and the majority of the cases referred to in the two notes in Ann. Cas., *supra*, is plainly right.

I suggest that you refer the case in question, and other similar cases coming to your attention, to the Commonwealth's attorney of the county in which the offense occurred, with the request that steps be taken for the prosecution of the offender.

Very truly yours,

JNO. R. SAUNDERS,

*Attorney General.*

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PENSIONS—NON-RESIDENTS.

RICHMOND, VA., March 29, 1919.

MR. L. S. DOWDY,  
*Pine Bluff, Ark.*

DEAR SIR:

Acknowledgment is made of your letter of March 25, 1919, addressed to the Hon. Jno. Garland Pollard. Mr. Pollard has not been Attorney General since January 1, 1918, and he is now in France.

Answering your inquiry relative to the payment of a pension to Confederate soldiers, residents outside of the State of Virginia, I beg to advise that the pension law is found in section 382-a of the Code of Virginia, and provides, among other things, that the applicant for a pension must be a citizen and a bona fide resident, and shall have actually resided in the State of Virginia for two years, and in the county or city from which the application is made for one year.

So that if you have left the State of Virginia and become a resident of the State of Arkansas, you would not be, under the law in this State,

entitled to receive a pension. It is likely, however, that if the State of Arkansas has a pension law, and you have been there long enough to acquire a residence, you could make application and receive a pension from that State.

Very truly yours,

F. B. RICHARDSON,

*Law Assistant.*

PENSIONS—NON-RESIDENTS.

RICHMOND, VA., *July 28, 1919.*

MR. POULTER C. BLAKE,  
*E. Baltimore, Md.*

DEAR SIR:

I am in receipt of your letter of July 26, 1919, in which you ask whether Mr. Edward B. Thomas, an ex-Confederate soldier, of Mathews county, who is now a resident of Baltimore, Md., is entitled to a pension. You state that he is totally unable to work.

The law provides that a Confederate soldier, in order to be entitled to a pension from the State of Virginia, shall be a citizen and a bona fide resident of the State. As Mr. Thomas is a resident of Baltimore, he is not eligible for a pension under the law of this State.

Regretting very much this circumstance, I am,

Very truly yours,

JNO. R. SAUNDERS,

*Attorney General.*

PHYSICIANS AND SURGEONS—EXAMINATION.

RICHMOND, VA., *June 14, 1919.*

DR. R. S. FARIS, *President,*  
*Virginia Homeopathic Medical Society,*  
*Richmond, Va.*

DEAR SIR:

I am in receipt of yours of the 11th inst., in which you state that a graduate of a medical college in another State desires to appear before the Board of Medical Examiners at their June meeting, and you wish to be informed as to whether he is eligible to examination because there is no homeopathic college in Virginia, by reason of this being a discrimination against Virginia schools.

Section 8 (d) of Chapter 84, Acts of 1916, provides in part as follows:

"\* \* \* Virginia medical schools and Virginia medical students shall not be discriminated against by the registration of any medical school outside of the State whose minimum graduation standard is less than that fixed by statute for Virginia medical schools. \* \* \*"

You will, therefore, see that, under this section, the test of discrimination seems to be whether the graduation standard is less than that fixed by statute for the Virginia medical schools.

Under the law, you will understand, of course, that I am made adviser to the State Medical Board. I would, therefore, suggest that you consult them before taking any action in the premises, because the matter is within their jurisdiction rather than mine. Should any question arise in their minds, they may, of course, call on me for an opinion.

Very truly yours,

JNO. R. SAUNDERS,

*Attorney General.*

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PHYSICIANS AND SURGEONS—PRACTICING WITHOUT A LICENSE.

RICHMOND, VA., *September 3, 1919.*

HON. HUGH H. KERR,

*Attorney at Law,*

*Staunton, Va.*

MY DEAR MR. KERR:

I beg leave to acknowledge receipt of your letter of September 1st concerning Dr. S. A. Austin, who was convicted in the circuit court of Augusta county of a felony, and sentenced to a term in the State penitentiary.

You further state in this letter that Dr. Austin, after having served his term, had his rights of citizenship restored by Governor Davis, and upon his return to Waynesboro, Va., he resumed the practice of medicine.

You also state in this letter that Dr. Preston, secretary and treasurer of the State Board of Medical Examiners, advises you that after the conviction of Dr. Austin, his license to practice medicine was revoked by the said board and that he was duly notified of this by the clerk of the said board, and that he has never been re-licensed by the said board nor has he ever made application to said board for re-instatement. You ask my opinion as to whether, under these circumstances, Dr. Austin has the right to practice medicine.

The legislature of Virginia, at its session in 1916, by an act approved February 29, 1916, passed a bill to regulate the practice of medicine and surgery in Virginia. Certain rules and regulations are prescribed by this act and certain power and authority vested in the State Board of Medical Examiners. Before anyone is authorized to practice medicine in the State of Virginia, he must first obtain from this board a certificate granting him the right so to do. The law also provides that should the said board refuse to grant such a certificate, then the party applying therefor shall have the right to test his rights in the court.

Inasmuch as Dr. Austin's certificate to practice medicine has been revoked by the said board and no authority so to do has been granted him by the court, I am of the opinion that he has no legal right to practice medicine in Virginia. The mere fact that his political disabilities have been removed and his rights to citizenship restored, it does not necessarily follow that he has a right to practice medicine.

I expect to be at Staunton next week and hope to have the pleasure of seeing you. With kindest personal regards, I am,

Yours very sincerely,

JNO. R. SAUNDERS,  
*Attorney General.*

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PENITENTIARY—DUTY OF BOARD OF DIRECTORS OF AS TO ELECTION OF OFFICERS OF.

RICHMOND, VA., *November 7, 1919.*

HON. HAWES COLEMAN, *President,*  
*Board of Directors of State Penitentiary,*  
*Richmond, Va.*

MY DEAR SIR:

In response to your inquiry as to whether the board of directors of the State penitentiary can defer the election of the superintendents and surgeons for the penitentiary and the State farm until after the first day of December, 1919, or whether it is necessary to elect these officers prior to that time. I beg leave to state that section 232 of the Code of Virginia, among other things, provides as follows:

“ \* \* \* The said board, as soon as practicable after the passage of this act, and every four years thereafter, prior to the first day of December, shall appoint a superintendent and surgeon of the penitentiary and a superintendent and surgeon for the State prison farm \* \* \* ”

You will see from a reading of this law that the duties of your board are clearly and expressly defined, and it is perfectly plain, in my judgment, that it is the duty of your board to elect these several officers prior to the first day of December, 1919.

I would further add that Judge Samuel W. Williams, a former Attorney General of Virginia, expressed a similar opinion in a letter dated November 22, 1911, to Hon. James D. Patton, then president of your board.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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PUBLICATIONS—WHERE TO BE MADE.

RICHMOND, VA., *October 24, 1919.*

HON. WILBUR C. HALL,  
*Leesburg, Va.*

MY DEAR MR. HALL:

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

“I refer to section 3208, Code of Virginia, and desire to know if publications for suits in Fairfax may be placed in the Observer, which is published as above set out.”

Of course, you are aware of the fact that this is not a matter which comes under the jurisdiction of the Attorney General, and, therefore, that what I may say is unofficial and is expressed as a matter of courtesy to you. It is provided by section 3208 of the Code of Virginia, 1904, as follows:

"Any such notice to a person not residing in Virginia may be served by the publication thereof once a week for four successive weeks, in a newspaper published in the city or county where the proceedings, about which the notice is given, are to be held, or if no newspaper is published in such city or county, then in a newspaper published in some convenient city or county."

The phrase, "must be published in the city or county" where the proceedings are, refers, not to the place where the newspaper is printed, but to the place from which it is published or issued. In the case of the Observer, referred to in your letter, I am of the opinion that the place of publication thereof is Herndon, Va., which is in Fairfax county, and, therefore, that such paper is published in Fairfax county and that publications for suits in Fairfax county may be made therein under the provisions of section 3208 of the Code of Virginia, 1904.

With my best wishes, I am,

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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QUARANTINE OF STOCK.

RICHMOND, VA., *July 15, 1919.*

HON. EDW. H. GIBSON,  
*Commonwealth's Attorney,  
Culpeper, Va.*

DEAR SIR:

Pursuant to our conversation over telephone this morning, I am of the opinion that the board of control of the experiment station at the Virginia Agricultural College and Polytechnic Institute at Blacksburg, designated as the State Livestock Sanitary Board by section 1599-a of the Code of Virginia, 1904, as amended, has the authority to direct and enforce such quarantine rules and sanitary regulations in this State as are necessary to prevent the spread of any contagious or infectious disease among the live stock of this state.

I am also of the opinion that the State Veterinarian has not the authority to declare such quarantine, but that the quarantine must be declared by the board in the manner prescribed by section 1599-a of the Code of Virginia, 1904, as amended, and the procedure therein provided for followed.

I desire to call your attention to sub-section 11 of section 1599-a of the Code of Virginia, 1904, as amended, under which section I am of the opinion that you would have the authority to prosecute any person having in his possession any domestic animal infected with any contagious or infectious disease or fever ticks, knowing such animal to be affected, who shall permit such animals to run at large or who shall keep such animals where other domestic

animals not affected but were previously exposed to such disease, may be exposed to its infection or contagion, or who shall drive, sell, trade or give away any such diseased animal or animals which have been exposed to such infection or contagion.

Pending the declaring of the quarantine, I would suggest that the veterinary notify all persons having in their possession such diseased animals of the fact, so that persons violating this portion of the statute could be prosecuted.

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

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QUARANTINE OF STOCK.

RICHMOND, VA., August 13, 1919.

HON. J. THOMPSON BROWN, *Chairman,*  
*State Live Stock Sanitary Board,*  
*Evington, Va.*

DEAR SIR:

Acknowledgment is made of your communication of August 2, 1919, which, so far as is applicable, is in the following terms:

"I shall be obliged if you will give me your opinion as to the construction placed upon the law by the board, in its administration.

"(1) We hold that the law authorized the board to establish quarantine lines, to maintain and enforce such lines, and to adopt rules and regulations and enforce the same.

"(2) We hold that the latter part of section 1599-a third, refers to the proclamation of quarantines of a more or less permanent character, and not to temporary quarantines.

"To construe the law so that the board would be required to have a proclamation from the Governor before establishing or raising a quarantine of a temporary character would destroy the law. In Culpeper, for instance, we have had more than twenty-five such quarantines, of which a number have already been raised.

"(3) We hold that our general and special expenses in administration of the law are provided for in section 1599-a. Second, but that in section 1599-a, eighth, is found the authority for the expense of local quarantine being borne by the board of supervisors."

It is provided by section 1 of section 1599-a that it shall be the duty of the Live Stock Sanitary Board to protect the domestic animals of the State from all contagious and infectious diseases of a malignant character, and for this purpose "they are hereby authorized and empowered to establish, maintain and enforce such quarantine lines and sanitary rules and regulations as they may deem necessary."

By sub-section 2, the board is directed to employ a qualified veterinarian, "whose duty it shall be to carry out the rules and regulations of the board," and by the same section it is provided that "the board shall have power to carry into effect all orders given by them."

By sub-section 3 it is made the duty of the board, upon receipt of reliable information of the existence of any malignant disease among the animals of

the State, to cause the State Veterinarian to go to such place and conduct an investigation which would reveal whether or not such disease existed. It is further provided that—

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

It is further provided by this same section that when the board—

“shall have determined the quarantine lines and other regulations necessary to prevent the spread among domestic animals of this State of any malignant, contagious or infectious disease found to exist among live stock of this State or elsewhere, and given their orders as hereinbefore provided, prescribing quarantine and other regulations, they shall notify the Governor of the State, who shall issue his proclamation, proclaiming the boundary of such quarantine around such diseased stock, and the orders, rules and regulations prescribed by the board; and said board shall give such notice as to it may seem best to make the quarantine established by them effective.”

From these sections it would appear that the State Live Stock Board has the authority to establish quarantines against malignant, contagious or infectious diseases among stock prior to the notification required to be made to the Governor, and that from the time such quarantine is established by the board and prior to the proclamation by the Governor, persons violating the quarantine would be liable for a violation thereof.

It would further appear that the board has authority to establish temporary quarantines by giving notice to persons having in their possession domestic animals infected with contagious or infectious diseases or fever ticks, and that for any violation of such quarantine after notice thereof had been given to the person having in possession such domestic animal, he could be proceeded against and prosecuted under the provisions of sub-section 11, section 1599-a, Code of Virginia, 1904, which section reads as follows:

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

Your third question is not sufficiently specific as to the facts to enable me to reply thereto. If you will give me a statement of the complete facts in the matter, I shall be glad to advise you as to your rights therein.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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ROADS AND HIGHWAYS—BONDS.

RICHMOND, VA., August 4, 1919.

CECIL CONNER, ESQ.,  
*Commonwealth's Attorney,*  
*Leesburg, Va.*

DEAR SIR:

Acknowledgment is made of your letter of July 21, 1919, in which you state that on June 21 you addressed to the Attorney General a communication requesting a final opinion on certain questions concerning a bond issue for road building, but that you have received no reply. No such letter has been received by this office up to this time. If you will write a new letter or send us a copy of your original letter, the same will be given attention.

In your letter of July 21, you state that the people of some of the districts of your county are impatient to start proceedings for the bond issue, and that you would like to have the opinion of the Attorney General on the question as to the advisability of having the judge of the circuit court call a special term, under section 3060 of the Code, for the purpose of ordering this election. You further state that you are doubtful as to the power of the court to enter a valid order for such an election at a special term so called.

Section 3060 of the Code reads as follows:

"If any term of a circuit court is to end, or has ended, without the dispatch of all its business, or if there be a failure to hold any term or it is expedient in the opinion of the judge of such court to hold a special term for the trial of any cause pending in such court, or of issues made up in any cause by consent of parties, or if the situation of a person confined in jail for trial in such circuit court makes it proper that his case should be disposed of before the next regular term thereof, the judge of such circuit court, or, if he is dead, or is unable for any cause to hold his court, the judge of any other circuit court, or judge of a corporation or hustings court of a city of the first class, who has been designated by the Governor to hold such terms, may, by order entered in such court, or by a warrant directed to the clerk, appoint a special term thereof and prescribe in such order or warrant whether any venire is to be summoned to attend the said term. The clerk shall inform the attorney for the Commonwealth and the sheriff or sergeant of such appointment, post a copy of the warrant or order at the front door of the court house, and issue all proper process to such special term, and the sheriff or sergeant shall execute the process."

From an examination of this section of the Code, it would appear that this is not a matter for which a special term of a circuit court may be held. An analysis of the statute shows that a special term may be held:

(a) Where a term of the circuit court is to end or has ended without the dispatch of all of its business.

(b) If there be a failure to hold any term, or it is expedient in the opinion of the judge of such court to hold a special term for the trial of any cause pending in such court, or of issues made up in any cause by consent of parties.

(c) Where the situation of a person confined in jail for trial in such circuit court makes it proper that his cause should be disposed of before the next regular term thereof.

It will, therefore, be seen that the case is one of doubt, and inasmuch as the regular term of the court will be held within a reasonable time, it seems to me but proper that this matter should be held over until then, in order that no question as to the validity of the proceeding can be raised, as what progress that is made by proceeding at the present time would be more than lost if litigation should result or a cloud rest upon the bonds sought to be issued.

Very truly yours,

JNO. R. SAUNDERS,

*Attorney General.*

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#### ROADS AND HIGHWAYS—BONDS ISSUED FOR.

RICHMOND, VA., *June 16, 1919.*

MR. S. G. WHITTLE, JR.,

*Martinsville, Va.*

DEAR SIR:

I am in receipt of yours of recent date, in which you ask the question as to whether, under section 7 of chapter 47, Acts of 1910, as amended, a tax may be assessed not in excess of the amount there provided for, in the light of the recent segregation act.

That section provides, in part, as follows:

"After issuing such bonds, or any of them, when the next levy is made, or tax imposed in said county, a tax shall be levied on all property liable to State, county, and district tax in such county, including such property located or the situs of which for purposes of taxation is within the limits of any incorporated town situated within such county, to pay interest on the bonds so issued. \* \* \*"

By the segregation act, chapter 85, Acts of 1915, which was passed subsequent to the section of the Code above quoted, you will note that certain subjects of taxation, as tangible personal property of public service corporations, real estate, tangible personal property, etc., are segregated for local taxation only, and that insurance taxes and licenses on insurance companies, and taxable intangible personal property, rolling stock of railroads, etc., are segregated and made subject to State taxation only. Therefore, the question obviously arises, does the segregation act nullify the provision of the roads bond act quoted, as far as it provides for the taxation of property subject to State taxation only?

As this segregation act was passed, as its name suggests, to segregate

certain objects for State taxation, and certain other objects for local taxation, thus giving an almost entirely new tax system to this State, I am of the opinion that the segregation act, so far as the Code section above quoted is concerned, relates to the taxation of property segregated for the purpose of State taxation only, and is by implication repealed, and, therefore, no property segregated for that purpose can be taxed under the Code section quoted.

This is, of course, subject to the express provisions of the segregation act providing that boards of supervisors are not prevented from levying a district road tax on segregated intangible personal property assessed to the residents in the magisterial district proposed to be taxed for district purposes, to be used exclusively for the construction and repair of roads located within the magisterial district in which the levy is laid at a rate not to exceed 30 cents on the \$100 of assessed valuation thereof. But the board of supervisors may not levy such a tax against the residents of an incorporated town which maintains its own roads, which town is located within such magisterial district, nor does it prevent any incorporated town exempted by law from the payment of district road taxes, or which maintains its own roads free of expense to the magisterial district in which it is located, from levying and collecting a tax on the segregated intangible personal property assessed to the residents therein at a rate not to exceed 30 cents.

I am, therefore, of the opinion that property segregated for State taxation only may not be taxed under the act quoted, except so far as the segregation act expressly permits, as I have above set forth.

In regard to your second question, as to whether property located in a town may be taxed, I am of the opinion that there is nothing in our laws to prevent the levy of such a tax, except, under the segregation act above referred to, boards of supervisors are not authorized to tax intangible personal property against the residents of an incorporated town which maintains its own roads.

Further, you ask whether an incorporated town, which, after the carrying of the bond issue, contains inhabitants numbering 5,000 and over, is cut off from the levy of this tax.

I am of the opinion that it is, of course, automatically cut off from the time of its incorporation from all levies arising by virtue of the authority of boards of supervisors, which, necessarily, would cover this question.

Trusting that this sufficiently answers your inquiry, I am,

Very truly yours,

JNO. R. SAUNDERS, '

*Attorney General.*

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ROADS AND HIGHWAYS—BONDS FOR IMPROVEMENT.

RICHMOND, VA., August 22, 1919.

HON. THOMAS E. WATKINS,  
*Commonwealth's Attorney,*  
*Charlotte Courthouse, Va.*

MY DEAR SIR:

Confirming a conference which I had with you on Wednesday with reference to the improvement of roads in your county, I understand that bonds

were issued for the improvement of certain specific roads, the order authorizing the issue specifying the amount to be spent on each road, and that there is in the treasury of the county from the proceeds of the sale of these bonds, about \$20,000, and that additional bonds have been authorized for the completion of the work specified in the first order, and you ask whether or not this \$20,000 must be spent upon the roads exactly in the terms of the first order authorizing the bonds.

I understand that from the sale of the second issue of bonds, there will be realized sufficient money added to the \$20,000 now in the treasury, to spend upon each of the roads designated in the original order the amount specified therein. Under this state of facts, I am of the opinion that it is a matter entirely in the discretion of your board of supervisors—who, I understand, have the expenditure of this money—as to which of the roads designated in the original order this \$20,000 shall be expended.

It will only be necessary that they shall expend on each of the roads the amount specified in the order of the court, and it makes no difference whether that amount comes from the amount now in the treasury of the county for said road purposes, or is derived from the sale of bonds authorized subsequent to the original order.

The demands of the special session on my time have been continuous, and I hope because of this fact you will accept my apology for not writing you sooner.

If I can be of any further service to you or your county in this matter, I trust you will do me the honor to call on me.

Yours truly,

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

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#### ROADS AND HIGHWAYS—BONDS.

RICHMOND, VA., *June 5, 1919.*

MR. G. TAYLOR GWATHMEY,  
*County Clerk,*  
*Portsmouth, Va.*

MY DEAR MR. GWATHMEY:

Upon my arrival this morning from the session of the Court of Appeals at Wytheville, I had a conference with Mr. W. T. Childs, representing Baker, Watts & Co., of Baltimore, in reference to the legality of the bond issue for the construction of roads in Norfolk county, which was authorized under chapter 427 of the Acts of Assembly, 1918.

As I understand it, some question has been raised as to the constitutionality of the bill, due to the fact that the title was amended after the bill had passed its third reading in the Senate. So far as this is concerned, I would state that I was a member of the State senate for ten years, and it is a universal custom wherever the title to a bill requires an amendment, this is done after the bill is passed.

From such an investigation as I have been able to make, which, of course, was necessarily hurried, it seems to me that there can be no objection on ac-

count of the title being amended after the bill was passed, and a careful observance of the bill shows that there was no material change made in the title; and, therefore, it is not in conflict with provisions 50 and 52, inclusive, of the Constitution. If you will compare the original title with the title as amended and passed, you will find that they are practically the same.

However, this is strictly a matter which should be referred to your Commonwealth's attorney, who is the legal adviser of your board of supervisors, and, under no circumstances, would I like to interfere with his prerogative in the matter. I, therefore, make these suggestions with the hope that they may aid him in arriving at his conclusion.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

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ROADS AND HIGHWAYS—BONDS.

RICHMOND, VA., July 11, 1919.

MR. E. M. HUNTER,  
*Purcellville, Va.*

DEAR SIR:

Acknowledgment is made of your letter, stating that certain magisterial districts in the Loudon county valley are preparing to ask for elections to authorize the sale of highway bonds, and asking that this office advise you what properties are taxable for payment of highway bonds, and whether town property is taxable for the above purpose.

You do not state under the authority of what act the bonds will be issued; whether under the general road law for the issuance of bonds for permanent road and bridge improvements in the magisterial districts of the county, or under a special act.

Chapter 108 of the Acts of Assembly, 1918, page 214, provides for the issuance of bonds for permanently improving public roads and bridges in the magisterial districts of a county. Section 1 provides that the bonds shall not exceed an amount in excess of 10 per cent of the total taxable values at the time in the magisterial district in which the road or roads are to be built or permanently improved.

Section 7 of the same act provides:

"After issuing such bonds, or any of them, when the next levy is made or tax imposed in said county, a tax shall be levied on all property liable to county and district tax in such magisterial district in which the proceeds of the bonds have been or are to be expended, including such property located or the situs of which for taxation is within the limits of any incorporated town situated within such district, to pay the interest on the bonds so issued, and to create a sinking fund to redeem the principal thereof at maturity; and in addition an annual levy at a rate to yield a sum equal to but not less than three per centum of the amount of bonds issued in any year, \* \* \* which levy shall not exceed ninety cents on the one hundred dollars (\$100.00) of taxable property within the said magisterial district of said county; \* \* \*"

Presuming that you propose to issue the bonds under the authority of this act, you will note that a tax is to be levied on all property liable to a county or district tax, including property within the limits of such incorporated towns as lie within the district in which the roads to be improved are located, for the payment of bonds. If you are proceeding, in the issuance of bonds, under an especial act, or some other provision of the statute laws of this State, with regard to the improvement of county roads, and there is any question as to property that can be assessed in connection therewith, I would be very glad to render you such information as lies within my power in regard thereto, and trust that you will not hesitate to call upon me.

Yours truly,

J. D. HANK, JR.,

*Assistant Attorney General.*

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ROADS AND HIGHWAYS—FEE SIMPLE OWNERSHIP OF.

RICHMOND, VA., July 9, 1919.

HON. GEO. P. COLEMAN,  
*State Highway Commissioner,*  
*City.*

DEAR SIR:

Acknowledgment is made of your communication of recent date enclosing a letter from Governor Davis, in which he says:

"I have a copy of a report made by Mr. J. C. Dickerman, utilities engineer of the Corporation Commission, to Hon. S. L. Lupton, Commissioner. Among other things he suggests that in any future legislation concerning the development of Virginia highways there should be a condition of a positive surrender of the abutting land owners of all rights in the roadway, such as they may have under the common law, before State money is expended in the development and improvement of these highways. He suggests that the control thereof should be vested in some suitable public authority—such as the county supervisors or some other officials. He advises that the claims of abutting owners frequently interfere with the public use of the roads.

"It may be that before the expenditure of the State money of your department upon highways you may require a conveyance by the abutting owners to the proper authorities. This matter should be carefully investigated in connection with the Attorney General of Virginia."

In your communication to me you say: "I would appreciate very much if you will advise me in this matter."

The law is well settled that the legislative power of a State has the authority to provide for the appropriation of the title to land in fee simple under eminent domain proceedings. *Roanoke City v. Berkowitz* (1885), 80 Va. 616, 622-3. In so holding, the court, speaking through Lewis, P., said:

"The view thus expressed is fully supported by the adjudged cases, which hold that the question as to the degree or quantity of interest to be taken is, like other political questions, exclusively for the legislature; and that when the use is public, the necessity or expediency of appropriating any particular property is not a subject of judicial cognizance. *DeVauaigne v. For*, 2 Blatchf. 95; *People v. Smith*, 21 N. Y.

595; *Boom Company v. Patterson*, 98 U. S. 403; *United States v. Jones*, 109 *Id.* 513; *Beekman v. S. S. R. R. Co.*, 3 Paige, 45; S. C., 22 Am. Dec. 679, and cases cited in the note, page 692."

It therefore follows that the legislature has the authority to provide for the acquisition of the fee simple title to the land occupied by the highways of the State. In the absence of legislative provision therefor, I find no authority in the law which would authorize you to compel the adjoining land-owners to make a conveyance of any right they may have in such roads as a prerequisite to improving the same.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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ROADS AND HIGHWAYS—JURISDICTION OF HIGHWAY COMMISSIONER.

RICHMOND, VA., June 6, 1919

HON. GEO. P. COLEMAN,  
*State Highway Commissioner,*  
*City.*

DEAR SIR:

I am in receipt of yours of recent date propounding the following question:

"Who is authorized to enter into agreements with land owners as to rights of way for roads being built as a part of 'the State highway system?'"

Paragraph 25 of section 1105-f of the Code, as amended, provides, in part, as follows:

"If \* \* \* the State Highway Commission, for the purpose of opening, constructing, repairing or maintaining a road \* \* \* cannot \* \* \* agree on terms of purchase with those entitled to any land, buildings, structures, sand, earth, gravel, water or other material necessary to be taken and used for the purposes of the State Highway Commission \* \* \* it may acquire title to such land or an easement thereover and title to such sand, earth, gravel, water or other material aforesaid, by condemnation, under the provisions of this act, and the proceedings in all cases shall be according to the provisions of this act so far as they can be applied to the same."

Chapter 10 of the Acts of 1918 provides, in part, as follows:

"The roads embraced within 'The State Highway System' shall be established, constructed and maintained exclusively by the State under the direction and supervision of the State Highway Commissioner. \* \* \*"

Under these sections, it was obviously intended that roads built under the State Highway System were to be exclusively under the jurisdiction of the State Highway Commission.

I am, therefore, of the opinion that agreements concerning roads built under that system are to be made with landowners as to rights of way

for roads by the State Highway Commission. Failing to so agree, resort should be had to condemnation proceedings instituted by the Commission as prescribed by the Code section to which reference is above made.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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ROADS AND HIGHWAYS—POWERS OF BOARD OF SUPERVISORS.

RICHMOND, VA., *June 9, 1919.*

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

MY DEAR MR. COLEMAN:

I am in receipt of yours of the 26th ultimo, enclosing a resolution of the board of supervisors of Tazewell county, making it "unlawful for any person or persons to haul or have hauled over the improved roads of Tazewell county, during any rainy or wet season, or while the roads are thawing after a freeze, any heavy load which will injure the crown of said road."

It would seem that, since this is a penal statute, it must nevertheless be definite in the penalty it imposes, although in *Polglaise's Case*, 114 Va. 850, our Supreme Court showed a disposition to uphold any reasonable classification that a board of supervisors might determine. However, it seems extremely doubtful that they would uphold a statute which merely forbids the hauling of heavy loads under certain circumstances. Besides this, I am informed that a similar resolution, even more definite than this one, was declared invalid by Judge Hundley in a recent case decided in Buckingham county.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

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ROADS AND HIGHWAYS—ROADS MAINTAINED BY CITIES AND TOWNS.

RICHMOND, VA., *February 28, 1919.*

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

DEAR MR. COLEMAN:

I acknowledge receipt of your letter of February 21, 1919, addressed to the Attorney General, to which letter is attached a letter from Mr. C. S. Mullen, one of your district engineers, relating to sections of road on the north and south of Lexington, and now maintained by the said town of Lexington, but which sections of road are without the corporate limits of the said town.

You desire to know whether or not you are authorized, under the law, to take over these two sections of road which are links of the State highway

system. You refer to an opinion heretofore rendered which advised you that you should not take over the streets of incorporated cities or towns for maintenance purposes.

I gather from Mr. Mullen's letter attached to yours that the town charter of Lexington, Va., required that town to maintain the two sections of road herein referred to, and thereby relieve the county of any responsibility of caring for the same. Technically, at least, the two sections of road referred to on the north and south of Lexington are within the corporate limits of that town. While not actually so, they are from the viewpoint that the town is responsible for their upkeep, and I doubt very seriously that you would be justified in taking over these two pieces of road when the duty is imposed upon the town of Lexington, under its charter, to maintain them, any more than you would be justified in taking over a portion of the streets actually within the corporate limits of the said town.

I feel, however, that you should exercise some discretion in matters of this kind, and if you think that the interest of the State highway system will be promoted by taking over these two sections of road, and that you will not by so doing establish a precedent by which you will be bound in future, you should not be subject to criticism for such action as you might take. Of course, you have the interest of the State at heart, and especially on the subject of highways, and whatever you do in this matter will be after careful, thoughtful consideration.

Very truly yours,

F. B. RICHARDSON,

*Law Assistant.*

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ROADS AND HIGHWAYS—SALE OF TOLL HOUSES.

RICHMOND, VA., April 5, 1919.

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

DEAR MR. COLEMAN:

Acknowledgment is made of your letter of April 4, stating that you are contemplating disposing of a toll house and a small piece of property on the old Valley Turnpike, and asking who should execute the deed for the transfer of the property.

While I have not had an opportunity to investigate the statutes, I am under the impression that the Commonwealth's property cannot be conveyed except by act of legislature, which should provide by whom the conveyance of such property shall be executed.

I would be very glad to confer with you on this matter at your convenience.

Yours truly,

J. D. HANK, JR.,

*Assistant Attorney General.*

## ROADS AND HIGHWAYS—SECURITIES GIVEN BY CONTRACTORS.

RICHMOND, VA., *January 10, 1919.*

MR. GEORGE P. COLEMAN,  
*State Highway Commissioner,*  
*Richmond, Va.*

DEAR SIR:

I have for acknowledgment your letter of January 9, 1919, enclosing certain correspondence between your department and Messrs. Betts and Boice, contractors, Harrisonburg, Va., relative to furnishing a chattel mortgage on their equipment as security for the performance of their contract instead of bond in some surety company.

I have examined this correspondence, and after consideration of the matter, I cannot advise that a chattel mortgage on the plant and equipment of the said contractors would be sufficient security to protect you in this instance. You, of course, understand that personal property of this kind very rapidly depreciates in value, and is also liable to be destroyed by fire at any time.

If these contractors, however, could furnish you with a bond signed by one or more persons who own real estate free from encumbrances for double the amount of the contract price, such a bond would be sufficient protection. However, if you adopt this method of taking security for the performance of contracts, I fear it will be very troublesome to you, by reason of the fact that you would have to examine into the ownership of property of the persons who execute the bond with the contractors in all instances, and this would be an annoying feature. The same thing would be true also with a chattel mortgage.

Of course, all of these matters are in your department, but I feel that a surety company is the safest and least troublesome of all forms of security which you might determine to take.

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

## ROADS AND HIGHWAYS—SOIL FOR IMPROVEMENT OF.

RICHMOND, VA., *December 11, 1919.*

HON. R. C. L. MONCURE,  
*Richmond, Va.*

DEAR MR. MONCURE:

Acknowledgment is made of your letter of even date in which you say:

"A neighbor of mine called at my house Sunday in regard to the board of supervisors taking gravel off his property to put on the public road. He stated to me that he was perfectly willing for them to take the gravel off his land adjacent to the piece of road to be worked, but he did not care to have them take a sufficient quantity of gravel off his land to put upon the road a mile distant from his property when there was gravel just as good convenient to the road where it was to be worked. I would like to have an opinion as to whether the board of

supervisors have a right to take gravel off a man's land and haul it a mile down the road to be placed on the road if they can get gravel just as good off land near the place where it is to be deposited."

Clause 21 of section 944-a of the Code of Virginia, provides that the superintendent of roads "may take from the most convenient lands so much wood, stone, gravel or earth as may be necessary to be used in construction or repairing any road, bridge or causeway therein; *he shall take such earth from the most convenient and nearest place to save the expense of hauling such earth any distance.*"

From the above, it is manifest that the soil for the repair of a road must be taken from the place most convenient and nearest to that part of the road to be repaired. Therefore, under the facts stated above by you, the supervisors have no authority to take the soil from the land of your friend and carry it any great distance for the repair of a road, especially when, as you say, there is soil of as good quality and closer to the place where the repairing is being done.

Very truly yours,

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

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ROADS AND HIGHWAYS—STATE AID MONEY.

RICHMOND, VA., *February 28, 1919.*

MR. R. B. STEPHENSON,  
*Covington, Va.*

DEAR SIR:

Acknowledgment is made of your letter of February 20, 1919, relating to certain monies paid over to the treasurer of Alleghany county during the year 1918, by the State Highway Commissioner for road work, and asking whether or not the board of supervisors of your county would be required, as requested by the State Highway Commissioner, to return to the State Treasury such unused funds from the year 1918 as are now in the hands of the treasurer of the county of Alleghany.

I have just talked with Mr. Coleman about this matter, and he advises me that he has had no refusals from any of the other counties in the State when requested to return unused portions of apportionments for any specific year. I have examined the laws referred to in your letter, and I concur in Mr. Coleman's view that the money should be returned. I think this is clearly contemplated under section 23 of the automobile law, where an apportionment is made to the counties, and they in addition avail themselves of convict labor.

I am sure your board of supervisors will adjust this matter with the State Highway Commissioner, so that the funds may be paid into the treasury, and re-apportioned according to the statute for the year 1919.

Very truly yours,

F. B. RICHARDSON,  
*Law Assistant.*

## ROADS AND HIGHWAYS—TOLL PAID FOR VEHICLES OWNED BY FEDERAL GOVERNMENT.

RICHMOND, VA., *April 10, 1919.*

To: Adjutant General, State of Virginia, Richmond, Va.  
From: Attorney General of Virginia, Richmond, Va.  
Subject: Account of Valley Turnpike Company—\$380.00.

DEAR GENERAL STERN:

I beg leave to acknowledge receipt of your letter of April 3, calling my attention to a former letter of yours which contained certain correspondence of the United States government, in reference to a charge made by the Valley Turnpike Company against the United States government as toll for the passage of certain motor trucks, touring cars and motorcycles over the Valley Turnpike, which said tolls amount to \$380.88.

The question is asked "whether the right of way granted to the company by the State of Virginia carries any provision exempting the government from the payment of road tolls."

In reply, I will state that I know of no provision which exempts the government from the payment of such road tolls, and I see no reason why the United States government should not pay this bill.

Respectfully,

JNO. R. SAUNDERS,  
*Attorney General.*

## ROADS AND HIGHWAYS—VALLEY TURNPIKE.

RICHMOND, VA., *November 12, 1919.*

HON. H. F. BYRD,  
*Winchester, Va.*

MY DEAR MR. BYRD:

Acknowledgment is made of your letter of November 7, 1919, in which you state that in many cases it has been impossible to find and surrender the original certificates of stock of the Valley Turnpike Company, and in other cases the executors or personal representatives of those in whose names the stock stands are not living. You desire my opinion on the two following questions:

"First: Providing that the original certificate of stock is presented, but application is not made by the executor or personal representative of the party in whose name the stock stands and applicant gives an indemnifying bond, should we make disbursement?"

"Second: Providing that the executor or personal representative makes application but has not the original certificate and gives an indemnifying bond, should we then make disbursement?"

In the first case, I am of the opinion that it is a very simple matter where the original certificate of stock is presented for the person presenting

the same to qualify as the personal representative of the deceased owner. I would suggest that this be done.

In response to your second question, I am of the opinion that where the party is rightfully entitled to the proceeds, but the certificate has been lost, payment should be made where a proper indemnifying bond, with sufficient security, is given.

Very truly yours,

JNO. R. SAUNDERS,

*Attorney General.*

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ROADS AND HIGHWAYS—WINCHESTER AND MARTINSBURG TURNPIKE.

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

DEAR MR. COLEMAN :

Acknowledgment is made of your letter of February 27, 1919, addressed to the Attorney General, enclosing a letter from Mr. T. R. Cather, a deed, and a resolution of the stockholders' meeting of the Winchester and Martinsburg Turnpike Company, asking to be advised if this deed is satisfactory.

You will note that Mr. Cather, in his letter, refers to a certified copy of the resolution of the board of directors, which he states in his letter, he encloses. The resolution he enclosed is one of the stockholders' meeting and not of a directors' meeting. It is the usual custom for the board of directors to call meetings of stockholders, and especially where the disposition of assets of the corporation are to be voted upon, stating in the notice to the stockholders for such stockholders' meetings, the objects and purposes of the meetings. It is then customary for the stockholders to pass upon such resolution or not as they see fit, referred to them by the board of directors.

From the resolution sent you by Mr. Cather, it does not appear that a directors' meeting submitting the question to the stockholders was ever held. It might be advisable to communicate with Mr. Cather, and ask him if such a meeting of the board of directors was ever held relating to the subject, and if so to send you a certified copy of the resolution of their meeting. After you have heard from him, I shall be glad to see his letter and such resolution as he may send you.

Referring to the sufficiency of the deed, I beg to state, aside from the resolution of the board of directors or stockholders, the deed seems to be in good form, and is sufficiently specific for all particular purposes.

I gathered from the conversation I had with you this morning that you consider the State to be obtaining a bargain in this matter, and did not feel that it was necessary to have the property referred to in the deed more specifically described.

If you will write me when you have heard from Mr. Cather, I shall be glad to consult with you again.

Very truly yours,

F. B. RICHARDSON,

*Law Assistant.*

## SOLDIERS AND SAILORS—RECORDATION OF DISCHARGE.

RICHMOND, VA., June 14, 1919.

*His Excellency, Gov. WESTMORELAND DAVIS,*  
*Richmond, Va.*

MY DEAR GOVERNOR:

I beg leave to acknowledge receipt of your letter of yesterday, in which you enclosed me a letter from Mr. W. A. Harris, director of Department of Civilian Relief.

I have very carefully read the contents of the letter of Mr. Harris, but I know of no law by which clerks of courts can be required to record the discharge of soldiers and sailors. It seems unfortunate that such is the case, as an accurate record should be kept of all soldiers and sailors discharged for future generations. It may be, however, that our legislature will make some provision for this at its next session.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

## STATE PROPERTY—CONDEMNATION OF.

RICHMOND, VA., October 2, 1919.

HON. GEO. P. COLEMAN,  
*State Highway Commissioner,*  
*City.*

MY DEAR MR. COLEMAN:

I am in receipt of your letter of October 1, in which you ask if the Federal government can, by presidential proclamation or otherwise, condemn and take over State property.

In reply, I will state that the Federal government has no such authority. The only way it can acquire State property is by purchase, and that must be done with the consent of the State.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## STATE PROPERTY—SALE OF.

RICHMOND, VA., October 16, 1919.

R. E. TYLER, ESQ.,  
*Staunton, Va.*

MY DEAR MR. TYLER:

Acknowledgment is made of your letter of October 10, with reference to the purchase by you of the toll gate property located just outside the corporate limits of Staunton. I have just been able to obtain a copy of the act passed by the special session of the General Assembly. This act is chapter 44 of the Acts of the special session, 1919, and reads as follows:

"1. Be it enacted by the General Assembly of Virginia, That the State Highway Commissioner be, and he is hereby, authorized, in his discretion, *to make sale of any or all of the houses formerly used as toll houses on the Valley Turnpike*, conveyed to the Commonwealth of Virginia under an act approved March twentieth, nineteen hundred and eighteen.

"2. The funds received from any sale or sales made under this act shall be paid into the treasury of the State and expended by the State Highway Commissioner for the benefit of the Valley turnpike and land appurtenant thereto.

"3. In order that the houses mentioned in this act may be disposed of without further delay, an emergency is declared to exist, and this act shall take effect upon its passage."

As stated above, this is the first time I have seen this act of the last legislature. You will observe from reading it, that no reference is made to any real estate upon which these toll houses are located or any adjacent thereto, and it is very doubtful whether the State could give title to any real estate by virtue of this act. I presume that the purchaser would hesitate about accepting a deed from the Highway Commissioner conveying anything except the toll houses. I am satisfied it was the intention of the legislature to embrace the real estate. I do not know who drafted the bill, but the next legislature should certainly cure this defect in the law.

Yours very sincerely,

JNO. R. SAUNDERS,  
*Attorney General.*

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STATE PROPERTY—TRANSFER OF.

RICHMOND, VA., *March 19, 1919.*

MR. H. W. VADEN,  
*Williamsburg, Va.*

MY DEAR SIR:

In reply to your inquiry as to how the property of the Commonwealth of Virginia, used as a part of the William and Mary College system, can be transferred out of the possession and control of the State of Virginia, I beg to say that I know of no way in which this can be done except by an act of the legislature, unless there is some specific provision giving authority to make such transfer provided in the deeds transferring the property to the Commonwealth, or by some act of the legislature expressly giving such authority to specific individuals.

Yours truly,

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

## SUNDAY LAWS—MOVING PICTURE THEATERS.

RICHMOND, VA., August 1, 1919.

W. STEPHEN BUSH,  
*Care The Billboard,*  
*New York City.*

DEAR SIR:

Acknowledgment is made of your communication to the Attorney General, in which you request the opinion of this office on the following questions relating to motion picture theaters:

1. The legality of Sunday exhibitions.
2. Whether there are building regulations in reference to motion picture theaters.

3. The status and requirements of motion picture operators.

First, Sunday exhibitions are not permitted in this State. Section 3799 of the Code of Virginia, 1904, as amended, Virginia Code, volume 4, page 527, makes it an offense for any person, on the Sabbath day, to labor at any trade or calling, or employ his apprentices or servants in labor or other business, except in household or other work of necessity or charity.

Second, by section 1067-a of the Code of Virginia, 1904, as amended, Virginia Code, volume 4, page 272, fire escapes from theaters and public places of amusement are required, which provide for the safe exit of the occupants of such places in case of fire. These fire escapes must be constructed and maintained in good condition, and must be of a most improved modern design, the character and design of which shall, in cities and towns, be selected by the council of such cities and towns.

Section 1067-b of the Code of Virginia, 1904, Virginia Code, volume 1, page 513, requires the owners or lessees of public halls, theaters and opera houses to provide suitable and safe exits for the safety of persons attending all gatherings therein.

Third, there seems to be no State law relating to your last question.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

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SCHOOLS—DIVISION SUPERINTENDENT.

RICHMOND, VA., April 2, 1919.

HON. HARRIS HART, *Superintendent,*  
*Department of Public Instruction,*  
*Richmond, Va.*

DEAR SIR:

I beg leave to acknowledge receipt of your letter of April 1, 1919, in which you desire my interpretation of the law in reference to the eligibility of a non-resident of Virginia for the position of division superintendent of schools.

The first sentence of section 32 of the Constitution reads as follows:

"Every person qualified to vote shall be eligible to any office of the State, or of any county, city, town or other sub-division of the State, wherein he resides, except as otherwise provided in this Constitution, and except that this provision as to residence shall not apply to any office elective by the people where the law provides otherwise. \* \* \*

While I have found nothing in the law which expressly states that a division superintendent of schools must be a resident of the State of Virginia, yet, by implication, I am inclined to the view that he should be. The fact that the Constitution provides that every person who is qualified to vote is eligible to office causes me to believe that if a person is not qualified to vote he is not eligible to office.

My opinion, therefore, is that a non-resident of the State of Virginia is not eligible for the position of division superintendent of schools.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

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SCHOOLS—EXPENSES OF EDUCATION COMMISSION.

RICHMOND, VA., October 11, 1919.

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

MY DEAR MR. HART:

Acknowledgment is made of your letter of October 7, 1919, in which you request me to advise you on the following statement of facts:

"Please look at the Acts of Assembly, 1918, page 444, to the act creating the Education Commission of Virginia. Be good enough to advise me if the per diem mentioned in this act should be paid in addition to all the expenses of the members of the commission, or should said per diem cover expenses for hotel, meals, etc.

"The State Board of Education, you will recall, decided that the latter interpretation was correct and this is in accord with the long practice of the State Board. I wish under the law we could pay the commissioners a per diem over and above expenses, and I particularly wish that the same practice could apply to the members of the State Board."

It is provided by section 3 of chapter 263 of the Acts of 1918 as follows:

"The State Board of Education shall provide a fund from the general public school fund of the State, not to exceed ten thousand dollars, or as much thereof as may be necessary, to pay the necessary expenses of this commission, and to carry out the purposes of this resolution, and the said commission is authorized to employ such expert help as it may deem necessary. Members of this commission shall receive for the actual time of service their necessary traveling expenses and six

dollars per diem. All expenses incurred by the commission shall be paid by the State Board of Education upon vouchers signed by the chairman and secretary of said commission."

It is my opinion that the necessary traveling expenses provided for in the law include the necessary hotel bills incurred by the members of the commission when away from their homes in the necessary performance of their duties as such, and that the \$6.00 per diem is to be paid over and above such expenses as compensation for the time such members are engaged in the performance of their duties.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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SCHOOL—LOANS ON SCHOOL BUILDINGS.

RICHMOND, VA., October 1, 1919.

HON. HARRIS HART,  
*Superintendent of Public Instruction,  
Richmond, Va.*

MY DEAR MR. HART:

I beg leave to acknowledge receipt of your letter in which you enclose a letter from Mr. J. F. Wilson, who is desirous of having a public school erected at Fieldale, in Henry county.

You will recall that section 6 of chapter 252 of the Acts of 1906, which authorize the several school boards of the several school districts to borrow money from the Literary Fund, was amended by chapter 187 of the Acts of 1916, page 380.

The old law provided that the State Board of Education should be satisfied that the school district or board borrowing the money had a good and sufficient title in fee to the real estate on which the proposed building was to be erected. By the amendment, the following language was inserted:

"or that the same has been leased by the local authorities for a period of twenty years or more upon such terms," etc.

It may be that the Carolina Cotton and Woolen Mills Company would be willing to lease this property to the school and in that way obtain the loan. I know of no provision in the law which would authorize the loan with a reverting clause inserted in the deed.

I am returning the letter from the Carolina Cotton and Woolen Mills.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## SCHOOL.—LOANS ON SCHOOL BUILDINGS.

RICHMOND, VA., *September 4, 1919.*

HON. ROSEWELL PAGE,  
*Second Auditor,*  
*Richmond, Va.*

DEAR SIR:

Acknowledgment is made of your letter of September 4, in which you state that the Lee County Industrial School, Rose Hill district, Lee county, borrowed \$10,000 on a building which cost \$28,000 (February, 1919), and that the board now desires to borrow an additional \$10,000 on the old building and a new dormitory, which will cost \$10,257.75, which dormitory will be built on the same lot as the school building and used in connection therewith; in other words, the desire is to borrow \$15,000 on the present school building and \$5,000 on the new dormitory. You ask whether this can be done.

Chapter 187, section 3, Acts of Assembly, 1916, page 379, provides:

“Upon the approval of the State Superintendent of Public Instruction of the plans and specifications for the location of the proposed building and of the making of the loan, the State Board of Education may, in its discretion, make such loan; provided, that no such loan shall exceed the sum of fifteen thousand dollars, nor shall it exceed two-thirds of the cost of the school house and any addition thereto, and no loan shall be made to aid in the erection of a building or addition to cost less than two hundred and fifty dollars. \* \* \*”

The provision set out in the above quotation, providing that the loan shall not exceed the sum of \$15,000.00, in my opinion, refers to the entire plant used in connection with one specific school; in other words, I think that the limit placed on the loan has reference to all the property used in connection with one school, and does not give the right, by building two houses upon the same school lot, to be used jointly for one school to secure thereby more than a loan of \$15,000.00. The section refers to additions to school houses, and it is manifest that a loan exceeding \$15,000 could not be made, because an addition was added to the school building. I do not think the situation is changed by the building being separate rather than affixing it to the main building.

I am, therefore, of the opinion that, because of the provision of the act above quoted, a further loan of more than \$5,000 cannot be made on the property referred to by you, for a further loan of \$5,000 added to the existing loan would make a total loan upon the property of \$15,000.00, which is the full amount allowed by statute on such property.

Yours truly,

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

## SCHOOLS—LOANS.

RICHMOND, VA., May 27, 1919.

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

MY DEAR MR. HART:

I beg leave to acknowledge receipt of your favor of the 23rd enclosing a letter from Mr. L. F. Smith concerning certain real estate located in Albemarle county which is proposed to be leased by John L. Pitts to the school board of Scottsville district, No. 3.

I note Mr. Smith writes that the judge cannot sign form S-No. 41, as the school trustees have not secured a fee simple title.

By an act approved March 15, 1916, page 378, Acts of Assembly, 1916, section 6 provides that the State Board of Education shall be satisfied that the school district or the board borrowing the fund has a good and sufficient title in fee to the real estate, or that the same has been leased by the local school authorities for a period of twenty years or more, so it is not necessary that the school board shall have a fee simple title in order to obtain a loan, but the condition of the lease as set forth in Mr. Smith's letter which provides that it shall continue for twenty years or as long as the property is used for white school purposes, would not be satisfactory, as I do not think the board, with this condition attached to the lease, could borrow money from the Literary Fund.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## SCHOOLS—LOANS.

RICHMOND, VA., June 16, 1919.

LEMUEL F. SMITH, Esq.,  
*Attorney at Law,*  
*Charlottesville, Va.*

DEAR SIR:

I am in receipt of yours of recent date in which you call my attention to a lease for "twenty years or as long thereafter as the property is used for white school purposes," in which case money is desired by the school board under the provisions of the Acts of 1918, chapter 252, as amended, to be loaned out of the Literary Fund. This act provides, in paragraph 6, in part, as follows:

"Before making any loan under this act, the State Board of Education shall be satisfied that the real estate on which the proposed building is to be erected has been leased by the local school authorities for a period of twenty years or more."

While it is undoubtedly true that period may mean either a definite or an indefinite time (*Parish v. Rogers*, 46 N. Y. S. 1058), I am constrained to

hold that the legislature intended merely to protect and secure the money loaned under the Literary Fund and therefore a lease which runs for at least twenty years is sufficient to warrant a loan under this act.

You will understand, of course, that I have not had the opportunity to examine the lease in question and can therefore merely pass upon the question in the abstract. Besides this, the matter more properly comes within the jurisdiction of Hon. Harris Hart, Superintendent of Public Instruction, to whom I am sending a copy of this letter.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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SCHOOLS—LOANS.

RICHMOND, VA., *July 12, 1919.*

HON. WM. BULLITT FITZHUGH,  
*Machipongo, Va.*

MY DEAR MR. FITZHUGH:

Acknowledgment is made of your letter, in reference to the desire of the citizens of your community to obtain a loan from the Literary Fund for the purpose of aiding in the construction of a school in your county. I regret very much that I was unable to answer your letter within the time you requested me to. As I was necessarily absent from the office, I have, therefore, been unable to answer it before.

If you will examine chapter 252 of the Acts of 1906, as amended, Acts of 1914, page 715, Acts of 1916, page 378, also found in volume IV. of the Code, beginning on page 679, you will find that the State Board of Education is authorized to lend school boards of the district and cities in this State, making application therefor, money belonging to the Literary Fund and in hand for investment, for the purpose of erecting or enlarging school houses in such districts and cities, on the terms and conditions set forth in the act, and subject to such rules and regulations as are promulgated by said board.

Very sincerely yours,

JNO. R. SAUNDERS,

*Attorney General.*

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SCHOOLS—OFFICERS OF, TERMS OF.

RICHMOND, VA., *September 4, 1919.*

HON. HARRIS HART,  
*Superintendent of Public Instruction,  
Richmond, Va.*

DEAR SIR:

Acknowledgment is made of your letter of September 2, 1919, in which you request my opinion on certain questions propounded to you by J. W. C. Bryant, Esq., chairman of the school board of Clifton Forge, Va.

Mr. Bryant states that he and two other members of the school board were elected members of the board in July, 1916, for three years, their terms expiring September 1, 1919. He then says:

"The city council failed to elect anyone in our places. I contend that section 192 of the Virginia school laws, 1915, covers this and that we are not qualified to serve as members after September 1."

It is provided by section 133 of the Virginia Constitution that "in each school district there shall be three trustees selected, in the manner and for the term of office prescribed by law." Section 1528 of the Code of Virginia (section 192 of the Virginia School Laws), provides that the council of each city shall appoint three trustees for each school district in such city, whose term of office shall be three years, respectively, and one of whom shall be appointed annually. This section also provides that, within thirty days preceding the day on which the term of said trustees shall expire by limitation, such council shall appoint a successor to each trustee in office whose term shall commence when the term of his predecessor shall have expired.

The council having failed to elect successors to the members of the school board whose terms of office expire on September 1, 1919, the old members of the board fall within the provisions of section 33 of the Virginia Constitution, which provides, so far as is applicable to the case here under consideration, as follows:

"\* \* \* All officers, elected or appointed, shall continue to discharge the duties of their offices after their terms of service have expired until their successors have qualified."

The second question asked by Mr. Bryant is thus stated:

"The city council refuses to elect a member in place of O. B. Harvey, who was elected by said council as city attorney at a salary of \$600.00 per annum, Mr. Harvey claiming that it is not a city, county or State office."

It is perfectly clear that the attorney for the city is not a county or State officer, but, without having the charter of the city of Clifton Forge before me, it is impossible for me to say whether or not the attorney for the city is a city officer.

Mr. Bryant's third question is as follows:

"Mr. George O. Green, clerk of the House of Representatives, was elected a member of our board, and still holds the office as clerk of the House."

Mr. Green is not clerk of the House of Representatives, Mr. John W. Williams holding that position. Mr. Green is merely the clerk of one of the committees of the House of Representatives, which is not an office within

the meaning of the Constitution. Acting as the clerk of one of the committees of the House of Representatives does not, in my opinion, disqualify one from being a school trustee.

Very truly yours,

JNO. R. SAUNDERS,

*Attorney General.*

SCHOOLS—PROPERTY DEFINED FOR PURPOSES OF SCHOOL TAX.

RICHMOND, VA., *February 27, 1919.*

HON. HARRIS HART,

*Superintendent of Public Instruction,  
Richmond, Va.*

DEAR SIR:

Acknowledgment is made of your letter of February 17, 1919, asking my construction of the word "property" in section 136 of the Constitution of Virginia, which said section provides that the counties, cities and towns, if they are separate school districts, and school districts are authorized to raise additional revenue by a tax on property not to exceed in the aggregate 5 mills on a dollar in one year.

Except for the segregation act, which segregated certain property for State taxation only and for county and local taxation only, there would be no trouble about construing the word "property," meaning all property, real, personal, tangible and intangible. However, under the provision of section 169 of the Constitution of Virginia, the legislature of Virginia passed what is generally known as the segregation act, a part of which reads as follows:

"\* \* \* and pursuant to the said provisions of the Constitution all insurance taxes and licenses on insurance companies and all taxable intangible personal property, rolling stock of all corporations operating railroads by steam, and all other classes of property not hereinbefore specifically enumerated in this act, be and the same are hereby segregated and made subject to State taxation only; \* \* \*"

Immediately following the above quotation, you will find this language in the act:

"\* \* \* provided that nothing herein contained shall prevent any city from levying a tax upon said segregated intangible personal property assessed to the residents therein at a rate not to exceed thirty cents upon the one hundred dollars of assessed valuation thereof; \* \* \*"

It would seem, from a reading of the last quotation above, that cities are not prevented by the act from levying a tax not in excess of 30 cents on the one hundred dollars of the assessed valuation of "said segregated intangible personal property." My view is that, since the legislature has segregated the various kinds of property in the State, some for taxation for State purposes only, and some for cities, towns and counties only, only such property as is mentioned in the said segregation act can be taxed, and only taxed in the manner provided for in the said act.

My understanding is that this particular question applies to the city of Richmond, and my view is that, in addition to the taxes permitted under the act to be levied by cities, the proviso in the act, contained in the last quotation above, would permit the city to levy a tax not exceeding 30 cents as therein set out.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

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SCHOOLS—PUPILS ENTITLED TO ATTEND.

RICHMOND, VA., *September 4, 1919.*

HON. HARRIS HART,  
*Superintendent of Public Instruction,  
Richmond, Va.*

MY DEAR SIR:

Acknowledgment is made of your letter of recent date, enclosing a letter to you from Mr. George McCants, and requesting my opinion on the facts stated by Mr. McCants.

Mr. McCants states that, although he formerly had his place of habitation in the city of Petersburg, he has moved beyond the city limits and has been living out of the city limits of Petersburg for three years. At the same time, he has retained his legal residence in Petersburg and has been sending his children to the public schools there as if he had been living within the limits of the city. He further states that he has been notified by the school board of the city of Petersburg that, beginning with this year, he will have to pay tuition for his children if they attend the Petersburg schools. He desires to be advised whether the city of Petersburg has this right.

This question is governed by the provisions of section 1492 of the Code of Virginia, 1904, as amended. This section, so far as is applicable to the question here under consideration, provides:

"The public free schools shall be free to all persons between the ages of 7 and 20 years residing within the school district. \* \* \*"

It will be seen from the words of the act that the schools are free to persons "residing within the school district." This has application to the persons who attend the schools and not to their parents. Therefore, I am of the opinion that the fact that the father may retain his legal residence in a city does not permit his children to attend the schools thereof as free pupils, unless the children actually reside within the school district in which the school they attend is located.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

## SCHOOLS—SCHOOL BUILDINGS.

RICHMOND, VA., *November 28, 1919.*

MR. GEO. B. ZEHMER,  
*Division Superintendent of Schools,*  
*Dinwiddie, Va.*

MY DEAR SIR:

I beg leave to acknowledge receipt of your letter of November 25, in which you enclose a letter from Hon. Chas. T. Lassiter concerning the conveyance by him of certain real estate to the school board of Namozine district, county of Dinwiddie, Va.; also the deed conveying said property. I have carefully noted the contents of the letter of Mr. Lassiter and also carefully examined the deed.

You state in your letter that it is the desire of your school board to make certain additions to the school building now erected on this property and it is your opinion that the board should have clear title to the property before constructing said building.

Of course, you understand from the terms of the deed of conveyance from Mr. Lassiter, that the failure on the part of the school board to erect and maintain a public free school thereon would cause this property to revert to Mr. Lassiter or his heirs.

You further state that this property is located in Kenilworth, a suburb of the city of Petersburg, and you ask if later on Petersburg should extend its corporate limits and take in this property, would your school board have the right to sell the school building located thereon. I am of opinion that in event this was done, your school board would not have this authority, as the property would then be a part of the city of Petersburg, and, therefore, under the control and management of that city.

Of course, the question of making additions to the school building on this property, or erecting any other improvements thereon, is a matter which is in the sound discretion of your board, and if there is no probability of Kenilworth becoming a part of Petersburg, I see no reason why your board should not go ahead and improve the property and continue to maintain the school as heretofore. I might further add that the State Board of Education would not approve a loan from the Literary Fund on the property if conveyed in this manner.

I am returning deed and Mr. Lassiter's letter.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## SCHOOLS—TAX ON BANK STOCK.

RICHMOND, VA., *February 1, 1919.*

MR. EARLE K. PAXTON,  
*Division Superintendent of Schools,*  
*Rockbridge Co., Lexington, Va.*

DEAR SIR:

I acknowledge receipt of your letter of January 17, in which you state that you have received a copy of my letter of January 6 to Mr. Harris Hart,

Superintendent of Public Instruction, which relates to the tax on bank stock for school purposes.

You refer to paragraph 3 of section 18, page 211, Acts of Assembly, 1915, and to paragraph 2, section 18, page 625, Acts of Assembly, 1918. You state that you do not understand the provisions relative to the powers of the board of supervisors in levying a tax on bank stock in incorporated towns. You desire to know whether or not, under these sections, the board of supervisors is required to give a part of this levy to school purposes, and if so, whether or not there is any minimum limit under the general law that will apply to such a case.

As I read the sections referred to, both in the Acts of 1915 and the Acts of 1918, I see no difference in the language, except the section in the Acts of 1915 provides for a levy not exceeding 40 cents, and the section in the Acts of 1918 provides a levy not exceeding 25 cents, both of these, of course, relating to levies made by the board of supervisors on bank stock where the banks are located in incorporated towns. Both of these sections provide that the levy shall be made on the \$100 of actual value thereof "for county, district and school purposes." Then the acts provide that the sum derived from any such district levy shall be expended by the board of supervisors only in those districts wherein such bank or banks are located. The language of the acts seem to require the board of supervisors to make the levy first for county purposes, second for district purposes, and third for school purposes. There seems to be no provision as to how the 40 cents levy under the act of 1915 shall be divided between these three funds, nor is there any provision in the act of 1918 providing how the 25 cents levy shall be divided between the three funds.

My opinion is that the division of these funds between the county, the district and the district schools is within the discretion of the board of supervisors, and I know of no provision in the general law which would require the board of supervisors to levy a specific amount especially for school purposes.

Very truly yours,

F. B. RICHARDSON,

*Law Assistant.*

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SCHOOLS—TEACHER'S PENSION.

RICHMOND, VA., *October 1, 1919.*

HON. HARRIS HART,

*Superintendent of Public Instruction,  
City.*

MY DEAR MR. HART:

I beg leave to acknowledge receipt of your letter in which you ask whether special teachers, part-time teachers and teachers not having schools, should have the 1 per cent deduction from their salaries for the benefit of the pension fund.

In reply, I will state that I do not think the law pertaining to the pension fund embraces the above class of teachers.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

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SCHOOLS—V. M. I. CADETS.

RICHMOND, VA., *February 10, 1919.*

MR. HERBERT F. MCG. MATTHEWS,  
*Virginia Military Institute,  
Lexington, Va.*

DEAR SIR:

I am just in receipt of your letter in which you wish to be advised the length of time required to reside in Virginia in order to obtain an appointment as a State cadet to the Virginia Military Institute.

The parents of a student desiring an appointment to this institution must be residents of this State at least two years before he is eligible for such an appointment.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

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SCHOOLS—WILLIAM AND MARY COLLEGE.

RICHMOND, VA., *May 8, 1919.*

HON. GEO. P. COLEMAN, *Chairman,  
Richmond, Va.*

MY DEAR SIR:

I beg leave to acknowledge receipt of your letter of April 30, in which you ask the question whether the board of visitors of William and Mary College has a right to lease to the trustees of the school board of Williamsburg, certain property located in the city of Williamsburg, which consists of a small tract of land upon which is located a school known as the Whaley school. I have read very carefully the contents of your letter and have noted the manner in which this property was acquired and is held by William and Mary College.

I have reached the conclusion that there can be no objection to the board of visitors of the college leasing this property to the school board of Williamsburg in order that there may be erected thereon a high school for the citizens of Williamsburg.

Your letter further states that an arrangement will be made between the board of visitors of the college and the trustees of the school board, whereby the school proposed to be erected can also be used by the college for certain work in the normal department. This, in my judgment, would be a very happy arrangement. Apart from the advantage which will result to the college by such an arrangement, I have no doubt that the board of visitors

has a right to lease this property. Should there be any question about it, the fact that the College of William and Mary is owned by the State of Virginia and the trustees of the school board of Williamsburg, acting in their official capacity, likewise are representatives of the State, that, in my mind, would remove all doubt as to the legality and propriety of the arrangement.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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TAXATION—ACTIONS AND SUITS.

RICHMOND, VA., May 8, 1919.

HON. C. LEE MOORE,

*Auditor of Public Accounts,  
City.*

DEAR SIR:

I beg leave to acknowledge receipt of your letter in which you ask if there should be any tax on an action of unlawful entry and detainer.

While section 14 of the tax laws, which imposes a tax on suits, other actions, etc., is not very clear, I am of the opinion that a tax of \$1.00 should be charged on all actions of unlawful entry and detainer.

In fact, I believe this is a custom followed by the majority of clerks in this State.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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TAXATION—COLLECTION BY LEVY OR GARNISHMENT.

RICHMOND, VA., July 14, 1919.

J. P. LEACHMAN, ESQ.,

*Treasurer of Prince William County,  
Manassas, Va.*

DEAR SIR:

Acknowledgment is made of your communication of recent date, in which you request my opinion on the following state of facts:

“A question has arisen here, as to whether a tax collector has the right, under section 627 or 622, Tax Laws, 1918, to take into his possession, or demand of the clerk, that the same be delivered to him, a warrant, duly audited, allowed, and properly signed, etc., and drawn in favor of a man whose taxes are overdue and unpaid.”

It is provided by section 622 of the Code of Virginia (Virginia Tax Laws, 1918, page 243), so far as is applicable to the case here under consideration, as follows:

“What may be distrained for taxes; fees of officers; notice to tenant.—Any goods or chattels in the corporation or county belonging to

the person or estate assessed with taxes or levies, may be distrained therefor by the treasurer, sheriff, sergeant, constable or collector. In all cases property subject to levy or distress for taxes shall be liable to levy or distress in the hands of any person for taxes thereon." \* \* \*

It will be seen, from an examination of the above quoted provision of this section, that the right of an officer to distrain for taxes is limited to "goods and chattels." A warrant being in the nature of a check is a chose in action, which, under the law, does not fall within the designation "goods and chattels." You, therefore, have no authority to proceed, in the case under consideration, under section 622 of the Code of Virginia.

It is provided by section 627 of the Code of Virginia (Virginia Tax Laws, 1918, page 244), as follows:

"When the officer cannot find sufficient goods or chattels to distrain for taxes or levies, any person indebted to or having in his hands estate of the party assessed with such taxes or levies may be applied to for payment thereof out of such debt or estate; and a payment by such person of the said taxes or levies, either in whole or in part, shall entitle him to a charge or credit for so much on account of such debt or estate against the party so assessed. If the person applied to does not pay so much as may seem to the officer ought to be recovered on account of the debt or estate in his hands, the officer shall, if the sum due for such taxes or levies does not exceed twenty dollars, procure from a justice a summons directing such person to appear before some justice at such time and place as may seem reasonable; and if the sum due exceed twenty dollars, shall procure from the clerk of the court of the county or city a summons directing such person to appear before the court of the county or city on the first day of the next term thereof; and from the time of the service of any such summons the said taxes and levies shall constitute a lien on the debt so due from such person, or on the estate in his hands."

Under this section, you have the right to apply to the person or persons owing the money "or having in his hands estate of the party assessed with such taxes or levies" for payment of the same, if you cannot find sufficient goods and chattels belonging to the taxpayer to distrain for taxes or levies.

Very truly yours,

JNO. R. SAUNDERS,

*Attorney General.*

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TAXATION—CONSTITUTIONAL LAW.

RICHMOND, VA., *August 20, 1919.*

HON. R. H. WILLIS,

HON. C. O'CONOR GOOLBICH,

*Members of the Legislature,*

*Richmond, Va.*

GENTLEMEN:

Acknowledgment is made of your letter in which you state that amendments have been proposed to the bills now pending before the two houses of the General Assembly to levy a property tax to raise funds to meet the Federal Aid Fund and to construct the State highways and to increase the

automobile tax for this purpose; and that, by such amendments, it is proposed to levy also a property tax on property and impose an automobile license tax on automobiles in the cities and towns of this State, to aid the various counties in the construction of county roads other than the State highways, and you ask my opinion as to the constitutionality of the tax as proposed by such amendment.

I take it from your letter that the county roads to be constructed by the proposed amendments above mentioned, are not a part of the State highway system. It is, therefore, manifest that the tax is for local purposes and not a matter of general concern to the whole State.

It appears well settled that one territory cannot be taxed for the benefit of another. This question arose in the case of *Robinson v. Norfolk*, 108 Va. 14, where a suit was brought to collect a license tax imposed by the city of Norfolk upon a person giving a circus performance entirely in the county of Norfolk, but within one mile of the corporate limits of the city of Norfolk, the territorial limits of the city of Norfolk not extending to the locality where the performance was given. The court held that such a tax was unconstitutional, and handing down its opinion after calling attention to the fact that the constitution, for the purpose of taxation, had divided the States into counties and magisterial districts, cities and towns, and that each of these sub-divisions had its territorial limits fixed, said (page 16):

"The principle that one territory cannot be taxed for the benefit of another is fundamental and well recognized by the authorities on the subject. It does not rest alone upon the theory of taxation without representation, but upon the principle that private property cannot be taken for anything but a public use. *Cooley on Taxation* (2nd ed.), Chapter 5, page 140, *et seq.*, and cases cited.

"At pages 141-2, this learned author says: 'It can therefore be stated with emphasis that the burden of a tax must be made to rest upon the State at large, or upon any particular district of the State, according as the purpose for which it is levied is of general concern to the whole State, or, on the other hand, pertains only to the particular district. A State purpose must be accomplished by State taxation; a county purpose by county taxation; or a public purpose for any inferior district by taxation of such district. This is not only just but it is essential. To any extent that one man is compelled to pay in order to relieve others of a public burden properly resting upon them, his property is taken for private purposes, as plainly and palpably as it would be if appropriated to the payment of the debts or the discharge of obligations which the person thus relieved by his payments might owe to private parties.' And again at page 161 it is said: 'It is certainly difficult to understand how the taxation of a district can be defended where people have no voice in voting it, in selecting the purposes, or in expending it.'"

This case, which appears to be one of the leading cases on the subject, took the position that a license charge imposed solely or primarily as a means of raising revenue is a tax regardless of the name by which it may be called, and the opinion was based upon the theory that as the license in question was imposed for revenue, it should be treated as any other levy of tax for revenue only. In 37 Cyc. page 711, this principle is laid down as well established.

Under the ruling of this case, the purpose for which the tax in ques-

tion is proposed to be levied, not being a matter of general concern to the whole State, but pertaining to local county conditions, I am of the opinion that such a tax either upon property or in the form of a license fee on automobiles in cities and towns for such local county purposes, would be unconstitutional.

A different question would arise if the county roads in question were a part of the State highway system, because, in such case, it would be a matter of general concern to the whole State. The State instead of the county would be selecting and building the roads and maintaining them out of the general funds of the State raised in the same manner as other revenue for general State purposes is raised.

What I have said above is predicated upon the assumption that the county roads proposed to be constructed out of the money raised by the proposed amendments are to be built by the boards of supervisors of the various counties and maintained by them and to be under the supervision and control of the local authorities and not built and maintained by the State and under the control of the State authorities.

You will understand that I have given no consideration to the question of the right of the State to appropriate a portion of the revenue raised by a levy for general State purposes for the building of roads through the State under what is known as the State Money Aid Road Law, but the above opinion is predicated entirely upon the assumption that a direct tax is proposed to be levied on the taxable property in the cities and towns for the distinct purpose of building local county roads.

Any further information which I can furnish you on this subject will be gladly given.

Yours truly,

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

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TAXATION—CORPORATIONS.

RICHMOND, VA., *December 15, 1919.*

HON. WM. F. RHEA, *Chairman,*  
*State Corporation Commission,*  
*City.*

DEAR SIR:

Acknowledgment is made of your letter, in which you ask when the Virginia tax year begins with respect to public service corporations. Section 1 of the tax bill provides that—

“The tax on persons, property and income for the year commencing the first day of February, 1903, and each year thereafter, and on licenses to transact business, shall be as follows: \* \* \*”

Then follow various sections providing for the assessment of taxes. Section 27, *et seq.*, provide that every public service corporation shall report annually to the Corporation Commission all of its real and personal property

of every description as of the 30th day of June preceding, and that the Corporation Commission, using this report as its basis, shall ascertain its value and assess its property. Because of this provision, the question arises whether the tax year of public service corporations is from June 30 of one year to June 30 of the next year, or whether the same year applies to public service corporations as to other corporations and persons.

The tax law, popularly known as the "Tax Bill," must be read as a whole, giving effect to each section thereof, and the broad provision in the first section that the tax year shall begin on the first day of February, applies to each section unless there is something in such section which qualifies its application thereto. The sections providing for the taxation of public service corporations contain no provision different from those in the sections providing for the taxation of other corporations and persons, save and except it provides that the report of the property of public service corporations shall show the property owned on the 30th of June.

In order to assess property owned by a public service corporation—or any other corporation or individual, for that matter—the time to which the ownership of such property shall refer, must necessarily be established, but the fixing of such time does not also fix the tax year. For instance, section 10 of the Tax Bill provides that the aggregate amount of the income received by any person within the year next preceding the first of January in each year, shall be taxed, yet the taxes assessed on such income are paid for the tax year beginning February 1 and running to January 31 of the following year.

We are of the opinion, therefore, that the fact that a tax is to be assessed against all property owned on June 30 by a public service corporation, does not qualify the provision in the first section of the Tax Bill, that the tax year shall be from February 1 to February 1. The legislature not only had the right to fix the date from which the tax year should run, but also had the right to fix the date as of which the property owned by the public service corporation should be determined for the purpose of taxation for such year.

When, therefore, the legislature provided that public service corporations should be taxed upon all the property which they owned as of June 30, it simply established a date to which the ownership of property for the purpose of taxation should relate, and not the date from which the tax year should run.

It is clear, therefore, that, in compelling public service corporations to report what they own on June 30 of any year, does not qualify the first section of the Tax Bill, which provides that the tax year shall run from February 1. This becomes more manifest when we examine the first tax bill, approved in 1903. Section 28 of this tax bill fixed the franchise tax on the gross receipts of such corporations for the year ending June 30 of each year, and closes as follows:

*"For the year 1903, the franchise tax shall be based upon said corporations' gross receipts for the year ending June 30, 1903."*

There the tax was based upon the gross receipts for the year ending June 30, 1903, but the tax year ran "for the year 1903," which, according to the

first section, was from the first day of February 1903, to the first day of February 1904.

I am of the opinion that, in requiring public service corporations to return the property owned by them on June 30, the legislature did not intend to make the tax year for public service corporations different from that of all other corporations and persons in the State of Virginia, but simply to fix a date to which ownership should relate for the purpose of arriving at an assessment against public service corporations. In other words, the legislature provided that public service corporations should pay for the tax year beginning February 1 of any year and running to February 1 of the next year, a tax assessed upon the property which they owned June 30.

This position becomes more forcible when it is remembered that up to the year 1903, public service corporations were required to report their property as of the first day of February, and the date was changed to the 30th of June to correspond with the date as to which reports to the Interstate Commerce Commission related, thus obviating the necessity of two separate reports.

We have read the opinion of Hon. Robert Catlett, Assistant Attorney General, sent us by you, in which he takes a different position, but it is to be noted that his closing paragraph is as follows:

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

We feel sure that, if his attention had been called to that portion of section 28, which provides that the tax based upon the corporation's gross receipts for the year ending June 30, 1903, should be "for the year 1903," he would not have reached the conclusion that the tax first assessed covered the period from June 30, 1903, to June 30, 1904. Furthermore, if the conclusion reached by Mr. Catlett was correct, public service corporations would have been exempted from taxes from February 1, 1903—to which time public service corporations had paid their taxes under the old law—to June 30, 1903. We cannot think the legislature ever intended to create such a result.

I am, therefore, of the opinion that it was never the intention of the legislature to make the tax year for public service corporations different from that of other persons and corporations in this State, and that the tax year, as far as public service corporations are concerned, runs from February 1 of one year to February 1 of the succeeding year.

I might add that I have discussed this matter with my assistant, Hon. J. D. Hank, Jr., and in these views we concur.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

## TAXATION—DEEDS.

RICHMOND, VA., August 4, 1919.

MR. CHAS. L. HUTCHINS, *Clerk*,  
*Suffolk, Va.*

MY DEAR SIR:

My delay in replying to your letter of July 28, 1919, is due to several days' absence from the office.

You ask the question whether you are required to collect a State tax on a deed conveying real estate to a church, on which a rectory is to be erected, or whether you should impose a similar tax on a trust deed securing money due the church.

Section 590 of the Code provides as follows:

"No deed or contract shall be admitted to record, except a deed conveying land as a site for a school house or church, no will shall be admitted to probate; and there shall be no grant of administration on the estate of any decedent, until the tax on such deed or contract, will or grant, is paid to the clerk."

You will see from this section that there should be a tax on all deeds or contracts conveying real estate, unless the said real estate is to be used as a site for a school house or church.

I am, therefore, of the opinion that the deeds referred to in your letter require a State tax when recorded.

Very truly yours,

JNO. R. SAUNDERS,

*Attorney General.*

## TAXATION—DELINQUENT CAPITATION TAXES.

RICHMOND, VA., *December 17, 1919.*

L. B. HANCOCK, ESQ.,  
*Room 421, Old Dominion Trust Co. Bldg.,*  
*City.*

DEAR SIR:

Acknowledgment is made of your communication of recent date, in which you request me to advise you as to what compensation you are entitled where a levy is made by you as delinquent capitation tax collector for the city of Richmond, under the provisions of chapter 488 of the Acts of 1916.

In your communication you say that Hon. C. Lee Moore, Auditor of Public Accounts, has instructed you to proceed by levy or garnishment where the tax cannot otherwise be obtained.

It is provided by section 1 of chapter 488 of the Acts of 1916, so far as is applicable to the question here under consideration, that it shall be the duty of the delinquent capitation tax collector to "enforce the collection by levy, garnishment or otherwise, of all delinquent capitation taxes which shall

be turned over to him for collection, as is herein provided." It is provided by section 622 of the Code of Virginia, 1904, so far as is applicable to this matter, as follows:

"Any goods or chattels in the corporation or county, belonging to the person or estate assessed with taxes or levies, may be distrained therefor by the treasurer, sheriff, sergeant, constable or collector. In all cases, property subject to levy or distress for taxes, shall be liable to levy or distress in the hands of any person, for taxes thereon. \* \* \* In all cases where a treasurer, sergeant or *other collecting officer*, has to levy or distrain and sell, or levy or distrain without selling, he shall receive a fee of 60 cents to be collected with the taxes. But in no case shall any of these fees be paid by the State. \* \* \*"

Therefore, I am of the opinion that where you make a levy or distrain, whether you sell or do not sell, that you are entitled to receive a fee of 60 cents to be collected with the tax due by the party upon whose goods you have distrained or levied. Where you distrain or levy, you should follow the procedure outlined in the last paragraph of the letter of Hon. C. Lee Moore, Auditor of Public Accounts, to you, dated December 3, 1919.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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TAXATION—DUTY OF BOARD OF SUPERVISORS.

RICHMOND, VA., *February 27, 1919.*

MR. EARLE K. PAXTON,  
*Division Superintendent of Schools,*  
*Lexington, Va.*

DEAR SIR:

I acknowledge receipt of your letter of February 25, 1919.

I beg to call your attention to paragraph 2 of section 18 of the act to which you refer. From the language used in that paragraph, it seems to be mandatory upon the board of supervisors to levy the tax, and the duty of the commissioner of revenue to assess the tax provided for in that section, the rate being, for incorporated towns, not exceeding 25 cents on a hundred dollars. The third paragraph provides for a levy of not exceeding \$1.00 on every hundred dollars worth of property, to be levied by the council of an incorporated town and assessed by its assessing officer.

My view is that both of these levies may be made, one of 25 cents by the board of supervisors and another of \$1.00 by the town council, making the total levy \$1.25, which, it is contemplated, should be assessable against bank stock under the first paragraph of section 18. The act concludes with language which is intended to repeal any acts or parts of acts in conflict with the act in question.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

## TAXATION—EXECUTORS AND ADMINISTRATORS.

/ RICHMOND, VA., April 30, 1919.

MR. T. RUSSELL CATHER,  
*Examiner of Records,*  
*Winchester, Va.*

DEAR SIR:

I acknowledge receipt of your letter of April 25, 1919, asking whether or not executors and other personal representatives should report to examiners of records as of February 1, following their qualification, the estate coming into their hands in the form in which it exists on February 1, or should the assessment be made as of the time the executor or personal representative qualifies and the estate comes into his hands.

You illustrate by saying, A qualifies as executor of B's estate on June 1, 1918, receiving, among other personal property, \$10,000 in bonds secured by deeds of trust on real estate, and that in January, 1919, A converts these bonds into cash and on February 1 holds the fund as money in bank, so reporting it to the examiner of records as of February 1, 1919.

The State Tax Board, as you know, is the legal adviser of all the examiners of records, and I intended having that board answer your letter, but when I went into their office Mr. Wall, the assistant counsel, was not in, so I am taking the liberty of answering the letter direct.

My view is that this property should be taxed in the form in which it exists as of February 1, 1919. There is no doubt in my mind that a taxpayer has a perfect right to convert his securities into money, or convert them into non-taxable securities if he so desires.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

## TAXATION—FEDERAL STAMP TAX.

RICHMOND, VA., June 6, 1919.

HON. C. B. SCOTT,  
*Assistant Highway Commissioner,*  
*City.*

DEAR SIR:

I beg leave to acknowledge receipt of your letter of June 3, referred to me by Hon. Geo. P. Coleman, in which you ask whether United States internal revenue stamps should be attached to the contracts prepared by your department.

In reply, I will state that I do not think it is necessary to attach internal revenue stamps to such contracts.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## TAXATION—FEDERAL STAMP TAX LAWS.

RICHMOND, VA., *October 14, 1919.*

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

DEAR SIR:

Acknowledgment is made of your communication of October 10, in which you request to be advised as to whether or not the Commonwealth should pay the Federal tax on the purchase of automobile trucks bought by the State Highway Department for use in State work, and which are paid for out of State funds.

I am of opinion that no tax is imposed on automobiles bought with State funds for State purposes, and, therefore, in the purchase of trucks by your department for State work, that the Federal tax should not be paid.

Yours very truly,

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

## TAXATION—INCOME TAX.

RICHMOND, VA., *April 11, 1919.*

MR. CHAS. L. WILSON,  
*Box 123,*  
*Buchanan, Va.*

DEAR SIR:

Acknowledgment is made of your letter of April 10. You ask first:

“Are the dividends received from bank stock liable to income tax to the State, when the bank pays to the State every year tax on its earnings?”

The income tax law provides that dividends received from corporations shall pay tax on its capital stock. Surplus is not taxable as income.

Your second question is:

“Is the interest derived from Virginia Century bonds liable to State income tax?”

The income tax law likewise exempts the income received from these bonds.

Your third question is:

“Is the interest from United States Liberty bonds liable to State income tax?”

The income tax statutes provides that interest received from United States Liberty bonds is not taxable as income.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## TAXATION—INCOME TAX.

RICHMOND, VA., *March 12, 1919.*

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

DEAR SIR:

I beg leave to acknowledge receipt of your letter of March 6, in which you ask for my opinion concerning certain provisions contained in the present income tax law.

Your first question is whether the salaries, wages and compensation received by officers and employees of railroad, telegraph and telephone corporations are exempt from the State income tax.

It is true that sub-section (e), found on page 23 of the Virginia Tax Laws, reads as follows:

“Salaries, wages and other compensation received from the United States by officials or employees thereof, are exempt from an income tax.”

I do not think, however, that this exemption would include the salaries, wages and compensation received by officers and employees of the railroad, telegraph and telephone companies. While it is true that these corporations are controlled and operated by the United States government, at the same time, the ownership of these corporations is still vested in the stockholders; the salaries and wages of their employees are paid from the earnings of the said corporations and not from taxes and revenues of the United States government. I am, therefore, of the opinion that the exemption quoted above does not embrace the officials and employees of the above mentioned corporations.

Your second question is whether or not a tax payer, under the provision of section (f) of the law, which is as follows:

“Sums paid by the tax payer within the year for taxes imposed by any State of this Union or possession thereof, upon the property, profession, occupation or business from which the income hereby taxed is derived; but not including assessments for local improvements or inheritance taxes wherever imposed,”

is authorized to deduct income taxes or any other taxes paid to the United States government, or income taxes paid to the State of Virginia or any taxes paid to a county, district, city or town. In connection with section (f) just above quoted, you also quote section (b), which is as follows:

“The necessary expenses actually paid within the year in carrying on the profession, occupation or business from which the income is derived, not including personal living or family expenses.”

I do not believe that the provisions contained in the two sections just quoted, authorize a tax payer to deduct income taxes or any other taxes paid to the United States government.

Under the provisions of the State income tax law prior to the amendment by the legislature at its session of 1918, the tax payer was authorized to deduct "all taxes" paid by him. For some reason, the legislature at its last session saw fit to limit and specify the taxes to be deducted. However, it is apparent that the legislature by the use of the following language found in the latter part of sub-section (f),

"but not including assessments for local improvements or inheritance taxes wherever imposed,"

intended to authorize the deduction of all taxes paid to a county, district, city or town, except such taxes as were levied for local improvements. I do not think that taxes can be classed as necessary expenses actually paid within the year in carrying on a profession, occupation or business under sub-section (b) for the reason that the statute specifically prescribes what taxes can be deducted.

It is, therefore, my opinion that the tax payer cannot deduct any income tax or other tax paid the United States government; or any income tax paid the State of Virginia, but can deduct taxes upon property, profession, occupation or business, paid to this State or to any county, city or town in this State, or taxes paid to any other State or county, city or town therein.

In the latter part of your letter you cite the following case:

"Suppose the husband or father includes in his income report income of his wife, \$1,300.00, and the income of a child, under 21 years of age, \$1,300.00. Should the husband deduct \$1,800.00 as the exemption for himself and wife and \$200.00 as the exemption for the child, making a total exemption of \$2,000.00, or should he exempt, in addition to the \$2,000.00, \$1,200.00 each on account of the wife and child?"

Sub-section (a) allows an exemption to an individual up to and including the sum of \$1,200. Sub-section (b) allows an exemption to a husband and wife living together, up to and including the sum of \$1,800.00. Sub-section (c) allows an exemption of \$200.00 for each additional person who is actually supported by and entirely dependent upon the tax payer for support.

It is my opinion in the case cited by you that the husband is entitled to an exemption for himself and wife, of \$1,800.00 and \$200.00 exemption for his dependent child, making a total exemption of \$2,000.00 in his case. I do not believe that he would be entitled to the additional exemption of \$1,200.00 each on account of his wife and child, but should the wife elect to make a separate income report for herself, she would be entitled to this exemption of \$1,200.00.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## TAXATION—INHERITANCE TAX.

RICHMOND, VA., *June 19, 1919.*

JUDGE R. T. W. DUKE,  
*Charlottesville, Va.*

MY DEAR JUDGE:

Please pardon my delay in replying to your letter of recent date. It came, however, while I was busy preparing for the term of court at Wytheville, and since my return I have been unable to catch up with my correspondence.

I have very carefully read the contents of your letter and am of the opinion that you are correct in your construction of the law. As you know, there is no inheritance tax on legacies from \$1,000.00 down. You ask the question:

“Does the 5 per cent tax come out of the general estate or out of the amount left to the specific legatees?”

In reply, I will state that an inheritance tax is a tax upon the person enjoying the privilege of receiving the legacy. Therefore, the tax on each specific legacy should be a charge upon that legacy rather than a charge upon the general estate.

In answer to your second question:

“Shall the Federal inheritance tax be deducted from the general fund before assessing the State tax?”

I am of the opinion that it should not be so deducted.

I regret that I have not the January number of the *University of Pennsylvania Law Review* in order that I might read the discussion of this subject. I am enclosing a little pamphlet compiled by the Auditor, which you will no doubt find useful.

If you are coming to Richmond any time in the near future, I shall be glad to see you and discuss this matter more fully with you.

Yours very sincerely,

JNO. R. SAUNDERS,  
*Attorney General.*

## TAXATION—INHERITANCE TAX.

RICHMOND, VA., *March 7, 1919.*

MESSRS. WOODS, CHITWOOD & COXE,  
*Attorneys at Law,*  
*Roanoke, Va.*

GENTLEMEN:

Acknowledgment is made of your letter of March 3, 1919, in which you state that you represent parties who are devisees under a will of the testator who died in 1883, leaving his property to his wife for life, with the remainder to his children.

You state that the life tenant died during the fall of 1918. Your question is whether the remaindermen are liable for the payment of an inheritance tax under section 44 of the tax bill as amended by the General Assembly of Virginia in 1918.

Section 44 of the tax bill as amended by the General Assembly of 1918, became effective on the 21st of June so that any estate coming under its provision after that date would be liable for the tax. You quote in your letter as follows:

"In every case where there shall be a devise, descent, bequest or grant to take effect in possession or enjoyment after the expiration of one or more life estates, the tax shall be assessed on the actual value of the property or the interest of the beneficiary therein *at the time when he becomes entitled to the same in possession or enjoyment.*"

My view is that the inheritance tax in this case should be assessed upon the actual value of the property at the time the parties whom you represent become entitled to the said property in possession or enjoyment.

Yours very truly,

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

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TAXATION—INSTRUMENTALITIES OF FEDERAL GOVERNMENT.

RICHMOND, VA., *November 7, 1919.*

W. E. DUVAL, Esq., *Clerk,*  
*Hustings Court, Part II.,*  
*Richmond, Va.*

DEAR SIR:

Acknowledgment is made of your request for my opinion as to whether or not a tax can be required of the United States government as a prerequisite to the filing and recordation of the papers filed by the alien property custodian, for the seizure of the property of E. K. Vietor, an alien enemy of the United States.

I am of the opinion that no tax can be required of the United States government in this matter.

It was held by the Supreme Court of the United States, in the case of *McCulloch v. Maryland*, 4 Wheaton, 316, 4 L. Ed. 579 (1819), that State governments have no right to tax any of the constitutional means employed by the government of the Union, to execute its constitutional powers.

The papers offered for record in your office, by the United States government, are a part of the means employed by the Federal government to execute its constitutional powers, and, therefore, no tax can be required by the Commonwealth of Virginia.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

## TAXATION—MERCHANTS.

RICHMOND, VA., *June 19, 1919.*

J. S. RASNICK & Co.,  
*St. Paul, Va.*

GENTLEMEN :

I am in receipt of yours of recent date, in which you desire to know whether a man who has taken out a license for the sale of tobacco must include his purchases of tobacco in his return to purchases under section 45 of the tax bill requiring a license from merchants.

In reply thereto, I will state that his purchases of tobacco should be included along with his other purchases, and a license tax should be fixed upon the basis of his entire purchases.

I would further state that this has been the ruling of the Auditor of Public Accounts and all the merchants in the Commonwealth, I am informed, are complying with this ruling.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## TAXATION—MERCHANT'S LICENSE TAX.

RICHMOND, VA., *September 27, 1919.*

MESSRS. HIDEN & BICKERS,  
*Attorneys at Law,*  
*Culpeper, Va.*

GENTLEMEN :

Acknowledgment is made of your letter of September 26, in which you state that Mr. C. B. Payne is a buyer of ties and other lumber, which he has hauled to Culpeper to the railroad yard and shipped; that all of his ties are sold under contract to the Southern Railway Company, and practically all of his other lumber is purchased by him to fill orders received from lumber merchants at other points, mostly out of the State, and that he occasionally sells, as a matter of accommodation, small bills of lumber to his neighbors. You ask whether he has to pay a merchant's license tax under the laws of Virginia.

It is manifest from the above statement of facts that Mr. Payne is such a merchant as is contemplated by the tax laws of Virginia relative to the license of merchants, and he must pay a license to the State on his business. The law does not contemplate any difference between a person who sells his merchandise to persons in this State and to those living out of the State.

Of course, if he sent his lumber to another State to there be sold by a broker or some other independent agent, he would not be taxed as a merchant, but would have to pay on his capital; but from your statement, the fact that the lumber and ties are sold in this State to be shipped to another State in consequence of the sale, does not affect the character of the business done by the seller.

I am, therefore, of the opinion that the commissioner of revenue complies with the law in assessing Mr. Payne with a license based upon his purchases in accordance with the law as to **taxing merchants.**

Yours truly,

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

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**TAXATION—MERCHANT'S TAX LAW.**

RICHMOND, VA., *November 24, 1919.*

R. L. SHIELDS Co., INC.,  
*Onancock, Va.*

DEAR MR. SHIELDS:

Your letter of November 28, asking whether or not your working capital is subject to a tax, has been received. You state that you pay a franchise tax, registration fee and State license and all other taxes a mercantile business is subject to.

If you are running only a mercantile business, the payment of your license tax is in lieu of all other taxes, and your capital is not subject to a tax. If you are conducting any other business besides a mercantile business, I would have to know your business before I could advise you whether or not you would have to pay a tax.

When I state above that the license tax is in lieu of all other taxes, of course, I do not refer to the franchise tax and registration fee, which always must be paid by a corporation regardless of any other taxes assessed against it.

Yours very truly,

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

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**TAXATION—MERCHANT'S LICENSE TAX.**

RICHMOND, VA., *August 1, 1919.*

CLYDE W. SAUNDERS, ESQ.,  
*Richmond, Va.*

DEAR SIR:

Acknowledgment is made of your request for an opinion on the following statement of facts:

"The United States government is going to ship to Richmond a number of carloads of sugar, which is to be distributed to the citizens of this city at cost. The mayor has designated me as the person to have charge of the distribution of the same. Under this arrangement, I am required to pay the United States government the cost price of the sugar, which amount will have to be paid in advance. The sugar will then be made up by me into small lots, and thus distributed to the people of the city. It will be distributed at cost, absolutely no profit being retained by me. Under these circumstances, will I be required to obtain a merchant's license in order to distribute this sugar?"

In an opinion given Hon. C. Lee Moore, Auditor of Public Accounts, on March 19, 1917, by Hon. Leslie C. Garnett, then Assistant Attorney General, Report of the Attorney General for 1917, page 291, it was held that no merchant's license tax is required of parties who combine to buy food products for their own use, and that the money used by them in the purchase of these products is not capital employed in business.

From the opinion, it appears that, in the case then under consideration, a number of parties desiring to buy food cheaper than it could be obtained by individual purchasers, combined for the purpose of buying desired articles in wholesale lots; that, pursuant to such agreement, shipments of specific amounts of food were to be made by the producers to one of the consumers who was a party to the agreement, by whom such articles were distributed to the other members of the association. It appears, however, that beforehand an order for a specific amount of food which was shipped had been placed by the parties desiring the same, and that on the arrival of the food at the residence of one of the parties to the agreement, the other parties paid their portion of the original cost only, and that no profit was retained by the party to whom the shipment was made by the producer.

I concur in this opinion, and am of the opinion that the question submitted by you falls within this class, and, therefore, that you are not required to obtain a merchant's license to distribute the sugar in question.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

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TAXATION—MONEY.

RICHMOND, VA., November 20, 1919.

N. J. NELMS, Esq.,  
*Law Bldg.,*  
*Newport News, Va.*

DEAR SIR:

I beg leave to acknowledge receipt of your letter of November 14. In this letter you state that Mr. S. R. Curtis, who is treasurer of Warwick county, was appointed special commissioner in certain suits depending in the circuit court of Warwick county, and whose duty it was as commissioner, to collect certain monies in said suits and deposit the same in bank, subject to the order of the court.

You further state that it is your opinion that this money should be taxed at the rate of 20 cents on the \$100.00. I think you are correct in your interpretation of the law and I know of no other basis upon which it could be taxed.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## TAXATION—MORTGAGES EXECUTED UNDER FEDERAL FARM LOAN ACT.

RICHMOND, VA., *June 13, 1919.*

HON. S. P. POWELL,  
*Commonwealth's Attorney,*  
*Spottsylvania, Va.*

DEAR SIR:

In reply to yours of the 7th inst., as to whether, under the Federal Farm Loan Act, acknowledgment of mortgages which are sent to the Federal Loan Banks in Baltimore, require the payment of a tax of \$1.00, I would advise you that the Auditor of Public Accounts, within whose jurisdiction this question comes, has ruled that such a tax is required in this State.

Secondly, you ask whether members of the county boards of review and justices of the peace may serve as district school trustees.

Section 1459 prohibits a county officer from acting as a school trustee. Under this section, which was apparently intended to be very broad in view of the fact that it expressly excepts county supervisors of the poor and notaries public, I am of the opinion that neither of the officers you mention may act as school trustees.

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

## TAXATION—PENALTY.

RICHMOND, VA., *December 23, 1919.*

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

DEAR SIR:

I beg leave to acknowledge receipt of your letter, in which you write concerning the taxes to be paid you by the Chesapeake and Potomac Telephone Company of Virginia. I would state that I have very carefully read your letter and also the letter of Mr. Robert J. Eby, tax agent for this company.

I note from Mr. Eby's letter that there seems to have been a misunderstanding in reference to the time for payment of taxes by the said company and that, due to this misunderstanding, the taxes were not paid by December 1, the time required by law. I note from your letter also that heretofore this company has always paid its State taxes promptly and prior to the time when any penalty was imposed.

Mr. Eby further states in his letter that a number of county treasurers throughout the State had notified his company that the time for the payment of taxes without penalty was extended to December 31, and that due to these notices and the conversation which Mr. Hull, a representative of the company, had over telephone with Mr. Dotson, a clerk in your office, that the company was under the impression that the act approved September 5, 1919, (extra session, 1919) which provided for an extension of time for the payment of taxes without penalty, applied to his company as well as to individuals.

From all of the circumstances surrounding this case, I do not believe that the Chesapeake and Potomac Telephone Company is morally bound to pay the penalty, and I question very much whether a court would impose such penalty. I, therefore, think that you would be justified in accepting the certified check which they have tendered you in payment of their taxes.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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TAXATION—PENALTY.

RICHMOND, VA., April 7, 1919.

MR. R. BENTON DAVIS, *Treasurer,*  
*Holdcroft, Va.*

DEAR SIR:

Acknowledgment is made of your letter of April 3, 1919, addressed to the Attorney General, asking whether or not the penalty of 5 per cent which is added to taxes after December 1, may be collected from the owner of real and personal property, where the party who owns the property is in the service of the United States navy.

If I am not mistaken, the Supreme Court of Appeals of Virginia has decided that the penalty which is added to taxes after December 1 is as much a part of the tax as the tax itself. However, if there is any reduction to be made in this case, it can only be made by the circuit court of the county in which the property is located. I am not familiar with any Federal law prohibiting the collection of this tax.

This information is given you as a matter of courtesy and is unofficial. The Attorney General is required to give his opinion to the heads of the various departments at the seat of government, and I would suggest that you consult with your Commonwealth's attorney—he being the legal adviser of the officers of his county—and follow whatever advice he may feel disposed to give.

Very truly yours,

F. B. RICHARDSON,  
*Law Assistant.*

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TAXATION—SLOT MACHINES.

RICHMOND, VA., June 11, 1919.

MR. B. P. BALL,  
602 Main Street,  
Danville, Va.

DEAR SIR:

I am in receipt of yours of the 7th instant, in which you ask whether there is a tax on slot machines which sell candy, chewing gum or peanuts.

In reply thereto I refer you to section 139 of the tax bill as amended in the Acts of 1915, which appears on page 127 of the Tax Laws of 1918, and which would be available to you in the office of the clerk of the corporation court of your city. That section requires a tax of \$10.00 on every slot machine with certain exceptions. One of the exceptions reads as follows:

"Provided further that this section shall not apply to any merchant who has paid a merchant's license tax and who uses such slot machine simply for the purpose of making sales of his goods."

Trusting that this gives you the information you desire, I am,

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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TAXATION—TOWNS.

RICHMOND, VA., April 5, 1919.

HON. A. N. ADAMS, *Mayor,*  
*Purcellville, Va.*

DEAR SIR:

Acknowledgment is made of your letter of April 2, 1919, in which you state that a certain fund in the hands of C. C. Gaver, committee, amounting to \$25,000.00, has been assessed for taxes for several years past by the town of Purcellville, but that the tax has never been collected. You desire to know whether or not your town can legally collect these taxes.

I understand from your letter that this assessment is only for taxes due the town, and I am not familiar with your charter privileges. Moreover, it is a question which should be referred to your town attorney. The Attorney General is required to give his opinions only to the heads of the various departments at the seat of government, and any opinion given you in this matter would be, at most, unofficial and not dependable, because we have not your charter before us.

Moreover, your town attorney might properly take exception at any attempt upon our part to construe the laws affecting only the government and revenue of your town. I would be very glad to give him any information possible, or assist him in any way I can to a proper adjudication of this matter.

Regretting that I am unable to give you the information you desire, I beg to remain,

Yours truly,

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

## TORTS—STATE NOT LIABLE FOR.

RICHMOND, VA., *September 25, 1919.*

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

DEAR SIR:

Acknowledgment is made of your letter of September 25, 1919, enclosing a copy of a letter from C. Vernon Spratley to you. You request my opinion on the facts as stated by Mr. Spratley, which are as follows:

"A young man of this city, William Elliot, has consulted me in reference to damages done his Ford automobile on September 5, 1919, on account of being run into from the rear while standing idle against the right hand curb of Court street, in this city, by a truck operated, I am advised, by a Mr. Gary, in your employ, coming from Langley Field. Witnesses state that your chauffeur admitted the truck had no brakes and could not be controlled. I believe it is a clear case of liability against the truck owner, and do not know whether any report has been made to you of the occurrence. Will you please advise me what position the commission would take towards payment of damages if the above facts are true?"

From the above facts, it appears that the only basis of liability on the part of the State, if any exists, will be negligence on the part of its employees, which is a tort. Certainly, Mr. Elliot has no claim against the State other than a claim based on tort. This being so, I am of the opinion that there is no liability upon the State.

Section 746 of the Code, which provides for proceedings against the State for claims against the same, is limited to claims arising out of contracts and has no application to claims arising out of torts. The words of the statute, so far as is applicable to the question here under consideration, are:

"\* \* \* and where a person has any other claim against the Commonwealth, redress may be obtained in the said court, by a petition or by a bill in chancery according to the nature of the case."

It has been repeatedly decided by the courts of various States that similar statutes do not authorize persons having claims against the State, based upon tort, to sue thereon.

*Murdock Grate Co. v. Commonwealth*, 152 Mass., 28, 32 (1890).  
*State v. Hill*, 54 Ala., 67, 68 (1875).  
*Billings v. State*, 27 Wash., 288 (1902).  
*Houston v. State*, 98 Wis., 481 (1898).

In *Murdock Grate Company v. Commonwealth*, *supra*, the statute there under consideration provided that the superior court should have "jurisdiction of all claims against the Commonwealth, whether at law or in equity." It was contended that the language covered claims arising from torts. In denying the contention, the Supreme Court of Massachusetts said (page 32):

"If the legislature had intended to create such an obligation, and voluntarily to assume in the administration of the State all the responsibilities which an individual must incur in his private business, it certainly would have done so in express terms. An intent so to do, as it is in violation of the ordinary principles by which the administration of less important bodies is ordinarily regulated, would not have been left to inference, but would have been explicitly stated. \* \* \*"

Mr. Elliot's remedy, if any, does not lie against the State.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

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TORTS—STATE NOT LIABLE FOR.

RICHMOND, VA., *September 19, 1919.*

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

MY DEAR MR. COLEMAN:

/ Acknowledgment is made of your communication of recent date, enclosing file relating to the injury of a mule belonging to Nelson county, by an automobile truck owned by the State and used in road construction work near Afton. You request me to advise you whether there is any liability upon the State in this matter.

From the facts stated in the papers in the file, the only basis of liability on the part of the State, if any exists, would be negligence on the part of its employees, which is a tort. Certainly, Nelson county has no claim against the State other than a claim based on tort. This being so, I am of the opinion that there is no liability upon the State.

Section 746 of the Code, which provides for proceedings against the State for claims against the same, is limited to claims arising out of contracts and has no application to claims arising out of torts. The words of the statute, so far as is applicable to the question here under consideration, are:

"\* \* \* and where a person has any other claim against the Commonwealth, redress may be obtained in the said court, by a petition or by a bill in chancery according to the nature of the case."

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of all claims against the Commonwealth, whether at law or in equity." It was contended that the language covered claims arising from torts. In denying the contention, the Supreme Court of Massachusetts said (page 32):

"If the legislature had intended to create such an obligation, and voluntarily to assume in the administration of the State all the responsibility which an individual must incur in his private business, it certainly would have done so in express terms. An intent so to do, as it is in violation of the ordinary principles by which the administration of less important bodies is ordinarily regulated, would not have been left to inference, but would have been explicitly stated. \* \* \*"

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

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TREASURER, STATE—COMPENSATION.

RICHMOND, VA., June 14, 1919.

HON. C. A. McHUGH,  
*Industrial Commission,*  
*Richmond, Va.*

DEAR MR. McHUGH:

I beg leave to acknowledge receipt of your letter of recent date in which you write me concerning the matter of depositing certain securities with the Treasurer, which said securities have been turned over to the Industrial Commission by parties who are self-insurers. You state that, conforming to a former opinion of mine, you have deposited these securities with the Treasurer of Virginia.

You also state that the Commission felt that the Treasurer was entitled to receive for handling these securities the same commission which is provided for by section 14 of chapter 2 of the Acts of 1906, page 134, to-wit: 1/20 of 1 per cent of the securities deposited with him annually. This compensation, as stated in the act, is allowed to defray the expenses of his office in the safe keeping and handling of such securities and after the payment of said expenses, whatever remains shall be retained as compensation to him for his care and labor with said securities.

I desire to state that I think the Commission is correct in its conclusion. Certainly, the Treasurer should be allowed the same compensation for taking care of these securities and assuming the responsibility therefor, which is allowed him by law for the safe keeping of similar securities, and the compensation, in my judgment, should be paid him annually as is required by law.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## TREASURY—DEPOSITORY BONDS.

RICHMOND, VA., *October 21, 1919.*

HON. CHAS. A. JOHNSTON,  
*Treasurer of Virginia,*  
*Richmond, Va.*

DEAR MR. JOHNSTON:

I beg leave to acknowledge receipt of your letter of the 17th, in which you state that it is the desire of some of the banks which you use as State depositories, to deposit with you or some trust company designated by you. United States government bonds for temporary excess deposits, thereby relieving them of the expense for surety bonds for so short a period.

It so happens that at this season of the year your deposits with such banks are necessarily larger than usual, owing to the large amount of taxes which will be paid into the State Treasury for the next sixty or ninety days.

Should any of these banks with which you make such temporary deposits desire to deposit United States government bonds as security, in my judgment you would be justified in accepting such security, for surely there can be no security better than United States government bonds.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## TREASURY—RETURN OF MONEY TO.

RICHMOND, VA., *April 4, 1919.*

COL. BENJAMIN L. PURCELL,  
*Dairy and Food Commissioner,*  
*Richmond, Va.*

DEAR COL. PURCELL:

I am herein enclosing you a letter from Col. Hodges to you, and other papers in connection with the killing of one of the Governor's cows.

I see no reason why this check, as I told you the other day, should not be returned to the treasury, inasmuch as the Governor is unwilling to accept it.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

## VACCINATION—NO EXCEPTION FOR CHRISTIAN SCIENTISTS.

RICHMOND, VA., *December 2, 1919.*

MR. OTIS O. HOLLER,  
*Manassas, Va.*

DEAR SIR:

Acknowledgment is made of your letter of November 29, 1919, in which you request my opinion as to whether or not a Christian Scientist is exempted from the requirement of the Virginia law in regard to vaccination.

It is provided by section 1733 of the Virginia Code, 1904, as follows (Pollard's Code, 1904, page 896) :

"The council of any city or town and the board of supervisors of any county, when in their judgment occasion requires, may cause persons residing within the limits of such city, town or county to be vaccinated with genuine vaccine matter; and the council of any city or town and the board of supervisors of any county may enforce obedience to its ordinance or orders, as the case may be, by fixing fines and penalties for the violation of said ordinance or orders. Should any person, including children who attend the public schools, be unable to pay for vaccination such person shall be vaccinated with genuine vaccine matter at the cost and expense of the city, town or county, and provision shall be made therefor by the council of the city or town or by the board of supervisors of the county."

You will see from the above that no exception is made for Christian Scientists or other persons who do not believe in such treatment.

It is a scientific fact that vaccination is the most effective means of preventing the spread of what, in times past, has been an awful scourge upon whole communities, and the legislature has, no doubt, in its discretion, seen fit not to take into account the opinions and beliefs of persons which conflict with established scientific facts.

If you desire to test the constitutionality of the law, by employing counsel you can have the same tested in court.

Very truly yours,

JNO. R. SAUNDERS,

*Attorney General.*

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VITAL STATISTICS—BIRTH AND DEATH CERTIFICATES.

RICHMOND, VA., *August 27, 1919.*

DR. W. A. PLECKER,  
*State Registrar,*  
*Richmond, Va.*

DEAR SIR:

I beg leave to acknowledge receipt of your letter of August 19, in which you advise me that the judge of one of the Pennsylvania courts has decided that a certified copy of a certificate of birth was not valid in that State because the physician did not report it within the ten-day limit specified in the law. You further advise that since then, the law has been enforced more vigorously in that State. You ask that I advise you whether such a point may be made as to certificates filed under our Vital Statistics law after the ten days have expired.

I have read the section which requires the physician to file this certificate within ten days. Section 21 of the law provides that any physician, etc., who shall wilfully neglect or refuse to file such certificate within the time required by the act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than \$1.00 nor more than \$10.00.

I think it would be advisable for you to insist that these certificates be filed within the time required by law, still I do not believe that the failure

on the part of a physician to do so within the specified time would invalidate this certificate. I feel sure if you will urge upon the physicians the necessity for doing this, that a large majority of them will comply with your request.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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WORKMEN'S COMPENSATION—MEDICAL FUND COLLECTED FROM EMPLOYEES.

RICHMOND, VA., *June 3, 1919.*

MR. R. W. GARNETT,  
*Health Officer,*  
*Danville, Va.*

DEAR SIR:

I am in receipt of yours of the 15th ultimo asking whether or not there is any law prohibiting an industrial concern, such as a cotton mill, from collecting a monthly fee graded according to the earning capacity of the employees, to go to a fund to be used in furnishing medical, nursing and hospital care in case of sickness or accident.

There seems to be no statute preventing an agreement between employer and employee as to the payment of money to provide for care in case of sickness.

However, in the opinion of a member of the Industrial Commission with whom I conferred on the question, there seems to be some question in regard to the use of such funds in the event of accident occurring during the employment under the Workmen's Compensation Act. If you will consult this act you will find that employers operating under this act are required to furnish, free of charge, necessary care of an employee during such sickness resulting from an accident.

It would, therefore, seem that such a fund applied to accidents arising during the course of employment would certainly violate the spirit of the act.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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WORKMEN'S COMPENSATION—ROAD EMPLOYEES.

RICHMOND, VA., *March 7, 1919.*

MR. LUCIUS GREGORY,  
*Chase City, Va.*

DEAR SIR:

Acknowledgment is made of your letter of March 4, in which you ask whether or not your district road board should take out insurance for the men they work under the provisions of the Workmen's Compensation law. Section 8 of the Workmen's Compensation law, found on page 639 of the Acts of Assembly, 1918, 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."

From the provisions of the act, it therefore appears that neither the State nor any municipal corporation within the State, nor any political sub-division thereof, can reject the provisions of the act.

From my viewpoint, therefore, the only safe thing for you to do under the circumstances is to provide insurance for the men you work. Whether or not this provision in the law is a wise one, I cannot say.

However, I would suggest that you do not rely entirely upon my advice in this matter because I have no official right to advise you. You should communicate with your Commonwealth's attorney and follow whatever advice he gives you.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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WORKMEN'S COMPENSATION—STATE EMPLOYEES.

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

DR. J. S. DEJARNETTE,

*Superintendent of Western State Hospital,  
Staunton, Va.*

DEAR SIR:

Acknowledgment is made of your letter of December 13, 1918, asking to be advised whether or not the provisions of the Virginia Workman's Compensation Act apply to all the State institutions, whether such institutions shall voluntarily accept the provisions of the act, or if they are obligatory.

Section 8 of the act, found on page 639, Acts of Assembly, 1918, 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."

I gather from a reading of this section that your institution would have no choice in the matter, except to abide by the terms of the act.

Very truly yours,

JNO. R. SAUNDERS,

*Attorney General.*

**Statement.**

*Showing the Current Expenses of the Office of the Attorney General from January 1, 1919, to January 1, 1920.*

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Telegrams .....	\$ 6 31
Telephone service and tolls .....	43 82
Subscriptions to and purchase of law books.....	106 00
Postage stamps .....	105 00
Towels, drinking water, office supplies, repairs, etc.....	276 29
<b>Total .....</b>	<b>\$537 42</b>

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**Statement.**

*Showing Amounts Expended from the Appropriation for Traveling Expenses from January 1, 1919, to January 1, 1920.*

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<b>1919.</b>	
Feb. 5.	J. D. Hank, Jr., expenses to Washington, <i>W. Va. Debt Case</i> \$32 58
Apr. 18.	J. D. Hank, Jr., expenses to Washington, <i>W. Va. Debt Case</i> 24 21
	18. J. R. Saunders, expenses to Washington, <i>W. Va. Debt Case</i> 25 00
	23. J. R. Saunders, expenses to Washington, <i>W. Va. Debt Case</i> 23 99
	29. J. D. Hank, Jr., expenses to Washington, <i>W. Va. Debt Case</i> 19 35
May 4.	J. R. Saunders, expenses to Washington, <i>W. Va. Debt Case</i> 16 20
	27. J. R. Saunders, expenses to Washington, <i>W. Va. Debt Case</i> 15 02
	27. J. D. Hank, Jr., expenses to Washington, <i>W. Va., Debt Case</i> 13 32
June 2.	J. R. Saunders, expenses to Wytheville Supreme Court..... 27 80
	2. J. D. Hank, Jr., expenses to Wytheville Supreme Court..... 24 46
Sept. 6.	J. R. Saunders, expenses to Louisa, <i>Marie Marshall Case</i> ..... 5 00
	6. J. D. Hank, Jr., expenses to Louisa, <i>Marie Marshall Case</i> .. 5 58
	9. L. M. Bazile, expenses to Staunton Supreme Court..... 21 00
	9. J. D. Hank, Jr., expenses to Staunton Supreme Court..... 36 85
Oct. 9.	J. D. Hank, Jr., expenses to Washington, Attorney General's meeting ..... 20 94
	9. J. R. Saunders, expenses to Washington, Attorney General's meeting ..... 19 59
	14. J. D. Hank, Jr., expenses to Washington, <i>in re Bragg v. Weaver</i> ..... 22 26
Dec. 2.	J. R. Saunders, expenses to Farmville, <i>re Gallion Will</i> ..... 7 32
	2. J. D. Hank, Jr., expenses to Farmville, <i>re Gallion Will</i> ..... 7 32
Dec. 27.	J. D. Hank, Jr., expenses to Washington, <i>re Trohy Case</i> ..... 21 44
<b>Total .....</b>	<b>\$389 23</b>

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**Statement.**

*Showing Amounts Expended from Appropriation for Additional Clerical Services from January 1, 1919, to January 1, 1920.*

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<b>1919.</b>	
Feb. 19.	Oscar L. Shewmake, extra work.....\$ 30 00
	26. E. S. Fitzwilson, extra work..... 30 00
	26. L. G. Phillips, extra work..... 20 00
	28. F. B. Richardson, extra work..... 75 00
Aug. 8.	N. E. Randolph, extra work..... 1 10
Sept. 11.	E. S. Fitzwilson, extra work..... 25 00
	11. L. G. Phillips, extra work..... 25 00
<b>Total .....</b>	<b>\$206 10</b>

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