

ANNUAL REPORT

OF THE

ATTORNEY GENERAL

TO THE

GOVERNOR OF VIRGINIA

FOR THE

YEAR 1920

RICHMOND :
DEVIS BOTTOM, SUPERINTENDENT OF PUBLIC PRINTING
1921

ATTORNEYS GENERAL OF VIRGINIA

From 1775 to 1921

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. BOCKOCK	1852-1857
JOHN RANDOLPH TUCKER.....	1857-1865
THOMAS RUSSELL BOWDEN.....	1865-1869
CHARLES WHITTLESEY (military appointee).....	1869-1870
JAMES C. TAYLOR.....	1870-1874
RALEIGH T. DANIEL.....	1874-1877
JAMES G. FIELD.....	1877-1882
FRANK S. BLAIR.....	1882-1886
RUFUS A. AYERS.....	1886-1890
R. TAYLOR SCOTT.....	1890-1897
R. CARTER SCOTT.....	1897-1898
A. J. MONTAGUE.....	1898-1902
WILLIAM A. ANDERSON.....	1902-1910
SAMUEL W. WILLIAMS.....	1910-1914
JNO. GARLAND POLLARD.....	1914-1918
*J. D. HANK, JR.....	1918
JNO. R. SAUNDERS.....	1918

Office of the Attorney General.

JNO. R. SAUNDERS.....	<i>Attorney General</i>
J. D. HANK, JR.	<i>Assistant Attorney General</i>
LEON M. BAZILE.....	<i>Second Assistant Attorney General</i>
ELISE S. FITZWILSON	<i>Secretary</i>
LILLIE GAINES PHILLIPS.....	<i>Stenographer</i>

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

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REPORT

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., February 7, 1921.

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

MY DEAR GOVERNOR:

As required by law, I herewith submit the following report of the work of this office for the year ending December 31, 1920.

This report does not contain all the opinions rendered by this office, but only those have been selected which bear upon questions of greater importance.

Yours very truly,

JOHN R. SAUNDERS,
Attorney General.

Cases Decided 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. Reversed.
2. *Sickel v. Commonwealth*. Violation of the prohibition law. From the Supreme Court of Appeals of Virginia. Dismissed for want of jurisdiction.
3. *Virginia Trust Co. and John S. Barbour, Executors v. Commonwealth, et al.* Tax question. In error from the Supreme Court of Appeals of Virginia. Dismissed for want of jurisdiction.

Cases Decided in the Supreme Court of Appeals of Virginia.

1. *Allen v. Commonwealth*. Violation of the prohibition law. From the corporation court of Newport News. Affirmed.
2. *Brodt's Executors v. Commonwealth*. Taxation. From the circuit court of Fairfax county. Error confessed.
3. *Buchholz v. Commonwealth*. Forfeiture of automobile under prohibition law. From the hustings court of the city of Richmond. Affirmed.
4. *Commonwealth, et als. v. Agnes Mayo Carter*. Taxation. From the circuit court of Clarke county. Affirmed.
5. *Cornett's Executors v. Commonwealth*. Inheritance tax case. From the circuit court of Grayson county. Affirmed.
6. *Criner v. Commonwealth*. Violation of the prohibition act. From the circuit court of Pulaski county. Error confessed.
7. *Davis v. Commonwealth*. Violation of the Mapp act. From the corporation court of the city of Norfolk.
8. *Dutton v. Commonwealth*. Violation of the Mapp act. From the circuit court of Dickenson county. Error confessed.

9. *Gottlieb v. Commonwealth*. Criminal assault. From the corporation court of the city of Norfolk. Reversed.
10. *Hall v. Commonwealth*. Violation of speed laws. From the circuit court of Loudoun county. Affirmed.
11. *Harris v. Commonwealth*. Robbery. From the circuit court of Prince William county. Affirmed.
12. *Heth v. Commonwealth*. Taxation. From the circuit court of Montgomery county. Affirmed.
13. *Hunt v. Commonwealth*. Violation of prohibition act. From the corporation court of the city of Norfolk. Affirmed.
14. *Hutslar v. Commonwealth*. Violation of prohibition law. From the hustings court of the city of Richmond. Reversed.
15. *King v. Commonwealth*. Forfeiture of automobile under prohibition law. From the hustings court of the city of Richmond. Affirmed.
16. *Martin's Errors, v. Commonwealth*. Recovery of excess fees. From the circuit court of the city of Richmond. Affirmed.
17. *Owens v. Commonwealth*. Violation of the prohibition law. From the circuit court of Dickenson county. Affirmed.
18. *Pennington & Ricker v. Commonwealth*. Forfeiture of automobile under the prohibition law. From the hustings court of city of Richmond. Affirmed.
19. *Richardson v. Commonwealth*. Murder. From the circuit court of Russell county. Reversed.
20. *Robertson, Special Commissioner, v. Commonwealth*. Correction of erroneous assessment. From the circuit court of Wise county. Affirmed.
21. *Southern Ry Co. v. Commonwealth*. Re-location of station at North Garden. From the State Corporation Commission. Affirmed.
22. *Staton v. Commonwealth*. Violation of the prohibition law. From the corporation court of the city of Newport News. Error confessed.
23. *Vance's Adm'r. v. Commonwealth*. Taxation. From the hustings court of the city of Richmond. Reversed.
24. *Williams v. Commonwealth*. Murder. From the corporation court of the city of Lynchburg. Affirmed.

Cases Pending in the Supreme Court of Appeals of Virginia.

1. *Ambrose v. Commonwealth*. Larceny. From the corporation court of the city of Portsmouth. Argued and submitted.
2. *Beverley v. Commonwealth*. Murder. From the circuit court of Alleghany county.
3. *Bibbs v. Commonwealth*. Misdemeanor. From the circuit court of Orange county. Argued and submitted.
4. *Brown v. Commonwealth*. Felony. From the corporation court of the city of Norfolk.
5. *Bunkley, et als. v. Commonwealth*. Criminal case. From the corporation court of the city of Newport News.
6. *Commonwealth, et al. v. Kernohan, Committee for Marie Marshall*. Taxation. From the circuit court of the city of Williamsburg. Argued and submitted.

7. *Dill v. Commonwealth*. Murder. From the circuit court of Alleghany county.
8. *Elliott v. Commonwealth*. Violation of the prohibition act. From the circuit court of Halifax county.
9. *Ellison v. Commonwealth*. Felony. From the circuit court of Arlington county.
10. *Fields v. Commonwealth*. Murder. From the circuit court of York county. Argued and submitted.
11. *Freeman v. Commonwealth*. Murder. From the circuit court of Wise county.
12. *Goode v. Commonwealth*. Violation of the prohibition act. From the circuit court of Halifax county.
13. *Hale v. Commonwealth*. Felony. From the circuit court of Dickenson county.
14. *Harding, Jr., v. Commonwealth*. Felony. From the circuit court of Fluvanna county.
15. *Henderson v. Commonwealth*. Felony. From the hustings court of the city of Richmond.
16. *Hitt v. Commonwealth*. Misdemeanor. From the circuit court of Rockingham county.
17. *Mann v. City of Lynchburg*. Workman's compensation case—Police-man. From the Industrial Commission of Virginia. Argued and submitted.
18. *Osborne v. Commonwealth*. Felony. From the circuit court of Wise county.
19. *Williams v. Commonwealth*. Murder. From the hustings court of the city of Richmond.
20. *Washington & Old Dominion Ry. v. Corporation Commission*. Violation of corporation law. From the State Corporation Commission.

Virginia v. West Virginia.

By an act of the special session of the West Virginia legislature, approved April 1, 1919, satisfactory arrangements were made by West Virginia for the settlement of the judgment obtained by Virginia against West Virginia. In pursuance of this act, the West Virginia debt was settled by the payment of \$1,078,662.58 in cash (of which amount \$1,062,867.16 was principal and the balance interest thereon), and the issuance of twenty-year gold bonds of the State of West Virginia of the face value of \$13,500,000, which said bonds carry interest at the rate of 3½% per annum. West Virginia delivered to Virginia these bonds to the amount of \$12,366,500 to be used in satisfying the certificates deposited with the Commonwealth of Virginia prior to April 1, 1919, but reserved \$1,133,500 of the bonds to meet the West Virginia certificates undeposited with Virginia on April 1, 1919.

A suit was brought in the circuit court of the city of Richmond, under the style of *Commonwealth of Virginia, at the relation of the Virginia Debt Commission, v. Eugene Delano, et al.*, for the purpose of distributing the cash and bonds received by Virginia among the parties entitled thereto. In this suit all matters of settlement were referred to Hon. Robert E. Scott, a special commissioner appointed by the court for the purpose.

Commissioner Scott reported, which said report was duly confirmed by decree entered in said court on July 22, 1920, that Virginia was entitled to share in this fund to the amount of \$470,344.18, of which \$22,425.84 was paid in cash and \$447,918.34 in bonds, all of which cash and bonds were turned over to the Treasurer of Virginia.

Under the above-mentioned decree, the distribution of the bonds and funds in bank was ordered, conditioned upon the cancellation by the Second Auditor of the West Virginia certificates then in the hands of the Virginia Debt Commission and on deposit in the Central Union Trust Company of New York. This was duly done by the Second Auditor on the 9th day of August, 1920, in the presence of the secretary of the Virginia Debt Commission, and the Attorney General of Virginia. These cancelled certificates are now in the possession of the Second Auditor, who has cancelled such certificates upon the books of his office. The amount of cash paid by West Virginia and the three and one-half per cent gold bonds of the State of West Virginia referred to above, have been duly distributed in accordance with the terms of the above-mentioned decree by the circuit court of the city of Richmond, among the parties entitled thereto.

By the terms of the decree above referred to, the Second Auditor of Virginia was appointed the representative of Virginia to receive any West Virginia certificates undeposited as of April 1, 1919, and to exchange them for the West Virginia reserve bonds retained by that State to meet these certificates as aforesaid. At the time of this report the amount of reserve bonds still in the hands of West Virginia to meet the certificates undeposited with the Virginia Debt Commission as of April 1, 1919, have been reduced from the original amount of \$1,133,500 to about \$600,000. This latter amount will be further reduced as additional undeposited bonds come into the hands of the Second Auditor by his calling upon West Virginia to turn over to him additional West Virginia reserve bonds to exchange for the deposited certificates.

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'r R. D. Adams.* Official bond.
5. *Commonwealth v. Philpotts, former Commissioner of the Revenue.* Recovery of excess fees.

6. *Commonwealth v. De 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. Doran, former Commissioner of the Revenue*. 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. Borman, 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. *Talbot, Minton W., v. Commonwealth*.

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

AT LAW.

1. *Commonwealth v. A. D. Phillips, et als.*, sureties of Adams. Official bond. Judgment for the Commonwealth.
2. *Commonwealth v. Jno. T. Fitzpatrick*, treasurer of Nelson county. Recovery of excess fees. Judgment for the Commonwealth.

Portraits of Former Attorneys General now in the Office of the Attorney General.

Portrait of EDMUND RANDOLPH, *first Attorney General of Virginia*, 1776-1786.

A copy made and loaned the office by Miss Emma Whitfield, artist, Richmond, Va.

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

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

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

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

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OPINIONS

AUTOMOBILES—LICENSES.

RICHMOND, VA., *January 8, 1920.*

DR. JOHN PRESTON MCCONNELL, *President,*
State Normal School for Women,
East Radford, Va.

DEAR DR. MCCONNELL:

I am in receipt of your letter of January 6th, in which you state that the institution of which you are president owns a five-passenger Ford automobile, which is used exclusively for the school.

You ask whether or not the normal school board should be required to obtain a license from the State in order to operate this car.

In reply, I will state that no license should be paid for this privilege. The car is owned by the State and it is, therefore, not necessary to obtain a license in order to operate the same.

Col. James will forward you the proper tag giving you permission to operate this car without a license.

Yours very sincerely,

JNO. R. SAUNDERS,
Attorney General.

AUTOMOBILES—LICENSES OF.

RICHMOND, VA., *April 5, 1920.*

R. J. SUMMERS, Esq.,
Attorney at Law,
Abingdon, Va.

DEAR SIR:

Acknowledgment is made of your letter of March 29th, in which you request me to advise you whether, under the provisions of section 2912 of the Code of Virginia, 1919, a young man or boy can drive or operate a passenger automobile for pay without first obtaining a chauffeur's license, he not being employed by the owner of the machine to do other work, nor is he a member of the family of the owner of the machine, nor does he receive any remuneration for his services in the operation of the passenger automobile for pay. It is provided by section 2912 of the Code of 1919, so far as applicable to the question here under consideration, as follows:

"Any person, other than the owner of a machine which has been registered and licensed to be operated in this State, who shall operate machines for pay, before he shall operate a machine in this State shall first take out a chauffeur's license to operate machines in this State,

except that a member of a family or servant regularly employed for other purposes of a licensed owner of a machine, who is otherwise qualified, may operate such machine without paying additional license. * * *

You will see from the above-quoted provision of the law that no person other than the owner of the machine, which has been registered and licensed to operate in this State, shall operate machines for pay unless he has first taken out a chauffeur's license in this State, the only exceptions being that a chauffeur's license is not required where the operator of the car is a member of the family of the owner or a servant regularly employed for other purposes by the owner.

In the case submitted by you, the young man not being a member of the family of the owner, nor a servant regularly employed by the owner, cannot operate a machine for pay without violating the law unless he has first procured a chauffeur's license as provided by law. The fact that he receives no compensation for his services in operating such machine for pay is immaterial. The law is violated when he operates the machine for pay.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

AUTOMOBILES—LICENSES OF.

RICHMOND, VA., *September 13, 1920.*

O. L. SHACKLEFORD, ESQ.,
Commonwealth's Attorney,
Norfolk, Va.

DEAR SIR:

On my return to the office this morning, from which I have been absent for some days on account of indisposition, I found your letter with reference to the necessity of the American Railway Express Company taking out a State license on the automobiles used in the express business.

A letter written by this office to the Secretary of the Commonwealth, a copy of which you have received, fairly sets out our position. A warrant was issued against the express company for failure to have a license on its machines in the city of Richmond. The case was brought before Justice Crutchfield and prosecuted by Mr. Wise with the assistance of Mr. Bazile of this office. The position was taken as follows:

The last paragraph of section 29½ of the Virginia tax bill, as amended, which provides:

"The amount of taxes and licenses herein imposed, shall be in lieu of all other taxes and licenses, State, county and municipal, upon all the property, franchises and privileges of said companies."

applies only to property and franchise taxes, and not to a license tax for the privilege of operating an automobile over the highways of the State, as the operation of automobiles is not essential to the conduct of an express business.

The only license tax imposed on an express company by section 29½ of the tax bill is "for the privilege of doing business in this State, in addition to the annual registration fee and the property tax," as provided for in the other subsections of this section, and the only purpose of the last paragraph of the act is to exempt express companies from other taxes on its property enumerated and taxed by this section of the act, and licenses upon its franchises and privilege of doing business as an express company in this State, and was not intended to exempt express companies from complying with the provisions of section 2125 of the Code, which requires a license as a privilege, not for the conduct of an express business, but for the operation of automobiles.

Justice Crutchfield convicted the company and an appeal was taken to the corporation court, in which the judge acquitted the company, holding they were not liable for license. We are now preparing a petition for writ of error, as we firmly are of the belief that the company is under obligation to have a license for every machine that they run. The court allowed certain evidence in the Richmond cases which may cause the Supreme Court to decide the same without passage upon the real issues. Therefore, I would suggest that you make as strong a case as you can in your court and we would be very glad if it is lost there, to assist in bring it here so that the matter might be finally determined.

Yours truly,

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

AUTOMOBILES—LICENSES OF.

RICHMOND, VA., July 21, 1920.

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

DEAR SIR:

Acknowledgment is made of your letter of July 19th, in which you say:

"I desire your opinion as to the construction of section 2137 as amended by the Acts of 1920. What I desire to know, particularly, is the use of paper tags by automobile owners from other States. These tags are not being issued by the proper authorities of the State in which the automobile owner resides.

"I desire this information in order that I may correctly inform the police authorities of the various cities and counties of the State."

It is provided by section 2137 of the Code of Virginia, as amended, as follows:

"The provisions of the foregoing sections relative to registration and display of registration numbers shall not apply to a motor vehicle owned by a non-resident of this State, other than a foreign corporation doing business in this State, provided that the owner thereof shall have complied with the provisions of the laws of the foreign country, State, territory or Federal district of his residence relative to registration of

motor vehicles and the display of registration numbers thereon, and shall conspicuously display his registration numbers as required thereby. The provisions of this section, however, shall be operative as to a motor vehicle owned by a non-resident of this State only to the extent that under the laws of the foreign country, State, territory or Federal district of his residence like exemptions and privileges are granted to motor vehicles duly registered under the laws of and owned by residents of this State."

Under this section of the Code, non-residents, other than foreign corporations doing business in this State, are excepted from the provisions of the Code requiring the registration of automobiles and the procuring of a license therefor, as a pre-requisite to the right to operate the same over the highways of this State, provided:

(1) The owner of such machine "*shall have complied with the provisions of the laws of the foreign country, State, territory or Federal district of his residence relative to registration of motor vehicles and the display of registration numbers thereon, and shall conspicuously display his registration numbers as required thereby,*" and

(2) Provided, further, that the laws of the foreign country, State, territory or Federal district of the residence of such owner contains "like exemptions and privileges as are granted to motor vehicles duly registered under the laws of, and by, residents of this State."

Assuming that the State, district or country of residence of the owner of such automobiles contains a provision similar to that of section 2137 of the Code of Virginia, 1919, as amended, clearly one has not the authority to operate his automobile over the highways of this State under the provisions of this section by reason of attaching to such machine paper tags which are not issued by the proper authorities of the State or jurisdiction in which the automobile owner resides.

In such case the operation of the automobile on the highways of this State falls under the provisions of section 2125, *et seq.*, of the Code of Virginia, 1919, which makes it unlawful for any person or persons to run, drive or operate any automobile or similar vehicle on the highways of this State, until such machine has been registered and a license to operate the same has been obtained.

One who does not comply with the provisions of section 2137 of the Code of 1919, as amended, must comply with the provisions of section 2125, *et seq.*, of the Code of Virginia, 1919, and a failure to do so is a violation of the laws of this State, for which the offender is subject to fine.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

AUTOMOBILES—LICENSE OF CHAUFFEURS.

RICHMOND, VA., *September 21, 1920.*

MR. F. P. CHAFFIN, J. P.,
Wytheville, Va.

DEAR SIR:

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

"As there is some confusion of opinion as to the proper construction of section 2129 of the present Code as to license tax of chauffeurs, am writing you to ascertain if you have construed or will construe the same.

"The confusion arises from the excepting clause in favor of 'member of a family or servant regularly employed for other purposes.' I have advised the justices that the servants referred to were those employed generally in the family, and did not exempt truck drivers who were employed by stores, ice factories and the like, although the latter may have other duties than that of operating a truck or car.

"I would also like to ask this further question as to chauffeur's license. Should a mechanic or hand at a garage where machines are repaired or sold, who operates cars for demonstration purposes, or takes out repairs, etc., to cars in distress on the road, if such mechanic or hand should have this license for such work?"

It is provided by section 2129 of the Code of Virginia, 1919, so far as is applicable to the question here under consideration, as follows:

"Any person, other than the owner of a machine which has been registered and licensed to be operated in this State, who shall operate machines for pay, before he shall operate a machine in this State shall first take out a chauffeur's license to operate machines in this State, except that a member of a family or servant regularly employed for other purposes of a licensed owner of a machine, who is otherwise qualified, may operate such machine without paying additional license. * * *

I fully agree with you that truck drivers who are employed as such, do not come within the exemption contained in the above-quoted provision of section 2129, although as a part of their employment they may have other duties than that of operating a truck or car. If a part of the duty of such employee is to run a machine, I think that it is necessary for him to procure a chauffeur's license.

In an opinion given Hon. B. O. James on August 18, 1916 (Report of Attorney General, 1916, pp. 29, 31), Attorney General Pollard expressed the opinion that no chauffeur's license was required of automobile mechanics and workmen who, as an incident to their duties, sometimes delivered automobiles which had been repaired to customers, and used the streets and highways in testing their work.

I think that this would be true where the mechanic or hand who is employed for other purposes occasionally drives a machine for the purpose of carrying repairs to cars in distress on the road. If, however, the employee is employed for the purpose of demonstrating automobiles for sale, even though he may also work as a mechanic in the garage, I am of the opinion that he would be required to obtain a chauffeur's license, as the purpose of his employment would be, in part, that of operating a machine.

In response to your last question as to whether a red light should be displayed while the machine is parked or idle in the street, I am doubtful as to whether section 2142 of the Code of 1919 would apply to such a case. Generally, this is a method which is regulated by a municipal ordinance in the respective cities and towns of the State. An obstruction, however, in the street or highway, as a matter of safety to the public, should have some light displayed at night.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

REPORT OF THE ATTORNEY GENERAL.

AUTOMOBILES—LICENSES OF.

RICHMOND, VA., June 1, 1920.

JAS. M. HAYES, JR., *Chief Clerk,*
Secretary of the Commonwealth,
City.

MY DEAR MR. HAYES :

Your letter of June 1 just received. In this you state that the post-office department have a number of parcel post carriers who own their own machines and have registered title of the same under the State law in their own name.

You further state that the United States government has no interest whatever in these machines, but that the owners are operating them without a State license.

I am clearly of the opinion that this is in violation of the law and such owners should be required to take out a State license for the operation of these machines.

You further state in your letter that it is claimed that an opinion has been rendered by this office that the operators of such machines were not required to obtain a State license. No such opinion has ever been rendered. I did give an opinion that where the machines were owned by the Federal government no State license tax was required, and that, no doubt, is the opinion referred to.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

AUTOMOBILES—LICENSES OF.

RICHMOND, VA., April 22, 1920.

HON. FRANK L. BALL,
Commonwealth's Attorney,
Clarendon, Va.

DEAR SIR:

Acknowledgment is made of your request that you be advised whether an express company is exempted by section 29½ of the tax bill from procuring licenses for the operation of its automobiles used by the company in this State. I am enclosing a copy of an opinion given Hon. R. O. James, Secretary of the Commonwealth, on yesterday by the Attorney General, in which opinion it is held that section 29½ of the Virginia tax bill does not exempt an express company from procuring automobile licenses required by chapter 90 of the Code of Virginia, 1919.

From an examination of the statutes relating to this question, it is perfectly clear that the last paragraph of section 29½ of the tax bill, which reads as follows:

"The amount of the taxes and licenses herein imposed shall be in lieu of all other taxes and licenses, State, county and municipal, upon all the property, franchises and privileges of said companies."

was not intended to relieve express companies from obtaining the license required for the privilege of operating automobiles in this State.

The only license tax imposed on an express company by section 29½ of the tax bill is "for the privilege of doing business in this State, in addition to the annual registration fee and the property tax," as provided for in the other sub-sections of this section, and the only purpose of the last paragraph of the act is to exempt express companies from other taxes on its property enumerated and taxed by this section of the act, and licenses upon its franchises and privilege of doing business as an express company in this State, and was not intended to exempt express companies from complying with the provisions of section 2125 of the Code, which requires a license as a privilege, not for the conduct of an express business, but for the operation of automobiles.

Yours very truly,

LEON M. BAZILE,
Second Assistant Attorney General.

AUTOMOBILES—LICENSES OF.

RICHMOND, VA., *April 19, 1920.*

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

DEAR SIR:

I am in receipt of your favor of April 16th, in which you ask whether or not the American Railway Express Company is exempt from licensing automobiles used in the express business throughout the State. You further state they claim exemption under the tax law.

I am of the opinion that this company is not exempt from paying the license tax for operation of their automobiles and that the exemption contained in section 29½ of the tax laws is not applicable so far as license on automobiles is concerned. The privilege for operating an automobile is an entirely separate and distinct matter from taxation on property, franchises and privileges incidental thereto.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

AUTOMOBILES—CHAUFFEUR'S LICENSE.

DR. H. G. CARTER,
Burkeville, Va.

RICHMOND, VA., *February 26, 1920.*

DEAR SIR:

Referring again to the question of a chauffeur's license for running the car used by the State at your sanatorium, you advise us that no license fee is paid on the car and the car belongs to the State, the chauffeur being paid out of State funds.

Under such circumstances, I am of the opinion that you are not required to secure for the chauffeur a license to run this car.

Yours truly,

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

AUTOMOBILE—DRIVERS OF MACHINES OWNED BY FEDERAL GOVERNMENT,
LICENSE OF.

RICHMOND, VA., *September 28, 1920.*

HON. B. O. JAMES,
Secretary of the Commonwealth,
Richmond, Va.

DEAR SIR:

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

"A question has arisen as to whether chauffeurs driving trucks used by the different postoffice departments should have a chauffeur's license. This license is in the nature of a personal one and I am inclined to the opinion that they should take out this license.

"Please give me your opinion."

The law is well settled that the Federal government has no right to impose any tax upon the property of the State or the means or instrumentalities by which the functions of the State are performed. The law is equally well settled that the States cannot impose a tax upon the property or the means or the instrumentalities of the Federal government. *McCulloch v. Maryland*, 4 Wheat. 316, 341.

Automobiles and trucks owned by the United States government and used by it in the performance of the functions of its government are not subject to the license tax imposed by this State on the operation of automobiles over its highways, because a tax imposed upon these machines would be a tax upon the means or instrumentalities of the Federal government.

The operation of these machines by the postoffice department in the performance of its functions as such, is a necessary use in the performance of a government function, and, therefore, I am of the opinion that a tax upon the chauffeur who operates the machine, which is used wholly in the performance of a government function, would be a tax upon the means or instrumentalities employed by the Federal government in the performance of the powers conferred upon it by the Federal Constitution, and, therefore, that the Virginia law cannot be construed so as to require a tax of chauffeurs engaged in driving machines owned by the Federal government.

Yours very truly,

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

AUTOMOBILES—OPERATION OF.

MR. F. P. CHAFFIN,

RICHMOND, VA., *September 10, 1920.**Justice of the Peace,**Wytheville, Va.*

DEAR SIR:

Acknowledgment is made of your letter of September 8, 1920, a copy of your letter of August 2, 1920, enclosed.

One of your questions is as follows:

"In the first part of section 2129 what does the language, 'Any person * * * who shall operate machines for pay' mean, that the person is working for pay or that the machine is operated for hire?"

It is provided by section 2129 of the Code of Virginia, 1919, so far as is applicable to the question here under consideration, as follows:

"Any person other than the owner of a machine which has been registered and licensed to be operated in this State, who shall operate machines for pay, before he shall operate a machine in this State shall first take out a chauffeur's license to operate machines in this State,
* * *

I am of the opinion that the phrase "for pay," used in this section, means anyone who is paid for operating a machine, and includes a person who operates a machine for hire as well as one who is otherwise paid to operate the same, except those persons who are excepted by the provisions of this section.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

AUTOMOBILES—SALE OF.

RICHMOND, VA., *March 13, 1920.*

HON. GILBERT E. PENCE,

*Commonwealth's Attorney,**Woodstock, Va.*

MY DEAR SIR:

I beg leave to acknowledge receipt of your letter of yesterday, in which you ask if, under chapter 57 of the Acts of Assembly, 1919, a bill of sale is required from the seller of an automobile when the seller is not a manufacturer's agent. You further ask if dealers and agents are not required to give these bills of sale under penalty prescribed.

Section 5 of the act referred to reads as follows:

"In all sales or purchases of a motor vehicle directly from the manufacturer or through an agent or agency of such manufacturer, there shall be issued to the purchaser, a manufacturer's bill of sale, which bill of sale shall contain the manufacturer's number on the engine or motor of the motor vehicle so sold."

Section 6 requires:

"In all other sales or purchases, the original bill of sale shall be assigned by the seller to the purchaser by an assignment witnessed by two persons or acknowledged by the seals before a notary public or such other person authorized by law to administer oaths."

If, however, the said motor vehicle was purchased from the manufacturer or his agent prior to the going into effect of this act, then instead of assigning the original bill of sale and attaching said assignment to said original bill, the seller shall execute a new bill of sale, etc. I think these two sections clearly answer your questions.

Section 12 provides that any person violating any provision of the act shall be guilty of a misdemeanor and likewise prescribes the punishment therefor.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

AUTOMOBILES—SALE OF.

RICHMOND, VA., *January 14, 1920.*

THE FORD MOTOR CO.,
Legal Department,
Detroit, Mich.

GENTLEMEN:

Acknowledgment is made of your letter of January 9, 1920, in which you request my opinion on the following statement of facts:

"Section 5 of the motor vehicle law of Virginia provides as follows:

"5. In all sales or purchase of a motor vehicle directly from the manufacturer or through an agent or agency of such manufacturer, there shall be issued to the purchaser a manufacturer's bill of sale, which bill of sale shall contain the manufacturer's number on the engine or motor of the vehicle sold."

"We are anxious to know if your department is of the opinion that this law applies to dealers who sell Ford cars in your State. The concerns that sell Ford cars in your State are not agencies of the Ford Motor Company. We simply sell the cars for cash to the dealers, and they in turn sell them to their customers. However, it may be that you have interpreted the law to mean that they are our agents, and as such we have to transfer the bill of sale specified above.

"Kindly let us hear from you at your earliest convenience."

The Secretary of the Commonwealth, under whose jurisdiction this matter primarily comes, has ruled that persons who sell Ford cars in Virginia as dealers, under the terms narrated in your letter, are agents of the Ford Motor Company within the meaning of section 5 of chapter 57 of the Acts of 1919, which section you have quoted in your letter. In this ruling I concur. Section 6 of this act provides as follows:

"In all other sales or purchases of motor vehicles the original bill of sale shall be assigned by the seller to the purchaser by an assign-

ment witnessed by two persons or acknowledged by the seller before a notary public or such other person authorized by law to administer oaths. All such assignments shall at all times be kept and attached to the original manufacturer's bill of sale; provided, however, that in the event the said motor vehicle was purchased from the manufacturer or his agent prior to the going into effect of this act, then, instead of assigning the original bill of sale and attaching such assignment to said original bill, the seller shall execute a new bill of sale, acknowledged before a notary public or such other person authorized by law to administer oaths."

When section 5 of the act is read in connection with section 6 thereof, it will be seen that for the purposes of the act persons who sell Ford cars in Virginia in the manner set out in your letter, are agents of the manufacturers within the meaning of section 5 of the law for the purpose of issuing to the purchaser a manufacturer's bill of sale.

It is a matter of common knowledge that automobiles are not billed by your factory to dealers in Virginia separately, but in lots, and it would be manifestly impossible under these circumstances to comply with the provisions of section 6 of the act unless each car was billed separately.

I, therefore, think it clear that it was the intent of the legislature that for the purpose of giving to the purchaser a manufacturer's bill of sale within the meaning of section 5 of the act, that dealers in Ford cars in Virginia are agents of the Ford Motor Company.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ACCOUNTANT—CERTIFIED PUBLIC.

A. R. HARRISON, ESQ.,
c/o Harrison Accounting Corp.,
Charlotte, N. C.

RICHMOND, VA., December 20, 1920.

DEAR SIR:

Acknowledgment is made of your letter of December 17th, in which you request me to advise you whether, in the event that your corporation should domesticate in this State, the president could sign certified balance sheets and letters in audit reports, with the following appellation: "C. P. A. (N. C.)."

It is provided by section 567 of the Code of Virginia, 1919, as follows:

"Any citizen of the United States (or person who has duly declared his intention of becoming such citizen), being over the age of twenty-one years and of good moral character, residing or having an office in the State of Virginia, who shall, as hereinafter provided, receive from the Virginia State Board of Accountancy a certificate of his qualifications to practice as an expert public accountant, shall be known and styled as a certified public accountant; but no other person, nor any corporation, nor any partnership, all the members of which have not received such certificate, shall assume such title, or the title of 'certified accountant' or 'chartered accountant,' or the abbreviations 'C. P. A.' or 'C. A.' or any other words, letters or abbreviations tending to indicate that the person, firm or corporation so using the same is a certified public accountant."

Section 569 of the Code of Virginia, 1919, reads as follows:

"The board may, in its discretion, waive the examination of any person possessing the qualifications stated in section 567 who (1) is the holder of a C. P. A. certificate issued under the laws of another State, provided the requirements for said degree in the said State are, in the opinion of the board, equivalent to the requirements in this State; or (2) is the holder of a degree of certified public accountant or chartered accountant, or the equivalent thereof, issued under the laws of any foreign government, provided the requirements for said degree are, in the opinion of the board, equivalent to the requirements of this State."

When section 567 of the Code is read in connection with section 569 thereof, I am of the opinion that you are not permitted under the law to use the initials C. P. A. or C. A., even though followed with the N. C. designation. I would suggest that you obtain a certificate from the State Board of Accountancy under the provisions of section 569 of the Code above-quoted.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

AGRICULTURE—COMMISSION MERCHANTS—JURISDICTION OF COMMISSIONER OF AGRICULTURE.

RICHMOND, VA., May 21, 1920.

HON. G. W. KOINER,
Commissioner of Agriculture and Immigration,
Richmond, Va.

DEAR SIR:

Referring to the conference had with you this morning, with reference to an investigation of the action of a commission merchant in this State, who received a consignment of farm products and sent the same to West Virginia and sold them without the consent of the consignor and has failed to pay the consignor therefor, I am of the opinion that it is a matter over which you should take jurisdiction under section 1257, *et seq.*, of the Code of Virginia, 1919.

Yours truly,

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

AGRICULTURE—COMMISSION MERCHANTS.

RICHMOND, VA., October 11, 1920.

MR. J. W. GARNETT,
Farmville, Va.

DEAR SIR:

Acknowledgment is made of your letter of October 8, 1920, in which you say:

"I am in receipt of letter from the Department of Agriculture signed by G. W. Koiner requesting that I give bond for \$2,500 and send check for \$5 to cover registration fee.

"We are of the opinion that we do not pay this fee or furnish bond where there is no commission charged, as we charge a flat rate of thirty cents for weighing and an auctioneer fee only, which figures about forty cents charge per hundred for selling.

"I am enclosing Mr. Koiner's letter and would be glad to have your opinion in this matter. I failed to state that we have not been required to furnish this bond up to now or pay any fee except to R. C. L. Moncure."

In his letter to you, Mr. Koiner calls your attention to sections 1257, 1258 and 1259 of the Code of Virginia, 1919, as amended, and says:

"The act of 1916 was amended at the 1920 session of the legislature and I am of the opinion that the definition of the term "commission merchant" as contained in section 1257 applies to all warehouses where leaf tobacco is sold, regardless of whether a commission is charged or not. The fact that the tobacco is accepted on consignment for the account of the shipper renders it necessary, in our opinion, for you to comply with the terms of this law."

It is provided by section 1257 of the Code of Virginia, 1919, as amended, so far as is applicable to the question here under consideration, as follows:

"The term 'commission merchant' as used in this chapter, shall include every person, firm, exchange, association or corporation accepting or receiving farm produce *on consignment*, or who sells or offers for sale such farm produce on commission within this State, except where such farm produce is sold for consumption and not for re-sale."

If you will examine the amended section in connection with the section before its amendment, you will see that the law has been changed so as to include within the term "commission merchant," as used in chapter 53 of the Code of Virginia, 1919, any person, real or corporate, who accepts or receives farm produce on consignment, except where the same is sold for consumption and not for re-sale.

I understand from your letter that the tobacco handled by you is accepted by you on consignment for the account of the shipper. I am, therefore, of the opinion that you are required to register, give the bond and pay the fee provided for by sections 1257, 1258 and 1259 of the Code of 1919, as amended.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

AGRICULTURE—FERTILIZERS AND LIME. .

RICHMOND, VA., *September 3, 1920.*

HON. G. W. KOINER,
*Commissioner of Agriculture,
Capitol Building,
Richmond, Va.*

DEAR SIR:

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

"There is now being sold in this State a mixture of agricultural lime and potash—the lime present therein sometimes being in the form of burnt lime and in some cases unburnt lime—and we are desirous of your opinion as to whether or not the sale of the said mixture in this State could be governed by a regulation issued by this department, and approved by the State Board of Agriculture.

"In connection with this matter, I wish to direct your attention to section 1125 of chapter 49 of the Code of Virginia, reading as follows:

"Definition of terms.—The term "Commercial fertilizer or fertilizer material," when used in this chapter, shall not be held to include lime, land plaster, ashes, common salt or unground tobacco stems when sold as such, unmixed with other fertilizer materials."

"From this, it is clearly noted that the sale of agricultural lime, unmixed with other fertilizer materials, is not subject to the provisions of the fertilizer law, but, in view of the fact that the product to which we have reference is mixed with potash—a fertilizer material—it appears to us that the sale of the said mixture does come within the scope of the provisions of the fertilizer law. The fertilizer law, however, does not provide for the registration of the lime constituent, and we deem it the part of wisdom to adopt some regulations, if legally possible, to govern the sale of this mixture to prevent fraud or deception, as well as protect purchasers against deficiency in the plant food elements present therein.

"As you will note from section 1119 of chapter 49 of the Code, the Commissioner of Agriculture and Immigration shall, with the approval of the Board of Agriculture and Immigration, adopt all needful rules and regulations which, in his judgment, shall be best for carrying out the provisions of the said chapter. In view of the fact, however, that there is no specific provision made for the registration of the lime constituent present in the said mixture, there is some doubt in my mind as to whether or not we could, by the adoption of a regulation in accordance with the authority vested in the Commissioner of Agriculture and Immigration, provide for and require the registration of the said lime constituent. Again, there is no provision made in the fertilizer law for the assessment of penalty for deficiency in the lime constituent, although we do feel that, in view of the provisions of section 1125 quoted above, it was contemplated that agricultural lime, when mixed with other fertilizer materials, should come under the full provisions of the fertilizer law. Section 1137 of chapter 49, having reference to assessment of penalties for deficiencies in agricultural lime, specifically provides a method whereby such penalties shall be assessed. Section 1120 of the same chapter specifically provides several methods for assessing penalties for deficiencies in fertilizer or fertilizer materials.

"We have given this matter our careful consideration and have drawn up a form of regulation to govern the registration, branding, tagging and shipment in or into this State of the mixture we have in mind, and copy of same is herewith enclosed. It will be noted that the provisions, as set forth therein, were taken in part from sections 1110 to 1125, inclusive, of the fertilizer law, and sections 1132 to 1137, inclusive, of the agricultural lime law.

"As advised in the foregoing, we deem it the part of wisdom to regulate, if legally possible, the sale of this mixture so as to extend to the purchasers and consumers in this State the full protection afforded by the fertilizer and lime laws."

While it is true that, as you say, the sale of agricultural lime unmixed with other fertilizer materials is not subject to the provisions of the fertilizer law, I am of the opinion that, under the provisions of 1110 of the Code of Virginia, 1919, the fertilizer law is applicable to agricultural lime which is mixed with other fertilizer materials. This section provides in part as follows:

"All manufacturers, dealers or agents who may desire to sell or offer for sale hereafter in this State, any fertilizer or fertilizer material, shall register with the Commissioner of Agriculture and Immigration of the State of Virginia, upon forms furnished by said commissioner," etc.

This section, in my opinion, especially when considered with the provisions of section 1125 of the Code of Virginia, 1919, subjects the product in question to the operation of the fertilizer law. Section 1125 provides as follows:

"The term 'commercial fertilizer or fertilizer material' when used in this chapter, shall not be held to include lime, land plaster, ashes, common salt or unground tobacco stems when sold as such, unmixed with other fertilizer materials."

The fact that this section specifies that the articles enumerated therein shall not be included under the term "commercial fertilizer or fertilizer material" when sold as such "unmixed with other fertilizer materials," evidences an intent on the part of the legislature to make the articles enumerated therein subject to the terms "commercial fertilizer or fertilizer material" when sold mixed with other fertilizer materials.

I have examined the regulation submitted with your letter, and am of the opinion that the same is within the scope of the authority conferred upon the Commissioner of Agriculture and Immigration with the approval of the Board of Agriculture and Immigration, within the meaning of section 1119 of the Code of Virginia, 1919.

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

ALIENS—OWNERSHIP OF PROPERTY BY.

RICHMOND, VA., May 7, 1920.

MR. W. J. GRAHAM,
Owen Sound, Ontario, Canada.

DEAR SIR:

I am in receipt of your letter in which you ask the question whether an alien can own real estate in Virginia. You further state you are a Canadian and a British subject, and are contemplating purchasing property in this State if your citizenship is not a bar.

In reply, I will state that section 66 of our statute law provides as follows:

"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 therefore see from the reading of this statute law that you have a perfect right to acquire property in Virginia.

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

ANATOMICAL BOARD, STATE—DISPOSITION OF BODIES OF PERSONS DYING IN
STATE INSTITUTIONS.

RICHMOND, VA., August 24, 1920.

COL. LEROY HODGES,

*Aide to the Governor,
City.*

MY DEAR COL. HODGES :

I beg leave to acknowledge receipt of your letter of August 23, in which you enclose a letter from Dr. A. S. Priddy, Superintendent of the Virginia State Colony for Epileptics and Feeble-minded, to the Governor of Virginia.

Dr. Priddy, in his letter to the Governor, states that demand has been made on his institution, under section 1731, by the State Anatomical Board, for the shipment of all bodies of patients dying in that institution, which are not removed or buried at the expense of their friends.

I have carefully read Dr. Priddy's letter, as well as yours, and am clearly of the opinion that section 1731 is not applicable to the institution of which Dr. Priddy is superintendent.

If you will examine this section you will see that it only applies to certain institutions located in a city. I am, therefore, of the opinion that Dr. Priddy is correct in refusing to grant the demand or request of the State Anatomical Board.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ATTORNEY GENERAL—CONTEST OF VALIDITY OF CONSTITUTIONAL AMENDMENT.

RICHMOND, VA., November 8, 1920.

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

MY DEAR GOVERNOR:

Acknowledgment is made of your letter of November 4th, in which you say:

"I am transmitting herewith, for your consideration, a letter addressed to J. Randolph Tucker, Esq., American Bar Association of Virginia, Richmond, Virginia, together with a copy of brief for appellant in the court of appeals of the District of Columbia, in the recent litigation involving the validity of the nineteenth amendment."

The letter to which you refer is written by Hon. Waldo G. Morse, who is counsel for those who are contesting the validity of the nineteenth amendment to the Federal Constitution, which case, I understand, is now pending in the Supreme Court of the United States. In this letter he says:

"Your State has not ratified the suffrage amendment proposed to the Constitution of the United States and has taken no legislative action (so far as I know) of a character to prejudice it in presenting before the

Supreme Court of the United States all questions concerning the validity of that proposed amendment.

"It is my hope that the State of Virginia may be induced to consider the contentions of the brief in the Fairchild case into which the writer was called only one day prior to the printing and filing in court of the brief mentioned and barely in time to formulate a skeleton of an argument upon the proposition presented under Point Sixth."

While it is true that the legislature of this State refused to ratify the nineteenth amendment, it has neither authorized nor directed me to institute or take part in any proceedings to contest the validity of this amendment, the ratification of which was expected during the last session of the General Assembly or shortly after its adjournment. On the contrary, in anticipation of the adoption of this amendment, the legislature of Virginia passed chapter 400 of the Acts of 1920, which was approved by you on March 20, 1920, the title of which is as follows:

"An act extending the right of suffrage to women; assessing a State capitation tax on certain women residents of Virginia; and prescribing the qualifications of women entitled to vote for members of the General Assembly and all officers elective by the people, and the manner in which women may register and vote; also providing when this act shall take effect."

While this act was limited so as to take effect only in the event of the ratification of this amendment, in view of this act and of the lack of any action on the part of the legislature authorizing or directing me to contest or to participate in the contest of the validity of this amendment, I do not feel that it would be right or proper for me to intervene in this matter, as is requested by Mr. Morse.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

AUCTIONEERS—POWER OF.

RICHMOND, VA., *October 5, 1920.*

HON. A. PLUMMER PANNILL,

*Commissioner of the Revenue,
Norfolk, Va.*

DEAR SIR:

Acknowledgment is made of your letter of October 2d, in which you enclose a copy of a letter from the Retail Merchants' Association of Virginia to you, in which certain questions are submitted, which you have requested me to answer. The letter of the Retail Merchants' Association of Norfolk, Virginia, is as follows:

"We would like to ascertain if the city and State license ordinance permits:

"A licensed auctioneer to employ criers.

"To hold several sales at separate places at one and the same time.

"To hold sales at other than his licensed place of business, except for people declining business.

"Can the license be revoked if he employs by-bidders, misrepresents the quality and character of merchandise or the previous ownership of same or resorts to other fraudulent and deceptive practices to induce buying."

I am not familiar with the license ordinance of the city of Norfolk and, therefore, can express no opinion thereon. The answer to the first two questions you ask is contained in section 60 of the Virginia tax bill, which reads as follows:

"An auctioneer may conclude the sales of anything he is authorized to sell, grant a certificate or other evidence of the sale, and receive the money; but no auctioneer shall authorize or permit any person to sell any property under and by virtue of his license, except the person so authorized or permitted is actually and bona fide in the employment of such auctioneer, and is actually and bona fide a resident of the county or city where such auctioneer is licensed to do business, and the commissions on such sale are actually and bona fide for the benefit of such auctioneer; and no license shall be construed to authorize the person to whom it is issued to sell at more than one regular establishment; but an auctioneer may sell anywhere in the county or city wherein he is licensed, public stocks, bonuses, lots and furniture on ships or vessels, on the premises where the same may be or at the exchange or the store of a regular licensed merchant declining business, or goods in the original form and packages as imported, and bulky articles such as have been usually sold in warehouses, or in the public streets, or on the wharves, or at such other places in the county or city wherein such auctioneer is licensed, as shall be desired by the owner or importer of such bulky articles or imported goods. If any auctioneer shall violate any of the provisions of this section, he shall forfeit and pay for every offense twenty dollars, to be recovered for the use of the party prosecuting the same before a justice of the peace, in like manner as other fines and penalties are imposed and collected. The offer to sell each article shall be deemed a separate offense."

I desire also to call your attention to sections 58 and 59, 61, 62 and 63 of the Virginia tax bill, copies of which you will find in the tax laws for 1920, furnished you by the Auditor of Public Accounts. I find no provision in the statute providing for the revocation of the license of an auctioneer.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

CHECKS—FRAUDULENT.

RICHMOND, VA., September 28, 1920.

DR. H. G. CARTER, *Superintendent,*
Piedmont Sanatorium,
Burkeville, Va.

DEAR SIR:

Acknowledgment is made of your letter of September 17th, in which you say:

"I am writing to you for your opinion in regard to a small matter. We were given a check for \$30 by the husband of a patient at Piedmont Sanatorium in payment for board. This check was returned to us with a charge of \$1.44. Please advise me if it is advisable and the best procedure necessary to obtain this money or to prosecute same."

It is provided by chapter 373 of the Acts of 1920, p. 561, so far as is applicable to the question here under consideration, as follows:

"It shall be unlawful for any person to obtain money, or other property of any kind or nature whatever, with fraudulent intent, or to obtain credit with like intent, by means of a check, draft or order, of which such person is maker or drawer, or which though he is not maker or drawer, he with like intent, utters, or delivers, or aids or abets another to utter or deliver. If such check, draft or order is not paid by the drawee, the person making, drawing or uttering the same shall be deemed guilty of the larceny of such money or property, or thing of value obtained on such credit, and the fact that such maker or drawer did not have on deposit with the bank, person, firm or corporation upon which such check, draft or order is drawn, sufficient funds to pay the same in full when presented, shall as against the maker or drawer of such check, draft or order, be prima facie evidence of fraudulent intent; provided, that if such check, draft or order be paid upon notice or at any time previous to the trial or examination of such person before a justice of the peace, or if such person be not tried or examined, if such check, draft or order be paid before indictment by a grand jury, no such presumption shall arise."

If the facts in your case (which you have not stated in your letter) are such as to come within the meaning of the above-quoted act, I would suggest that you place the matter before the Commonwealth's attorney of your county with the request that he take the necessary steps in the matter.

If the facts in the case, however, are such that you could not take advantage of the provisions of chapter 373 of the Acts of 1920, the only remedy would be to attempt to recover the amount of the check by civil proceedings.

I have examined section 4464 of the Code of Virginia, 1919, but I am of the opinion that this section would not apply to your Sanatorium, as your Sanatorium is neither a hotel or a boarding-house.

With reference to the receipt sent me which was given me by Mr. Epps for the examination of the title to the property on which the Sanatorium is built, I have the same in my files and will return it to you as soon as I have finished with it. At the same time, I expect to have to sue Mr. Epps, as he declines to answer the letters written him from this office. I therefore wish you would make an effort to find out where the abstract is that was made by Mr. Epps. Perhaps Dr. Williams or your predecessor could give you this information.

Yours very truly,

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

CHILD LABOR—MEANING OF "WHEN THE PUBLIC SCHOOLS ARE NOT
ACTUALLY IN SESSION."

RICHMOND, VA., *October 12, 1920.*

HON. JOHN HIRSCHBERG,
Commissioner of Labor,
City.

DEAR SIR:

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

"The 1920 session of the General Assembly passed two acts amendatory of the child labor law of this State, viz: Chapters 390 and 507. The latter of these acts contains this provision: 'Provided this act shall not apply to children between the ages of twelve and sixteen, working in vegetable and fruit factories eight hours in any one day when the public schools are not actually in session, nor to children of such ages employed in running errands or delivering parcels.' Kindly advise me your opinion regarding the following:

"1. Are the words 'when the public schools are not actually in session' restricted to the school vacation period only, or do they also include all time during the regular school year, when schools are not actually in session? That is to say, would it be permissible for children within the ages mentioned to work on a regular school day, but not within school hours or on a school holiday?

"2. Does the provision regarding school vacation also govern children employed in running errands and delivering parcels, or are they permitted to do such work at any time regardless of whether the schools are in session or not?"

In reply to your first question, I am of the opinion that the words used in the statute referred to, "when the public schools are not actually in session," are not restricted to the school vacation period only, but that they also include all time during the regular school year when the schools are not actually in session.

In response to your second question, I am of the opinion that the words, "when the public schools are not actually in session," apply also to children employed in running errands and delivering parcels, and that such children are not permitted to be employed in running errands or delivering parcels during the school hours when the schools are actually in session.

Yours truly,

JNO. R. SAUNDERS,
Attorney General.

CITIES AND TOWNS—FINES TO SUPPRESS NUISANCES.

RICHMOND, VA., *March 9, 1920.*

HON. G. W. ALLMAN, *President,*
Board of Trustees,
Gordonsville, Va.

MY DEAR SIR:

Acknowledgment is made of your letter of March 6, in which you enclose a copy of the charter of Gordonsville and a copy of an ordinance of your

town regulating toilets and the disposition of sewerage. You request my opinion as to whether or not your town has the authority to pass an ordinance relating to this subject.

It is provided by section 3030 of the Code of Virginia, 1919, among other things, that every city and town shall have the authority "to prevent injury or annoyance from anything dangerous, offensive or unhealthy, and cause any nuisance to be abated."

Under this provision of the Code, I am of the opinion that a town has the authority to provide by ordinance for the prevention of dangerous, offensive or unhealthy conditions resulting from the unsanitary disposition of the matters covered by your ordinance, and having this power it has likewise the authority to enforce such ordinance by the imposition of reasonable penalties for violation thereof.

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

CITIES AND TOWNS—STREETS OF.

RICHMOND, VA., *May 15, 1920.*

MR. R. G. POOLE, *Cashier,*
Bank of Virgilina,
Virgilina, Virginia.

DEAR SIR:

Acknowledgment is made of your letter, requesting my advice as to whether or not you can put obstructions in the streets of your town for the purpose of preventing speeding.

I doubt the right or propriety of placing mounds in your streets for this purpose, especially when the law provides the punishment of those persons who exceed the speed limit.

I know of no law, however, which prevents the town council from making such mounds across the streets as will prevent washing and will carry off drainage.

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

CLERKS OF COURT—WEST FEE BILL.

RICHMOND, VA., *April 10, 1920.*

HON. C. LEE MOORE,
Auditor of Public Accounts,
Richmond, Virginia.

DEAR SIR:

Acknowledgment is made of your letter, asking the proper application of what is known as the West fee bill to the compensation of the clerks of the corporation and circuit courts of the city of Hopewell.

What is known as the West fee bill was enacted by the legislature in 1914, was approved March 27, 1914, and became effective January 1, 1916. This act fixed the maximum compensation of certain officers,—among them court clerks—until action be had upon the report of the commission created by the act to fix the maximum amount of the compensation of such officers.

Cities and counties were classified according to the population of each, which population was, by the express terms of the act, fixed by the Federal census of 1910. Under an act of the legislature approved February 26, 1916, Acts of Assembly, 1916, chapter 65, Hopewell became a city on the 1st day of July 1916. The City of Hopewell was not in existence, and, incident thereto, there was no court clerk when the act known as the West fee bill became effective, January 1, 1916; and, of course, it had no population in 1910.

No one dreamed, at the time the subdivisions of the State were classified for the purpose of tentatively fixing the compensation of the local officers of the State until their compensation should be made permanent, that, over night, a city would spring up as Hopewell did, and no provision was made in the West fee bill to take care of such conditions. Nor has the legislature, since that time, amended the act so as to include the city of Hopewell within its provisions, but, on the other hand, by an amendment in 1916 and again in 1918, excepted the county of Prince George, in which the city of Hopewell is located, from the provisions of the act for a certain definite period.

In the case of *Martin's Executors v. Commonwealth*, 19 Va. App., 536, the constitutionality of the West fee bill was before the Supreme Court, the attack upon the constitutionality being based upon the fact that the classification of cities and towns was fixed by the 1910 census and no provision was made for future changes dependent upon the uncertain variation of existing conditions. But the court, in sustaining the constitutionality of the bill, recognized that all the counties and cities then in the State had been classified according to their populations in 1910, and said "the legislature may leave future changes of condition to be met by future legislation upon the reasonable assumption that its successors will be equally just and fair." The court said that this was probably what the legislature had in mind "in providing that '*for the purposes of this act*' as an initial step to what it regarded as a needed reform, the census of 1910 should control."

I am of the opinion, therefore, that the West fee bill, as enacted in 1914, does not apply to the city of Hopewell for the year 1918, but only to such cities and counties as were contained in the Federal census of 1910.

Another Federal census is being taken, and, of course, will include the population of the city of Hopewell. We understand that the act in question has been so amended as to classify cities and counties by the population shown by this census. For the future, therefore, Hopewell will legally come under the provisions of the West fee bill as shown by the 1920 census.

Yours very truly,

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

CLERKS OF COURT—QUALIFICATION OF PERSONAL REPRESENTATIVES.

RICHMOND, VA., *May 12, 1920.*

J. W. BROWNING, Esq., *Clerk,*
Orange, Va.

DEAR MR. BROWNING:

I am in receipt of your letter of May 11, in which you ask whether the act approved March 16, 1918 (chapter 293, Acts of 1918), is applicable to clerks as well as to courts.

I fully agree with you that it is only within the discretion of the courts and not the clerks, to permit personal representatives, where the amount coming into their hands does not exceed \$100.00, to qualify as such by giving bond without surety.

Inasmuch as the clerks have authority to qualify personal representatives, I do not see why the legislature did not give them the same discretion. However, the act seems to be explicit, and only mentions courts.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

CLERKS OF COURTS—WEST FEE BILL

RICHMOND, VA., *May 8, 1920.*

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

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:

"Mr. E. Thompson, of Portsmouth, Virginia, was elected and qualified as clerk of the hustings court of that city, and while no clerk was elected for the circuit court, under section 98 of the Code of 1904, he has served as defacto clerk of that court, and he contends that, under the West fee bill, settlement had with him should relate to each court and not to the two courts taken together, consequently should be credited with \$5,500.00 annual allowance for each court instead of \$5,500.00 for the two courts.

"Replying to this contention I wrote him I did not think under the West fee bill he could be considered as a separate official with respect to these courts, and if they are separate offices I doubt if he could hold them without some statute expressly so permitting because he would be holding two State offices. I hand you herewith correspondence between Mr. Thompson and myself about this matter. Please let me have your opinion on the contention made by Mr. Thompson."

Under the provisions of section 129 of the Code of 1919, which is practically the same as section 98 of the Code of 1903, I am of the opinion that the office of clerk of the hustings court of the city of Portsmouth and the office of clerk of the circuit court of the city of Portsmouth, are two separate and distinct offices, the city of Portsmouth having a population of thirty thousand or more.

In view of this, the clerk of these courts cannot be required to settle his accounts for these offices jointly under the provisions of chapter 352 of the Acts of 1914, as amended, although, as happens in this case, the same man holds both offices, as the offices are separate and distinct, and he does not hold one by virtue of holding the other.

I am therefore of the opinion that Mr. Thompson is correct in his contention that settlements with him under the provisions of chapter 352 of the Acts of 1914, as amended, should relate to each court and not to the two courts taken together.

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

CODE OF 1919—PRIORITY OF ACTS OF 1918.

RICHMOND, VA., *October 1, 1920.*

HON. F. NASH BILISOLY,
Commissioner of Fisheries,
Portsmouth, Va.

DEAR SIR:

Acknowledgment is made of your letter of September 28, in which you enclose a letter from E. Hugh Smith, Esq., attorney at law, Heathsville, Virginia, in which the contention is made that an act of 1918 which is in conflict with a section of the Code of 1919, repeals the Code section.

It is provided by section 6568 of the Code as follows:

"The enactment of this code shall not affect any act passed by the General Assembly, which shall have become a law after the 9th day of January, 1918, and before the 13th day of January, 1920; but every such act shall have full effect, and so far as the same varies from or conflicts with any provision contained in this Code, it shall have effect as a subsequent act and as repealing any part of this Code inconsistent therewith."

Chapter 268½ of the Acts of 1918, having been approved March 16, 1918, became a law after the 9th day of January, 1918, and before the 13th day of January, 1920, and so far as the same varies or conflicts with any provision contained in the Code of 1919, it has effect as a subsequent act and has repealed any part of the Code inconsistent therewith.

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

COLD STORAGE LAW.

• RICHMOND, VA., *December 3, 1920.*

HON. A. B. THORNHILL, *Commissioner,*
Dairy and Food Division,
Richmond, Va.

DEAR SIR:

Acknowledgment is made of your communication of recent date, in which

you request me to advise you whether the F. E. Patrick-Young Co., pork packers, Richmond, Virginia, are subject to the provisions of chapter 55 of the Acts of 1919, commonly known as the Virginia cold storage law.

The F. E. Patrick-Young Co., in a communication to you dated June 30, 1920, stated their side of the case as follows:

"Replying to yours of the 29th, enclosing application for license, we would refer you to the cold storage law, approved September 9, 1919, clause No. 12. We come under this clause.

"We maintain refrigeration as wholesale dealers, but we buy the refrigeration, and it is piped over to our plant from W. S. Forbes & Co. In other words, we do not manufacture it.

"We maintain it simply to keep our meats and cheese in good shape for our customers.

"This is our understanding of the law, which exempts us, we think, from license."

In a report furnished me by you, M. S. Angle, an inspector of your department, states that he was informed by the general manager of the plant that they do keep over thirty days chickens, eggs, frozen eggs, creamery butter, American cheese, edible fats and lard.

It is provided by the first paragraph of section 1 of chapter 55 of the Acts of 1919 as follows:

"For the purpose of this act, 'cold storage' shall mean the storage or keeping of articles of food at or below a temperature of forty-five degrees above zero, Fahrenheit, in a cold-storage warehouse; 'cold-storage warehouse' shall mean any place artificially or mechanically cooled to or below a temperature of forty-five degrees above zero, Fahrenheit, in which articles of food are placed or held for thirty days or more; 'articles of food' shall mean fresh meat and fresh-meat products, except in process of manufacture, and all fresh fish, game, poultry, eggs, milk, butter, cheese and edible fats and oils and lard."

I am of the opinion that, in view of the facts furnished me by your department, the F. E. Patrick-Young Company is subject to the provisions of chapter 55 of the Acts of 1919, and falls within the meaning of section 1 of that act above quoted.

Section 12 of the act reads as follows:

"The provisions of this act shall not apply to ice boxes or refrigerators maintained by wholesale or retail dealers."

In my opinion, this does not apply to cases similar to that under consideration. It was intended to apply to dealers who keep their provisions in ice boxes or refrigerators for only a few days, and not to dealers who make a practice of keeping the above enumerated articles of food in cold storage for a period of 30 days or more.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

CONSTITUTIONAL LAW—AGRICULTURAL FAIRS.

RICHMOND, VA., *March 5, 1920.*

W. C. SAUNDERS, Esq., *Secretary,*
Virginia State Fair Association,
City.

MY DEAR SIR:

In response to your request as to whether or not House bill No. 457 is constitutional, which bill, so far as is applicable to the question, is as follows:

"Be it enacted by the General Assembly of Virginia, That it shall be unlawful for any individual, partnership, association or corporation conducting an agricultural fair in this State to operate the same for more than six days in any one month."

I beg leave to submit the following: I am of the opinion that said bill is in conflict with the provisions of section 1 of the Constitution of Virginia, which said section is in the following language:

"That all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety."

This section has been fully construed in *Young's Case*, 101 Va. 853, by the Supreme Court of Virginia. In this case the court held that the only authority which the State has to prohibit, regulate or control the private business of a citizen, grows out of its "police power" and a statute regulating such private business in any manner, which in no wise pertains to public health, safety or morals, is not a valid exercise of the police power.

As this bill has nothing to do with public health, safety or morals, it is not a valid exercise of the police power of the State and is, therefore, plainly in contravention of section 1 of the Constitution of Virginia. I am of the opinion that this decision is as much applicable to an agricultural association composed of a number of citizens as it is to any one citizen.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

CONSTITUTIONAL LAW—AMENDMENT OF CONSTITUTION.

RICHMOND, VA., *June 23, 1920.*

HON. WM. F. COCKE,
Assistant State Highway Commissioner,
Richmond, Va.

DEAR SIR:

Acknowledgment is made of your letter of June 21, 1920, in which you request me to advise you whether the joint resolution of the General Assembly,

providing for a vote on the proposed amendment to section 184 of the Constitution must, of necessity, be voted on at the November election, 1920.

Section 196 of the Constitution provides that when a proposed amendment to the Constitution has been acted on the required number of times by the General Assembly, "then it shall be the duty of the General Assembly to submit such proposed amendment or amendments to the people in such manner and at such times as it shall prescribe."

The General Assembly, by chapter 310 of the Acts of 1920, in providing for the submission to the people for approval and ratification certain proposed amendments to the Virginia Constitution, among which amendments is included the proposed amendment to section 184 of the Constitution, has provided that this amendment shall be voted on at the election directed by law to be held on the Tuesday after the first Monday in November, 1920.

The legislature having provided the time at which such amendment must be voted on, it must necessarily be voted on at that time.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

CONSTITUTIONAL LAW—AMENDMENT OF CONSTITUTION.

RICHMOND, VA., August 31, 1920.

HON. GEORGE P. COLEMAN,
State Highway Commissioner,
Richmond, Va.

DEAR SIR:

Acknowledgment is made of your letter of August 28th, in which you enclose a letter from V. D. L. Robinson to you, submitting the following question, which question you request me to answer:

"Kindly advise me whether the law of Virginia will make it necessary for us to secure a majority of the votes cast in the November election, or will it be possible to carry the constitutional amendment on a majority voting on the amendment."

The answer to this question is given by section 196 of the Constitution of Virginia, which reads as follows:

"Any amendment or amendments to the Constitution may be proposed in the Senate or House of Delegates, and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals, with the ayes and noes taken thereon, and referred to the General Assembly at its first regular session held after the next general election of members of the House of Delegates, and shall be published for three months previous to the time of such election. If, at such regular session the proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the General Assembly to submit such proposed amendment or amendments to the people, in such manner and at such time as it shall prescribe; and if the people shall approve and ratify such amendment or amendments by a majority of the electors, qualified to

vote for members of the General Assembly, voting thereon, such amendment or amendments shall become part of the Constitution."

From the foregoing constitutional provision, you will see that it is necessary that the proposed amendment be approved by a majority of the electors qualified to vote who vote thereon.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

CONSTITUTIONAL LAW—CONFLICTING CONSTITUTIONAL AMENDMENTS.

RICHMOND, VA., *February 3, 1920.*

HON. LOUIS S. EPES,
Blackstone, Va.

DEAR SIR:

Acknowledgment is made of your letter of January 30th, in which you ask the following question:

"At the direction of the sub-committee appointed by the Senate committee on public institutions and education, I herewith submit to you Senate Joint Resolutions Nos. 1 and 5, and in the light thereof request that you furnish to this sub-committee an opinion on the following point:

"If Senate Joint Resolution No. 5 be adopted, and then Senate Joint Resolution No. 1 amended so as to strike out pages 6, 7 and 8 thereof. Can the county unit as provided for in the amendment to section 133 of the Constitution (p. 5, Joint Resolution No. 1) be made effective, or will the reference to 'school district' in resolution No. 5 still preserve the school district as the unit?"

Section 133 of the Constitution reads as follows:

"The control of the school system in each county, in each city and in each town, if the same be a separate school division, shall be exercised by a school board with a superintendent of schools as its executive or administrative officer, the number of members of said board, their terms of office, and the manner of selecting the said members and superintendent to be fixed by law. The duties and powers of the board shall also be fixed by law. Men and women may serve as members of such local school boards."

The proposed amendment to section 136 of the Constitution reads as follows:

"Each county, city, town, if the same be a separate school district, and school district is authorized to raise additional sums by a tax on property, not to exceed in the aggregate in any one year a rate of levy to be fixed by law, to be apportioned and expended by the local school authorities of said counties, cities, towns and districts in establishing and maintaining such schools as in their judgment the public welfare may require; provided that such primary schools as may be established in any school year, shall be maintained at least four months of that school year before any part of the fund assessed and collected may be devoted to the establishment of schools of higher grade. The boards of supervisors of the several counties, and the councils of the several cities,

and towns if the same be separate school districts, shall provide for the levy and collection of such local school taxes."

From a comparison of these proposed amendments it will be seen that they are in conflict and the adoption of both amendments would undoubtedly work confusion and mischief. I would suggest that your committee determine which amendment it prefers and that the other be abandoned, since the adoption of both amendments would unquestionably result in confusion and litigation.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

CONSTITUTIONAL LAW—JUDGES.

RICHMOND, VA., April 3, 1920.

HON. HENRY W. HOLT,

Judge of the Eighteenth Judicial Circuit.

Staunton, Va.

MY DEAR JUDGE HOLT:

Acknowledgment is made of your letter, calling attention to the amendment to section 5889 of the Code, passed by the General Assembly of 1920, the same being made an emergency act, going into effect March 8, 1920.

You request my opinion upon two questions:

First, as to the constitutionality of the amendment.

Second, as to its effect upon your position as judge of the Eighteenth judicial circuit if you comply with the act so far as the city of Buena Vista is concerned.

I understand that Buena Vista is a city of the second class, and that the term of office of the judge of the city court of that city expired February 1, 1920. I further understand that the legislature did not elect a successor to the judge of that court prior to February 1, 1920, nor has it elected any successor at all.

The amendment to section 5889 reads as follows:

"and whenever the term of office for which a judge was elected or appointed shall expire while the General Assembly is in session, and the General Assembly shall fail or neglect to choose his successor and shall adjourn without having chosen his successor in the manner prescribed by law, a vacancy in the office of such judge shall be thereby created and shall be deemed to occur and exist immediately following the adjournment of such session of the General Assembly, provided, however, that if such vacancy shall be created or shall occur or exist from whatever cause in the office of judge of a city court of a city of the second class during the recess or following the adjournment of any session of the General Assembly, such vacancy shall not be filled *pro tempore* by the Governor, but the judge of the circuit court of the county within which such city is situated, upon taking and subscribing the oath required and prescribed by law to be taken and subscribed by a person elected or appointed judge of such city court shall act as and become and be in all respects the judge of such city court *ad interim* as, and he shall become, be and continue the successor in that office of the judge of such city court

whose term of service and office has so expired or has otherwise ceased to be, such judge, until a judge thereof shall be chosen by the joint vote of both houses of the General Assembly and shall have qualified, and while he is so acting as such judge *ad interim* he shall receive and be paid wholly from the treasury of such city as compensation for his services in that behalf and for the additional duties hereby imposed upon him, in addition to the compensation which he is entitled to receive as judge of his judicial circuit, the sum of \$10 per day and his actual hotel and travelling expenses while proceeding to, holding and returning to his home from said city court."

Section 99 of the Constitution of Virginia provides:

"For each city court of record a judge shall be chosen by the joint vote of the two houses of the General Assembly. * * *"

Section 33 of the Constitution of Virginia provides that all officers elected or appointed under the Constitution shall continue to discharge the duties of their offices, after their terms of service have expired, until their successors have qualified.

It is manifest, therefore, that, until by a joint vote of the two houses of the General Assembly, a successor is elected for the office of judge of the city court of Buena Vista and he qualifies, the judge whose term of office expired on February 1, 1920, must continue to discharge the duties of that office. The provision of section 33 of the Constitution above referred to is mandatory. By section 99 of the Constitution his successor must be chosen by a joint vote of the two houses of the General Assembly, and under section 33 of the Constitution the term of office of such successor begins on the 1st day of February next succeeding his election.

I am of the opinion, therefore, that the legislature had not the power to declare that, by its failure to choose a successor to the judge of the city court of Buena Vista when his term expired, a vacancy was created, and should be deemed to occur and exist, and that the judge of the circuit in which Buena Vista is located should become the judge of the city court of Buena Vista. This is in direct contravention with the express provision of the Constitution that a judge of this court whose term has expired shall continue to discharge the duties of that office until his successor—who must be elected by a joint vote of the two houses of the legislature—has been elected and has qualified.

The legislature cannot violate the express mandate of section 33 of the Constitution that the judge whose term has expired shall continue to discharge the duties of the office, by providing that their failure to elect a successor creates a vacancy. The effect of such provision by the legislature is an attempt to repeal the constitutional provision on the subject. Moreover, the amendment to the section in question provides that the judge of the Eighteenth judicial circuit shall act as and become in all respects the judge of the city court of Buena Vista. The judge of that court, even if it be granted that the legislature had a right to declare that a vacancy has occurred, cannot be chosen as provided in section 5389, because the Constitution expressly provides that he must be elected by a joint vote of the two houses of the General Assembly.

That portion of section 56 of the Constitution which provides that:

"* * * the General Assembly may declare the cases in which any office shall be deemed vacant where no provision is made in this Constitution."

does not affect the conclusions above set out, because there is a provision in the Constitution for the filling of the office of the judge of the circuit court of a city of the second class, where the legislature does not elect a successor to the judge whose term has expired, namely, that such office shall be filled by the judge whose term has expired.

I am of the opinion, therefore, that the amendment in question violates the Constitution of the State, and that, under the express terms of that Constitution, the judge of the city court of Buena Vista, Virginia, whose term expired on February 1, 1920, must continue to discharge the duties of that office until his successor is elected by the joint vote of the two houses of the General Assembly, and duly qualifies.

It is not necessary, therefore, to answer your second question.

Very truly yours,

JNO. R. SAUNDERS,

Attorney General.

CONSTITUTIONAL LAW—LEGISLATION PASSED IN ANTICIPATION OF CONSTITUTIONAL AMENDMENT.

RICHMOND, VA., *January 27, 1920.*

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

MY DEAR MR. HART:

Acknowledgment is made of your letter of recent date, in which you request my opinion on the following question:

"Resolutions favoring two amendments to the Constitution were passed in 1918, one eliminating the five mills from the aggregate of local taxes (see page 790, Acts 1918), another providing that the General Assembly shall have power to pass an adequate compulsory law (see page 783, Acts 1918). These resolutions will be offered at this assembly, and I think will be passed without objection. Ordinarily, we would have to wait until the session of 1922 in order to have appropriate laws enacted under these amendments.

"Please advise me if laws cannot be passed at this session of the assembly so worded as to take effect in the event and when the amendments to the Constitution are favorably acted upon by the people. It seems to me that we ought to be able to have a compulsory school law now passed, and also to enact a law for local taxes to become effective after the election in November, 1920, when the amendments become operative."

After an exhaustive examination of the authorities, it appears that there have been three cases in which the question propounded by you has been passed upon by the courts.

The first case in which the question was raised is *Pratt v. Allen*, 13 Conn. 119 (1893).

The next case in which the question was raised is *G. B. & C. N. G. Ry. Co. v. Gross*, 47 Tex. 428 (1877), in which a similar conclusion was reached, without reference to *Pratt v. Allen*, *supra*, which, until then, appears to have been the only case in which the question was considered.

The last case in which the question was considered was *Coquenhan v. Avoca Drainage District, et al.*, 130 La. 323, 326-7; 57 Sou. 989 (1912), in which the rule adopted by the Connecticut and Texas courts was adopted after an examination of the Connecticut and Texas cases.

These cases hold that where an act is not intended to and does not oppose at the time it takes effect, any existing article of the Constitution, but is intended to meet and accord with its proposed substitute, that the same is constitutional, unless the amendment restrains the legislative power in this respect.

In *G. B. & C. N. G. Ry. Co. v. Gross*, *supra*, the court, in discussing a similar question to that raised in your letter, said (p. 434) :

"In support of the second proposition, it is urged that the constitutionality of the law must be tested by the Constitution as it was on the very day that the law was adopted; and that, if unconstitutional, then it was absolutely void, and so remained, notwithstanding the amendment of the next day. The statute, it is said, is void, because it contemplated a grant forbidden by the Constitution, and attempts to provide the means of completing such an illegal grant."

The court then examined the history of the constitutional amendment and determined that it was "evident that the act objected to was passed in anticipation of its adoption," and in view thereof, said :

"We know of no rule forbidding legislation looking to the contingency of a constitutional change, at least when the consummation of that change rests with the legislature alone. (Cooley's Const. Lim., 114-117, and references; Brig Aurora v. U. S., 7 Cranch, 382; Bull v. Read, 13 Gratt. 78; State v. Parker, 26 Vt. 357; Peck v. Weddell, 17 Ohio, N. S., 271; State v. Kirkley, 29 Md. 85.)"

In *Coquenhan v. Avoca Drainage District, et al.*, *supra*, the court in discussing this question, said (p. 326) :

"The next contention is that sections 9, 23 and 27 of said act No. 317 of 1910 are unconstitutional because inconsistent with article 281 of the Constitution as said article stood before the amendment proposed by act No. 197 of 1910 and adopted at the congressional election of that year."

After setting out the provisions of the statute and referring to the constitutional provision, the court said (p. 327) :

*"The only question would have to be, therefore, whether such anticipatory legislation was valid. No reason is suggested why it should not be, and that legislation may be validly enacted with a view to a future amendment of the Constitution, upon which it is to depend for its constitutionality, has been held by the supreme courts of Texas and Connecticut. Galveston, B. & C. N. G. Ry. Co. v. Gross, 47 Tex. 428; Pratt v. Allen, 13 Conn. 119. "The tax in question is expressly authorized by the amendment which was proposed to said article 281 by act No. 197 of 1910 and adopted at the congressional election of the year. * * *"*

See also *Bull, et als. v. Read, et als.*, 13 Gratt. 54 Va. 78, 89, 90, 91 (1855), in which it was held that the legislature may provide that an act shall not take effect until some future day named, or until the happening of some particular event, or in some contingency thereafter to arise, or upon the performance of some specified condition, and where it was said (pp. 90-1):

"Now if the legislature may make the operation of its act depend on some contingency thereafter to happen, or may prescribe conditions, it must be for them to judge in what contingency or upon what condition the act shall take effect. * * *"

I am, therefore, of the opinion that the legislature has the authority to enact appropriate legislation for the purpose of carrying into effect the proposed amendments to the Constitution in anticipation of their ratification in the manner prescribed by law, and conditioned to take effect only in the event that the proposed amendments become a part of the Constitution.

Yours very truly,

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

CONSTITUTIONAL LAW—LEGISLATION PASSED IN ANTICIPATION OF CONSTITUTIONAL AMENDMENT—EFFECT OF AMENDMENT TO FEDERAL CONSTITUTION.

RICHMOND, VA., *February 26, 1920.*

SENATOR ROBT. L. LEEDY,
Senate Chamber,
Richmond, Va.

MY DEAR SENATOR:

Acknowledgment is made of your request for an opinion as to the constitutionality of Senate bill No. 325, entitled, "A bill extending the right of suffrage to women; assessing a State capitation tax on certain women residents of Virginia; and prescribing the qualifications of women entitled to vote for members of the General Assembly and all officers elective by the people, and the manner in which women may register and vote; also providing when this act shall take effect."

This act, after prescribing the methods by which women may register and vote in Virginia, and fixing the eligibility of women to vote, prescribes by section 8 thereof, as follows:

"This act shall not become effective until a proposed amendment to the Constitution of the United States extending the right of suffrage to women shall become a part of the Constitution of the United States in the manner prescribed by law, if such proposed amendment shall not become a part of the said Constitution until after the expiration of ninety days from the adjournment of this session of this General Assembly; but if such proposed amendment shall become a part of the said Constitution before the expiration of said ninety days, this act shall take effect ninety days after the adjournment of this session of the General Assembly."

You have raised two questions as to the validity of this bill.

1. As to the power of the General Assembly to enact such a law in

anticipation of an expected amendment to the fundamental law of the land, and,

2. That the proposed nineteenth amendment to the Federal Constitution is not self-executing but merely requires the states to amend their constitutions in the usual and regular method prescribed therefor, so as to conform to the nineteenth amendment after it has been ratified, and in lieu thereof authorizes Congress, and not the legislature of the State, to carry into effect by suitable law the provisions of the amendment provided the State fails to amend its Constitution by the usual method and in the time in which the same could be done by the use of due diligence so as to conform with the Federal amendment.

I have examined the bill with care and have given special attention to the questions raised by you, which I shall answer in their order.

1. After an exhaustive examination of the authorities, it appears that there have been three cases in which the question propounded by you has been passed upon by the courts.

The first case in which the question was raised is *Pratt v. Allen*, 13 Conn. 119 (1893).

The next case in which the question was raised, is *G. B. & C. N. G. Ry. Co. v. Gross*, 47 Tex. 428 (1877), in which a similar conclusion was reached, without reference to *Pratt v. Allen*, *supra*, which, until then, appears to have been the only case in which the question was considered.

The last case in which the question was considered was *Coquenhaw v. Avoca Drainage District, et al.*, 130 La. 323, 326-7; 57 Sou. 989 (1912), in which the rule adopted by the Connecticut and Texas courts was adopted after an examination of the Connecticut and Texas cases.

These cases hold that where an act is not intended to and does not oppose at the time it takes effect, any existing article of the Constitution, but is intended to meet and accord with its proposed substitute, that the same is constitutional, unless the amendment restrains the legislative power in this respect.

In *G. B. & C. N. G. Ry. Co. v. Gross*, *supra*, the court, in discussing a similar question to that raised in your letter, said (p. 434) :

"In support of the second proposition, it is urged that the constitutionality of the law must be tested by the Constitution as it was on the very day that the law was adopted; and that, if unconstitutional then, it was absolutely void, and so remained, notwithstanding the amendment of the next day. The statute, it is said, is void, because it contemplated a grant forbidden by the Constitution, and attempts to provide the means of completing such an illegal grant."

The court then examined the history of the constitutional amendment and determined that it was "evident that the act objected to was passed in anticipation of its adoption," and in view thereof said:

"We know of no rule forbidding legislation looking to the contingency of a constitutional change, at least when the consummation of that change rests with the legislature alone. (Cooley's Const. Lim., 114-117, and references; Brig. Aurora v. U. S., 7 Cranch, 382; Bull v. Read, 13 Gratt. 78; State v. Parker, 26 Vt. 357; Peck v. Weddell, 17 Ohio, N. S., 271; State v. Kirkley, 29 Md. 85.)"

In *Coquenhay v. Arco Drainage Dist., et al., supra*, the court in discussing this question, said (p. 326) :

"The next contention is that sections 9, 23 and 27 of said act No. 317 of 1910 are unconstitutional because inconsistent with article 281 of the Constitution as said article stood before the amendment proposed by act No. 197 of 1910 and adopted at the congressional election of that year."

After setting out the provisions of the statute and referring to the constitutional provision, the court said (p. 327) :

"The only question would have to be, therefore, whether such anticipatory legislation was valid. No reason is suggested why it should not be, and that legislation may be validly enacted with a view to a future amendment of the Constitution, upon which it is to depend for its constitutionality, has been held by the supreme courts of Texas and Connecticut. *Galveston, B. & C. N. G. Ry. Co. v. Gross*, 57 Tex. 428; *Pratt v. Allen*, 13 Conn. 119.

"The tax in question is expressly authorized by the amendment which was proposed to said article 281 by act No. 197 of 1910 and adopted at the congressional election of the year. * * *"

See also *Bull, et als., v. Read, et als.*, 13 Gratt. 54 Va. 78, 89, 90, 91 (1855), in which it was held that the legislature may provide that an act shall not take effect until some future day named, or until the happening of some particular event, or in some contingency thereafter to arise, or upon the performance of some specified condition, and where it was said (pp. 90-1) :

"Now, if the legislature may make the operation of its act depend on some contingency thereafter to happen, or may prescribe conditions, it must be for them to judge in what contingency or upon what condition the act shall take effect. * * *"

I am, therefore, of the opinion that the legislature has the authority to enact appropriate legislation for the purpose of carrying into effect the proposed amendment to the Constitution in anticipation of its ratification in the manner prescribed by law, and conditioned to take effect only in the event that the proposed amendment becomes a part of the Constitution.

I examined this question with great care recently, and expressed my views thereon as given above in an opinion to Hon. Harris Hart, Superintendent of Public Instruction, January 27, 1920.

I am, therefore, of the opinion that it is within the power of the General Assembly to enact a law with a view to a future amendment to the Constitution, upon which it is to depend for its constitutionality.

2. The proposed nineteenth amendment to the Federal Constitution upon the taking effect of which the bill in question depends for its validity, reads as follows :

"1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

"2. Congress shall have power to enforce this article by appropriate legislation."

An examination of the fifteenth amendment to the Federal Constitution shows that this amendment and the proposed nineteenth amendment to the Federal Constitution, are identical so far as affects the question raised by you as to the validity of this act. Therefore, decisions construing the fifteenth amendment to the Federal Constitution are in point and controlling. The fifteenth amendment to the Federal Constitution reads as follows:

"Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color or previous condition of servitude.

"Section 2. The Congress shall have power to enforce this article by appropriate legislation."

In construing the fifteenth amendment to the Federal Constitution, the Supreme Court of the United States said in *Neal v. Delaware*, 103 U. S. 370, 389 (1880), speaking through Mr. Justice Harlan:

"Beyond question the adoption of the fifteenth amendment had the effect, in law, to remove from the State Constitution, or render inoperative, that provision which restricts the right of suffrage to the white race. Thenceforward, the statute which prescribed the qualifications of jurors was, itself, enlarged in its operation, so as to embrace all who by the State Constitution, as modified by the supreme law of the land, were qualified to vote at a general election. The presumption should be indulged in, in the first instance, that the State recognizes, as is its plain duty, an amendment of the Federal Constitution, from the time of its adoption, as binding on all of its citizens and every department of its government, and to be enforced, within its limits, without reference to any inconsistent provisions in its own Constitution or statutes. In this case that presumption is strengthened, and, indeed, becomes conclusive, not only by the direct adjudication of the State court as to what is the fundamental law of Delaware, but by the entire absence of any statutory enactments or any adjudication, since the adoption of the fifteenth amendment, indicating that the State, by its constituted authorities, does not recognize, in the fullest legal sense, the binding force of that amendment and its effect in modifying the State Constitution upon the subject of suffrage."

The opinions of the judges composing the court of Oyes and Terminer of Delaware, to the same effect, are quoted with approval by the court (pp. 390-1-2).

In *Guinn v. United States*, 238 U. S. 347. 361-2-3 (1915), the Supreme Court of the United States again affirmed the doctrine laid down in *Neal v. Delaware*, *supra*, and held that the command of the fifteenth amendment was self-executing. In so holding, Mr. Chief Justice White, speaking for the court, said (p. 362):

"(c) While in the true sense, therefore, the amendment gives no right of suffrage, it was long ago recognized that in operation its prohibition might measurably have that effect; that is to say, that as the command of the amendment was self-executing and reached without legislative action the conditions of discrimination against which it was aimed, the result might arise that as a consequence of the striking down of a discriminating clause a right of suffrage would be enjoyed by reason of the generic character of the provision which would remain after the discrimination was stricken out. *Ex parte Yarbrough*, 110 U. S. 651; *Neal v. Delaware*, 103 U. S. 370. A familiar illustration of this

doctrine resulted from the effect of the adoption of the amendment on State constitutions in which at the time of the adoption of the amendment the right of suffrage was conferred on all white male citizens, since by the inherent power of the amendment the word white disappeared and therefore all male citizens, without discrimination on account of race, color or previous condition of servitude, came under the generic grant of suffrage made by the State."

To the same effect see *Wood v. Fitzgerald*, 3 Ore. 568 (1870).

I am, therefore, of the opinion that the effect of the proposed nineteenth amendment to the Federal Constitution when it becomes a part of that instrument, will be to strike from the Virginia Constitution those provisions thereof which are in conflict with it without the action of the legislature or electorate of the State, or the Federal Congress.

For these reasons, therefore, I am of the opinion that both objections raised by you to Senate bill No. 325 are without merit.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

CONSTITUTIONAL LAW—POWER OF LEGISLATURE TO AUTHORIZE OR BOARD OF
SUPERVISORS TO ERECT COURT HOUSE.

RICHMOND, VA., March 16, 1920.

J. C. COURTER,
Jetersville, Va.

DEAR SIR:

Acknowledgment is made of your letter of March 15, 1920, in which you ask to be advised upon several questions.

First, you ask if the legislature has the power to authorize or direct the board of supervisors of a county to issue bonds for the purpose of building a new court house.

There seems to be nothing in the Virginia Constitution which prohibits the legislature of Virginia, in its discretion, from authorizing the issuance of bonds by a county or district for the erection or improvement of a court house therein, or from providing that the same may be issued by the board of supervisors, or other county agency, without submitting the question to the people for a vote thereon. In the absence of such constitutional inhibition, the authorities are well settled that the legislature has such a power.

11 Cyc., 507, Par. B.
County of St. Louis v. Griswold, et als., 58 Mo. 175 (1874).
Sinton v. Carter (C. C. D. Ky.), 23 Fed. 535-7 (1885).

As to your remaining questions, with reference to whether or not the board of supervisors would be guilty of contempt of court in certain contingencies, these are not matters upon which I feel that I should express an official opinion. The Commonwealth's attorney of your county is, by law, made the legal adviser of the board of supervisors, and the board of supervisors should be guided in their actions by his advice. If I were to attempt to express an opinion upon these matters, I would be trespassing upon the

prerogatives of your Commonwealth's attorney, and he would, I am sure, with justice resent the same.

Very truly yours

JNO. R. SAUNDERS,

Attorney General.

CONSTITUTIONAL LAW—SPECIAL ACTS.

RICHMOND, VA., *January 27, 1920.*

HON. W. H. BUNTIN,
House of Delegates,
Richmond, Va.

DEAR SIR:

Acknowledgment is made of your letter of January 23d, in which you request my opinion on the following statement of facts:

"I am the patron of a bill for the relief of Jonathan B. Stovall and J. L. Nalle.

"The facts are that Messrs. Stovall and Nalle became sureties on a recognizance, the condition of which was the presence of a man named Hendricks before the corporation court of Danville. Hendricks failed to make his appearance, the recognizance was forfeited and in proper proceedings the money collected from Messrs. Stovall and Nalle and paid into the State Treasury. Subsequently, said sureties, at their own expense, delivered Hendricks to the corporation court of Danville, where he was tried and convicted, the State not having been prejudiced in his prosecution by his failure to appear at the term for which he was recognized. Under these circumstances, I have thought it proper that the money for the recognizance, \$100, be refunded to said sureties.

"The House committee on appropriations, however, has raised the objection that the bill is unconstitutional and has requested me to secure your opinion as to same."

It is provided by section 63 of the Virginia Constitution so far as is applicable to the question here under consideration, as follows:

"* * * The General Assembly shall not enact any local, special or private law in the following cases:

* * * * *

"Section 9. Refunding money lawfully paid into the treasury of the State or the treasury of any political subdivision thereof. * * *"

It appears from the above statement of facts that the money which the bill in question seeks to refund was lawfully paid into the treasury of the State. Under these circumstances, the object of the bill is to violate subsection 9 of section 63 of the Virginia Constitution and would be invalid if enacted by the General Assembly and approved by the Governor.

The Supreme Court of Appeals, in construing subsection 9 of section 63 of the Constitution in *Commonwealth v. Ferris Co.*, 120 Va. 827; 92 S. E. 804, laid especial emphasis on the fact that the money refunded by the act under consideration in that case had not been *lawfully* paid into the treasury, but had been unlawfully paid into the treasury, and for that reason

alone did not fall within the prohibitions of subsection 9 of section 63 of the Constitution.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

CONSTITUTIONAL LAW—STATUTES IN CONFLICT WITH THE CONSTITUTION.

RICHMOND, VA., *February 4, 1920.*

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

MY DEAR GOVERNOR:

I beg leave to acknowledge receipt of your letter, in which you ask to be advised whether or not Senate bill No. 77, which provides for the creating and establishing of a circuit court at Buena Vista, is constitutional.

In reply, I will state that I have carefully examined this bill and am of the opinion that the same is contrary to the provisions of sections 97 and 98 of the Constitution.

Buena Vista is a city of the second class. Section 97 of the Constitution, among other things, provides:

"* * * But no separate circuit court shall be held for any city of the second class until the city shall abolish its existing city court.
* * *"

Section 98 of the Constitution, among other things, provides as follows:

"* * * In every city of the second class, the corporation or hustings court, existing at the time this Constitution goes into effect, shall continue hereafter under the name of the corporation court of such city; but it may be abolished by a vote of a majority of the qualified electors of such city, at an election held for the purpose, and whenever the office of judge of a corporation or hustings court of a city of the second class, whose salary is less than eight hundred dollars, shall become and remain vacant for ninety days consecutively, such court shall thereby cease to exist. * * *"

Buena Vista has a city court which, I am informed, was in existence for some years prior to the adoption of the Constitution, the salary of the judge being \$400. It is, therefore, clear that such court comes within the provisions of section 98 just quoted, which court, I am informed, has not been abolished as above provided.

Section 9 of the bill in question provides that during the existence of the circuit court created under said bill, no sessions of the corporation court of the said city shall be begun, continued or held, and no judge of said corporation court shall be elected or appointed. It further provides that whenever said circuit court shall cease to exist or the sessions thereof shall be discontinued, the said corporation court shall forthwith resume its sessions and shall thereafter continue and be held and presided over by a judge, elected or appointed in the manner prescribed by law for the election or appointment of judges of city courts.

It is further provided in the same section, that during the suspension of the session of the corporation court of said city, the office of judge thereof shall not be deemed or construed to be vacant, and the failure to elect or appoint a judge of said corporation court during the time the sessions are suspended, shall not be deemed or construed to create a vacancy in the office of the judge of said court.

You can readily see from the provisions contained in section 9 as quoted above, that the corporation court of the city of Buena Vista is not abolished, but is simply held in abeyance. In other words, the bill seeks to create a circuit court while such corporation court is in existence, which is clearly contrary to the provisions of the Constitution. Before the circuit court is created the corporation court must be abolished, and according to the provisions of the Constitution, it can only be abolished by the method prescribed in sections 97 and 98.

It is true that whenever the office of judge of the corporation court shall become and remain vacant for ninety consecutive days, such court shall thereby cease to exist, but under the provisions of this bill it is not sought to discontinue the court altogether, but rather have it come in existence should the circuit court created under this bill be discontinued.

Furthermore, section 13 of the bill in question provides that this act shall be in force from its passage, which necessarily means that the circuit court would be created from the time of the approval of the bill and before there is a vacancy for ninety days in the office of judge of this court, which under the Constitution, is necessary to abolish the office for failure to elect a judge.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

CONVICTS—COURTS HAVING JURISDICTION TO TRY FOR OFFENSES.

RICHMOND, VA., July 28. 1920.

MAJ. J. B. WOOD,

*Superintendent of State Penitentiary,
Richmond, Va.*

MY DEAR MAJOR:

Yours of the 27th, in which you enclosed the prison record of William Taylor, one of the convicts in the State penitentiary, and also an indictment against him in the circuit court of Goochland county, has been received. You ask if the circuit court of the city of Richmond does not have exclusive jurisdiction over convicts in all criminal proceedings against them.

Section 5053 of the Code of Virginia, 1919, provides as follows:

"All criminal proceedings against convicts in the penitentiary shall be in the circuit court of the city of Richmond; but when convicts are employed on any work of public or private improvement in any county in the State, the criminal proceedings against them may be in the circuit court of the county in which the convict is so employed or in the circuit court of the city of Richmond."

You will see from the reading of this section that the circuit court of the county of Goochland had concurrent jurisdiction with the circuit court of the city of Richmond. Such being the case, the trial of Taylor held in the former court was legal.

As requested, I am returning the papers sent me.

Very truly yours

JNO. R. SAUNDERS,
Attorney General.

CONVICTS—CREDIT FOR TIME SERVED IN JAIL

RICHMOND, VA., August 4, 1920.

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

MY DEAR MAJOR WOOD:

Acknowledgment is made of your communication of recent date, in which you enclosed correspondence with reference to Loyd Bray, who was convicted in the circuit court of Pittsylvania county and sentenced on July 19, 1920. In the judgment of the court, it is provided as follows:

"* * * and it is further ordered that the said Loyd Bray be given credit for the time he has served in the jail of this county, viz.: from the 7th day of February, 1919, until the 15th day of August, 1919, and from the 19th day of July, 1920, and the said Loyd Bray is remanded to jail."

It will be seen from the above order that the time served in jail for which Loyd Bray is allowed credit in the judgment of the court was served between the 7th day of February, 1919, and the 15th day of August, 1919, and, therefore, prior to the 13th day of January, 1920, when the Code of Virginia, 1919, took effect. By the provisions of chapters 282 and 414 of the Acts of 1916, which were in force at the time Loyd Bray was in jail, he was entitled to the credit allowed in the order of the court.

It is true that section 5019 of the Code of Virginia, 1919, repeals these acts, but, under the provisions of section 6569 of the Code of Virginia, 1919, which reads as follows:

"Such repeal shall not affect any offense or act committed or done, or any penalty or forfeiture incurred, or any right established, accrued, or accruing before the said 13th day of January, 1920, or any prosecution, suit or proceeding pending on that day, except that the proceedings thereafter had shall conform, so far as practicable, to the provisions of this Code; and where any penalty, forfeiture or punishment is mitigated by these provisions, such provisions may, with the consent of the party affected, be applied to any judgment to be pronounced after that day; and such repeal, as to any statute of limitations, under which the bar of a right of action or remedy is complete at the time the repeal takes effect, shall not be deemed a removal of such bar, but the bar shall continue, notwithstanding such repeal."

I am of the opinion that, although he was tried and sentenced subsequent to the taking effect of the Code of Virginia, 1919, he was entitled to credit for the period of time served in jail by him pending the trial of his case prior to the taking effect of the Code of Virginia, 1919, and that, therefore, the judgment of the court allowing him credit for such time is correct.

Very truly yours

JNO. R. SAUNDERS,
Attorney General.

CORONER—JURISDICTION AND DUTIES.

RICHMOND, VA., *April 29, 1920.*

DR. W. A. PLECKER,
State Registrar,
Richmond, Va.

DEAR SIR:

Acknowledgment is made of your letter of April 28th, in which you enclose a letter from Dr. P. S. Schenk, of the department of public welfare, Norfolk, Virginia, with the request that we answer the following question contained therein:

"If a person is injured by accident or intent, attended by physician and dies, are all of these cases coroner's cases?"

It is provided by section 4806 of the Code of Virginia, 1919, so far as is applicable to the question here under consideration, as follows:

"Upon notice of a sudden, violent, unnatural or suspicious death, the coroner of the city of Richmond, if the dead body be in the penitentiary, and in any other case, the coroner of the county or corporation in which the dead body is, shall view the body and make inquiry into the circumstances of the said death, and after an inquiry had as aforesaid, if facts are revealed sufficient to create in the mind of the said coroner a reasonable belief that the person whose body he shall have been called to view, came to his or her death by murder or manslaughter or by the contrivance, aiding, procuring or other misconduct of any person or persons, he shall issue a warrant * * *."

In all the cases enumerated in section 4806 of the Code of 1919, the coroner is required to view the body and make inquiry into the circumstances of the said death and by section 4816 of the Code, a penalty is prescribed for his wilful or negligent failure to do so.

The fact that, in the case provided for in section 4806 of the Code, the person was attended by a physician, does not relieve the coroner from performing the duty required of him by this section.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

COSTS—BY WHOM PAID.

RICHMOND, VA., *November 8, 1920.*

GEORGE T. TYSON, ESQ., *Clerk,*
Circuit Court,
Eastville, Va.

DEAR SIR:

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

"Pursuant to an opinion of Assistant Attorney General Leslie C. Garnett, rendered on May 5, 1917, court clerks are permitted to charge advance deposits in suits. There has been a question raised here as to who this should be paid by in cases of removal under section 6017 and appeals under section 6028.

"I shall be glad if you will advise me at your earliest convenience whether this advance deposit should be paid by the plaintiff in each case, or whether it should be paid by the same parties required under the aforesaid sections to pay the writ tax."

The letter of Assistant Attorney General Garnett, to which you refer, is found in the report of the Attorney General for 1917, at p. 94, and the statute upon which that opinion was based has been carried into the Code of 1919 as section 3495 thereof.

Section 6017 of the Code of Virginia, 1919, to which you refer, reads as follows:

"In every case cognizable by a justice where the amount or thing in controversy exceeds the sum or value of fifty dollars, the justice shall, at any time before the trial, upon the application of the defendant, and upon the payment by him of the costs accrued and writ tax, remove the case, and all the papers thereof, to the circuit court of the county or to the corporation court of the city wherein the warrant has been brought and transmit to the clerk the writ tax received by him, and the clerk of the said court shall forthwith docket the case. On the trial of the case the proceedings shall conform to proceedings under section 6046."

This section, you will see, provides that a case shall be removed upon the application of the defendant and upon the payment by him of the costs accrued and writ tax.

The fees of the clerk of the circuit court cannot be construed as being a part of the accrued costs, and I think that in view of the fact that the trial in the circuit court is for the benefit of the plaintiff in the removed warrant, that the phrase "cost accrued" was deliberately used by the legislature with the intention of requiring the plaintiff in the removed warrant to pay the costs in the circuit court.

With reference to the payment of advanced costs on appeal warrants, I do not find any provision in section 6027 of the Code of Virginia, 1919, with reference to the allowance of an appeal, or in section 6028 of the Code of Virginia, 1919, which requires the prepayment of the writ tax, which negatives the proposition that the person who appeals from the judgment should pay the advanced costs in the circuit court in view of the fact that the trial in such court is for his benefit, a judgment having been obtained against him which he is seeking to have set aside. The trial of the appeal warrant

in the circuit court being for the benefit of the person who appeals, I am of the opinion that such person should be required to pay the advanced costs in the circuit court.

I may also add that I have talked with several clerks in reference to this matter, among them being Mr. S. P. Waddill, clerk of the circuit court of Henrico county, and they agree with me in the views which I have expressed in this letter, and have followed this course in the conduct of their office.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

CRIMES—AMENDMENT OF WARRANT.

RICHMOND, VA., March 25, 1920.

HON. A. B. THORNHILL,
Dairy and Food Commissioner,
City.

DEAR SIR:

Acknowledgment is made of your letter of yesterday with reference to the warrant against Moses Cohen, of Norfolk, Virginia. It appears from the facts furnished me by you that this man Cohen offered for sale decayed meat; that a warrant was issued for him and that he was convicted and fined; that the case is now about to come up in the corporation court at Norfolk, where it is contended that the warrant is insufficient because it charges a violation of two rules and regulations promulgated by your department under the authority conferred upon it by law, when, as a matter of fact, it should have charged a violation of section 1183 of the Code of Virginia, 1919.

You request me to advise you as to the right to have this warrant amended so as to charge a violation of the statute. On motion of the Commonwealth's attorney the trial court will permit the warrant to be amended.

In *Robinson v. Commonwealth*, 111 Va. 844, the Court of Appeals held that it was proper for the trial court of its own motion, to direct the attorney for the Commonwealth to change a warrant from the charge of an attempt to commit larceny of oats, to an attempt to obtain money by false pretenses. See also *Flint v. Commonwealth*, 114 Va. 820. In that case the court said, speaking through Keith, P. (p. 822):

“* * * As has been said by this court frequently, the same exactness and precision is not required in the statement of an offense where it is to be heard upon a warrant as in more formal proceedings by information or indictment. In this case it appears, further, that the defendant made no objection whatever to the form of the warrant in the corporation court. Had he then objected, whatever formal defects may have appeared in the warrant could have been cured.

“As was said in *Robinson v. Commonwealth*, 111 Va. 844, 69 S. E. 518: ‘Under the broad powers conferred upon the trial court, by section 4107 of the Code, it was entirely competent for the court, of its own motion, pending the trial of an appeal from the justice of the peace, to direct the attorney for the Commonwealth to change the warrant from an attempt to commit larceny of oats to an attempt to obtain money by false pretenses. While it would have been more regular, perhaps, to have directed the change to have been made before the trial

began, yet where the prisoner did not ask for a continuance, and there is nothing to indicate that he was prejudiced by the amendment during the trial, the irregularity is harmless.'

"We think, therefore, that if there were formal objections to the warrant, the court had ample power, under the statute, to amend it, and that the accused cannot be permitted to go to trial upon a warrant which the court had full power to amend and after verdict and judgment, for the first time, to make known his objection."

Section 4107 of the Code of Virginia, 1904, referred to in the above quotation, is now section 4989 of the Code of Virginia, 1919.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

DEBT, PUBLIC—LOST CERTIFICATE.

RICHMOND, VA., *June 7, 1920.*

HON. ROSEWELL PAGE,

Second Auditor,

Richmond, Va.

DEAR SIR:

Acknowledgment is made of your letter of June 5, which reads, in part, as follows:

"I have had submitted to me the construction of section 2639 of the Code of 1919, which bears upon the question whether the terms of that section apply to West Virginia certificates or Virginia deferred certificates, as they are called by the stock exchange.

"This office has always considered that this section didn't apply and I have on more than one occasion advised applicants to resort to the usual method of setting up a lost paper by appealing to court. This has been done in one case now pending before the circuit court of the city of Richmond and has been referred to Robert E. Scott, master commissioner.

"In conversation with Mr. Scott he seems to be of the opinion that the power was in this office under the above mentioned section. I am submitting the question to you and ask that you will give me your opinion thereon."

In a conversation with you, I have been further informed that your office has consistently construed section 2639 of the Code of 1919 and the previous statute, which was in substantially the same words of section 2639 of the Code, as not applying to West Virginia certificates, which are provided for by section 2589 of the Code of 1919.

Section 2639 of the Code is very broad in its terms, but inasmuch as the law has been in substantially the same terms as section 2639 for a great many years and no one has heretofore contested the ruling of your office on the construction of this statute, and in view of the further fact that in the suit of *Commonwealth v. Eugene Delano, et al.*, now pending in the circuit court of the city of Richmond, matters of this kind are now before that court, I am of the opinion that claimants having lost or destroyed West Virginia certificates, should file their claim in that suit and have the matter passed upon by the court.

Our court, in *Smith v. Bryan*, 100 Va. 199, held that where a statute is of doubtful import, a court will consider the construction put upon the act when it first came into operation, and that such construction after a lapse of time, without change either by the legislative or judicial decision, will be regarded as a correct construction, and in the course of its opinion further said that:

"The practical construction given to a statute by public officials and acted upon by the people, is not only to be considered, but, in cases of doubt, will be regarded as decisive. It is allowed the same effect as a course of judicial decision."

In view of this rule and of the fact, as aforesaid, that this question is now before the circuit court of the city of Richmond in the case of *Commonwealth v. Eugene Delano, et al.*, I am of the opinion that claimants should be referred to the court in that cause for relief in such matters.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—ABSENT VOTERS.

RICHMOND, VA., *October 7, 1920.*

CHAS. D. FOX, Esq., *Secretary,*
Electoral Board,
Roanoke, Va.

DEAR SIR:

I am in receipt of your letter of October 4th, in which you submit to me the following question:

"Can a voter make application for ballot after fifteen days prior to the general election?"

In response to this question, I will state that section 2 of the absent voter's law, which is section 203 of the Code of 1919, as amended by the Acts of 1920, provides that the absent voters shall give notice in writing to the registrar of his precinct not less than fifteen days nor more than sixty days prior to the primary or general election in which he desires to participate.

You will therefore see that a notice given after fifteen days prior to the general election will be too late.

Your next question is as follows:

"Can registrars entertain application for ballot to vote by mail if such application is not forwarded by registered mail by the voter?"

Section 204 of the Code of 1919 provides that the letter of application must be forwarded by registered mail.

In response to your third question, there is no reason why an elector in your city who finds that his business and habitual duties will require his absence on the day of election, cannot by complying with the provisions contained in the absent voter's law, obtain his ballot, prepare the same and have it cast for him during his absence; but, of course, in order to do this he must

make application by registered mail and comply with the other requirements of the law. Should he return on the day of election, he could not personally vote, but his ballot would have to be cast for him just as if he were absent.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—ABSENT VOTERS.

RICHMOND, VA., *September 29, 1920.*

RYLAND GOODE, ESQ.,
Secretary of Electoral Board,
Rocky Mount, Va.

DEAR SIR:

Acknowledgment is made of your letter asking whether a person who has availed himself of the right to vote by mail, under the absent voter's statute of Virginia, finding himself able to be present on election day, can vote in person and have his mail vote destroyed.

I have examined very carefully the statute as to absent voters, and I find no authority allowing a person who has availed himself of the right to vote by mail to afterwards vote in person.

Yours truly,

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

ELECTIONS—ASSISTANCE TO VOTERS IN PREPARATION OF BALLOTS.

RICHMOND, VA., *October 26, 1920.*

J. D. WINNE, ESQ.,
Forestville, Va.

DEAR SIR:

Acknowledgment is made of your letter of the 25th, addressed to the Attorney General, in which you say:

"The officers of the election for this precinct ask you for information in regard to assisting women voters. There is a rumor afloat that many of the older women are advised to leave their glasses at home when they come to vote in order to get the judge to assist them in marking their ballots. In event the rumor is true, are the judges under obligations to assist them, and if so, to what extent? For example, a voter who has registred since January 1, 1904, who cannot see to read without glasses, has either accidentally or purposely left their glasses at home, and demands help from the judges to prepare his ballot. After retiring to the booth, he informs the judge that he desires to either vote the straight Democratic or Republican ticket. The point in dispute is: Does the judge who complies with the above request violate his oath in doing so. We have asked others in regard to the above, but have invariably been referred to the Code for an answer. As we differ on the interpretation of those sections governing the above, we would esteem it a special favor to have your opinion

on the above, as it may help us to do our duty in complying with the law."

It is provided by section 1 of the Virginia Constitution, so far as is applicable to the question here under consideration, that if a person register after the first day of January, 1904:

"* * * 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."

As all women who are registered did so after the 1st day of January, 1904, they must, unless physically unable, prepare and deposit their ballots without aid. The words "physically unable" mean a person who, because of disease or other physical infirmity, is prevented from preparing and depositing his or her ballot. I would say that one who is blind or paralyzed so that she cannot use her eyes or hands, or one who had lost both hands, for example, would be physically unable to prepare and deposit the ballot, but I am of the opinion that one who can see by the use of eyeglasses is not physically unable to prepare and deposit her ballot within the meaning of section 21 of the Virginia Constitution, and that in those cases where persons leave their eyeglasses at home or do other things which may make them, because of their own act, unable to see as well as they otherwise could, will not be entitled to receive any help or assistance in the preparation of and depositing of their ballots.

Yours very truly,

LEON M. BAZILE,

Second Assistant Attorney General.

ELECTIONS—BALLOTS; REGISTRARS, JUDGES, CLERKS AND COMMISSIONERS OF.

RICHMOND, VA., *October 28, 1920.*

MR. B. I. BICKERS, *Clerk,*
Stanardsville, Va.

DEAR SIR:

Yours of the 26th just received. You desire to be advised whether the electors under the several candidates for president have to be marked two-thirds across their names, or whether it is only necessary to do this in connection with the names of the candidates for president and vice-president.

In reply, I will state that it is unnecessary to mark the names of the electors. The erasure of the names of the candidates for president and vice-president is all that is necessary.

You call my attention to chapter 265 of the Acts of 1920, page 387, whereby section 200 of the Code of 1919, which provides for the payment of judges, clerks, etc., of election, was amended. You then ask for a construction of this statute.

I am of the opinion that, while the statute is not altogether clear, it was only intended, by the legislature, to change the compensation of the officers

mentioned in this section from \$2 to \$3 per day. I think the word "pay" in the third line from the bottom was placed therein inadvertently. You will observe that the statute as amended is identical with the old law, except that the words "registrars, clerks, and members of the electoral board," and the word "pay" just referred to, were added.

I would be glad if you would call the attention of your Commonwealth's attorney to this, and ascertain his views of the matter. Of course, as these compensations are to be paid out of the treasury of the county, he is really the proper one to decide the question.

Very truly yours

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—SPLIT BALLOTS.

RICHMOND, VA., *October 30, 1920.*

DR. M. J. CRITTENDEN,
Orange, Va.

DEAR SIR:

Acknowledgment is made of your letter of the 29th, in which you ask whether it is necessary for a voter to vote for Cox and Roosevelt in the presidential election this year, in order that he may vote for United States senator in 1922 in the Democratic primary.

The primary law provides that no person shall be permitted to vote in a party primary unless in the *last* next preceding general election he voted for the presidential electors nominated by such party, etc.

In other words, to vote in a primary, a person must have voted for the nominees of that party in the last preceding general election. Of course, the last general election preceding the primary to be held in 1922 would be the general election in 1921. The action of the voter in that election and not in the election this year will decide his right to vote in the August, 1922, primary.

Yours very truly,

J. D. HANK, JR.,

Assistant Attorney General.

ELECTIONS—BOND ISSUES.

RICHMOND, VA., *October 28, 1920.*

MR. WM. SHAND,
Courtland, Va.

DEAR SIR:

Acknowledgment is made of your letter of October 26th, in which you ask me whether it is legal for a special road bond election to be held on the same day as the general election. In response thereto, I desire to call your attention to section 2110 of the Code of Virginia, 1919, which reads as follows:

"Bonds may be issued by any county for the purpose of constructing, macadamizing or otherwise permanently improving the public roads and for building bridges therein, upon the conditions hereinafter provided.

"The circuit court of the county, upon the petition of a majority of the board of supervisors of said county, or upon the petition of 150 freeholders of said county, shall make an order, requiring the judges of election, at the next regular election, or at any other time not less than thirty days from the date of such order, which shall be designated therein, to open a poll and take the sense of the qualified voters of the county on the question whether the board of supervisors shall issue bonds for said purposes or either of them; the approximate location, length and width of such roads as is proposed to be constructed, macadamized or permanently improved to be named in the order. But no election shall be ordered until the State Highway Commissioner, or his representative, shall report to the court that the amount of bonds proposed to be issued will be approximately sufficient to construct or improve the road set out in order. The estimated cost of each road, or part thereof, shall be set out in the order of the court for expenditures solely on said road or part thereof, and said order shall also designate the location of such roads as are to be constructed or improved, and of such bridges as are to be built, and the maximum amount of bonds to be issued, which shall, including all bonds previously issued and remaining unpaid, in no case exceed an amount in excess of ten per cent of the total taxable values at the time of the county in which the road or roads and bridge or bridges are to be built or permanently improved."

You will see from this section that the statute authorizes such election to be held on the same day on which a regular election is held.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—BOND ISSUES.

RICHMOND, VA., *October 21, 1920.*

HON. PARKE P. DEANS,
Attorney at Law,
Windsor, Va.

DEAR SIR:

Acknowledgment is made of your letter of October 20th, in which you say:

"I have been requested by the council of the town of Windsor to submit to you the following question: The town of Windsor was incorporated by an act of the Assembly of Virginia, 1901-1902, p. 246, and they want to buy and install an electric plant in the town. Can they petition the judge for a bond issue?

"Can they get this authority from section 3079 of the Code of 1919? Or can they do this under section 381 of the 1919 Code?

"The question has arisen due to the fact that the town of Wakefield wanted to bond their town for the same purpose and at the last session of the legislature they obtained the passage of a special act.

"As you know, the electricity will be used for the lighting of the streets and the sale of electricity to the merchants and homes of the town. While there will be some revenue derived, it will not be sufficient to pay the cost of output."

I have examined section 3079 of the Code of Virginia, 1919, and I doubt very much if this section would permit you to issue bonds for the purpose

mentioned in your letter. Section 3081 of the Code of Virginia, 1919, reads as follows:

"Any city or town may borrow money and issue bonds for the purpose of a supply of water or other specific undertaking from which the city or town may derive revenue, as provided in clause 'b' of section 127 of the Constitution."

I am of the opinion that section 3081 of the Code of 1919, does authorize a bond issue for an electric plant, provided your town may derive a revenue from said plant. I do not think that it is the intention of section 127, paragraph "b," of the Constitution, that the revenue produced must be sufficient to make the plant, or a specific undertaking, self-supporting. All that is necessary, in my opinion, is that the town derive a revenue from the same.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—CAPITATION TAX.

RICHMOND, VA., March 9, 1920.

HON. C. A. HUBBARD,

*Commissioner of the Revenue,
Denby, Va.*

MY DEAR MR. HUBBARD:

Acknowledgment is made of your letter of March 8, 1920, in which you request my opinion on the following question:

"Will you kindly give me your opinion as to whether a person moving into Virginia from another State is required to pay three years' poll taxes in order to register and vote in the presidential election next November, unless such person shall have resided in this State during the three years next preceding such election?"

It is provided by section 21 of the Constitution, among the conditions for voting, that unless he is exempted by section 22 of the Constitution, one 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."

Under this section of the Constitution, one is only required to pay such taxes as he was lawfully assessable with. Therefore, as was said by Attorney General Anderson, if a voter "has only been of age during one or two of those three years, he would be assessable with the 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." (Opinions of Attorney General, 1907, p. 66).

It is, therefore, clear that one becoming a resident of the State within the three-year period, is required to pay, as a prerequisite to his right to

vote, only such capitation taxes as were assessed or assessable against him during the period subsequent to his becoming a resident of the State.

Therefore, if one became a resident of Virginia in January, 1918, he would be required to pay as a prerequisite to his right to vote in the November, 1920, election, his capitation taxes for the years 1918 and 1919, as having become a resident of Virginia prior to February, 1918, he would be assessable for that year. If, however, he became a resident of Virginia in March, 1918, or subsequent to February, 1918, he would be required to pay his capitation taxes only for the year 1919 after having become a resident of the State subsequent to February, 1918, no capitation taxes would be assessed or assessable against him for that year.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—CAPITATION TAX, PAYMENT OF.

RICHMOND, VA., *September 17, 1920.*

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

MY DEAR SIR:

Acknowledgment is made of your letter inquiring the last day for the payment of poll taxes in order to enable women to register for the coming election.

As, by law, the registration books close on the 2d day of October, after that date a woman cannot register for the November election. Therefore, in order to register for this election, it will be necessary for her to pay her poll tax on or before the 2d day of October.

Yours truly,

J. D. HANK, JR.,

Assistant Attorney General.

ELECTIONS—CAPITATION TAX OF WOMEN.

RICHMOND, VA., *September 8, 1920.*

B. R. WALDROP, ESQ.,
Cardwell, Va.

DEAR SIR:

Acknowledgment is made of your letter of September 6, 1920, addressed to the Attorney General, in which you say:

"What are the prerequisites for women to register? If a woman is twenty-five years old, will she have to pay her poll taxes for the previous three years?"

A woman will not have to pay, this year, her capitation taxes for the three preceding years in order to register to vote. After she has assessed

herself for 1921, and pays a capitation tax of \$1.50, she is then entitled to vote, if she is otherwise eligible, just as a young man just coming of age. See chapter 400, Acts of 1920.

Very truly yours

LEON M. BAZILE,
Second Assistant Attorney General.

ELECTIONS—CAPITATION TAX.

RICHMOND, VA., *October 1, 1920.*

MR. W. H. JOHNSON,
Keysville, Va.

DEAR SIR:

Acknowledgment is made of your letter of September 29th, in which you say:

"I am writing you in regard to registering. I was in the navy from August 29, 1917, to February 13, 1919, and while there I paid no tax, but paid my tax for 1919. Am I entitled to register?"

If you were twenty-one years of age in 1917, or prior thereto, your capitation taxes were assessable for the years 1917 and 1918, and if your tax was not paid at least six months before the November, 1920 election, as well as your 1919 tax, you are not eligible to vote.

If you have just come of age, the payment of the 1919 tax would be sufficient.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—CAPITATION TAX.

RICHMOND, VA., *August 31, 1920.*

MR. W. J. PARKER,
Mt. Landing, Va.

DEAR MR. PARKER:

Your letter of August 30th just received, to which I will reply at once. It will be the duty of every woman who desires to vote to go to the commissioner of the revenue and have herself assessed just as a young man should do who becomes twenty-one years of age after the 1st of February. The same certificate will be given her by the commissioner of the revenue as will be given the young men. She will then take this receipt to the treasurer of the county, pay her capitation tax and can then apply to the registrar to be registered.

This tax receipt should be for the year 1921. The women are not required to pay taxes for the year 1920 even though they were twenty-one years old the 1st of February, 1920, as stated in your letter. Next year, the

commissioner of the revenue, of course, will assess all women who are twenty-one years of age with a capitation tax.

I do not understand that it is the duty of the commissioners of the revenue to assess the women this year for the 1921 tax, unless application is made to the commissioner of the revenue by the women who desire to be assessed in order to vote.

In answer to your question whether a woman's husband will be liable for her taxes, he is not. Of course, therefore, his property would not be subject to levy or distress in order to collect such tax.

I would add that Mr. Moore, the Auditor of Public Accounts, is today sending out some printed instructions to the commissioners of the revenue and treasurers, which instructions bear upon the recent act passed by the legislature as to the payment of poll taxes by women, etc. I have read and approved these instructions. No doubt they will reach you in a day or two.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—CAPITATION TAX.

RICHMOND, VA., *October 4, 1920.*

PROFESSOR W. T. ELLIS,
Virginia Polytechnic Institute,
Blacksburg, Va.

MY DEAR SIR:

I am just in receipt of your letter of October 2d, in which you ask the question whether you can vote in the coming election in November following conditions existing in reference to your case.

You state that you moved from Raleigh, N. C., to Blacksburg, Va., on September 16, 1918, with your 1918 taxes paid in North Carolina. You further state that you paid your poll and State taxes in Virginia November 29, 1919, but before paying these taxes you asked your county treasurer (Mr. Surface) over the telephone if you would be required to pay the 1918 poll tax in Virginia in order to vote in November, his reply being in the negative.

You further state that in mailing your check for taxes, you enclosed a separate check for 1918 poll taxes, which latter check was returned, but later on, you were informed by the registrar that you should pay your 1918 poll tax, which you promptly paid September 28, 1920. These being the facts as stated by you, I am of the opinion that you are qualified to vote in the November election.

The Constitution provides that in order for one to vote in Virginia, he must have been a resident of the State at least two years. Inasmuch as you moved to Virginia in September, 1918, you have complied with that requirement. It further provides that an elector must have personally paid to the officer all State poll taxes assessed or assessable against him for the three years next preceding that in which he offers to register.

Inasmuch as you did not move to Virginia until September, 1918, no poll taxes were assessable against you for the year 1918. The only poll tax which you were required to pay which was assessable against you and which

you were required to pay six months prior to the election, was the poll tax for 1919. Inasmuch as you paid this on November 29, 1919, you have complied with the requirements of the law as to the prepayment of poll taxes, and you are, therefore, eligible to vote in the November election provided you have registered. There was no reason for you to pay the 1918 poll tax. The 1920 poll tax, of course, is not due yet and, therefore, you should not be required to pay this six months prior to the election.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—CAPITATION TAX.

RICHMOND, VA., *September 15, 1920.*

MRS. R. W. PULLEY,
Ivor, Va.

DEAR MADAM:

I am in receipt of your letter of the 13th, in which you ask to be advised if, on account of the fact that your husband was a Confederate soldier, whether you will have to pay a poll tax before voting.

In reply, I will state that the fact that your husband was a Confederate soldier does not exempt you from the payment of this tax, and if you desire to vote it will be necessary for you to pay your capitation tax for the year 1921.

Yours very respectfully,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—CAPITATION TAX.

RICHMOND, VA., *September 22, 1920.*

HON. W. E. DUVAL, *Clerk,*
Hustings Court, Part 2, City.

DEAR MR. DUVAL:

Acknowledgment is made of your request that I advise you whether women should be assessed with a capitation tax for the year 1920 or 1921.

They should be assessed for the year 1921. It is provided by the first sub-paragraph of section 2 of chapter 400 of the Acts of 1920, so far as is applicable to the question here under consideration, as follows:

"If she offers to register in the year in which this act becomes effective, has personally paid to the proper officer one dollar and fifty cents in satisfaction of the poll tax assessed or assessable against her for the next succeeding year. * * *"

For those offering to register in 1920, of course the next succeeding year is 1921. The women at the present time occupy the same position as a young man coming of age after February 1.

Yours very truly,

LEON M. BAZILE,
Second Assistant Attorney General.

REPORT OF THE ATTORNEY GENERAL.

ELECTIONS—CHARTER CHANGES, PETITION.

RICHMOND, VA., *September 27, 1920.*

JOHN S. PATTON, ESQ.,
Librarian,
University, Va.

DEAR SIR:

Acknowledgment is made of your letter of September 20th, in which you say:

"A movement is on foot to petition the proper court to order an election to determine whether the government of the city of Charlottesville shall be changed to the modified commission plan (section 2938 of Code, 1919). Should the petition be presented to the judge of the circuit court or to the judge of the corporation court? (Section 2930.)"

"The lawyers consulted are in doubt, and before taking action we desire to have your opinion. In making this request I am representing several hundred citizens."

"The present intention is to give an opportunity for the election to be held on the same day as the presidential election, if that may be done, and we desire to present the petition at the earliest possible date. You will oblige us very much if you can send an opinion soon."

From an examination of section 2930 of the Code it appears clear that if your city has a circuit court, that petition must be presented to the circuit court or the judge thereof in vacation. If there is no circuit court for your city, then the petition must be presented to the corporation or hustings court or the judge thereof in vacation.

From an examination of section 5888 of the Code of Virginia, 1919, as amended by the Acts of 1920, p. 600, 601, it appears (sub-paragraph 8) that the city of Charlottesville forms a part of the eighth circuit. This city, having a circuit court, the petition should be presented to that court or the judge thereof in vacation.

Yours truly,

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

ELECTIONS—CITIES AND TOWNS—VACANCIES IN OFFICE.

RICHMOND, VA., *August 10, 1920.*

HON. A. D. WATKINS,
Attorney,
Farmville, Va.

DEAR SIR:

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

"The town council of the town of Farmville has requested me to get an opinion from you touching the following matter:

"The town finds itself in a very embarrassing situation by reason of the fact that the election for town officers on the second Tuesday in June last was overlooked, and, consequently, no election held, though the primary had been held in April naming the mayor and councilmen."

"The town charter provides that the town council and mayor can hold over until their successors qualify.

"The charter of the town was amended in 1919, and provided for a mayor and nine councilmen instead of six councilmen as provided for in the original charter.

"There is no provision under the statutes that I can find providing for a special election to meet the situation.

"Query 1. Can the mayor and six councilmen hold over and discharge the duties according to law, which the charter provides for a mayor and nine councilmen?

"2. Can the present council resign to take effect as of the 31st of August, 1920, thereby creating a vacancy in these offices, and then in that event the judge of the circuit court of the county of Prince Edward appoint mayor and councilmen to fill the vacancies thus created? (Section 136 Code).

"I am sending you herewith the following citations of laws which I would be glad if you would consider and give me your opinion covering the situation. Constitution of Virginia, volume 1 of Code, section 121; town charter, Acts 1912, p. 359. As to holding over, section 132. As to appointment by judge, section 136. As to election by council, section 3003."

Replying to your first question, I am of the opinion that under the facts narrated in your letter, the mayor and six councilmen will continue to hold over until their successors qualify. In other words, so far as they are concerned, no vacancy has occurred. Virginia Constitution, section 33; Code of Virginia, 1919, section 132; *Chadduck v. Burke*, 103 Va. 694.

By chapter 122 of the Acts of 1920, section 4 of the amended charter of the town of Farmville, which provides that the municipal authorities of the town should consist of a mayor and six councilmen, was amended so as to read:

"The municipal authorities of said town shall consist of a mayor and nine councilmen, who shall be elected on the second Tuesday in June, 1920, and on the second Tuesday in June every second year thereafter by the qualified voters of the town. All persons qualified to vote in said election shall be eligible to either of said offices."

You, therefore, have the following situation: The charter provides for a mayor and nine councilmen to be elected in June, 1920, and every second year thereafter, while, as a matter of fact, due to the failure to hold the election provided for, the town has a mayor and six councilmen. As to the remaining three councilmen provided for by the charter, as amended, there is a vacancy. *State, ex rel Sanders, v. Blakemore*, 104 Mo. 340-5; 15 S. W. 960.

In 8 Words and Phrases, title "Vacancy," p. 7259, it is said:

"The word 'vacant' as applied to an office without an incumbent, means empty, unoccupied. There is no technical nor peculiar meaning to the word. An existing office without an incumbent is vacant."

This being so, the provisions of section 8 of the amended charter of Farmville, chapter 162 of the Acts of 1912, would apply unless there is some statute in conflict therewith. Section 8 of the amended charter of the town of Farmville provides as follows:

"Whenever, from any cause, a vacancy shall occur in the office of mayor or councilmen, the same shall be filled by the council at its

next regular meeting from the qualified electors of said town, and an entry of said election shall be made of record: provided, however, such vacancy in the office of mayor shall not be filled by any person than a member of the council, and a vacancy in the office of councilmen shall be filled from the ward from which such vacancy occurs."

Section 136 of the Code of Virginia, 1919, does not apply to the facts here under consideration, because this section provides that it shall be applied in cases of vacancy only when "no other provision is made for filling the same," or to vacancies occurring in any office of a city or town "as to filling which vacancy there is no provision in the charter or ordinances of such city or town."

Section 3003 of the Code of Virginia, 1919, provides as follows:

"The council of a town shall judge of the election, qualification and returns of its members; may fine them for disorderly behavior, and, with the concurrence of two-thirds, expel a member. If any person returned be adjudged disqualified or be expelled, a new election to fill the vacancy shall be held at the same place, on such day as the council may prescribe, except that when there shall be vacancies in the majority of the council, the circuit court or the judge thereof in vacation, shall fill such vacancies. Any vacancy occurring otherwise during the term for which any of the said persons have been elected may be filled by the council by the appointment of any one eligible to such office. A vacancy in the office of mayor may be filled by the council from the electors of said town."

This section manifestly does not apply to the vacancies here in question. The first vacancy provided for by that section is a vacancy caused by a person elected to the council being adjudged disqualified, or where such person is expelled. The second event provided for is the case where there are vacancies in the majority of the council, neither of which provisions could apply to the matter here under consideration. The only other provision of this section with reference to a vacancy in the council is found in next to the last sentence, which provides:

"Any vacancy occurring otherwise during the term for which any of the said persons have been elected may be filled by the council by the appointment of any one eligible to such office."

From a reading of this sentence, it will be seen that it applies only to a vacancy occurring during the term for which the member of a council has been elected. As the three extra members provided for by the amendment to section 4 of the charter of Farmville have never been elected, the vacancy created did not occur during the term for which any of the said persons were elected.

So far as I have been able to find from an examination of the Code, there are no other provisions therein which conflict with the provisions of section 8 of the amended charter of the town of Farmville (chapter 162 of the Acts of 1912), and I am, therefore, of the opinion that the vacancy in its council can be filled in the manner therein prescribed.

Replying to your second question, I am of the opinion that in the event that all members of the present council should resign, a vacancy would occur which should be filled in accordance with the provisions of section 136 of the Code of Virginia, 1919, as the provisions of section 3003 of the Code of Vir-

ginia, 1919, and section 8 of the amended charter of the town of Farmville, do not apply to a case of this kind.

Yours truly,

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

ELECTIONS—CITIES AND TOWNS.

RICHMOND, VA., April 12, 1920.

B. K. WINSTON, ESQ.,

Dillwyn, Va.

DEAR SIR:

Acknowledgment is made of your letter of April 10, 1920, in which you state that a special election will be held in your town on April 30, 1920, and request me to advise you who will be qualified to vote in that election.

It is provided by section 83 of the Code of Virginia, 1919, so far as is applicable to the question here under consideration, as follows:

"The qualifications of voters at any special election shall be such as are hereinbefore prescribed for voters at general elections, but at any such special election, held before the second Tuesday in June in any year, any person shall be qualified to vote who was so qualified at the last preceding regular November election, or who is otherwise qualified to vote, 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. * * *

With reference to the question as to whether one can vote on a transfer in such election, I refer you to section 173 of the Code of Virginia, 1919, where it is provided:

"* * * 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 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 be not present. No person, however, who removes from one city or county to another city or county in this State, or who offers to vote in a city or town having 2,500 inhabitants or more, shall be allowed to vote at any election therein without having first registered upon his transfer at the time and in the modes prescribed in sections 98 and 100 of this Code."

Very truly yours

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—CITIES AND TOWNS.

RICHMOND, VA., June 1, 1920.

MR. V. L. SEXTON,
Graham, Va.

MY DEAR SIR:

Absence from my office has prevented an early reply to your letter of May 4. In this letter you call my attention to an opinion of the Attorney General, which is found in Pollard's Supplement to the Code of 1910, on page 266. This opinion has reference to the qualification of voters who desire to vote in the regular elections held in cities in June. I can't imagine how this ever got into the Code, as I can find no opinion rendered by this office during the year 1912 which bears on this question. I do find, however, an opinion rendered by Mr. Pollard on the 11th day of April, 1914 (see report of the Attorney General, 1914, pp. 29, 30). Mr. Pollard, in rendering this opinion, was considering the identical question raised in your letter.

Mr. Christopher B. Garnett, on March 10, 1914, rendered a similar opinion. In these two opinions, these gentlemen held that the following requisites must be complied with in order for one to qualify to vote in a town election:

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

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

Third. He must be on the treasurer's list after having paid his State capitation tax six months prior to the second Tuesday in June.

If you will read section 21 of the Constitution, you will see that in order for one to vote at all regular elections he must have paid at least six months prior to said election, all capitation taxes assessed or assessable against him for three years next preceding the election in which he offers to vote. The fact that the residents of the town of Graham have paid their taxes six months prior to the election to be held this fall, does not render them eligible to vote in the regular June town election. I might add that this question has been passed upon a number of times during my term of office, in which I have expressed a view similar to that contained in this letter.

Yours very truly,

JNO. R. SAUNDERS.

Attorney General.

ELECTIONS—CITIES AND TOWNS.

RICHMOND, VA., June 4, 1920.

D. H. WISE,
Strasburg, Va.

DEAR SIR:

Acknowledgment is made of your letter of May 31, 1920, in which you say:

"An elector paid his State poll tax before May 1st, thereby qualifying himself to vote in the General Assembly elections. Is this elector qualified to vote in the corporation election to be held in Strasburg, Va.,

on June 8th, or must he have paid his State poll tax six months prior to June 8th?

"Again, when are the registration books to be closed against a person who wishes to register, or, in other words, can a voter register up to the day before the election?"

One who pays his capitation tax before May 1st is not qualified to vote in the regular June election in cities and towns unless his capitation tax was paid six months prior to the June election.

Replying to your second question, the registration books are required to be closed thirty days before the regular election held in November, and the regular election held in cities and towns in June.

Very truly yours

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—CITIES AND TOWNS—VACANCIES IN OFFICE.

RICHMOND, VA., August 20, 1920.

HON. S. W. PAULETT, *Mayor,*
Farmville, Va.

DEAR SIR:

Acknowledgment is made of your letter in which you call attention to the fact that I did not, in answer to the second question asked in Judge Watkins' letter, state the effect of your failure to resign as mayor.

If you will read his letter to me, you will find that I was not asked any question with reference to your successor, but I am of the opinion that under the facts narrated by Judge Watkins, you will continue to hold over until your successor is elected and qualifies.

In other words, no vacancy has occurred and you continue to hold the office until you resign or until your successor has been duly elected at a time provided for the election of a mayor, and qualifies.

You are correct in the view that if you do not resign, you hold over until your successor is elected and qualifies. If you do resign, your office is filled by the council at its next regular meeting of the qualified electors of your town, under authority of section 8 of the charter of Farmville.

Yours truly,

J. D. HANK, JR.,

Assistant Attorney General.

ELECTIONS—CITIZENSHIP AND RESIDENCE.

RICHMOND, VA., September 23, 1920.

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

DEAR SIR:

Acknowledgment is made of your letter of even date, which is as follows:

"Two ladies called to see me after I had left the office yesterday and interviewed Mr. Sale, first clerk in this office. Each had been assessed with State capitation tax of \$1.50 for 1921, and had paid that amount to the treasurer of the city of Richmond, and each offered to register as a qualified voter in the city of Richmond.

"Mrs. E. J. Humphreys is a native of Virginia and formerly resided in Virginia. Her husband is a resident of the State of Pennsylvania and a registered voter in that State, whose occupation is that of a traveling man. Mrs. Humphreys now makes her home at 618 Third avenue, Highland Park, Richmond city. She claims Richmond city as her residence, although she is away at times temporarily. Is Mrs. Humphreys qualified to register under the act extending the right of suffrage to women, approved by the General Assembly, March 20, 1920, or any other law of this State? If she is not, is the treasurer of Richmond city authorized to refund her the State capitation tax of \$1.50 for 1921, which she has paid?"

"Mrs. Helen A. Penger is a native of Virginia and has lived in Virginia all her life and now resides at 1221 Floyd avenue. Her husband is an Englishman and has never been naturalized. Is Mrs. Penger qualified to register under the act extending the right of suffrage to women, approved by the General Assembly March 20, 1920, or any other law of this State? If she is not, is the treasurer of Richmond city authorized to refund her the State capitation tax of \$1.50 for 1921 which she has paid?"

"Just after dictating this letter, before it was written, Miss Glada Fleishman, 7 South Pine street, Richmond city, called to see me, and requested that I take steps to refund her the \$1.50 State capitation tax for 1921, paid by her, for the reason that she was unable to register, not having been in Virginia, to which State she came from West Virginia, but one year. Would I be authorized to direct the treasurer of the city of Richmond to refund this tax because her inability to register is not due to the fact that she is unable to answer any and all questions affecting her qualifications as an elector submitted to her by the registering officer, but because she has not been a resident of the State for a period of two years, and for this reason, in my opinion, is not assessable with the tax, and if she is not assessable with the tax, should not her money be refunded her, because paid under mistake? I do not think the money can be returned when paid by a woman who is assessable under the law, but is unable to register for the reason that she cannot answer any and all questions affecting her qualifications as an elector submitted to her by the registering officer."

In the case of Mrs. E. J. Humphreys, whose husband is a resident of the State of Pennsylvania and a registered voter in that State, she cannot register and vote in Virginia, as her legal residence is in Pennsylvania and not in Virginia, the rule of law being that the legal residence of the wife is the same as that of the husband. In her case no capitation tax could be assessed, and, therefore, the capitation tax of \$1.50, which she has paid for 1921, should be refunded her.

Mrs. Helen A. Penger, being the wife of an Englishman who has never been naturalized, is not qualified to register and vote in Virginia, but inasmuch as she is a resident alien of the State, she is liable for the State capitation tax of \$1.50 for this year, and each year thereafter, so long as she resides in Virginia. Being liable for this tax, the treasurer would have no authority to refund it to her.

Due to the fact that Miss Glada Fleishman has only been a resident of Virginia for one year, of course she cannot register and vote in Virginia at this time, but having declared herself to be a resident of Virginia, and having

gone to the commissioner of the revenue and had herself assessed and having paid the \$1.50 State capitation tax, I do not think the amount should be refunded her.

Section 4 of chapter 400 of the Acts of 1920, provides "that there is hereby levied for the year succeeding the year in which this act becomes effective (which, of course, is for the year 1921), and for every year thereafter, a State capitation tax of \$1.50 on every female resident of the State not less than twenty-one years of age. * * *"

You will see from a reading of this that there is levied on every female resident of the State, not less than twenty-one years of age, a State capitation tax of \$1.50. It is true that Miss Fleishman could have waited until February of next year when she would have been assessed by the commissioner of the revenue, and would not have been required to pay this capitation tax until some time during the year 1921, but having paid it already, of course she will not have to pay this again next year.

I fully agree with you that capitation taxes cannot be returned when paid by women who are assessable under the law, but are unable to register for the reason that they cannot answer any or all questions affecting their qualifications as electors submitted to them by the registration officers. In other words, the mere fact that a woman is required to pay her capitation tax on account of being a resident of Virginia, does not mean that she is entitled to vote on account of having paid these taxes.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—CITIZENSHIP.

RICHMOND, VA., *September 22, 1920.*

MR. S. B. MARTZ, *Registrar,*
First Ward,
Harrisonburg, Va.

DEAR SIR:

Acknowledgment is made of your letter of September 20th, in which you say:

"Will you kindly give me your opinion on the following question by return mail?

"A woman born in Russia has lived in the United States of America for fifteen to twenty years. Can she register as a voter here or will she have to be naturalized? Please let me hear from you at once."

This woman is not a citizen of the United States unless she has been naturalized, or is the wife of a citizen of the United States. Under the Constitution of Virginia, section 18, no person is eligible to vote in this State unless a citizen of the United States.

Yours very truly,

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

ELECTIONS—CITIZENSHIP.

RICHMOND, VA., *September 30, 1920.*

MR. R. K. SANDERS,
Saltville, Va.

DEAR SIR:

Acknowledgment is made of your letter of September 27, 1920, in which you state that a woman living in your town was born in England but has been in Virginia more than twenty-five years; that soon after moving to Saltville she married a man who was also born in England, but was a naturalized American citizen and has been voting for many years. You desire to be advised whether the woman in question will be required to take out naturalization papers before she can register and vote.

In reply, I will state that, inasmuch as the husband has become naturalized, this makes his wife also a citizen of the United States, and, therefore, it is unnecessary for her to take out naturalization papers in order to register and vote.

Very truly yours

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—ELIGIBILITY OF CANDIDATES.RICHMOND, VA., *May 12, 1920.*

MR. H. B. STRAWN,
Altavista, Va.

DEAR SIR:

I am in receipt of your letter of the 8th, in which you ask the following question:

“Would a citizen of a town who has not registered, be eligible to file his name with the clerk of the court as a candidate for councilman to be voted on in this June election?”

I presume you have reference to the regular election held in June in cities for the election of mayor, members of the council, etc. Section 32 of the Constitution provides as follows:

“Every person qualified to vote shall be eligible to any office of the State or of any county, city, town or other subdivision 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. Men and women eighteen years of age shall be eligible to the office of notary public and qualified to execute the bonds required of them in that capacity.”

A person, in order to be eligible to vote, must meet the requirements of the Constitution as to residence, pre-payment of poll taxes and also must be duly registered. Of course, a person can register any time up to thirty days prior to the election. However, as this is purely a local matter, and not

being familiar with the terms of the charter of your town, it might be well to advise with the attorney for your city.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—ELIGIBILITY OF CANDIDATES.

RICHMOND, VA., May 6, 1920.

MR. C. D. SMITH,

Strasburg, Va.

DEAR SIR:

I am just in receipt of your letter of the 5th, in which you state that an election will be held in your town in the near future for the purpose of electing a council and mayor.

You further state that four of the candidates are employees of the B. & O. and the Southern Railway, and you desire to be advised whether, if elected, they can serve in this capacity while holding annual passes on the respective lines employing them.

In reply, I will state that they are not prohibited under section 161 of the Constitution from holding the office of councilmen or mayor, even though they be employees of a railroad and have passes.

The Court of Appeals, by a decision rendered November 17, 1910, in the case of *Commonwealth v. Gleason, et al.*, 111 Va. 383, which opinion was delivered by Judge Keith, has decided the question. In construing section 161 of the Constitution, the court said:

"An employee of a railroad company who receives a pass over the road as a part of the compensation for his services, is not thereby rendered ineligible to the office of councilman in a city council by section 161 of the Constitution, which declares that any officer who accepts of a transportation or transmission company any frank or free pass, shall thereby forfeit his office. * * * The pass in this instance is neither a free pass nor a frank within the meaning of the Constitution."

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—ELIGIBILITY OF CANDIDATES.

RICHMOND, VA., April 29, 1920.

DR. ALLEN C. JONES,

2800 West Ave.,

Newport News, Va.

MY DEAR DR. JONES:

Acknowledgment is made of your letter of the 21st, in which you request me to advise you whether one who has acted as a registrar since the last election, is eligible as a candidate for the city council in the election to be held in your city under its new charter. You state that the city charter declares that "any qualified voter can be a candidate for office," and you desire

to know whether this provision repeals section 97 of the Code of Virginia, 1919, which provides 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 has so acted as registrar."

It is a well-settled rule of construction that one act of the legislature is not to be construed as repealing by implication a previous act of the legislature if the two acts can be reconciled. While I have not a copy of the charter of Newport News before me, I am of the opinion that if the provision quoted above as given in your letter is the only provision in your city charter which appears to be in conflict with section 97 of the Code, that it was not the intention of the legislature by that section to repeal section 97 of the Code, but that the two must be construed together and both given effect.

This is not a question which comes within the official duties of the Attorney General and I have heretofore declined to express an official opinion thereon. The question whether a candidate is qualified or not, in my view of the matter, is one for the courts to determine and for that reason it would be improper for me to express an official opinion. Therefore, I have merely stated my view of the matter unofficially and as a courtesy to you.

Not having a copy of your city charter before me, I do not know whether the election in question is a regular election or a special election. For that reason I am here quoting the last paragraph of a letter on this subject written to T. Morris Wampler, Esq., September 3, 1919, with reference to a similar question:

"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 for 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."

Trusting the above information is satisfactory, I am

Very truly yours

JNO. R. SAUNDERS.

Attorney General.

ELECTIONS—ELIGIBILITY OF CANDIDATES.

RICHMOND, VA., June 4, 1920.

MR. GEO. A. REYNOLDS,
Graham, Va.

DEAR SIR:

Your letter of June 3, just received, to which I will reply at once. In this you state that you are a candidate for the city council at an election to be held in your town on Tuesday next. You state also that for the past ten or twelve years you have been a registered voter but that you paid your poll taxes a month too late in order to vote in next Tuesday's election.

You desire to be advised if you are eligible for election for councilman, or could you legally serve, if elected. In reply, I will state that section 32 of the Constitution provides as follows:

"Every person qualified to vote shall be eligible to any office of the State or of any county, city, town or other subdivision of the State wherein he resides."

I think this means that in order for one to hold the office as a member of the town council, he should be a qualified voter at the time he is elected. However should you decide to remain a candidate and be elected, your right to hold the office would be a question for the courts to decide. Such being the case, I would hesitate to advise you what to do.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—ELIGIBILITY OF WOMEN TO HOLD OFFICE.

RICHMOND, VA., *October 1, 1920.*

C. A. PRITCHETT, Esq.,

Whitmell, Va.

DEAR SIR:

Acknowledgment is made of your letter of September 29th, in which you say:

"Will you please give me your opinion as to whether, without further legislation a woman can be appointed division superintendent of schools for a county. Your opinion immediately will be appreciated. The question has arisen in my county (Pittsylvania) as to this question."

It is provided by section 32 of the Constitution of Virginia, so far as is applicable to the question here under consideration, as follows:

"Every person qualified to vote shall be eligible to any office in the State, or of any county, city, town or other subdivision 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."

The women of Virginia now being eligible to vote, are likewise eligible to any office, if qualified to vote.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—PERSONS QUALIFIED TO FILL OFFICE.

RICHMOND, VA., *November 1, 1920.*

MRS. MARY SUMNER BOYD,
Washington, D. C.

DEAR MADAM:

Acknowledgment is made of your letter of the 29th ult. addressed to the Attorney General, which came to the office in his absence.

As the jury lists for the present were made up prior to the taking effect of the nineteenth amendment to the Federal Constitution, the question of women serving on juries has not arisen in this State, or rather has not been passed upon yet. In your letter you also say:

"Another question which I have been called upon to answer is as to whether special legislation or constitutional amendment will be necessary to enable women voters to serve in public office. Most State constitutions require simply that holders of public office shall be citizens, but I know of one State, namely: Arkansas, where enabling legislation has been necessary on the ground that this right was not recognized in the common law and was not specifically granted by State constitutions. I am very anxious to know whether other State legal authorities are taking this stand."

It is provided by section 32 of the Virginia Constitution, so far as is applicable to the question asked by you, as follows:

"Every person qualified to vote shall be eligible to any office of the State, or of any county, city, town or other subdivision 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."

Women now being qualified to vote in this State, are therefore eligible to public office.

Yours very truly,

LEON M. BAZILE,
Second Assistant Attorney General.

ELECTIONS—OFFICERS OF.RICHMOND, VA., *September 30, 1920.*

MR. RYLAND GOODE, *Secretary of Electoral Board,*
Rocky Mount, Virginia.

DEAR SIR:

I am in receipt of your letter of September 29, in which you state that the town of Rocky Mount will, in your judgment, be unable to handle the vote this fall, due to the fact that it has only one voting place. You desire to be advised if it would be lawful to increase the number of judges and clerks at this voting precinct.

I am of the opinion that the law does not make any provision for an increased number of judges and clerks for any voting precinct.

Section 148 of the Code of Virginia, 1919, provides that the electoral board shall appoint three competent citizens who shall constitute the judges of election for all elections to be held in their respective election districts, for the term of one year, and shall, at the same time, appoint two clerks for each place of voting, whose terms of office shall be co-incident with that of the judges.

Section 144 of the Code of 1919 provides that, upon the petition of twenty qualified voters of a magisterial district of a county, the circuit court may, in its discretion, change the name of any election district, alter the boundaries of any election district, or re-arrange, increase or diminish the number thereof, or it may change the voting places or establish others in the county. However, this section further provides that no change shall be made within 30 days next preceding any general election.

Of course, it is too late now for the town of Rocky Mount to take advantage of this section. I trust, however, that your judges and clerks will be able to handle the situation.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—OFFICERS OF.

RICHMOND, VA., *September 7, 1920.*

C. F. WHITFIELD, ESQ.,

Franklin, Va.

DEAR SIR:

Acknowledgment is made of your letter of September 30th, in which you say:

"Is it legal for the chief of police of the town of Franklin, Va., who is elected or appointed by the town council, to serve as judge, clerk or registrar of election at the general election to be held in November, 1920, said chief receiving compensation for services from the town of Franklin."

Under the provisions of section 86 of the Code of Virginia, 1904, the chief of police of the town is not eligible to hold the office of registrar. The qualifications of judges and clerks of election are prescribed in sections 84 and 149 of the Code of Virginia, 1919.

Section 84 provides that "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," and section 149 provides that:

"No person shall act as the judge or clerk of any election, who is a candidate for, or the deputy or employee of any person who is a candidate for any office to be filled at such election, or who is 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

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such government, or holding any elective office of profit or trust in the State, or in any county, city or town thereof."

The last edition of the Virginia election laws has been exhausted. A new edition is being prepared but is not yet ready for distribution.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—OFFICERS OF.

RICHMOND, VA., *August 31, 1920.*

D. B. PURKS, ESQ.,
Comorn, Va.

DEAR SIR:

Acknowledgment is made of your letter of August 30th, in which you request me to advise you whether the fact that one is a special game warden disqualifies him from being a judge of election.

It is provided by section 149 of the Code of 1919, so far as is applicable to the question here under consideration, as follows:

"No person shall act as a judge or clerk of any election who is a candidate for, or the deputy or employee of any person who is a candidate for any office to be filled at such election, or who is 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. * * *"

Section 84 of the Code of Virginia, 1919, contains a similar provision. A special game warden is not an elective officer, and, therefore, I am of the opinion that such an officer is not disqualified from acting as a judge of election.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—REGISTRARS.

RICHMOND, VA., *September 27, 1920.*

MR. F. H. HOBBS,
P. O. Box 502,
Norfolk, Va.

DEAR SIR:

In reply to your telegram of inquiry, this morning I wired you as follows:

"Appointment of registrar for Norfolk legal, but if appointed after May 1, 1920, term of office begins May 1, 1921. Am mailing you opinion given Registrar Abbott of your city."

Accordingly, I am enclosing copy of the opinion given Mr. Abbott.

I received from you this morning a clipping from the *Virginian-Pilot* with reference to the general registrar. This article takes up the last column on the first page, and is continued on the fifth page, column four, which you did not send me. I notice, at the bottom of the column on page one, Mr. Bowden says, "It was the intention of the legislature." I do not know, of course, what intention of the legislature he stated, as that seems to have been carried over on the fifth page, but our Supreme Court has held time and again that it is unnecessary to discuss the intention of the legislature where the act itself is not ambiguous.

In this case the act expressly and specifically states that "the registrar shall hold office for two years from the first day of May following his appointment." If it is true that the general registrar in Norfolk was not appointed until the latter part of July or the first part of August, it is manifest that his term of office does not begin until the first day of May, 1921, and the intention of the legislature is specifically expressed.

With reference to the city of Richmond, I was advised on Saturday that the registrar was appointed for that city the last of April.

Of course, you will understand that there is no desire on my part to eliminate the general registrar of the city of Norfolk, for I think it will prove to be a very beneficial office to the electorate. But the law must be construed as it stands, and not as we would have it.

I will be glad to give you any further information that I can with reference to this matter.

Yours truly,

J. D. HANK, JR.,

Assistant Attorney General.

ELECTIONS—REGISTRAR.

RICHMOND, VA., *September 15, 1920.*

FRED C. ABBOTT, ESQ.,

*National Bank of Commerce Building,
Norfolk, Va.*

DEAR SIR:

Acknowledgment is made of your letter in which you state that you are the registrar for the third precinct of the city of Norfolk, that Mr. W. W. Ritter was appointed general registrar for the city the latter part of July or the first of August of this year, and that he has demanded of you the registration books of your precinct, to which demand you have declined to comply on the ground that Mr. Ritter's term of office does not begin until May 1, 1921. You advise me that Mr. Ritter was appointed under the authority of chapter 389 of the Acts of Assembly, 1920 (page 578), and ask my opinion as to whether he has a legal right to the said registration books at this time.

The first section of chapter 389 of the Acts of 1920, among other things, provides:

"* * * Said registrar shall hold office for two years from the first day of May following his appointment, and until his successor is

duly qualified, except as provided in section six of this act. The appointment of such registrar shall be in addition to the office of registrar in each election district in such city now provided for by law, but each of such registrars, upon the appointment of the general registrar provided for in this act shall deliver to said registrar all books, papers and documents pertaining to their respective offices."

Mr. Ritter having been appointed the latter part of July or the first part of August of this year, it is expressly provided that his term of office shall not begin until the first day of May, 1921. This being true, it is manifest that, until that time, he cannot demand the registration books in question as he will not be a registrar and has no authority to act as such until his term of office begins.

The last part of the quotation above, which provides that "each of such registrars, upon the appointment of the general registrar provided for in this act, shall deliver to said registrar all books, papers and documents pertaining to their respective offices," must be read in connection with the first sentence of the quotation; that is to say, "each of such registrars" must deliver to the general registrar all books, papers and documents pertaining to his office when the terms of office of the general registrar begins. This was the evident intent of the legislature, and is in accord with reason, because the general registrar cannot act as such until his term of office begins and no benefit could accrue to either him or the electorate by placing in his hands the registration books prior to the time when he can perform the duties of his office. On the other hand, it probably would work grave injury to those persons who desire to register, as there would be no way for them to do so. The general registrar would have no authority to register them, and the registrar who had surrendered to the general registrar the registration books would have no way to record the registration.

It is pertinent to call your attention to the fact that the act was made an emergency act and was approved March 20, 1920, therefore becoming effective upon that date. If the electoral board had desired that the general registrar should take office and perform the duties during the year 1920, under the provisions of the act, it should have appointed him prior to the first day of May of this year.

Yours truly,

J. D. HANK, JR.,

Assistant Attorney General.

ELECTIONS—REGISTRARS, COMPENSATION.

RICHMOND, VA., *October 12, 1920.*

MR. B. P. WARD,

Rural Retreat, Va.

DEAR SIR:

Acknowledgment is made of your letter of October 9th, in which you say:

"I am registrar of the Zion precinct in Wythe county and as such respectfully ask that you give me your construction of section 96 of the Code in regard to the pay of registrars. This section provides that the registrar shall be paid \$1 for posting notices. Section 98 of the Code

requires that the registrar shall post three copies of the lists of the names of all persons admitted to registration since his last sitting. The question on which your opinion is desired is whether the lists of persons registered constitutes a notice for posting which the registrar is entitled to a fee of \$1. I understand, of course, that the registrar is entitled to a fee of \$1 for posting the notice of the time and place of registration.

The lists referred to by you are the written or printed lists of the names of all persons admitted to registration which you are required by section 98 of the Code of Virginia, 1919, to have posted at three or more public places in your election district after each sitting.

These lists, in my opinion, are notices within the meaning of section 96 of the Code of Virginia, 1919, for which you should receive \$1 for posting. In addition to this, for making and certifying such lists, you are entitled to 3 cents for each ten words, counting initials as words, as is provided for by section 98 of the Code of Virginia, 1919.

Yours very truly,

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

ELECTIONS—REGISTRATION.

RICHMOND, VA., *September 24, 1920.*

SAMUEL L. ADAMS, ESQ.,
South Boston, Va.

DEAR SIR:

I am just in receipt of your letter of the 23rd, in which you ask to be advised as to whether colored soldiers, although illiterate, are entitled to register and vote, due to the fact that they served in the late world war.

In reply, I will state that soldiers who served in the late war are not entitled to register and vote by virtue of their service, but must comply with the provisions contained in section 20 of the Constitution, which provides as to who may register after 1904.

The only soldiers exempted from these requirements are those who served in the War Between the States.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—REGISTRATION.

RICHMOND, VA., *September 9, 1920.*

MR. JAMES P. REARDON,
Attorney at Law,
Winchester, Va.

DEAR SIR:

I am just in receipt of your letter of the 4th, which is as follows:

"The registration law provides that the registrar shall sit thirty days before the general election. The thirty day period would fall on Sunday. If held on the following Monday the period would be only twenty-nine days, and if held on Saturday the period would be thirty-one days. Kindly advise me what the law provides in this case."

I think it advisable that the registrar should sit on Saturday, inasmuch as the law requires that the registration books shall be closed thirty days prior to the general election in November, and should the registrar sit on Monday, there would not be this period of time between that day and the day of election.

I therefore think it advisable that the registrar should sit on Saturday, October 2. Certainly no harm can be done, as the law requires the registrar to post notices of the time and place of registration at ten or more public places in his election district.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—REGISTRATION.

RICHMOND, VA., *October 7, 1920.*

MR. C. R. WILLIAMS,
*Route 1, Box 61,
Lanexa, Va.*

DEAR SIR:

I am just in receipt of your letter of October 4th, in which you state that you are registrar for Cumberland district, New Kent county, and that you declined to register women who had not paid their capitation tax for 1921.

The law requires that all women who desire to vote in the November election should pay one year's capitation tax, namely, for the year 1921, and unless this tax receipt is exhibited to the registrar they cannot be registered. You will therefore see that you are correct in your construction of the law.

The law bearing on this subject is found in the Acts of 1920, page 588.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—REGISTRATION.

RICHMOND, VA., *October 15, 1920.*

F. C. DALTON, ESQ.,
Ocala, Va.

DEAR SIR:

Acknowledgment is made of your letter of October 11, 1920, in which you ask several questions. Your first question is:

"Will you please advise me if the law requires a person who desires to register as a voter, and who has lost his tax receipts, to show

duplicate tax receipts to the registrar when said person's name appears on the county treasurer's certified voting list, said list being in the possession of the registrar at the time application is made?"

This question is answered by the first paragraph of section 20 of the Virginia Constitution, which reads as follows:

"After the first day of January, 1904, every male citizen of the United States, having the qualifications of age and residence required in section 18, shall be entitled to register, provided:

"First. That he personally paid to the proper officer all State poll taxes assessed or assessable against him, under this or the former Constitution, for the three years next preceding that in which he offers to register; 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;"

From this you will see that all that is necessary is that the person offering to register has paid to the proper officer all State poll taxes assessed or assessable against him for the three years preceding that in which he offers to register. The registrar, in order to register a person, must have evidence of this fact, but the production of tax receipts is not necessary if the payment of the applicant's taxes can be proved in some way just as authentic. A certified copy of the treasurer's list, in my opinion, is sufficient evidence of the payment of his capitation taxes by one whose name appears on that list as having paid the same within the time prescribed by law, and should entitle him to register without the production of his tax receipts.

Your second question is as follows:

"Should the applicant sign the registration oath before making his written application to the registrar or after?"

In my opinion, it is immaterial whether the applicant signs the registration oath before or after making out his written application to register. Section 95 of the Code of Virginia, 1919, which provides for the registration oath, reads as follows:

"Before a registrar shall register the name of any person as a voter he shall be satisfied of his qualification as hereinbefore prescribed, and every person applying for registration shall, before he is registered, take and subscribe the following oath: 'I, _____, do solemnly swear (or affirm) that I am entitled to register under the Constitution and laws of this State, and that I am not disqualified from exercising the right of suffrage by the Constitution of Virginia,' which oath, so subscribed, shall be filed with the registrar and preserved with the books of registration."

You will see from this that the oath is required to be taken and subscribed only before the applicant is registered.

Your third question is:

"When written application is made by a person and accepted as all right, and the registration oath is signed, is the registrar required by law to enter said name on the books?"

It is provided by the second paragraph of section 20 of the Virginia Constitution as follows:

"That, unless physically unable, he make application to register in his own hand-writing, without aid, suggestion, or memorandum, in the presence of the registration officer, 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;"

If the written application complies with this provision of section 20 of the Constitution, and the applicant is otherwise qualified, I am of the opinion that such person should be registered. Of course, you are aware of the fact that the registration books are closed until after the November election.

Very truly yours,

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—REGISTRATION.

RICHMOND, VA., *September 2, 1920.*

MR. CHAS. D. FOX, *Secretary,*
Electoral Board,
Roanoke, Va.

MY DEAR SIR:

I am just in receipt of your letter of August 30th, in which you ask to be advised how women should register under chapter 400 of the Acts of Assembly, 1920. You further state that some members of your board maintain that before women can register under said act, the certification of the nineteenth amendment giving women this privilege, must be promulgated by the Secretary of the Commonwealth to the officers of counties and municipalities. You then ask to be advised if the women can proceed to register under the provisions of the above named act without any notice from the Secretary of the Commonwealth.

In reply to your letter I will state that I have given this matter very careful consideration. The Auditor of Public Accounts and I discussed it for some time. Several days ago he sent out instructions, which were approved by me, to the treasurers and commissioners of the revenue throughout the State. I am enclosing a copy of these instructions. I am of the opinion that no action on the part of any State officer is necessary to put into effect and force the nineteenth amendment to the Federal Constitution.

A woman who desires to vote occupies a similar position to the young man who became of age after February 1, 1920. Should she wish to vote it will be necessary for her to go to the commissioner of the revenue, have herself assessed and obtain from him a certificate: take this certificate to the treasurer, pay her capitation tax for the year 1921 and then apply to the registrar to register. Of course, in order to register she must comply with the law applicable to legislation.

Should you desire any further information in reference to this I shall be very glad to give it.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—REGISTRATION.

RICHMOND, VA., *September 30, 1920.*

MR. C. F. KITTS,

North Tazewell, Va.

DEAR SIR:

I regret very much that your special delivery letter did not reach me until this morning. This was due to the fact that I left the city last Saturday to attend the circuit court of my county and it came during my absence. The postoffice, instead of sending it to my office, sent it to a private residence where I live, hence no one in my office saw it.

I sent you a telegram this morning in reference to the right of the registrar to ask questions affecting the qualifications of an elector.

I quote the following paragraph from your letter:

"If a registrar would put the name of an applicant on the registration books who has not paid his poll tax in accordance with subsection 1 of section 20, would he be lawfully registered and could he lawfully vote under such registering? Or if he had personally paid his poll tax to the proper officer and was physically able and could not make his application in his own handwriting and the registrar would permit such person to register and place his name on the books, would he be lawfully registered and allowed to vote in the coming election? Or, if the applicant pays his poll tax and makes his application in his own handwriting, in the presence of the registration officer and the registrar refuses to ask him any questions under oath, as required in subsection 3 of section 20, affecting his qualifications as an elector, would such person be registered according to law and should he be allowed to vote under such registration?"

The mere fact that one has been registered does not give such person the right to vote unless he has paid all taxes assessed or assessable against him as required by the Constitution.

Section 86, found on page 30 of the Virginia election laws, provides as to how the registration books may be purged, etc. This is the only method provided by law for striking the names from the registration books of the persons who have been improperly registered. It is not compulsory upon the registrar to ask questions affecting the qualifications of an elector, but certainly the Constitution contemplates that this should be done.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—REGISTRATION.

RICHMOND, VA., *September 22, 1920.*

MR. J. S. WRENN,
Clerk of the Court,
Emporia, Va.

DEAR SIR:

Acknowledgment is made of your letter asking whether persons can register who give their ages as "21 plus" and refuse to give the date of their birth, as required by law.

Section 20 of the Virginia Constitution and section 93 of the Code of Virginia, 1919, provide that, as a prerequisite to the registration of any person, such person shall make application to the registrar in his own handwriting, without aid, suggestion or memorandum, in the presence of the registrar, 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. Unless these prerequisites are complied with, the registrar has no authority to register an applicant.

One of the prerequisites is that the application shall show the age and date of birth of the applicant. This is not complied with by stating in the application that the applicant is "21 plus." It is manifest, therefore, that an application so filled in is not in such form as to authorize registration thereunder.

Yours truly,

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

ELECTIONS—REGISTRATION.

RICHMOND, VA., *September 22, 1920.*

H. S. IRVINE, ESQ., *Registrar.*
North Liberty Precinct,
Bedford, Va.

DEAR SIR:

Acknowledgment is made of your letter of September 21st, in which you say:

"I inclose herewith original application of Mrs. R. B. Kelsey for registration under Acts of Assembly, 1920.

"Second clause of section 20 of the election laws of Virginia requires applicants for registration to give their age, place and date of birth, etc. Mrs. Kelsey refused to give either, simply qualifying that she was more than 21 years of age. As a matter of fact she is supposed to be about 75.

"I respectfully request your opinion on two points involved.

"First. Is she entitled to registration on her application, omitting as she does to give her age, place and date of birth?

"Second. In case her name had been placed on registration book, would the registrar be justified in erasing her name from the list of voters?"

It is provided by section 20 of the Constitution of Virginia, paragraphs 2 and 3 thereof, as follows:

"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

"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."

You will see from the provisions of paragraph 2 of this section of the Constitution that it is necessary for the person applying for registration, to state in his or her application his or her name, age, date and place of birth. This means that the correct age must be stated and that the date and place of birth must be given. An application which does not contain this information does not comply with this section of the Constitution, and the mere statement that the person making application to register is considerably over twenty-one years of age, accompanied by the physical appearance of being over that age, is not a sufficient compliance with the provisions of the Constitution.

The person making the application in question should be informed of these facts and given an opportunity to supply the missing information. Upon failure to supply the information in the application, the registrar has no authority to register the applicant.

In response to your second question, I am referring you to section 107 of the Code of 1919, which provides a method for purging registration books of persons improperly thereon.

Yours very truly,

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

ELECTIONS—REGISTRATION.

RICHMOND, VA., October 7, 1920.

MR. R. E. GATEWOOD,
Toano, Va.

DEAR SIR:

I am just in receipt of your letter of October 4th, which is as follows:

"Just one point in view. Will a woman who has been in the county and district less than the time required by law, although having registered, be a qualified voter in the next election?"

In order for a woman to vote in the coming November election, the law requires that she shall have been a resident of the State at least two years,

of the county, city or town for one year, and of the precinct thirty days, and in addition to this she must have paid her capitation tax for 1921 and registered.

No woman is entitled to register unless she meets these requirements of the law.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—REGISTRATION.

RICHMOND, VA., *October 3, 1920.*

HON. P. H. DREWRY,
Petersburg, Va.

MY DEAR SENATOR DREWRY:

Acknowledgment is made of your letter of October 1st, in which you say:

"There seems to be a rumor in some portions of the State that you have rendered an opinion that registration does not cease on October 2nd, but will continue up to and including the date of election; that the women are simply to be classed like the young man coming of age. I have not seen any statement from you to this effect and think it not probable that you have rendered such a statement, but there seems to be a great deal of misconception on the subject."

I have never expressed such an opinion. The women who did not register prior to the closing of the registration books on October 2, 1920, cannot register so as to vote in the November, 1920, election.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—REGISTRATION.

RICHMOND, VA., *September 28, 1920.*

R. T. HUBARD, ESQ.,
Commonwealth's Attorney,
Salem, Va.

DEAR SIR:

Acknowledgment is made of your letter in which you state that certain persons in your section of the State are distributing forms among the women, such forms to be used in making application to register. You ask if this is permissible.

Subsection 2 of section 20 of the Constitution of Virginia provides as follows:

"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;"

It is manifest, therefore, that a registrar has no authority to register any person who does not fill out the registration application without assistance, suggestion or memorandum to guide him.

Yours truly,

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

ELECTIONS—REGISTRATION.

RICHMOND, VA., *September 28, 1920.*

MR. D. S. GAULDING,
Keysville, Va.

DEAR SIR:

Acknowledgment is made of your letter in which you ask me to advise you the list of questions to be asked those who apply to vote in the next election. I presume you have in mind subsection 3 of section 20 of the Constitution of Virginia, which provides as follows:

“* * * That he answer on oath any and all questions affecting his qualification as an elector, submitted to him by the officers of registration.”

There is no specific list of questions to ask an applicant for registration, but I am of the opinion that the provision was placed in section 20 in order that, if doubt arose in the mind of the registrar, as to the right of the applicant to qualify, he could ask him such questions affecting his qualification as would satisfy his mind upon the subject.

Such questions the applicant is compelled to answer, and if these answers convince the registrar that the applicant is not entitled to be registered, he, of course, would refuse so to do, but as provided in section 20, all questions and answers must be reduced to writing and certified and preserved as a part of the registrar's official record.

Yours truly,

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

ELECTIONS—REGISTRATION.

RICHMOND, VA., *August 19, 1920.*

HON. J. F. WYSOR,
County Treasurer,
Pulaski, Va.

MY DEAR MR. WYSOR:

Acknowledgment is made of your letter of August 14th, in which you say:

“We are making plans to register the women:

“Please advise if in your opinion the registrars will have the right to use separate registration books for the women. In my opinion this is highly desirable. It will simplify matters very much, not only in the registration but in the casting of the vote.”

I know of no reason why women could not be registered in separate registration books from those used for the registration of men. As you say, I think it would simplify matters a good deal, not only in the registration, but in the casting of the vote.

The only restrictions as to the books in which a person may be registered, so far as I have been able to find, is that persons registered by the boards of registration appointed by the constitutional convention (section 108) must be registered in a separate book from that provided for persons registered after 1904, and that separate books must be provided for white and negro voters (section 94 of the Code of Virginia, 1919).

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—REGISTRATION OF MARRIED WOMEN, PLACE OF.

RICHMOND, VA., *October 28, 1920.*

WM. F. KEYSER,
Attorney at Law,
Luray, Va.

DEAR SIR:

Acknowledgment is made of your letter of October 23rd, in which you say:

"Our sheriff, E. L. Lucas, is a registered voter at Printz Mill precinct in which territory he lived before he was elected sheriff last fall, and where he owns a dwelling and real estate, but his dwelling is now closed, he having temporarily, of course, moved to Luray and now, with his wife and family, occupies the jail house residence. During the late registration his wife registered at Luray precinct as a voter. It so happens that Mr. Lucas failed to get his transfer from Prinz Mill precinct to Luray precinct, and the question now arises whether he can go back to Printz Mill precinct to vote, and if he does whether his wife can vote at Luray precinct. In other words, can the husband and wife under these circumstances vote at separate precincts. I am clearly of the opinion they cannot. If the wife votes at Luray the husband cannot vote at Prinz Mill, or if the husband votes at Prinz Mill, then the wife has no right to vote at Luray. Certainly, where the husband and wife live together the wife's residence and domicile follows that of the husband and they must necessarily be eligible to vote at the same place. Will you kindly give me your unofficial views as to the situation?"

Mrs. Lucas' legal residence is at the precinct where her husband has his legal residence and it is necessary for her to register and vote at that precinct. If Mr. Lucas claims Prinz Mill as his place of legal residence, his wife must register and vote there and not elsewhere.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—REGISTRATION OF VOTERS.

RICHMOND, VA., *November 26, 1920.*

HON. J. M. HOOKER,

Stuart, Va.

MY DEAR MR. HOOKER,

I am in receipt of your letters of November 8th and November 22, 1920, in which you submit to me certain questions, and desire to be advised whether or not, in my judgment, a registrar, in refusing to register certain persons, is guilty of violating section 4728 of the Code of 1919. As a matter of convenience I quote your questions:

"1st. A woman files with the registrar a paper as her application to register, and fails to state therein her age and her occupation for the past two years. The registrar is not satisfied with the application and refuses to register her. She files a petition appealing from the registrar, but does not prosecute the appeal, and goes before a justice and swears out a criminal warrant under section 4728, Virginia Code, 1919.

"2nd. A woman applies for registration, but fails to state in her application the county and district in which she now resides, and further fails to state the county and district in which she has resided for the past two years, merely saying, I have resided at Blank P. O., Virginia, for the past two years. She could have resided at that post-office, or have gotten her mail there and yet been a resident of Carroll county or Floyd county. The registrar not being satisfied with her application, refused to register her. She filed a petition for an appeal to the circuit court but dropped it, and swore out a warrant under section 4728, above mentioned.

"3rd. A woman applies for registration but fails to state what her occupation has been for the past two years, and further fails to state the county and district in which she resides. The registrar, not being satisfied with her application, refuses to register her. She files an appeal but drops it, and swears out a criminal warrant under 4728 *supra*.

"4th. At one of the precincts in this county there were no registration books, and the clerk ordered some for the precinct from the proper authorities, but they did not arrive until October 10th or 12th. The last day for registering voters for the November election was October 2d. The registrar went ahead, took the applications of all who applied, and on October 6th, and before the registration book was made up or had even arrived, made out a list and furnished it to the clerk and posted it at the precinct as required by law. When the book later arrived, he entered thereon all he had registered and left off the names of some that were on the posted list. They were properly left off and had gotten on the posted list and clerk's list by inadvertence. The ones left off the books knew they had not registered and are not complaining. The list furnished the clerk and list posted at the precinct do not correspond with the book, but the registration book is the correct list of those he intended to register."

Section 4728 of the Code of Virginia, 1919, reads as follows:

"If any registrar wilfully or maliciously reject from registration, or corruptly register any person, contrary to law, he shall be deemed guilty of a misdemeanor."

You will observe from a reading of this section that in order to constitute a crime thereunder, a registrar must be guilty of wilfully or maliciously

rejecting a person applying for registration, or of corruptly registering such applicant contrary to law.

The ratification of the nineteenth amendment to the Federal Constitution, which gave to women the right of suffrage, does not in any manner exempt them from the same qualifications that are required of men, which qualifications are set out fully in section 20 of the Constitution of Virginia. In other words, women must fulfill these requirements just as male voters are required to do.

Subsection 2 of section 20 of the Virginia Constitution requires that, unless physically unable, an applicant must make application to register in his or her own handwriting, without aid, suggestion or memorandum, in the presence of the registration officers, stating therein his or her name, age, date and place of birth, residence and occupation at the time and for the two years next preceding.

Subsection 3 of this same section requires that the applicant must answer on oath any and all questions affecting his qualifications as an elector, submitted to him by the officers of registration.

In your first question you state that a woman who applies for registration failed to state her age and her occupation for the past two years, and the registrar, not being satisfied, refused to register her. In my judgment, he was correct in so doing.

In your second question you state that a woman who applied for registration failed to state in her application the county and district in which she resided, and further failed to state the county and district in which she had resided for the past two years. Her failure to state these facts in her application justified the registrar in refusing to register her.

In your third question you state that a woman who applied for registration failed to state in her application what her occupation had been for the past two years, and further failed to state the county and district in which she resided. The registrar, in my judgment, was justified in refusing to register such party.

The Constitution is very explicit in requiring all applicants to measure up to these qualifications, and the action of the registrar in refusing to register such persons was not a wilful or a malicious rejection by him of such persons.

In answer to your fourth question, I would say that the registrar seems to have taken a common sense view of the situation and did, perhaps, what was best under the circumstances. I am, therefore, of the opinion that he was not guilty of violating section 4728 of the Code of 1919.

Very truly yours,

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—REGISTRATION OF VOTERS.

RICHMOND, VA., April 24, 1920.

A. B. CARNEY, ESQ.,

Attorney at Law,

Norfolk, Va.

DEAR SIR:

Acknowledgment is made of your letter asking for an interpretation of

that portion of section 2995 of the Virginia Code, which provides that "the said registrar shall, before any election in said town, register all voters who are residents of such town, and who shall have previously registered as voters in the county, or either of them, in which said town is situated, and none others."

You state that the question is whether the registrar in the town of South Norfolk, which has recently been carved out of the county of Norfolk, shall have each voter come before him and re-register, or can he take from the old registration books of the county the names of the voters residing now within the town, and from this data prepare a registration book for the town in question.

I am of the opinion that it was never intended, by this section, to force the voters to do anything that is unnecessary, and, therefore, the town registrar should take from the county registration books the names of the voters who are residents of the town, provided that from these books he can secure the information necessary to determine whether the person listed on the county registration book lives in that portion of the county which is now a part of the town; that is to say, most of the registration books show the streets, etc., where the person registered lives, and if, therefore, the county registration books make the place where the person registered lives sufficiently definite for the registrar to determine whether such person is now in the town, he can and should transfer the names to the town registration books.

If, however, the town registrar cannot, from the county registration book or otherwise, determine whether a person whose name appears on the county registration book, is now in the town, I am of the opinion that it would be necessary for such person to bring proof of that fact to the registrar before he should be placed on the town registration book.

I hope I have made myself clear, but if there is any further information I can give you with reference to the matter, I would be very glad to do so.

It is possibly pertinent to call your attention to the fact that an opinion was given by the Hon. William A. Anderson, former Attorney General (report of Attorney General, 1908, p. 71), in which he decided that the provision of section 78 of the Code, which requires the registrar to close his books thirty days before an election, does not apply, and was not intended to apply, to the registrars appointed for towns under section 2995 (section 1022 of the old Code). Therefore, a person can be registered up to and including the day of election. In this opinion Major Anderson says that:

"It is the duty of the registrar appointed under section 1022 of the Code to enter upon the registration books the names of such voter as shall have been previously registered as a voter in the county in which the said town is situated, and who resides in such town and are otherwise qualified voters thereof."

Yours truly,

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

ELECTIONS—PURGING OF REGISTRATION ROLLS.

RICHMOND, VA., *September 23, 1920.*

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

DEAR SIR:

Acknowledgment is made of your letter of September 15th, in which you say:

"The electoral board of Fauquier county has ordered a purging of the registration books of the county to be made on October 2, 1920, under the direction and authority of section 107 of the Code.

"The question has arisen as to whether registrars have authority under this section to purge the *permanent roll* or whether their activities must be confined solely to the roll of voters registered since January 1, 1904. Section 108 would seem to imply that they cannot purge the permanent roll."

I have examined sections 107-8 of the Code of Virginia, 1919, with care, and am of the opinion that the registrars have the authority, under section 107 of the Code, to purge the permanent registration roll as well as the roll of persons registered since January 1, 1904. Certainly, it was not the intention of the law that persons who are dead, or for any other reason are not entitled to be on the registration books, should be exempt from the provisions of section 107 of the Code merely because such persons have been registered on the permanent registration rolls.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—RESIDENCE.

RICHMOND, VA., *March 5, 1920.*

HON. JOHN HIRSCHBERG,
Commissioner of Labor,
City.

MY DEAR MR. HIRSCHBERG:

Acknowledgment is made of your letter of even date, which is in the following terms:

"Will you kindly advise me regarding the following:

"A resident of the State of New York, who was in the employ of the DuPont Powder Company, was sent to this State by that company in January, 1917, to work in their plant at Hopewell. He continued to retain his residence in New York State, returning there several times during the succeeding twelve months. In March, 1918, he married in Virginia and decided to make this State his permanent home.

"How many years' poll taxes would this man have to pay in order to vote in the election to be held in this city in June of this year?"

It is provided by section 21 of the Constitution among the conditions for voting, that unless he is exempted by section 22 of the Constitution,

one 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."

Under this section of the Constitution one is only required to pay such taxes as he was lawfully assessable with. Therefore, as was said by Attorney General Anderson, if a voter "has only been of age during one or two of those three years, he would be assessable with the 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." (Opinions of Attorney General, 1907, p. 66).

It is, therefore, clear that one becoming a resident of the State within the three-year period is required to pay, as a prerequisite to his right to vote, only such capitation taxes as were assessed or assessable against him during the period subsequent to his becoming a resident of the State.

It appearing that the man in question became a resident of Virginia in March, 1918, the first capitation tax assessable against him would be for the year 1919. If this tax has been paid six months prior to the election in which he offers to vote and he possesses the other qualifications necessary for registering and voting in this State, he is entitled to register and vote at the election to be held in June, 1920.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—RESIDENCE.

RICHMOND, VA., *March 16, 1920.*

REV. LEE G. CRUTCHFIELD,
Williamsburg, Va.

DEAR SIR:

Acknowledgment is made of your communication of March 5, 1920, in which you request me to advise you on the following statement of facts:

"I am a Methodist preacher. I lived in Norfolk, but was transferred to Williamsburg last November, reaching here November 29th. I am registered in Norfolk and my poll taxes are paid. As I understand it, I cannot vote next November, because I will not have been in Williamsburg a full year by the time the presidential election is held. Am I correct? Under the circumstances, can I vote anywhere next November?"

Your right to vote in Norfolk depends upon whether you changed your legal residence from Norfolk to Williamsburg when you moved to the latter place. There is nothing to prevent you from selecting one county or city as the place of your legal residence, and maintaining it there regardless of where you are moved in the performance of your duties as a minister of the Methodist church.

The question of residence for the purpose of voting is purely a matter of intention, and if, when you moved to Williamsburg as the pastor of a church

in that city, you intended to retain your legal residence in the city of Norfolk, where you had acquired such residence and qualified to vote, you would be entitled to vote there in the coming election. If, on the other hand, when you moved from the city of Norfolk to Williamsburg, you intended to abandon your residence in Norfolk and to acquire a new residence in the city of Williamsburg, of course, you have lost your residence in Norfolk and will be unable to vote there.

Very truly yours,

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—RESIDENCE.

RICHMOND, VA., May 8, 1920.

MR. JACOB HEVENER,
Staunton, Va.

DEAR SIR:

Acknowledgment is made of your letter in which you say that a voter moved from Staunton to the county seat the day before an election held in Staunton, and you ask whether or not he could vote in Staunton in such election.

The laws of Virginia provide that a voter must live in the county, city or town one year before he can vote therein. Therefore, this voter could not vote in the county to which he had moved until he had been a resident there for one year, but he does not lose his franchise because of his removal, but can still vote in the city until the year has elapsed.

The provision with reference to removal from one precinct to another in the same county, city or town does not apply in such case.

Any further information I can give you will be gladly furnished.

Yours truly,

J. D. HANK, JR.,

Assistant Attorney General.

ELECTIONS—RESIDENCE.

RICHMOND, VA., April 26, 1920.

E. W. SYDNOR, ESQ.,
Jefferson City, Tenn.

MY DEAR SIR:

Acknowledgment is made of your letter of April 23d, in which you state that you are registered at Swansboro precinct, South Richmond, Virginia, and that you expect to get a transfer to a precinct in Prince George county. You then say:

"My residence in Prince George dates from July 15, 1920. I have paid no poll taxes for several years, but have always claimed Virginia as my legal residence. Will you please advise me of every step I will have to make before voting."

It is provided by section 18 of the Virginia Constitution, that in order to vote one must have 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 required by subsequent sections of the Constitution.

The fact that you have been living out of Virginia does not affect the question of your residence in Virginia if you have intended to retain it as your home, which would appear from your letter. However, it is necessary for you to have been a resident of the county one year before the election in which you desire to vote. If the date you changed your residence to Prince George was July, 1919, instead of 1920, as stated in your letter, you would have acquired the residence required by the Constitution to vote in the November election, and having done so, you would, under the provisions of section 35 of the Constitution, be entitled to vote in the primary.

In order to vote in Virginia it will be necessary that you shall have paid your capitation taxes for the three preceding years, or the years 1917, 1918, 1919 more than six months before the November election. You, therefore, have but a few days in which to do this. Before the tax can be paid you will have to be assessed. I would suggest, however, that you send the amount of the tax plus the penalty, which will be 8 cents on each \$1.50, to the treasurer, telling him that it is in payment of your capitation tax for the specified years, with the request that he see that the commissioner of the revenue properly assesses you.

If you have not been assessed for any one of the three preceding years, you can request the commissioner of the revenue of Prince George to assess you with these omitted taxes and pay the whole amount in Prince George county. If, however, these taxes have been assessed against you in South Richmond, they should be paid there.

Your transfer should be procured and presented to the registrar in Prince George at least thirty days before the general election.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—RESIDENCE—ANNEXATION OF TERRITORY BY CITY.

RICHMOND, VA., May 20, 1920.

SENATOR SAXON W. HOLT:

Newport News, Va.

MY DEAR SIR:

Your letter of the 7th did not reach my office until last Monday, when I was in Roanoke, and this is my first opportunity to reply. You state in your letter that within the last two months a section of Warwick county, adjacent to the city of Newport News, in which you live, has been annexed to that city.

You then ask the question that inasmuch as you are qualified to vote in the district which has been annexed, are you not entitled to vote in the

city for the presidential election this fall. Section 2964 of the Code of 1919 provides as follows:

"Whenever, by extension of its territorial limits as aforesaid, territory is annexed to a city or town, the council thereof shall, by ordinance, organize the same into a new ward or wards and shall forthwith select the proper number of councilmen from the residents and qualified voters of such new ward or wards, to serve until the next general election, or attach the same to existing ward or wards, under such regulations as are provided by law. This shall be done long enough before the next ensuing general city election to enable electors in such annexed territory to register. All electors residing in such annexed territory shall be entitled to transfers to the proper poll books in said city or town without again registering therein. Any person residing in said territory who shall not have registered shall be entitled to register in said city or town if he would have been entitled to register and vote at the next succeeding election in said county or town. But the failure of the council to so district said territory shall not invalidate any election held in said city or town."

You will see from a reading of this section that you will be entitled to vote in the city.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—RESIDENCE.

RICHMOND, VA., *July 13, 1920.*

CHARLES E. HASTY,
312 *Myrtle Street,*
Petersburg, Va.

DEAR SIR:

Acknowledgment is made of your letter of June 9, 1920, in which you state that you have been a resident of this State for two years and four months, and have paid your capitation taxes for the years 1918 and 1919. You further state that you moved from Salem, Virginia, in the county of Roanoke, on January 1st of this year, at which time you became a resident of the city of Petersburg. You ask if you are entitled to vote in that city in the election to be held in November.

Under the provisions of section 18 of the Virginia Constitution, you are not. This section reads as follows:

"Every male citizen of the United States, twenty-one years of age, who has been a resident of the State two years, of the county, city or town one year, and of the precinct in which he offers to vote thirty days next preceding the election in which he offers to vote, has been registered, and has paid his State poll taxes as hereinafter required, shall be entitled to vote for members of the General Assembly and all officers elective by the people; but removal from one precinct to another, in the same county, city or town shall not deprive any person of his right to vote in the precinct from which he has moved, until the expiration of thirty days after such removal."

You will see from the above quoted section that, in order to vote, it is necessary for you to have been a resident of the city or county in which you offer to vote at least one year preceding the election.

Very truly yours,

JNO. R. SAUNDERS.

Attorney General.

ELECTIONS—RESIDENCE.

RICHMOND, VA., July 6, 1920.

HON. GILBERT E. PENCE,
Commonwealth's Attorney,
Woodstock, Va.

MY DEAR SIR:

Acknowledgment is made of your letter of July 3d, in which you request me to advise you whether a young man who will become twenty-one years of age in September, 1920, and is not registered and has not paid his poll tax, will have the right to vote in Shenandoah county in the November election upon the payment of his capitation tax and registration, although he has not been a resident of that county for the period prescribed by the Constitution.

It is provided by section 18 of the Constitution 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."

The qualifications prescribed by this section are applicable to persons just coming of age, as well as to other persons qualified as to age, and I am of the opinion that a young man just coming of age is not entitled to vote merely upon the payment of the capitation tax prescribed by section 20 of the Constitution unless he is otherwise qualified to vote, among which qualifications is included that of residence.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—RESIDENCE.

RICHMOND, VA., October 29, 1920.

S. C. BOWMAN, Esq.,
Judge of Election,
Broadway, Va.

DEAR SIR:

In response to your letter of the 28th, addressed to the Attorney General, if the man in question moved from Broadway to Harrisonburg with

the intention of abandoning Broadway as his legal residence and acquiring a legal residence in Harrisonburg, he cannot vote in Broadway.

If, on the other hand, when he moved to Harrisonburg, he intended to retain his legal residence at Broadway, he is entitled to vote there. The Court of Appeals said in *Williams v. Commonwealth*, 116 Va. 272:

"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."

From this you will see that the mere fact that the man in question has moved from Broadway will not in itself deprive him of his legal residence there for the purpose of voting. In addition to the act of moving away, he must have had the intention of so doing, or after he removed, of abandoning Broadway as his legal residence and acquiring a legal residence elsewhere.

Trusting this sufficiently answers your question, I am,

Yours very truly,

LEON M. BAZILE,

Second Assistant Attorney General.

ELECTIONS—RESIDENCE.

RICHMOND, VA., June 4, 1920.

E. W. PENNINGTON, ESQ.,

Attorney at Law,

Pennington Gap, Va.

DEAR SIR:

Acknowledgment is made of your letter of June 2, 1920, in which you request my opinion on the following statement of facts:

"Some parties who lived within the magisterial district in which the incorporated town is located and registered as voters at the voting precinct in the town, duly paid their poll taxes six months before the date of the municipal election, but after they were assessed for 1919, and about the time they paid their taxes they moved within the corporate limits of the town and will be residing for more than six months in the town before the date of the election, on the day of the election. Do you or not think they are legal voters in the town? An early answer will be appreciated by these parties and the officers who will conduct the municipal election."

It is provided by section 18 of the Constitution of Virginia that one must have been a resident of the county, city or town in which he offers to vote for one year next preceding the election. If the parties in question have not been residents of the town one year preceding the election, then they are not eligible to vote in the town election. The fact that they are qualified

voters of the county in which the town is located and the precinct in which they vote is located within the town, does not affect the question, as being a resident of the county does not make such voter a resident of the town.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—RESIDENCE.

RICHMOND, VA., *October 28, 1920.*

MR. W. H. BOWMAN,
Ararat, Va.

DEAR SIR:

Acknowledgment is made of your letter of October 25th, in which you say:

"Last fall I moved to Mt. Airy, North Carolina. Temporarily, to put my children in school, I only moved part of my house property. I did not sell my farm, and now I have moved back to Virginia on September 10, 1920, but I intended to hold my citizenship in Virginia all the time. What I want to know is if I won't have as much right to vote in the next election as anybody else?

"Last fall at the election the judges would not let me vote, saying I had moved away and had been out of the State a while, so I want to know if they had any right to refuse my vote and what recourse have I on them?"

Under the circumstances narrated in your letter, I am of the opinion that you are qualified to vote so far as residence in this State is concerned.

A man does not lose his legal residence, once acquired, my moving to another place, unless he goes to such place with the intention of abandoning his legal residence at the place from which he moved.

You state that although you moved, you intended to retain your legal residence in your precinct in Virginia, and that you only moved for a temporary purpose. I am, therefore, of the opinion that you are a resident of this State within the meaning of the election laws.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—RESIDENCE.

RICHMOND, VA., *October 28, 1920.*

O. B. WATSON, ESQ., *Treasurer,*
Orange, Va.

DEAR SIR:

Acknowledgment is made of your letter of October 27th, in which you request my opinion on the following statement of facts:

"Mr. A. lived in Taylor magisterial district, Orange county, Va., for, say twenty-five years or longer, and he still owns real estate in said Taylor district; but in the fall of 1919 Mr. A bought a home and

moved with his family into Madison magisterial district and his family spends all their time in Madison magisterial district, and Mr. A spends his week-ends, Sundays and many of his nights with his family in Madison magisterial district, but goes to his farm and spends some nights with his son and family.

"Is Mr. A entitled to go back to Taylor district and vote, or should he vote in Madison magisterial district where he keeps his family and spends time as above set forth?"

The Court of Appeals said in *Williams v. Commonwealth*, 116 Va. 272 (1914):

"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."

If the man in question moved from Taylor district with the intention of abandoning that district as his place of legal residence, then he is not entitled to vote there. If, however, when he moved from that district to Madison district he intended to retain Taylor district as his place of legal residence, he is entitled to vote in that district. Of course, this intention would depend upon the acts and declarations of the man in question.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—RESIDENCE.

RICHMOND, VA., August 18, 1920.

MR. P. R. FLANAGAN,
1316 L Street, N. W.,
Washington, D. C.

DEAR SIR:

Acknowledgment is made of your letter of August 16th, in which you say:

"It has been intimated by parties residing in Richmond, Va., that I will have no legal right to participate as a voter in the election to be held November 2, 1920. In order that there may be no doubt about this matter, I, as a property owner and citizen of Virginia, wish to present the pertinent points in connection with my case for an expression of opinion. The case is as follows:

"I was born at Powhatan, Powhatan county, Virginia, February 24, 1889; resided there until September 1, 1905, at which time I moved to Richmond, Va. When I reached the age of twenty-one, or a few months short of that age, I paid poll taxes and was duly registered as a voter in the city of Richmond, and have participated in various elections from 1911 to 1917. During the period named (1911-17), I resided in various wards in the city of Richmond, as evidenced by tax receipts enclosed. In October, 1917, I was given appointment as a clerk in the quartermaster corps (field service) at Front Royal, Va. After having been at Front Royal for about a month I was sent under competent orders to Richmond, Va., and Norfolk, Va., in connection with the inspection and purchase of public animals for the army. I remained in these two cities until April 1, 1918, at which time I was ordered to Washington, D. C., the office with which I was identified having been

moved to Washington. I have lived in the latter city since that time. My address on September 1, 1920, will be 1401 West Main street, Richmond, Va. I have paid poll taxes to the treasurer of Richmond for the years 1911-12-13-14-15-16-17-18-19. In view of all of the above, the question I wish to ask is: If I obtain a transfer from the registrar of Clay ward, Fourth precinct, to whatever ward and precinct 1401 West Main street is located in, will I be eligible to participate in the election to be held November 2, 1920?"

From the foregoing statement I assume that the only question raised as to your eligibility is that of residence.

The Constitution of Virginia does not require one to actually live within the State in order to be a resident thereof. All that is necessary is that a person be a resident of this State for the period required.

The Supreme Court of Appeals of this State in *Williams v. Commonwealth*, 116 Va. 272 (1914), in passing upon a question of residence, held:

"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."

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 his 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.

From the fact that your legal residence was in the city of Richmond and that in all the time that you have been away from the city you have paid your capitation taxes there and that your absence has been occasioned by your being engaged in work for the United States government occasioned by the war, it would appear that unless you have done some act or made some statement indicating an intention to change your legal residence from the city of Richmond, that you are still a resident of this city and entitled to vote therein, if otherwise qualified.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—RESIDENCE.

RICHMOND, VA., *September 27, 1920.*

MR. JOHN T. MARTIN,
Buchanan, Va.

DEAR SIR:

Acknowledgment is made of your letter, in which you state that Mrs. H. V. McLeod is an employee of the government at Washington, but owns

property at Buchanan and considers that her home. You ask whether she can register and vote there.

If her husband is living she takes his domicile and can only register at his domicile. If she is a widow, is domiciled in Virginia and has been domiciled here for the past two years, she can register and vote in this State.

Yours truly,

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

ELECTIONS—RESIDENCE.

RICHMOND, VA., *September 28, 1920.*

MR. W. N. SHOWALTER,
Snowville, Va.

DEAR SIR:

Acknowledgment is made of your letter in which you state that you are a voter in Snowville precinct, Pulaski county, and ask if you move to Montgomery county between October 5th and October 15th, can you still vote in Snowville precinct on November 2, 1920.

You cannot vote in Montgomery county until you have resided in that county one year. Therefore, you will still retain your right to vote at Snowville in the November election of this year, though you move from that place in October.

Yours truly,

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

ELECTIONS—RESIDENCE.

RICHMOND, VA., *October 2, 1920.*

DR. B. F. NOLAND,
Spencer, Va.

MY DEAR DR. NOLAND:

Acknowledgment is made of your letter of September 27, 1920, which would have been answered sooner but for my absence from the office. In your letter you say:

"I have recently moved to this place (Henry county), and know I cannot vote here this fall. However, it has occurred to me that Mrs. Noland, never having voted and occupying the same position as a young man just coming of age, can pay her poll tax, register and vote. By election day she will have lived in this county ninety days. Kindly advise me as to this."

It is provided by section 18 of the Virginia Constitution that the residence qualification of a person for voting shall be two years as a resident of the State, one year of the county, city or town, and thirty days of the precinct. This section applies to women as well as to men now that the nineteenth amendment has been ratified. I am, therefore, of the opinion that Mrs.

Noland is not eligible to register and vote in Henry county at the present time, as she has been a resident of this county less than one year prior to the date of the coming November election.

I call your attention, however, to section 35 of the Virginia Constitution, under the provisions of which Mrs. Noland will be qualified as to residence so as to vote in the primary next year.

Very truly yours,

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—RESIDENCE.

RICHMOND, VA., *October 2, 1920.*

HON. E. FRANK STORY,
Franklin, Va.

DEAR SIR:

Acknowledgment is made of your letter of October 1, 1920, in which you say:

"A young lady who resided in this county prior to the beginning of the war took a position in Washington city about three years ago. Last December she married a man who lives in another section of the State. I was asked as to whether or not she could qualify to vote in this county and advised her that she would have to qualify and vote at the residence of her husband, and that she could not qualify and vote in this county. Please advise me if my opinion was right in the premises."

I am of the opinion that the advice given by you to the young lady in question was correct. Her residence is that of her husband, and she should register and vote at the place where he has his legal residence.

Very truly yours,

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—RESIDENCE.

RICHMOND, VA., *October 7, 1920.*

MR. R. K. SANDERS,
Saltille, Va.

DEAR MR. SANDERS:

I am in receipt of your letter of October 2d. You state that a number of married women have registered who have not lived in your county one year, or the State two years, but have lived at Saltille since marriage, from three to twelve months. These women are not eligible to vote.

You are mistaken in thinking that they are eligible to vote in the place where they happened to live when the nineteenth amendment became effective. It is true that this amendment made women eligible to vote, but only under certain conditions, which conditions must be complied with before they can vote, namely, that they must have resided in the State for at least two

years, the county one year, the precinct in which they offer to vote at least thirty days, and must have paid their capitation tax for the year 1921. The nineteenth amendment does not change these requirements.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—RESIDENCE.

RICHMOND, VA., *September 29, 1920.*

MR. J. H. NEWHOUSE,
Culpeper, Va.

DEAR SIR:

Acknowledgment is made of your letter in which you state that a certain person votes in Culpeper, though he lives with his family in Alexandria. You ask whether or not he has a right to vote in Culpeper under these circumstances.

The domicile of a person fixes the place where he has a right to vote. Domicile depends, to a great extent, upon intention; that is to say, a person might have a domicile in Culpeper and go to Alexandria to live temporarily, with the intention of keeping Culpeper as his domicile and of returning thereto. Under such circumstances he would have a right to vote in Culpeper. If, however, he left Culpeper with the intention of making Alexandria his permanent home he would lose his domicile in Culpeper.

Yours truly,

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

ELECTIONS—RESIDENCE.

RICHMOND, VA., *October 1, 1920.*

REGISTRAR,
Fieldale, Va.

DEAR SIR:

Acknowledgment is made of your unsigned letter of September 29th, in which you say:

"I am enclosing you application made by Mr. Edw. A. Johnson to register. Will you please examine his application and inform me if he is eligible to register. He claims that he should be entitled to register although he has not been in the State two years, but that he was not of age when he moved to Virginia. I did not exactly know just what to do with his application, as he has been advised by some lawyer that he could register and vote, and I went to J. R. Taylor, Commonwealth's attorney, and he advised me to send it to you and ask you to let me know what to do with it."

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."

Mr. Johnson, not having been a resident of this State for two years preceding the date of the November, 1920, election, is not eligible to register. As soon as he has been a resident of this State two years he can register.

Yours truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—RESIDENCE.

RICHMOND, VA., September 15, 1920.

REV. J. G. UNRUH,
119 Sycamore Street,
Petersburg, Va.

MY DEAR SIR:

Acknowledgment is made of your letter of September 9, 1920, in which you say:

"I am writing to ask you whether or not I can have a permanent voting place. The Methodist ministry is my profession, and I often find myself wanting to vote when, as I suppose, I cannot.

* * * * *

"My home is Kinsale, Virginia, and I would like to make that a permanent voting place if this can be done."

Residence for the purpose of voting is largely a matter of intention. There is nothing in the law to prevent you from establishing your legal residence at one particular place in the State and maintaining it there. You state in your letter that you are at present registered as a voter in the City of Portsmouth, Virginia. Before you can lose your residence as a voter in Portsmouth, it is necessary for you to move from that place with the intention of abandoning your legal residence at that place. I assume from your letter that when you moved you did so with the intention of abandoning Portsmouth as a legal residence. In order to gain a legal residence at some other place, it is necessary for you to form such an intention which, in order to ripen into the required residence for the purpose of voting, must be expressed in some way other than a mere secret intention in your own mind.

If you intend to make Kinsale your legal residence, you should declare this fact and have yourself assessed for capitation taxes by the commissioner of revenue for the district in which this town is located. You should then pay your capitation taxes in that jurisdiction. When this is done, and the required length of time has elapsed, you will be eligible to register and vote there so far as residence is concerned.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

REPORT OF THE ATTORNEY GENERAL.

ELECTIONS—RESIDENCE.

RICHMOND, VA., *September 13, 1920.*REV. JAMES A. CRAIN,
Norfolk, Va.

DEAR SIR:

Acknowledgment is made of your letter in which you state that you established a legal residence in Norfolk in March, 1920, and ask whether or not under the laws of the State of Virginia, you will be eligible to vote in the coming election in Virginia.

Under section 18 of the Constitution of this State, it is provided that in order to vote in Virginia, a person 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 next preceding the election in which he offers to vote; he must be registered and have paid all poll taxes assessed or assessable against him. These poll taxes must have been paid six months prior to the election.

According to your letter, you have only been a resident of Virginia since March, 1920. Therefore, you are not qualified to vote in this State in the fall election. The Virginia law makes no exception in this matter with relation to men in military service.

I will be very glad to give you any further information you may desire.

Yours truly,

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

ELECTIONS—RESIDENCE.

RICHMOND, VA., *September 22, 1920.*T. RUSSELL CATHER, ESQ.,
Winchester, Virginia.

DEAR SIR:

Acknowledgment is made of your letter stating that a number of ladies living in Washington city with their husbands are asking to be permitted to register and vote in Winchester, claiming that as their legal residence though their husbands do not live in Virginia and have not registered here. You ask whether or not they can claim a legal residence in Winchester.

In order for these women to register, they must have been residents of the State of Virginia two years, of the city of Winchester one year and of the precinct in which they offer to vote thirty days. The domicile of a married woman is that of her husband, and unless the husbands of these ladies have been residents of the State for two years past, of Winchester one year past and of the precinct in which the ladies desire to vote thirty days, the ladies cannot vote in Winchester.

Yours truly,

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

ELECTIONS—RESIDENCE.

RICHMOND, VA., *September 22, 1920.*

MR. J. R. SWITZER, *Chairman,*
Democratic Party,
Harrisonburg, Va.

DEAR SIR:

Acknowledgment is made of your letter in which you ask my opinion on the following statement of facts:

"Rev. C. L. Potter, who is a Methodist minister, some years ago was stationed at Mt. Crawford and voted there. He was then transferred to Elkton to preach (this county), and was transferred to Elkton to vote. He is a man up in years, and while at Elkton, realizing that he would soon stop active preaching, he bought real estate at Mt. Crawford, has personal property in this residence there, but at present is renting the said property.

"He has moved his transfer from Elkton back to Mt. Crawford, has been assessed there and voted there in the primary this past August, but at that time and now he is on a charge in Augusta county, but claims Mt. Crawford as his legal residence and expects the conference to put him off the active list as a preacher and will then reside in his said real estate at Mt. Crawford.

"He being a preacher and owning real estate at Mt. Crawford, and claiming that as his legal residence, is he not a qualified voter at that precinct, even though temporarily residing in Augusta county. In other words, cannot a preacher who is moved from place to place claim a certain place as his legal residence, even though he is residing at a different place?"

Residence, for the purpose of voting, is a matter which depends very largely upon the intention of the individual. It is not necessary for a man to actually live in the place where he intends his legal residence. Therefore, where a person such as the Rev. Mr. Potter has acquired a legal residence at one place, that fact that in the performance of his duties as a minister he is sent elsewhere, does not prevent him from retaining his legal residence at the place where it has been acquired.

As was said by the Court of Appeals in *Williams v. Commonwealth*, 116 Va. 272, "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. * * *"

Therefore, if Rev. Mr. Potter, in moving from Mt. Crawford to attend to the duties of his profession, intended to retain Mt. Crawford as his legal residence, he is entitled so to do since he could not lose the residence once acquired unless, in addition to removing therefrom, he intended also to abandon the same as his place of legal residence.

Yours very truly,

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

ELECTIONS—RESIDENCE.

RICHMOND, VA., *October 9, 1920.*

MR. J. S. ARGABRIGHT,
Camp Creek, Virginia.

DEAR SIR:

Acknowledgment is made of your letter of October 5, 1920, in which you ask two questions with reference to the qualification of voters in the coming election. In your first question, you say that there is a voter on your registration books who lives in another district, but that he pays part of his taxes in the district in which he is registered. You desire to know whether or not he can vote at the precinct where he is registered.

You have not stated sufficient facts for me to express an opinion as to the right of this man to vote. One does not actually have to physically live within the bounds of a precinct in order to have his legal residence there. Legal residence is largely a matter of intention, and if this man once acquired a legal residence at your precinct, the mere fact that he has moved without the limits of that precinct will not in itself change his legal residence from that precinct. He must have moved with the intention of abandoning the same in order to change his legal residence and deprive him of his right to vote at that precinct. It would, therefore, depend largely upon the intention of this man as expressed by his acts and his declarations. The fact that he has not had his registration transferred is evidence of his intention to retain his legal residence at that precinct. But, as I have said, it will depend largely upon what he has said and done since he actually moved out of the district, and as you have not submitted sufficient facts, I cannot do more than state the rule in general terms.

In your next question you ask if one is entitled to vote at your precinct when he has moved therefrom to another county until he has gained a legal residence in such other county.

Again you have not stated sufficient facts for me to express a definite opinion. If this man moved from your county to another county with the intention of changing his legal residence to such other county, he cannot come back to vote at your precinct because he has abandoned his legal residence at such place and acquired it at the place to which he has moved although he may not as yet be qualified to vote at such place. (Report of the Attorney General, 1919, page 91.)

If, on the other hand, he physically removed from your county with the intention of retaining his legal residence at your precinct, he is entitled to vote. But this case, like the other, must depend upon the acts and the declarations of the man in question in determining whether or not he has retained or lost his legal residence at your precinct.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—RESIDENCE.

RICHMOND, VA., October 12, 1920.

MR. G. R. McPHERSON,
Iron Gate, Va.

DEAR SIR:

Acknowledgment is made of your letter of October 11th, in which you say:

"Would like your opinion about a certain young man in this section voting.

"The facts are: He has lived here for the past ten or twelve years, with his father and mother. Last year he married in West Virginia, and about two months ago he moved from here to West Virginia, taking everything he had; rented a house in Marlinton and kept house while there, and had never registered here. He is about twenty-three or possibly twenty-four years of age.

"He came back here about the last days of September; I think it was the last day of September, and went to the registrar and registered.

"I am unable to find a ruling in the election laws giving just what should be done in a case of this kind, and for this reason would appreciate a reply from you advising if he can vote."

While you have not stated sufficient facts in your letter for me to give you a definite opinion in this matter, I will say that residence for the purpose of registering and voting, is largely a matter of intention on the part of the person who registers and votes.

Where a person has once acquired a legal residence in this State, in order to lose the same, he must do more than move from such place. He must move from the place where he has acquired the legal residence, with the intention of abandoning the same as his place of legal residence.

As the Court of Appeals said in *Williams v. Commonwealth*, 116 Va. 272: "A legal residence once acquired by birth or habitancy, is not lost by temporary absence for pleasure, health or business, or while attending to the 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."

Whether or not this man is a resident of your precinct for the purpose of registering and voting will, therefore, depend upon the facts and circumstances in the case, and his intention expressed by words or acts, or by both.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—RESIDENCE.

RICHMOND, VA., October 14, 1920.

HENRY S. MOSBY, Esq.,
Judge of Election,
Columbia, Va.

DEAR SIR:

Acknowledgment is made of your communication of October 12th, in which you enclose a letter of Mr. Dabney Cosby, in which he says:

"I was born in the town of Columbia, Fluvanna county, Va., September 23, 1879, and registered as a voter as soon as I became twenty-one years old, at Columbia precinct in Fluvanna county, Virginia, and have been assessed on personal property and capitation tax in Fluvanna county each year since.

"Have never voted or lived anywhere else. Have been agent for C. & O. Ry. at Columbia, Va., twenty-three years and postmaster since 1914.

"About ten or eleven years ago my wife built a house on the line between Fluvanna and Goochland counties, house being in Goochland county. Since that time I have been going over the county line about 9:00 or 10:00 P. M. and coming back in Fluvanna about 5:00 A. M. every day. Have never moved my personal property or my legal residence to Goochland county, being assessed each year in Fluvanna and voting at Columbia precinct.

"There has been no question as to my right to do this until this year. Two of the judges of election agree that I am a legal voter of Fluvanna county, but I understand the Republican judge does not, although he has certified election returns which contained my vote in the past ten years."

On this statement of facts, you desire an opinion from this office as to whether or not Mr. Cosby is a legal resident of Columbia Precinct, Fluvanna county, Virginia.

In the absence of the Attorney General from the office, I am taking the liberty of replying to your request.

Residence, within the meaning of the Virginia election laws, is largely a question of fact, and in order to be a legal resident of a precinct for the purpose of voting, it is not necessary that one physically live within the bounds of a particular precinct or county in order to be a legal resident thereof for the purpose of registering and voting at such precinct.

As was said by the Court of Appeals of this State in *Williams v. Commonwealth*, 116 Va. 272:

"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 habitancy, is not lost by temporary absence for pleasure, health or business, or while attending to the 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."

From the facts furnished by Mr. Cosby, it appears that he was born in the town of Columbia, Fluvanna county; that as soon as he became twenty-one, he registered at the precinct in that town, and has ever since that time, paid his capitation and personal property tax in Fluvanna county; that he has continuously voted at such precinct and has continuously and still does, claim such precinct as his legal residence.

The above facts in themselves show that the legal residence which he once acquired by birth and habitancy, has not been lost by the fact that he may sleep across the Fluvanna line at night, because there has been no intention on his part to abandon his legal residence at Columbia precinct in Fluvanna county, and, as there has been no intention plus an act of abandonment, his legal residence remains where it was first acquired, namely: Columbia precinct, Fluvanna county.

You have further stated in your communication to me that Mr. Cosby's wife, in accordance with the ruling of the Attorney General that a wife's legal residence is at the place where her husband has his legal residence, has registered at Columbia precinct in Fluvanna county. You request me to advise you whether Mrs. Cosby properly registered there, although she actually spends most of her time in Goochland, where the house in which she lives is located.

The Attorney General has ruled that a married woman's legal residence for the purpose of registering and voting, is at the precinct in the county or city at which her husband has his legal residence. Mr. Cosby's legal residence being Columbia precinct in the county of Fluvanna, the legal residence of his wife for the purpose of registering and voting, is Columbia precinct, county of Fluvanna, and she was properly registered there so far as her qualification as to residence is concerned, and is entitled to vote at that precinct if there is no objection to her other than the question of residence.

Yours very truly,

LEON M. BAZILE,

Second Assistant Attorney General.

ELECTIONS—SCHOOL.

RICHMOND, VA., April 22, 1920.

MR. B. D. EDWARDS, *Sheriff,*
Surry, Va.

DEAR SIR:

I am just in receipt of your letter of April 20th, in which you ask the question:

"If, in a county district school election, the vote stands one hundred and four for and one hundred against, which wins?"

I judge from your letter that this election was held in one of the districts in your county for the purpose of bonding the district in order to raise money to erect school buildings. Such being the case, section 765 of the Code of 1919, governs elections held for that purpose. This section provides, among other things, as follows:

"* * * The school board of any such district, when authorized by a vote of a majority of the qualified voters in any such district, voting as hereinafter provided, borrow money for the purpose of erecting a schoolhouse or schoolhouses therein and for furnishing the same, and may issue either registered or coupon bonds for the sums of money so borrowed."

You will observe that a majority of the qualified voters of such district voting, governs. According to your letter, 104 voters cast their votes for this purpose and 100 against it. Therefore, those voting for the erection of the building constituting a majority, they would prevail and the board would have the authority to issue the bonds.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—ADDITIONAL BALLOT BOXES FOR SPECIAL ELECTION HELD ON SAME DAY OF A GENERAL ELECTION.

RICHMOND, VA., *October 1, 1920.*HON. MORTON G. GOODE,
Dinwiddie, Virginia.

MY DEAR MR. GOODE:

Acknowledgment is made of your letter of September 28th, in which you call ~~my~~ attention to the fact that a special election has been called by the Governor to be held on November 2, 1920, for the purpose of filling a vacancy in the twenty-ninth senatorial district. You state that you have been declared the nominee of the Democratic party, and that as there was no other candidate, no primary was held. You desire to be advised whether it will be proper for your name to go on the tickets to be used in the general election, or whether the electoral board should have separate ballots and ballot boxes provided.

In reply, I will state that, where a special election is set for a date on which a general election is to be held, it has been customary for the electoral boards to provide separate ballots and separate ballot boxes. Of course, the judges appointed for the holding of the regular election can also act for the special election.

To place your name as candidate for State Senate on the national ticket might, perhaps, create confusion. I, therefore, think it would be much better for the electoral board to furnish separate ballots and ballot boxes for the special election.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—SPECIAL.

RICHMOND, VA., *March 6, 1920.*HON. B. RICHARDS GLASCOCK,
Secretary of Electoral Board,
Warrenton, Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter, in which you state that a special election will be held in the county of Fauquier on March 23, 1920, under the authority of chapter 28 of the Acts of Assembly, extraordinary session, 1919.

You desire to know who is qualified to vote in this election; that is to say, whether the provisions as to qualification to vote contained in the act authorizing the election will govern the right to vote, or whether this right will be governed by the provisions of the 1919 Code with respect to such election.

Since the act in question became a law September 5, 1919—it being an emergency act—and section 6568 of the Code of 1919 provides that the enactment of that Code shall not affect any act passed by the General Assembly which shall have become a law after the 9th day of January, 1918, and before the 13th day of January, 1920, but every such act shall have full effect, I am of the opinion that the qualification to vote in the election referred to

by you must be determined by the provisions of the act under the authority of which the election is held.

The words, "until otherwise provided by general laws," contained in the act authorizing the election, manifestly could not have reference to a law which had been passed over a year prior thereto though it was not to become effective until a later date.

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—SPECIAL.

RICHMOND, VA., May 20, 1920.

H. S. SHOBY, ESQ., *Chairman,*
Bond Issue Campaign Committee,
Craigsville, Va.

DEAR SIR:

You advise me that a special election will be held in the county of Augusta on June 22, 1920, under authority of chapter 28 of the Acts of Assembly, passed at its extraordinary session of 1919, and that you desire to know who will be qualified to vote in this election.

The act provides that those persons shall be qualified to vote at the election, who were qualified at the preceding regular November election and those who have become of age and registered since said preceding regular November election, excepting those who have disqualified themselves to vote because of the commission of crime or removal from the district or county.

This section being a complete answer, it would not be necessary to say anything further but for the fact that you call my attention to section 83 of the Code of 1919, which provides that at any special election held after the second Tuesday in June of 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."

The question therefore arises whether the act under which the election is to be held, controls the qualification of the electorate or whether the provision therein contained is superseded by section 82 of the Code. Since the act in question became a law September 5, 1919—it being an emergency act—and section 6568 of the Code of 1919 provides that the enactment of that Code shall not affect any act passed by the General Assembly which shall have become a law after the 9th day of January, 1918, and before the 13th day of January, 1920, but every such act shall have full effect, I am of the opinion that the qualification to vote in the election referred to by you must be determined by the provisions of the act under the authority of which the election is held; that is to say, only those can vote in the special election above referred to, who were qualified to vote at the regular November election of 1919 and those who may have come of age and registered since the said November election.

The words, "until otherwise provided by general laws," contained in the act authorizing the election, manifestly could not have reference to a

law which had been passed over a year prior thereto, though it was not to become effective until a later date.

This question has hitherto been passed on by me, the question there arising being the same here except for the fact that the election held was prior to the second Tuesday in June, and I am enclosing a copy of that letter which is the basis of the opinion above.

Yours very truly,

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

ELECTIONS—SPECIAL.

RICHMOND, VA., November 15, 1920.

MR. M. L. LAFFOON,
Tree, Va.

DEAR SIR:

Acknowledgment is made of your letter of November 10th, which was referred to this office for reply by the Auditor of Public Accounts.

In your letter you state that there will be held in Brown's Store district, in Lunenburg county, on November 16th, an election for the purpose of issuing school bonds. You wish to know whether women are entitled to vote in this election.

It is provided by section 772 of the Code of Virginia, 1919, as follows:

"All registered voters of any such school district who were qualified by law to vote in the last preceding general election, shall be qualified to vote in any such special election."

Therefore, women who are qualified to vote in the November, 1920, general election, are eligible to vote in this special election.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—SPECIAL ELECTIONS.

RICHMOND, VA., November 27, 1920.

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

DEAR SIR:

Acknowledgment is made of your letter of November 25, 1920, in which you say:

"Our circuit court has ordered a special election to be held in Scott magisterial district, Fauquier county, on November 30, 1920, for the purpose of passing upon the question of issuing bonds of the county for the permanent improvement, etc., of the roads in the district.

"The question has arisen as to whether or not female voters who have not registered prior to the general election held November 2, 1920, and who had not paid their 1921 poll taxes prior to that election, can

now pay their 1921 poll taxes and register and vote in this special bond issue election of November 30, 1920."

It is provided, so far as is applicable, by section 1 of chapter 11 of the Acts of 1920, the special law under which the election in question is being held, that:

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

The act itself, therefore, limits the right to participate in such election to those qualified to vote at the preceding regular November election, and those who may come of age and have registered since said preceding November election, unless otherwise provided by the general laws.

There is nothing in section 2111 or 83 of the Code of Virginia, 1919, which would authorize any persons to participate in said election other than those authorized by chapter 11 of the Acts of 1920.

I am, therefore, of the opinion that the persons authorized to participate in your special election are those who were qualified to vote in the November, 1920 election, and those who have come of age and registered between the date of the November, 1920, election and the date of the special election. I think that there is nothing in chapter 400 of the Acts of 1920 which would change this.

Yours truly,

J. D. HANK, JR.,

Assistant Attorney General.

ELECTIONS—SPECIAL ELECTIONS, PERSONS ELIGIBLE TO VOTE IN.

RICHMOND, VA., *September 20, 1920.*

MR. JNO. E. BAUGH,

Stony Creek, Va.

DEAR SIR:

Your letter of September 18th received.

You desire to be advised whether women who are qualified to vote in the coming general election to be held in November can vote in a special election for a bond issue to be held in Stony Creek district of your county on the 2nd day of October next.

If you will read section 62, found on pages 16 and 17 of the Election Laws of Virginia, you will see that a part of this section provides as follows:

"* * * at any such special or local option 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. * * *"

I am, therefore, of the opinion that all women who are qualified to vote

in the November election, 1920, will be eligible to vote at a special election to be held on October 2, 1920.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—TREASURER'S VOTING LIST.

RICHMOND, VA., *October 5, 1920.*

J. B. PACE, ESQ., *Treasurer,*
Richmond Va.

DEAR SIR:

Acknowledgment is made of your letter of October 5th, in which you say:

"There are more than thirteen thousand women who paid poll taxes to this office.

"Will you please advise me whether or not it is incumbent upon this office to furnish a list of their names to the clerk of the hustings court to be printed by him for use in the election to be held November 2, 1920?"

I am of the opinion that you are not required to furnish to the clerk a list of the women who paid their capitation taxes between the taking effect of the Nineteenth Amendment to the Federal Constitution, and October 2, 1920. The only list of voters that the treasurer is required to file with the clerk is the list provided for by section 109 of the Code of Virginia 1919, which requires the Treasurer, at least five months before the second Tuesday in June, and each regular election in November, 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, 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 to be held.

The Nineteenth Amendment to the Federal Constitution was ratified and became effective at such time when the capitation taxes assessed upon the women of this State by chapter 400 of the Acts of 1920, could not have been paid six months prior to the election.

As a prerequisite to the right to vote in the November election, the women of this State were only required to pay their capitation taxes and to register prior to the date that the registration books closed for the November election, 1920. The law imposes no duty upon you to make such a list nor is such a list necessary, as only those women who had paid their capitation taxes for the year 1921, could have been permitted to register by the registrars.

Therefore, all women whose names properly appear upon the registration books to be used in the November election 1920, are qualified to vote, so far as the payment of their capitation tax is required, since, under the provisions of section 20 of the Virginia Constitution, they could not register without the production of their tax receipts, nor will it entail any unnecessary burden upon the women voters to produce their tax receipts if the election officers demand the same, since any list that you might prepare of

the women who had paid their capitation taxes prior to October 2, 1920, for use in the November, 1920, election, would not be conclusive of the facts therein stated, and any woman whose name was omitted therefrom would have the right to vote upon the production of her tax receipt, if properly registered.

The women who will vote in the November election occupy a similar position to the young men who became of age since February 1, 1920, and there is no provision in the law authorizing you to make up a list of the young men who have paid their capitation tax since February, 1920, and registered.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—PERSONS ELIGIBLE TO VOTE IN SPECIAL ELECTIONS.

RICHMOND, VA., *October 7, 1920.*

MR. J. LEE DUNTON,

Birds Nest, Va.

DEAR SIR:

Acknowledgment is made of your undated letter, in which you say:

"Please let me know if in your opinion, women that have registered thirty days before the November election can vote in a special election called to decide a bond issue for schools on October 12th?"

It is provided in section 2111 of the Code of Virginia, 1919, so far as is applicable to the question here under consideration, as follows:

"When an election for the purpose of issuing bonds is held at any other time than at a regular election, the qualified voters at any such special election shall be the same as those provided by general law for special elections, and when held at a regular election, the qualification of voters shall be the same as those who can vote at such regular election."

Section 83 of the Code, the general law governing the qualification of voters at special elections, so far as is applicable to the question here under consideration, provides that the qualification of voters at any special election shall be such as are hereinbefore prescribed for voters at general elections, but

"* * * at any such special election held on or after the second Tuesday in June in any year, any person shall be qualified to vote who is or was qualified to vote in the regular election held on the Tuesday after the first Monday in November of that year. * * *"

The special election to be held on October 12, 1920, will be held after the second Tuesday in June of this year, and therefore all persons who are qualified to vote in the November, 1920, election, will be entitled to vote in this special election, which includes all women who are qualified to vote in the November, 1920, election.

I presume the election referred to in your letter is being held under the general law and not in accordance with any special act of the legislature

which might provide as to who would be qualified to vote in said election. My answer to your letter is based upon the idea that this election is held according to the general law defining a special election.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—QUALIFICATION OF VOTERS.

RICHMOND, VA., *September 7, 1920.*

J. W. MILTON, Esq., *J. P.,*
Eagle Rock, Va.

MY DEAR SIR:

Acknowledgment is made of your letter of September 4th, which came to the office in the necessary absence of the Attorney General therefrom.

In your letter you ask the question whether a young woman who will become of age between now and election day can pay her capitation tax and register and vote in the November election. It is provided by section 26 of the Constitution as follows:

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

By reason of the nineteenth amendment to the Federal Constitution, women who will come of age between now and the date of the November election, are entitled to pay their capitation tax for the year 1921 and register and vote in that election if otherwise qualified.

I call your attention, however, to the fact that the capitation tax for 1921 must be paid and the young lady must register before the registration books close, which is thirty days before the election.

Yours very truly,

LEON M. BAZILE,

Second Assistant Attorney General.

ELECTIONS—ELIGIBILITY OF WOMEN.

RICHMOND, VA., *August 27, 1920.*

HON. JOHN W. CARTER, JR.,
Commonwealth's Attorney,
Danville, Virginia.

DEAR SIR:

Acknowledgment is made of your letter of August 21, 1920, in which you say:

“I have observed chapter 400 of the Acts of 1920 which purports to extend the rights of suffrage to the women of Virginia under the ratification of the proposed amendment, and also purports to as-

sess a State capitation tax on certain women and prescribes the qualification of women entitled to vote, and the manner in which they may register and vote.

"I beg to inquire whether in your opinion this act is effective and constitutional in view of the constitutional requirement of six months' prepayment of poll tax? In other words, has the legislature the right to permit the women of Virginia to vote, upon the ratification of the nineteenth amendment by anticipating the poll tax of 1921 as is provided in the Acts of 1920.

"In case you are of the opinion that the act is constitutional and therefore its provisions are part of the law of the State and should be observed, I then submit the following conclusions of my own and beg to be advised whether I am correct.

"First: Chapter 400 of the Acts of 1920 does not become a law until the ratification of the nineteenth amendment of the Constitution of the United States and the proclamation of same by the Secretary of State of the United States.

"Second: That upon such proclamation any woman in Virginia who is eligible under the terms of the act and is not barred by the provisions of section 23 of the Constitution of Virginia, may apply to the commissioner of revenue for the jurisdiction in which she lives, to be assessed a capitation tax and it is the duty of the said commissioner to make such assessment.

"Third: On such assessment having been made, it devolves upon the woman assessed to pay the tax to the treasurer of the county or city in which she resides.

"Fourth: If such payment has been made thirty days prior to November 2, 1920, the date set for election of presidential electors and members of Congress, she has a right to register under the general law and upon being registered has a right to vote in the said election."

On February 26, 1920, in an opinion given Hon. Robert L. Leedy, I said, with reference to the proposed nineteenth amendment which has since become an amendment to the Federal Constitution.

"I am of the opinion that the effect of the proposed nineteenth amendment to the Federal Constitution when it becomes a part of that instrument, will be to strike from the Virginia Constitution those provisions thereof which are in conflict with it without the action of the legislature or electorate of the State or the Federal Congress."

There is, therefore, no provision in the Constitution of Virginia which can validly delay or prevent the women of Virginia, except those who occupy the same class as men disqualified for voting in this State, from exercising the right of suffrage.

The women of Virginia occupy the same position as the young man just coming of age, and the Constitutional requirement that the capitation tax be paid at least six months prior to the election applies only to those persons who were assessed or assessable with capitation taxes at the time they should have been paid, the language of section 21 of the Constitution being that, as a prerequisite to the right to vote, the voter shall "personally pay, 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. * * *

Prior to the taking effect of chapter 400 of the Acts of 1920, the women of Virginia were not assessable with capitation taxes. Therefore, I am of the opinion that this act is not in conflict with the Constitution of Virginia

since the taking effect of the nineteenth amendment, which, as I have said, has abrogated the provisions of the Virginia Constitution in conflict therewith.

I am also of the opinion that the conclusions stated in your letter and quoted above are correct.

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

ELECTION—WOMEN ELIGIBLE TO REGISTER AND VOTE.

RICHMOND, VA., *September 9, 1920.*

M. S. JENNINGS, *Registrar,*
Harton Summitt,
Virginia.

DEAR SIR:

Acknowledgment is made of your letter of September 7, 1920, in which you state that you are a registrar for Duffield precinct, Scott county, Virginia, and request me to advise you whether women have a right to register and vote in the November election.

All women twenty-one years of age, or who will be twenty-one years of age before the November election, are entitled to register and vote provided they pay the capitation tax required by law, and are otherwise eligible. See chapter 400, Acts of Assembly, 1920.

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

ELECTION—QUALIFICATION OF WOMEN FOR VOTING.

RICHMOND, VA., *September 16, 1920.*

MR. LOUIS I. JAFFE, *Editor,*
Virginian-Pilot,
Norfolk, Virginia.

MY DEAR MR. JAFFE:

Your letter with reference to the requisites necessary to enable women to vote in the fall election reached my office upon my departure from the city for a rest, which became necessary on account of my physical condition. This explains my failure to answer sooner.

Chapter 400 of the Acts of Assembly, 1920, provides that women shall pay a capitation tax. Therefore, a woman who desires to vote occupies a position similar to that occupied by a young man who became of age after February 1, 1920. Section 20 of the Constitution of Virginia reads in part as follows:

"* * * 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 * * *"

The act in question assesses women with a capitation tax for the year 1921. Thus it will be necessary for any woman who desires to vote to have herself assessed by the commissioner of revenue, obtain from him a certificate to the treasurer, pay her capitation tax for the year 1921, and then apply to the registrar for registration. Of course, in order to register, even though her capitation tax for 1921 has been paid, she must comply with the laws applicable to registration.

Regretting my inability to write you before, I beg to remain,

Yours truly,

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

ELECTIONS—VOTERS.

RICHMOND, VA., March 16, 1920.

HON. R. A. BROWN, *Treasurer,*
Waverly, Virginia.

DEAR SIR:

Acknowledgment is made of your letter of March 15, 1920, in which you request my opinion upon the following statement of facts:

"A young man in the town of Wakefield paid, on November 29, 1919, the first capitation tax assessable against him. He will be twenty-one years of age in May, 1920. Of course, he is on the voting list for the June election to be held in the town of Wakefield. The town will hold a special election for voting bonds for town improvements on March 23, 1920, and the young man is very desirous to know whether he can legally vote in this special election before he is twenty-one, inasmuch as he is eligible to vote in the regular June town election."

This question is governed by section 83 of the Code of Virginia, 1919, which, so far as is applicable to the question here under consideration, is as follows:

"The qualifications of voters at any such special election shall be such as are hereinbefore prescribed for voters at general elections, but at any such special election, held before the second Tuesday in June in any year, any person shall be qualified to vote who was so qualified at the last preceding regular November election, or who is otherwise qualified to vote, 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, * * *"

You will see from the above quotation that the only persons qualified to vote in a special election to be held before the second Tuesday in June are those persons who were qualified to vote at the last preceding November election, or who were otherwise qualified to vote at the time the special election is held.

The gentleman in question, not being a qualified voter at the November election and not having reached his majority at the time the special election

is held, will, therefore, not be qualified to vote in the special election to be held in March, 1920.

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

ELECTIONS—VOTERS.

RICHMOND, VA., *May 8, 1920.*

HON. THOS. NEWMAN,
City Treasurer,
Newport News, Va.

DEAR SIR:

Acknowledgment is made of your letter stating that certain territory north of the city limits was annexed to Newport News about a month ago, and you ask to be advised if the men living in that territory will be allowed to transfer and vote in Newport News in the June election, provided their capitation taxes were paid for the years 1917, 1918 and 1919 prior to December 8, 1919.

Section 2964 of the Code of 1919 provides that wherever, by extension of its territorial limits, territory is annexed to a town "all electors residing in such annexed territory shall be entitled to transfers to the proper polling books in the said city or town, without again registering therein. Any person residing in said territory, who shall not have registered, shall be entitled to register in said city or town, if he would have been entitled to register and vote in the next succeeding election in said county or town."

This section answers your question in the affirmative.

If there is any further information I can give, I will be glad for you to call on me.

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

ELECTIONS—YOUNG MAN COMING OF AGE—RESIDENCE.

RICHMOND, VA., *October 21, 1920.*

MR. W. H. DEFORD,
Madisonville, Va.

DEAR SIR:

Acknowledgment is made of your letter of October 2nd, addressed to the Attorney General, which came to the office in his absence, in which you ask two questions: (1) whether a young man coming of age on the 25th of May, 1920, could pay his capitation tax and register on the regular registration day (October 2, 1920) and vote in the 1920 election.

If the young man paid his tax any time prior to the day of registration and registered before the registration books closed for the November election, he is entitled to vote if otherwise qualified.

In your second question you ask whether a young man who went over-

seas as a member of the army could return to his home and vote in this election.

If he paid his capitation tax within the proper time and is registered, he can vote if otherwise qualified. No man lost his residence by being in the army in France, no matter how long he was away from home.

Yours very truly,

LEON M. BAZILE,

Second Assistant Attorney General.

ENGINEERS, ARCHITECTS AND SURVEYORS—FEES OF APPLICANTS FOR
REGISTRATION.

RICHMOND, VA., *October 12, 1920.*

HON. C. G. MASSIE, *Acting President,*
State Board of Examiners of
Engineers, Architects and Land Surveyors,
Lynchburg, Va.

DEAR SIR:

Acknowledgment is made of your letter of October 9th, in which you call my attention to section 16 of chapter 328 of the Acts of 1920, which provides for the waiving of examination of applicants from other States or Territories, who are qualified, provided such State or Territory grants a similar privilege to applicants from Virginia. You then say:

"1. If examination is waived, what fee, if any, should be charged applicants. Should it be the regular fee of \$5.00 charged for certification without examination of applicants within this State? Or should the board charge the same fee for certifying applicants from other States that applicants from this State would have to pay for certification in that State. To illustrate, the Michigan board charges applicants from this State \$20.00 for certification. Should we make the same charge against applicants from Michigan, or is that the reciprocity intended in the last clause of section 16?

"2. For convenience in correspondence, writing checks and otherwise, the board desires to adopt some shorter name or title than 'State Board for the Examination and Certification of Professional Engineers, Architects and Land Surveyors.' Has the board the right so to do?"

Section 16 of chapter 328 of the Acts of 1920 reads as follows:

"Examination may, by the board, be waived in the case of applicants to practice as certified architects, certified engineers or certified surveyors, in the option of the members of the board of the profession in which application is made to practice, if the applicant be from another State or Territory where the qualifications prescribed at the time of such certification were equal to those prescribed in this State, at date of application, and provided, further that a like privilege is granted in the State from which such applicant comes to applicants from this State."

The reciprocity clause of section 16 of chapter 328 of the Acts of 1920 refers, in my opinion, to the privilege of qualifying as a certified architect, engineer or surveyor, if qualified in this State without examination in other

States, and does not refer to the fees charged by the examining board for the issuing of such certificate.

The fee of \$20.00 provided for by section 5 of chapter 328 is for examination. In the case where a person is issued a certificate by your board without examination, as provided for by section 6 of the act, a fee of only \$5.00 is required. It would appear to have been the intention of the legislature to make a distinction in the fees required of applicants where an examination is held before a certificate is granted, and those cases where a certificate is granted without examination.

I am therefore of the opinion that in cases arising under section 16 of the act where certificates are granted without examination, the fee should be only \$5.00.

Replying to your second question, I know of no law which would authorize a board or department of government, whose name or title is designated by law, to alter that name or title.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

EMBALMING, STATE BOARD OF—COMPENSATION OF.

RICHMOND, VA., October 7, 1920.

HON. L. T. CHRISTIAN, Sec.,
State Board of Embalming,
City.

DEAR SIR:

Acknowledgment is made of your letter of recent date in which you request me to advise you whether the members of your board are entitled to a per diem allowance for the time spent in the performance of their duties as members of the State Board of Embalming.

It is provided by section 1722 of the Code of Virginia, 1919, as follows:

"All expenses, salary and per diem to members of this board shall be paid from fees received under the provisions of this chapter, and shall in no manner be an expense to the State. All moneys received in excess of said per diem allowance and other expenses provided for shall be held by the secretary of said board as a special fund for meeting the expenses of said board."

I am of the opinion that this section of the Code authorizes the members of the board in addition to their expenses, to receive a reasonable per diem allowance for the time actually spent in the performance of their duties as members of the board, which expenses and per diem, however, must be paid from the fees received under the provisions of chapter 72 of the Code of Virginia, 1919.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

EXAMINERS OF RECORDS—COMPENSATION OF.

RICHMOND, VA., *October 5, 1920.*

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

DEAR SIR:

Pursuant to your request, I am writing you my views with reference to the payment to E. V. Barley, examiner of records of the 19th judicial circuit, commissions on certain assessments made because of his investigation in accordance with his official duties as examiner.

I understand that the commissioner of revenue of Alleghany county turned over to the local board of review the interrogatories received by him from various tax payers, and also the interrogatories of tax payers making no returns, which he himself had filled out. Thereupon, the examiner of records reported to the local board of review of Alleghany county taxable values relating to tax payers who made no returns to the commissioner of revenue, and for which tax payers the commissioner of revenue had returned no interrogatories made out by himself, and that such values were certified to said commissioner of revenue for assessment. I understand that this work was done by the examiner under the authority of the local board of review, for the purpose of ascertaining whether or not interrogatories of all persons taxable in Alleghany county had been submitted to the board, and, if not, that such interrogatories might be made upon the best information he could obtain.

You ask whether or not Mr. Barley should be paid for this work.

In creating the boards of review and increasing the duties of the examiners of records, the legislature evidently intended to eliminate the omission of property from the tax rolls, and it can hardly be questioned that the legislature intended to pay those officers who bring about the placing on the tax rolls property which would otherwise be omitted, and give them fair compensation for the services which they render the Commonwealth.

I understand that Mr. Barley was acting in pursuance to an opinion given the State Advisory Board of Taxation by Hon. John Garland Pollard, Attorney General, on July 2, 1915, in which he concluded that it was the duty of an examiner of records to perform such services as above mentioned; that he has been doing work of this nature each year since this ruling and has been paid for the same; and that he has had no notice heretofore questioning his right to receive payment for such services.

I am, therefore, of the opinion that, under the circumstances above set out, Mr. Barley is entitled to receive compensation for the services rendered as stated.

Yours truly,

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

EXTRADITION—ARREST OF FUGITIVES FROM JUSTICE.

RICHMOND, VA., *March 3, 1920.*

MR. C. M. THOMAS, *Sheriff,*
Charlottesville, Va.

MY DEAR SIR:

I am in receipt of your letter of recent date, in which you ask to be advised what disposition you should make of a warrant issued by H. R. Fleming, a justice of the peace for the city of Williamsport, Lycoming county, Pennsylvania, which said warrant is for the arrest of one Henry Lockett, a resident of Charlottesville, charged with the larceny of \$46.00 from the person of one George Redmond.

I have very carefully read your letter and the statement of facts in connection with this matter. It seems to me that the proper procedure in this case would be under section 5062 of the Code of Virginia, 1919, which is as follows:

"Whenever any person is found within this State, charged with treason, felony, or misdemeanor, committed in any other State, any justice may, upon complaint on oath, or other satisfactory evidence, that such person committed the offense, issue a warrant to bring the person so charged before the same or some other justice within the State; and the officer, to whom such warrant is directed, may execute the same in any county or corporation in the State, and bring the party, when arrested, before any justice of the same or any other county or corporation."

In other words, the justice of the peace, I presume, would issue the warrant upon the same facts which you detailed to me in your letter. Of course, Henry Lockett could be indicted in the court at Williamsport and upon this indictment the Governor of Pennsylvania could request the extradition of Lockett by the Governor of Virginia.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

EXTRADITION—WHO ARE FUGITIVES.

RICHMOND, VA., *February 11, 1920.*

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

MY DEAR GOVERNOR:

Acknowledgment is made of the papers with reference to the extradition of L. B. Williamson. As I understand, you desire to know whether or not he can be considered a fugitive from justice, as contemplated by the statutes with reference to extradition.

In the case of *In Re Cook*, 49 Fed. 833, it was held that one who personally, within the State, has set in motion the machinery for crime, and departs after the commission of an act in furtherance of, but before the consummation of the offense, is a "fugitive from justice," within the meaning of the law.

Also in the case of *In Re Sutton*, 115 N. C. 57, it was held that the departure from the jurisdiction after consummation of an act in furtherance of a crime subsequently consummated, is a flight from justice and renders the fugitive liable to extradition. In this case it was held that a person who, while within one State, makes false pretenses to secure the goods of another to be shipped to him in another State, and then goes to the latter State before the goods are shipped to him on the faith of such representation, is a fugitive from justice of the former State and is liable for extradition.

The court said that the accused was actually within the State when the crime against him was begun and when he was sought for extradition, the crime was completed; that after beginning the crime, he left the State and the purpose he had in view in leaving the State was not material; that he was found there and must be deemed a fugitive from justice of that State, within whose borders, he being actually present, put in operation an offense against the law. Of course, this principle applies with greater force where the crime was completed before the departure from the State in which it was committed.

In *Roberts v. Riley*, 116 U. S. 80, Mr. Justice Mathews, in delivering the opinion of the court, defined the words "fugitive from justice," in the following words:

"* * * To be a fugitive from justice, in the sense of the act of Congress regulating the subject under consideration, it is not necessary that the party charged should have left the State in which the crime is alleged to have been committed, and after an indictment found, or for the purpose of avoiding a prosecution anticipated or begun, but simply that having within a State committed that which by its laws constitutes a crime, when he is sought to be subjected to its criminal process to answer for his offense, he has left its jurisdiction and is found within the territory of another."

As late as 1917 this principle was approved by the Supreme Court of the United States.

In *Biddinger v. Commissioner*, 245 U. S. 128, the court said:

"Such being the origin and purpose of these provisions of the Constitution and statutes, they have not been construed narrowly and technically by the courts as if they were penal laws, but liberally to effect their important purpose, with the result that one who leaves the demanding State before prosecution is anticipated or begun, or without knowledge on his part that he has violated any law, or who, having committed a crime in one State, returns to his home in another, is nevertheless decided to be a fugitive from justice within their meaning. *Roberts v. Riley*, 116 U. S. 80; *Appleard v. Massachusetts*, 203 U. S. 222; *Kingsbury's Case*, 106 Massachusetts, 223."

Therefore, if, in the opinion of Your Excellency, Williamson committed a crime in North Carolina or after he had set in motion the machinery for a crime afterwards consummated, he is clearly a fugitive from justice. As to whether the crime has been committed, is a matter for Your Excellency to decide from all the facts and circumstances surrounding the case. Of course, whether or not you will grant the requisition, is a matter within your discretion.

Yours truly,

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

EXTRADITION—FACTS WHICH JUSTIFY.

RICHMOND, VA., May 28, 1920.

COL. LEROY HODGES, *Aide to the Governor,*
Richmond, Virginia.

DEAR SIR:

Acknowledgment is made of your request that I advise you whether the following statement of facts constitutes sufficient ground for the extradition of a man now in Maryland:

It appears that, sometime ago, the man in question was duly summoned as a witness in a murder case pending in the hustings court of the city of Petersburg. On the day of the trial, this man did not attend, but, subsequent to the service of the subpoena, left the State and is now located in Maryland. The court in which he was summoned to attend as a witness has issued an attachment against this man for contempt of court in disobeying the summons requiring him to attend the trial and testify as a witness therein.

The conduct of this man is contempt of court within the meaning of section 4521 of the Code of Virginia, 1919, and I am of the opinion that his conduct constitutes a crime within the meaning of the laws of this State. In *Kidd v. Virginia Deposit Company*, 113 Va., 612, 614 (1912), the Court of Appeals held that contempt is criminal or quasi criminal in its nature, and that the rules of evidence applicable in criminal cases prevail, and, therefore, that mere preponderance of evidence is not sufficient to convict, but the offense charged must be proved beyond a reasonable doubt.

In 13 Corpus Juris, page 7, section 7, the rule is thus stated:

"Criminal contempts, being offenses directed against the dignity and the authority of the court, are offenses against organized society, which, although they may arise in the course of private litigation, are not a part thereof but raise an issue between the public and the accused and are, therefore, criminal and punitive in their nature. In Texas, however, it has been held that contempt of court is not an offense within the meaning of the penal code of that State. Contempts prosecuted to preserve the rights of private parties are civil and remedial in their nature."

It, therefore, seems clear that the man in question has been guilty of contempt of court, and that the contempt in question is a crime in this State. This being so, I am of the opinion that it is proper for the Governor to ask for the extradition of the man in question.

In 6 U. S. E., page 223, in discussing the subject of extraditable crime, it is said:

"The words 'treason, felony or other crime,' in the second clause of the second section of the fourth article of the Constitution of the United States, include every offense forbidden, and made punishable by the laws of the State where the offense is committed. And such offense may be made the foundation of a requisition."

In 11 R. C. L., page 739, title, "Extradition," section 33, it is said:

"Each State, except as its authority may be limited by the Constitution of the United States, has power to declare what shall be offenses against its laws, and citizens of other States within its juris-

diction are subject thereto. In recognition of this right so reserved by the State, the words 'treason, felony or other crime' employed in the Federal Constitution, article 4, section 2, to define extraditable offenses, were intended to include every offense against the laws of the demanding State, without exception as to the nature of the crime, whether made so by common law or by statute. The word 'crime' comprehends every offense, not excluding misdemeanors; and the obligation to surrender a fugitive for an act made criminal by the law of the demanding State but not by the State on which the demand is made, is the same as if the alleged act were a crime by the law of both States. A person against whom a complaint for a felony has been filed before a committing magistrate, who can only charge or hold for trial before another tribunal, is 'charged' with the crime within the meaning of the Federal Constitution."

Very truly yours,

JNO. R. SAUNDERS,

Attorney General.

EXTRADITION—POWER OF GOVERNOR.

RICHMOND, VA., June 9, 1920.

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

MY DEAR GOVERNOR:

Acknowledgment is made of the file in the matter of application for the extradition of C. V. Brandt, and of your request that you be advised in this matter. The following facts appear from the file:

Three separate criminal warrants have been issued, in the State of Tennessee, against C. V. Brandt, two on complaint of W. Y. Hutchins, and one on complaint of M. J. Campbell. The first warrant charges said Brandt with feloniously disposing of and selling a certain Ford touring car which was, at the time, mortgaged property, in violation of sections 6588-6589 of the Tennessee Code; the second warrant charges the said Brandt with the larceny of a Ford starter and storage battery of the value of over \$30.00, in violation of sections 6542-6543 of Thompson's-Shannen's Code of Tennessee; and the third warrant charges the said Brandt with the larceny of two certain automobile tires or casings, both the property of M. J. Campbell, and being of the value of over \$30.00, in violation of sections 6542-6543 of the Code of Tennessee. On these warrants, Hon. A. H. Roberts, on May 22, 1920, issued a requisition addressed to your Excellency, requesting the extradition of the said C. V. Brandt as a fugitive from justice from the State of Tennessee.

From an examination of the statutes of Tennessee, it appears that the acts charged in the warrants attached to the requisition of the Governor of Tennessee constitute crimes against the State of Tennessee, and that these acts are felonies.

An affidavit has been filed on behalf of the said C. V. Brandt, by J. M. Brandt, his father, and one J. Z. Collins, by which an effort is made to show that the extradition proceeding in question is an attempt on the part of said W. Y. Hutchins to collect a debt. Another affidavit, made by said C. V. Brandt, is filed, in which the said Brandt attempts to show that the

act charged in the first warrant above referred to does not constitute a crime, and the object of which, his counsel states, is to show that he is not a fugitive from justice. The said Hutchins has also made an affidavit in which he states that a requisition for the said Brandt "is not sought for the purpose of collecting debt, to enforce a civil remedy, or to answer any private end whatever, but for the purpose of punishing a crime." No effort has been made by the said Brandt to show that the third warrant referred to, which was issued under oath of M. J. Campbell, charging said Brandt with larceny, was issued for the purpose of aiding him to collect a debt or that it is an attempt to use criminal process to compel the payment of a debt.

It further appears from the file that, at the time of the commission of the alleged offenses by said C. V. Brandt, he was in the State of Tennessee, and that since that time he has come to the State of Virginia, where he now is.

The law is well settled that where a warrant of extradition is sought for some ulterior purpose, as, for instance, for the purpose of collecting private debts, or to gratify personal malice, it is within the discretionary power of the Governor of a State to refuse to issue it. 11 R. C. L., section 35, page 740. But it is equally well settled that the Governor is not restricted in the exercise of that discretion, and that it is beyond the power of the courts to inquire into the motive and purpose of the extradition proceeding.

As has been well said *In Re Sultan*, 115 N. C. 57, 20 S. E. 375, 44 Am. St. Rep. 433, 28 L. R. A. 294, 296 (1894), the leading case on this subject:

"* * * In such matters the judiciary may review and control the action of the Governor in regard to points of law, but cannot interfere with such action in regard to any matter within the discretion of the Governor. *Hughes, Case*, 61 N. C. 57. The executive and judicial are co-ordinate departments of the government. The judiciary will control and correct the acts of the executive officers only when they are acting contrary to law, or without its sanction. In this matter, as we have said, the Governor was authorized by the law, upon the document laid before him, to issue his warrant for the arrest and delivery of the petitioner. The law which clothes him with the power to issue that warrant invests him with a discretion not to issue it, or, if he has issued it, to revoke it, if in his opinion his warrant is sought, not to aid in bringing the alleged criminal to trial for his offense, but for some other ulterior purpose. It has been well said: 'In our polity the judiciary have a power and are clothed with a duty unique in the history of the government, viz., the power and duty to declare legislative enactments and executive acts which are in conflict with our written constitutions to be, for that reason, void, and of no effect. In this, America has taught the world the greatest lesson in government and law it has ever learned, namely, that law is not binding alone upon the subject, and that the conception of law never reaches its full development until it attains complete supremacy, in the form of written constitutions, which are the supreme law of the land, since their provisions are obligatory both upon the State and upon those subjected to its rule, and equally enforceable against both, and therefore law, in the strictest sense of the term.' As, in the performance of its 'unique duty,' the judiciary will declare no enactment of the legislative department void because unconstitutional, unless it is plainly so, likewise it will, with equal solicitude, abstain from encroachment on the province of the executive department, and will never declare the acts of its officers illegal unless clearly so, and not within the scope of that discretion with which the law itself has clothed them. The judiciary cannot review or control the executive in its exercise of that discretion."

You will, therefore, see that, so far as the warrants issued on complaint of W. Y. Hutchins are concerned, the matter is within your discretion to determine whether or not these criminal proceedings were instituted for the purpose of collecting a civil debt, and if you determine this fact in the affirmative, it is within your discretion to issue or refuse to issue the extradition warrant, and in the exercise of this discretion you cannot be controlled.

I desire to call your attention to the fact, however, that in the third warrant, as I have before observed, there appears to be no charge that this proceeding is not a bona fide criminal proceeding, but is an effort, through the means of the criminal law, to collect a civil debt.

So far as the said C. V. Brandt being a fugitive from justice is concerned, I think there can be no question. The fact that the acts charged were committed in the State of Tennessee, and that he has since left that State and come to Virginia makes him a fugitive within the meaning of the Constitution and the statutes governing this matter. *In Re Sultan*, supra; 19 Cyc. page 86.

I am returning herewith the file in this matter.

Very truly yours,

LEON M. BAZILE,

Second Assistant Attorney General.

EXTRADITION—POWER OF GOVERNOR.

RICHMOND, VA., June 14, 1920.

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

MY DEAR GOVERNOR:

Acknowledgment is made of your request that you be advised in the matter of the extradition proceeding against W. T. Johnson and of the file relating to this matter.

It appears from the papers in this matter that a warrant has been issued for the arrest of W. T. Johnson in the State of North Carolina on the charge of abandoning his lawful wife and failing to provide adequate support for her, and that since such abandonment the said Johnson has come to Virginia, where he now is. On this warrant, the Governor of North Carolina has requested that an extradition warrant be issued for the said Johnson.

While this matter was pending before Your Excellency, Mrs. Johnson, the wife of said W. T. Johnson and the complainant in this matter, came to Virginia and addressed the following letter to Your Excellency:

"My husband, W. T. Johnson, and myself, having been reconciled and all our difficulties having been adjusted, I respectfully request that you do not honor any request for the issuance of any requisition for him upon any complaint made by me, or in my behalf. I shall not further prosecute any proceeding against him formerly sued out for me or for my benefit."

Mr. W. McK. Woodhouse, a notary, who is also counsel for W. T. Johnson, attached the following certificate to this letter:

"Subscribed and sworn to before me by Maud Johnson, in the City of Norfolk, this 19th day of May, 1920. My commission expires July 11, 1920." (Signed) W. McK. Woodhouse, Notary Public.

Later, Mrs. Johnson returned to North Carolina, where she made the following affidavit:

"Mrs. W. T. Johnson, of the city of Wilmington, county of New Hanover and State of North Carolina, wife of W. T. Johnson, now under arrest in Norfolk, Virginia, being held under a warrant issued out of the recorder's court of New Hanover county, North Carolina, charged with abandonment and non-support, being by me duly sworn, says: That while she was in Norfolk, Virginia, on Wednesday the 19th instant, and by request of her husband, the said W. T. Johnson, she went to the office of Attorney William McK. Woodhouse, and that said attorney asked this affiant about a warrant there for her husband in which he was charged with abandonment, non-support and white slavery; that she told him she did not have her husband charged with white slavery, but with abandonment and non-support. Affiant further says that the said attorney wrote out some paper and asked her to make her mark, she not being able to read or write, that she made her mark as requested although the paper was not read to her and she did not know the contents of the same.

"This affiant further says that she did not intend nor does she desire now to have the proceedings against her said husband withdrawn or dismissed, but that she wants the case to proceed to the end that the defendant may be returned here to stand trial under the warrant as originally charged."

This last affidavit was made on May 24, 1920. On May 29, 1920, Hon. J. A. McNorton, county solicitor, who represents the State of North Carolina in this proceeding, wrote your assistant secretary, Miss M. L. Hunter, a letter in which, speaking of the prosecuting witness, Mrs. Johnson, the wife of the said W. T. Johnson, he said:

"* * * Mrs. Maud Johnson went to Norfolk a few days ago under advice of her attorney who was engaged as private prosecutor in this case, in which advice I concurred, inasmuch as she had, apparently, made an affidavit in Norfolk before that, to effect that she wanted to have the case withdrawn, and when confronted with that information here, made another affidavit to effect that it was untrue; that she did not want the case stopped, but on the contrary, did want is prosecuted and her husband returned here for trial.

"* * * She is now in Norfolk, unless she has returned in the last day or two, of which the writer has no information. Of course, if Mrs. Maud Johnson concludes to remain in Norfolk, and is satisfied with the present outcome of the matter, we would be unable to get along here, even though the defendant were returned to this county. But I am at a loss to understand the alleged attitude of Mrs. Johnson now, when the last thing she did before leaving for Norfolk was to make an affidavit that she wanted her husband returned here to stand trial.

"I appreciate very much the interest of your office in the case, and only regret that I am unable to write you more definitely at this time: not having had an opportunity to talk with Mrs. Johnson since she departed for Norfolk some days ago. If I come into possession of any additional information on this subject, I will at once communicate same to you."

It will be observed that this letter written by Hon. J. A. McNorton, county solicitor, was written four days after the last affidavit made by Mrs. Johnson.

In view of what is said in that letter, I am of the opinion that there are not sufficient facts to justify the issuance of an extradition warrant at the present time.

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

FEDERAL RESERVATIONS—JURISDICTION OF STATE.

RICHMOND, VA., *December 16, 1920.*

GENERAL S. D. BUTLER,
United States Marine Corps,
Quantico, Virginia.

DEAR SIR:

I am in receipt of your letter of December 9, 1920, in which you state that there is located on the United States Government Reservation at Quantico a cemetery locally known as the Smith's Hill cemetery. You say that the location of this interferes with certain developments contemplated by the Navy Department, and that it is the desire of the Department to remove this cemetery to another site on the Government reservation. You further state that the expenses of this removal will be borne by the Navy Department.

I would say that, in as much as this cemetery is located on property belonging to the United States Government, the State of Virginia has no jurisdiction over the same. *Bank of Phoebus v. Byrun*, 110 Va. 708, 67 S. E. 349. There is a section of our law, however, which provides for the removal of remains interred in graveyards. This is found in the Acts of Assembly, 1918, page 485, being chapter 312.

Your attention is also called to section 58 of the Code of 1919, and to the decision of our Supreme Court of Appeals in the case of *Grinnan v. Fredericksburg Lodge*, 118 Va. 588, 88 S. E. 79. Since our law requires certain details and procedure in court, I would suggest that you take this matter up with someone in the office of the Attorney General of the United States.

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

FEES—CLERKS.

RICHMOND, VA., *March 18, 1920.*

R. J. WATSON, ESQ., *Clerk of Courts,*
Roanoke, Virginia.

MY DEAR SIR:

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

"At your convenience, kindly advise me whether or not clerks of courts are allowed commissions for receiving and paying over to the your office, the damages and attorney fees awarded by the Supreme Court of Appeals in criminal cases as in case of fines and other criminal costs collected by them and if so, how same are collected, whether they

are deducted from settlement or full amount remitted and bill rendered for commission."

I have examined the Virginia statutes with care, but have been unable to find any provision allowing a clerk compensation in the case mentioned in your letter.

Very truly yours,

JNO. R. SAUNDERS,

Attorney General.

FEE—CLERKS.

RICHMOND, VA., *March 3, 1920.*

MR. S. R. HURLEY, *Clerk,*
Grundy, Virginia.

DEAR SIR:

I beg leave to acknowledge receipt of your letter of February 27th, in which you ask the question whether or not, in recording deeds, the law permits you to charge for figures at the same rate as you would for words. You further illustrate your question by referring to degrees, courses and distances in a plot.

I would suggest that you confer with some clerk of a court who has been in office for sometime as to what the custom is. It is very doubtful as to whether you have the right to charge as much for figures as you would for a word, though I am frank to tell you that I do not know what is the custom with clerks of courts.

Very truly yours,

JNO. R. SAUNDERS,

Attorney General.

FEE—CLERKS.

RICHMOND, VA., *July 26, 1920.*

CHARLES L. HUTCHINS, ESQ., *Clerk of Circuit Court,*
Suffolk, Virginia.

DEAR SIR:

Acknowledgment is made of your letter of July 17, 1920, in which you call my attention to the provisions of section 5189 of the Code of Virginia, 1919, as amended, which provides a fee of 25 cents for the docketing and indexing of reservations of title to and liens on goods and chattels, and to the opening paragraph of section 3484 of the Code of Virginia, 1919, as amended, which provides as follows:

"Where a writing is admitted to record under chapters one hundred and thirty-two, two hundred and ten and two hundred and eleven of the Code of 1919, for everything relating to it, except the recording in the proper book, to-wit: for receiving proof of acknowledgments, entering orders, endorsing clerk's certificate, and where required, embracing it in list for commissioners of the revenue, fifty cents."

You then say:

"I have charged as my proper fee for docketing, indexing and placing the certificate on the back of conditional sale contracts the sum of seventy-five cents, being twenty-five cents for docketing and indexing, and fifty cents for the certificate placed on the back."

You request me to advise you whether or not you are correct in charging the additional fee of 50 cents under the theory that you are entitled to make this charge because of the above quoted provision of section 3484 of the Code of 1919, as amended.

Section 5189 of the Code of Virginia, 1919, as amended, so far as is applicable to the question here under consideration, reads as follows:

"Every sale, or contract for the sale of goods and chattels, wherein the title thereto, or a lien thereon, is reserved, until the same be paid for, in whole or in part, or the transfer of title is made to depend on any condition, where possession is delivered to the vendee, shall, in respect to such reservation and condition be void as to creditors of the vendee who acquire a lien upon the goods and as to purchasers from the vendee, for value, without notice, from such vendee unless such sale or contract be evidenced by writing, signed by the vendor and the vendee, setting forth the date thereof, the amount due, when and how payable, a brief description of the goods and chattels, and the terms of the reservation or condition; and until and except from the time a memorandum of said writing, setting forth the names of the vendor and vendee, the date thereof, the amount due thereon when and how payable, and a brief description of said goods and chattels in within five days after the delivery of the goods to the vendee, filed for docketing with the clerk of the county or corporation, where deeds are admitted to record, as provided by law, in which said goods and chattels may be, and it shall be the duty of such clerk to endorse on such contract the words 'memorandum filed and docketed' together with the day and hour of such filing with the signatures of the clerk affixed thereto; or if such goods and chattels consist of locomotives, cars, or other rolling stock, equipments, or personal property of any description to be used in or about the operation of any railroad, operating as a public service corporation, until and except from the time the said writing is duly docketed in the clerk's office of the county, or the corporation, where deeds are admitted to record, as provided by law, wherein the principal office, in this State, of the company operating such railroad is located, and a copy of said writing be filed in the office of the State Corporation Commission, and, each locomotive, car, or other piece of rolling stock, be plainly and permanently marked with the name of the vendor, on both sides thereof, followed by the word 'owner.'

"It shall be the duty of the clerk to docket the writings mentioned herein, in a well bound book, to be called the 'conditional sales book,' and to index the same, thereon, alphabetically, in the name of both the vendor and vendee, for which service he may charge a fee of twenty-five cents; except in case of public service corporation, he may charge a fee not exceeding fifty cents; but no tax shall be charged thereon."

You will see that section 5189 of the Code of Virginia, as amended, does not provide for the recordation or reservations of title contracts as the original section found in the Code of 1919 provided, but merely provides that the same shall be docketed and indexed by the clerk in a book known as the "conditional sales book."

When the above quoted provision of section 3484 of the Code of 1919 is read, you will see that the fee of 50 cents therein provided is allowed the clerk only in those cases "where a writing is admitted to record."

As reservations of title contracts are no longer recorded under the provisions of section 5189 of the Code of Virginia, 1919, as amended, but are docketed, I am of the opinion that the above quoted provision of section 3484 of the Code of 1919, as amended, does not apply to the question submitted for my consideration, and, therefore, that for the services rendered by the clerk with reference to the filing, docketing and indexing or reservations of title contracts he is entitled to charge only one fee, namely the fee provided for by section 5189 of the Code of Virginia, 1919, as amended, which fee is 25 cents in certain cases, and not exceeding 50 cents in others.

Very truly yours,

JNO. R. SAUNDERS,

Attorney General.

FEES—COMMONWEALTH'S ATTORNEY.

RICHMOND, VA., August 20, 1920.

J. R. TAYLOR, ESQ.,

*Commonwealth's Attorney,
Martinsville, Va.*

DEAR SIR:

Acknowledgment is made of your letter enclosing accounts for the prosecution in the United States District Court of four defendants, jointly indicted for murder and tried together.

You ask what fee you have a right to charge under section 4971 of the Code. This section of the Code provides for a fee of \$50.00 for *each case* tried by the Commonwealth's Attorney in the United States District Court.

The interpretation of the words "each case," where there is a joint indictment and trial, was ruled on by Attorney General Montague in 1899. He had under consideration section 3528 of the Code providing a fee in each case tried in the State court. He interpreted the words "in each case" to provide for one fee for each case and not for a fee for each party defendant in the case.

Since, the law has been changed so that section 3505 provides for a fee to the Commonwealth's Attorney for each person tried in a State court, though jointly indicted with another person and tried together.

However, no such amendment has been made of section 4971 and it still provides for a fee of \$50.00 in each case tried in the Federal Court. I am therefore of opinion that though there were four defendants jointly indicted and tried by you in the United States court on the 9th of August, 1920, you can recover from the State under section 4971 only one fee of \$50.00, as for the trial of one case.

I am returning your bill and suggest that you change the \$200.00 to \$50.00, making a total of \$62.40, and same will be approved immediately upon receipt thereof and turned over to the Auditor for payment.

I have no doubt but that your services were worth the amount stated by you in your bill and it may have been an oversight in the legislature in not amending the section in order to make it conform to the language fixing fees for trials in the State court, but not having done so, of course there is

no way that the Auditor can allow fees as under the State law, but will be confined to section 4971 as it at present stands.

If I can be of any further service in this matter, kindly call on me.

Yours very truly,

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

FEES—COMMONWEALTH ATTORNEY, WHERE NOLLE PROSEQUI IS ENTERED
IN MISDEMEANOR CASES.

RICHMOND, VA., *July 29, 1920.*

MR. GEORGE K. TAYLOR, JR.,
Anelia Courthouse, Virginia.

MY DEAR SIR:

I beg leave to acknowledge receipt of your letter of July 28th, in which you ask for my construction of section 3527 of the Code of 1904, as amended by Acts of Assembly, 1918, page 627, which section deals with fees of attorneys for the Commonwealth and certain other officers for services rendered in connection with criminal cases.

I have carefully read your letter, and have discussed this matter fully with the Auditor of Public Accounts. I am of the opinion that the view taken by the Auditor in regard thereto is correct, and find that Hon. Leslie C. Garnett, former Assistant Attorney General of Virginia, also held this view. Although it is true that the law at that time provided that only one-half of the fee should be paid, Mr. Garnett concurred with the Auditor that no fee should be paid the attorney for the Commonwealth where a nolle prosequi was entered in a misdemeanor case.

Further, section 4966 of the Code of Virginia, 1919, sets out that no fee to an attorney for the Commonwealth shall be paid out of the treasury of the State unless such fee be expressly provided for.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

FEES—COMMONWEALTH'S ATTORNEY.

RICHMOND, VA., *November 5, 1920.*

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

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DEAR SIR:

Acknowledgment is made of your communication of November 4, 1920, with which you enclosed the following letter from Roland D. Cock, Esq., of Hampton, Virginia:

"During the illness of Judge Sidney J. Dudley, Commonwealth's attorney for this county, I have been acting for him, and am doing so at the present time.

"I am bothered as to the question of fees in prohibition cases and am writing to you with the request that you clear the matter up for me.

"The statute provides for a fee of \$10.00 for the Commonwealth's attorney, to be taxed in the costs and paid by the defendant in case of conviction.

"The question that bothers me is this,—should this fee be paid by the clerk into the State treasury and be shown on the commonwealth's attorney's warrant, official form No. 4, or is the clerk permitted to pay the fee in such cases to the Commonwealth's attorney?

"If the latter is true these fees would not count against the total allowance of the attorney for the Commonwealth, and this seems the logical way of looking at the matter for when the defendant pays the costs the Commonwealth is put to no expense.

"Mr. H. H. Holt, the clerk here, takes the position that he cannot pay these fees direct without authorization from your office.

"Would it be asking too much of you to request that you send your ruling in the matter both to Mr. Holt and to me?"

It is provided by section 55 of chapter 388 of the Acts of 1918 as amended (chapter 500, Acts of 1920), so far as is applicable to the question here under consideration, as follows:

"For official services rendered in connection with violation 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 may hereafter be prescribed by law, in felony cases other than violations of the revenue laws; provided, however, the fees mentioned in this section when paid out of the State treasury shall be for the same amount and shall be payable in the same manner as the law now prescribes or may hereafter prescribe in other felony or misdemeanor cases."

Under the provisions of this act as amended, the Commonwealth's attorney is allowed compensation for the prosecution of offenses against the Virginia Prohibition Law (misdemeanors) the same fee as is allowed by law in felony cases when the fee is collected from the accused. On the other hand, it is expressly provided that when the fee is paid out of the treasury, he shall receive only such fee as is allowed for the prosecution of a misdemeanor.

The law, therefore, contemplates that when the fee of the Commonwealth's attorney for the prosecution of an offense against the State prohibition law has been collected by the clerk, such fee shall be paid directly to the Commonwealth's attorney, and not into the treasury, because if the fee were paid into the treasury, the same fee that is allowed for the prosecution of a felony would be collected from the accused while only the fee provided for the prosecution of a misdemeanor could be paid out of the State treasury to the Commonwealth's attorney.

Very truly yours,

JNO. R. SAUNDERS,

Attorney General.

FEES—JUSTICES OF THE PEACE.

RICHMOND, VA., *July 16, 1920.*

BRUCE SIMMONS, ESQ.,
Police Justice,
Norfolk, Va.

DEAR MR. SIMMONS:

Acknowledgment is made of your letter in which you ask:

1. "What fee, if any, should I charge for trying a misdemeanor, and if any fee is charged and *collected* by me who is entitled to the same?"
2. What fee, if any, should I charge for bailing an accused, and if any amount is charged, who is entitled to the same?"

Chapter 482 of the Acts of 1920, page 804, provides that a justice, for trying or examining a case of misdemeanor shall be paid \$2.00; for admitting any person to bail, \$1.00 to be taxed in the costs and paid by the defendant if upon the trial he be found guilty.

It is further provided that the police justice of a city shall not be entitled to receive these fees out of the State Treasury, but that the police justice shall be paid by the city for which he is police justice.

The statute further provides that if the warrant was procured at the instance of a prosecutor—other than a public officer charged with the enforcement of the laws—and be dismissed, or the accused discharged from accusation, the justice may give judgment against the prosecutor in favor of the accused.

I am of the opinion, therefore, that upon conviction, the fees above mentioned should be collected by the police justice from the accused, and if acquitted, and cost that he has paid, should be assessed in his favor against the prosecutor.

There is no fund for the payment to the justice of such fees assessed against the accused when found guilty, but not collected from him. Of course such fees as the justice collects do not go into the State Treasury but into the pocket of the police justice as compensation to him for his service, in reference to which he does not have to account to the State authorities. Of course, I am referring only to fees in misdemeanor cases.

I will be very glad to give you any further information I can on this subject. I will probably be in Norfolk next Tuesday and if you will get in touch with my office, it will give me pleasure to talk the matter over with you, as well as to see you in person.

Yours truly,

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

FEES—SHERIFF.

RICHMOND, VA., April 5, 1920.

MR. J. A. MACGREGOR,
Deputy Sheriff,
Stafford, Va.

DEAR SIR:

Acknowledgment is made of your letter of March 29th, in which you request me to advise you as to the fee to which you are entitled for serving a warrant in a prosecution for a misdemeanor. It is provided by section 3531 of the Code of 1904 as amended (which section as amended takes priority over the provisions of the Code of 1919) so far as applicable to the question here under consideration, as follows:

"For serving a warrant or summons other than on a witness where no arrest is made, 60 cents; for an arrest in case of a misdemeanor, \$1.00. * * *"

In the case submitted by you, if the person charged with the misdemeanor, was placed under arrest by you and required to give bail for appearance, you would be entitled to the sum of \$1.00. If, on the other hand, you merely summoned the person to appear before the justice and did not take him into custody and require bail before releasing him, you are entitled to only 60 cents, as the law expressly provides that the fee shall be only 60 cents where the warrant is merely served and the accused is summoned to appear.

You also request me to advise you on the following question:

A justice issued three separate warrants of arrest and fixed the trial for the same date and hour and summoned five witnesses to appear in each case. He tried each warrant separately and charged his usual fee for each case, but allowed the officer only one fee in the matter. Was this correct?

It is provided by the last paragraph of section 3531 of the Code of Virginia 1904, as amended, which section relates to the fees of sheriffs, etc., that "in no case shall there be more than one fee allowed for several offenses growing out of the same act or acts by any one party." It would appear from your statement that all the cases were against one party, and if this is true, but one fee should be allowed if each of the cases grew out of the same act or acts.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

FEES—SPECIAL POLICE.

RICHMOND, VA., September 7, 1920.

MR. F. L. FARLEY, *Superintendent,*
McKenney, Va.

DEAR SIR:

Acknowledgment is made of your letter of September 3rd, in which you state that as superintendent of roads for the State Highway Commission,

you have been appointed a special policeman under the provisions of section 4 of chapter 31 of the Acts of 1919, and as such, you desire to know whether you are entitled to the \$5.00 fee provided for officers of the Commonwealth who institute prosecutions for violations of this section.

Where one has been appointed special police officer under the provisions of section 4 of chapter 31 of the Acts of 1919, he is an officer of this Commonwealth within the meaning of section 2133 of the Code of Virginia, 1919.

I call your attention, however, to the fact that you are not entitled to a fee in all cases where a person is arrested for violating the automobile laws of this State, but the fee provided for in that section can be taxed only in those cases where you have caused the arrest of a person using a number plate on any other machine than that for which it was issued, or where one uses a number plate on a machine for which it was issued, knowing that the machine is of a higher horse power than that indicated by the license. In those two cases only are you entitled to the fee provided for by this section.

No informer's fee is allowed for violation of the speed laws or other provisions of the act prosecuted under section 2145 of the Code of Virginia 1919.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

FEES—OF TREASURERS.

RICHMOND, VA., August 27, 1920.

HON. C. LEE MOORE,

Auditor of Public Accounts,

City.

DEAR MR. MOORE:

I am in receipt of your letter of the 27th, in which you make inquiry as to proper commissions to be allowed treasurers of counties, collected in excess of \$60,000 in revenue and licenses for the year 1919. The law in force, as stated in your letter, prior to the new Code, was as follows:

5% on \$25,000 or less.

3½% on collections in excess of \$25,000.

Section 2430 of the Code of 1919, which became a law on January 13, 1920, as stated in your letter, made a change in these commissions. An act passed by the legislature (chapter 249 of the Acts of 1920), amended section 2430 of the Code of 1919 and restored the old rates of commissions.

You also state in your letter that ninety per cent or over, of the taxes and licenses charged for the year 1919, were collected by the treasurers before the provisions of section 2430 of the Code became effective. You desire to be advised whether a line should "be drawn and the treasurers paid at the old rate for the amounts collected prior to January 13, 1920, and the new rate, as provided in section 2430 of the Code, paid on the smaller amounts collected between January 13, 1920, and the date of settlement with the treasurer, or should the entire settlement be made under the provisions of the law prevailing previous to the adoption of the new Code."

Inasmuch as this settlement only affects a few treasurers in the State, and as the legislature of Virginia, at its last session, restored the old commissions for more than ninety per cent or over of the taxes and licenses which had been collected before the provisions of section 2430 of the Code became effective, you would be justified and I think you would be right, in settling with the treasurers upon a basis of the commissions allowed than under the law prior to the taking effect of the new Code.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

FEES—WEST FEE BILL.

RICHMOND, VA., May 13, 1920.

HON. C. LEE MOORE,
Auditor of Public Accounts,
Richmond, Virginia.

DEAR SIR:

Acknowledgment is made of your letter of recent date, in which you request my opinion on the following statement of facts

"Chapter 352 of Acts of Assembly 1914, known as the West Fee Bill, which act was amended in section 1 by chapter 110 Acts 1918, and in section 9 by chapter 359 Acts 1918, requires the officers named in the act to make annually to the Auditor of Public Accounts a full and accurate statement, under oath, of all fees, allowances, commissions, and salaries and the source from which the same were derived.

"It is contended by a few of the clerks of the circuit courts in counties that they are not required to include in the statement salary paid them by the board of supervisors for their services as county clerk and salary paid them by the same board for their services as clerk of the board, and a few of the clerks acting upon that view of the law have not included the same in the sworn statement filed with me.

"Please advise me if the law requires them to include the same or not."

By section 3516 of the Code of Virginia, 1919, chapter 352 of the Acts of 1914, as amended, "is continued in force with its said amendments."

It is provided by section 1 of chapter 352 of the Acts of 1914, as amended by the Acts of 1918, so far as is applicable to the question here under consideration, as follows:

"No court clerk, treasurer, commissioner of the revenue, sheriff, high constable or city sergeant 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 subdivision thereof, or from any person or corporation, an amount in excess of the same hereinafter named, * * *"

You will see from the above-quoted provision of section 1 of chapter 352 of the Acts of 1914, as amended, that its application, so far as it applies to clerks, is limited to court clerks.

By section 110 of the Constitution, it is provided that the county clerk shall be the clerk of the circuit court. The clerk of the circuit court occupies

this office, therefore, by virtue of being county clerk and holds it, not as an incident to his office of court clerk. Therefore, the compensation received by county clerks is not received directly or indirectly by the clerk of the circuit court as such, but by virtue of his office of county clerk, which is not covered by the terms of chapter 352 of the Acts of 1914, as amended.

By section 2770 of the Code of 1919, it is provided, among other things, that "the county clerk shall be *ex officio* clerk of the board of supervisors," and as such is required to perform certain duties for which he is allowed compensation under the provisions of other section of the Code. This office is held by the clerk by virtue of his being county clerk, and not by virtue of being clerk of the circuit court. It therefore follows that such compensation likewise is not received directly or indirectly by the clerk as clerk of court, and therefore is not subject to the provisions of chapter 352 of the Acts of 1914 as amended.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

FINES—REFUNDING OF FINES PAID INTO TREASURY.

RICHMOND, VA., October 8, 1920.

HON. F. NASH BILISOLY,

Department of Game and Inland Fisheries,

Richmond, Virginia.

DEAR SIR:

Acknowledgment is made of your letter of October 5, 1920, in which you say:

"Will you kindly advise us if fines imposed upon persons who paid their 1920 dog license taxes after July 1, 1920, and who were fined for delinquency as per your letter of June 4, 1920, can have these fines remitted them, and if so, what is the proper legal procedure for them to take in the premises?"

Where fines have been paid into the treasury the only way that the same can be returned is by an act of the legislature, as it is provided by section 186 of the Constitution that no money shall be paid out of the State Treasury except in pursuance of appropriations made by law.

Very truly yours,

JNO. R. SAUNDERS,

Attorney General.

FORTUNE TELLING, WHEN NOT UNLAWFUL.

RICHMOND, VA., June 26, 1920.

WAILES HANK, ESQ.,

Law Building,

Norfolk, Virginia.

DEAR SIR:

Acknowledgment is made of your letter in which you call attention to chapter 144 of the Acts of 1918, making it unlawful for any company of

gypsies or other strolling company of persons to receive compensation or reward for pretending to tell fortunes or to practice any so-called magic art. You ask whether it is a violation of this law for a person selling jewelry to tell the fortunes of the purchasers thereof without charge.

The statute provides:

"That it shall be unlawful for any company of gypsies or other strolling company of persons, to receive compensation or reward for pretending to tell fortunes or to practice any so-called magic art."

I am of the opinion that the act in question does not make it unlawful to tell fortunes where no compensation is charged therefor.

Yours truly,

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

GAME AND FISH—BOUNTY LAW—POWER OF SUPERVISORS.

RICHMOND, VA., *December 8, 1920.*

HON. F. NASH BILISOLY,
Richmond, Va.

DEAR SIR:

I am just in receipt of your letter of December 7th, in which you ask for a construction of section 3 of chapter 158 of the Acts of 1920, which provides for the payment of bounties for the killing of certain predatory birds and animals. In your letter you call attention to the following language from section 2:

"* * * and if the board of supervisors of any county fails or refuses to pay one half of the bounties aforesaid, the Department of Game and Inland Fisheries shall not pay the other half."

I am of the opinion that the act is not mandatory on the board of supervisors and it is a matter left to their discretion.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

GAME AND FISH—BOUNTY FOR SCALPS OF PREDATORY BIRDS AND
ANIMALS—POWER OF SUPERVISORS.

RICHMOND, VA., *July 10, 1920.*

LEWIS JONES, ESQ., *Commonwealth's Attorney,*
Urbanna, Virginia.

MY DEAR MR. JONES:

Acknowledgment is made of your letter, in which you call attention to chapter 158 of the Acts of 1920, authorizing the payment of certain amounts for the killing of certain predatory birds and animals, and ask whether the payment of these bounties is mandatory or optional with the various boards of supervisors of the counties.

The act does not expressly or impliedly impose upon the boards of supervisors the duty of paying the bounties provided therein. I am of the opinion, therefore, that there is nothing compulsory upon your board of supervisors to pay the bounties so provided, and that it is a matter entirely within their discretion.

Yours truly,

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

GAME AND FISH—CLERKS OF COURT, REPORTS BY.

RICHMOND, VA., April 8, 1920.

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

DEAR SIR:

Acknowledgment is made of your letter of April 7th, in which you request my opinion on the following statement of facts:

"We would like to have your opinion as to whether this department can require the clerks of the circuit courts of the counties, and the corporation courts of the cities, who sell hunting and fishing licenses—see chapter 259, section 28, Acts 1918, page 438—to render us a report, monthly, whether they make any sales or not.

"In this connection, we will say that the big majority of these clerks have cheerfully complied with our request, and are making monthly reports, regardless of the fact whether they have sold any licenses or not while on the other hand, there are one or two clerks who claim that they do not have to make these reports unless they have actually made a sale.

"To have these reports sent in monthly by the clerks enables us to keep our books right up to date, and is a great convenience to the work of this department."

It is provided by section 28 of chapter 152 of the Acts of 1916, as amended by chapter 259 of the Acts of 1918, as follows:

"Clerks shall retain ten cents for a county license and twenty cents for a State license, from the money received for each license issued by them, and shall pay the balance to the State Treasurer on the first day of each month, which amount shall be covered into the game protection fund, and said clerks shall report to the Commissioner on the first day of each month the number of licenses issued and the licenses and the amount of money remitted to the State Treasurer."

You will see from the above section that clerks are required to report to the commissioner on the 1st day of each month the number of licenses issued, and the licenses and the amount of money remitted to the State Treasurer.

The language employed by the legislature contemplates a report by the clerks to be made as required, when a license or licenses have been issued, and it is very doubtful whether such report can be required from the clerks where no license has been issued.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

REPORT OF THE ATTORNEY GENERAL.

GAME AND FISH—DOG LAW.

RICHMOND, VA., *January 8, 1920.*

HON. F. NASH BILISOLY,
Commissioner of Game and Inland Fisheries,
City.

DEAR SIR:

I am just in receipt of your letter of the 7th instant, in which you enclose a letter from Mr. F. G. Stratton, treasurer of the city of Petersburg. Mr. Stratton in his letter refers to the following language which is a part of section 6 of the dog law:

"Any 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."

He desires to be advised whether this language means the 1st day of January or February of each year. The last sentence in section 1 of the dog law reads as follows:

"All dog licenses shall run from the 1st day of February to the 31st day of the following January."

The treasurers of counties, cities and towns should, therefore, make this report to the supervisors or city or town councils as of the first day of February in each year instead of January 1st.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

GAME AND FISH—DOG LAW.

RICHMOND, VA., *January 6, 1920.*

MR. J. H. RUCKER, *J. P.*,
R. F. D. 1,
Lynchburg, Va.

DEAR SIR:

Acknowledgment is made of your letter of January 5, 1920, in which you request my opinion on the following statement of facts:

"I have pending before me a case arising under the dog law of 1918 (Pollard's 1918 Sup. page 392) about which I wish you to give me benefit of your opinion for guidance. The case is one in which the owner listed the dog properly, but has failed to pay the tax.

"He has employed counsel, who contends that, under subsection 7 of the Act, I have authority to impose a fine unless the Commonwealth can show a failure to both list and pay the tax and cities in support of his contention the case of *Maury v. W. H. Tel. Co.*, 10 Va. Law Reg. page 993."

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."

I am of the opinion that under this section, either the failure to list a dog or to pay the fine within the time prescribed by law, constitutes a misdemeanor. Therefore, the listing of a dog or the failure to pay the license tax, is a misdemeanor under this statute. Courts have repeatedly held that the word "and" should be construed as "or" to further the intent of the legislature. 2. Lewis Sutherland on Statutory Construction, page 397.

The Supreme Court of West Virginia, in *Jelly v. Dills*, 27 W. Va. 267, 274, went so far as to hold that the word "and" employed in the Constitution of that State, should be construed to mean "or." This clearly was the intention of the legislature in using the word "and" in section 7 of the Acts of 1918, and I am of the opinion that the same should be construed to mean "or."

The very title of this act indicates that one of the objects of the act was to provide for the licensing of dogs and for the imposition of penalties for a violation thereof. In my opinion in view of these circumstances, the case of *Maurry v. W. U. Tel. Co.*, 10 Va. Law Reg. 991-3, has no application to the question involved in this case, and under the circumstances related in your letter, I am of the opinion that the party by failing to pay his license tax, is guilty of a misdemeanor as provided for by section 7 of chapter 390 of the Acts of 1918.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

GAME AND FISH—DOGS.

RICHMOND, VA., February 27, 1920.

HON. R. L. WOODSON,
Commissioner of Revenue,
Harrisonburg, Va.

DEAR SIR:

I beg leave to acknowledge receipt of your letter of the 25th, in which you ask whether the city of Harrisonburg has a right to impose a special tax on dogs in addition to the tax which is imposed by the State under the act approved March 20, 1918, known as the "Dog Law."

In reply, I will state if you will examine section 2 of the law you will see that it is there provided, after specifying the amount of tax on dogs, as follows:

"* * * said tax to be in lieu of all other taxes at present imposed by State and local county laws. * * *"

You will observe that section 6 provides that

"* * * Any 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, county, etc. * * *"

I gather from the reading of these sections that it was clearly the intention of the legislature that the tax of \$1.00 and \$3.00 respectively, imposed by this act, should be in lieu of all other taxes thereof. I am frank to say the law does not clearly prohibit a city or town from imposing an additional tax. However, I am advised that there is now pending before the legislature a bill prepared by the Department of Game and Inland Fisheries, which amends this law and clears up this doubt in reference thereto.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

GAME AND FISH—DOG LAW.

RICHMOND, VA., February 5, 1920.

MR. MELTON JONES,
Charlottesville, Virginia.

MY DEAR SIR:

I beg leave to acknowledge receipt of your letter of February 3rd, in which you ask whether a person who has sheep killed by his own dog is entitled to receive compensation therefor. You also ask whether the assessing of dogs, and the payment of the license tax thereon makes them personal property under the "Dog Law."

I will state that I do not think the legislature intended that a party should be compensated for sheep killed by his own dog. However, this is a matter which should be passed upon by the board of supervisors of the county in which this occurs, and I presume they will be properly advised by the Commonwealth's attorney.

In answer to your second question, I am of the opinion that a dog is still classed as personal property, where the owner has it assessed and pays the tax thereon.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

GAME AND FISH—DOG LAW.

RICHMOND, VA., March 31, 1920.

FRANK GUERRANT, ESQ.,
Danville, Virginia.

DEAR SIR:

Acknowledgment is made of your letter of March 30, 1920, in which you request me to advise you whether or not the dog license tax imposed by chapter 390 of the Acts of 1918 is in lieu of a city tax on dogs.

It is provided by section 2 of chapter 390 of the Acts of 1918, so far as is applicable to the question here under consideration, as follows:

"Every dog above six months of age shall be liable to a license tax as follows, viz: All male dogs and spayed females, one dollar; unspayed females, three dollars; *said tax to be in lieu of all other taxes*

*at present imposed by the 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 the above quoted provision of chapter 390 that the license tax therein imposed is in lieu of all other State taxes and local county taxes. Therefore, cities are not prevented from imposing an additional tax upon dogs.

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

GAME AND FISH—DOG LAW.

RICHMOND, VA., *March 5, 1920.*

M. L. OVERSTREET, Esq.,
Commissioner of the Revenue,
Bedford, Va.

DEAR SIR:

Acknowledgment is made of your letter of March 1st, in which you request my opinion on the following statement of facts:

"I am writing you with reference to the dog law. The law says 'all dogs shall be listed with the commissioner of revenue on or before February 1.' Where a town has no commissioner of the revenue of its own, but uses the books of the district commissioner, whose place it is to list the dogs of such town? The clerk of the town of Bedford for which I am commissioner of the revenue, claims that he is the proper assessor of the town dogs."

It is provided by section 1 of chapter 390 of the Acts of 1918, as follows:

"That it shall be the duty of every person owning or having under his control or on his premises any dog over six months of age to list the same forthwith with the commissioner of revenue of the county, city or town wherein he resides, for taxation, and to pay on or before the 1st 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 into the possession of any such person at any time after the 1st of February, such license shall be paid forthwith. All dog licenses shall run from the 1st day of February to the 31st day of the following January."

You will see from the above quoted provisions of section 1 of the dog law, that it is expressly provided that dogs shall be listed with the commissioner of the revenue of the county, city or town where the owner or person having the dog under control, resides. As you say that you are the commissioner of the revenue for the town of Bedford, I am of the opinion that dogs should be listed for taxation with you and not with the clerk of the town.

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

GAME AND FISH—DOG LAW.

RICHMOND, VA., June 4, 1920.

HON. F. NASH BILISOLY, *Commissioner*,
Department of Game and Inland Fisheries,
Richmond, Virginia.

DEAR SIR:

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

"We are enclosing you a copy of chapter 413, approved March 20, 1920, which amends chapter 390, Acts 1918.

"You will note chapter 413 goes into force and effect ninety days after the adjournment of the last session of the General Assembly, viz, June 20, 1920. Under a former opinion of yours, we are instructed not to begin the enforcement of the law until we receive the delinquent list from the treasurers, July 1st.

"On July 1, 1920, chapter 390, Acts 1918, will have been superseded by chapter 413, Acts 1920, and we would like to have your opinion if we shall ask the treasurers to send in the lists of all persons who have paid their dog licenses as of June 20, 1920? If not, how are we to force the payment of dog licenses this year?"

Chapter 413 of the Acts of 1920 will not take effect until the latter part of this month, and, under well settled principles of statutory construction; the provisions of section 1 of this act cannot be construed so as to make them retroactive.

Under the provisions of chapter 390 of the Acts of 1918 I held that one could not be fined for non-payment of his dog license tax unless he was delinquent on or after the first of July. This provision, however, has been repealed by chapter 413 of the Acts of 1920, and, therefore, it would appear that persons delinquent in the payment of their dog tax after the taking effect of chapter 413 of the Acts of 1920 have violated the law. Inasmuch, under the provisions of chapter 390 of the Acts of 1918, dog owners had until the first of July to pay their taxes, I am of the opinion that for the year 1920 you should not proceed against any person for the non-payment of his dog tax unless such person is delinquent on or after the first of July of this year.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

GAME AND FISH—DOG LAW.

RICHMOND, VA., July 8, 1920.

HON. F. NASH BILISOLY, *Commissioner*,
Department of Game and Inland Fisheries,
Richmond, Virginia.

DEAR SIR:

Acknowledgment is made of your letter, asking whether officers' fees in dismissed cases arising under chapter 413, Acts of 1920, must be paid by the treasurer of the counties, cities or towns, out of the eighty-five per centum of the dog license fund retained by them.

Section 6 of that act provides that:

"* * * Out of the remaining eighty-five per centum 1920, and thereafter eighty-five per centum of the fund so collected by the treasurer, all damages and fees provided for in this act shall be paid. * * *"

Section 7 of the act under consideration makes the violation of the provisions of the act a misdemeanor, which it would not be otherwise. This being so, the fees of the officers engaged in the prosecution of violations of the act follow as the shadow does the substance; and, therefore, such fees are provided for in the act.

I am, therefore, of the opinion that the fees of officers in dismissed cases arising under the act in question should be paid out of the eighty-five per centum above mentioned.

You call my attention to an opinion rendered by this office on this subject August 28, 1919, but section 6 was materially amended by the 1920 legislature, and, as amended, takes precedence over the provisions of the law on this subject in the Acts of Assembly, 1918, interpreted in the opinion referred to by you.

Yours truly,

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

GAME AND FISH—DOG LAW.

RICHMOND, VA., August 31, 1920.

S. C. AGEE,
Justice of the Peace,
Baldwin Station, Virginia.

DEAR SIR:

Acknowledgment is made of your letter of August 27, 1920, in which you request me to advise you whether or not it is a crime for one to purchase an unlicensed dog after the license is due thereon, such purchaser paying the tax on the dog after he has become the owner thereof.

While, under chapter 390 of the Acts of 1918, it was the duty of the owner of a dog to pay the license tax thereon on or before the first of July, or as soon as the dog attained the necessary age, there is nothing in the present law, nor was there in the law of 1918, making it a crime for one to purchase an unlicensed dog. The misdemeanor consists in owning a dog and not paying the license tax thereon as provided by law.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

GAME AND FISH—DOG LAW.

RICHMOND, VA., *September 10, 1920.*

HON. R. J. SUMMERS,
Commonwealth's Attorney,
Abingdon, Virginia.

DEAR SIR:

Acknowledgment is made of your letter of September 7, 1920, in which you say:

"I wish you would please give me your opinion on section 2 and section 4 of the dog law of the Acts of the General Assembly of 1920 on page 603 and 605. Reading both sections, what is your opinion as to the game warden's duty as to notifying the owner of a dog found away from his home without having a tag on, and without a tag at his home? The owner of the said dog had purchased his tag from the treasurer and failed to put it on the dog in some cases, and in other cases the dog lost the tag and the owner failed to get a duplicate until he was summoned to trial. Our magistrates have fined a great many people in the two above named violations, and about twenty-five to forty have taken appeals to our circuit court."

It is provided by so much of section 2 of chapter 413 of the Acts of 1920 as is applicable to the question submitted by you as follows:

"* * * Such license tags when so furnished to the owners of dogs, or those having them in charge, shall be attached to a substantial collar to be furnished by the owner of dog, or other person having such dog under his control, and shall be worn by such dog at all times, except as otherwise provided in this act. If any such tag should be lost, the owner of the dog, or such person as may have such dog in his charge, shall at once pay to the treasurer ten cents for a new tag, which shall forthwith be attached to the dog's collar and shall at all times be worn thereon, except as otherwise provided in this act. * * *"

The only exception made as to this is found in section 9 of chapter 413 of the Acts of 1920, which reads as follows:

"This act shall not be construed to prevent dogs from having collars and tags removed while they are actually being hunted, and are accompanied by the hunter, nor to prevent dogs, other than kennel dogs, from running at large day or night."

Section 7 of this act reads as follows:

"Any person failing to pay a license tax on any dog which he may own, have under his control, or on premises upon which he resides, or who shall otherwise violate the provisions of this act, shall be deemed 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 follows from the above quoted provisions of chapter 413 of the Acts of 1920 that one who has paid his tax and obtained a tag for his dog violates the law if he does not keep the tag fastened to the dog's neck, regardless of the location of the dog, except at such times as the dog is being actually hunted, accompanied by the hunter.

When the tag which has been fastened to the dog's neck has been lost, I am of the opinion that the owner should have a reasonable time in which to obtain another tag. The act, you will observe, says that if the tag should be lost the owner or person having the dog in his charge "shall at once pay to the treasurer ten cents for a new tag." Of course, this means that the owner, in the exercise of due care, must obtain a new tag within a reasonable time. What is a reasonable time, it seems to me, is a question of fact depending upon the circumstances of each particular case.

Coming now to the provisions of section 4 of chapter 413 of the Acts of 1920, referred to in your letter, I am of the opinion that the notice required by this section does not relate to prosecutions for violation of the provisions of section 2 of the act, but has reference merely to what must be done by the game warden before he is authorized to kill the dog; namely, the owner, if known, must be notified before the game warden is authorized to kill the dog, as provided for by section 4 of the act, unless the dog is engaged in killing sheep, etc., as therein provided. This appears clear from the language of **this section.**

So far as is applicable to the question here under consideration, section 4 of chapter 413 of the Acts of 1920, is 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 at any time of the year, without a license tag as herein provided, to immediately notify the owner thereof, if known to him, and if such dog be again found roaming at large contrary to the provisions of this act, or if upon the first occasion of finding such dog so at large, the owner be not known to the warden, or if any dog, whether wearing a tag or not be found killing, injuring or chasing sheep, or killing or injuring any domestic animal, it shall be the duty of the warden to kill such dog forthwith in any manner he may see fit. * * *

This section further provides:

"* * * 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. * * *

This section authorizes the game warden to kill any dog running at large on which license has not been paid and has no known ownership. If, however, the owner is known, before the dog can be killed, the game warden is required to notify the owner unless the dog be found killing, injuring or chasing sheep, etc. But this notice, in my opinion, has no reference to the provisions of section 2 of chapter 413 of the Acts of 1920, which requires the tag to be worn by the dog at all times except as otherwise provided in the act.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

GAME AND FISH—DOG LAW.

RICHMOND, VA., November 17, 1920.

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

DEAR SIR:

I am in receipt of your letter of recent date, which is as follows:

"Mr. A. W. Bohannon, treasurer of Surry county, has asked this department to obtain from you a ruling as to whether a person who buys a dog tag on November 1st, and whose dog dies before February 1st would be entitled to have the amount paid refunded.

"You will note the dog law provides that treasurers must have dog tags for 1921 on sale November 1st, although the tax is not actually due on dogs until February 1st. This provision was written into the law as a matter of convenience to dog owners who might wish to pay their dog taxes when they paid their general property taxes."

"A ruling from you on the point involved would be appreciated."

From the facts stated in the above case, I am of the opinion that the tax should be refunded to the dog owner.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

GAME AND FISH—DOG LAW.

RICHMOND, VA., July 30, 1920.

HON. F. NASH BILISOLY, *Commissioner,*
Department of Game and Inland Fisheries,
Richmond, Virginia.

DEAR SIR:

I beg leave to acknowledge receipt of your favor of July 28th, in which you enclosed a letter from Hon. C. Vernon Ford, Commonwealth's attorney of Fairfax county, and a copy of your reply to him, both of which relate to certain violations of the dog law in Fairfax county.

In your letter to me you refer to an opinion rendered by this office on June 4, 1920, a copy of which opinion is now before me. In this opinion, I held that, under the provisions of chapter 390 of the Acts of 1918, one could not be fined for non-payment of his dog license tax unless he was delinquent on or after the 1st day of July, 1920; that it is true that this provision was repealed by chapter 413 of the Acts of 1920, but that inasmuch as the act of 1920 did not go into effect until the 19th of June, 1920, I was of the opinion that your department should not proceed against any person for the non-payment of his dog tax for the year 1920 unless such person was delinquent on or after the 1st of July of this year.

This, in my judgment, is a correct interpretation of the law. From a reading of the opinion, you will see that the failure of anyone to pay taxes on his dog on or before the 1st day of July, 1920, technically speaking, makes him guilty of a misdemeanor under this act.

I have carefully read the letter of Hon. C. Vernon Ford, Commonwealth's attorney, to you in connection with this matter, and am satisfied that, if you will take the matter up with him in his official capacity, he will see that the law in Fairfax county is properly enforced and will render your department whatever assistance is necessary in the prosecution of the cases you mention. If, on the other hand, Mr. Ford is unwilling to appear to represent the Commonwealth in these cases, then your department has the privilege of engaging such attorney as you think proper to aid you in enforcing the law, your department being specifically charged with the enforcement of the dog law.

You have requested that some one of my assistants, or myself, appear in these cases, but, as I have said, knowing Mr. Ford as I do and having confidence in his integrity and ability, I am satisfied that he will render you the necessary service, and you will not need any assistance from my office. I would suggest that you communicate with Mr. Ford at once.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

GAME AND FISH—DOG LAW.

RICHMOND, VA., *December 8, 1920.*

THOS. H. NOTTINGHAM, ESQ.,
Attorney-at-Law,
Eastville, Va.

DEAR SIR:

Your letter of December 6th just received. In this you ask the following questions: Whether the commissioners of revenue shall continue now to list dogs for taxation, and if so what compensation will the commissioners receive for their services, and from what source should these fees be paid.

You also refer in your letter to certain opinions written by me during the year 1919. In reply, I will state that under the present law the commissioners of the revenue are no longer required to list dogs for taxation. Such being the case, of course they would not receive any compensation.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

GAME AND FISH—DOG LAW.

RICHMOND, VA., *December 16, 1920.*

JUDGE R. T. W. DUKE,
Charlottesville, Virginia.

MY DEAR JUDGE DUKE:

I am just in receipt of your letter of December 15, 1920, in which you ask my opinion upon the following statement of facts:

A man in your community had a child bitten by a mad dog. He has put in a claim for expenses of a trip to Richmond for treatment, and also the costs of twenty-one trips in an automobile to the University Hospital, where he also took his son for treatment. All of these expenses, you state, were

incurred in getting the child to and from the hospital and are not actual expenses incurred in the hospital. You further state that the costs of the treatment amounted to \$40.00, and the expenses of the trips to Richmond and to the University Hospital amounted to \$103.00. You desire to be advised whether the word "treatment" can be considered as broad enough to include the automobile trips to and from the hospital and the trip to Richmond.

The last two lines of section 5 of the act commonly known as the dog law, Acts of Assembly, 1920, page 606, read as follows:

"* * * And in case of any person being bitten by a mad dog he shall recover from such fund the costs of necessary treatment, not to exceed two hundred dollars."

The fund referred to, of course, is the fund under the control of the board of supervisors, which fund was derived from dog licenses. As stated in your letter, then, the sole question is whether the word "necessary treatment" are sufficiently broad in their meaning to include the expenses of the trip to Richmond and the automobile trips in taking the child to and from the hospital.

There can be no doubt that the expenses of the trip to Richmond would certainly be included. I would further state that if it was necessary for the parent of the child to hire a machine in order to take his child to and from the hospital, and if the expenses of so doing were not greater than they would have been had the child remained in the hospital, I see no reason why your board should not allow the amount of the claim.

However, this is a rather unusual case and one which can only be decided from the peculiar circumstances connected therewith. It being purely a local matter, you are in a better position to decide the question than I. I see no reason, though, why the statute would not be broad enough, under certain conditions, to cover the case in question.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

GAME AND FISH—DOG LAW.

RICHMOND, VA., *August 5, 1920.*

MR. FRANK P. PULLEY, JR.,
Waverly, Virginia.

DEAR SIR:

Your letter of August 4th just received. In this, you ask for an interpretation of the dog law so far as it is applicable to the following state of facts:

You have a tenant on one of your farms who moved there from Whitaker, North Carolina, on February 7, 1920. On May 2, 1920, he returned to his old home in North Carolina and had shipped to himself, in Virginia, his dog, which reached Virginia on May 3, 1920. In January, 1920, this man paid the tax on his dog for this year in North Carolina, and received a tag. You say that, a warrant has been served by a game warden on this man, charging him with having a dog in his possession upon which tax has not been paid,

and the case will be heard by a justice on next Saturday. You also say that you have discussed this matter with the justice, explaining to him fully the facts, but that the justice states he sees nothing to do, under the dog law, except fine this man, as no provision is made in the law for cases of this kind. You ask my opinion as to what should be done under the circumstances.

The payment by this man of the tax on his dog in North Carolina does not relieve him from paying the tax on the dog in Virginia. Technically speaking, he is guilty of violating the provisions of the dog law; at the same time, I doubt if a jury would find him guilty and impose the penalty provided in the law. Of course, I cannot advise the justice what he should do, but it seems to me he should exercise his discretion and common sense in a question of this kind.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

GAME AND FISH—DOG LAW—NON-RESIDENT DOGS NOT SUBJECT TO TAX.

RICHMOND VA., July 28, 1920.

HON. F. NASH BILISOLY, *Commissioner,*
Department of Game and Inland Fisheries,
Richmond, Virginia.

DEAR SIR:

Acknowledgment is made of your letter of July 21, 1920, in which you say:

"There are a good many government reservations, barracks, and camps under the control of the Federal government, in Virginia.

"We would like to have your opinion as to whether dogs which are the private property of the Federal government employees stationed on above stated Federal property are amendable to taxation as provided for in chapter 413, Acts 1920; and, if so, what is the proper procedure for our game wardens to pursue in enforcement of the payment of tax on unlicensed dogs aforesaid."

The Court of Appeals, in the case of *Bank of Phoebus v. Byrun*, 110 Va. 708, decided that territory which has been ceded to the Federal government is no longer a part of the State, nor subject to the jurisdiction of its courts, and that the persons residing therein are not citizens of Virginia. See also *Foley v. Shriver*, 81 Va. 573.

I am, therefore, of the opinion that dogs belonging to persons residing on Federal reservations are not subject to the license tax imposed by the provisions of chapter 390 of the Acts of 1918, as amended, and am further of the opinion that section 17 of the Code of Virginia, 1919, does not operate, so as to repeal the decision of the Court of Appeals in the case of *Bank of Phoebus v. Byrun*, supra, so far as the matter under consideration is concerned.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

GAME AND FISH—DOG LAW.

RICHMOND, VA., August 19, 1920.

HON. J. M. PARSONS,
Attorney at Law,
Independence, Va.

MY DEAR SENATOR PARSONS:

Acknowledgment is made of your letter of August 12th, in which you say in part:

"There has been considerable confusion in this county over the Act of Assembly, approved March 22, 1920, relative to the "dog law" imposing license taxes, etc., on all dogs over 4 months of age, especially to whom this license money shall be paid, in incorporated towns.

"Please write me who should collect the tax on dogs within the incorporated limits of towns of our county, and what should be done with the same."

Section 2 of chapter 413 of the Acts of 1920, which amends and re-enacts chapter 390 of the Acts of 1918, after prescribing the tax to be paid on dogs provides as follows:

"* * * Such tax to be in lieu of all other taxes at present imposed upon or on account of such dogs by State and local county laws, and city and town ordinances, which license tax shall be paid to the treasurer of the county, city or town, or to such other officers as is or shall be designated by law to collect county, city and town taxes, in the county, city or town, such officers to be hereinafter designated for the purpose of this act as 'treasurer,' wherein the owner of such dog, or such person as may have him under control, may reside. * * *"

This section further provides as follows:

"Such treasurer shall receipt to the Department of Game and Inland Fisheries for such tags, and shall on the first of November of each year render an account with the department for all tags sold, and return all unsold tags which were received by him on the preceding first day of November. * * *"

Further, this section provides that:

"* * * Necessary tags shall be furnished by the Department of Game and Inland Fisheries to treasurers, and these tags, when furnished, shall be paid for out of the funds received and retained by such counties, cities and towns derived from dog licenses. * * *"

And it further provides:

"* * * The treasurer of each county, city and town shall receive for handling the funds arising from taxes imposed by this act, ten cents for each tag sold, except duplicates and kennel tags, for which he shall receive ten per centum. It shall be the duty of the treasurer of each county, city or town to furnish the Commissioner of Game and Inland Fisheries on or before the first day of May of each year, with a list of all persons in his county, city or town who have paid license taxes on dogs as herein provided. * * *"

In section 4 of the act, which provides for the killing of dogs under certain circumstances and for a fee for the game warden for killing and burying the dog, it is provided :

"Bills for such fees shall be rendered by each game warden entitled to receive them to the board of supervisors of the county, or to the city and town council; or to such other governing body of a city or town, as may be authorized by law to pass upon, approve and order to be paid, bills against such city or town. Every such bill shall be verified by the oath of the warden presenting same, and when it shall appear to such board of supervisors, city or town council, or other governing body that the supervisors, city or town council, or other governing body that the account is correct, the same shall be forthwith ordered to be paid."

In section 6 of the acts, the following provisions are found :

"* * * All moneys arising from the collection of dog license taxes shall be kept in a separate fund by the treasurer. From such fund the treasurer shall remit a sum equal to fifteen per centum of the gross receipts from dog license taxes collected 1920 and thereafter only fifteen per centum, to the Auditor of Public Accounts to be placed by the Auditor of Public Accounts to the credit of the Department of Game and Inland Fisheries as to be used by the Department of Game and Inland Fisheries for the enforcement of this act, and to carry out the purposes thereof. * * * Out of the remaining eighty-five per centum 1920 and thereafter eighty-five per centum of the fund so collected by the treasurer all damages and fees provided for in this act shall be paid. * * * Any funds remaining in the hands of the treasurers, as shown by his report made to the board of supervisors of his county, or to the city or town council, or other governing body, at the beginning of each year, shall be used by the counties for either the public roads or public schools, as the board of supervisors may direct, and may be used in cities and towns for such purposes as the city or town council, or other governing body, may direct. * * *"

From the foregoing extracts, you will see that the tax is to be paid to the treasurer of the county, city or town or to such other officers as are or shall be designated by law to collect county, city and town taxes in the county, city or town wherein the owner of the dog on which the license is paid, or the person having him under control, may reside. Therefore, where the owner of the dog, or the person having him under control, resides in a town, the tax should be paid to the treasurer of the town or such other officer thereof as is designated to collect the town taxes.

The money so received by the town treasurer is to be disposed of in the same way as the county or city treasurer disposes of the funds collected by him from dog licenses. The treasurer must pay out of this fund, for the dog license tags furnished him by the Department of Game and Inland Fisheries and retained by his town. The treasurer is entitled to a fee of 10 cents for each tag sold for use in his town, except duplicates and kennel tags, for which he is entitled to a fee of ten per centum, and from this fund, the treasurer must remit a sum equal to fifteen per centum of the gross receipts to the Auditor of Public Accounts to be placed by that officer to the credit of the Department of Game and Inland Fisheries to be used in the enforcement of the dog law.

Out of the remainder of this fund so collected by the treasurer, all damages and fees provided for by the act are to be paid, and any funds remain-

ing in the hands of the treasurer at the beginning of each year, may be used by the town for such purposes as its council or other government body may direct.

Trusting this gives you the desired information, I am,

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

GAME AND FISH—PAYMENT FOR FOWL KILLED BY DOGS.

RICHMOND, VA., November 1, 1920.

HON. JOS. R. TAYLOR,
Commonwealth's Attorney,
Martinsville, Va.

DEAR SIR:

Acknowledgment is made of your letter in which you ask whether or not the law allows the board of supervisors to pay out of the dog license fund the fair value of any fowl killed by a dog, when such fowl is not assessed for taxation. Section 5 of the Acts of Assembly 1920, page 606, provides:

"Any person, firm or stock company taxed by the State who shall have any stock or fowl killed or injured by any dog shall be entitled to receive compensation therefor at the assessed value of such stock and the fair value of such fowl out of the fund derived from dog licenses, 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 fowl, and in case of any person being bitten by a mad-dog he shall recover from such fund the costs of necessary treatment, not to exceed two hundred dollars."

It will thus be seen that where fowl are killed or injured by dogs, the owner has a right to be compensated for his damages out of the money arising from the dog license tax, even though the fowl is not assessed for taxation. In other words, it is seen that the legislature intended to provide that damage to stock should not be paid out of this fund unless assessed for taxation, but that compensation could be obtained out of the fund for damage to fowl, even though not assessed.

Yours truly,

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

GAME AND FISH—DOG TAGS.

RICHMOND, VA., August 25, 1920.

HON. G. E. PENCE,
Commonwealth's Attorney,
Woodstock, Virginia.

DEAR SIR:

Acknowledgment is made of your letter of August 20, 1920, in which you say:

"Kindly advise if, in your opinion, a license tag for a dog is transferable from one owner to another for the same dog. In the event of a sale, would the purchaser be required to secure a new tag for the dog, or would the one originally issued be sufficient?"

I am of the opinion that the license tag provided for by chapter 413 of the Acts of 1920 is issued on the dog, and that the same is transferable from one owner to another when the dog is transferred. Therefore, in the event of a sale, the purchaser is not required to secure a new tag for the dog if the vendor transfers the tag along with the dog.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

GAME AND FISH—FISHING ON SUNDAY.

RICHMOND, VA., March 22, 1920.

MR. F. H. MOREHEAD,
Justice of the Peace,
New Market, Va.

DEAR SIR:

Acknowledgment is made of your letter of the 19th, in which you request answers to the following questions:

"Is there a law in this State under which a man can be punished for fishing on Sunday? If there is, what is the penalty?"

It is provided by section 3251 of the Code of Virginia, 1919, that it shall be unlawful for any person to take "clams or crabs in the waters of this State, or oysters from either public or private grounds on Sunday." A violation of the above provision of section 3251 of the Code is punished by a fine of not less than \$25.00 nor more than \$100.00.

It is provided by section 3301 of the Code of Virginia, 1919, that no person shall "lay out and fish with any seine or net in the Potomac river or its tributaries between 5 o'clock on Sunday morning and 5 o'clock on Monday morning."

By section 4570 of the Code of Virginia, 1919, it is provided that any person found on Sunday to be "laboring 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" shall be deemed guilty of a misdemeanor, and for conviction shall be fined not less than \$5.00 for each offense. This section, however, would not apply to the case under consideration unless the persons found fishing were found engaged therein as a trade or calling.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

REPORT OF THE ATTORNEY GENERAL.

GAME AND FISH—USE OF FOOD FISH.

RICHMOND, VA., *February 3, 1920.*HON. C. S. TOWLES,
Reedville, Va.

MY DEAR CLARENCE:

I beg leave to acknowledge receipt of your letter of January 28th, in which you ask whether or not it is lawful for a fish factory to use herring (food fish) in the manufacture of hog and chicken feed.

You further ask if it is lawful to have the fish oil derived from the above-mentioned food fish shipped to another State and there manufactured into compound lard, lubricating oils, etc.

You state that it is contemplated that these fish will not be caught in purse nets, but will be caught in fish traps or pound nets and then sold to the fish factories to be manufactured into fish scrap, then this scrap will be ground and sold as poultry feed.

I am of the opinion that it is unlawful to use such food fish for any of the purposes mentioned in your letter, regardless of how they are caught, the object of the law being to protect them and not to have them used for any purpose other than as food. I feel satisfied that you will agree with me in this view of the matter.

Yours very sincerely,

JNO. R. SAUNDERS,

Attorney General.

GAME AND FISH—FISH LADDERS.

RICHMOND VA., *March 19, 1920.*HON. F. NASH BILISOLY, *Commissioner,*
Department of Game and Inland Fisheries,
Richmond, Virginia.

DEAR SIR:

Acknowledgment is made of your letter of March 18, 1920, in which you say:

"The department would like to have your opinion as to whether, under the terms of the new Code, it would be the duty of this department to enter proceedings against the owner of any dam obstructing the rivers of the State above tidewater, who has failed to erect a fishway.

* * * * *

"We would thank you, if you consider this department responsible for the erection of fishways, to suggest the mode of procedure necessary for us to follow in the premises."

Section 3192 of the Code of Virginia, 1919, reads as follows:

"Any person or corporation owning or having control of any dam or other obstruction in any of the rivers of this State above tidewater, which may interfere with the free passage of fish, unless exempt by law, shall provide every such dam or other obstruction with a suitable fish-ladder so that fish may have free passage up and down said rivers during the months of March, April, May and June of each year, and maintain and keep the same in good repair, and restore it in case of

destruction. This section, however, shall not apply to the Meherrin river within the county of Brunswick."

This section has been slightly affected by chapter 287 of the Acts of 1918, amending section 2105 of the Code of Virginia, 1904, which, to the extent that it is in conflict with section 3192 of the Code of 1919, must prevail over the latter section. An examination of the amendment to section 2105 of the Code of 1904, however, shows that it is not in conflict with the provisions of section 3192 of the Code of 1919, the wording thereof being identical, with the exception of the second paragraph of section 2105 of the Code of 1904, as amended, which has been incorporated into the body of section 3192 of the Code of 1919, which also provides that the same shall not apply to dams or obstructions exempt by law. Otherwise, if we except the word "provided," with which begins the last part of the last sentence of the first paragraph of section 2105 of the Code of 1904, as amended, these sections are identical. There being no conflict between the same, I am of the opinion that both are in force.

Section 3193 of the Code of Virginia, 1919, which also relates to this question, reads as follows:

"Any person, firm or corporation failing to comply with the provisions of the preceding section shall be fined one dollar for each day's failure; and the circuit court of the county or the corporation court of the city in which the dam is situated, after reasonable notice, by a rule or otherwise, to the parties or party interested, and upon satisfactory proof of the failure, shall cause the fishway to be constructed, or put in good repair, as the case may be, at the expense of the owner of the dam or other obstruction."

Under the provisions of section 3192 of the Code of 1919, and section 2105 of the Code of 1904, as amended, I am of the opinion that any person or corporation owning or having control of any dam or other obstruction in any of the rivers of this State above tidewater, which may interfere with the free passage of fish, is required to provide every such dam or other obstruction with a suitable fish-ladder, so that fish may have free passage up and down said rivers during the months of March, April, May and June of each year, and that such person or corporation is required to maintain and keep the same in good repair, and restore it in case of destruction. The Meherrin river, within the counties of Brunswick and Greensville, and dams exempted by law at the time of the amendment to the section of the Code of 1904, March 16, 1916, are the only exceptions to the application of the sections.

I am further of the opinion that any person or corporation who fails to comply with the provisions of section 3192 of the Code of Virginia, 1919, or the provisions of section 2105 of the Code of Virginia, 1904, as amended, incurs the penalty provided for by section 3193 of the Code of Virginia, 1919, quoted above.

It is no longer required by the present Code, as was required by the previous statutes, that the board of supervisors shall designate a suitable fishway, thereby relieving those owning or in control of dams and obstructions from the necessity of erecting fish ladders until the board of supervisors designate a suitable make of fish-ladder.

As the revisors of the Code of 1919 say, in a note to section 3193 of that Code:

"The proviso of this section as it appears in the act has been omitted and repealed. That proviso enacted that the penalty should not be imposed in any case until some make or kind of ladder had been declared by the board of supervisors to be a suitable fish-ladder."

While it is true that section 3194 of the Code of Virginia, 1919, requires the supervisors of each county and councilmen of each city to make a personal inspection of dams in rivers in their respective counties and cities, and report to the circuit court of the county or the corporation court of the city any violation of the provisions of section 3192 of the Code, I am of the opinion that this does not relieve you of the duty imposed on you by section 3315 of the Code of Virginia, 1919, which provides that you shall enforce all laws "relating to fish in waters above tidewater."

It being your duty to enforce the above provisions of the law relating to fish ladders, I would suggest that you proceed against persons who are violating this law in the same manner that you have been proceeding against persons who have violated the hunting and other inland fish laws.

Very truly yours,

JNO. R. SAUNDERS,

Attorney General.

GAME AND FISH—FISH LADDERS.

RICHMOND, VA., March 23, 1920.

HON. F. NASH BILISOLY, *Commissioner.*

*Department of Game and Inland Fisheries,
Richmond, Virginia.*

DEAR SIR:

Acknowledgment is made of your letter of March 20, 1920, enclosing correspondence with Hon. Thomas H. Lion, Commonwealth's attorney of Prince William county, relative to the matter of fish ladders in Occoquan creek. In your letter, you request me to advise you whether section 3192 of the Code of Virginia, 1919, applies to dams and obstructions in creeks above tidewater.

In an opinion given the Commissioner of Game and Inland Fisheries by this office February 7, 1917, opinions of the Attorney General, 1917, page 116, it was held that section 2105 of the Code of Virginia, 1904, was confined in its application to rivers in this State above tidewater, and not to creeks.

Section 3192 of the Code of Virginia, 1919, is substantially the same as section 2105 of the Code of Virginia, 1904, and the same is true of section 2105 of the Code of Virginia, 1904, as amended by the Acts of 1918, page 464. Section 3192 of the Code of Virginia, 1919, and section 2105 of the Code of Virginia, 1904, as amended, are penal statutes, and for this reason should be strictly construed.

I am, therefore, of the opinion that the word "rivers," used in these sections, does not include creeks within its meaning.

Very truly yours,

JNO. R. SAUNDERS,

Attorney General.

GAME AND FISH—FISH LADDERS.

RICHMOND, VA., May 21, 1920.

F. NASH BILISOLY, Esq.,
Commissioner of Fisheries,
City.

DEAR SIR:

Acknowledgment is made of your letter of May 13th with reference to the dams of the Bedford Pulp and Paper Company.

I have examined the documents enclosed with this letter and am of the opinion that you should not proceed against this company to compel it to ter 329 and the further fact that the Bedford Pulp and Paper Company is erect fish ladders, in view of the contract referred to in the Acts of 1887, chapter 329, and the further fact that the Bedford Pulp and Paper Company is the successor of the R. & A. R. Co.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

GAME AND FISH—FISH LADDERS.

RICHMOND, VA., May 28, 1920.

HON. F. NASH BILISOLY, *Commissioner,*
Department of Game and Inland Fisheries,
Richmond, Virginia.

DEAR SIR:

Acknowledgment is made of your letter of May 27, 1920, with enclosures, relating to the erection of a fish-ladder on Judith's Dam, owned by the Lynchburg Traction and Light Company, located near Lynchburg.

It appears from the correspondence that the Lynchburg Traction and Light Company, in the ownership of this dam, is the successor of the R. & A. R. R., and that this is one of the dams contemplated by the act of May 20, 1887 (Acts of Extra Session, 1887, page 427). The owner, therefore, is not required to place a fish-ladder on the same.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

GAME AND FISH—FISH LADDERS.

RICHMOND, VA., May 26, 1920.

HON. F. NASH BILISOLY, *Commissioner,*
Department of Game and Inland Fisheries,
Richmond, Virginia.

DEAR SIR:

Acknowledgment is made of your letter of May 24, 1920, in which you enclosed correspondence relating to the erection of a fish-ladder on the dam across Roanoke river near Vinton, Virginia, owned by the Roanoke Railway & Electric Company. Among this correspondence is a letter from Hon. H. M. Smith, Commissioner of the Bureau of Fisheries of the Federal government,

dated February 12, 1915, in which the facts relating to this matter are stated as follows:

"From a description of the dam given by your engineer, and judging from its location and general surroundings, it would be a difficult matter to construct an efficient fishway in this site; and from the non-anadromous character of the fish inhabiting this river, it appears that the necessity for a fishway is not vital.

"The dam is built of concrete and is 50 feet high. The distance between it and the next one below, at Weldon, N. C., is nearly 230 miles. Numerous large and small tributaries feed Roanoke river between the two dams, and the distance from Camps dam to the headwaters of the river is less than 30 miles. During the spawning season the fish are able, if necessary, to ascend the many tributaries below the dam, and the distance of over 200 miles between the two dams mentioned affords the fish a sufficient area in which to search for food. The same may be said of the remaining 30 miles of the river above the dam.

"A fishway would require a large percentage of the volume of water discharged by the river during its normal flow. Even if provided with all the water required, there is no trustworthy evidence available going to show that such fish as inhabit the Roanoke river have ever in appreciable numbers ascended a fishway in a dam of the height of Camps dam.

"In the present state of knowledge respecting fishways, and under the prevailing local conditions, the construction of a fishway in Camps dam is therefore not regarded as essential to the welfare of the local fishes.

"The foregoing views are concurred in by Mr. Hector Von Bayer, the engineer and architect of this bureau, who has made a special study of fishways in America and Europe, and is the best informed person on this subject in the United States."

It is provided by section 3192 of the Code of Virginia, 1919, as follows:

"Any person or corporation owning or having control of any dam or other obstruction in any of the rivers of this State above tidewater, which may interfere with the free passage of fish, unless exempt by law, shall provide every such dam or other obstruction with a suitable fish-ladder so that fish may have free passage up and down said rivers during the months of March, April, May and June of each year, and maintain and keep the same in good repair, and restore it in case of destruction. This section, however, shall not apply to the Meherrin river within the county of Brunswick."

This section was affected by chapter 287 of the Acts of 1918, which amended section 2105 of the Code of Virginia, 1904, but this amendment does not change in any particular the above quoted provision of section 3192 of the Code of Virginia, 1919, as I had occasion to inform you in a previous opinion given you some months ago.

While the language of section 3192 of the Code of Virginia, 1919, and chapter 287 of the Acts of 1918 is broad, I am, nevertheless, of the opinion that it was not the intention of the legislature to require the erection of a fish-ladder in a case in which the facts are as stated by Hon. H. M. Smith.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

GAME AND FISH—KILLING RABBITS OUT OF SEASON.

RICHMOND, VA., July 8, 1920.

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

DEAR SIR:

Acknowledgment is made of your letter of July 6, 1920, in which you request me to advise you whether a land owner who is a resident of this State can lawfully authorize his servants to kill rabbits on his land, which are destroying his orchard and crops.

In the second paragraph of section 3356 of the Code of Virginia, 1919, it is made unlawful for any person to hunt, kill or capture, in any manner, or have in his possession, among other things, any hares or rabbits, between February 1 and November 1. This section is qualified, however, by the following proviso:

“* * * Provided that this shall not restrict the killing of hares squirrels by residents of this State upon their own land at any time. * * *”

This proviso clearly authorizes a resident land owner to kill hares on his own land at any time during the year. (Opinions of Attorney General 1916, page 102).

I am further of the opinion that this is a case in which the maxim “qui facit per alium, facit per se,” which means “he who acts through another acts by himself,” applies. As was said in *Musc v. Stern*, S2 Va. 33, 40, “The servant is regarded as an instrument set in motion by the master,” and is acting for and on behalf of the master in the performance of his duties. I am therefore of the opinion that the servant who kills rabbits on his master's land under the above circumstances, incurs no liability in so doing.

I desire to call your attention, however, to the fact that, although one has a right to kill rabbits on his own land, in person or through his servant, he has no right to expose the same for sale on the market, and the purchaser of such rabbits would violate the provisions of section 3356 of the Code of Virginia and incur in so doing the penalty prescribed for the violation of the same. (Opinions of Attorney General 1916, page 105).

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

GAME AND FISH—NON-RESIDENTS.

RICHMOND, VA., November 4, 1920.

MR. R. KIRK HEADLEY,
204 W. Pratt Street,
Baltimore, Maryland.

DEAR SIR:

I am in receipt of your letter of November 1st. Section 3330 of the Code of Virginia, 1919, which answers your question, is as follows:

"Any non-resident of this State who is a citizen of the United States may procure a license for hunting in this State by making application as provided in the preceding sections, and by paying the said clerk the sum of not less than ten dollars; but any non-resident owning real estate in this State, or the tenant thereon, shall be permitted to hunt upon his own lands without obtaining any license."

The license fee for a non-resident hunter is ten dollars. The mere fact that you own real estate in Virginia does not entitle you to a State license, which is three dollars.

Very truly yours,

JNO. R. SAUNDERS,

Attorney General.

GAME AND FISH—OYSTERS.

RICHMOND VA., *December 5, 1920.*

HON. F. NASH BLISOLY,
Commissioner of Fisheries,
Portsmouth, Va.

DEAR SIR:

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

"The running and marking of the Baylor lines in the Rappahannock river is developing into the following condition:

"Some of the planters there who are holding public grounds come within the provisions of section 3233 and are entitled to time within which to remove their planted oysters. In such cases it will develop that it will be impossible for them to employ labor to tong, since the tongers are fully aware that if the oysters are not taken up within the time allowed by the commission they, the tongers, will get them when the ground is turned out. We are, therefore, going to be faced with applications from the planters to dredge.

"In preparation for this condition, I have been searching the laws to find a section under which the commission can allow them to dredge public grounds, but have been unsuccessful.

"Since, of course, you are familiar with the oyster business and also with the laws of the State, I am writing to ask that you consider the situation and advise me if there is any section under which the commission may allow the use of dredges on public ground or if the ground, though public ground, having been duly assigned to the planters, may be considered planting ground during the period which may be allowed them by the commission under section 3233."

Section 3233 of the Code of Virginia, 1919, so far as is applicable, provides as follows:

"When, by any resurvey of oyster-planting grounds or survey made to re-establish the lines of the State survey of natural oyster beds, rocks or shoals which shall hereafter be made under the direction of the Commission of Fisheries, it shall appear that any holder, without his own default, and by mistake of any officer of the State, has had assigned to him and included in the plat of his assignment any portion of the natural oyster beds, rocks or shoals as defined by law, and it shall further appear that such holder has oysters or shells planted on the said ground, then, before the stakes shall be removed from said ground or the same opened to the public, the said holder shall be allowed a reasonable time,

the length of which is to be determined by the Commission of Fisheries, in their discretion (and duly advertised), within which to remove his planted oysters or shells from said ground * * *

Section 3248 of the Code of Virginia, 1919, so far as is applicable to the question, provides as follows:

"It shall be lawful for any resident of this State holding under legal assignment oyster-planting ground and having paid the rent therefor to dredge or scrape the same at any time, except on Sunday or at night; provided, such privilege of dredging or scraping such oyster grounds may be revoked in any case by the Commission of Fisheries, whenever, in its judgment, it may be proper or necessary to do so; * * *

This latter section is too long to copy in full in this letter, but there are certain requirements with which a person desiring to dredge must comply before he is permitted to do so, and so far as is applicable to the case in question, it provides that a person desiring to dredge must first obtain written permission to do so from the Commission of Fisheries.

Section 3233 of the Code of 1919, as you will see from an examination thereof and which has been quoted above, unquestionably provides that where any oyster planter who, without his own default, or by mistake of any officer of the State, has had assigned to him any portion of the natural oyster beds, rocks or shoals and shall have planted oysters or shells thereon, that the said planter before the said stakes shall be removed, shall have a reasonable time, which time is to be determined by the Commission of Fisheries, in which to remove his planted oyster or shells from said ground.

You have stated in your letter that it will develop that certain planters on Rappahannock river to whom the Commission of Fisheries has granted the privilege of removing their oysters under these conditions, will be unable to employ labor to tong since the tongers are fully aware that, if the oysters are not taken up within the time allowed by the Commission of Fisheries, they (the tongers), will get them when the ground is turned out. If the planters to whom the Commission of Fisheries has granted the privilege to remove their oysters from said planted ground, cannot have them removed in the ordinary way, namely, by tongs, for the Commission of Fisheries, to grant them a permit to remove said oysters and then to deprive them of the only method left for so doing, would render the said permit useless.

I am therefore of the opinion that this is a matter which addresses itself to the sound discretion of the Commission, and if, upon investigation, the Commission ascertains that it would be impossible for the planters to remove their planted oysters from their planting ground within the time prescribed, except by dredging, that sub-section 2 of section 3240 of the Code of 1919, which prohibits the taking or catching of oysters by dredges or scrapes in any of the public waters of the Commonwealth, is not applicable in these cases, and that the Commission would be justified in granting the planters the right to remove said oysters according to the provisions of section 3248 of the Code.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

GAME AND FISH—POISON.

RICHMOND, VA., *August 27, 1920.*

MR. R. T. CORBELL, *Field Secretary,*
Department of Game and Inland Fisheries,
City.

MY DEAR MR. CORBELL:

Acknowledgment is made of your letter of August 25th, in which you enclose the letter of James H. Garth, Esq., game warden for Madison county, in which he says:

"Please advise me whether or not it is against the law for farmers to put out poisoned corn in their fields for the purpose of killing crows.

"When they do this I am sure that a number of partridges or quail are killed by the poisoned corn."

The only section in the Code which affects the administering of poison to fowls and animals, is section 4467 of the Code of Virginia, 1919, which reads as follows:

"If any person maliciously administer poison to or expose it with intent that it shall be taken by any horse, cattle, or other beast of any other person; or if he poison or kill his own horse, cattle or other beast for the purpose of defrauding any insurer thereof; or if any person maliciously shoot, stab, cut, or wound any horse, mule or cattle of any person with intent to kill or injure the same, he shall be confined in the Penitentiary not less than two nor more than ten years. And if any person unlawfully shoot, stab, cut, or wound any horse, mule, or cattle of any person, or unlawfully and maliciously shoot, stab, cut, or otherwise wound or poison any fowl of another, or any dog of another which has been listed or assessed for taxation, with intent to maim, disfigure, disable or kill the same, he shall be guilty of a misdemeanor."

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

GAME AND FISH—POLLUTION OF STREAMS.

RICHMOND, VA., *February 28, 1920.*

HON. NORVELL HENLEY,
House of Delegates,
City.

DEAR SIR:

Acknowledgment is made of your letter of February 27th, in which you request my opinion on the following statement of facts:

"I am co-patron of a bill with Captain Tabb, amending section 3195 of the new Code.

"From an examination of section 3195, you will see that it is unlawful for anyone to cast any injurious substance in certain streams of the State, which destroys fish. This section is so amended by the bill introduced, as to include oysters as well as fish, and it also includes the York river.

"Will you please advise me whether there is any general law which protects oysters, as well as fish, from injuries of this nature?"

I have examined the index to the Code with care, and am unable to find any statute which covers the specific evil sought to be remedied by your bill.

Of course, under the principles of the common law, damages could, no doubt, be recovered or injunction proceedings be maintained for the injury or destruction of oysters from the polluting of streams.

As I have said, however, I find nothing in the Code relating to oysters, similar to the bill in question.

Yours truly,

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

GAME AND FISH—RESIDENCE.

RICHMOND, VA., August 13, 1920.

MR. J. W. CLARKSON,
Hickory, N. C.

MY DEAR MR. CLARKSON:

I have just returned to my office from New York where I have been for the past few days, and found your letter of the 7th, also letters from Messrs. Billisoly and McDonald Lee to you. I have carefully noted the contents of all of these letters and am very glad to give you the law applicable to the question contained in your letter, namely, whether or not you are privileged to continue in the oyster business in Virginia.

You stated in your letter that you still claim Virginia as your place of residence; that while, during the past two years you have spent most of your time in North Carolina, still you have never voted in that State, nor do you claim it as you residence. You further state that you went to North Carolina on account of the health of one of your children. In addition to this, you state that you own considerable real estate in Virginia and that you continue to pay your taxes on this real estate.

In the case of *Long v. Ryan*, 71 Va. 718, it is held:

"That it is extremely difficult to say what is meant by the word 'residence' as used in particular statutes, or to lay down any particular rules on the subject. All the authorities agree that each case must be decided on its own particular circumstances and the general differences are calculated to perplex and mislead."

After all, the question of residence is a question of intention. The mere fact that a man spends the greater part of his time outside of the State of Virginia, does not necessarily mean that he has lost his residence in Virginia, provided it is his intention to return to Virginia, and still claims his residence therein.

The legislature of Virginia some years ago made some changes in the oyster laws of the State. It endeavored to define who was deemed a resident of the State within the meaning of the oyster law. It went so far as to enact a law which provided that no person shall be deemed a resident of the State within the meaning of the act, who is not a tax payer in the State and shall not have maintained his residence therein for one year and actually resided therein for the four months next preceding the time when he made application for any privileges or licenses granted to residents under this act, or un-

less he be a bona fide purchaser of land in this State, and has actually lived within this State for the four months next preceding the time when he makes application for any privileges or licenses. (Chapter 343, Acts of Assembly 1916, section 37).

Attorney General Pollard, in an opinion to Hon. John Parsons who was the Commissioner of Fisheries in 1917, construed the above section of the law which required actual physical residence of four months in the State, next preceding, etc., to be unconstitutional. I am of the opinion that Attorney General Pollard was correct in this view.

I am further of the opinion that the mere fact that you have spent most of the last two years in the State of North Carolina, but that you still claim your residence in Virginia, own real estate in Virginia and pay taxes therein, does not prevent you from continuing to engage in the oyster business in this State.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

GAME AND FISH—REGULATIONS BY SUPERVISORS.

RICHMOND, VA., March 2, 1920.

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

DEAR SIR:

I beg leave to acknowledge receipt of your letter of March 1st, in which you state that considerable complaints from hunters have reached your department in reference to certain regulations adopted by boards of supervisors, changing the hunting seasons. You further state that notices of such changes in the game laws are seldom published as is required by section 2743 of the Code of 1919.

You ask whether the game wardens of your department should undertake to enforce these changes in the game laws as made by the boards of supervisors unless they have been made in accordance with the provisions of section 2743.

You will observe that the latter part of section 2743 requires the boards of supervisors to first advertise what changes they propose to make in the law, and after these ordinances or by-laws have been adopted by the board of supervisors, they shall again advertise what changes have been made, and unless they are so advertised, they shall not become effective.

I am therefore of the opinion that, unless the boards of supervisors comply with the requirements of the statute in reference to the proposed changes in the game laws, the game wardens of your department should not undertake to enforce the same. In other words, it is very doubtful whether such changes would amount to anything unless the board had strictly complied with the requirements of the law.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

GAME AND FISH—TRESPASS.

RICHMOND, VA., June 16, 1920.

HON. F. NASH BILISOLY, *Commissioner*,
Department of Game and Inland Fisheries,
Richmond, Virginia.

DEAR SIR:

Acknowledgment is made of your letter of June 10, 1920, in which you say:

"Section 2071, the hunting trespass law applicable to the counties east of the Blue Ridge mountains, seems to have been left out of the New Code of Virginia. In section 3365 of the New Code you will note all acts relating to trespass applicable to a designated county or counties are continued in force.

"Since section 2071 of the Old Code is applicable to the counties east of the Blue Ridge mountains only, we would like to have your opinion whether this hunting trespass law is still in force in the counties east of the Blue Ridge mountains."

Section 2071 of the Code of Virginia, 1904, which made it unlawful for any person, without the consent of the owner or tenant, to shoot, hunt, range, fish, trap or fowl on or in the lands, waters, mill ponds, or private ponds of another, which were enclosed, or east of the Blue Ridge mountains, was omitted by the Code revisors, and, therefore, has been repealed. Virginia Code, 1919, section 6567.

The only section relating to trespass of the nature affected by section 2071 of the Code of 1904 are section 3338, 3348, 3354 and 3365 of the Code of Virginia, 1919.

Section 3338, so far as is applicable to the question here under consideration, provides 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. * * *

This section, which was formerly section 33 of chapter 152 of the Acts of 1916, covers a considerable part of the matters covered by section 2071 of the Code of Virginia, 1904, only it imposes certain burdens upon the land owner which it is necessary for him to perform before one trespassing upon his land becomes criminally liable.

Section 3348 of the Code of 1919 makes it unlawful for any person to set or place any trap, snare, net, spring pole, dead fall, or to bait the same, upon the lands or in the waters of, or in the waters adjoining the lands of any person, for the purpose of catching or killing any fur-bearing or hair-bearing animal upon the lands of another, until such person has obtained the written consent of the owner of the lands to use such devices to catch or to kill such animals, which written consent must be upon the person at the time he may be using or setting such devices. Section 3354 of the Code of 1919 prescribes the penalty for any violation of this section.

Section 3365 of the Code of 1919, referred to in your letter, reads as follows:

"All laws applicable to a designated county or counties and which relate to hunting, shooting or trespassing upon the lands of another, or which relate to the protection of game, or of birds, water fowl, or fur-bearing animals, or which regulate the number thereof that may be killed in a designated time, or may be removed from the county, are continued in force."

The Code revisors have appended the following note:

"In *Carter v. Edwards*, 88 Va. 205, 13 S. E. 352, it was held that a statute regulating the procedure in an action of ejectment in *three designated counties* was a general law, though of local application, and hence was repealed by section 4202 of the Code of 1887. The revisors deemed it best, out of abundant caution, expressly to continue in force statutes of the character mentioned in the section. Some ten or twelve acts applying to various counties were passed at the session of 1918."

This section does not have reference to section 2071 of the Code of Virginia, 1904, which, as I have said, was repealed by section 6567 of the Code of 1919, as section 2071 of the Code of Virginia, 1904, was a general law which was applicable to the State generally, although it prescribed a different rule for that part of the State east of the Blue Ridge from that established for the part of the State west of the Blue Ridge. The object of section 3365 was to retain all laws applicable to a designated county or counties which related to hunting, shooting or trapping upon the lands of another, etc., which, being applied to more than one designated county, under the rule of *Carter v. Edwards*, 88 Va. 205, might possibly be construed as a general law.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

GAME AND FISH—WORDS AND PHRASES, "ADJOINING LAND."

RICHMOND, VA., December 14, 1920.

HON. F. NASH BILISOLY, *Commissioner.*

Department of Game and Inland Fisheries,
Richmond, Virginia.

DEAR SIR:

Acknowledgment is made of your letter of December 10th, in which you say:

"A and B own farms on opposite sides of a public road. Kindly advise this office whether, in your opinion, the two farms adjoin within the meaning of the statute which requires persons to obtain licenses to hunt off their own and adjoining lands."

Except in those cases where the State or county has the fee simple title to the road, I am of the opinion that the farms adjoin within the meaning of the above referred to section of the hunting law.

Except where the fee simple title to the road is in the public, which is unusual in Virginia, the county or State has merely a right or easement over the road, and not the ownership thereof.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

GAME AND FISH—WORDS AND PHRASES, MEANING OF, "DOMESTIC ANIMALS."

RICHMOND, VA., August 10, 1920.

HON. F. NASH BLISOLY,
Commissioner of Game and Inland Fisheries,
Richmond, Va.

DEAR SIR:

Acknowledgment is made of your letter in which you ask whether the words "domestic animal" in section 4 of chapter 413 of the Acts of 1920, can be construed so as to cover domestic turkeys, ducks, chickens or barnyard fowls.

I have read the section very carefully and am of the opinion that the words "domestic animal," do not include turkeys, ducks, chickens or barnyard fowls. This view is substantiated by the fact that the section mainly speaks of killing, injuring or chasing sheep, and adds to it the killing or injuring of "domestic animals."

Under the principle of *ejusdem generis*, I am of the opinion that the words referred to do not include fowls.

Yours truly,

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

HEALTH—ADMISSION OF CHINAMAN TO CATAWBA SANATORIUM.

RICHMOND, VA., November 17, 1920.

DR. B. L. TALIAFERRO,
Catawba Sanatorium, Va.

DEAR DR. TALIAFERRO:

I am in receipt of your letter of recent date, in which you ask to be advised whether a Chinaman who is a resident of Norfolk and who has been living in Virginia for fifteen years, but who has not been naturalized, is entitled to admission to Catawba Sanatorium.

I know of nothing in the law, which under these circumstances, prevents the admission of a Chinaman to this institution. To admit him would certainly be a means to prevent his spreading this disease.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

HEALTH—COMPENSATION OF OFFICERS OF LOCAL BOARDS OF HEALTH.

RICHMOND, VA., February 10, 1920.

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

DEAR SIR:

Acknowledgment is made of your letter of February 2, 1920, in which you request my opinion as to the authority of a county board of supervisors

to provide funds with which to compensate officers and agents of the local boards of health constituted under section 1492 of the Code of Virginia, 1919.

It is provided by section 1493 of the Code of Virginia, 1919, as follows:

"Such local boards of health shall have charge of the sanitary affairs of the respective cities, counties or towns for which they are appointed, and shall, subject to the provisions of this chapter, have control of the prevention and eradication of contagious and infectious diseases, and the removal and quarantine of suspects. They may provide for compulsory vaccination, the prevention, restriction and care of smallpox and other contagious or infectious diseases, and shall, with the consent of the board of supervisors of the county or the council of the city or town, as the case may be, fix the compensation for the officers or agents employed in discharging such duties relating to the abatement of nuisances."

I am of the opinion that the last part of the last sentence, authorizes the boards of supervisors to fix the compensation for the officers or agents "employed in discharging such duties relating to the abatement of nuisances" and refers to the subjects over which such local boards are given control, namely: the prevention and eradication of contagious and infectious diseases, the removal or quarantine of suspects, compulsory vaccination, the prevention, restriction and care of smallpox or other contagious or infectious diseases. All of the infectious and contagious diseases are nuisances, and vaccination is a means of abating or preventing the spread of a nuisance. I am, therefore, of the opinion the board of supervisors of a county has the authority to fix the compensation for the officers or agents of such local boards employed in discharging such duties as are enumerated in this section.

That this was the intent of the legislature is evident by the provisions of section 1496 and 1498 of the Code of Virginia, 1919. The former section provides that when a city, town or county, authorized by law to appoint a local board of health or health officers, omits to do so, the State Board of Health may exercise the authority and perform the duties of such local board of health, or health officers until such local board be established or such officers be appointed, and then provides:

"* * * The compensation of all officers and agents appointed by the State Board of Health under this and the following section, and the expenses incurred by them and by the State board in fulfilling the duties imposed by this and the said following section, shall be a charge upon and be paid by the city, town or county over which said officers are appointed or in reference to which such expenses are incurred."

Section 1498 provides that the local secretary "shall receive such compensation as the board of supervisors of the county, or the council of the city or town may deem proper."

If it had not been the legislative intent to authorize the board of supervisors of a county to provide for the compensation of the officers and agents of the local board employed in the enforcement of the provisions of section 1493 of the Code, it would not have placed a charge upon the county for agents employed by the State Board of Health to perform such duties, where the local board has not been appointed as is clearly provided by section 1496 of the Code.

Very truly yours,

JNO. R. SAUNDERS,

Attorney General.

HEALTH—QUARANTINES.

RICHMOND, VA., *June 26, 1920.*

DR. W. A. BRUMFIELD,
Public Health Service,
City.

DEAR SIR:

Acknowledgment is made of your letter of June 24th asking for my opinion as to section 5 (a) of chapter 364 of the Acts of 1920, page 548; the request being in connection with a letter to you from C. C. Hudson, M. D., asking for an interpretation of this section.

The section expressly provides that local health officers are authorized and directed to quarantine persons who have or are reasonably suspected of having the diseases enumerated, and provides for the release of such persons from quarantine.

I am of the opinion that the local health officers may retain such persons in quarantine so long as they deem it necessary, and if, after they are released, they deem it necessary to again quarantine released patients, they have authority to do so.

With reference to where such patients should be quarantined and whether the place of quarantine should be placarded, this is a matter in the discretion of the health officers, just as in cases of other contagious or infectious diseases.

I agree with you that in such matters the health officer has the same power to use his discretion as he has for the control of other quarantinable infection. If he deems it essential to remove the patient to isolated quarters, I think he would have the power so to do; but if he deems that quarantining the premises where the patient lives is sufficient, he would have a right so to do.

I will be glad to give you any further information on this subject you may desire.

Yours very truly,

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

HOLIDAYS, LEGAL—STATUTES. CONSTRUCTION OF.RICHMOND, VA., *June 10, 1920.*

MRS. SIDNEY J. DUDLEY,
Murphy's Hotel,
Richmond, Va.

MY DEAR MRS. DUDLEY:

Acknowledgment is made of your letter of May 5, 1920, in which you request me to advise you whether or not Jefferson Davis' birthday is a legal holiday in this State.

By section 6567 of the Code of Virginia, 1919, all acts and parts of acts of a general nature in force at the time of the adoption of this Code, were

repealed from and after the 13th day of January, 1920, with such limitations and exceptions as were thereinbefore or thereafter expressed.

By the provisions of section 5758 of the Code of Virginia, 1919, the 3rd day of June (Jefferson Davis' birthday), was declared to be a legal holiday. Section 6568 of the Code of Virginia, 1919, provides as follows:

"The enactment of this Code shall not affect any act passed by the General Assembly, which shall have become a law after the 9th day of January, 1918, and before the 13th day of January, 1920; but every such act shall have full effect, and so far as the same varies from or conflicts with any provision contained in this Code, it shall have effect as a subsequent act, and as repealing any part of this Code inconsistent therewith."

By chapter 66 of the Acts of 1918, the legislature amended and re-enacted section 2844 of the Code of Virginia 1904, the general law relating to public holidays, and in amending and re-enacting this statute, omitted therefrom the 3rd day of June. Inasmuch as chapter 66 of the Acts of 1918, which was approved the 20th day of February, 1918, varies from section 5758 of the Code, I am of the opinion that that part of section 5758 which provided that the 3rd day of June should be a public holiday, has been repealed, and that Jefferson Davis' holiday is no longer a public holiday in this State.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

INTOXICATING LIQUORS—JURISDICTION OF COURTS AND OF JUSTICES OF THE
PEACE IN ENFORCEMENT OF LAWS AGAINST.

RICHMOND, VA., *August 13, 1920.*

MR. W. J. JONES,
Dungannon, Va.

DEAR SIR:

As to the first question contained in your letter of August 10th, we have referred the matter to the Department of Game and Inland Fisheries, from which department we feel sure you will hear in due course.

With reference to the enforcement of the prohibition law, section 24 of that law provides that the circuit, corporation and hustings courts having jurisdiction of the trial of criminal cases, shall have exclusive, original jurisdiction except as otherwise provided in the trial, of all cases arising under the act.

Of course, section 23 provides for the issuing of a warrant by a justice of the peace for violation of the provision of the act, and if, upon examination, it shall appear to the justice that there is proper cause to believe the accused guilty the accused is required to enter a recognizance to appear before the next session of the circuit, corporation or hustings court having jurisdiction to answer any indictment found against him. This is as far as the jurisdiction of a justice goes.

Yours truly,

J. D. HANK, JR.,

Assistant Attorney General.

INTOXICATING LIQUORS—PROSECUTION OF PROHIBITION AGENTS, COST OF
STENOGRAPHIC REPORTS.

RICHMOND, VA., June 7, 1920.

DR. J. SIDNEY PETERS,
Commission of Prohibition,
City.

DEAR SIR:

Acknowledgment is made of your letter in which you state that in certain trials instituted against the members of the Prohibition Department, it is necessary for the good of the service and the State, that a stenographic report be made of the testimony taken in court. You ask whether or not under the present appropriation bill for the conduct of the department, you can order a copy of such reports and pay for the same out of the fund appropriated for the conduct of the department.

The appropriation for the Prohibition Department states that it is "for the purpose of carrying into effect the act of the General Assembly relating to ardent spirits."

I am of the opinion that you can pay out of this appropriation for a copy of such stenographic reports as it is necessary for your department to have for the good of the service and the State.

Yours truly,

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

INTOXICATING LIQUORS—REFUND OF TAX TO PURCHASERS FROM
COMMISSIONER OF PROHIBITION.

RICHMOND, VA., February 19, 1920.

HON. J. SIDNEY PETERS,
Commissioner of Prohibition,
City.

DEAR SIR:

I beg leave to acknowledge receipt of your letter of recent date in which you state that Messrs. H. M. Shield & Co., a drug concern of this city to whom you sold ardent spirits which were seized by your department in the enforcement of the Virginia Prohibition Law, has made claim against you as Prohibition Commissioner, for the sum of \$4,553.60. This amount is claimed by that company as a rebate on the price paid to your department by it for ardent spirits.

It appears that, while the matter as to whether or not the Federal revenue tax would have to be paid by the Commonwealth for the purpose of disposing of ardent spirits seized in the enforcement of the Virginia Prohibition Law, was pending between your department and the Internal Revenue Department of the Federal government, you paid the tax to the Federal government under protest, and disposed of the ardent spirits at an increased price governed by the prevailing sale price on the Baltimore market; that, since that time, the Commissioner of Internal Revenue of the Federal gov-

ernment has ruled that this tax was erroneously exacted, and that the Commonwealth is entitled to a rebate of the taxes thus erroneously paid to the Federal government, pending the determination of this matter; and that you have made claim against the Federal government for a refund of the amount of these taxes, in the manner prescribed by law.

It is the contention of the Shield Drug Company, you state, that, because the Commonwealth is entitled to have refunded the taxes erroneously paid to the Federal government, in turn, this Company is entitled to have returned to it, by the Commonwealth, such proportion of the purchase price paid by it for the ardent spirits bought from your department, as represents the amount of the Federal Revenue tax restored to the Commonwealth as a result of the ruling of the Commissioner of Internal Revenue.

You then say:

"This claim the Commissioner of Prohibition declined to recognize for the reason that Messrs. H. M. Shield & Co., have no claim against the State of Virginia, because the ardent spirits purchased by them were bought at an agreed price governed by the prevailing sale price on the Baltimore market, and the differentiation made on the bills showing the revenue tax was by agreement with the Collector of Internal Revenue to show the amount of money involved in the question pending between the State and Federal governments. There never was any assurance or suggestion made to this firm that there was any likelihood of a rebate upon the price charged in the bills because of any question then pending between the State and Federal governments. Their price was not contingent, but fixed, and it is to be presumed that Messrs. Shield & Co. based the sale price to their customers upon the total amount paid the State for the ardent spirits purchased.

"Furthermore, all of the receipts from the sale of confiscated ardent spirits, after deducting the cost of handling, are required to be paid by the Commissioner of Prohibition to the Treasurer of the State for the benefit of the Literary Fund. All of the monies received by the Commissioner of Prohibition from the sale of confiscated ardent spirits have been paid to the Treasurer of the State, and there are no funds in his hands out of which such a claim could be paid, even were it a proper one.

"With the foregoing statement of facts, as Commissioner of Prohibition, I should greatly appreciate it if you will advise me whether the claim of Messrs. H. M. Shield & Co., is valid, also to whom the refund to be made by the Federal government should be paid by me when collected.

"I am informed that the Shield Drug Company, prior to the time the price of liquor was increased so as to meet the Federal revenue tax of \$3.20 per gallon, sold whiskey at the price of \$4.05 per quart, the 5 cents being included for the revenue stamp. When the price of whiskey was increased so as to meet the demand made for the Federal revenue tax, the Shield Drug Company increased the sale price to the consumer of whiskey bought from this department, to \$5.05 per quart, or an amount considerably in excess of the increase in price made by this department to cover the Federal revenue tax."

These facts show that no express agreement was entered into with the Shield Drug Company to pay them any rebate on the price paid for ardent spirits purchased from you in the event the Federal government refunded the tax paid by your department under protest; nor is there anything in the same from which an agreement to pay any rebate to this company can be implied. I am, therefore, of the opinion that you should refuse to pay this claim, and, in response to your second inquiry, I advise you that the money

refunded to you by the Federal government, under the circumstances narrated in your letter, should be paid into the Treasury of this State in accordance with the provisions of section 36-a of chapter 388 of the Acts of 1918.

While it is true that the amount of the Federal revenue tax was billed as a separate item and listed in a separate column upon your cash book, I am of the opinion that this does not affect the matter, as you inform me that you were required to do this to enable the Federal authorities to check your accounts.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

INTOXICATING LIQUORS—STAMP TAX.

RICHMOND, VA., April 8, 1920.

HON. J. SIDNEY PETERS,
Commissioner of Prohibition,
City.

DEAR SIR:

Acknowledgment is made of your letter of March 24th, in which you request my opinion on the following statement of facts:

"Section 67 of chapter 388 of the Acts of Assembly of 1918, known as the Mapp prohibition law, requires that there shall be affixed to every prescription filled by a druggist in accordance with the State Prohibition Law a five cent prohibition revenue stamp. These stamps are required to be prepared and sold by the Commissioner of Prohibition and represent a considerable revenue to the State."

Senate Bill No. 320 which was approved March 20, 1920, amends and re-enacts section 54 of chapter 388 of the Acts of 1918.

You further ask the following question:

"Will you not kindly advise me the effect of this amendment and particularly whether or not the 5 cent revenue stamps are still required to be affixed to prescriptions filled by druggists licensed in this State to fill prescriptions for ardent spirits for medicinal purposes."

Section 54 of chapter 388 of the Acts of 1918, as amended by Senate Bill No. 320, reads as follows:

"All prescriptions and affidavits required by this act shall be made in duplicate and one original filed with the clerk of the circuit court of the county or the corporation court of the city, which has criminal jurisdiction, on or before the fifth day of every month following the filing of such prescriptions and the making of such affidavits, by the druggists, or by the common carrier handling the same, and the failure of any physician to make out said prescription in duplicate and the failure of the persons making the affidavit to do so in duplicate shall be deemed a misdemeanor. The clerk of the court with whom said prescriptions and said affidavits shall be filed shall paste them in an alphabetically arranged book, and permit their examination without fee. Any clerk who shall fail or refuse to comply with the duties im-

posed upon him by this section shall be fined not less than five dollars and not more than twenty-five dollars. This section is subject to this proviso, however; *that whenever the prescriptions have been issued and filed in accordance with the provisions of the national prohibition act and the regulations issued in pursuance thereof, the prescriptions and affidavits mentioned in this section shall not be required.*"

It is provided by section 67 of chapter 388 of the Acts of 1918, so far as is applicable to the question here under consideration, as follows:

"Every prescription and affidavit required by this act shall have affixed thereto and duly canceled by the initials in ink of the person affixing the same, a five cent stamp, to be furnished to druggists, transportation companies and other persons handling such prescriptions and affidavits, who shall keep such stamps for that purpose in stock. * * *

You will see from the above-quoted portion of section 67 of chapter 388 of the Acts of 1918, that the stamps provided for thereby are required to be affixed only to prescriptions and affidavits required by chapter 388 of the Acts of 1918.

Under the provisions of section 54 of chapter 388 of the Acts of 1918, as amended, "no prescription or affidavit provided for by this section, is required whenever the prescriptions have been issued and filed in accordance with the provisions of the national prohibition act and the regulations issued in pursuance thereof. Therefore, no prescription or affidavit being required in such case by chapter 388 of the Acts of 1918, as amended, no stamp will be required. In those cases, however, where a prescription and affidavit are required by chapter 388 of the Acts of 1918 as amended, the stamp provided for in section 67 is still required.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

JUSTICES OF THE PEACE—APPEALS IN CRIMINAL CASES.

RICHMOND, VA., November 17, 1920.

S. A. TAYLOR, ESQ., J. P.,
MaKemie Park, Va.

DEAR SIR:

Your letter of recent date received. You desire to be advised whether you as justice of the peace, have a right to demand payment of all costs of a person convicted in your court of a crime before granting him the right of appeal to a higher court. I am of the opinion that you have no such right.

The Constitution, in all criminal cases, gives the accused the right of appeal. This has been given as a matter of right, and I know of no authority in law which requires him to pay the costs prior to taking his appeal.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

JUSTICES OF THE PEACE—ASSOCIATING OTHER JUSTICES IN THE TRIAL OF CASES.

RICHMOND, VA., August 23, 1920.

MR. J. D. AYERS, J. P.,
Route 3,
Wytherville, Va.

MY DEAR SIR:—

I am just in receipt of your letter of August 21st, in which you ask to be advised as to the following: Whether a justice of the peace who has issued a warrant of arrest for a party charged with a criminal offense, can be compelled to summon two other justices to sit with him in the hearing of the case, and can the justice who issued the warrant be excluded from sitting in the case.

If you will examine section 6022 of the Code of Virginia, 1919, you will find the following language:

“* * * In the trial of all warrants, both civil and criminal, upon the application of the defendant at any time before trial, to the justice of the peace who issued said warrant and before whom it is returnable, such justice shall associate with himself two other justices of the peace of the county, who shall try said warrant and in case of disagreement in opinion, the opinion of the majority shall prevail.”

You will therefore observe from a reading of this law that the justice who issues the warrant can be compelled to summon two other justices to sit with him in the trial of the case, but the justice who issued the warrant cannot be excluded from sitting in the case.

You further ask if the justice who issued the warrant can be summoned as a witness as a mere pretext in order to get rid of his trying the case. In answer to this question I should say no. If the justice knows nothing of the case, there is no reason why he could not so state and proceed with the trial thereof. Of course, if the justice should be used as a witness, it would not be proper for him to sit in the case.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

JUSTICES OF THE PEACE—JURISDICTION OF NON-SUPPORT CASES.

RICHMOND, VA., August 25, 1920.

CHARLES P. JONES, JR., ESQ.,
Covington, Virginia.

DEAR SIR:—

Acknowledgment is made of your letter of August 20, 1920, in which you call my attention to chapter 80 of the Code of Virginia, 1919, and ask if a justice of the peace has any jurisdiction under that chapter.

This chapter of the Code relates to desertion and non-support, and has been to a large extent, if not wholly, superseded by chapter 416 of the Acts of 1918. This latter act, by section 3 thereof, provides that proceedings under

the act shall be had in circuit courts of counties and before police justices or in corporation courts of cities, excepting in those cities which have juvenile and domestic relations courts. Therefore, justices of the peace have no jurisdiction in such cases.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

JUSTICES OF THE PEACE—PEACE WARRANTS.

RICHMOND, VA., *August 3, 1920.*

MR. J. D. AYERS, *J. P.,*
Wytheville, Virginia.

DEAR SIR:

Acknowledgment is made of your letter of July 30th, in which you say:

"Please tell me how long a peace warrant will live when it is once returned executed and endorsed 'continued indefinitely' by a justice of the peace."

If you will examine chapter 189 of the Code of 1919, you will find the information you desire. It is contemplated that a justice shall at once examine into the cases of this nature and either dismiss the accused or else require him to enter into recognizance to keep the peace and be of good behavior. In my judgment, a justice has no authority to continue a peace warrant indefinitely.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

JUSTICES OF THE PEACE—POWERS OF POLICE JUSTICES.

RICHMOND, VA., *September 29, 1920.*

CHAS. R. WINFREE, *Chief of Investigations,*
Bureau of Social Hygiene,
Richmond, Virginia.

DEAR SIR:

Acknowledgment is made of your letter in which you ask whether a police justice has a right to order a couple to be married. My delay in answering has been due to the fact that, because of extreme indisposition, I have had to be absent from the city in an attempt to restore my health.

There are certain cases in which a police justice may grant the privilege of marriage rather than impose a punishment, but I find no law which gives him the right to compel marriage.

As to the other question, I do not consider the act itself sufficient ground to suspect the disease referred to.

Yours truly,

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

JUVENILE JUSTICES—POWER TO BAIL.—FEES.

RICHMOND, VA., December 3, 1920.

HON. J. HOGE RICKS, *Justice,*
Juvenile and Domestic Relations Court,
Richmond, Virginia.

DEAR SIR:

Acknowledgment is made of your communication of recent date, in which you request me to advise you whether you are authorized to bail persons under the provisions of chapter 66 of the Acts of 1920, and to receive the fee therein provided.

It is provided by section 1950 of the Code of Virginia, 1919, so far as is applicable to the question under consideration, as follows:

"All cases affecting the protection, care, custody or control of children under the age of eighteen years, of which justices of the peace or police justices now have or shall be given jurisdiction: and said special justices shall, in all such cases, possess the jurisdiction and exercise all the powers conferred upon justices of the peace and police justices by the laws of this State. Such special justices shall have such other powers and jurisdiction as may be conferred upon them by the councils of their respective cities, not in conflict with the Constitution and laws of the United States and of the State of Virginia. * * *

From the above quoted paragraph of section 1950 of the Code, it will be seen that in cases in which you are given jurisdiction you are authorized to exercise all of the powers conferred upon justices of the peace and police justices by the laws of this State.

You inform me that there is no restriction in the charter of the city of Richmond, or in the ordinances of that city, which prohibits you from receiving the fee provided for by chapter 66 of the Acts of 1920, provided you are entitled to the same under the laws of the State.

I am of the opinion that section 1947 of the Code of Virginia, 1919, does not operate so as to prevent your receiving the fees provided for by chapter 66 of the Acts of 1920, if you are authorized to receive the same.

As section 1950 of the Code of Virginia, 1919, gives you in the cases over which you have jurisdiction all the powers conferred upon justices of the peace and police justices by the laws of this State, I am of the opinion that you have the right to exercise the powers conferred upon the police justices by chapter 66 of the Acts of 1920, and that, having this power, you are likewise entitled to the fees provided for by said act for the exercise of such powers.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

JURORS—ALLOWANCES FOR MAINTENANCE.

RICHMOND, VA., August 24, 1920.

JUDGE R. T. W. DUKE,
Charlottesville, Va.

MY DEAR JUDGE DUKE:

I am just in receipt of your letter which has reference to the maintenance of juries which are required to be kept together in the trial of certain criminal cases.

You state in your letter that you have found it impossible to get anybody in the city of Charlottesville to maintain the jury at the rates prescribed by law, namely: fifty cents per meal and fifty cents for lodging for each juror.

I had a long talk with the Auditor this morning in reference to your letter, and he tells me he knows of no provision in the law which permits him to pay more than the rates prescribed by section 4902 of the Code of 1919. The law permits the Auditor, upon the recommendation of the Governor, to pay certain criminal expenses which are not provided for by law, but inasmuch as there is a statute making provision for the case cited in your letter, of course that law would not be applicable.

I agree with you that it is an outrage that a man should be compelled to serve as a juror and the Commonwealth of Virginia not pay a sufficient amount for his board and lodging in order to maintain him. I presume the legislature, of course, will take care of this situation at its next session. Certainly it should do so. I regret very much that I cannot suggest a remedy.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

JURORS—MEDICAL ATTENTION.

RICHMOND, VA., March 10, 1920.

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

MY DEAR GOVERNOR:

Acknowledgment is made of your letter of March 10th, which is in the following terms:

"Attached hereto please find some correspondence recently had by the Auditor of Public Accounts with Judge Henry W. Holt, relative to medical attention rendered a juror summoned for the trial of a criminal case at the circuit court of Rockbridge county. Be good enough to give me your opinion as to whether this claim is a proper charge against the Commonwealth."

It appears from the correspondence enclosed with your letter that during the progress of a murder trial in Lexington, which had continued for seven

days, one of the jurors was taken ill with influenza. The judge summoned a physician who, under order of the court, examined the juror and reported that he had influenza. In the hope that the doctor might be mistaken in this, and that the juror's illness was only temporary, the court directed that he be sent to the hospital and kept there under observation twenty-four hours, at which time the court directed the doctor to again report his condition, and in the meantime held the other eleven jurors in the hope that a mis-trial might be escaped. At the expiration of that time, the doctor again reported to the court that this juror was quite ill and that influenza was unmistakably his trouble.

Judge Holt, in this matter of February 27, 1920, to the Auditor says:

"This juror was, as you know, a member of what is known as a 'lock-up' jury. His illness was occasioned and caused by his public service. Indeed, he fell in the very act of performing this service. There was nothing for me to do but to send him to a hospital. Common humanity demanded it. He was too ill to be sent home and a further reason for sending him to the hospital was that I could in this way hold the jury together trusting that the trial might go on. In these circumstances I have approved the bill which I enclose and trust that you may see your way clear to approve my conduct in this matter. If you do this, I shall also send you the doctor's bill when it comes—the doctor summoned by the court."

I find no specific provision in the Code for the payment of the expenses incurred in this connection. I am of the opinion, however, that this matter unquestionably comes within the meaning of the provisions of section 2176 of the Code of 1919, which, so far as applicable to the question here under consideration, provides as follows:

"For services rendered or expenses incurred in the arrest of a criminal, or about a criminal prosecution for which no particular provision is made by law * * * it shall be lawful for the said Auditor within three years after the claim might have been presented, if he be of opinion that such claim ought to be paid, to say the same before the Governor and so much thereof shall be paid as the Governor may direct."

This expenditure was incurred about a criminal prosecution, and in my opinion was properly incurred by the court. I am of the further opinion that it is such an expense as was contemplated by the provisions of section 2176 of the Code of Virginia 1919.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

LOCAL BOARDS OF REVIEW.

RICHMOND, VA., July 14, 1920.

MR. VOLNEY OSBURN, *Chairman,*
Local Board of Review,
Leesburg, Va.

MY DEAR SIR:

I beg leave to acknowledge receipt of your letter of the 10th, in which you state that the local board of review of your county desires an opinion

from me as to what is required of it with reference to the examination and certification of the books of the land assessors.

You further state that the books furnished to the assessors by the Auditor of Public Accounts contain a form of certificate to be executed by the chairman of the local boards, which certificate seems to demand more of the board than is required by law. You also call my attention to sub-section P of section 2227 of the Code of 1919. I have before me the form of the certificate which is provided by the Auditor for the chairmen of the local boards of review throughout the State, and do not see anything in this certificate which is especially objectionable. The certificate simply certifies that the land book has been examined by the local board of review for the county and found to be correct and wherein not found correct, has been corrected as prescribed by law.

You will observe that sub-section P of section 2227 referred to in your letter provides that:

"In the year of a quinquennial assessment of real estate and in the year immediately following such assessment, the board of review shall devote special attention to grievances and complaints with regard to the assessment of real estate, and direct such correction on the land books with reference thereto as may be determined. * * *"

The Auditor has construed that section to mean that it is the duty of the local board of review to examine the books of the land assessors and to make such corrections therein as the said board deems wise and proper. I do not take this to mean that the local board of review shall go over all the calculations made by the land assessors, but rather that in the examination of the books the local board of review shall have special regard to the valuation of the real estate fixed by the assessors.

The local board of review, as you know, was created for the purpose of endeavoring to equalize the assessments as far as possible and unless such examination is made by the board, of the land assessors' books, I cannot well see how the purposes of its creation could be fulfilled. Of course, if the form of the certificate is objectionable to you, you are at liberty to modify it as you think best.

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

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

MILITARY—RETIRED OFFICERS.

RICHMOND, VA., March 11, 1926.

HON. JO LANE STERN,
Adjutant General,
City.

DEAR SIR:

Acknowledgment is made of your letter of March 10th, in which you request my opinion on the following statement of facts:

"On August 5, 1917, an officer of the Virginia National Guard, who served six years in the United States Army, from 1897 to 1903, and

ten years in the Virginia Volunteers, from 1907 to August 5, 1917, was honorably discharged August 5, 1917, with rank of First Lieutenant, Virginia National Guard, but said officer was continued in the United States service on October 16, 1919, with that grade. It will be observed that this higher rank in the United States service was not held by such officer until after his discharge from the Virginia National Guard. As this officer has not since re-joined the Virginia National Guard, but now makes application as former officer of the State forces, for retirement, ruling is requested as to grade of rank at which he may be retired."

It is provided by section 2673 of the Code of Virginia, 1919, that "all statutes in force the day before this Code takes effect," in any manner whatever relating to, affecting or concerning the militia or the military fund, shall remain in force until otherwise provided.

The statutes relating to the military, found in the Code of 1904 and its amendments, must therefore govern the answer to your question. It is provided by section 372-a of the Code of Virginia 1904, as amended, so far as is applicable to the question here under consideration, as follows:

"Any person who shall have been appointed and served as Adjutant General, and shall have resigned, or been relieved, or any officer or enlisted man in the Virginia Volunteers who shall have served for at least ten years as an active member in the Virginia Volunteers, or ten years computing the period served in the Virginia Volunteers and the period in which he shall have served in the active service of the Confederate States or United States, or as a cadet at the Virginia Military Institute or the Virginia Polytechnic Institute, may, upon his own application through the regular military channels to the commander-in-chief, be placed upon the retired list of Virginia Volunteers, and may only be required to answer any summons in aid of the civil authorities and to attend an annual inspection and muster of the command to which he belonged before retirement; provided that any officer or enlisted man who may have received an honorable discharge from the service of the Virginia Volunteers, after having served at least ten years therein, may, upon his application in like manner, *be placed upon the retired list. Officers shall be commissioned on the retired list in their respective grade or the highest grade held by them in the military service of the State or the United States*, except in case of officers who have to their credit fifteen years or more of service, such officers may, in the discretion of the commander-in-chief, be retired with commission of their respective grade, or of the next higher service grade to the highest rank held by them in the military service of the State or United States. * * *

You will observe from the above-quoted part of section 372-a of the Code of Virginia, 1904, as amended, that any officer or enlisted man who may have received an honorable discharge from the Virginia Volunteers after having served at least ten years therein, may, upon his application in like manner as if at the time of his application he was in the service of the Virginia Volunteers, be placed upon the retired list.

Immediately following this provision is the provision that officers shall be commissioned on the retired list in their respective grade or the highest grade held by them in the military service of the State or the United States, except in case of officers who have to their credit, fifteen years or more of service, in which event, such officers may, in the discretion of the commander-in-chief be retired with the commission of their respective grade or

of the next higher service grade to the highest rank held by them in the military service of the State or United States.

The officer in question, therefore, is entitled, upon his application to be placed upon the retired list, and having served in the military service of the State and the United States for a period in excess of fifteen years, he may, in the discretion of the commander-in-chief, be retired with a commission of the highest grade held in either service or the next higher service grade to the highest rank held by him in the military service of the State or the United States. Having served as a captain in the military service of the United States, he should be retired with this rank in your discretion, with the next higher service grade to that rank held by him while in the service of the United States.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

MILLS.

RICHMOND, VA., July 29, 1920.

HON. THOS. H. LION,
Attorney at Law,
Manassas, Virginia.

DEAR SIR:

Your letter of July 27, 1920, in which you ask for my construction of the act of the last legislature, approved March 20, 1920, Acts of 1920, page 574, which act amends section 3594 of the Code of Virginia, 1919, received.

You state that there are several mills in Prince William county, the owners of which have made a practice, for some years, of purchasing grain locally and from the West, converting the same into flour and meal, and then selling the same to local merchants and to customers in other States. You ask if this class of mills comes within the definition of commercial mills as set out in the act you cite.

You do not state in your letter whether or not it is customary for these mills to grind grain for farmers and, in turn, take toll for so doing. Of course, if it is customary for these mills to do this, they can take only such toll as is provided for by law; but if they were established solely for the purpose of grinding only products which they buy, and then sell meal and flour, in my judgment, they are embraced within the definition of commercial mills as given in the act, and are not compelled to accept grain to be ground for the toll provided by law. However, you can readily see that each case would depend entirely upon the facts and circumstances connected therewith.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

MORTGAGES AND DEEDS OF TRUST—MARGINAL RELEASE OF.

RICHMOND, VA., *September 28, 1920.*

J. W. ADAMS, Esq., *Clerk,*
Corporation Court,
Fredericksburg, Va.

DEAR SIR:

Acknowledgment is made of your letter of September 14, 1920, in which you request me to advise you on the following statements of facts:

"A deed of trust made to Wm. H. White 'trustee for noteholder,' is admitted to record.

"In marginal release of same the trustee signs
'Wm. H. White,
Attorney for noteholder.'

"Is this a proper release or is it essential that the name of the noteholder appear?

"The note properly canceled is of course presented to the clerk and he so certifies."

It is provided by section 6456 of the Code of Virginia, 1919, so far as is applicable to the question here under consideration, that:

"* * * Such entry of payment or satisfaction shall be signed by the creditor or his duly authorized agent, attorney or attorney-in-fact, and the note, bond or other evidence of debt secured by such lien duly cancelled, shall be produced before the clerk, in whose office such encumbrance is recorded. * * *"

The statute, in my opinion, clearly requires the agent, attorney or attorney-in-fact, in signing the entry of payment or satisfaction, to disclose the name of the principal for whom he signs. Certainly, I would not pass a title where it appeared that a deed of trust had been released in the manner suggested in your letter.

Yours very truly,

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

NOTARIES PUBLIC—CONCEALED WEAPONS.RICHMOND, VA., *March 31, 1920.*

MR. MARSHALL HANEY, N. P.,
Geer, Greene Co., Va.

DEAR SIR:

I beg leave to acknowledge receipt of your letter of March 30th, in which you ask if the law permits notaries public to carry concealed weapons.

Section 4534 of the Code of 1919, which pertains to the carrying of concealed weapons permits a city sergeant, constable, sheriff, conservator of the peace and carriers of the United States mail in rural districts, to carry con-

cealed weapons. Section 4789 of the Code of 1919 designates a notary public as a conservator of the peace.

I am therefore of the opinion that a notary public has the authority to carry a concealed weapon.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

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NOTARIES PUBLIC—WHO ELIGIBLE TO APPOINTMENT.

RICHMOND, VA., March 18, 1920.

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

MY DEAR GOVERNOR:

Acknowledgment is made of the letter of Miss V. E. McDougall, your assistant secretary, dated March 15, 1920, in which is enclosed the file in the matter of F. H. Hodges, who has applied for a commission as notary public for the city of Norfolk.

In Mr. Hodges' amended application for appointment as notary public, he states that he is not in the employment of the United States and that he receives no compensation in any form or manner whatever from the United States, except to the extent of \$8.00 per month for temporary disability incurred while in the active service.

It is provided by section 164 of the Code of Virginia, 1904, as amended by the Acts of 1918, which section by the operation of the act adopting the Code of 1919, takes precedence over the similar provision found in the Code of 1919, that section 163 of the Code of 1904 (section 290 of the Code of 1919), "shall not be construed * * * 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. * * *"

The compensation that Mr. Hodges receives from the Federal government for temporary disability incurred while in the active service, is not based upon his war risk insurance, but is rather in the nature of a pension, and therefore would not exclude him from appointment as notary public.

If, on the other hand, the compensation allowed him is under the terms of his policy of war risk insurance, this is not such compensation from the Federal government as was contemplated by section 163 of the Code of 1904 (section 290, Code of 1919) and as such, would not exclude him from appointment as a notary public. I am therefore of the opinion that this compensation received by Mr. Hodges from the Federal government does not exclude him from appointment as notary public.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

NOTARIES PUBLIC—WHO ELIGIBLE TO APPOINTMENT.

RICHMOND, VA., August 4, 1920.

C. D. SNIFFIN, *Captain, AQM., USMC.,*
Quantico, Virginia.

DEAR SIR:

Acknowledgment is made of your letter of July 30, 1920, with reference to the appointment of Mr. Charles E. Harrington as a notary public.

If Mr. Harrington is a civilian employee of the Federal government, he is ineligible for appointment as a notary. Code of Virginia, 1919, sections 290, 291, section 164, Code of Virginia, 1904, as amended by the Acts of 1918.

If, however, Mr. Harrington is an officer or an enlisted man in the military service, I am of the opinion that he is eligible for appointment, if he possesses the other qualifications.

If you address a request for the same to the Governor's office, the necessary application blank will be forwarded you.

Very truly yours,

JNO. R. SAUNDERS.

Attorney General.

NOTARIES PUBLIC—FEES.

RICHMOND, VA., January 8, 1920.

SAM'L. M. ADAMS ESQ.,
Attorney at Law,
South Boston, Va.

MY DEAR MR. ADAMS:

I am in receipt of your letter of January 7th, in which you write me concerning certain fees charged by the notaries public in your office, for filling out certificates for children to work in tobacco factories, over fourteen and under sixteen years of age.

I have carefully noted the contents of your letter. I always keep a copy of all letters written from this office, but cannot find a copy of any letter which I wrote Mr. Hirschberg, Labor Commissioner, bearing on this subject. I must, therefore have given him a verbal opinion in the matter. However, I am satisfied I gave him the opinion that the charge of a notary should be fifty cents, though I did not mean to convey the idea that a notary could not charge for extra work which he did as is mentioned in your letter. I meant that the charge should not exceed fifty cents where the blanks were furnished and the notary public filled them out. Of course, you, as an attorney, have a perfect right to charge for papers prepared by you, and under no circumstances would I say what your fee in that case should be. This agrees with your letter, because you state that formerly where the blanks were furnished you, your charges did not exceed fifty cents. Of course, I meant, as stated above, that this was the correct charge where the blanks were furnished.

I am very glad to give you this information.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

REPORT OF THE ATTORNEY GENERAL.

NOTARIES PUBLIC—JURISDICTION OF.

HON. JAMES R. NOLAND,
Secretary of State,
Denver, Colo.

RICHMOND, VA., August 25, 1920.

DEAR SIR:

Acknowledgment is made of your letter of August 20, 1920, in which you say:

"Will you kindly inform me as to the jurisdiction of notaries public in your State? Are their powers State-wide or confined to one county, or may they operate in contiguous counties?"

Notaries public in Virginia are limited in their jurisdiction to the counties or cities for which they are appointed, with the exception that "notaries in cities and in counties in which cities or parts thereof are located shall have authority to act as such in each of said localities." Virginia Code of 1919, section 2850.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

NOTARIES—JURISDICTION.

RICHMOND, VA., November 10, 1920.

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

MY DEAR GOVERNOR:

Acknowledgment is made of the letter of Miss McDougall, your assistant secretary, in which it is said:

"At the direction of Governor Davis, I am enclosing herewith correspondence in the matter of notary commissions for Leo Judson.

"I take it that Mr. Judson wishes to act as notary for the city of Norfolk, the county of Norfolk and the city of Portsmouth under one commission. If Mr. Judson were appointed a notary for the county of Norfolk, would it be possible for him to act in the city of Norfolk and the city of Portsmouth?"

I gather from the letters of Mr. Judson that he wishes to act as a notary public for the cities of Norfolk and Portsmouth and the county of Norfolk, but that he seems to be under the impression that he can be commissioned for each of these places with one commission instead of three separate commissions as has been the custom heretofore.

It is provided by section 2851 of the Code of Virginia, 1919, in part, as follows:

"Notaries in cities and in counties in which cities or parts thereof are located, shall have authority to act as such in each of said localities. * * *

Therefore, one appointed a notary for Norfolk county has authority to act as such in both the cities of Norfolk and Portsmouth which, within the meaning of section 2851 of the Code of 1919, are within the county of Norfolk.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

NOTARIES PUBLIC—RESIDENCE.

RICHMOND, VA., May 21, 1920.

J. M. HAYES, JR., ESQ.,
*Office of Secretary of Commonwealth,
City.*

DEAR SIR:

Acknowledgment is made of your request that I advise you whether or not a resident of the county of Hanover is eligible for appointment as a notary public for the city of Richmond without first procuring an appointment as a notary public for the county of Hanover.

On June 1, 1917, in an opinion given Hon. J. D. Hank, Hon. Leslie C. Garnett, then Assistant Attorney General, expressed the opinion that, while section 32 of the Virginia Constitution defines the persons who may be appointed notaries public, the residence provision of this section of the Constitution relates to officers of counties, cities, towns or other subdivisions of the State, and not to notaries public who are State officials, and that the Governor has the authority to appoint a notary public for a county or city, regardless of the place of his residence.

Mr. Garnett further expressed the opinion that the provision of section 923 of the Code of Virginia, 1904, as amended (section 2850 of the Code of 1919) that the removal of a notary public from the county or corporation in which he resided when appointed, unless such removal be to another city or county for which he may have been appointed, vacate such office, was not intended as a qualification of the power of appointment conferred upon the Governor, but operates merely as a limitation upon the term of a notary. (Report of Attorney General, 1917, p. 207.)

I concur in the above views expressed by Mr. Garnett and am of the opinion that one who resides in the county of Hanover is eligible for appointment as a notary public for the city of Richmond without first being appointed notary for the county of Hanover.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

NOTARIES PUBLIC—RESIDENCE.

RICHMOND, VA., June 8, 1920.

MISS V. E. McDUGALL,
*Assistant Secretary to the Governor,
Richmond, Virginia.*

MY DEAR MISS McDUGALL:

Acknowledgment is made of your letter of June 7, 1920, in which you say:

"Would you kindly advise this office whether it is necessary for a person residing in Westmoreland county, but practicing law in the city of Alexandria, to first obtain a commission as notary public for the county of Westmoreland before he can be appointed a notary for the city of Alexandria."

In the absence of the Attorney General, I am taking the liberty of replying thereto.

On May 21, 1920, the Attorney General gave J. M. Hayes, Jr., of the Secretary of the Commonwealth's office, an opinion on this subject, in which opinion it was held that the Governor has the authority to appoint a notary public for a county or city regardless of the fact that he has not previously been appointed a notary public for the county or city in which he resides. I am, therefore, of the opinion that it is not necessary for the person in question to first obtain a commission as a notary public for the county of Westmoreland before being commissioned a notary public for the city of Alexandria.

I am enclosing a copy of the Attorney General's opinion to Mr. Hayes referred to above.

Very truly yours,

LEON M. BAZILE,
Second Assistant Attorney General.

NOTARIES PUBLIC—RESIDENCE.

RICHMOND, VA., May 21, 1920.

MRS. JULIA C. SCHEER,
805 *Travelers Bldg.*,
City.

MY DEAR MRS. SCHEER:

Acknowledgment is made of your letter of recent date, in which you state that as a resident of Richmond, Va., you obtained a commission as notary public for this city. You then say that in April 1919, you obtained a position with the C. & O. Railroad Co., which required you to perform your work in the city of Newport News, Va., but that during the whole time you were there, you retained your residence in the city of Richmond; that you kept your effects in Richmond and were awarded a term pass No. B-4015 by General Superintendent J. C. Gary, of Clifton Forge, Va., which entitled you to travel back and forth between Newport News and Richmond. You further say:

"These term passes are only issued to persons who work in one place and have their home in another. This being the case, I was granted one due to the fact that, as stated, my home was in Richmond and I was working in Newport News."

You ask in your letter whether or not the fact that for a time you worked in Newport News under these circumstances, operated as a revocation of your commission as a notary public. It is provided by section 2850 of the Code of 1919, so far as is applicable to the question here under consideration, as follows:

"* * * The removal of a notary from the county or city in which said notary resided when appointed, unless said removal be into another city or county for which said notary may have been appointed, shall be construed as a vacation of said office. * * *"

The word "removal" as used in this section of the Code, means a change of residence, and not a mere temporary absence from your place of residence.

As it appears from the facts stated by you in your letter, you did not change your place of residence from the city of Richmond to the city of Newport News, but that you merely worked in the latter city, retaining your home in Richmond all the time, and your effects there, to which city you returned at frequent intervals upon your term pass, awarded to you as an employee of the C. & O., who lived in Richmond but worked outside of the same, I am of the opinion that there has been no such "removal" on your part from Richmond as would vacate your appointment as notary public.

Yours very truly,

LEON M. BAZILE,
Second Assistant Attorney General.

OFFICERS—INCOMPATIBILITY OF OFFICES.

RICHMOND, VA., *June 10, 1920.*

MR. W. M. TREDWAY, JR.,
Chatham, Va.

MY DEAR SIR:

I am just in receipt of your letter of June 9th, in which you ask whether, under the provisions of section 2702 of the Code of 1919, as amended by the act of the Assembly approved March 16, 1920, a county surveyor is eligible to hold the office of town councilman.

In reply, I will state that in my opinion he is not eligible to this office. Section 2702 of the Code, as amended, reads 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 elected or appointed at the same time, except that of city attorney, notary public, commissioner in chancery, commissioner of accounts, examiner of records and local registrars of deaths and births. * * *

You will therefore see that the office of councilman is not embraced in the exceptions above-mentioned. There can be no doubt but that a member of a city council is an officer. If you will examine section 122 of the Constitution, you will see that mayors and councils of cities are provided for by this section and in the section are referred to as officers.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

REPORT OF THE ATTORNEY GENERAL.

OFFICERS—INCOMPATIBILITY OF OFFICES.

RICHMOND VA., November 15, 1920.

MR. GEO. G. ANDERTON,
Saluda, Va.

MY DEAR MR. ANDERTON:

I am just in receipt of your letter of November 12th, in which you ask to be advised whether or not a game warden is eligible to hold the position of district school trustee.

In reply, I will state that section 437 of the Code of 1919 provides as follows:

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

You will see from a reading of this section that no State or county officer is eligible to act as district school trustee.

Unquestionably, a game warden is either a State or a county officer (it is not necessary to decide which), therefore he is ineligible to hold the position of district school trustee.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

OFFICERS—INCOMPATIBILITY OF OFFICES.

RICHMOND, VA., April 19, 1920.

R. O. GARRETT, Esq.,
Cumberland, Va.

DEAR MR. GARRETT:

I am in receipt of your letter of April 16th, in which you ask if, under an act of the General Assembly, 1920, approved March 16th, page 281, you, as county clerk, are prevented from being a school trustee.

In reply, I will state that a county clerk cannot hold the office of school trustee while he is clerk. The exceptions contained in the act do not embrace the office of school trustee.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

OFFICERS, PUBLIC—INCOMPATIBILITY OF OFFICES.

RICHMOND, VA., March 4, 1920.

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

MY DEAR GOVERNOR:

I am just in receipt of a letter from Miss McDougall, your assistant secretary, enclosing a letter from Mr. W. W. Pressley, of Clintwood, Virginia.

Mr. Pressley states that he has been appointed a member of the electoral school board of Dickenson county, and that he is also a notary public. He desires to know whether or not he can hold both positions.

I am of the opinion that his being a notary public will not conflict with his duties as a member of the electoral school board, and I know of nothing in the law which prohibits his holding both positions.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

OFFICERS, PUBLIC—FORESTRY WARDEN—INCOMPATIBILITY OF OFFICES.

RICHMOND, VA., March 20, 1920.

*HON. R. C. JONES, State Forester,
Charlottesville, Virginia.*

DEAR SIR:

Acknowledgment is made of your letter of March 18, 1920, in which you request my opinion on the following statement of facts:

"A citizen of Virginia, who has for several seasons been serving as a State forest warden and as a Federal forest patrolman, under my direction, has recently been elected one of the commissioners of revenue for his county. Another citizen, who has been serving as a State forest warden and as a district fire chief for several counties in his vicinity as a part of the fire-protective force of this office, has recently been elected supervisor of his county, and a sheriff of one of the counties has just been informally recommended by the board of supervisors of his county to this office for appointment as a Federal forest patrolman and State forest warden. These incidents make it necessary for me to know whether or not it is illegal for a man who is a commissioner of revenue, a county supervisor, or a sheriff to be at the same time a State forest warden, a Federal forest patrolman or a district fire chief, and I wish to appeal to you for an opinion to guide me in these matters."

It is provided by section 2702 of the Code of Virginia, 1919, 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 the definition of "officer," I am of the opinion that a forest warden is an officer within the meaning of section 2702, and that any officer mentioned in that section is not permitted, at the same time, to hold the position of forest warden. It is said in 29 Cyc., page 1364, that "one participating in the exercise of the powers or receiving the emoluments of a public office is a public officer." Forest wardens certainly exercise the powers of public office, and, under the provisions of section 540 of the Code of 1919, they are required to take the proper official oath before the clerk of the court of the county in which they reside, after which they shall, "*while holding such office*, possess and exercise all the authority and power held and exercised by constables at common law, and under the statutes of this State, etc."

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

OFFICES, PUBLIC—INCOMPATIBILITY OF OFFICES.

RICHMOND, VA., *January 2, 1920.*

HON. WALKER WARE,
Tenno, Va.

DEAR SIR:

Acknowledgment is made of your letter of December 22, 1919, in which you request me to advise you if one may hold the office of county treasurer and notary public at the same time.

Section 2702 of the Code of 1919 provides 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 the office of notary public and county treasurer are incompatible and that, therefore, you cannot hold the office of county treasurer and act as notary public at the same time.

Yours very truly,

LEON M. BAZILE,
Second Assistant Attorney General.

OPTOMETRY—RIGHT TO PRACTICE.

RICHMOND, VA., July 29, 1920.

DR. F. D. JACKSON, *Secretary and Treasurer,*
State Board of Examiners in Optometry,
Norfolk, Virginia.

DEAR SIR:

Acknowledgment is made of your letter of July 27, 1920, in which you say:

"In the last examination held by this board, two candidates for certificates to practice optometry failed to make the required average of seventy-five per cent, and are declared to have failed; (also, they failed in three subjects). (Section 1630).

"Of course they may take the examination again, and must do so in order to receive certificates to practice.

"Question: 'Could these men be employed by 'employers of practitioners of optometry,' etc., until the next examination, as in section 1636?

"Or, they having failed to demonstrate their 'fitness,' are they prohibited from practicing, though in the employ of another?"

Section 1636 of the Code of Virginia, 1919, provides that no person not a holder of a certificate duly issued to him and filed, as provided, shall practice optometry in this State, with this proviso:

"* * * But employers of practitioners of optometry in connection with their optical business, may, in case of a vacancy in such position, fill the same by the employment of some person deemed competent, and the said person shall at once announce to the board his readiness for examination, and may continue in his work until examined by the board, and his fitness so determined."

Under the language of this section, I am of the opinion that one who has failed to pass the examination is not a competent person within the meaning of this proviso, as his competency has been determined by his failure on the examination.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

PASSES—OFFICERS.

RICHMOND, VA., February 13, 1920.

HON. WILBUR C. HALL,
House of Delegates,
Richmond, Virginia.

MY DEAR HALL:

Acknowledgment is made of your letter, in which you referred me a letter with reference to the acceptance by a prohibition officer of Loudoun county, of a pass from the Washington and Old Dominion Railway Company. The

letter states that the pass is to be used in traveling over the company's roads in the performance of official duties.

You ask my opinion as to whether or not this prohibition officer can legally accept the pass.

Section 161 of the Constitution of Virginia provides that no transportation or transmission company doing business in Virginia shall grant to any State, county, district or municipal officer, for his personal use while in office, any frank, free pass, free transportation, any rebate or reduction of the rates charged by such company to the general public for like service. The section further provides that any officer who accepts any gift, privilege or benefit prohibited by the section shall thereby forfeit his office, and be subject to such further punishment as may be prescribed by law.

It is manifest, therefore, that the acceptance of the pass by the writer of the letter sent me will violate the section of the Constitution and forfeit his office.

I am returning the letter enclosed to me.

Yours truly,

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

PHYSICIANS AND SURGEONS—ADMISSION TO PRACTICE—RECIPROCITY.

RICHMOND, VA., *March 8, 1920.*

DR. J. W. PRESTON, *Secretary,*
Virginia State Board of Medical Examiners,
Roanoke, Va.

MY DEAR SIR:

Acknowledgment is made of your letter of March 4th, in which you request my opinion on the following statement of facts:

"The matter of reciprocity between Virginia and other States, with like requirements, for the practice of chiropody, having arisen, we do not find any specific authority delegated to our board, by law, to enter into such reciprocal relations. We would thank you to give the matter consideration and advise whether or not the authority of our board to grant reciprocity in the matter of practice of medicine, which is in the same act, may or may not be extended to that of chiropody."

Chapter 68 of the Code of Virginia, 1919, which embraces the sections thereof relating to and regulating the practice of medicine in this State, includes among its provisions, sections 1618, 1619 and 1920, which define chiropody and who may practice the same, and upon what terms.

It is provided by section 1613 which is found in this chapter and which deals with a number of other objects, so far as is applicable to the question here under consideration, as follows:

"* * * The board may, at its discretion, arrange for reciprocity with the authorities of other States, Territories and countries having requirements equal to those established by this chapter. * * *"

This provision of section 1613 of the Code, in my opinion, embraces not only the practice of medicine generally, but the practice of the various

branches of medicine defined and covered by chapter 68 of the Code of 1919, among which is included the practice of chiropody.

I am therefore of the opinion that your board may, at its discretion, arrange for reciprocity in the matter of the practice of chiropody with the authorities of other States, Territories and countries having requirements equal to those established by chapter 68 of the Code of 1919.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

PHYSICIANS AND SURGEONS—EXAMINATION OF CHIROPRACTIC
APPLICANTS.

RICHMOND, VA., *December 15, 1920.*

DR. J. W. PRESTON, *Secretary,*
State Board of Medical Examiners,
Roanoke, Va.

MY DEAR DR. PRESTON:

I beg leave to acknowledge receipt of your letter of December 10th, which is in part, as follows:

"Recently the question has arisen as to whether our board has authority to admit to examination, and grant certificates to those who wish to practice the sectarian tenets of what is known as chiropractic.

"Under section 11 of the practice act there is an exception made permitting those who were practicing chiropractic in the State prior to January 1, 1913, to continue. Further on in the same section there is a provision for the admission of graduates of sectarian schools to examination, and while chiropractors are not specifically mentioned, I draw the conclusion that we have authority, should it in our judgment be best, to admit such graduates to the examination provided they comply with the requirements as set forth under section 7 (c) and (d).

"If, after examining the statute it would seem to you that this conclusion is correct. I would thank you to advise me whether or not the proposed amendment to our by-laws, a copy of which I am enclosing herewith, seems to you to be in accordance with the statute."

You enclose with your letter a copy of an amendment to the by-laws of the Virginia State Board of Medical Examiners, which amendment is in the following language:

"The board may at its discretion examine and admit to practice applicants who are graduates of chiropractic, or other sectarian schools of medicine, whose preliminary education and course of professional training be equal to that required of Virginia students and Virginia schools. Should it be deemed necessary the board may invite any member of such sectarian school who may be a legal practitioner in the State, to submit questions and grade papers upon the branches which the applicants may be examined upon in lieu of materia medica, therapeutics and the practice of medicine."

In reply, I will state that I have carefully read your letter and also examined the amendment to the by-laws above-quoted, and in reply will state

that I am of the opinion that your board has the authority, in its judgment, if it deems best, to admit such graduates to examination provided they comply with the requirements as set forth under sub-sections (c) and (d) of section 7.

I do not think the law contemplates that only those who were qualified to practice chiropractic in the State prior to January 1, 1913, should continue, to the exclusion of all others. In other words, it is my view that the State Board of Medical Examiners may continue to examine and to admit to the practice of chiropractic, such persons as shall be able to comply with the provisions of the amendment to your by-laws which is quoted above.

Yours very truly,

JNO. R. SAUNDERS.

Attorney General.

PHYSICIANS AND SURGEONS—REGISTERED NURSES.

RICHMOND, VA., *September 4, 1926.*

FREDERIC B. MORLOK, *Superintendent,*

Medical College of Virginia, Hospital Division,

Richmond, Virginia.

DEAR SIR:

Acknowledgment is made of your letter of August 30, 1926, in which you say that work in the hospitals throughout the country is badly handicapped by a shortage of pupil nurses, and that the activities of hospital administrators toward increasing the pupil nurse personnel is not meeting with the success necessary for the proper care and treatment of the patients. You state that among the means suggested for interesting young women to take up the study of nursing is the recommendation that the course of training be shortened from three years to two years. You further say:

"It is our desire to shorten our period of training from three years to at least two years, but the question arises as to whether young women graduating from a two-year course of general nursing given in the school of nursing of a hospital registered by the Virginia State Board of Examiners of Nurses are eligible for examination and registration as "registered nurse," and I will be much obliged to you for an expression of your opinion. * * *

After quoting section 1707 of the Code of Virginia, 1919, you further quote from a letter received from Miss Ethel M. Smith, R. N., secretary-treasurer of the Virginia State Board of Examiners of Nurses, as follows:

"I am enclosing you a copy of the law and would refer you to paragraph 5, page 6, which would make it appear that two years' training only is necessary. However, it was the decision of the Board of Examiners sometime past that the nurses who had not had three years' training would not be considered eligible for registration."

It is provided by section 1707 of the Code of Virginia, 1919, as follows:

"The applicant who desires to practice professional nursing shall furnish satisfactory evidence that she or he is more than twenty-one years of age, is of good moral character, has received sufficient prelimi-

nary education as may be determined by the board, and has graduated from a training school of a hospital giving practice in medical, surgical and obstetrical nursing, either through and under the hospital organization, or by affiliation, and maintaining the standards required by the board, and where at least two years' training in the hospital and systematic courses of instruction are given, provided that the applicant shall have attended for at least two years the said training school from which she graduated."

You will see from this section that the law only requires at least two years' training in a hospital. It, therefore, follows that one who has graduated from a two-year's training course in a hospital giving practice in medical, surgical and obstetrical nursing as provided by this statute, if otherwise qualified, is eligible for examination and registration as a registered nurse.

While the State Board of Examiners of Graduate Nurses has the power to make all reasonable rules and regulations, I am of the opinion that it has no authority to make any rules or regulations that are in conflict with the provisions of the statutes of this State, and that, therefore, where the statute has required a training course of only two years, it is not within the power of the Board, by rule or regulation, to require a training course of three years.

Very truly yours,

JNO. R. SAUNDERS,

Attorney General.

PENITENTIARY—COMPENSATION OF GUARDS.

RICHMOND, VA., *June 11, 1920.*

COL. LEROY HODGES, *President,*

Board of Directors, State Penitentiary,
City.

MY DEAR COL. HODGES:

I am just in receipt of your letter of June 10th, in which you advise me that the Board of Directors of the Penitentiary, at their last meeting, passed a resolution authorizing a continuation of compensation to Mr. P. C. Jones, one of the guards at the Penitentiary during his illness. You desire to be advised if it is legal for the board to do this.

I have examined the appropriation bill passed by the last legislature, and observe that the appropriation for guarding prisoners is \$30,000 per annum. I find the following language in the appropriation bill:

"Out of this appropriation of \$30,000 shall be paid the salaries of the interior and exterior guards at the Penitentiary, not to exceed twenty-four in number, at an annual rate of compensation not exceeding twelve hundred dollars each, and not to be paid when absent on furlough for more than fifteen days in any one year, whether sick or otherwise; and provided further that substitute guards shall receive the same pay when employed as the regularly employed guards."

Section 5040 of the Code of 1919 provides, among other things:

"* * * If any absentee furnishes satisfactory evidence to the superintendent that his absence was unavoidable from sickness, his full pay may continue during such absence, not exceeding twenty days in any one year, and beyond that time at the rate of \$15.00 per month, not exceeding three months."

Section 3451 of the Code is similar to the language contained in the appropriation bill. You will observe that these two sections seem to be in conflict, so it is very difficult to say just what the law is in reference to this matter. However, I believe, that inasmuch as Mr. Jones has been guard at the Penitentiary for more than forty years, and his services, I am informed in this connection, have been faithful and satisfactory, and inasmuch as he is dependent solely upon his salary for a livelihood, I believe that your board would be perfectly justified in allowing him the \$15.00 for three months, as is provided for in section 5040, and full pay for twenty days. This is certainly a humane view to take of the situation. At the time we had a conversation over the 'phone about this matter, I had section 5041 of the Code before me, which section simply provided for the vacation, and there was no inhibition contained therein, as contained in the sections above quoted.

I had a letter from the Governor also in reference to this matter, in which he desired to be informed whether the board could pension Mr. Jones. I do not think your board would have the authority to do this.

Yours very truly,

JNO. R. SAUNDERS.

Attorney General.

PENITENTIARY—CREDITS TO BE ALLOWED FOR GOOD BEHAVIOR.

RICHMOND, VA., July 23, 1920.

HON. J. B. WOOD, *Superintendent of State Penitentiary,*
Richmond, Virginia.

MY DEAR MAJOR:

Acknowledgment is made of your letter of July 17, 1920, in which you request me to advise you as to the effect of section 2094 of the Code of Virginia, 1919, as amended, a copy of which amended statute you state you received the morning you wrote me.

This statute, as amended, provides as follows:

"Jail prisoners on road or quarry force to be allowed credit for good behavior. All persons sentenced by any of the courts of this Commonwealth, or by a justice of the peace, to work on the public roads or in public quarries, in lieu of jail sentences, and all persons confined in jail who are worked on said road or quarry force, shall be allowed credit for good behavior on their sentences to the same extent and upon the same terms as are provided for convicts in the Penitentiary. When any prisoner is sentenced by any court or justice to work on the public roads or quarries, it shall be the duty of the judge or justice immediately to notify the Superintendent of the Penitentiary of such sentences in each case. * * *

Under the provisions of this statute all persons sentenced by the courts of this Commonwealth, or justices of the peace, to work on the public roads or in public quarries in lieu of jail sentences, and all persons who are confined in jail who are worked on said roads or in said quarries are entitled to a credit for good behavior on their sentences to the same extent and upon the same terms as provided for convicts in the Penitentiary. Therefore, in figuring the number of days such prisoners are required to serve, the same credit for good behavior should be allowed on their sentences as is allowed on the sentences of convicts in the Penitentiary.

As this statute provides that such credit is to be allowed not only to persons sentenced to work on the public roads or in public quarries in lieu of jail sentences, but to "all persons confined in jail who are worked on said road or quarry force," I am of the opinion that it applies to persons who are confined in jail by reason of the non-payment of a fine, provided such persons are worked on the said road or quarry force.

The papers sent me are herewith returned for your files.

Very truly yours,

JNO. R. SAUNDERS.

Attorney General.

PENITENTIARY—FUNDS BELONGING TO.

RICHMOND, VA., August 3, 1920.

HON. LEROY HODGES,
President of Penitentiary Board,
Richmond, Virginia.

MY DEAR COLONEL HODGES:

Acknowledgment is made of your letter of July 29, 1920, in which you say:

"I am directed by the Board of Directors of the Penitentiary to ask you for an opinion as to whether or not moneys received from the State convict road force for the hire of convicts in the automobile and truck repair shops operated by the State Highway Commissioner at the Penitentiary, can be deposited with the Auditor of Public Accounts to the credit of the Penitentiary and not placed in the general fund of the State Treasury.

"It appears that the money which has been received from this source heretofore has been deposited in the State Treasury by the Superintendent of the Penitentiary and cannot be reached except by reappropriation by the General Assembly. If it is legal for the money derived from this source to be credited to the Penitentiary fund and made available for use, it would greatly relieve pressing financial stress at the Penitentiary at the present time."

It is provided by section 5037 of the Code of Virginia, 1919, as follows:

"He shall, at the end of each month, or oftener if the board direct, pay all money received by him into the treasury to the credit of the Penitentiary fund, and the same shall be paid out on the order of the Superintendent, approved by the board."

Under this section, I am of the opinion that the Superintendent is authorized to pay the fund in question, when received by him, into the Treas-

ury, to the credit of the Penitentiary fund, and that the same can be paid out on the order of the Superintendent, approved by the board.

Your attention is directed to chapter 236 of the Acts of 1918, which provides, among other things, that convicts actually confined within the Penitentiary shall be used, as far as possible, in the making of clothes, shoes and other necessary articles required by the State convict road force and other institutions of the State, for which the Superintendent of the Penitentiary is authorized and empowered to charge the State convict road force and other State institutions the actual cost of the materials used in the manufacture of the articles furnished them, and, in addition thereto, ten per centum of the said cost, "the funds so derived to be used to keep in repair and to replace the machinery, tools, etc., used in the manufacture of the various articles furnished."

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

PENITENTIARY—JAIL PRISONERS.

RICHMOND, VA., May 3, 1920.

COL. LEROY HODGES, *Chairman,*
State Penitentiary Board,
City.

MY DEAR COL. HODGES:

I have very carefully examined the recommendations of the committee appointed by the State Penitentiary Board at its meeting on April 26, 1920. The purpose of this committee was to inquire into the law dealing with jail prisoners and to report a plan for properly safeguarding their health, etc.

I am of the opinion that the first five of these recommendations are all right. I do not think, however, that under the law there is any authority to bring jail prisoners designated to the State road force, to the State Penitentiary, even though it be merely for examination and cleansing.

In other words, a man who has been convicted of a misdemeanor can be compelled to work on the public roads, but there is no authority in the law to send anyone except a felon, to the State Penitentiary.

However, I am advised that there is a lot or parcel of land just across from the Penitentiary which is now used for the purpose of storing trucks and building material, etc., for road work and should the Board of Directors of the Penitentiary see fit to establish a temporary hospital, I see no objection to bringing the above class of prisoners there for examination, etc.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

PENITENTIARY—LEASE OF CONVICTS BY HIGHWAY COMMISSIONER.

RICHMOND, VA., *October 25, 1920.*

COL. LEROY HODGES, *Chairman,*
State Penitentiary Board,
City.

DEAR COL. HODGES:

Acknowledgment is made of your letter of October 20th, in which you say:

"I have been directed by the Board of Directors of the Penitentiary to secure from you an opinion with reference to the powers of the State Highway Commissioner to lease convicts of the State convict road force to contractors for construction work on the State highway system. Before taking this matter up with you, I wrote Mr. George P. Coleman, the State Highway Commissioner, asking if he would write me fully concerning the matter so that full information could be placed before you in connection with the request of the Penitentiary Board for an opinion in the matter. A reply was received from Mr. Coleman, a copy of which is enclosed, together with a copy of a letter I wrote to him at the direction of the board June 29, 1920.

"You will note that Mr. Coleman is not very clear in his letter as to the sources of authority which he contends that he has in this connection. Reference to the Code of Virginia would indicate that section 2093 is the only law which governs the employment of convicts on contract work, and the provisions of this section do not seem to apply to the State highway system.

"I would appreciate it if you would let us have your opinion in this matter at your very earliest opportunity, as the inquiry has already been held up some time in connection with other matters which are being worked out at the Penitentiary."

I have examined with care the letter of Hon. G. P. Coleman, State Highway Commissioner, copy of which you enclosed in your letter to me. In his letter to you, which is dated June 30, 1920, Mr. Coleman says:

"As I explained to you today, the Acts of 1906, as amended in 1908, contemplated giving convict labor aid to the counties. Under this act the work could be done by force account or by contract. The time of the men so employed was charged against the contract at the end of each month; that is, no money passed between the contractor and the State, the State simply getting the credit for the work done. The men so employed remained under the direction and supervision of the Superintendent of the Penitentiary and the State Highway Commissioner, and worked under such rules and regulations as were prepared by them.

"Under the Acts of 1918 establishing the State highway system, the convict labor aid to the counties was discontinued and money aid was given them in lieu thereof. The convict labor under this act was to be worked in the State highway system, and the same authority was vested in the Superintendent of the Penitentiary and the State Highway Commissioner for working the prisoners on the State highway system.

"As I explained to you today, and to Governor Davis some time ago, it had been the policy of the department to work the convicts in quarries or on construction or maintenance work by force account, doing away, as much as possible, with contract work. Labor conditions, however, during last winter and this spring have given us so much trouble that we have found it necessary to continue in some instances the contract plan as outlined above. It is the intention of the department to discontinue this character of work as soon as conditions become normal."

I have examined with care the provisions of section 2093 of the Code of Virginia, 1919, which reads as follows:

"If the local road authorities of a county, proposing to improve permanently any main traveled road, or part thereof, and desiring to avail of the services of the State Highway Commission under the terms of the chapter creating that commission, and to have the benefit of this chapter creating the State convict road force, shall prefer to make such improvements by contract, then the State Highway Commissioner may, upon request, furnish such local road authorities, in advance of the lettering of the contract, an estimate of the number of convicts available for use upon such proposed permanent road improvements, provided that such number of convicts to be so supplied by the State Highway Commissioner, shall not exceed such a number as that estimating their labor at one dollar per day per convict, exclusive of Sundays, will amount to a contribution on the part of the State of more than forty per centum of the total contract price of such proposed improvement.

"The convicts so employed upon contract work shall be and remain under the direction, supervision and care of the Superintendent of the Penitentiary and of the State Highway Commissioner, which said hours, rules, regulations and conditions shall be stated and promulgated in advance of the letting of the contract."

This section does not authorize the letting or hiring of convicts by the Highway Department to private contractors who are engaged in the building of sections of the State highway system.

I have also examined with care chapter 9 of the Acts of 1918, which authorizes the use, so far as practicable, of the convict road force in the construction and maintenance of the State highway system, and I am of the opinion that there is nothing in this act which authorizes the hiring or letting of convicts to private contractors who are engaged in work on the State highway system. This law, in my opinion, contemplates the use of convicts upon the State highway system on work being done by the State, and not work which is being constructed by private contractors.

I have also examined the Code and Acts with a view of ascertaining whether or not there is any other statute under which the hiring or leasing of convicts under such circumstances, is authorized, but I have been unable to find the same.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

PENITENTIARY—SURGICAL OPERATIONS ON CONVICTS.

RICHMOND, VA., July 2, 1920.

COL. LEROY HODGES, *President,*
Board of Directors of State Penitentiary,
Richmond, Virginia.

DEAR COL. HODGES:

Acknowledgment is made of your letter of June 12, 1920, in which you say:

"I have been directed by the Board of Directors of the Penitentiary to ask you for an opinion as to the powers of the surgeons at the Penitentiary and at the State farm to perform surgical operations on

prisoners when the prisoners refuse to consent to having such operations performed but which are deemed necessary by the surgeons at the respective institutions.

"Has the Board of Directors of the Penitentiary power to make provision in our by-laws to meet such cases?"

There appears to be no express provision in the Code giving such authority to the Board of Directors of the Penitentiary. Section 5022 of the Code of Virginia, 1919, which prescribes the duties of the surgeon to the Penitentiary, so far as is material to the question under consideration, provides:

"The surgeon of the Penitentiary shall visit the Penitentiary once at least every day, and oftener when there are cases of sickness requiring it, or when he is called on to attend by the Superintendent. * * * The surgeon shall render to the convicts all surgical and medical aid which may be requisite."

This section, as you will see, does not give to the surgeon of the Penitentiary or the Board of Directors thereof, either expressly or by implication, the authority to perform surgical operations on prisoners when the prisoners refuse to consent to having such operation performed, although the operation would be of benefit to the convict.

In discussing a similar question in the case of *Westbrook v. State*, 133 Ga. 578, 18 A. & E. Ann. Cas. 295, 297 (1909), the court said:

"* * * Upon conviction the convict may lose his liberty for the time being, and may be required to perform hard labor, but he does not lose security of his person against unlawful invasion. The security of person, except as expressly provided by statute, remains his right; and if it be unlawfully invaded, he may resist such unlawful invasion as if there had been no conviction. If the warden, or other officer, inflicts corporal punishment under circumstances which the law does not recognize as sufficient to justify, he invades the convict's right of personal security, and does so at his own peril."

Sections 5012, 5016 and 5025 of the Code of 1919, which authorize the Directors of the Penitentiary to make rules and regulations for certain enumerated purposes, do not, in my opinion, authorize the making of a rule or regulation with reference to the subject of your inquiry. In the absence of such authority, therefore, I am of the opinion that the Board of Directors of the Penitentiary has no power to compel a convict to submit to a surgical operation over his objection.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

PENITENTIARY—TERM OF CONFINEMENT.

RICHMOND, VA., January 26, 1920.

HON. J. B. WOOD,
Superintendent of State Penitentiary,
City.

MY DEAR MAJOR:

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

"I find that section 5019 of the Code of 1919 does away with the time being allowed prisoners, who are sentenced to the Penitentiary,

for confinement in jail before trial and from the revisor's note to this section it would seem that I am not authorized now to allow them this jail time, as I have been doing. I may not be making myself as explicit as I should, but what I really want is a ruling from you as to whether they should be allowed any jail time before sentence and whether we should date the beginning as of the date on which sentence was passed."

It is provided by section 5019 of the Code of 1919 as follows:

"The term of confinement in jail or in the Penitentiary for the commission of a crime shall commence and be computed from the date of the judgment, unless such judgment is suspended at the instance of the defendant." (1916, pages 499, 721).

Appended to this section is the following note by the Code revisors:

"The first act cited at the end of this section provided that persons sentenced to confinement in jail or in the Penitentiary should have deducted from their terms all time actually spent by them in jail awaiting trial, or pending removal to the Penitentiary after trial and sentence, or pending appeal, etc. The second act cited provided for deduction from the term of confinement of persons sentenced to the Penitentiary of the number of days such persons may have been held in jail because of quarantine regulations, etc. The revised section materially changes the first act cited, in that it does not allow credit for time spent in jail awaiting trial, nor for time spent in confinement pending an appeal. The jury, or court trying the case, usually takes into consideration, where it is proper to do so, the length of time the accused has been in jail and there should be no further credit therefor given. The prisoner should not have credit for time spent in jail at his instance. By applying for a writ of error he takes his chances of an affirmance of the judgment, and to allow credit for the time pending an appeal would offer a premium to apply for appeals and in some cases might result in keeping him in jail in idleness during the whole, or a very large part, of the time for which he is sentenced."

It will therefore be seen that chapters 282 and 414 of the Acts of 1916 authorizing a deduction from the term of a person for the time he remained in jail pending trial, or the time he was held in jail because of quarantine regulations, have been repealed.

I am therefore of the opinion that persons who have been convicted subsequent to the date the Code of Virginia 1919, took effect, are not entitled to the deduction formerly allowed but that the term of confinement in jail or in the Penitentiary "shall commence and be computed from the date of the judgment, unless such judgment is suspended at the instance of the defendant."

Yours very truly,

JNO. R. SAUNDERS.

Attorney General.

PENSIONS—TEACHERS.

RICHMOND, VA., July 19, 1920.

HON. HARRIS HART,
Superintendent of Public Instruction,
Richmond, Va.

DEAR MR. HART:

Acknowledgment is made of your letter of July 15th, enclosing copy of your letter of the same date to Robert Lecky, Jr., Esq., with reference to the employment by the Virginia Home and Industrial School for Girls, of a lady who is retired on a teacher's pension under Class B, as provided for by section 787 of the Code of Virginia, 1919.

It is provided by section 804 of the Code of Virginia, 1919, as follows:

"Any person whose name has been placed upon the retired teachers' list who shall engage in teaching in any of the public schools of this State, shall forfeit his right to a position on the retired teachers' list and shall be removed therefrom by the State Board of Education."

You will see from the above section that the instruction as to teaching is limited to a teacher who engaged in teaching "in any of the public schools of this State."

While a school may be maintained by the Virginia Home and Industrial School for Girls for the purpose of educating the inmates of the school, which is a public institution, nevertheless it is extremely doubtful whether such school could be considered a public school within the meaning of section 804 of the Code of Virginia, 1919.

However, it is clear that section 804 of the Code of Virginia, 1919, places no limitation upon a person on the retired teachers' pension list (Class B), who engages in any other occupation than that of "teaching in any of the public schools of this State," and inasmuch as Mr. Lecky in his letter to you of July 16, 1920, which you have also referred to me, states that the lady in question is to be engaged, not as a teacher, but as an assistant superintendent of the Home whose duties will be other than those of teaching or supervising the teaching, I am of the opinion that she may act as assistant superintendent of the Home without forfeiting her right to the teachers' pension which she is entitled to as a member of Class B.

I fully concur in the opinion expressed by you in the second paragraph of your letter of July 15th to Mr. Lecky.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

PLATS—RECORDATION OF.

RICHMOND, VA., April 17, 1920.

N. W. PERKINS, ESQ., *Clerk,*
Fluvanna Circuit Court,
Palmyra, Va.

MY DEAR SIR:

I beg leave to acknowledge receipt of your letter of recent date in which you ask the question whether a clerk has the authority to record a plat of a

piece of land when the said plat is not offered for recordation along with the deed conveying the said land and the plat is not signed and acknowledged by the adjoining land owners.

I have carefully examined sections 5217 and 5218 of the Code of 1919, which sections were referred to by you in your letter. I agree with you that these two sections have reference to city and suburban lots and have no application to tracts of land located out in the country. I can find no law which answers your question definitely, but I would say that unless a plat is offered for record along with the deed of which it is made a part, that there should be some acknowledgment of the plat before it would be of much value.

In the case of *Norfolk v. Water Co.*, 113 Va. 303, the question of a plat of suburban lots was before the court. I am advised by counsel in that case that the plat had been delivered to the clerk of the circuit court of Norfolk county who spread it upon the plat book. There was no acknowledgment to the plat, nor was it offered for recordation along with any deed. In no particular had section 2510-a of Pollard's Code, been complied with. The position was taken in the Supreme Court that the plat had not been recorded because there was no acknowledgment, but had been simply spread upon the record and that no paper could be validly recorded, and therefore be treated as if it were recorded, unless it was acknowledged. But the Supreme Court, in delivering this opinion, said:

"The material facts established by the pleading, are that The Kensington Company * * * owned the tract of one hundred acres of land in the city of Norfolk which it had laid off into blocks, lots, streets, and alleys, according to the specifications of a *plat which it had recorded in the clerk's office in Norfolk county.*

It is a matter of common knowledge that not only property not contiguous to a city, but also property contiguous to a city is oftentimes platted and the plat admitted to record, even though there is no acknowledgment to the same, nor is it recorded along with a deed, and yet such plats have generally been accepted as properly placed on the record books.

Yours very truly,

JNO. R. SAUNDERS.

Attorney General.

POOR—COUNTY PHYSICIAN FOR NOT AN OFFICER.

RICHMOND, VA., *October 15, 1920.*

DR. A. M. BURFOOT,
Fentress, Va.

DEAR SIR:

Acknowledgment is made of your letter of October 12th, in which you say:

"I am a member of the board of health of my county (Norfolk). The service thus rendered is in no wise paid for and the appointment is made by the State Board of Health. In other words, doctors are appointed, and that without salary, and the position purely honorary if any honor there be.

"I am asking our supervisors to appoint me physician to the county alms house for another year, which appointment carries with it the

salary of \$300.00 per annum. The question has been raised as to whether or not it would be legal for me to receive the latter appointment at the hands of our supervisors in view of the fact that I was a member of the Board of Health, even though no salary attached. To this end I have been asked to write and get an opinion from you relative to this matter."

The physician for the county poor is employed under the provisions of section 2796 of the Code of Virginia, 1919, which reads as follows:

"The boards of supervisors of the several counties may appoint a physician to attend the poor at the place of general reception, and allow him such compensation therefor as to them may seem reasonable."

You will see from a reading of this section that the physician for the poor does not hold any office, but is an employee. I know of no reason why a member of the county board of health cannot be employed as physician for the poor for his county.

This is a local matter, however, and I would suggest that you consult the Commonwealth's attorney for your county with reference to this matter.

Yours very truly,

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

POSTMASTERS—NOT AUTHORIZED TO TAKE AFFIDAVITS.

RICHMOND, VA., *January 7, 1920.*

MR. E. W. HART,
Wake, Va.

DEAR SIR:

Your letter of the 7th received, in which you enclosed letter from Col. B. O. James, Secretary of the Commonwealth.

As postmaster, you have no authority to take affidavits to blanks to be filled out in applying for a license and registering automobiles. A notary public, a justice of the peace, commissioner in chancery and other officers authorized under the statute law of Virginia to administer oaths, are the only persons who can take affidavit. The authority which you have from the government only pertains to post office matters. The fee to be charged for this affidavit is twenty-five cents.

I am glad to give you this information.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

PRINTING, PUBLIC—CHIEF EXAMINER OF BANKS.

RICHMOND, VA., *July 20, 1920.*

HON. F. B. RICHARDSON,
Chief Examiner of Banks,
Richmond, Va.

DEAR SIR:

Acknowledgment is made of your letter of July 20th, in which you say:

"Your opinion is requested of the proper construction of section 385 of the Code of Virginia, 1919, with reference to whether or not the

banking division of the State Corporation Commission is required upon statements rendered by the Superintendent of Public Printing to draw warrants against the banking fund for the payment of such printing as may be done by the Public Printer for the banking division."

Section 385 of the Code of Virginia, 1919, so far as is applicable to the subject under consideration, provides as follows:

"* * * Each officer, board, department or institution, except the Governor, General Assembly, Secretary of the Commonwealth, Auditor, Second Auditor, Treasurer, Attorney General, Register of Land Office, Superintendent of Public Printing, Corporation Commission, Legislative Reference Bureau, Banking Division and Commission of Fisheries, shall, upon statements rendered by the Superintendent of Public Printing, draw a warrant on the Auditor, payable out of the funds appropriated for the maintenance of such department, institution or boards into the treasury to the credit of the printing fund covering the cost of the printing, binding, ruling, and so forth, furnished such department, board or institution.

"For all other printing, binding, ruling, lithographing, engraving, advertising, wrapping, mailing, freight, postage, expressage or stationery or other material, for the payment of which no provision is otherwise made, accounts certified by the Superintendent of Public Printing to be correct and according to contract, shall be presented to the Auditor of Public Accounts, and, if found correct, paid by him by warrant on the Treasury."

You will see from reading the above-quoted provisions of section 385 of the Code of Virginia, 1919, that the banking division is excepted from the general provisions of the act which require each officer, board, department or institution, to pay into the Treasury to the credit of the printing fund out of the funds appropriated for the maintenance of such department, the cost of the binding, printing, ruling, etc., furnished such department board or institution.

I do not find any provision in the law for the payment of printing, binding, etc., of the banking division, and therefore, I am of the opinion that under the further provisions of this section, the cost of the printing, etc., of your department, should be paid out of the Treasury.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

PRINTING, PUBLIC—WHAT BINDING TO BE PAID FOR OUT OF TREASURY.

RICHMOND, VA., *February 12, 1920.*

HON. DAVIS BOTTOM,

*Superintendent of Public Printing,
City.*

DEAR SIR:

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

"The State Corporation Commission recently sent me a number of blue prints to be bound in volumes. Some of these bound volumes will be used for the purposes of the Corporation Commission, while

others will be sold, in the sale price of which the cost of printing will be added as a part of the cost of the copy. It is the contention of the clerk of the Corporation Commission that the total amount should be remitted to the Treasurer of Virginia along with his remittance as clerk to the Commission, as required for each month. I hold the view that if the cost of this binding is to be paid by outside interests the money received from that source, even though small, should be returned to the Treasury to the credit of the printing fund."

It is provided by section 384 of the Code of Virginia, so far as is applicable to the question here under consideration, as follows:

"He shall supply all the officers, departments, boards and institutions located at the seat of government, the hospitals for the insane, the Virginia State Epileptic Colony, and the Catawba Sanatorium with such printing, stationery, lithographing, engraving, ruling, and binding as may be required by them in their several departments for the proper conduct of the business of the State. * * *

You will see from the above quotation that you are only authorized to furnish a department of the government such as the Corporation Commission, with such binding as may be required by it for the proper conduct of the business of the State, the cost of which, as provided by section 385 of the Code of Virginia, 1919, is to be paid out of the general fund appropriated to public printing by a warrant on the Treasury.

You will therefore see that you are authorized to pay out of the printing fund, only for the binding of those volumes which are to be used by the Corporation Commission in the conduct of the business of the State, and are not authorized to expend any part of the general fund appropriated to public printing in paying for the binding of such volumes as the Corporation Commission proposes to sell.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

PUBLIC DEBT—LOST CERTIFICATES.

RICHMOND, VA., *October 29, 1920.*

HON. ROSEWELL PAGE,

Second Auditor,

Richmond, Va.

MY DEAR MR. PAGE:

Acknowledgment is made of your letter of recent date, in which you enclose a copy of your letter of October 14, 1920, to Hon. Randolph Harrison. In your letter, you request me to advise you whether a refunding bond is necessary where the court has affirmed the report of Commissioner Scott in the case of *Commonwealth v. Delano, et al.*, holding the debt proved on a lost certificate.

It is provided by section 2639 of the Code of Virginia, 1919, as follows:

"When any bond or certificate shall be lost or destroyed, the owner thereof may produce to the Auditor, in whose office the said bond or certificate is registered, proof of his having advertised the

same once a week for four successive weeks in a newspaper; file in the office of the said Auditor an affidavit, setting forth the time, place, and circumstance of the loss or destruction, and execute a bond to the Commonwealth, with one or more sureties, approved by the said Auditor, with condition to indemnify the Commonwealth and all persons against any loss in consequence of issuing a new bond or certificate in place of the one so lost or destroyed; and thereupon the said Auditor may issue a new bond or certificate and register the same."

I am of the opinion that in issuing a certificate or bond, the loss of which has been established in this suit, the provisions of section 2639 of the Code of Virginia, 1919, with reference to the execution of a refunding bond, must be complied with.

Yours very truly,

JNO. R. SAUNDERS.

Attorney General.

REWARDS.

RICHMOND, VA., July 19, 1920.

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

MY DEAR GOVERNOR:

Acknowledgment is made of the receipt of the file relating to the matter of the request of Richard H. Baker, Esq., attorney at law, Norfolk, Virginia, and of certain of his clients that you issue a proclamation offering a reward for the arrest and conviction of certain persons in Princess Anne county, Virginia, who, in the night-time, made an attack upon a house occupied by the employees of Mr. Baker's clients, firing through the windows and walls of the house, and narrowly missing the persons therein.

You have referred this file to me, with the request that I examine the same, and advise you in the premises.

This matter is governed by the provisions of section 5069 of the Code of Virginia, 1919, which reads as follows:

"The Governor may offer a reward for apprehending and securing any person convicted of an offense or charged therewith, who shall have escaped from prison, or for apprehending and securing any person charged with an offense, who, there is reason to fear, cannot be arrested in the common course of proceeding. But no such reward shall be paid to any sheriff, sergeant, or other officer who arrests such person by virtue of any process in his hands to be executed. The Governor may also offer a reward for the detection and conviction of the person guilty of an offense, when such offense has been committed, but the person guilty thereof is unknown."

Under this section, the exercise of the power therein conferred upon the Governor rests within his discretion. If, in the instant case, you are of the opinion that the reward should be offered, you have the authority to do so. However, there is nothing in the law which compels you to issue the proclamation, unless, in your discretion the same should be done.

Very truly yours,

JNO. R. SAUNDERS,

Attorney General.

REWARDS—OFFERED BY GOVERNOR ON BEHALF OF INDIVIDUALS.

RICHMOND, VA., August 2, 1920.

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

MY DEAR GOVERNOR:

Acknowledgment is made of the letter of your assistant secretary, dated July 29, 1920, in which it is said:

"The Governor desires that you will advise him as to whether it would be in keeping with the provisions of section 5068 of the Code of Virginia, 1919, referred to in your letter of July 19, 1920, for him to offer, in the name of the State, reward for \$1,000, upon agreement in writing that said amount would be paid by Mr. Baker's company."

In his letter of June 30, 1920, to you, Edwin J. Smith, Esq., Commonwealth's attorney of Princess Anne county, says:

"I am informed by Mr. Baker that his company will guarantee a reward of \$1,000 which they have asked you to offer, and if you make this offer of reward I can have that agreement put in writing."

I am of the opinion that it would be in keeping with the provisions of section 5068 of the Code of Virginia, 1919, for you to offer, in the name of the State, the reward as suggested in Mr. Smith's letter, upon an agreement in writing that the said amount will be paid by Mr. Baker's company, if, in the exercise of your discretion, you are of the opinion that a reward should be offered in this manner.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

ROADS AND HIGHWAYS—APPEALS FROM DECISION OF HIGHWAY COMMISSIONER
IN LOCATING PART OF HIGHWAY SYSTEM.

RICHMOND, VA., September 14, 1920.

HON. WADE H. MASSIE, Chairman,
State Highway Commission,
Washington, Va.

MY DEAR SIR:

I beg leave to acknowledge receipt of your letter of September 1st, in which you write me in reference to the location of the road from Williamsburg to Lee Hall. You state in your letter that the Commission has received a petition signed by more than fifty freeholders of James City county, requesting an appeal from the decision of the State Highway Commission in the establishment of this route.

You further state that there is some doubt as to whether the Commission has jurisdiction to hear an appeal, as the Commissioner contends that this

route "has already been located and established by the Commissioner under the authority conferred upon him by chapter 10 of the Acts of Assembly, 1918.

My delay in replying to your letter, is due to the fact that Mr. Coleman desired to have a conference with me concerning this matter, which conference we did not have until last Thursday. I was called out of the city Friday and this is my first opportunity to reply.

Chapter 10 of the Acts of Assembly, 1918, created and established "the State Highway System" consisting of roads and projects running to and from certain points. The paragraph of this act found at the bottom of page 10 provides as follows:

"The State Highway Commissioner shall locate and establish by surveys or otherwise, as soon as possible, the exact routes to be followed by the roads comprising the State Highway System, as set out above, and shall prepare and keep on file in his office for public inspection, a complete map showing the routes so located and established by him. The said roads from and to the points designated above, shall be designated and known as the 'State Highway System.'"

I have carefully noted all of the correspondence which accompanied your letter, which correspondence is between you and Mr. Coleman, and between Mr. Coleman and certain officials of the Federal government. Accompanying this correspondence is a sketch map showing relative locations of public roads between Williamsburg, Lee Hall and Yorktown, which sketch map is dated at Richmond, Virginia, August 31, 1920. In Mr. Coleman's letter of August 30, 1920, to you, I note the following paragraph:

"This question was taken up informally on several occasions and discussed with the Attorney General and we were advised by him that in his opinion this clearly established the route as indicated. I am attaching hereto a letter from the Attorney General of May 3rd, which clearly brings out my contention. * * *"

I feel sure that Mr. Coleman does not desire to do me an injustice in writing you this. At the same time, I desire to make my position clear in connection with this matter. The letter of May 3rd written by me to Mr. Coleman, copy of which is enclosed with your letter to me, was a letter which had reference to an entirely different route, and was based upon different facts. Nor had Mr. Coleman and I ever discussed the route in question until last Thursday. It is true that prior to this time, we had an informal discussion in reference to a hypothetical case, at which time I gave Mr. Coleman my views as to what the statute meant by the section first above quoted.

Chapter 31 of the Acts of Assembly (Special Session 1919) which created and established what is known as the State Highway Commission, among other things, provides (which provision is found about midway on page 35):

"* * * That, where the route has already been located and established by the Commissioner, under the authority conferred upon him by an act approved January 31, 1918, entitled 'an act to establish the State highway system,' no change shall be made in such route by the Commission. * * *"

You will observe that where the route has been established by the Commissioner, according to the provisions of chapter 10 of the Acts of 1918, which establishment and location must be prior to the act of September 5, 1919, which said act created the State Highway Commission, there can be no appeal from the decision of the Commissioner to that body.

The question then resolves itself into this: Was the route in question definitely located and established by surveys or otherwise by the State Highway Commissioner prior to the creation of the State Highway Commission? The decision to this question must necessarily be based upon the evidence which is before me.

As stated above, the act of 1918 requires the Commissioner to locate and establish a route by surveys or otherwise. The sketch map which I have before me which shows and designates the route in question, is dated at Richmond, Virginia, August 31, 1920. If this map means that the survey of this route was not made by Mr. Coleman until subsequent to the passage of the act of September 5, 1919, creating your Commission, unquestionably your Commission has the right to hear this appeal.

I also have before me, as mentioned heretofore, certain correspondence between the Highway Commissioner, Josephus Daniels, Secretary of the Navy, and Ralph Earle, Rear Admiral of the United States Navy. This correspondence dates from September 22, 1919, to as late as February 9, 1920.

The letter of State Highway Commissioner to Hon. Josephus Daniels, dated October 23, 1919, and the reply of Secretary Daniels, dated November 3, 1919, to this letter, seem to indicate that the two routes in question were still under consideration, and whether the route would go by The Grove or over the road which traversed the property of the Federal government, would depend upon the difference in cost and whether or not the Federal government would co-operate with the State Highway Commission in bearing the extra expense. If, at that time, the two routes were still under consideration and the survey of the route was not made until the date specified thereon, unquestionably your Commission has a right to hear this appeal.

On the other hand, I find in the letter of August 30, 1920, from Commissioner Coleman to you, that the State Highway Commissioner, on August 27, 1918, entered into a contract with the DuPont Engineering Company to construct a section of the road between Williamsburg and Springfield, which section is on the road from Williamsburg to Halstead's Point. That act, he states, in his judgment, definitely located and established that section of Route 9 between Williamsburg and Lee Hall.

I would further add that in the letter of October 17, 1919, of Secretary Daniels to the State Highway Commissioner, he calls his attention to the fact that the stage road traverses the Mine Depot Reservation of the United States through a distance of about five miles, and passes through a high explosive district; that it is the purpose of the Government to keep in storage large quantities of high explosives in the area over which this road will run, and that at an early date it will become necessary to exclude all civilian residents from the reservation and to prevent all access upon the reservation by unauthorized persons by means of fences, posted warnings and patrol.

I would also state that Ralph Earle, Rear Admiral of the United States Navy, on February 7, 1920, in a letter to Commissioner Coleman, states that he would regard this route as perfectly safe both for traffic and the mine

depot, as it is the intention of the Government to patrol its property by mounted marines.

I think that this is a question which should be carefully considered by your body—whether it is wise, to say nothing of its legality, for the State Highway Department to construct a road through property owned by the Federal government with the conditions surrounding it as set forth in the letters of Secretary Daniels and the Rear Admiral of the Navy.

I confess that the consideration of this question has given me much concern. After all, it is a question of fact as to what was done by the Commissioner in definitely establishing and locating this route. I would therefore suggest that after you and the Commissioner have read this letter, if he has any additional facts which have not been submitted to me, he should submit them to you and then your body, in conference with him, determine what is best to be done under all the circumstances in the premises.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ROADS AND HIGHWAYS—BONDS.

RICHMOND, VA., April 28, 1920.

N. G. PAYNE, ESQ.,
Commonwealth's Attorney,
Madison, Va.

DEAR SIR:

Acknowledgment is made of your letter of April 23rd, in which you say:

"The voters of Madison county will, on May 18th next, vote on a county bond issue of \$263,000.00. I have before me the bond issue laws compiled and issued by the State Highway Commission, August, 1918. On page 67, under the heading, 'Issue of Bonds by Counties,' there appears under section 4, the following: 'If it shall appear by the report of the commissioners that a majority of the qualified voters of the county voting upon the question, *and also that a majority of the qualified voters of the district, or districts, in which the road or roads are to be built or permanently improved voting on the question, are in favor of issuing the bonds for the purpose aforesaid,* the circuit court shall at its next term enter of record an order requiring the supervisors of the county to proceed at their next meeting to carry out the wishes of the voters as expressed at said election.'

"I have underscored the words that seem to convey the idea that in a county bond issue, it is necessary for every district in the county in which roads are to be permanently improved, to vote for the bond issue. What I want to know is whether or not it is necessary for each district to carry, or only is it necessary for a majority of the voters voting on the question in the entire county to vote for the bond issue."

By reference to page 66 of the Road Laws of Virginia, issued by the State Highway Commission in August, 1918, you will see that the section quoted by you is taken from chapter 47 of the Acts of 1910, as amended in 1915, and again in 1916 by chapter 284 of the Acts of 1916. This statute has been revised and incorporated into the Code of 1919 as a part

of chapter 89 thereof. Section 2114 of the Code of 1919, which is the Code section corresponding with section 4 of the act quoted by you, reads as follows:

"If it shall appear by the report of the commissioners that a majority of the qualified voters of the county voting upon the question is in favor of issuing the bonds for the purpose aforesaid, the circuit court shall, at its next term, enter of record an order requiring the supervisors of the county to proceed at their next meeting to carry out the wishes of the voters as expressed at the said election."

This section relates to bond issues by the county, as distinguished from a bond issue for a magisterial district, which latter is provided for by section 2123 of the Code of 1919. You will see from the above-quoted provisions of section 2114 that all doubt has been removed as to the question asked by you in your letter.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ROADS AND HIGHWAYS—BONDS.

RICHMOND, VA., *February 24, 1920.*

HON. T. L. FELTS,
House of Delegates,
Richmond, Va.

DEAR SIR:

Acknowledgment is made of your request that I advise you as to whether or not any limitation is placed upon the legislature's authority to authorize the issue of bonds by a county for the purpose of building and improving the roads therein.

From an examination of the Constitution, I find no limitation therein as to counties. By section 127 of the Constitution, a limitation is placed upon the power of a city or town to issue bonds or other interest-bearing obligations, but no similar provision is found with reference to counties.

You will see from an examination of chapter 108 of the Acts of 1918 that, under the general law providing for the issuance of bonds for road building, the legislature, in section 1 thereof, has placed a limitation upon the amount of bonds issued, but, of course, the acts of one legislature in such a matter are not binding upon a future legislature so as to prevent the repeal of this provision.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

ROADS AND HIGHWAYS—CLEARING OF UNDERBRUSH AND TREES FROM
SIDES OF.

RICHMOND, VA., August 25, 1920.

MR. C. W. BLAKE,
Wake, Va.

DEAR SIR:

I am just in receipt of your letter of the 23rd, which is as follows:

"I am having much trouble with landowners in getting shade trees cut back off the State Highway System. I have consulted several lawyers and all differ in their opinion. I would appreciate your opinion in reference to getting the trees cut along the State Highway System in the Rappahannock residency."

If you will examine chapter 367 of the Acts of the legislature, 1918, page 356, you will see that provision is made thereby for the clearing of trees and underbrush from the sides of public roads.

The first section of the act has reference to the board of supervisors doing this work when it is necessary to do so. The second section makes provision for clearing the sides of any portion of a road within the State Highway System, which section is the one under which you would operate, as you have supervision of the State Highway System. I am enclosing you a copy of this section of the law.

You will see from the reading of this law that by complying with the conditions prescribed therein, you will have a perfect right to cut and remove trees along the State Highway System.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

ROADS AND HIGHWAYS—COUNTY.

RICHMOND, VA., January 16, 1920.

SENATOR J. M. PARSONS,
Senate Chamber,
City.

DEAR SIR:

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

"In addition to your opinion given me on the issuing of bonds by the board of supervisors without vote of the people, I wish you would also advise me as to whether or not the funds raised by the proposed bond issue can be employed by the county in the building of roads without having the work performed under the supervision of or in conjunction with the Highway Commissioner, or the State Highway Commission. It is the purpose of the proposed bill that the roads to be constructed from the bond issue therein provided for, shall be constructed wholly at the county expense and not as a part of the system of roads constructed with the State money aid."

From an examination of the Constitution of Virginia, I find no provision therein which would prohibit the legislature from incorporating such

a provision in the proposed act, and I am of the opinion that the same would be valid.

The law is well-settled that the General Assembly in being endowed by the Constitution with the legislative power of this Commonwealth, possesses not only granted, but supreme power in the exercise of legislative powers, limited and restrained only by the express terms of the Constitution or the necessary implications therefrom. *Prison Assn. v. Ashby*, 93 Va. 667 (1896).

In *Commonwealth v. Drewry, et al.*, 56 Va. 1-5 (1858), it is said:

"In the partition of power between the three departments of government, the power of making laws is conferred on the General Assembly; some laws they are compelled by mandate to make; other laws they are forbidden to make; these are the only limits to their powers; all subjects of legislation not affected by mandate, nor by prohibition, are within the discretion of the General Assembly."

There being no provision of the Constitution which prohibits the legislature from incorporating such a provision in a law, I am of the opinion that such a provision would be a valid exercise of legislative power.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ROADS AND HIGHWAYS—COUNTY.

RICHMOND, VA., *January 16, 1920.*

SENATOR R. O. PROFFITT,
SENATOR J. M. PARSONS,
Senate Chamber,
Richmond, Va.

GENTLEMEN:

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

1. Can a valid road law be enacted which authorizes the board of supervisors of a county to issue bonds for the building of roads for (a) the county, or (b) the magisterial district without a vote of the people?
2. Assuming that such a law is valid, should the roads be designated in the statute, or could the roads upon which such money is to be expended, be left to the discretion of the board of supervisors?
3. There are special road laws in the counties to be affected by this legislation. Would it be wise to amend these laws by incorporating therein the statute proposed in question No. 1, or should the same be enacted by special acts?

In reply to your first question, there seems to be nothing in the Virginia Constitution which prohibits the legislature of Virginia in its discretion, from authorizing the issuing of bonds by a county or district for road improvement therein, or from providing that the same may be issued by the board of supervisors or other county agency without submitting the question to the people for a vote thereon. In the absence of such constitutional inhibition, the authorities are well-settled that the legislature has such

power. 11 *Cyc.* paragraph B; *Sinton v. Carter Co.* (C. C. D. Ky.) 23 Fed. 535-7 (1885); *County Court of St. Louis Co. v. Griswold, et al.*, 58 Mo. 175, 1874.

In *Sinton v Carter County*, *supra*, the rule is thus stated (page 537):

"In the absence of a constitutional inhibition, the legislature of a State may, in its discretion, indicate the mode and the agency by which a debt is created by a city, town, county, or precinct in a county. The debt must be created for a governmental purpose, but if for such a purpose, there can be no necessity for a submission to a vote of the people of the city, town, or county, or other municipality. *Railroad Co. v. Otoe*, 16 Wall. 667; *Town of Queensbury v. Culver*, 19 Wall. 83; *County of Callaway v. Foster*, 93 U. S. 567; *Mount Pleasant v. Beckwith*, 100 U. S. 514."

In reply to your second question, I am of the opinion that this involves the exercise of discretion in the matter of the legislature in enacting the law. Having the authority to authorize the issue of the bonds, the legislature would have the authority to designate the roads upon which the fund realized from the same should be expended, or to authorize the board of supervisors to designate the roads upon which such funds should be used for the purposes of construction or improvement.

Answering your third question, I am of the opinion that while this question likewise involves a matter of legislative discretion that inasmuch as the special road laws of your respective counties are permanent in their nature, while the proposed law is to be merely for the purpose of authorizing a bond issue, that it would be better to authorize the bond issue by a special act instead of doing so by amending and re-enacting other special road laws of your respective counties.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ROADS AND HIGHWAYS—CONSTRUCTION OF STATE HIGHWAY SYSTEM
BY COUNTIES.

RICHMOND, VA., May 4, 1920.

HON. THOMAS H. NOTTINGHAM,
Commonwealth's Attorney,
Eastville, Va.

DEAR SIR:

Acknowledgment is made of your letter of April 30th, in which you state that at a mass meeting of citizens of Northampton county for the purpose of discussing the advisability of bonding the county for the purpose of raising funds to build permanent or macadam roads under the State Highway System and in pursuance of an "Act to anticipate by counties, or otherwise, the construction of the State Highway System, chapter 184, Acts of Assembly, 1920, page 268, approved March 15, 1920," a resolution was adopted

requesting the committee appointed by the chairman to procure the opinion of the Attorney General and the Commonwealth's attorney of your county on the following questions:

"1. Has the county of Northampton a right to borrow money, and issue its bonds, and levy a tax for the payment of the principle and interest on said bonds, as they shall become due under the general road law, as provided by the Acts of 1920, above cited?

"2. Supposing the county to have this right to issue its bonds etc., under the general road law, what assurance has the county that this money will be refunded, as it becomes available, under said Act of 1920?

"3. And if said funds will be repaid, under what circumstances, and at what time will the money become available, to repay the county for the money advanced for the building of these roads?"

Chapter 184 of the Acts of 1920, which as an emergency act, so far as applicable to the question here under consideration, provides as follows:

"Be it enacted by the General Assembly of Virginia, that if any county, or district, or private corporation or person desires to immediately improve any section of the State Highway System within any county, which has been designated as a part of the State Highway System, the State Highway Commission may enter into an agreement with said county officials, or other parties, to finance the construction, or reconstruction, of said highways, or section thereof: provided, however, that the funds so advanced shall be without interest. Provided further that the Commission shall be authorized to make repayment to said counties, or other parties, annually as the funds are available and are apportioned for such construction, or reconstruction, until the amount so advanced has been repaid."

This act refers to chapter 10 of the Acts of 1918, which establishes the "State Highway System."

Replying to your first question, I am of the opinion that your county would have the right to issue bonds for the improvement of its roads in contemplation of taking advantage of chapter 184 of the Acts of 1920, provided in so doing it proceeded in accordance with the provisions of chapter 89 of the Code of 1919, the general law relating to bond issue for road construction and improvement.

Replying to your second question, I am of the opinion that the county has no assurance beyond chapter 184 of the Acts of 1920 that it will be reimbursed for any expenditure in making permanent improvements to its roads, as contemplated by chapter 184 of the Acts of 1920.

In reply to your third question, it is impossible to give you any definite answer as to this. The Highway Commission, I am informed by Mr. Coleman, is at present attempting to formulate the kind of agreement to be entered into between the Highway Commission and the county or district desiring to take advantage of chapter 184 of the Acts of 1920. Any agreement, however, would necessarily have to be made subject to future action on the part of the General Assembly.

Yours very truly,

JNO. R. SAUNDERS,,
Attorney General.

ROADS AND HIGHWAYS—POWER TO CLEAR AND DRAIN.

RICHMOND, VA., March 16, 1920.

HON. WM. F. COCKE,
Assistant Highway Commissioner,
City.

DEAR SIR:

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

"I am enclosing herewith letter which we have just received from Mr. J. N. Bosang, clerk of Pulaski county, in which he advises that a land owner in that county had forbidden our maintenance force from cleaning out ditches, claiming that our doing so was causing the bank to sluff and thereby endanger his fences.

"If it is not asking too much we would be glad if you would advise as to what are our rights under the premises, assuming that the ground was not intentionally disturbed back of the right-of-way line and that the disturbance which has occurred has been due to the elements, and not to the actual work of our maintenance force. Accepting this assumption as correct, would it be our right to continue to clean these ditches in order that the road may be protected?"

It is provided by section 1989 of the Code of Virginia, so far as is applicable to the question here under consideration, as follows:

"The superintendent of roads shall cause the roads of his county to be kept cleared, smoothed of rocks and obstructions, of necessary width, well-drained and otherwise in good order. * * *

See also chapter 21 of the Acts of 1919.

The maintenance of a road necessarily carries with it side ditches for the purpose of keeping the water off the road, and I am of the opinion that the county authorities as to local roads, and the authorities of your department as to the State Highway System, have the authority to open and keep in a clean condition the sides of ditches for the purpose of draining the roads.

While it is true that section 1989 and chapter 21 of the Acts of 1919 appear to relate to county roads, I am of the opinion that your department has the power to open and maintain in an open condition the necessary ditches for the purpose of draining the roads of the State Highway System. This power is a necessary incident to the power to construct and maintain the Highway System, since without the power to drain a road, it would be impossible to maintain it in a condition suitable for traffic. It therefore follows that as an incident to the authority conferred upon the State Highway Department with reference to the construction and maintenance of roads of the State Highway System, that your department has the power to open and maintain suitable ditches for the drainage of these roads.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ROADS AND HIGHWAYS—QUARRIES—APPROVAL OF GOVERNOR.

RICHMOND, VA., *December 23, 1920.*

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

DEAR SIR:

In response to my conversation with you on yesterday with reference to the thirty and nine-tenths acres of land in Culpeper county, Virginia, being Lot No. 1 and a part of Lot No. 2 in a subdivision of Greenwood, the abstract of title with which you furnished me, I find that the statute under which this property is being purchased is chapter 9 of the Acts of 1918. The second paragraph of this act, which is the only part thereof relating to this question, provides as follows:

"The State Highway Commissioner, with the approval of the Governor, may acquire out of the proceeds of money, now or hereafter available for construction or maintenance of 'The State Highway System' such quarries, gravel pits or plants as may, in his opinion, be necessary for such work."

I am of the opinion that before the State Highway Commissioner is authorized to acquire the quarries or gravel pits mentioned in this act, the purchase of the same must be approved by you. Your approval, however, is limited to the purchase of the property only, and you are required to approve nothing beyond this.

I am returning the abstract of title.

Yours very truly,

LEON M. BAZILE,
Second Assistant Attorney General.

ROADS AND HIGHWAYS—STATE HIGHWAY SYSTEM.

RICHMOND, VA., *May 3, 1920.*

HON. GEO. P. COLEMAN,
State Highway Commissioner,
City.

MY DEAR MR. COLEMAN:

Acknowledgment is made of your letter of April 16th, which is in the following terms:

"I would appreciate very much if you would advise me if, under that part of chapter 10, Acts of 1918, paragraph immediately following Route 28, which reads as follows:

"The State Highway Commissioner shall locate and establish by survey or otherwise, as soon as possible, the exact routes to be followed by the roads comprising 'The State Highway System,' the Commissioner has once made his decision and located and established a route, whether he would have the right to re-consider said decision and take up anew the location and establishment of said route. In other words, advise me when the route has been definitely located and established."

I find nothing in the act itself which would answer this question. I am of the opinion, however, that up to the time expenditures have been made or obligations incurred in connection with the route located and established, that you would have the right to re-consider your previous decision and take up anew the location and establishment of a particular route, provided you felt that some error or mistake had been made in your former decision, and that a more practical route could be established by re-opening the case.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ROADS AND HIGHWAYS—STATE MONEY AID—CONVICTS.

RICHMOND, VA., *March 20, 1920.*

HON. GEORGE P. COLEMAN,
State Highway Commissioner,
Richmond, Virginia.

DEAR SIR:

Acknowledgment is made of your letter of March 26, 1920, in which you request me to advise you upon the following statement of facts:

"One of the counties of the State, which has made application for State money aid for road improvements, has also, through its local road authorities, requested us to try to work out some plan whereby we could give them prison labor to work one of their stone quarries. This we would be very glad to do, provided we have the necessary men, and also provided it is within the law.

"While I feel satisfied that, under the law, this department cannot give to counties both money and convict labor aid during the same year, I would like to have your opinion on the question."

It is provided by section 2108 of the Code of Virginia, 1919, as follows:

"Where a State convict road force is furnished to any county in any year, under the provisions of chapter 87 of this Code, such county shall not be entitled to receive for such year State money aid under this chapter."

While this section prohibits a county from receiving State money aid, under chapter 88 of the Code, in any year in which a State convict road force is furnished that county, by implication it also excludes a county which has received State money aid from having, in the same year, a State convict road force.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

ROADS AND HIGHWAYS—STATE MONEY AID.

RICHMOND, VA., *February 2, 1920.*

HON. G. P. COLEMAN,
State Highway Commissioner,
City.

DEAR SIR:

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

"In December, 1919, the board of supervisors of King George county made application for their proportionate part of State money aid fund and specified the road on which they wished the fund expended. The new board took office on January 1st of this year and has rescinded that application insofar as the location of the road to be improved is concerned. I will, therefore, appreciate it if you will advise me if under this act the board has this right."

It is provided by section 1 of chapter 426 of the Acts of 1918, that the local road authorities of each county shall formulate and lay out a system of county roads in their respective counties which shall be certified to the State Highway Commissioner for his approval, and that the local road authorities to change, add to or take from the said system in their county with the approval of the State Highway Commissioner.

Section 2 of the act provides that after such systems has been certified to the Highway Commissioner, the local road authorities may make application to the Commissioner for State aid for the permanent construction of said roads, or any part thereof, or the maintenance of any section which has been permanently improved, or both, for construction and maintenance, including any bridges embraced within the system, "and be entitled to receive the same when said system has been so approved, and the provisions of this act complied with."

It is provided by section 3 of the act, so far as is applicable to the question here under consideration, as follows:

"* * * Provided further, that if such apportionment for each year shall not be applied for by the local road authorities of any county and such county becomes entitled to receive it according to law * * * before the 1st day of January in each year, the amount so apportioned and set aside for that county, or the amount thereof not so applied for and not so entitled to be received and apportionments hereafter made to any counties remaining in the State Treasury at the expiration of two years after such apportionments have been made, shall thereupon be apportioned as herein provided, among the counties entitled to share in said apportionment as aforesaid, whose local road authorities have heretofore and after the passage of this act, made application according to law, requesting State money aid to the extent of a sum greater than the amount of their said apportionments, respectively."

The above-quoted provision of section 3 of the act, I am of the opinion, merely requires the local road authorities, in order to entitle themselves to their apportionment of the State aid fund to apply therefor before the 1st day of January in each year, but was not intended to prohibit the board from using the fund on different roads from those designated in the appli-

cation, provided such roads are a part of the system of county roads certified to the State Highway Commissioner and approved by him.

I am therefore of the opinion that the board of supervisors of King George county have the right to change the roads upon which these funds are to be applied, subsequent to the date of application provided the roads upon which the State money aid is to be expended, are a part of the county system which has been certified to and approved by the State Highway Commission.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ROADS AND HIGHWAYS—SUPERVISORS.

RICHMOND, VA., *May 17, 1920.*

JULIAN BRYANT, ESQ.,
Commonwealth's Attorney,
Newcastle, Va.

DEAR SIR:

With reference to the question whether the whole board shall make an inspection of the public roads, or each member shall make an inspection of the roads in his respective district, you failed to point me to the place where I can find the quotation contained in your letter, and whether this provision comes under the general road law or a special road law, under which Craig county is operated.

But, reading the section as it stands, without the context, I am of the opinion that the evident intent was for the board as a board, to examine the roads; that is to say, that it was not intended for the various roads to be parcelled out so that the member in each district alone would examine the roads in his district, but that the intent was that the board of supervisors as a board, should make the inspection, so that the whole board could make a comprehensive decision in regard to the needs of the county with respect to roads. Of course, this does not mean that it will be necessary to have every member of the board present when the inspection takes place, but it would be a board inspection rather than an inspection of each individual member separately.

With reference to their services, I agree with you that the supervisors are inadequately paid, but I know of no way to increase their compensation except in two ways—first, under section 2769 of the Code of 1919, if you have a special road law, you can pay the supervisors additional compensation for services rendered thereunder, but this must not exceed \$3.00 a day for the time employed, or \$100.00 a year in addition to what he receives as a supervisor.

The second way, of course, could not be of any assistance now, but if you will read the Acts of Assembly 1918, page 362, you will find out how other counties have managed to increase the compensation of their supervisors, and I see no reason why the good county of Craig should not take

advantage of the same method. I examined this act of the Assembly very carefully to see whether or not Craig might not have been mentioned, but no provision seems to appear therein for it.

If there is any further assistance or information I can give you, I feel sure you know I will be glad to have you call on me.

Yours truly,

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

ROADS AND HIGHWAYS—SUPERVISORS.

RICHMOND, VA., *May 19, 1920.*

J. R. KIRKPATRICK, ESQ.,

Kent's Store, Virginia.

DEAR SIR:

Acknowledgment is made of your letter of May 18, 1920, which, in the absence of the Attorney General, I am taking the liberty of answering. In your letter, you say:

"Please advise me as to the law and power the board of supervisors have regulating capacity of loads on county roads; also about stopping heavy hauling after rains, etc. Our board of supervisors are to be in session next Monday, the 24th inst., and want this information by that time."

It is provided by section 2013 of the Code of Virginia, 1919, as follows:

"The boards of supervisors of the several counties of the Commonwealth shall have power to enact such special and local legislation in their respective counties, not to conflict with the Constitution and general laws of the Commonwealth, as they may deem expedient to protect the public roads, ways and bridges of such county from encroachment or obstruction, or from any improper or exceptionally injurious use thereof, and this power shall extend to, and may be exercised over, turnpike roads, the control of which has been given to said boards of supervisors, whether tolls be taken therefrom or not, except that the board of supervisors shall have no power to limit the hauling of the fruits of farm industry at any time. Any violation of such enactments shall be deemed a misdemeanor."

In *Polglais's Case*, 114 Va., 850, 76 S. E. 897, the Court of Appeals held that a regulation of the supervisors, fixing the loads which might be hauled over the permanent roads of a county on certain width tires and restricting the regulation to haulers of lumber, ties and wood, does not deny to them the equal protection of the laws.

Your attention is also called to section 2014 of the Code of Virginia, 1919, and to chapter 282 of the Acts of 1918, page 461.

Very truly yours,

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

ROADS AND HIGHWAYS—VALLEY TURNPIKE.

RICHMOND, VA., *March 29, 1920.*

HON. GEO. P. COLEMAN,
State Highway Commissioner,
City.

DEAR SIR:

Acknowledgment is made of your letter of March 26th with reference to the funds discovered in the toll house on the Winchester Martinsburg turnpike. The facts in this matter are thus stated in the letter of Hon. T. Russell Cather to you under date of March 5, 1920:

"Pursuant to our conversation of yesterday, I beg to advise that I have found that money was discovered in the toll house on the Winchester and Martinsburg turnpike, in the sum of about \$4,300.00; that after payment of funeral expenses and other legitimate debts, there remains about \$3,600.00. The toll-keeper left an estate of several thousand dollars in addition to this money, but it has been invested for a considerable period of time and I would advise that you accept the sum of \$3,600.00 in satisfaction of any claim you may have against the heirs of the toll-keeper, Mrs. Langley.

"The heirs have offered to pay us \$3,600.00 upon the condition that the Attorney General of Virginia advises that you have the power to give an indemnifying bond indemnifying the heirs of Mrs. Langley's estate against any claim which might be made by the stockholders of the old Winchester and Martinsburg Turnpike Company, which has now been dissolved. If the Attorney General believes that you have a right to give this indemnifying bond and you will give the bond, I think I can secure the payment of the \$3,600.00 at once. The bond should be made to indemnify Mrs. Ruth Franks and Mrs. Naomi Graber as heirs-at-law of Mrs. Sarah J. Langley, deceased, against any claim which may be made by the stockholders of the Winchester and Martinsburg Turnpike Company. As this fund is now in the hands of the heirs of Mrs. Langley and as it has not been deemed advisable to attach the fund, I would suggest that you have this indemnifying bond prepared by the Attorney General's office and forward to me at your earliest opportunity."

I know of no provision of law which would authorize you to execute an indemnifying bond under the circumstances. I would suggest, however, that this money be deposited under an agreement with the heirs of Mrs. Langley's estate in some bank to your credit as State Highway Commissioner; to the credit of Hon. T. Russell Cather and the credit of the attorney for Mrs. Langley's heirs jointly, with the understanding that the money should remain so deposited until such time as you had obtained a release from all of the stockholders of the company, at which time the money should be turned over to the Commonwealth.

This would offer an absolutely safe method for all parties to the transaction, and it seems to me would be suitable to all parties. In making the deposit, however, I would suggest that some bank which is a State depository, be selected, or that a bond covering such deposit be required of the bank in which the same is made.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ROADS AND HIGHWAYS—VALLEY TURNPIKE.

RICHMOND, VA., *June 10, 1920.*

HON. H. F. BYRD,
Winchester, Va.

MY DEAR SENATOR:

Acknowledgment is made of your letter in which you state that Isaac Russell had eight shares and David Russell four shares of stock in the Valley Turnpike Company, which stock was duly recorded in the stock-book, and the minute book shows that the claim was approved; that the secretary died, and in some way the claim was not presented for payment to the treasurer, although authorized by the board of directors. You ask whether it is not possible for this claim to be refunded by the State in the event that the board of directors certify that the claim should have been paid.

I am of the opinion that it was the intention of the legislature that all outstanding stock should be paid, and it was not the intention that through some error of an officer of the company, to preclude the payment, and therefore, that this claim should be refunded upon the certificate of the board of directors of the facts as stated by you.

I have had some correspondence with Mr. Russell in connection with this matter, and I think the proper thing to do would be for you to have the board of directors of the Valley turnpike make a certificate giving all the facts in regard to this matter, and send it to me, then I will take it up with Mr. George P. Coleman. He will recommend the payment to Mr. Russell of these shares of stock. I can then approve it and take it up with the Auditor of Public Accounts and in this way I hope, can adjust the matter. I saw Mr. Coleman to-day and he and I agreed that this was the best mode of procedure.

Certainly, Mr. Russell has done all that could be required of him under the law, and this money should be paid him, in my judgment.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

SALES—CONDITIONAL SALE CONTRACTS, RECORDATION.

RICHMOND, VA., *March 5, 1920.*

MONEYWEIGHT SCALE CO.,
Chicago, Ill.

GENTLEMEN:

Acknowledgment is made of your communication of March 3rd, which, so far as is applicable to the question submitted for my opinion, is as follows:

"We sell scales and slicers throughout the United States, including the State of Virginia. We try to comply with the law in all instances in reference to filing and recording our contracts.

"Now, we are recording our contracts in your State and as the new Code of Virginia provides that the contract has to be acknowledged by both the vendor and vendee and attested by a subscribing witness as to both the vendor and vendee, we have in compliance with this order had our contract signed both by Moneyweight Scale Company and

by the purchaser and have had both signatures attested strictly in accordance with the provisions of your law.

"Now, there is one clerk in your State who absolutely refuses to record our contract, although they are accepted in all other parts of your State. H. L. Kent, deputy clerk of Marion, Va., Smyth county, is of the opinion that the witness or witnesses for both the vendor and vendee *have to appear in his office* to prove the execution of the same. * * * We would be pleased to have you write us regarding this matter. * * *"

The section to which you refer is section 5189 of the Code of Virginia, 1919. This section provides that every sale or contract for the sale of goods and chattels, wherein the title thereto or lien thereon is reserved until the same be paid for in whole or in part, or the transfer of title is made to depend on any condition where possession is delivered to the vendee, shall be void unless recorded. This section, so far as is applicable to the question under consideration, provides:

"* * * Such writing shall be acknowledged or attested by a subscribing witness as to both the vendor and vendee. * * *"

Under this provision, I am of the opinion that your contracts must be acknowledged before a notary public, justice of the peace or other officer authorized to take acknowledgments, both as to you and your vendee or in lieu thereof, there must be an attesting witness as to both the vendor and vendee, and these attesting witnesses must appear before the clerk of the court to prove the same.

The statute does not require, as you say in your letter, that the instrument be both acknowledged and attested, but it offers the parties an option as to which method they prefer. If it is acknowledged by the parties (it does not have to be acknowledged before the same officer by both parties, but you may have both certificates), the attesting witnesses are unnecessary. If the parties do not acknowledge their signatures to the instrument then, it must be witnessed by an attesting witness for the vendor and vendee and these attesting witnesses must prove the same before the clerk. This provision of the statute is perfectly clear, and that this was the object of the revisors is illustrated by the revisors note attached to this section, which reads as follows:

"* * * Attention is called to the requirement of the revised section that the writing itself and not a mere memorandum thereof must be recorded, and that it must be acknowledged or attested by a subscribing witness as to both the vendor and vendee. It would seem that all writings that are recorded should have some proof of due execution. * * *"

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

SALES—CONDITIONAL SALE CONTRACTS, RECORDATION OF.

RICHMOND, VA., *July 8, 1920.*

MR. B. B. ROANE, *Clerk of the Court,*
Gloucester, Virginia.

MY DEAR MR. ROANE:

Acknowledgment is made of your letter, in which you state that you have been advised that this office has ruled that contracts reserving title to property left with the clerk for recordation must be kept in the clerk's office, unless the parties file a memorandum of the same or duplicates.

It is necessary to file the contract or a memorandum of such contract, setting forth the names of the vendor and vendee, the date thereof, the amount due thereon, when and how payable and a brief description of the said goods and chattels, with the clerk for docketing, but as soon as such contract or memorandum thereof is docketed it is proper for the clerk to return it to the person delivering it to be docketed if such person so desires.

In other words, as soon as the clerk has entered upon the proper book the data which he is compelled by law to enter thereon, it is not necessary to retain the contract further in his possession, and he may deliver it to the owner just as a deed or bargain and sale is delivered to the owner after it is recorded.

Yours truly,

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

SALES—CONDITIONAL SALES CONTRACT.RICHMOND, VA., *December 16, 1920.*

MARYLAND CREDIT-FINANCE CORPORATION,
Easton, Maryland.

GENTLEMEN:

I am just in receipt of your letter of December 14, 1920, in which you refer me to section 5189 of the Code of Virginia, 1919, which section was amended by an act of the General Assembly of Virginia, 1920. You desire to be advised whether the five days required by that section are absolutely necessary in order to fully protect the interest of the vendor or holder by assignment against all other parties, etc.

The section as originally adopted by the revisors of our Code did not require the contract to be recorded within five days, but the legislature of 1920, in amending the law, added that provision. It is very doubtful, in my judgment, whether that requirement would hold in court, but inasmuch as our courts have not passed upon this provision of the law, and the requirement seems to be a reasonable one, I see no reason why a vendor should not record his contract within the prescribed time.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

SALES—CONDITIONAL SALE CONTRACTS, RECORDATION OF.

RICHMOND, VA., June 18, 1920.

F. P. EASTMAN,
Deputy Clerk,
Saluda, Virginia.

DEAR SIR:

Acknowledgment is made of your letter of June 17, 1920, in which you quote section 5189 of the Code of 1919, as amended, and then say:

"This section seems to read as if there were to be two papers, an original and a duplicate, the duplicate to be filed and retained in the clerk's office, and the fact that a memorandum of the original has been filed and docketed endorsed on such original."

That portion of section 5189 of the Code of 1919, as amended, provides that a reservation of title, etc., shall not be valid as to creditors and purchasers of the vendee without notice; that:

"* * * Unless such sale or contract be evidenced by writing, signed by the vendor and the vendee, setting forth the date thereof, the amount due, when and how payable, a brief description of the goods and chattels, and the terms of the reservation or condition; and until and except from the time a memorandum of said writing, setting forth the name of the vendor and vendee, the date thereof, the amount due thereon when and how payable, and a brief description of said goods and chattels is within five days after the delivery of the goods to the vendee, filed for docketing with the clerk of the county or corporation, where deeds are admitted to record, as provided by law, in which said goods and chattels may be, and it shall be the duty of such clerk to endorse on such contract the words 'memorandum filed and docketed' together with the day and hour of such filing with the signature of the clerk affixed thereto. * * *"

The language of the statute is crude and somewhat ambiguous, but I am of the opinion that when the object of the statute is sought and the language used read in connection with that object, its proper meaning is that where the title to personal property is reserved or a lien reserved on the same, such reservation of title or lien shall be void as to creditors or purchasers from the vendee for value without notice, unless, first, the sale or contract is evidenced by a writing, signed by the vendor and the vendee, setting forth the amount due, when and how payable, and a brief description of the goods and chattels and the terms of the reservation or condition; and second, until the same or a memorandum thereof, setting forth the required information, has been filed for docketing with the clerk of the county or corporation, as provided by law.

While the parties have the option of executing such an agreement in duplicate, keeping one copy and filing the other with the clerk, I am, nevertheless, of the opinion that one contract is sufficient, provided that contract is filed with the clerk.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

SEARCH WARRANTS.

RICHMOND, VA., *June 28, 1920.*

HON. WM. M. MYERS, *Director,*
Department of Public Safety,
Richmond, Va.

MY DEAR COL. MYERS:

Acknowledgment is made of your letter of June 23rd, with which you enclose a letter from Capt. A. S. Wright, chief of detectives of the city of Richmond, in which he asks four questions with reference to chapter 345 of the Acts of 1920, which questions you request me to examine and pass upon. Captain Wright's first question is:

"Could an officer search for a weapon, immediately after crime is committed, without search warrant?"

Section 4 of chapter 345 of the Acts of 1920, so far as is applicable to the question here under consideration, provides as follows:

"It shall be unlawful for any officer of the law or any other person to search any house, place, vehicle, baggage or thing except by virtue of and under a warrant issued by the proper officer. Any officer or other person searching any house, place, vehicle, or baggage otherwise than by virtue of and under a search warrant, shall be deemed guilty of a misdemeanor. * * *"

It will be seen from the above-quoted language of section 4 of chapter 345 of the Acts of 1920 that its application is limited to the search of any (1) house; (2) place; (3) vehicle; (4) baggage, or (5) thing.

The law is well settled aside from statute, that a person in custody on a criminal charge, may be subjected to a personal search and examination against his will in order to discover upon him evidence of his criminality or for the purpose of discovering weapons upon his person. *Lucchesi v. Commonwealth*, 122 Va. 872, (1918); *State v. Edwards*, 51 W. Va. 220 (1902); Note to 55 Am. St. Rep. 228.

It is equally well settled that a statute is not to be construed so as to repeal by implication well settled principles of law, nor in my opinion is section 4 of chapter 345 of the Acts of 1920, susceptible of a construction which would make it applicable to the search of the person of an individual under arrest for a crime. It is limited in its application to the places or articles enumerated therein and to things which are *ejusdem generis* with the things mentioned in the act.

Therefore, I am of the opinion that an officer or one having authority to place another under arrest for a criminal offense, can lawfully search the person of the person under arrest to discover upon him evidence of his criminality, or weapons which might be used by him in resisting arrest.

Your remaining questions are as follows:

"Could an officer search for papers, money, etc., in a prisoner's house at the time the arrest was being made, without a search warrant?"

"Could an officer search for stolen goods in a prisoner's house at the time the arrest was being made, without a search warrant?"

"Could a house be searched on any of the above questions with the consent of the prisoner or the occupants of the house, without a search warrant?"

The language of chapter 345 of the Acts of 1920, quoted above expressly prohibits any officer of the law or other person, from searching any house or place, etc., *except by virtue of and under a warrant issued by a proper officer*, and makes it unlawful to search any house, place or other enumerated place or thing, except by virtue of and under a search warrant.

Therefore, I am, of opinion that the second, third and fourth questions submitted by Capt. Wright should be answered in the negative. While it would seem that the consent of the prisoners or the occupants of a house, to its search would probably relieve the person making the search from liability for the compensatory and punitive damages provided for by section 4 of the act, I am of the opinion that the consent of the prisoner or the occupants of the house could not have the effect of relieving the officer or person making the search, from the provision of the act, which makes a search without a warrant, a misdemeanor. I think it would be well for you to confer with Hon. Geo. E. Wise, Commonwealth's attorney, and Hon. H. R. Pollard, city attorney, in reference to these matters.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

SEARCH WARRANTS.

RICHMOND, VA., November 17, 1920.

O. L. SHACKLEFORD, Esq.,
Commonwealth's Attorney,
Norfolk, Va.

DEAR SIR:

I beg leave to acknowledge receipt of your letter of November 15th, in which you ask the question whether a search warrant may be lawfully obtained and executed for the search of a hotel, without specifying in the affidavit the number of the room or the part of the hotel to be searched, when based upon the following facts, which facts I quote from your letter:

"A plain clothes police detective is standing near the back door of one of the local hotels; two men, bearing several boxes containing a large quantity of whiskey in bottles, in plain view of the detective, take this whiskey into the hotel building. It may be carried to the garret of the hotel, or to the cellar, or to the clerk's office, or to the kitchen, or to any one or more of the hundred rooms in the building. The detective is unable to designate what part of the building contains the whiskey in question."

In response to your question, I am of the opinion that if the affidavit upon which the search warrant is issued, sufficiently sets forth these facts and reasonably describes the hotel to be searched and the things to be searched for thereunder, and in addition to alleging the material facts constituting the probable cause for the issuing of such warrant, alleges substantially the offense in relation to which said search is to be made, that an officer would have a right under said warrant, to search a hotel building without specifying any particular room or portion of the hotel to be searched.

I am of the opinion that section 1 of chapter 345 of the Acts of 1920 clearly authorizes a search warrant under such circumstances.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

SEARCH WARRANTS—FOR CONCEALED DOGS.

RICHMOND, VA., September 8, 1920.

HON. F. NASH BILISOLY, *Commissioner,*
Department of Game and Inland Fisheries,
Richmond, Virginia.

DEAR SIR:

I am in receipt of your letter of September 7, 1920, with which you enclose an anonymous letter written by a tax-payer in Petersburg to the treasurer of that city, advising him that two dogs are concealed in a certain dwelling located in that city. You state that your game warden applied to a justice of the peace for a search warrant, which warrant was denied him by the justice of the peace. You wish to be advised whether there is any provision in the law for issuing a search warrant in such a case.

If you will examine sections 4819 and 4822, inclusive, of the Code of 1919, you will find the law applicable to search warrants. You will observe from a reading of these sections that there is no provision in the law covering a case of this kind.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

SEARCH WARRANTS—SEARCHES WITHOUT WARRANT.

RICHMOND, VA., August 30, 1920.

HON. FRANK P. BURTON, *Mayor,*
Stuart, Virginia.

DEAR SIR:

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

"What I want to know is, has an officer who is empowered to enforce the laws with reference to intoxicating liquors, a right to enter for the purpose of police inspection without a search warrant, a passenger depot and inspect telegrams that are being sent and received from said depot?"

"We have information that telegrams are being sent from this place for the purpose of notifying certain blockaders as to just what time to come to Stuart in automobiles to receive cars of whiskey, and if the officers have a right, under the proviso in section 4 of the above mentioned act, to inspect the records of the telegraph office here, which is stationed in the passenger depot, it would be a great help to the officers in knowing just when to watch for said automobiles."

It is provided by section 4 of chapter 345 of the Acts of 1920, so far as is applicable to the question here under consideration, as follows:

"It shall be unlawful for any officer of the law or other person to search any house, place, vehicle, baggage or thing except by virtue of and under a warrant issued by the proper officer. Any officer or other persons searching any house, place, vehicle, or baggage otherwise than by virtue of and under a search warrant shall be deemed guilty of a misdemeanor. * * *

"Provided, however, any officer empowered to enforce the game laws and the laws with reference to intoxicating liquors may without a search warrant enter for the purposes of police inspection any freight yard, or room, passenger depot, baggage room or warehouse, storage room or warehouse, train, baggage car, passenger car, express car, Pullman car, freight car, boat or other vehicle of any common carrier, boat, automobile or other vehicle; but nothing in this proviso contained shall be construed to permit a search of any occupied berth or compartment on any passenger car or boat or of any baggage, bag, trunk, box or other closed container without a search warrant."

While, under the terms of the above quoted provisions of section 4 of chapter 345 of the Acts of 1920, an officer empowered to enforce the game laws and the laws with reference to intoxicating liquors may, without a search warrant, enter for the purposes of police inspection any passenger depot, I am of the opinion that this provision would not give an officer the authority to enter those portions of the depot which are not generally open to the public, such as the ticket office where the telegraph office is usually located. I am, therefore, of the opinion that it would be unsafe for an officer to enter that portion of a passenger depot used as a telegraph office for the purpose of examining the telegrams being sent and received there unless the search is made under a search warrant.

Very truly yours,

JNO. R. SAUNDERS,

Attorney General.

SEARCH WARRANTS—SEARCH WITHOUT.

RICHMOND, VA., *September 24, 1920.*

R. B. STEPHENSON, ESQ.,
Attorney-at-Law,
Covington, Va.

DEAR SIR:

Acknowledgment is made of your letter of September 16th, in which you refer to chapter 345 of the Acts of 1920 and then say:

"Under section 4 of said act, there is a provision that any officer empowered to enforce the game law and laws with reference to intoxicating liquors may enter without a search warrant certain enumerated places and vehicles for the purpose of police inspection. I should like to have your reply to the following questions:

"1st. Does this act give an officer the right to search an automobile or other vehicle without a search warrant?

"2nd. If an officer enters any of the enumerated places or vehicles specified in said act and finds there a closed container which he has reasonable cause to believe contains ardent spirits, can he search said container without a search warrant?

"3rd. What is meant by the phrase "for the purpose of police inspection" contained in said act?

"4th. Does this act repeal section 22 of the prohibition act of 1918 with reference to search warrants?"

It is provided by section 4 of chapter 345 of the Acts of 1920, that it shall be unlawful for any officer of the law or any other person to search any house, place, vehicle, baggage or thing except by virtue of and under a warrant issued by the proper officer. The second paragraph of this section then provides:

"Provided, however, any officer empowered to enforce the game laws and the laws with reference to intoxicating liquors may without a search warrant enter for the purposes of police inspection any freight yard or room, passenger depot, baggage room or warehouse, storage room or warehouse, train, baggage car, passenger car, express car, Pullman car, freight car, boat or other vehicle of any common carrier, boat, automobile or other vehicle; but nothing in this proviso contained shall be construed to permit a search of any occupied berth or compartment on any passenger car or boat or of any baggage, bag, trunk, box or other closed container without a search warrant."

(1) In response to your first question, I am of the opinion that while an officer would have the right without a search warrant, to enter for the purposes of police inspection, an automobile or other vehicle, that he would not have the right to search any baggage, bag, trunk, box or other closed container found therein without a search warrant. In other words, I think that an officer's right in the matter would be limited to a casual inspection of exposed articles. When the second paragraph of section 4 of the Act is considered in connection with the first sentence of this section of the act, it is clear that any search without a search warrant, is absolutely prohibited.

(2) The answer to your second question is emphatically no. The second paragraph expressly provides that the act shall not be construed so as to permit a search of "any baggage, bag, trunk, box or other closed container without a search warrant."

(3) In response to your third question, I am of the opinion that the phrase, "for the purpose of police inspection," when considered in connection with the other provisions of section 4, in which this language is used, means an inspection such as would be obtained by entry of the permitted places and a discovery of what was contained therein, without any search being made of the place entered, or its contents.

(4) In response to your fourth question, I am of the opinion that chapter 345 of the Acts of 1920 repeals any provisions of section 22, chapter 388 of the Acts of 1918, or any other act which is in conflict with the provisions of chapter 345 of the Acts of 1920.

Yours very truly,

• JNO. R. SAUNDERS,
Attorney General.

SCHOOLS—APPEALS.

RICHMOND, VA., *March 31, 1920.*

D. W. ALLEN, Esq.,
White Point, Virginia.

DEAR SIR:

Acknowledgment is made of your letter of March 27, 1920, and of your previous letter, which, due to the pressure of official business, I have been prevented from answering before.

In your letter you say that the school board of your district, at a meeting held for the purpose of selecting a site for the district high-school, by a two-thirds majority selected a site which the division superintendent refused to approve. You wish to be advised if there is any appeal from this action of the division superintendent.

It is provided by section 673 of the Code of Virginia, 1919, so far as is applicable to the question here under consideration, as follows:

"No school house shall be contracted for or erected until the site, location, plans and specifications therefor shall have been submitted to and approved in writing by the division superintendent of schools, whose action in each case shall be reported by him to the State Board of Education; * * *

From the above provisions of section 673 of the Code, it will be seen that no school house can be contracted for or erected until the site, location, plans and specifications therefor have been submitted to and approved in writing by the division superintendent of schools. In other words, until the site and location in the case under consideration, selected by the school board, has been submitted to and approved by the division superintendent, there is no final adjudication of the matter, or decision from which an appeal may be taken. An appeal can be taken only to some action of the board which is complete and final. Until such action is completed and final, by the selection of a site or location by the district school board and approval thereof in writing by the division superintendent of schools, as contemplated by section 673 of the Code of Virginia, 1919, there is no such action on the part of the board as would permit an appeal to be taken.

As I have said, until the action of the school board in the selection of the site or location in the particular case is approved by the division superintendent of schools, there is no final settlement of the matter such as would permit an appeal to be taken, as provided for by section 666 of the Code of 1919.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

SCHOOLS—STATE BOARD OF EDUCATION—APPEALS.

RICHMOND, VA., *January 30, 1920.*

HON. HARRIS HART,
*Superintendent of Public Instruction,
Richmond, Virginia.*

DEAR SIR:

Acknowledgment is made of your letter of January 27, 1920, enclosing a petition from certain citizens of Campbell county, requesting a hearing by

the State Board of Education on an appeal from the decision of the district board and electoral board of Campbell county in the matter of the location of the site for certain schools in that county. It is alleged in the position that the site selected by the district school board and approved by the trustee electoral board is not suitable, and the State Board of Education is requested to reverse this ruling, and locate the schools at some other point in the county.

In support of the petition, sections 1466, 1487 and 1489 of the Code of Virginia, 1904, are referred to. These sections, so far as they have not been altered or repealed, are found in the following sections of the Virginia Code, 1919; namely, section 661, 666, and 673.

Section 661 of the Code of 1919, so far as relates to this question, provides that "said board (district school board) shall provide suitable school houses. * * *

Section 666, which refers, among other section, to the action of the district school board under section 661, reads as follows:

"Any five interested heads of families, residents of the district, who may feel themselves aggrieved by the action of any district school board, may, within thirty days after such action, state their complaint in writing to the division superintendent of schools, who, if he cannot within ten days after the receipt of the said complaint satisfactorily adjust the same, shall grant an appeal to the school trustee electoral board, which shall meet in the district where such complaint originated, and shall summon witnesses and decide finally all questions at issue. Any action taken or had by this board shall be recorded in its minutes and also in the record book of the district board whose action is reviewed."

This section merely gives the right of appeal to five interested heads of families, residents of the district, from the action of the district school board to the school trustee electoral board in the event that the division superintendent of schools cannot satisfactorily adjust the same within the time prescribed by the statute. No appeal from the decision of the school trustee electoral board in such matters to the State Board of Education is conferred by this section of the Code.

Nor is such right of appeal to the State Board of Education given by section 673 of the Code of Virginia, 1919. This section merely provides, so far as is applicable, that no school house shall be contracted for or erected until the site, location, plans and specifications therefor shall have been submitted to and approved in writing by the division superintendent of schools, and that the action in each case shall be reported by him to the State Board of Education.

I am, therefore, of the opinion that the State Board of Education has no jurisdiction of such an appeal, and that the same should be dismissed.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

SCHOOLS—TEACHERS—APPEALS FROM DECISION OF DISTRICT BOARD

RICHMOND, VA., *December 7, 1920.*

N. G. PAYNE, ESQ.,
Attorney at Law,
Madison, Va.

DEAR SIR:

I beg leave to acknowledge receipt of your letter of December 3rd. In this you state that in August, 1920, the district school board employed a principal for a certain school in Madison county, who took charge of the same in September last, and is still in charge thereof. You state that a few days ago, certain patrons preferred charges against the principal, asking for his dismissal, which the district school board, after hearing the evidence, refused to do. You then ask if the school trustee electoral board has any jurisdiction in the matter. Section 666 of the Code of 1919, provides as follows:

"Any five interested heads of families, residents of the district, who may feel themselves aggrieved by the action of any district school board, may, within thirty days after such action, state their complaint in writing to the division superintendent of schools, who, if he cannot within ten days after the receipt of the said complaint satisfactorily adjust the same, shall grant an appeal to the school trustee electoral board, which shall meet in the district where such complaint originated, and shall summon witnesses and decide finally all questions at issue. Any action taken or had by this board shall be recorded in its minutes and also in the record book of the district board whose action is reviewed."

I am of the opinion that this section is applicable to the case in question. Of course, the appeal from the action of the district school board must be taken within thirty days or else the parties appealing would be too late. The thirty days, in my judgment, date from the time of the action of the district school board.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

SCHOOLS—BONDS.

RICHMOND, VA., *February 9, 1920.*

DR. W. H. ARTHUR, *Clerk,*
Franklin Town School Board,
Franklin, Va.

MY DEAR SIR:

Please pardon my delay in replying to your letter of January 31st, but somehow it got covered up on my desk and I failed to run across it until this morning. I trust very much the delay in my reply caused you no trouble.

You state it is the desire of the town of Franklin, which is a separate school district, to borrow money to build a high school within the town. You further quote section 175 of the Virginia school law, which gave to town councils the authority to borrow money to build school houses along with

other buildings provided that they do not borrow more than eighteen per cent of the assessed valuation of the property of the town.

You then ask if it is necessary to have the legislature enact a law authorizing the town council to borrow the money for this purpose. If you will read sections 3079 and 3080 of the new Code, you will see that any city or town of this Commonwealth which is authorized to issue bonds for the building or improving of school buildings provided that the amount including existing indebtedness, shall not at any time exceed eighteen per cent of the assessed valuation of the real estate in the city or town. Section 3080 provides what indebtedness is not to be considered when such bonds are issued.

You will therefore see from the reading of these sections, that it will not be necessary to have a special act of the legislature for the purposes indicated in your letter provided you do not go beyond the eighteen per cent.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

SCHOOLS—BONDS, LIMIT OF INDEBTEDNESS.

RICHMOND, VA., October 22, 1920.

J. H. BRENT, Esq.,

*Division Superintendent of Schools,
Hampton, Va.*

DEAR SIR:

Acknowledgment is made of your letter of October, 1919, in which you say:

"The school boards of this county are preparing to go before the county board of supervisors with requests for permission to call elections on bond issues for the schools.

"They have been confronted with a quotation from the Virginia Code, specifying that only seventeen per cent of the assessed values in real estate may be used as a basis for issuing bonds.

"The question has arisen as to whether this applies to schools only or whether the seventeen per cent means the total amount of bonded indebtedness for all purposes that may be incurred in any district.

"I will appreciate very much indeed if you will let me have an opinion on this as soon as possible."

Section 765 of the Code of Virginia, 1919, so far as is applicable to the question here under consideration, provides as follows:

"* * * But no such bonds shall be sold for less than their par value, and at no time shall the aggregate amount of bonds issued and outstanding in any school district exceed seventeen per cent of the aggregate assessed value of real estate located in such school district."

I am of the opinion that the indebtedness referred to means the total amount of bonded indebtedness for all purposes that may be incurred in any district.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

SCHOOLS—CHINESE PUPILS.

RICHMOND, VA., *September 8, 1920.*

MR. F. S. COLLIER,
Attorney at Law,
Hampton, Va.

DEAR MR. COLLIER:

I am just in receipt of your letter of September 7th regarding the admission of the Chinese boy to the public schools of the city of Newport News. You state in your letter that Superintendent Dutrow wishes to be advised if this boy can be admitted to the white public schools in that city. Section 719, so far as is applicable to your question, provides as follows:

"The public free schools shall be free to all persons between the ages of seven and twenty years residing within the school district, * * * provided that white and colored persons shall not be taught in the same schools, but shall be taught in separate schools, under the same general regulations as to management, usefulness and efficiency."

This is the only law I know of which would seem to bear on this question. There can be no doubt but that the Chinaman is not a colored person within the definition of the statute, nor should he be classed with the white or Caucasian race. I would therefore say that this is a matter which should be settled by the local school board of Newport News.

Inasmuch as Chinese are admitted to our colleges and universities, I can see no reason why the school board would not have the authority to permit them to attend the public schools. I presume the report of the boy in question which you enclose me from the Norfolk public schools, was given by the principal of one of the white schools in that city. I have just talked with Superintendent Hart, and he concurs in this view.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

SCHOOLS—ERECTION OF BUILDINGS.

RICHMOND, VA., *June 16, 1920.*

C. W. HARRINGTON, Esq.,
Virginia Fruit and Farm Corporation,
North Garden, Virginia.

DEAR SIR:

Acknowledgment is made of your letter of June 5, 1920, addressed to His Excellency, the Governor of Virginia, and by him referred to this office for attention. In your letter, you say:

"Judge Duke, of the electoral board, states that it is not necessary for the district trustees to call a meeting of the voters of a district to ascertain their wishes in regard to a site for a new high school, costing around \$40,000, but that the trustees may decide by themselves and that the decisions stands. Is this correct?"

I find nothing in the Code which requires district trustees to call a meeting of the voters of the district to ascertain their wishes in regard to the selection of a site for a new school. Section 661 of the Code of 1919 provides, among other things, that "it shall be the duty of the district school board to call meetings of the people of the district for consultation in regard to the school interests thereof * * *," but these meetings seem to have no reference to the further provision of the section that the board shall provide suitable school houses with proper equipment. Your attention is also called to section 648 of the Code of Virginia, 1919.

For your information, I am here quoting section 666 of the Code of 1919:

"Any five interested heads of families, residents of the district, who may feel themselves aggrieved by the action of any district school board, may, within thirty days after such action, state their complaint in writing to the division superintendent of schools, who, if he cannot within ten days after the receipt of the said complaint satisfactorily adjust the same, shall grant an appeal to the school trustee electoral board, which shall meet in the district where such complaint originated, and shall summon witnesses and decide finally all questions at issue. Any action taken or had by this board shall be recorded in its minutes and also in the record book of the district board whose action is reviewed."

Very truly yours,

JNO. R. SAUNDERS,

Attorney General.

SCHOOLS—DISTRIBUTION OF SCHOOL FUNDS.

RICHMOND, VA., August 4, 1920.

HON. LEWIS JONES,
Commonwealth's Attorney,
Urbanna, Virginia.

MY DEAR LEWIS:

I beg leave to acknowledge receipt of your letter of July 30th, written in response to mine of July 28th, in which I desired certain information before replying definitely to a former communication of yours, dated July 23, 1920.

For convenience, I quote your letter of July 23, 1920:

"Section 647 of the Code of Virginia, 1919, provides that the county school board shall apportion the county school fund among the several districts of the county according to its judgment, etc. Our county school board, at a meeting held last year, passed a resolution to the effect that the county school fund should be apportioned among the several school districts in proportion to the school population of each district. The treasurer of the county followed this resolution in proportioning the funds in every district except the town of Urbanna. In the town of Urbanna, he proportioned the funds according to the assessed value of the property. He did this because the charter of the town, section 19, provides that the county shall not collect any taxes in the town of Urbanna for school purposes, if the town maintains its own schools. In May, 1919, the town of Urbanna became a separate school district, the treasurer of the county, at the request of the town,

collected the school taxes in the town just as he had done before the Urbanna school district was formed. The charter of the town can be found in the Acts of Assembly, 1901-2, page 816.

"Kindly advise me whether our treasurer acted right in paying this money to Urbanna in the manner indicated above?"

In your letter of July 30, 1920, you state that the board of supervisors of Middlesex county did include, in the school levy made by said board on April 18, 1919, the property in the town of Urbanna. You further state that the town of Urbanna became a separate school district on April 25, 1919.

The part of section 647 of the Code of 1919 which is applicable to the question under consideration, reads as follows:

"The county school fund shall be apportioned by the county school board among the several districts of the county according to its judgment, having due regard to maintain, as far as practicable, a uniform term throughout all of the districts. * * *"

You state that the county school board of Middlesex county, at a meeting held last year, decided, by resolution, that the county school fund should be apportioned among the several school districts in proportion to the school population of each district.

Unquestionably the taxes collected in pursuance of the school levy made by your board of supervisors on the 18th of April, 1919, constituted the county school fund. In this levy was embraced the property in the town of Urbanna. Such being the case, it was entirely right and proper that the treasurer of Middlesex county should collect the school taxes in the town of Urbanna, regardless of whether or not he was requested by the town to do so. When this collection was made, the taxes so collected became a part of the county school fund, and the county school board had a perfect right to apportion the entire fund according to its judgment.

It is true that section 19 of the charter of the town of Urbanna provides that the said town shall be exempt from the payment of any school tax to or by the county of Middlesex provided the said town shall maintain its schools, but at the time the school levy was made by the board of supervisors of Middlesex county, the town of Urbanna had not become a separate school district, and, therefore, was not maintaining its own schools.

Such being the case, I am of the opinion that the distribution of the funds was a matter in the discretion of the county school board, and said board had a right to apportion them according to the school population of the several school districts in the county.

I have discussed this matter with Hon. Harris Hart, Superintendent of Public Instruction, and he concurs in this view.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

SCHOOLS—FUNDS OF.

RICHMOND, VA., *December 23, 1920.*

HON. HARRIS HART, *Superintendent,*
Public Instruction,
Richmond, Va.

DEAR MR. HART:

I am just in receipt of your letter of the 21st, in which you enclose a letter from Hon. Robert Watson, president of the United States Housing Corporation, which letter concerns the using the State funds for school purposes at Craddock and Truxton, Virginia.

In the third paragraph of Mr. Watson's letter he states that the Housing Corporation is empowered to grant permission to the State Board of Education to use the schools because of the benefit to the public interests, but it cannot assume to grant more than a mere revocable license *subject to termination at any time at the will of the government.*

Mr. Watson further states that such a license will confer no contractual right upon the board and cannot be extended for a longer time than may be necessary to meet the demand of the existing situation.

This permission on the part of the Housing Corporation is too uncertain and too indefinite, and I would suggest that until something more definite and fixed can be obtained from this corporation in the way of a contract with the State Board of Education, that this matter should be held in abeyance.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

SCHOOLS—FUNDS OF.

RICHMOND, VA., *December 23, 1920.*

MR. J. D. SMITH,
Petersburg, Va.

DEAR SIR:

Replying to yours of the 18th instant, I am of the opinion that your school board would have no authority to use State funds for the purpose of conducting a cafeteria in your high school.

If it is necessary to run a cafeteria, it seems to me your town council could easily appropriate a part of the funds which they give for school purposes for this purpose. The situation might be remedied in this manner.

Yours very truly,

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

SCHOOLS—DISTRICTS.

RICHMOND, VA., *January 27, 1920.*

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

MY DEAR HART:

Acknowledgment is made of your letter of recent date, in which you request my opinion on the following question:

"The Constitution, section 133, provides that each magisterial district shall constitute a separate school district, unless otherwise provided by law. Does this section give to the legislature powers broad enough to make the county the unit of operation, or does it simply give the right to change the boundaries of school districts from those of the magisterial districts? In other words, has the legislature, under this section, sufficiently broad powers to eliminate the school district altogether and establish the county as the basis of operation?"

It is provided by section 133 of the Constitution:

"Each magisterial district shall constitute a separate school district unless otherwise provided by law. In each school district, there shall be three trustees selected in the manner and for the terms of office prescribed by law."

The provision "each magisterial district shall constitute a separate school district, *unless otherwise provided by law*, unquestionably confers upon the General Assembly the power to provide otherwise by law.

The law is well settled that the General Assembly in being endowed by the Constitution with the legislative power of this Commonwealth, possesses not only granted, but supreme power, the exercise of legislative powers being limited and restrained only by the express terms of the Constitution or the necessary implications therefrom. *Prison Asso. v. Ashby*, 93 Va. 667 (1896). *Commonwealth v. Drewry, et als*, 56 Va. 1, 5 (1858).

Not only does section 133 not prohibit the legislature from providing otherwise than as is provided by the first sentence thereof, but the last part of that sentence unquestionably means that the legislature shall have this power.

While the legislature has this power, I am of the opinion, nevertheless, that its power does not extend to the abolition of the school district, nor does it have the power to change the provisions of the second sentence of section 133 of the Constitution, which requires that there be three trustees in each school district. In other words, while the legislature has the authority to make each county a school district, for instance, it has not the power to add to or take from the number or trustees prescribed for such district by the second sentence of section 133 of the Constitution.

Yours truly,

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

SCHOOLS—TRUSTEES—WHO ELIGIBLE.

RICHMOND, VA., December 7, 1920.

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

DEAR SIR:

Acknowledgment is made of your letter of December 6th, in which you enclose a letter of December 1st from Hon. Bruce R. Richardson, superintendent of schools of Hot Springs, Virginia, on the subject raised, in which letter you request my opinion. In his letter, Mr. Richardson says:

"Mr. John W. Stephenson, Jr., Warm Springs, Va., our Commonwealth's attorney, has requested that I get from you the opinion of the Attorney General as to whether women can be appointed as school trustees.

"There is some difference of opinion among the lawyers of the county as to whether the amendment becomes effective at once or will have to receive the vote of the General Assembly and be enacted into law.

"If the opinion of the Attorney General is favorable, it is our purpose to make two appointments in the county on the receipt of your advice, and thereby run some tried and true men out of the school business."

Mr. Richardson no doubt refers to section 133 of the Constitution of Virginia as amended. This section, together with the proposed amendments to the Constitution, was ratified by a majority of the voters in the November, 1920, election, at which time it was submitted to the voters of the State for approval. (Chapter 346 of the Acts of 1920).

Mr. Richardson evidently overlooked the fact that by reason of the adoption of the Nineteenth Amendment to the Federal Constitution, the amendment to section 133 of the Virginia Constitution, was unnecessary so far as the eligibility of women to be appointed school trustees was concerned.

Section 32 of the Virginia Constitution, so far as is applicable, provides: "Every person qualified to vote shall be eligible to any office of the State, or of any county, city, town or other subdivision of the State wherein he resides, except as otherwise provided in this Constitution. * * *"

This section has also been amended (chapter 349 of the Acts of 1920), but not in a manner so as to affect the matter here under consideration.

Under the provisions of the Nineteenth Amendment to the Federal Constitution and chapter 400 of the Acts of 1920, the women of Virginia are now eligible to vote on the same terms with men and under the provisions of section 32 of the Constitution, are now eligible to any office of the State or of any county, city, town or other subdivision of the State wherein they reside, except as otherwise provided in this Constitution.

As it does not appear to be otherwise provided in the Constitution, I am therefore of the opinion that women are at the present time eligible for appointment as school trustees if qualified to vote. This being so, it is unnecessary to answer the question raised in Mr. Richardson's letter as to when the Amendment to section 133 of the Virginia Constitution becomes effective.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

SCHOOLS—TRUSTEES, QUALIFICATION OF.

RICHMOND, VA., July 29, 1920.

MR. HOWELL M. MILLER,
Washington, Virginia.

MY DEAR MR. MILLER:

I beg leave to acknowledge receipt of your favor in which you quote the following provision contained in section 786 of the Code of Virginia, 1919, as amended:

"No 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 school trustee. * * *"

This has been the law for a number of years and is not a recent statute. From a reading of the same, it is very difficult to tell whether the law was intended to apply to members of city councils only, or to members of town councils as well, but the language "no member of council or any officer thereof" would seem to embrace members of councils regardless of whether of cities or towns. The only way in which the matter can be finally determined is to have a decision of the court.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

SCHOOLS—QUALIFICATION OF TRUSTEES.

RICHMOND, VA., August 28, 1920.

HON. S. P. POWELL,
Spotsylvania, Va.

DEAR SIR:

In the absence of the Attorney General from the city, I am replying to your letter to him of August 27th.

In your letter you ask whether a member of the local board of review; justice of the peace, or precinct registrar or a member of the county board of health, could serve as a district school trustee. It is provided by section 637 of the Code of Virginia, 1919, as follows:

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

It is provided by the second paragraph of section 786 of the Code of Virginia, 1919, as amended, 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."

In an opinion given Hon. W. W. Sale, Adjutant General of Virginia on December 24, 1917 (Report of Attorney General 1919, page 209), Attorney General Pollard held that members of the local boards of review and justices of the peace, are State officers. Therefore, one holding either office is not eligible to serve as a district school trustee. Members of the boards of health are, by the provisions of section 786 of the Code of Virginia, 1919, as amended, permitted to serve as school trustees.

With reference to the registrar, I call your attention to section 86 of the Code of Virginia 1919, which, among other things, provides that a registrar "shall not hold any office by election or appointment during his term," and which further provides that "the acceptance of any office, either elective or appointive, by such registrar, during his term of office, shall, *ipso facto*, vacate the office of registrar."

From an examination of the opinion of Attorney General Pollard above referred to, you will see that the opinion was expressed that school trustees are State officers.

Trusting this gives you the desired information, I am,

Yours truly,

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

SCHOOLS—POWERS OF SCHOOL BOARDS.

RICHMOND, VA., *September 27, 1920.*

J. W. KELLY, *Chairman,*
Big Stone Gap School Board,
Big Stone Gap, Va.

DEAR SIR:

Acknowledgment is made of your letter of the 17th instant, in which you say:

"I wish you would give me your opinion as to whether the trustees of Big Stone Gap school district has the power to purchase school property under the following state of facts:

"Big Stone Gap is a separate school district, and last April we had an election in said school district, ordered by the circuit court of Wise county, authorizing the qualified voters of the school districts to vote on the question as to whether or not the trustees shall issue bonds in the sum of \$35,000 for the purpose of building and furnishing an additional school house. The election was regular in every respect, and resulted in favor of the bond issue by a very decided majority.

"The petition upon which this election was ordered showed that the school building to be erected out of the proceeds of the bonds authorized by such election, should be erected on the plat of land situate in the town of Big Stone Gap, Wise county, Virginia, and according to the plans, specifications and estimated costs, filed with said petition, which land was then and still is owned by the said school board.

"Since said election it turns out, owing to the high cost of material and labor and the inability of the trustees to sell said bonds advantageously, the trustees have decided to purchase other property for school purposes.

"The other property that the trustees contemplate purchasing is located in the town of Big Stone Gap, Wise county, Virginia, and is

deemed desirable for school purposes, and the division superintendent of schools for this county, as well as the State Superintendent of Public Instruction has approved the purchase.

"The trustees have agreed to pay \$30,000 for this property, and are executing their six negotiable notes for \$5,000 each, payable in five years, with interest from date, interest payable semi-annually. Can the trustees make this deal?"

It is provided by section 767 of the Code of Virginia, 1919, which relates to the use and disposition of the proceeds of bond issues under chapter 34 of the Code, the chapter under which you proceeded, as follows:

"The proceeds realized from the sale of any such bonds issued under the provision of this chapter, shall not be used for any other purpose than that of erecting school buildings and furnishing the same."

It appears from this that your board has no authority to expend the fund raised from the bond issue in the purchase of real estate, but that the same must be used only for the purpose of erecting a school building and furnishing the same.

Yours very truly,

J. D. HANK, JR.,

Assistant Attorney General.

SCHOOLS—LITERARY FUND.

RICHMOND, VA., April 3, 1920.

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

MY DEAR MR. HART:

Acknowledgment is made of your letter of March 31st, in which you request my opinion upon the following statement of facts:

"The Norfolk county school board desires to secure a loan from the Literary Fund for the Pleasant Grove and Butts Road districts. These districts are about to issue twenty year bonds, such bonds to constitute a lien on the school property. The amount of the bonds will be fifty thousand dollars for each district.

"In this circumstance, is it your opinion that the same districts may negotiate a loan of about \$7,500.00 each from the Literary Fund?"

It is provided by section 766 of the Code of Virginia, 1919, that bonds issued by a district school board under the provisions of section 765 of the Code of 1919, "shall be a lien upon the school property elected and procured with the proceeds of the sale of any such bonds for the payment of the principal thereof and the interest to accrue thereon; and if it shall be so stated on the face of the bonds, it shall be a lien on all the school property of the school district issuing and selling the same for the payment of the principal thereof and of the interest to accrue thereon."

It is provided by section 762 of the Code of Virginia as follows:

"Before making any loan under this chapter, the State Board of Education shall be satisfied that the school district or board borrowing the fund has a good and sufficient title in fee to the real estate on which the proposed building is to be erected, or that the same has been leased by the local school authorities for a period of twenty years, or more, upon such terms that there is no liability of the loss of any money that may be loaned under the provisions of this chapter, *and that the same is free from incumbrances*, and shall take proper measure to secure the expenditures of the money for the purpose for which it is loaned; and in cases where loans are made for the enlargement of school houses, previous loans thereon made from the literary fund shall not be considered an incumbrance within the meaning of this section; but in no case shall the total amount of loans from the literary fund be in excess of the amount herein prescribed, nor more than two-thirds of the cost of such school house and the addition thereto."

You will see that before a loan could be made it would have to appear that the title to the property upon which the loan was made was free from encumbrances. In the case under consideration the title to the property upon which the proposed loans are sought, would not be free from encumbrances, and I am therefore of the opinion that the proposed loans cannot be made.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

SCHOOLS—LOANS FROM LITERARY FUND.

RICHMOND, VA., July 8, 1920.

WILLING BOWIE, Esq.,
Commonwealth's Attorney,
Bowling Green, Va.

DEAR SIR:

Acknowledgment is made of your letter, in which you ask whether a school board can borrow money from the Literary Fund for the purpose of erecting a teacher's house on a high school site.

If the house is built upon property in which the school board owns the fee, or has leased it for the requisite number of years, and the school board has full control of the property, the State Board of Education is authorized to make a loan from the Literary Fund for the erection of such building.

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

Yours truly, .

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

SCHOOLS—LOANS, FORMS FOR, CONTENTS.

RICHMOND, VA., *September 9, 1920.*

HON. HARRIS HART,
*Superintendent of Public Instruction,
Richmond, Virginia.*

DEAR SIR:

Acknowledgment is made of your letter of September 8, 1920, in which you say:

"I believe that in recent months you are requiring on the blanks for loans from the Literary Fund that the certificate of the court shall have recorded the page in the deed book on which title is entered. Rather unfortunately, the form of application does not provide for just this information. If the information is necessary and pertinent, there would be no trouble about getting it, if we had only asked the question on the regular form. This form, you recall, was submitted to and approved by your office before it was printed.

"In the present circumstances, we are compelled to send every one of the applications back to the local school board to have this information entered. This we want to continue to do, if it is really necessary, will you be good enough to advise whether, in your opinion, this information is positively necessary and whether it adds materially to the validity of the certificate of the court?"

The number of the deed book and the page whereon the instrument referred to is recorded is not necessary to give the instrument validity, but it saves a great deal of trouble, difficulty and confusion, and I shall, therefore, insist that it be inserted in the certificate. It is a matter which should cause the local school officials no trouble, while, on the other hand, in the even that collection of the loan is to be enforced, it would be the means of saving this office much unnecessary trouble.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

SCHOOLS—TITLE TO SCHOOL PROPERTY.RICHMOND, VA., *July 19, 1920.*

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

DEAR SIR:

Acknowledgment is made of your letter of recent date enclosing a deed from the superintendent of Tazewell county to a school lot in the town of Pocahontas, Virginia, with which you enclose a copy of the deed and the letter from the superintendent of schools. In this letter, he says that the attorney who was appointed to examine the title has some misgivings as to the title, and before having the deed executed, he thought it would be well to submit the same to me for an opinion.

I wrote the superintendent of schools for further information as to this matter, and my letter was referred to Messrs. Harman & Harman, attorneys-

at-law who examined the title and who in their letter express a doubt as to the validity of the title to the property in question.

The law expressly requires, in addition to other things, that the title to real estate acquired for school purposes, must have been examined and approved in writing by a competent and discreet attorney-at-law designated by the judge of the circuit court for the circuit wherein the real estate is located, and that the evidence of title must have been submitted to the circuit court or the judge thereof in vacation, for approval, which approval must have been entered of record by the clerk of the court, and that the certificate of the attorney examining the title must show that the school board has a good and sufficient title in fee to the real estate on which the proposed building is to be erected, and that the same is free from encumbrances.

Inasmuch as the attorneys who examined the title to the property in question, have expressed a doubt as to the validity of the same, I cannot approve the title to the real estate in question for a loan made thereon.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

SCHOOLS—RELEASE OF LIENS ON SCHOOL PROPERTY.

RICHMOND, VA., *July 26, 1920.*

HON. GEORGE L. BROWNING,
Orange, Virginia.

MY DEAR SIR:—

I beg leave to acknowledge receipt of your letter of July 22nd, in which you advise me that the district school board of the county of Orange desires to sell three acres of the Gordonsville Public School lot, having a residue of six acres for school purposes. You further state that the proceeds from this sale will be turned over to the Literary Fund, which holds a lien upon the entire nine acres. You wish to be advised how a release of the lien, so far as the three acres sold, can be perfected in order to give the purchaser a clear title.

It is customary, where a school district pays off a lien held by the Literary Fund, for the Second Auditor to write a letter stating that the lien has been satisfied. However, I know of no special provision in the law which covers the particular case you cite.

Presuming that the six acres, with the buildings thereon, will be ample security for the residue of the loan, I would suggest that the best way to arrange the matter would be for a new loan to be obtained on the six acres and buildings. In this way the present loan can be discharged and a lien would be created only on the six acres and buildings left. However, if the purchaser would be satisfied by having the Second Auditor unite in the deed conveying him the three acres, this can be done after submission of the matter to the State Board of Education, they being satisfied that there is ample security left for the balance due.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

SCHOOLS—SUPERINTENDENTS OF.

RICHMOND, VA., October 8, 1920.

HON. C. CONWAY BAKER,
Commonwealth's Attorney,
Montross, Va.

MY DEAR SIR:

I beg leave to acknowledge receipt of your letter of recent date, in which you state that the board of supervisors of Westmoreland county, has declined to appropriate their proportionate part of the salary of Mr. Blake T. Newton, superintendent of schools for Westmoreland and Richmond counties, due to the fact, it is claimed, that he does not give his entire time to the duties of his office.

You then state that the board requests my opinion in reference to this matter. In reply, I will state that this matter is purely a question of fact, and I do not think that it would be proper for me to express an opinion in connection therewith.

Mr. Newton has been in my office since your letter was received and discussed this with me. He also went to see Superintendent Hart.

You state in your letter that Mr. Newton is engaged in farming and also in the active practice of law. There are very few superintendents in the State, who do not to some extent, engage in farming work. Mr. Newton tells me that he does very little of this work himself, but that his farm is worked by tenants. He also states that while he has a license to practice law, at the same time, he is not actively engaged in practice, but as it is only my duty to construe the law, I certainly would not undertake to pass upon a question of fact between Mr. Newton and the board of supervisors of your county.

I construe the law which requires superintendents of schools to give their whole time to the duties of their office, to mean that they should not engage in any other work or occupation which interferes with their duties as superintendents. I feel sure you will appreciate my position in this matter.

I am forwarding a copy of this letter to Superintendent Hart, under whose supervision this matter really comes. I am also sending a copy of it to Mr. Newton.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

SCHOOLS—TAX RATE.

RICHMOND, VA., March 8, 1920.

DR. A. J. HURT,
Chester, Va.

DEAR SIR:

Acknowledgment is made of your letter of March 5th, in which you say:

"I would be glad if you would give me the following information. Section 135 of the Constitution of Virginia and section 740 in recent Code of Virginia seems to conflict in regard to amount of taxes which the board of supervisors may be allowed to lay for support of schools."

You then request my opinion as to the power of your board to lay a levy of seventy-five cents for school taxes under the provisions of section 740 of the Code of Virginia, 1919. It is provided by section 136 of the Constitution that:

"Each county, city, town if the same be a separate school district, and school district is authorized to raise additional sums by a tax on property, not to exceed in the aggregate five mills on the dollar in any one year. * * *"

It will be seen from the above quotation that in levying local school taxes, the supervisors are not authorized to exceed the sum of five mills on a dollar in any one year.

Section 740 of the Code of Virginia, 1919, in authorizing a levy in excess of this amount, is in conflict with this provision of the Constitution and to the extent of such conflict, is invalid.

Of course, if, as you say in your letter, the people of your county are willing to pay the extra tax in order to retain efficient teachers, I can see no objection to their doing so, but I am of the opinion as I have said, that your board has no authority to lay a levy in excess of the maximum authorized by section 136 of the Constitution.

The question of amending this section of the Constitution is before the General Assembly at the present time and will be probably submitted to a vote of the people in the near future. The proposed amendment to this section of the Constitution, I am informed, leaves it optional with the legislature to fix the maximum amount of the levy.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

SCHOOLS—TAX RATE.

RICHMOND, VA., April 30, 1920.

MR. W. B. DAVIE,
South Richmond, Virginia.

MY DEAR SIR:

I am just in receipt of your letter of the 30th instant, in which you state that you desire to be advised as to what is the limit fixed by the Constitution for the levy to be made by the board of supervisors for county school purposes.

This is a matter which falls within the jurisdiction of your Commonwealth's attorney, and I would suggest that you consult him concerning it; however, as a courtesy to you, I very gladly give you my views on the subject.

It has been repeatedly held by my predecessors in office, as well as by me, that the limit fixed by section 136 of the Constitution for a county school levy is fifty cents on the \$100.00. I might further add that, in some of the counties, the boards of supervisors have exceeded this limit, and in some cases such action on their part has been contested in the circuit courts, the courts holding that fifty cents is the limit.

I will still further say that a resolution was introduced in the legis-

lature of Virginia at its session of 1918, and again in 1920, which resolution seeks to amend this section of the Constitution. This amendment will be voted upon at the fall election.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

SCHOOLS—LIMIT OF COUNTY AND DISTRICT LEVY.

RICHMOND, VA., June 2, 1920.

C. S. TOWLES, Esq.,
Attorney-at-Law,
Reedville, Va.

MY DEAR SIR:

Acknowledgment is made of your letter of recent date, in which you state that the board of supervisors of Cumberland county at their April meeting in 1920, raised the county school levy to forty cents on the \$100.00 of property and the district school levy to thirty-five cents on the \$100.00 of property, making the total levy seventy-five cents.

You further state that there is some talk of testing the constitutionality of this levy and you desire an opinion in reference thereto. In reply I will state that it is my opinion, and it has been so held a number of times by my predecessors in office that the Constitution limits the levy to fifty cents on the \$100.00 of property. As you know, a resolution seeking to amend the Constitution, has twice passed the legislature of Virginia, removing this prohibition to the Constitution, and will be voted upon at the November election. That, I think, is a strong argument in favor of the above view.

Again, I might state that I am informed that the constitutionality of a larger levy by the board of supervisors, has been tested in several courts in the State and they held that fifty cents was the limit. The matter has not come before the Supreme Court.

You desire also to be advised if your board of supervisors, having already laid the levy and as such levy is contrary to the Constitution, can they now change the school levy to fifty cents on the \$100.00 and add twenty-five cents to the county levy provided for in section 2720 of the Code of 1919.

As you know, the law requires that all levies made by the board of supervisors shall be made not later than the April meeting. I do not think your board would have any authority now to add to any levy, but I am of the opinion that they would have the authority to reduce an illegal levy. I fully realize that the schools throughout the State are suffering for lack of funds and it seems unfortunate that the citizens are unwilling to pay this increased levy even though it might be contrary to the law. Of course, if no one would contest the constitutionality of your levy it would be all right.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

SCHOOLS—TAX RATE.

RICHMOND, VA., *May 19, 1920.*

JESSE EWELL, JR.,
Ruckersville, Virginia.

DEAR SIR:

Acknowledgment is made of your letter of May 10, 1920, which I am taking the liberty of answering in the absence of the Attorney General.

In your letter, you say:

"The school board and some of the patrons in the Ruckersville magisterial district of Greene county are desirous of raising the district school levy to the maximum this year. The board of supervisors, in April meeting, made the levy according to law. The question is: Can this levy be re-opened, or must it stand as it is?"

By section 2720 of the Code of Virginia, 1919, it is provided, so far as is applicable to the question here under consideration, as follows:

"The board of supervisors of each county shall have power, and it shall be their duty, at regular meeting in the month of January, in each year or as soon thereafter as practicable, not later than their meeting in April, to fix the amount of the county levies for the current year; * * *

It is provided by section 2721 of the Code, so far as is applicable to the question here under consideration, as follows:

"The board of supervisors shall, at the time provided by preceding section, have power to levy a tax upon all the property in the county, upon which county levies are laid sufficient to raise the amount recommended by the county school board in their estimates for county school purposes, or so much thereof as it may allow; and to levy a tax upon such property, in each school district, sufficient to raise the amount recommended by the county school board for district school purposes, or so much thereof as it may allow; but the tax so levied shall not be less than the minimum nor exceed the maximum prescribed in section 1740."

It is true that section 2722 of the Code provides that, unless otherwise especially provided, the board of supervisors of a county may exercise any of the powers conferred upon it at any lawful meeting of the board, regular, special or adjourned, but, inasmuch as section 2721 provides the school levy must be made at the time provided by section 2720, which latter section fixed the regular meeting in the month of January in each year, or as soon thereafter as practicable, not later than the April meeting, the matter cannot be re-opened at this time nor at any time after the April meeting.

Very truly yours,

LEON M. BAZILE,
Second Assistant Attorney General.

SCHOOLS—TAXABLE PROPERTY.

RICHMOND, VA., February 12, 1920.

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

DEAR SIR:

Acknowledgment is made of your letter of January 31st, in which you request me to advise you upon the following question:

"In making the calculation as to whether or not a district pays the fifty cents required in order to participate in certain school funds, I have never been quite clear on what the calculation should be based: whether on the total taxable values of the county or district, or on all except intangibles, or just what the ruling is. My board wants to know exactly on what this is based. We get the amount, but we want to know for future use what to base the calculation upon."

From a conversation with you, I understand that this question refers to that provision of the budget bill (page 22, 23) appropriating the sum of \$400,000 to be apportioned by the State Board of Education as prescribed by the Constitution, to the public free schools of the several counties and cities of the Commonwealth, upon certain conditions, among which is the condition.

"* * * that no portion of this fund shall be paid to any county or city in which the aggregate city or county tax for schools amounts to less than fifty cents on the one hundred dollars. * * *"

As to counties, this question is governed by the provisions of section 740 of the Code of Virginia, 1919, which, so far as is applicable hereto, provides:

"The board of supervisors of each county, at the regular meeting in April of each year, or as soon thereafter as practicable, or when the division superintendent of schools shall file with the said board the estimates made by the county and district school boards in accordance with section 631, shall levy a tax of not less than ten nor more than forty cents on the hundred dollars *of the assessed value of the real and personal property in the county for the support of the public free schools of the county*, and a tax of not less than fifteen nor more than thirty-five cents on the hundred dollars *of the assessed value of the real and personal property in any school district for district school purposes*."

And by section 2721 of the Code of Virginia, 1919, which authorizes the board of supervisors to levy a tax "upon all the property in the county upon which county levies are laid, sufficient to raise the amount recommended by the county school board in their estimates for county school purposes, or so much thereof as it may allow; and to levy a tax upon such property in each school district, sufficient to raise the amount recommended by the county school board for district school purposes, or so much thereof as it may allow," which tax shall not be less than the minimum for exceeding the maximum prescribed in section 740 of the Code.

It will therefore be seen that the tax in a county is based upon the assessed value of the real and personal property in the county, and as to the district, upon the assessed value of the real and personal property therein.

As to cities of the second class, the question is governed by the provision of section 2907 of the Code, which reads as follows:

"The city shall have the right to levy and collect all taxes on property and all license taxes which are authorized by its charter or which cities of the second class are authorized by general law to levy and collect; provided, that such levy on property shall not exceed the limits fixed by its charter, and if its charter fixes no such limit, then not to exceed for city purposes, two dollars on the one hundred dollars of value of such property, which shall include a levy for school purposes not exceeding fifty cents on the one hundred dollars of value of such property."

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

SCHOOLS—TEACHERS PENSIONS.

RICHMOND, VA., May 20, 1920.

HON. HARRIS HART,
*Superintendent of Public Instruction,
Richmond, Virginia.*

DEAR SIR:

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

"I have a case in which a Mr. Riddick is on the retired teachers' pension list, and at the same time is an inmate in the Soldiers' Home. I understand that a soldier's war pension is not continued after the State makes provision for him in the Soldiers' Home. It would seem to me rather doubtful whether his teacher's pension should be continued in the same circumstance. Will you give me your opinion about this matter?"

I find nothing in the law which prohibits an inmate of the Soldiers' Home from receiving a teacher's pension, provided for by chapter 36 of the Code of Virginia, 1919. Indeed, this chapter which enumerates the cases in which a teacher may be removed from the retired teachers' pension list does not include such a case. I am, therefore, of the opinion that Mr. Riddick is entitled to receive his teacher's pension if otherwise qualified.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

SCHOOLS—TEACHERS PENSIONS.

RICHMOND, VA., May 20, 1920.

MORTIMER M. HARRIS, *Attorney-at-Law.*
Washington, D. C.

DEAR SIR:

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

"Will you be so kind as to inform me the correct status of a Virginia teacher, who was retired after twenty years of continuous service, on account of ill health, and placed on the retirement list for life,

when that teacher re-marries after receiving a pension from the State of Virginia for a number of years."

Formerly the Virginia law provided that, upon marriage, a pensioner should be removed from the teacher's pension list. The Code of 1919, however, omitted that section, thereby repealing the same. See revisors' note to section 805, Code of Virginia, 1919.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

STATE—LIABILITY FOR TORTS.

RICHMOND, VA., *February 13, 1920.*

MR. WILLIAM F. COCKE,
*Assistant Highway Commissioner,
Richmond, Virginia.*

MY DEAR MR. COCKE:

Acknowledgment is made of your letter enclosing papers with reference to injuries to a colt, on the public highway by a truck operated by the State Highway Commission. You ask whether or not the State is liable for the injury.

In the first place, it is well established that the State is not liable for injuries of the nature you mention. In the second place, it would appear from the testimony of the owner of the colt that he was guilty of contributory negligence for allowing the colt to run at large upon a public highway, and for this reason could not recover even though the State could be sued, and the driver was also liable. In the third place, the evidence appears to be very conflicting, and if the testimony of the driver of the truck can be relied upon at all, it was impossible to avoid the accident, which was due entirely to the fault of the colt.

I could not, therefore, recommend a payment of the claim.

Yours truly,

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

STATE—MEANS AND INSTRUMENTALITIES OF EXEMPT FROM FEDERAL TAX.

RICHMOND, VA., *September 14, 1920.*

HON. LEROY HODGES, *President,
State Penitentiary Board,
Richmond, Virginia.*

MY DEAR COLONEL HODGES:

Acknowledgment is made of your letter of September 11, 1920, with reference to the question as to whether or not the milk shipped to Richmond from the State farm is exempt from the payment of the Federal war tax

imposed on other shipments. With your letter, you enclosed a letter from Mr. John D. Potts, passenger traffic manager of the Chesapeake and Ohio Railroad Company, dated September 8, 1920, in which he says:

"As we understand it, this milk is shipped to Richmond for sale and consequently is in competition with milk shipped by private concerns. Under the circumstances it would appear that the exemption certificate would not be properly applicable and that war tax would be in order."

You also enclosed a letter from Hon. C. H. Morrisett, of the Legislative Reference Bureau, with reference to this matter, in which he advises you that, under the act imposing the tax, the shipments in question are not subject to war tax.

I concur in the view expressed by Mr. Morrisett, but aside from the act which imposes the tax, the Federal government is without power to lay a tax upon any means or instrumentality of the State government. The rule is elementary that it is beyond the power of the State government to impose a tax upon the property, or means, or instrumentalities of the Federal government, and, likewise, it is beyond the power of the Federal government to impose any tax upon the property, or means, or instrumentalities of the State government, regardless of the use to which that property may be put, or the purpose for which it may be employed.

M'Culloch v. Maryland, 4 Wheat. 316, 431.

United States v. B. and O. Railroad Co., 17 Wall. 322.

In the last cited case, Mr. Justice Hunt, in delivering the opinion of the court, said:

"* * * The right of the States to administer their own affairs through their legislative, executive and judicial departments, in their own manner through their own agencies, is conceded by the uniform decisions of this court and by the practice of the Federal government from its organization. This carries with it an exemption of those agencies and instruments, from the taxing power of the Federal government. If they may be taxed lightly, they may be taxed heavily; if justly, oppressively. Their operation may be impeded and may be destroyed, if any interference is permitted. Hence, the beginning of such taxation is not allowed on the one side, is not claimed on the other."

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

STATE ACCOUNTANT ASSISTANT—COMPENSATION FOR SERVICES—AUDITING
COMMITTEE—COMPENSATION OF CLERK OF.

RICHMOND, VA., *December 3, 1920.*

HON. C. LEE MOORE,
Auditor of Public Accounts,
Richmond, Virginia.

DEAR SIR:

Acknowledgment is made of your letter of November 20, 1920, in which you say:

"The State Auditing Committee, which is provided for in the Constitution of Virginia, has, through the State Accountant, its clerk, cer-

tified to me the following resolution adopted by it at a meeting held on the 16th of this month, which resolution is as follows:

"Resolved, that the Auditor of Public Accounts is authorized to pay A. B. Garthright, of the State Accountant's office, the further compensation of two hundred and fifty dollars per annum for services to this committee, from July 1, 1920."

"By reference to the appropriation act, under title 'State Accountant,' you will find that the General Assembly fixed the salary of the assistant State Accountant at \$2,500 just as it fixed the salary of the State Accountant, assistant Accountant and stenographer, and the remainder of the appropriation is for expenses of the auditing committee as provided by law.

"Am I authorized to pay the \$250.00 mentioned in the resolution for the services of the assistant State Accountant to the auditing committee, or does the appropriation act limit the amount of the salary of the assistant State Accountant to \$2,500? You will notice the State Auditing Committee is, as I have said, a constitutional committee (provided for in section 68 of the Constitution) and constitutionally empowered and directed to employ one or more accountants to assist in its investigations. This section of the Constitution makes no reference to legislative action respecting salary or compensation except as to the committee itself, and it would seem that the committee is constitutionally empowered and authorized to employ one or more accountants and pay what it pleases without limitation by legislative action. Of course an appropriation by the General Assembly must be made because section 186 of the Constitution forbids the payment out of the treasury of money except in pursuance of appropriations made by law. The appropriation act does make an appropriation for the State Auditing Committee and the appropriation made is ample to carry out the resolution of the committee, which I am bringing to your attention."

It is provided by section 68 of the Constitution of Virginia as follows:

"The General Assembly shall, at each regular session, appoint a standing committee, consisting of two members of the Senate and three members of the House of Delegates, which shall be known as the Auditing Committee. Such committee shall annually, or oftener in its discretion, examine the books and accounts of the First Auditor, the State Treasurer, the Secretary of the Commonwealth, and other executive officers at the seat of government whose duties pertain to auditing or accounting for the State revenue, report the result of its investigations to the Governor, and cause the same to be published in two newspapers of general circulation in the State. The Governor shall, at the beginning of each session, submit said reports of the General Assembly for appropriate action. The committee may sit during the recess of the General Assembly, receive such compensation as may be prescribed by law, and employ one or more accountants to assist in its investigations."

The appropriation bill for 1920-1921, with reference to the State Accountant, makes an appropriation of \$12,000 for the examination of State accounts. It then provides:

"Out of this appropriation of \$12,000 shall be paid the following salaries and expenses only:

*	*	*	*	*	*	*	*
Assistant State Accountant							\$2,500.00
*	*	*	*	*	*	*	*

Expenses of the Auditing Committee, as provided by law, a sum sufficient."

From an examination of chapter 29 of the Code of Virginia, 1919, it does not appear to be one of the prescribed duties of the assistant State Accountant, or deputy State Accountant, to do the work here in question. It appears that this work consists of extra services rendered the Auditing Committee by the deputy or assistant State Accountant, for which services the Auditing Committee is authorized by the Constitution to pay.

Not being an increase in salary but merely compensation for extra services performed by the assistant State Accountant, I am of the opinion that this money should be paid, provided there is a sufficient appropriation for the same.

Very truly yours,

JNO. R. SAUNDERS.

Attorney General.

STATUTES—AMENDMENTS TO.

RICHMOND, VA., *February 17, 1920.*

SENATOR HARRY FLOOD BYRD,
Richmond, Virginia.

MY DEAR SENATOR:

Acknowledgment is made of Senate Bill No. 61, being "a Bill to Amend and Re-enact section 885 of the Code of Virginia." You ask whether or not this section can be amended and re-enacted without re-enacting the other sections of the chapter of which it is a part.

I am of the opinion that it is not necessary, in amending a single section of an act, to re-enact and publish at length the whole of the original act. In other words, I think that one of the several sections of the Code can be amended without re-enacting the other sections to which it is related, provided, of course, the amended section can be correlated or co-ordinated with the other sections pertaining to the same subject matter.

This principle has been recognized by our Supreme Court in dealing with the title to an act. In *District Road Board v. Spillman*, 117 Va. 201, it was held that "although the title of an amendatory act is broad enough to cover the whole of the original act, it is not necessary to re-enact and publish at length the whole of the original act, where the amendment affects only a single section of the original act. If the section to be amended is published at length in its amended and re-enacted form, it is a sufficient compliance with section 52 of the Constitution."

It might be well to say that the title of an act amending the Code is sufficient if it refers to the section to be amended. Because the title is confined to reference to the section amended, does not violate section 52 of the Constitution. *Kelly v. Gwatkin*, 108 Va. 6, *Bertram v. Commonwealth*, 108 Va. 902.

I have closely examined the bill in question, and I find that it only amends section 885 of the Code only by adding the word "plant," and changing the distance from one to two miles. It is manifest, therefore, that it is possible to correlate and co-ordinate the amended act with the other sections pertaining to the same subject matter, and I am of the opinion that

if the bill passes your honorable bodies, it will take the place of section 885 of the Code of 1919 as it now exists, and will read in connection with the other sections immediately succeeding it as if section 885 had been originally enacted as amended by the bill.

I am enclosing you herewith the bill.

Yours truly,

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

STATUTES—CONSTRUCTION OF.

RICHMOND, VA., *December 17, 1920.*

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

MY DEAR GOVERNOR:

I am just in receipt of your letter of the 17th instant, the first paragraph of which reads as follows:

"Will you be good enough to examine the Acts of 1920, chapter 510, providing for a War Memorial Library, and advise me whether, by the terms of the act, the State, upon certain conditions in the act set forth, proposes to dedicate to the city of Richmond, in addition to the fifteen feet on the southern side of Capitol Square, any part of the Capitol Square bordering on Twelfth street, and if such dedication be authorized, how much of the said land upon the conditions therein set forth, is to be dedicated?"

It is provided by the last full paragraph on page 844 of chapter 510 of the Acts of 1920, which was approved March 25, 1920, and referred to in your letter, as follows:

"It is further enacted that upon the grant and conveyance in fee simple and free of incumbrances by the city of Richmond of the square or parcel of land described in the foregoing part of this section, and its acceptance by the library board, with the approval of the Attorney General of Virginia as to the form of conveyance as aforesaid, that a strip or parcel of land fifteen feet in width, now composing the extreme southern portion of the Capitol Square shall be dedicated as and for a public street and highway, the metes and bounds of which are shown on a plan on file in the office of the director of public works of the city of Richmond, entitled: 'Proposed widening of Bank street from Ninth street to Twelfth street and Twelfth street from Bank street to Franklin street,' dated January 14, 1920, and marked '10875-A-5' said strip of land being needed by the city of Richmond for the widening of Bank street between Ninth and Twelfth streets."

The only portion of the title of the act relating to this question is as follows:

"* * * To dedicate as and for public streets and highways upon certain conditions a strip of land fifteen feet in width lying on the southern side of the Capitol Square in the city of Richmond, needed by the city of Richmond for the widening of Bank street. * * *"

You will observe from a reading of that part of the title to the act quoted above, that under certain conditions, a strip of land fifteen feet in width, lying on the south side of the Capitol Square in the city of Richmond, is dedicated for the purposes of widening Bank street.

You will also observe that in the paragraph of the act quoted above, it is provided "that a strip or parcel of land fifteen feet in width now composing the extreme southern portion of the Capitol Square, shall be dedicated as and for a public street and highway. * * * said strip of land being needed by the city of Richmond for the widening of Bank street between Ninth and Twelfth streets.

The southern side of the Capitol Square borders on Bank street, and not on Twelfth street, and the very purpose of the act states that the strip of land in question is needed by the city of Richmond for the purpose of widening Bank street between Ninth and Twelfth streets.

I am therefore of the opinion that it was not the intention of the legislature, nor does it by the act in question convey, any portion of the Capitol Square bordering on Twelfth street, other than the fifteen feet in width, which, of course, will necessarily touch Twelfth street at its intersection with Bank street.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

STATUTES—CONSTRUCTION OF.

RICHMOND, VA., *June 21, 1920.*

HON. F. NASH BILISOLY, *Commissioner,*

Department of Game and Inland Fisheries,

Richmond, Virginia.

DEAR SIR:

Acknowledgment is made of your letter of June 17, 1920, in which you say:

"In the compilation of the game, fish and dog laws by this department for the current year, the question has arisen as to the effect of the Code of 1919 on certain acts relating to fishing in one or more designated counties, especially an act entitled an act to amend and re-enact an act entitled an act to prohibit the taking or removing of fish, except such as are expected, from the water courses of the county of Augusta, approved March 13, 1912; approved March 21, 1914 (Acts 1914, page 288).

"Section 3218 of the Code continues in force certain acts of local application, but the act hereinbefore mentioned is not one of them, and section 6567 of the Code repeals 'all acts and parts of acts of a *general* nature, in force at the time of the adoption of this Code. * * * with such limitations and exceptions as are hereinbefore or herein-after expressed.' The question such as arises with reference to the fishing laws does not arise with reference to the laws of local application relating to trespass, the protection of game, birds, water fowl, etc., because these acts are expressly continued in force by section 3365 of the Code.

"The revisors' note to the section of the Code just cited gives the reason for the section, such reason being the decision in the case of

Carter v. Edwards, 88 Va. 205. This decision throws light upon the question now presented with reference to the fate of all acts of local application relating to fishing which are not contained in the Code or continued in force by it. The question is this: Has the act relating to fishing in Augusta county hereinbefore mentioned been repealed by the adoption of the Code?"

It is provided by section 6568 of the Code of Virginia, 1919, as follows:

"All the provisions of the preceding chapters shall be in force upon and after the 13th day of January, 1920; and all acts and parts of acts of a general nature, in force at the time of the adoption of this Code, shall be repealed from and after the said thirteenth day of January, nineteen hundred and twenty, with such limitations and exceptions as are hereinbefore or hereinafter expressed."

The rule is well settled that repeals by implication are never favored, and, therefore, the mere fact that the revisors, by section 3218 of the Code, specifically referred to and continued in force certain special acts relating to the fish laws of this State, does not have the effect of repealing chapter 178 of the Acts of 1914, if this be a special law.

As I understand you, it is your contention that chapter 178 of the Acts of 1914 is a general and not a special law, and, therefore, was repealed by section 6567 of the Code of 1919, quoted above. I cannot agree with you in this particular. This act is entitled, "An act to amend and re-enact an act entitled an act to prohibit the taking or removing of fish, except such as are excepted, from the water courses of the county of Augusta, approved March 12, 1912." An examination of chapter 178 of the Acts of 1914, shows that, as its title indicates, it is limited in its application to the county of Augusta, and, therefore, is a special or local law, and as such was not repealed by section 6567 of the Code of Virginia, 1919, which is limited in its application to laws of a general nature.

As is said in 25 R. C. L., section 65:

"* * * The phrase 'local law' means primarily at least a law that in fact, if not in form, is directed only to a specific spot. A local act is confined in its operation to the property and persons of a limited portion of the State. * * * The commonly accepted definition of a general law as distinguished from a special or a local law is that it is a law that embraces a class of subjects or places, and does not omit any subject or place naturally belonging to such class. * * *

The case of *Carter v. Edwards*, 38 Va. 205 (1891), while going very far in its decision, is not authority for the proposition that a law relating to one county in the State is a general law. In that case, the law in question affected three counties located in what might possibly be construed a distinct geographical section of the State and in this it went very far. Also it is not an unimportant fact in connection with that decision that Judge Lewis, one of the ablest lawyers of the State at that time dissented from the opinion.

I am, therefore, of the opinion, as I have above indicated, that chapter 178 of the Acts of 1914 is a special or local law, and as such was not repealed by section 6567 of the Code of Virginia, 1919. It, therefore, follows that, except in so far it has been repealed, by implication, by other laws in conflict therewith, it is still in force.

Very truly yours,

JNO. R. SAUNDERS,

Attorney General.

STATUTES—CONSTRUCTION OF.

RICHMOND, VA., *January 22, 1920.*

HON. B. O. JAMES,

*Secretary of the Commonwealth,
City.*

DEAR SIR:

Acknowledgment is made of your letter of January 20th, which is in the following terms:

"In the re-arrangement of the automobile law in the new Code, section 2149 in relation to license fees for garages, etc., and section 2151 in relation to machines operated for hire, both precede section 2154. Section 2154 relates to the collection and disposition of license fees. Heretofore those two sections followed the section in relation to the fees and the collection was through the local authorities. There seems to be some question as to whether or not this office should make these collections.

"I would appreciate your opinion promptly so that this office may be properly advised as to just what to do."

The fact that sections 2149 and 2151 of the Code of Virginia, 1919, precede section 2154 of that Code, in my opinion does not change or alter the law so as to place in your hands the assessment and collection of the license taxes provided for in section 2149 of the Code of Virginia 1919, namely: licenses for garages and fees for operation of machines for hire.

Prior to the revision of the Code, the licenses required by sections 2149 and 2151 of the Code, were handled through the regular channels for the assessment and collection of other revenue license taxes. There is nothing in either of these sections or section 2154 of the Code of Virginia, 1919, which would indicate an intent to change this method of collecting these license taxes, and the mere fact that these sections precede section 2154, which latter section relates to the disposition of the fees collected by the Secretary of the Commonwealth under the provisions of chapter 90 of the Code of 1919, in my opinion does not evince an intent to alter the method of collecting these taxes in the manner in which they have been collected in the past

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

STATUTES—CONSTRUCTION OF.

RICHMOND, VA., *February 26, 1920.*

SENATOR S. L. FERGUSON,

*Senate Chamber,
Richmond, Va.*

MY DEAR SENATOR:

I beg leave to acknowledge receipt of your letter of February 25th, in which you ask whether or not the members of the county road board of the county of Appomattox, which said board was created by an act of the legislature at its extra session in 1919, approved September 5, 1919, will be

entitled to the same compensation as is provided for in House Bill No. 50, now under consideration before the legislature of Virginia, which said bill seeks to amend section 2769 of the Code of 1919.

In reply, I beg leave to state that I have carefully examined chapter 53 of the Acts of 1919, approved September 5, 1919, and am of the opinion that it was intended by said act to allow to the county road board of Appomattox the same compensation which is allowed the board of supervisors of the county.

Should House Bill No. 50 which is now under consideration by the present legislature, become a law, which bill increases the compensation of the board of supervisors, I am of the opinion that the compensation to the members of the county road board automatically increases with the increased compensation for the members of the board of supervisors.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

STATUTES—CONSTRUCTION OF—DAY—MEANING OF.

RICHMOND, VA., August 2, 1920.

HON. JOHN W. RICHARDSON,
Register Land Office,
Richmond, Virginia.

MY DEAR COLONEL RICHARDSON:

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

"Referring to Act of the General Assembly, approved March 16, 1920, page 353, chapter 251, will you advise me what in your opinion constitutes a day under said act?"

Chapter 251 of the Acts of 1920, to which you refer, reads as follows:

"Be it enacted by the General Assembly of Virginia as follows: That every employee of the State government or of any department thereof, who is required to be on duty seven days in each calendar week, shall on and after the passage of this act be relieved from duty, without any reduction in pay, at least two Sundays in each calendar month. The heads of the various departments are hereby authorized to take such steps as may be necessary to put this act into effect."

I am of the opinion that the period of time referred to in this act means the usual working day, and that an employee of the State who is required to be on duty for the usual number of working hours seven days in each calendar week is entitled to two Sundays in each calendar month without reduction of pay.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

STATUTES—CONSTRUCTION OF.

RICHMOND, VA., April 13, 1920.

HON. S. G. PROFFIT,
Floyd, Va.

DEAR SIR:

Acknowledgment is made of your letter of April 9th, in which you enclose a copy of a bill authorizing the board of supervisors of Floyd county to borrow the sum of \$215,000 and to issue bonds therefor for the repair, improvement and construction of certain roads and bridges in the magisterial districts of said county, which you state became a law at the last session of the General Assembly. You ask for my opinion as to several matters in connection with the act. One of your questions relates to section 8 of the act. As to this you say:

"Is the provision allowing each supervisor \$4.00 per day repugnant to section 63 of the Constitution? In this connection, your attention is called to chapter 213 of the Acts of 1918."

The Court of Appeals, in *Shelton & Luck v. Sydnor*, 19 Va. App. 509 decided on January 22, 1920, that a special law giving additional compensation to supervisors during their term of office, was in conflict with section 63 of the Constitution, and invalid. In so holding, the court said, however:

"* * * Section 848, as amended, imposed no duties upon the plaintiff-in-error, in addition to those imposed by the special law for Hanover county prior to their election. * * *"

It would appear from this that the Court of Appeals, by inference recognized the doctrine laid down by many authorities, that such a constitutional prohibition does not apply in the case where additional duties are placed upon the officer or officers affected by the change. In 29 Cyc. 1429, it is said:

"* * * Such limitations * * * do not prevent the legislature or its delegates, from providing that a change in the duties of an incumbent of an office, shall be accompanied by a change in his compensation. * * *"

Whether or not the last sentence of section 8 of the act in question, is invalid, would seem to depend upon whether or not the act in question has imposed duties upon the members of the board of supervisors in addition to the duties which they were required by law to perform at the time of their election. If, however, this part of section 8 is invalid, it would affect no other portion of the act. See opinion of the Court of Appeals on the rehearing in *Martin's Error's v. Commonwealth*, decided in the last few days.

In your second question you refer to section 13 of the act and say:

"Does this clause meet the requirement of section 53 of the Constitution? In other words, must that state of affairs out of which the emergency arises, be stated in the body of the bill to make it constitutional? If this section is repugnant to the Constitution, will the objection be legally avoided by deferring the resolution provided in section 7 of the act until three months after the passage of said act?"

Section 13 of the act reads as follows:

"An emergency existing, this act shall be in force from its passage."

This is sufficient to make the act an emergency statute. Practically all the emergency acts passed by the General Assembly declare the emergency in this form. The rule is thus stated in 36 Cyc. 1193, where it is said:

"In those jurisdictions in which, under the general rule, statutes do not take effect until some time subsequent to their passage and approval, it is commonly provided that when an emergency exists the legislature may declare a statute in force from its passage. Under such provisions the legislature is the sole judge as to whether an emergency exists, and its declaration is not open to question by the courts. Where, however, such special provisions, permitting the legislature to except certain statutes from the general rule, are found in the Constitution, the legislative declaration that an emergency exists must conform to the Constitutional requirements, and must be clear, distinct, and unequivocal. A statute containing a valid emergency clause takes effect immediately it passes through all the formalities required by the Constitution for the complete enactment of laws."

You also refer to section 2 of the act and say:

"If the board of supervisors pass the necessary resolution to put the act into effect in the month of May next, is it permissible to defer the levy necessary for the purposes of the act until the April meeting, 1921?"

It is provided by section 2 of the act, so far as is applicable to this question, as follows:

"The said board of supervisors are authorized and empowered, after issuing said bonds, or any of them, when the next levy is made, or tax imposed in said county, to levy a tax on all property," etc.

Under the provisions of section 2720 of the Code of 1919, the county levies for the current year must be made by the board of supervisors at its regular meeting in the month of January in each year, or as soon thereafter as practicable not later than the meeting in April.

The county levies for the present year having been made prior to the issuance of the bonds in question, the next levy will be made between the regular meeting of the board in January, 1921, and its meeting in April of that year, and under the terms of the act, itself, the levy cannot be made until the next levy is made.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

STATUTES—CONSTRUCTION OF—VIRGINIA TRUCK EXPERIMENT STATION.

RICHMOND, VA., April 22, 1920.

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

MY DEAR GOVERNOR:

Acknowledgment is made of your letter of April 21st, in which you enclose a copy of the lease obtained by the Virginia Truck Experiment Station,

Norfolk, Virginia, from the Southern Produce Company, a Virginia corporation. In your letter you request me to examine this lease and if properly executed, to have the same admitted to record in the clerk's office of Princess Anne county. You further state that the director of the Virginia Truck Experiment Station desires to know what is necessary to be done before the first installment of the money appropriated for the station's support by the last General Assembly, can be received.

In reply, I will state that I have carefully examined House Bill No. 312, under which this lease was executed, and I find the lease is drawn in accordance with the terms of said bill. However, the following requirements in connection with this lease should be complied with before it is admitted to record:

First of all, the seal of the Southern Produce Company, of course, must be attached to the document before recordation. Likewise, a copy of the resolution adopted by the Southern Produce Company on the 1st day of April, 1920, should be attached to and made a part of the lease before recordation, under the provisions of section 5208 of the Code of Virginia. The last paragraph of the lease contains this language:

"has caused these presents to be signed in its name by its first vice-president, and its corporate seal to be hereto attached, attested by its secretary, the year and date first above written."

In lieu of this language, the following should be inserted:

"has caused these presents to be signed in its name by its first vice-president, and its corporate seal to be hereto affixed by C. W. Coleman, its said first vice-president, attested by its secretary, the year and date first above written."

I refer you to section 5208 of the Code of 1919, which requires the corporate seal to be attached by the officer signing the paper.

On pages 148 and 149 of the Acts of Assembly 1920, I find that the sum of \$20,000 is appropriated for this station. However it is provided:

"That no part of the above appropriation of twenty thousand dollars for the Virginia Truck Experiment Station at Norfolk shall be available until the control and management of the station shall be placed under a special governing board created by law, and the Southern Produce Company has conveyed in fee or leased free of rent to the Commonwealth for a period of years fixed by law, the property on which the said station is now located; and it is further provided that no part of the above appropriation of two thousand dollars for the operation of branch station on the Eastern Shore of Virginia shall be available until the control and management of the Eastern Shore Experiment Station, located at Onley, shall be placed under the governing board of the Virginia Truck Experiment Station at Norfolk, to be created by law, and the property on which the said branch station is now operated, or some other suitable property, has either been conveyed to the State in fee or is leased to it free of rent for the period of years fixed by law."

Therefore, before any of the said appropriation will be available, it will be necessary for section 3 of House Bill No. 312, to be complied with, namely: That the board of directors, which consists of five members, shall be appointed as is provided for in said section, and they shall organize

and take charge of the property as is provided for in said bill. As soon as this is done and the directors organized, take charge of the property and a certificate from the clerk of Princess Anne county showing that the lease has been duly recorded, then of course, the money will be available.

I am enclosing an extra copy of this letter in order that you may send it to Mr. Johnson, Director of the Virginia Truck Experiment Station.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

STATUTES—CONSTRUCTION OF.

RICHMOND, VA., August 25, 1920.

HON. C. LEE MOORE,

Auditor of Public Accounts,

Richmond, Va.

DEAR SIR:

I am in receipt of your letter of August 25th, in which you enclose a copy of a communication from the board of directors of the State Penitentiary, which is as follows:

"At a meeting of the board of directors of the Penitentiary, held this afternoon, I was directed to notify you to pay Dr. Herbert Mann the full salary, authorized by the legislature, for services rendered as surgeon to the Penitentiary, beginning as of March 1, 1920, and not to exceed \$3,000.00 per annum."

You then ask the question if you are authorized to pay the surgeon the annual salary of \$3,000.00 under the provisions of chapter 144, page 157 of the Acts of Assembly, 1920, or should you pay him the sum of \$1,800.00, which latter amount is the salary prescribed under section 3449 of the Code of Virginia.

The legislature, at its session of 1920, in appropriating the public revenues for the two years ending respectively on the 28th of February, 1921, and 1922, by chapter 144, in making the appropriations for the Penitentiary at Richmond, among others, provides as follows:

"For medical attention.....	\$3,000.00
Of this appropriation of \$3,000.00, shall be paid the follow-	
ing salary only:	
Surgeon, not exceeding	\$3,000.00."

I am of the opinion that the legislature, by this act, in providing \$3,000.00 for medical attention and further providing that out of this amount the only salary to be paid should be to the surgeon, clearly intended that he should receive this amount as his salary.

You are therefore authorized under the law to pay to the surgeon at the State Penitentiary, the salary of \$3,000.00.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

STATUTES—CONSTRUCTION OF—EFFECT OF CODE OF 1919 ON PREVIOUSLY
EXISTING GENERAL LAWS.

RICHMOND, VA., August 17, 1920.

HON. F. NASH BILISOLY, *Commissioner,*
Game and Inland Fisheries,
Richmond, Va.

DEAR SIR:

Acknowledgment is made of your letter of August 12th, in which you say:

"You will please note the new Code, section 3356, has followed Pollard's Code and that Pollard's Code was in error since it followed chapter 299 of the Acts of 1910, which applied to Brunswick and Greensville counties only, when the Act of 1908, section 2070-a gave the general State law as to open hunting seasons. Now with the explanation of how the error occurred, which you will note has cut off wild water fowl shooting for the month of January, see regulation 12 of the Migratory Bird Treaty Act, effective July 31, 1918, we are assuming that except in Back Bay, Princess Anne county (see chapter 360 Acts 1914), it will be illegal to hunt wild water fowl in Virginia in January until the General Assembly amends section 3356 of the new Code.

"This will work a great hardship on our duck hunters and we hope you may be able to show a legal way around this prohibition, since it is clear that cutting off January in the first instance was never intended to apply save only to the counties of Brunswick and Greensville."

It is provided by section 6567 of the Code of Virginia, 1919, as follows:

"All the provisions of the preceding chapters shall be in force upon and after the 13th day of January, 1920; and all acts and parts of acts of a general nature, in force at the time of the adoption of this Code, shall be repealed from and after the said 13th day of January, 1920, with such limitations and exceptions as are hereinbefore or hereinafter expressed."

Section 2070-a of the Code of 1904 was a general statute of the State, and as amended, was in force at the time of the adoption of the Code of 1919 and consequently was repealed from and after the 13th day of January, 1920.

Section 3356 of the Code of Virginia, 1919, as it is found in that Code, is now the law upon the subject referred to in your letter. The fact that this section may have followed an error made in the Supplement to the Code of 1904, does not make it any less the law, and the fact that it may work a hardship is no justification for not giving it the construction that its provisions demand.

Your attention, however, is called to section 3357 of the Code of Virginia, 1919, which expressly exempts Back Bay, in the county of Princess Anne.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

STATUTES—CONSTRUCTION OF—PENITENTIARY—GUARDS AND EMPLOYEES.

RICHMOND, VA., October 28, 1920.

HON. J. B. WOOD,

*Superintendent of State Penitentiary,
Richmond, Va.*

MY DEAR MAJOR WOOD:

Acknowledgment is made of your letter of October 26th, in which you say:

"Enclosed you will find paper signed by the guards who are affected by the act contained on page 353, chapter 251 of the Acts of Assembly 1920, an act to provide relief from employment on Sundays, etc.

"You will note that this is addressed to the board of directors, and that in it the guards state they desire that no change be made in their working hours. These guards work six and one-half hours each night, and the rest of the night they sleep here in quarters provided for that purpose, so that in case they are needed, they can be called. In that way, it makes them on duty twelve hours. The only way that could be arranged so that they could get two Sundays off during each month would be for me to take a like number of day guards and let these men work one week in the day and one week at night, which would give them their required Sundays under the law. When I started to put that in force, they sent this petition to the board, and the board desired me to send it to you and get a ruling from you as to whether they could allow it or not.

"I have two officers also. One works from 4 p. m. to 12 night and one from 12 night to 8 a. m. They are not required to be here at any other time, and I would like to know if the law applies to them, they not being desirous of any change being made."

The petition enclosed reads as follows:

"We, the undersigned, guards of the Penitentiary, respectively ask that no change be made in the hours of duty to which we are now assigned. We prefer the present arrangement to the one proposed in order to give us two Sundays off each month."

and is signed, as you say, by the guards who are affected by the provisions of chapter 251 of the Acts of 1920. This act reads as follows:

"That every employee of the State government or of any department thereof, who is required to be on duty seven days in each calendar week, shall on and after the passage of this act be relieved from duty, without any reduction in pay, at least two Sundays in each calendar month. The heads of the various departments are hereby authorized to take such steps as may be necessary to put this act into effect."

I am of the opinion that there was nothing in this act which required the head of a department to put into effect the provisions of the act where the employees for whose benefit the act was passed, request otherwise.

In response to the question contained in the last paragraph of your letter, I am of the opinion that chapter 251 of the Acts of 1920, applies to the two officers mentioned by you.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

STATUTES—CONSTRUCTION OF.

RICHMOND, VA., April 9, 1920.

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

DEAR SIR:

I beg leave to acknowledge receipt of your letter of April 2nd, in which you ask for a construction of Senate Bill No. 12, approved March 16, 1920, which said bill fixed the salaries of certain clerks of court, among the number, the clerk of the circuit court of the city of Richmond, at the sum of \$1,500.00.

You advise me in your letter that the Appropriation Bill, approved March 10, 1920, only appropriates for the salary of this officer, the sum of \$720.00. The question then arises whether you shall be guided by the act approved March 16, 1920, which gives this officer \$1,500.00, or the Appropriation Bill which was approved March 10, 1920, in which only the sum of \$720.00 is allowed him.

I am of the opinion that the act approved March 16, 1920, which gives the clerk of the circuit court of the city of Richmond, the sum of \$1,500.00, repeals that item of the Appropriation Bill which only gives him \$720.00, and therefore you should pay him this sum.

It was decided by the Supreme Court of Appeals in the case of *Commonwealth v. Ferriss Co.*, 120 Va. 129, in construing that portion of section 186 of the Constitution which provides that:

“* * * No money shall be paid out of the treasury except in pursuance of appropriations made by law.”

that under this provision, no particular form of appropriation is prescribed, and an act which directs the Auditor of Public Accounts to draw a warrant for a definite sum in favor of the claimant on the treasurer of a city, complies with all the requirements of a valid appropriation.

In my judgment, the act approved March 16, 1920, which provides for the payment to the clerk of the circuit court of the city of Richmond the sum of \$1,500.00 as his salary, is a sufficient direction on the part of the legislature to you to pay said officer this amount.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

STATUTES—CONSTRUCTION OF.

RICHMOND, VA., May 3, 1920.

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

MY DEAR MR. COLEMAN:

Acknowledgment is made of your letter of recent date, in which you enclose a copy of House Bill No. 377 (session 1920), as amended and passed

by the General Assembly. In your letter you refer me to chapter 28 of the Acts of 1919, especially to that portion of section 1 of the act, which reads as follows:

"No election shall be ordered until after the court has been assured by the State Highway Commissioner, or his representative, that the amount of bonds proposed to be issued will be approximately sufficient to improve the roads set out in the order, the estimated cost of each road or part thereof, to be set out in the order of the court for expenditure solely on said road, or part thereof. * * *"

You then say:

"As a number of applications are coming in from various counties to have surveys made, I would be very glad if you would advise me whether or not the act as passed by the last General Assembly, known as House Bill 377, would do away with the necessity for these surveys except in the counties which are not affected by the act."

It is provided by House Bill No. 377 (session 1920, which is chapter 358 of the Acts of 1920) so far as is applicable to the question under consideration, as follows:

"Be it enacted by the General Assembly of Virginia, that where the voters of any county or magisterial district in Virginia have heretofore, or shall hereafter, vote a bond issue, in order to provide a fund to be used in improving and constructing the public roads, or any part thereof, of such county or magisterial district, not included in the State Highway System, nor under joint construction or maintenance by the county and State, the boards of supervisors of such counties shall have the exclusive right to use such fund in the improvement and construction of such roads, as the voters by their votes designate it should be used on. And such boards of supervisors shall have the right to use said fund on such roads to provide specification for the improvement of said roads, and shall have the right, independent of the State Highway Commission, to use said fund in the improvement and construction of such roads. And for this purpose may employ such engineers as they choose, and may either let said work to contract, or do said work in any way they may choose."

This act excepts from its provisions certain counties, and the last paragraph thereof provides that "all acts and parts of acts in conflict with this act are hereby expressly repealed." The rule of construction is well-settled that where there are statutes relating to the same subject, they must be construed together and all parts of each act except so far as are in conflict with a later act, must be given effect.

Therefore, I am of the opinion that House Bill No. 377 (session 1920) does not operate as a repeal of the above-quoted provision of chapter 28 of the Acts of 1919, but I am further of the opinion that you are not required to make the report provided for by that act until the board of supervisors has certified to your department the plans and specifications and the road or roads to be affected by the court order and upon which your report is to be made.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

STATUTES—CONSTRUCTION OF.

RICHMOND, VA., *June 26, 1920.*

WILLING BOWIE, Esq.,
Commonwealth's Attorney,
Bowling Green, Va.

DEAR SIR:

Acknowledgment is made of your letter asking whether the Commonwealth's attorney, clerk and sheriff of Caroline county are entitled, under section 2726 of the Virginia Code, as amended by the Acts of Assembly, 1920, page 216, to a salary of \$800.00 and if so, from what date the salaries would commence.

The act provides that the annual allowance in the county of Caroline for these persons, should not be less than \$800.00.

The act further provides that it shall be in force from its passage, which of course, means the date of its approval, March 10, 1920.

I am therefore of the opinion that on and after March 10, 1920, the annual allowance made by the board of supervisors for Caroline county, for these officers, should be not less than \$800.00 nor more than \$1,200.00.

Yours very truly,

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

SUPERVISORS, BOARDS OF—POWER TO RESCIND RESOLUTIONS.RICHMOND, VA., *February 27, 1920.*

MR. O. P. RAMSEY,
Division Superintendent,
Chatham, Va.

MY DEAR SIR:

In response to your request made of me yesterday for an opinion as to whether or not the board of supervisors of Pittsylvania county had a right to rescind a certain order adopted by said board on June 2, 1919, by which resolution the sum of \$10,000 was appropriated to the public schools of Pittsylvania county, I beg leave to submit the following:

Copies of both orders are before me. The first order was adopted at the June meeting of the board, 1919, and appropriated the sum of \$10,000 for the purposes above mentioned and specified that the said amount should be paid into the county school fund on or before December 1, 1919. At a subsequent meeting of said board, held December 6, 1919, an order was entered rescinding the former order entered June 2, 1919.

You state that the said amount of \$10,000 which was appropriated, had not been paid into the school fund before December 1, 1919, as was provided for in the original order. I am therefore of the opinion that the board had a legal right to rescind its former order.

You further state that the school board of your county, relying upon the first resolution of the board of supervisors, appropriating the sum of \$10,000 for school purposes, contracted with teachers on the basis of such appropriation with the result that unless this money is received by the school board,

it will be financially embarrassed and unable to perform the contracts made on the strength of the appropriation.

Under these circumstances, it would seem to me that the new board of supervisors who took office on January 1st of this year, will make the necessary appropriation to protect the school board and enable it to meet the expenditure incurred as a result of the action of the former board of supervisors. When these facts are explained to the board, I should think you would have no trouble in having the matter adjusted.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

TAXATION—ASSESSMENT.

RICHMOND, VA., *September 2, 1920.*

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

DEAR SIR:

I have examined the correspondence of Hon. E. Hugh Smith, relating to the assessment of the farm devised by Septimus Headley, Sr.

It appears from this correspondence that the testator devised all of his real estate to his sons and in his will attempted to divide the same by metes and bounds, which metes and bounds, I assume, covered the entire acreage owned by the testator, although in estimating the acreage devised, the testator placed it at about one hundred acres less than he actually had. Mr. Smith says in his letter:

"There can be no doubt under the will that the said devisees own all the land owned by the testator, regardless of the number of acres."

He therefore must have included in the metes and bounds of the land devised by him the entire acreage possessed by him, regardless of the fact that he made an error as to the true number of acres in each tract.

Under the provisions of section 2287 of the Code of Virginia, 1919, which was section 474 of the Code of 1904, the commissioners should have charged the land devised to the persons beneficiary entitled thereto under the will. However, he failed to do so and assessed each of the devisees with the actual number of acres mentioned by the testator in his will, and assessed the residue of the property left by the testator to the testator's estate.

While the assessment, made in the manner it was, was in one sense incorrect, nevertheless, no more than the total number of acres being assessed with taxes, of course the property is liable for the tax and the delinquent taxes are a valid lien upon those portions of the testator's estate which were allowed to go delinquent.

I know of no reason, however, which would prevent the commissioner of the revenue or the land assessor as you have suggested, from correcting

his books so as to conform with section 2287 of the Code and I feel reasonably certain that the commissioner and the land assessor would make the necessary correction on the books for 1921 if Mr. Smith would take the matter up with them.

Yours very truly,

LEON M. BAZILE,

Second Assistant Attorney General.

TAXATION—AMERICAN LEGION CARNIVALS.

RICHMOND, VA., April 1, 1920.

HON. W. W. HALLIGAN,
Commissioner of Revenue,
Clifton Forge, Va.

DEAR SIR:

I am in receipt of your letter of March 27th, in which you state that the American Legion contemplates bringing a carnival to your city next week. You state that the proceeds derived from this carnival are to be used for charity.

You also refer to a letter of mine of April 29, 1919, to Hon. C. Lee Moore, in which he advised that under certain conditions a carnival could be held without the payment of a State license.

You further advise in your letter that the American Legion will have complete control and management of the show, handling money, selling tickets and receiving all money over and above the actual expense of the show. Such being the case, I am of the opinion that no State license will be required.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

TAXATION—AUTOMOBILES.

RICHMOND, VA., May 19, 1920.

H. S. MARX, *Assistant General Counsel,*
American Railway Express Company,
New York City.

DEAR SIR:

Acknowledgment is made of your letter of May 12, 1920, with reference to the opinion of the Attorney General on the matter of requiring automobiles operated by your company to procure the license provided for by chapter 90 of the Code of Virginia, 1919. In the absence of the Attorney General, I shall take the liberty of replying thereto.

After our letter of the 19th instant, to the Secretary of the Commonwealth was written, I had occasion to look into the matter more fully in

connection with a request received from Hon. Frank L. Ball, Commonwealth's attorney of Alexandria county, Virginia. I then went into the matter at some length, and am enclosing you a copy of my letter to Mr. Ball.

Clearly the provisions of section 29½ of the Virginia Tax Bill, which reads:

"The amount of taxes and license herein imposed shall be in lieu of all other taxes and licenses, State county and municipal, upon all the property, franchises and privileges of said companies."

refer to the property, franchises and privileges of express companies taxed by section 29½ of the Tax Bill, and have no reference to the statute which imposes a license for the privilege of operating an automobile on the roads and streets of Virginia.

Yours very truly,

LEON M. BAZILE,

Second Assistant Attorney General.

TAXATION—AUTOMOBILES.

RICHMOND, VA., *June 8, 1920.*

HARRY K. GREEN, ESQ.,

*Commissioner of Revenue,
Clarendon, Virginia.*

DEAR SIR:

Acknowledgment is made of your letter of May 20, 1920, a part of which I have previously answered. In the third question submitted by you, you say:

"Should owners of automobiles or trucks, using same for transportation of passengers, merchandise, or the hauling of sand, gravel, bricks and such matter, take out a license under section 2151 of new Code? We have a great many persons in this county and in the District of Columbia, who have machines and use same for purposes above described, and have already taken out the regular State license and certificate of registration through the Secretary of Commonwealth, and from my understanding of the law they must also have a license under automobiles for hire, as set forth under section 2151. Please advise me on this matter fully as I have had some complaints in this direction, the owners claiming that they have already applied to the Secretary of Commonwealth for such license and been advised that it was not necessary."

It is provided by section 2151 of the Code of Virginia, 1919, as follows:

"Every person, for the privilege of running a machine for hire, in the transportation of merchandise or passengers in counties or in cities or towns of less than five thousand inhabitants shall for each machine operated pay the sum of five dollars, and in cities or towns of more than five thousand shall for each machine operated pay the sum of ten dollars, such fees to be paid in addition to the registration and license tax hereinbefore provided for. These shall be the only State license taxes to be paid for the privilege of running a machine for hire in the transportation of merchandise or passengers."

The provisions of this section clearly cover the cases embraced in your query. Where one engaged in the running of a machine for hire in the transportation of merchandise or passengers, the license provided for by section 2151 of the Code must be obtained in addition to the general license required for the operation of automobiles in this State.

In connection with this matter, I am sending you a copy of an opinion given Hon. C. Lee Moore, Auditor of Public Accounts, by me on April 26, 1918 (report of Attorney General, 1918, pages 105 et seq), which relates to this subject.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

TAXATION—LICENSE TO OPERATE AUTOMOBILES FOR HIRE.

RICHMOND, VA., *August 10, 1920.*

MR. GEO. F. GRANT,
Abingdon, Va.

DEAR SIR:

Acknowledgment is made of your letter in which you ask whether a person living in the county, by paying a State license to carry passengers, can do such business in the town of Abingdon without paying the license required by the town ordinance to do such business.

The payment of the State license in a county, for the privilege of carrying passengers, secures to the licensee the privilege of transporting passengers from such county to any portion of the State without paying an additional license tax for so doing, regardless of the fact that he passes through towns, cities and other counties in the State. But such licensee cannot come into the town and do the business of carrying passengers to and from therein, or carrying them therefrom, without paying such license as the town ordinance requires.

Yours truly,

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

TAXATION—RECORDATION OF DEEDS.

RICHMOND, VA., *May 18, 1920.*

HON. LANDON LOWRY,
Bedford, Va.

DEAR SIR:

Acknowledgment is made of your letter of May 15th, in reply to a letter from this office dated May 10th, with reference to the tax to be charged by the clerk for the recordation of a deed which was executed and recorded for the purpose of correcting an omission in a previous deed which has been recorded. In your letter you say:

"In my opinion the tax imposed is a tax on the transfer of the land from the grantor to the grantee, and if this tax has been paid,

and because of a clerical error in writing the original deed, on which the tax was paid, a second deed is written and recorded, it seems to me that the tax should not be required on the second deed, which was executed merely for the purpose of correcting the defect in the original deed."

In the absence of the Attorney General from the office, I shall take the liberty of replying to your letter. It is provided by section 13 of the Virginia Tax Bill, so far as is applicable to the question here under consideration, as follows:

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

From the above quoted language you will see that the tax is imposed, not on the transfer of the land but on the deed, the words of the statute being "on every deed," and therefore the full tax should be paid on the deed of correction as well as on the original deed.

Yours very truly,

LEON M. BAZILE,

Second Assistant Attorney General.

TAXATION—ON DEEDS.

RICHMOND, VA., *September 15, 1920.*

C. W. YANCEY, Esq., *Deputy Clerk.*
Sussex Court House, Virginia.

DEAR SIR:

Acknowledgment is made of your letter of September 9, 1920, in which you say

"Will thank you to send us your ruling in reference to whether or not standing timber is considered or determined real estate.

"We are in question as to whether or not a deed conveying standing timber should be taxed as a deed conveying real estate or personal property."

From an examination of section 13 of the Tax Bill, I find that exactly the same tax is imposed for the recordation of deeds which convey personal property as is required for the recordation of deeds conveying real estate. I, therefore, cannot see the necessity for a clerk to pass upon the question as to whether standing timber is real or personal property. If you desire the information for any other purpose, however, I shall be glad to go into the question for you.

Very truly yours,

JNO. R. SAUNDERS,

Attorney General.

TAXATION—ON DEEDS.

RICHMOND, VA., *September 20, 1920.*

C. W. YANCEY, ESQ.,

*Deputy Clerk,**Superior C. H., Va.*

DEAR SIR:

Yours of the 27th just received. In your former letter you did not ask me as to whether revenue stamps should be required on a deed conveying timber, but I was under the impression that your letter had reference only to the tax required by the State.

A deed conveying timber should have revenue stamps attached. I would add that this is also the ruling of the internal revenue tax collector.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

TAXATION—RECORDATION OF DEEDS.

RICHMOND, VA., *July 23, 1920.*

MR. JAMES A. SOMMERVILLE,

Newport News, Va.

DEAR SIR:

Acknowledgment is made of your letter of July 22nd, in which you desire an opinion as to whether the law requires a State tax to be paid on recording a deed of correction.

In reply, I will state that the Auditor holds that on every deed which is recorded according to the provisions of section 13 of the Virginia Tax Bill, there should be paid a State tax, whether said deed is an original deed or whether it be a deed to correct a former deed. That section states that:

"On every deed except a deed exempt from taxation by law, which is admitted to record, * * * the tax shall be * * *"

That section imposes a tax on the deed, and not on the transfer of land, the words of the statute being "on every deed." The tax, of course, is graduated according to the value of the property.

This being the construction placed upon the law by the Auditor, of course the clerks would have to follow it unless a court should rule otherwise

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

TAXATION—MORTGAGES AND DEEDS OF TRUST.

RICHMOND, VA., *December 9, 1920.*

HON. C. LEE MOORE,

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

DEAR SIR:

I have examined the correspondence between you and R. Gray Williams, Esq., with reference to the proposed "open end" mortgage to be executed

by the Northern Virginia Power Company, and am of the opinion that you are correct in the position you have taken in this matter.

Mr. Williams states that an "open end" mortgage is a mortgage that does not limit the maximum amount of bonds that may be issued and secured thereunder, but prescribes stringent restrictions on the bonds that the company may issue, and makes the trustee responsible for the authentication of bonds in conformity with said restrictions.

Section 13 of the Virginia Tax Bill which provides for the tax on deeds of trust, so far as is applicable to the question here under consideration, provides as follows:

"* * * On deeds of trust or mortgages the tax shall be upon the amount of bonds or other obligations secured thereby. On deeds of trust or mortgages upon the works and property of a railroad partly in another State, the tax shall be upon such proportion of the amount of bonds or other obligations secured thereby, as the number of miles of line of such company in this State, bears to the whole number of miles of the line of such company conveyed by such deed. * * *

This section requires the tax on a deed of trust to be based upon the amount of bonds or other obligations secured thereby and contemplates that said deed of trust shall distinctly state the amount of bonds or obligations secured by the same, and I am of the opinion that the clerk should decline to record any deed of trust, mortgage or other lien in the nature of a deed of trust until the amount of bonds or other obligations secured thereby, are specified in the deed of trust or mortgage so that the tax upon the recordation of the same can be determined.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

TAXATION—SUBSTITUTION OF TRUSTEE IN DEED OF TRUST.

RICHMOND, VA., *September 17, 1920.*

HON. H. T. WICKHAM, *Vice-Pres.,*
C. & O. Ry.,
Richmond, Va.

MY DEAR SIR:

I beg leave to acknowledge receipt of your letter of September 15th, in which you enclose me copies of two mortgages from the Chesapeake & Ohio Railway Company to the United States Mortgage and Trust Company and William H. White, Trustees, dated respectively January 2, 1909, and December 1, 1910.

You further advise me that Mr. William H. White, the individual trustee under said mortgages, departed this life on August 5, 1920, and it is now proposed by the C. & O. Railway Company to fill the vacancy caused by the death of Mr. White.

You also enclose in your letter certain drafts of instruments in writing, executed by order of the board of directors or the executive committee of the C. & O. Railway Company, appointing an individual trustee in the

place and stead of Mr. William H. White. You also state that the original mortgages were duly recorded upon their execution and the tax on these at the time of recordation, was duly paid.

You then ask to be advised whether or not there is any tax imposed under section 13 of the Tax Laws of Virginia or any other statute of Virginia for the recordation of these proposed instruments in writing, to substitute trustees.

In reply, I will state that I am clearly of the opinion that there should be no tax imposed by the State for the recordation of these proposed instruments in writing. I would add that I have carefully discussed this matter with Hon. C. Lee Moore, Auditor of Public Accounts and he fully concurs with me in this opinion.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

TAXATION—EATING HOUSES—SUNDAY LAWS.

RICHMOND, VA., *October 28, 1920.*

MR. C. VERNON FORD,
Commonwealth's Attorney,
Fairfax, Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of October 23, 1920, in which you say:

"There is a grocery store out in the country in this county which is in the line of a good deal of automobile travel. Complaint is made that on Sundays, in order to accomodate the travel, there is sold, over the counter, lunches, soft drinks and candy, but nothing else. Some people in the neighborhood complain, but the storekeeper insists that it does not violate the law to sell the necessary food to travelers, although he may use the counters of his grocery store to do it. What do you think of this?"

If this man has a license to keep an eating house, Virginia Tax Bill, sections 96 and 97, I am of the opinion that he has the right to sell lunches on Sunday. I am further of the opinion, however, that he has no right to sell soft drinks and candy on Sunday under any circumstances, and if he does so, he violates the Sunday law.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

TAXATION—LICENSE—PERISHABLE ARTICLES OF FOOD.

RICHMOND, VA., *June 28, 1920.*

MR. ANDREW L. JONES,
Monterey, Va.

DEAR SIR:

Your letter of June 25th just received, in which you ask whether or not persons who travel around the country and buy meats, butter, eggs,

poultry and other things of a perishable nature not grown by themselves, and take them to certain towns for sale, are required to pay a license of \$25.00.

You further state that persons coming to Highland county from Bath, buy such articles and then sell them in Hot Springs and other towns in Bath county. Section 51 of the Tax Laws provides that :

"The tax on peddlers of ice, wood, meat, milk, butter, eggs, poultry, fish, oysters, game, vegetables, fruit or other family supplies of a perishable nature, not grown or produced by them, shall be \$25.00 for each vehicle used in peddling. * * *"

Of course, this license should be paid where such articles are sold.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

TAXATION—LAND AGENTS.

RICHMOND, VA., June 4, 1920.

HON. HARRY K. GREEN,
Commissioner of Revenue,
Clarendon, Va.

DEAR SIR:

Acknowledgment is made of your letter of May 28th, in which you ask several questions. Your second question is as follows:

"Is a real estate agent having a place of business in the city of Washington, but advertising and showing real estate in Alexandria county, liable for a license, although he closes all his deals for Virginia property in his office in Washington?"

It is provided by section 54 of the Virginia Tax Bill, so far as is applicable to the question here under consideration, as follows:

"No person, firm or corporation, shall, without a license, act as agent for the sale of lands. * * *"

I am of the opinion that an agent who advertises lands for sale in Virginia and who brings parties into this State to look at property he has for sale for the purpose of selling the same, is acting as an agent for the sale of lands within the meaning of section 54 of the Tax Bill and should be required to obtain a license as such.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

TAXATION—MERCHANTS.

RICHMOND, VA., *January 13, 1920.*

MR. JAMES WEISER,

*R. F. D. 1,**Lincolnton, Pa.*

DEAR SIR:

Acknowledgment is made of your letter of January 9, 1920, in which you say that you expect to locate in Virginia and engage in buying and shipping eggs and poultry to northern markets and to wholesale dealers or commission men. You request to be advised if there is any license tax required for engaging in this business.

Under section 46 of the Virginia Tax Bill, such business is exempted from a license tax. You would, however, be taxable upon the amount of capital employed in your business.

You further ask if you can use a trade name, such as Produce Exchange, or some other suitable name without violating the laws of this State. That would depend upon whether some other person had already acquired the right to the use of such a name.

Under the corporation laws of this State, it is provided that no charter shall be issued to any corporation with a name which has already been acquired by some other corporation chartered or licensed to do business in this State.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

TAXATION—MERCHANTS.

RICHMOND, VA., *April 1, 1920.*J. ED. OGDEN, Esq., *Treasurer,**Berryville, Va.*

DEAR SIR:

Acknowledgment is made of your letter of March 30th, in which you desire certain information concerning the license tax on merchants, beginning business on April 1st. As you know, a merchant's license tax is based upon the amount of his purchases. Under the old law which was in force several years ago, the license tax could be pro-rated. However that has been repealed by the legislature and there is now no pro-rating of merchants license taxes.

If you will examine section 46 of the Virginia Tax Laws, found on pages 73-4, you will find one paragraph of said section, which reads as follows:

"For the purposes of ascertaining the tax to be paid by a merchant beginning business, his purchases shall be considered to be the amount of goods, wares and merchandise bought to commence business with, including goods, wares and merchandise manufactured by him to be offered for sale at the place at which he conducts his business as a merchant provided such place is not the place of manufacture, also including an estimate of purchases which the merchant will make

between the date of the issuance of his license and the thirty-first of March following, and including an estimate of the amount of goods, wares and merchandise manufactured by him to be offered for sale at the place at which he conducts his business as a merchant, provided such place is not the place of manufacture."

You will see from the provisions contained in this paragraph that in case of a merchant beginning business, that his purchases shall be considered to be the amount of goods, wares and merchandise bought with which to commence business, plus what will be his approximate purchases between the date of beginning business, and the 31st of March following, which license expires the 31st of April in accordance with section 555 of the Tax Laws, pages 213-4. The tax must be calculated as follows:

If the purchases with which to begin business amounted to \$10,000 and the approximate purchases between that date and the 31st of March following would be an additional \$10,000, the tax must be calculated on purchases of \$20,000 as follows: On the first \$20,000, \$10.00; on the excess (\$18,000) \$2.00 per thousand, \$36.00; total tax \$46.00.

Of course, on May 1, 1920, the merchant will have to take out another license for the year beginning May 1, 1920.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

TAXATION—MERCHANTS.

RICHMOND, VA., April 27, 1920.

R. L. COSBY, Esq.,

Commissioner of the Revenue,

Newport News, Va.

MY DEAR MR. COSBY:

Acknowledgment is made of your letter of April 24th, in which you say:

"I understand that the State legislature, at its special session last year, fixed a rate of tax on merchants, of ten cents per hundred on all purchases in excess of one hundred thousand dollars, and that this rate will apply to all cities as well as to the State. Will you kindly advise me as soon as convenient, if this is correct? It is very important, because it seriously affects the revenue of this city."

It is provided by section 46 of the Tax Bill as amended, which will be in force on and after May 1, 1920, so far as is applicable to the question under consideration, as follows (Va. Tax Laws 1919, page 75):

"For every license to a merchant, firm, company or corporation, as defined in section 45, engaged in the business of a merchant, the amount to be paid shall be graduated as follows: if the amount of purchases shall not exceed one thousand dollars, the amount shall be ten dollars; when purchases exceed one thousand dollars but do not exceed two thousand dollars, the amount shall be twenty dollars and when purchases exceed two thousand dollars, but do not exceed one

hundred thousand dollars, the amount shall be twenty dollars for the first two thousand and twenty cents on the one hundred dollars on the excess from two thousand dollars to one hundred thousand dollars, and when purchases exceed one hundred thousand dollars, the amount shall be twenty dollars on the first two thousand dollars, twenty cents on the one hundred dollars from two thousand dollars to one hundred thousand dollars, and ten cents on the one hundred dollars upon all in excess of one hundred thousand dollars."

The same provision with reference to the tax of ten cents on the hundred on all purchases in excess of one hundred thousand dollars is also contained in the old law, which is in force at the present time and which is found on page 73 of the Virginia Tax Laws of 1919, being the second paragraph of section 46 of the Virginia Tax Bill previous to its recent amendment, which takes effect May 1, 1920. In the old law it is provided as follows:

"If the amount of purchases shall not exceed one thousand dollars, the amount shall be five dollars. When purchases exceed one thousand dollars, but do not exceed two thousand dollars, the amount shall be ten dollars; and for all purchases over two thousand dollars and less than one hundred thousand dollars, there shall be paid twenty cents on the one hundred dollars; and upon all the purchases over one hundred thousand dollars, there shall be paid ten cents on every hundred dollars in excess of one hundred thousand dollars."

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

TAXATION—NOTARY'S SEAL.

RICHMOND, VA., *June 21, 1920.*

C. W. GARY, ESQ.,
Franklin, Va.

DEAR SIR:

Acknowledgment is made of your letter of June 16th, in which you enclosed a copy of a notary's certificate to a deed and request me to advise you whether the same is an acknowledgment or affidavit, so that you may know whether you can put your official seal thereon without affixing thereto a State revenue stamp.

This certificate, you say, is attached to a deed which conveys property in North Carolina and will therefore be recorded in that State. The certificate is as follows:

"State of Virginia
County of Isle of Wight, to-wit:

"This the 4th day of June, 1920, personally came before me, C. W. Gary, a notary public, in and for the State and county aforesaid, J. L. Camp, Jr., who being by me duly sworn, says that he knows the common seal of the Marion County Lumber Corporation, a corporation organized and existing under the laws of the State of Virginia, and is acquainted with J. L. Camp, who is president of said corporation, and that he, the said J. L. Camp, Jr., is secretary of the said corporation, and saw the said president sign the foregoing instrument, and that he, the said J. L. Camp, Jr., secretary, as aforesaid, affixed said

seal to said instrument, and that he, the said J. L. Camp, Jr., signed his name in attestation of the execution of the said instrument in the presence of said president of said corporation.

"Witness my hand and official notarial seal, the day and year first above written.

(Signed) "C. W. GARY,
Notary Public.

"My commission expires on the 16th day of October, 1921."

This certificate, while partaking of certain qualities of an affidavit, is nevertheless, in my opinion, also an acknowledgment of the execution of the deed, and therefore if your seal is attached to the same, the State stamp should be used.

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

TAXATION—PHOTOGRAPHERS.

RICHMOND, VA., *June 23, 1920.*

D. WAMPLER EARMAN, ESQ.,
Commonwealth's Attorney,
Harrisonburg, Virginia.

DEAR SIR:

Acknowledgment is made of your letter of June 18, 1920, in which you request me to advise you whether one who is engaged in the book business in your town and, as a side line, develops and prints kodak pictures is subject to the license tax provided for by section 121 and 122 of the Virginia Tax Bill, as amended. In your letter, you say:

"This merchant does absolutely no enlarging or color work, and is not a photographer in any sense of the word, except simply develops and prints pictures occasionally, for which he makes a nominal charge."

It is provided by section 121 of the Virginia Tax Bill, as amended, so far as is applicable to the subject of your inquiry, as follows:

"Any person who takes, or exposes, on plates, films or sensitized material, or who develops or prints images of objects according to the invention of the daguerreotype process, or who does any or all of these things, by whatever name it may be known or called, shall be deemed a daguerreotype artist. * * *

You will observe that a daguerreotype artist is defined by this section as being not only one who takes or exposes on plates, films or sensitized material, but one who "*develops or prints* images of objects according to the invention of the daguerreotype process," and this section declares one who does any one or all of these things a daguerreotype artist within the meaning of the Virginia Tax Bill. I am, therefore, of the opinion that one who develops kodak pictures is a daguerreotype artist within the meaning of section 121 of the Virginia Tax Bill, and is subject to the license tax provided for by section 122 of that bill.

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

TAXATION—PROBATE OF WILLS OR GRANT OF LETTERS OF ADMINISTRATION
TAX ON.RICHMOND, VA., *December 15, 1920.*

CHAS. L. HUTCHINS, ESQ., *Clerk,*
Suffolk, Va.

MY DEAR MR. HUTCHINS:

I am in receipt of your letter of December 13th in reference to the above estate. The first two paragraphs of your letter are as follows:

"In applying for the probate of the will of the above named decedent this morning, a question arose that has never been presented to me before. It is as follows:

"On the imposing of the State tax on the deceased's estate, the attorney representing the executrix contended that the amount of the debts of the deceased should be deducted from the corpus of the estate, and the tax based on the remainder. His contention was that so much of the estate of the deceased as would have to answer for his debts, was not really a portion of the estate, but such as properly belonged to his creditors, the law imposing upon the fiduciary the duty of paying them before any distribution of the estate could be made. Will you kindly advise me in this matter at your earliest convenience?"

Section 12 of the Virginia Tax Law provides as follows:

"On the probate of every will or grant of administration not exempt by law, there shall be a tax of one dollar, where the estate, real or personal or mixed, passing by such will or by intestacy of the decedent, shall not exceed one thousand dollars, and for every additional one hundred dollars, or fraction of one hundred, an additional tax of ten cents; and no one shall be permitted to qualify and act as executor or administrator until said tax shall have been paid. * * *

You will observe from a reading of this section, that the tax is based upon the *estate itself*. There is no provision in the law for any deduction for debts. In other words, it was never contemplated by the legislature that the State should first ascertain what were the debts due by the decedent, before levying its tax upon his estate.

I would add that I have discussed this matter with the Auditor of Public Accounts and he tells me that this question has been presented to him on several occasions, and he agrees with me that the contention of the attorney in this case, is clearly erroneous and it is your duty to base the tax upon the value of the estate without taking into consideration any debts which may be due by the decedent.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

TAXATION—INCOME.

RICHMOND, VA., May 5, 1920.

MR. HARRY K. GREEN,
Clarendon, Virginia.

DEAR SIR:

Acknowledgment is made of your letter of April 26, 1920, in which you request me to answer two questions thus stated by you:

"A lawyer living in Alexandria county, having his home and family here, but has his law office in the District of Columbia, and practices his profession both in Washington and Virginia, claims that under Acts of 1918, chapter 219, section 10, paragraph "i," he is only liable for income tax on the amount of income he receives from his profession in the State of Virginia—that the income he receives from his profession in the city of Washington is not taxable in Virginia, regardless of the fact that Virginia is his home. Is this taxpayer subject to income tax in this State to the full extent of his income or only on that part he makes in Virginia?

"If the lawyer referred to above is correct and only pays on that part of his income made in Virginia, how about the business or professional man receiving all his income from a business conducted wholly in the city of Washington, D. C., and conducting no part of his business in this State—is such a taxpayer liable to income tax in this State?"

It is provided by paragraph (i) of chapter 219 of the Acts of 1918, so far as is applicable to the question here under consideration, as follows:

"Persons and corporations doing a part of their business within the State and a part without the State, and having offices or other regular places of business both within and without the State, shall be taxed only upon such income as is derived from business transacted and property located within the State, which may be determined by an allocation and separate accounting for such income when the books of such person or corporation show income realized from such transactions and property located within the State; otherwise such income shall be apportioned and determined as follows: * * *

Under this exception to the general taxing provision found in the second paragraph of section 10 of the Tax Bill, as amended by chapter 219 of the Acts of 1918, the lawyer in question, who maintains an office in Virginia and another in Washington, is taxed only upon such income as is derived from business transacted and property located within the State.

Replying to your second question, it is provided by the second paragraph of section 10 of the Virginia Tax Bill, as amended by chapter 219 of the Acts of 1918, as follows:

"The aggregate amount of income of each person and corporation residing or doing business in this State, whether received or due but not received within the year next preceding the first of January in each year, subject to the deductions and exemptions hereinafter recited."

I find no exception in the case of a resident of Virginia who derives his income wholly from business conducted out of the State, as is the case

propounded in your first question. I am, therefore, of the opinion that the person referred to in your second question should be taxed on all of the income received by him less the deductions provided for.

Very truly yours,

JNO. R. SAUNDERS,

Attorney General.

TAXATION—INCOME TAX—BANKS AND TRUST COMPANIES.

RICHMOND, VA., April 26, 1920.

MARYUS JONES, Esq.,

Attorney at Law,

Newport News, Va.

MY DEAR SIR:

Acknowledgment is made of your letter of April 23rd, in which you refer to the exemption by section 11 of the Tax Bill, of State and national banks, banking associations, trust and security companies, from the provisions of the income tax law, found in section 10 of the Virginia Tax Bill. In your letter you say:

"The Powell Trust Company of this city, by its charter, is a banking association, and trust and security company. It seems, therefore, that under the said exception, the Powell Trust Company, Inc., is clearly exempt from paying an income tax for 1920. If you will look into this matter and let me have a ruling from you in this matter, as it is of very great importance to the Powell Trust Company, I shall be obliged to you. The Powell Trust Company, as a banking institution, has to make reports as such regularly to the State Corporation Commission."

If the Powell Trust Company, of your city, is taxed as a bank, banking association or trust and security company, under the provisions of sections 17, 18, 19, 20, 21 and 22 of the Virginia Tax Bill, it is exempted from the payment of an income tax. Otherwise not.

Yours truly,

JNO. R. SAUNDERS,

Attorney General.

TAXATION—INCOME ON CORPORATIONS SUBJECT TO FRANCHISE TAX.

RICHMOND, VA., November 30, 1920.

JUDGE WM. F. RHEA, *Chairman,*

State Corporation Commission,

Richmond, Va.

DEAR SIR:

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

"I enclose a circular letter issued by the Auditor of Public Accounts to commissioners of the revenue, under date of July 22, 1920, wherein he states that all public service corporations, such as express, seamboat, telegraph and telephone companies are subject to and

assessable with the income tax imposed by section 11 of the tax law, and should make income tax return to the commissioner of the revenue in whose district the principal office of the corporation is located in this State.'

"The revenue act, as amended by Acts 1916, pages 793-5, imposed a tax upon income of 'each person or corporation;' but it also contained the following *proviso*, viz, 'provided nothing herein contained shall be construed as imposing an income tax on any part of the receipts of any public service corporation which are now subjected to a State franchise tax upon such receipts, or on insurance companies which pay a State license tax on gross premiums, or on State and national banks or trust companies engaged in the banking business.' This law was still further amended (but in no respect which appears to be here material) by the Acts of 1918, page 392.

"By section 36 of the tax law, a State tax, based partly upon gross receipts, is imposed upon telegraph and telephone companies. This is termed a license tax.

"By section 31 of the tax law, a State tax, measured by gross receipts, and also termed a license tax, is imposed upon corporations operating steamboats, steamships, or other floating property for the transportation of passengers or freight.

"And, by section 29½ of the tax law, a State tax, measured by gross receipts, and designated a license tax, is imposed upon express companies, refrigerator, oil, stock, fruit and certain other car companies.

"In imposing the State tax measured by receipts, the tax law (sections 28 and 36½) designates the same as a 'franchise' tax in the case of railroad companies and water, heat, light and power companies; but the same is, in terms, imposed upon each such company 'for the privilege of exercising its franchises in this State.'

"If the view announced by the Auditor of Public Accounts is correct, the result is that telephone, telegraph, express and steamboat companies would, in substance, be taxed, first, upon *gross* receipts, and, then also, upon *net* receipts; whereas certain other public service corporations would be protected from a tax upon net receipts *because* of having been taxed upon their gross receipts—and this, too, notwithstanding the fact that such gross receipts tax seems to be imposed, in every case, for the privilege of exercising franchises.

"Please consider the matter, and give me your opinion upon the following questions:

"*First*.—Are the receipts of telephone, telegraph, express and steamboat companies 'subjected to a State franchise tax,' within the true intent and meaning of the aforesaid proviso to section 11 of the State income tax law?

"*Second*.—If not, are the last-named companies protected from such income tax by the Constitution, State or Federal—especially in view of the express exception of 'receipts of any public service corporation which are now subjected to a State franchise tax upon such receipts'?

"*Third*.—In view of the statutory provisions under which the State Corporation Commission is given the power, and charged with the duty of assessing State taxes against all of such public service corporations, has the Auditor of Public Accounts, or any commissioner of revenue, or examiner of records, any authority to assess State income taxes (omitted or otherwise) against any public service corporation, even if any such corporation is liable to such tax?"

Section 36 of the Tax Bill, as amended, provides, so far as is applicable to the question here under consideration, as follows:

"Each telegraph company * * * shall, *for the privilege of doing business between points within this State*, pay a license tax as

follows, to-wit: two dollars per mile of line of poles or conduits owned or operated by the company * * * and an additional charge of two per centum of the gross receipts of the company received (or due, though not received) from business done within this State during the year ending the 30th day of June.

"The *specific license tax* to be paid by every corporation, person or association *for the privilege of operating the apparatus necessary to communicate by telephone*, shall be, when the gross receipts do not exceed fifty thousand dollars, and when the number of poles do not exceed six hundred miles, and a majority of the stock or other property of such company is not owned or controlled by any other telephone or telegraph company whose receipts exceed fifty thousand dollars, a sum equal to one per centum of the gross receipts of such corporation, person or association from business done within this State during the year ending the thirtieth day of June preceding; when the gross receipts from business done within this State during any such year are in excess of fifty thousand dollars, or the number of miles of poles exceed six hundred or a majority of the stock or other property of such company is owned or controlled by any other telephone or telegraph company whose receipts exceed fifty thousand dollars, the license tax shall be a sum equal to one per centum of such receipts up to fifty thousand dollars and an additional sum equal to two per centum of such receipts exceeding fifty thousand dollars, and, in addition, a sum equal to two dollars per mile of line of poles or conduits, owned or operated by such corporation, person, or association in this State. * * *

Section 31 of the Virginia Tax Bill, as amended, after providing for a tax on the intangible property and the real and tangible personal property of corporations which operate steamships, steamboats or other floating property for the transportation of passengers or freight, provides as follows:

"Every such company *for the privilege of doing business in this State*, in addition to the annual registration fee, and property tax, shall pay an *annual license tax* as follows:

"Said tax shall be equal to one and one-eighth per cent upon the gross receipts from the operation of such companies and each of them, within this State. When such companies are operated partly within and partly without this State, the gross receipts within this State shall be deemed to be all receipts on business beginning and ending within this State and all receipts earned in Virginia on business passing through, into or out of this State; provided that unless otherwise clearly shown such last-mentioned receipts shall be deemed to be that proportion of the total receipts from such business which the entire line mileage over which said business is done bears to the mileage operated within this State."

Section 29½ of the Virginia Tax Bill, after imposing upon express companies, refrigerator, oil stock, fruit and other car-loaning and car companies operating upon the railroads in this State, except sleeping car, dining car, drawing-room car and palace car companies, a tax upon the intangible personal property, money, bonds and real and tangible personal property, provides as follows:

"Every such company, *for the privilege of doing business in this State*, in addition to the annual registration fee and the property tax as herein provided, shall pay an *annual license tax* as follows:

"Said tax shall be equal to the percentages herein fixed upon the gross receipts from operation of such companies and each of them within this State. When such companies are operating partly within

and partly without this State, the gross receipts within this State shall be deemed to be all receipts on business beginning and ending within this State and all receipts earned in Virginia on business passing through, into or out of this State; provided, unless otherwise clearly shown, such last-mentioned receipts shall be deemed to be that portion of the total receipts from such business which the entire mileage over which such business is done bears to the mileage operated within this State the percentage above mentioned shall be as follows:

"On all companies doing express business within this State, one and one-half per centum; on all refrigerator, oil, stock, fruit and other car loading and other car companies, except sleeping car, dining car, drawing room car and palace car companies, six per centum.

"The amount of the taxes and license herein imposed shall be in lieu of all other taxes and licenses, State, county and municipal, upon all the property, franchises and privileges of said companies; provided, that nothing herein contained shall exempt the property of said companies from any special State taxes heretofore or hereafter imposed upon such property. * * *

As you have said, section 28 of the Virginia Tax Bill, as amended, in imposing a similar tax upon the gross transportation receipts of railway and canal corporations, designates such tax as a State franchise tax which is required "for the privilege of exercising its franchise in this State," and section 36½ of the Virginia Tax Bill, as amended, after fixing the tax rate on the intangible personal property, money, bonds and the real and tangible personal property of water, heat, light and power companies, provides for an annual tax on the gross receipts of such companies "for the privilege of exercising its franchise in this State," which tax is designated in the act as a "State franchise tax."

From an examination of the last two sections of the Tax Bill above referred to, it will be seen that the only difference in the principle of the tax imposed upon the gross receipts of the corporations enumerated in those sections, for the privilege of exercising their franchises in this State, and the tax imposed by section 29½, 31 and 36 of the Tax Bill as amended, upon the gross receipts of the corporations enumerated in those sections of the Tax Bill for the privilege of exercising their franchise in this State, is that in one case the tax is called a State franchise tax, while in the other it is called a license tax.

The thing upon which the tax is based—namely: the gross receipts of the corporation—in every instance is the same. The purpose of the tax, namely: for the privilege of doing business in this State, is likewise the same in each case. The method of assessment is the same. The period for which the assessment is made is the same. The only difference to be found, excepting the rate of the tax which varies in all cases, is that in some sections the tax is called a State franchise tax, while in others, an identical tax except as to rate, is called a license tax.

In view of the provisions of section 11 of the Virginia Tax Bill as amended, which provides that nothing therein contained shall be construed as imposing an income tax on any part of the receipts of "any public service corporations which are now subject to a State franchise tax upon such receipts or on any insurance companies which may pay a State license tax on gross premiums," the answer to your first question depends upon the meaning of the phrase "State franchise tax" upon the receipts of public service corporations. In the absence of a judicial definition of this phrase

by the courts in this State, reference must be had to the authorities of other States.

The case of *State v. Express Co.*, 100 Me. 278 (1905) is in point. In that case, section 55 of chapter 6, R. S. (1883) as amended, provided that every corporation, company or person doing an express business, should annually, before the first day of May, "apply to the Treasurer of the State for a license authorizing the carrying on of said business; and every such corporation, company or person shall annually pay to the Treasurer of the State, one and one-half per cent of the gross receipts of said business for the year ending on the first day of April preceding. * * *" The court said (page 280):

"* * * We have but little doubt that the legislature intended that the payment required of express companies should be considered as an excise or franchise tax."

In this case the court discussed the opinion in *State v. M. C. R. R. Co.*, 74 Me. 376 (1883). The statute in that case, chapter 249, section 1, laws 1880, provided as follows:

"It shall be the duty of the Governor and council between the first day of April and the first day of May in each year, to appraise the several railroads in the State with their franchise rolling stock and fixtures, at their cash value, and upon this valuation to levy a tax of one percentum so as to make said tax equal, as near as may be, to the taxes of all kinds upon other property through which said roads may extend."

In commenting upon this statute, the court said:

"This statute does not pretend to give a name to the tax imposed by it. It simply states the way of determining the valuation upon which the tax is to be assessed. But Mr. Justice Walton, who drew the opinion, says: 'We think it is clearly a franchise tax and was so intended by the legislature. * * *'"

It will be seen that the Supreme Court of Maine has held that where a tax is imposed upon the earnings of a public service corporation for the privilege of doing business in that State, that it is a franchise tax even though the legislature has designated the same a "license tax," and that where a tax is a franchise tax in fact, it will be so held, even though the legislature fails to designate the name of the tax.

In *Worth v. Railroad*, 89 N. C. 301, 306 (1883), it is said:

"* * * Whenever a tax, as here, is imposed upon a corporation directly by the legislature and is not assessed by assessors, and the amount depends on the amount of business transacted by the corporation, and the extent to which it has exercised the privileges granted in its charter, without reference to the value of its property or the nature of the investments made of it, it is a franchise tax. *Burroughs on Tax.*, 169. * * *"

and at page 307 of the same case, speaking of the tax under consideration, the court said:

"* * * Besides, it is a privilege tax, and every privilege tax must be a tax on the franchise; for a franchise of a private corporation, in its application to a railroad, is the *privilege* of running it and taking fare and freight, *Railroad v. Reid*, 13 Wall., 264. * * *"

In an exhaustive note by Mr. Freeman to the case of *Black Rock Copper Mining and Milling Co. v. Tingey*, 131 Am. St. Rep. 850; 34 Utah 369 (1908) it is said (page 869):

"Many statutes impose a tax by way of a license for exercising corporate franchises. These taxes are sometimes called franchise taxes, and sometimes license taxes. They are not property taxes, and hence are not within the constitutional limitations placed on the taxation of property. The tax is often graduated according to the number of shares of stock, the amount of capital stock, the extent of business transacted, the gross receipts of the company, the amount of dividends declared, or according to some other such standard; but the tax is not for that reason deemed a property tax. It is a tax on the privilege of the corporation to exercise its franchise. * * *

and at page 871, the same distinguished writer says:

"But while a corporate franchise is property, and a valid asset of the corporation, yet the term 'franchise tax' may be used to indicate a license or privilege tax—a tax imposed by the State for the continued privilege of exercising the franchise in the State. The distinction between these two kinds of taxes is not always easy to make, neither is the distinction between a tax on the franchise and the tangible assets of the corporation. * * *

In discussing the meaning of franchise and license taxes, the Supreme Court of Alabama, in *Southern Ry. Co. v. Green*, 49 Sou. 404, 407 (1909) said:

"* * * The conclusion is that, while a corporate franchise is property, and a valuable asset, of the corporation, yet the term 'franchise tax' may be used to indicate a license or privilege tax—in other words, a tax imposed by the State for the continuing privilege of exercising the franchise in the State."

In *State v. Franklin Co. Sav. Bank and Tr. Co.*, 74 Vt. 246 (1902), the court held that a tax upon the average amount of deposits of the bank was a franchise tax because such tax was upon the privilege of conducting the business under a corporate organization.

The same rule was laid down by the Supreme Court of Vermont. In the case of *State v. Bradford Sav. Bank*, 71 Vt. 234 (1898) and in numerous cases cited in the opinion.

Other authorities to the same effect could be cited, but these sufficiently illustrate the rule that where a tax is imposed upon the gross receipts of a corporation for the privilege of doing business, that the tax is a tax on the privilege of the corporation to exercise its franchise, and whether it be designated a license tax, a franchise tax or is given no designation at all, it belongs to that class of taxation which is commonly known as a franchise tax, or to designate it with accuracy, a tax on the privilege of the corporation to exercise its franchise.

As I have said before, under sections 28, 29½, 31, 36 and 36½ of the Virginia Tax Bill, as amended, the tax in each case is levied for the privilege of doing business in this State.

I am therefore of the opinion that the tax levied on the gross receipts of such corporations for the privilege of doing business in this State, in each

case, whether designated a license tax or not, is a State franchise tax within the meaning of section 11 of the Virginia Tax Bill which exempts from the operation of the income tax law a tax on any part of the receipts of "any public service corporations" which are now subject to a State franchise tax upon such receipts.

Having answered your first question in the affirmative, I take it that it is unnecessary to answer the second and third inquiries propounded by you.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

TAXATION—INCOME DEDUCTIONS.

RICHMOND, VA., *October 28, 1920.*

MR. WM. A. PRATT, *Chairman,*
Local Board of Review,
Staunton, Virginia.

MY DEAR SIR:

I am just in receipt of your letter of October 26, 1920, to which I will reply at once.

You state that a citizen of Staunton, who owns stock in the C. & O. Railway, the N. & W. Railway, the A. C. L. Railway and the Southern Railway, claims the right to deduct the dividends from said stock in reporting his income, on the ground that the railway companies are Virginia corporations.

I have very carefully read the contents of your letter, and the reasons assigned therein whereby your board takes the position that the said individual is not entitled to deduct these dividends in reporting his income. I am of the opinion that you are entirely correct in your construction of the law. I would further add that I have discussed this matter with counsel for the State Tax Board, and he too fully concurs in your view.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

TAXATION—INHERITANCE TAX.

RICHMOND, VA., *March 8, 1920.*

DR. J. H. C. WINSTON,
Hampden-Sidney, Virginia.

MY DEAR DR. WINSTON:

I am just in receipt of your letter of March 6th, in which you write me concerning certain personal property which was devised by your father, Dr. Peter Winston, to your mother, Mrs. Mollie E. Winston. You state that the Bankers Trust Company of New York, to which you have applied for the transfer of some stock, which stock is in the name of your father, requires, among other things, that they have in hand "evidence of the payment of the inheritance tax, or waivers and consents from State officials."

You also write that this trust company states that application for such waivers and consents should be made to the Attorney General of Virginia.

In response to your letter, I will state that, inasmuch as the amount bequeathes your mother by your father is less than \$10,000, the State of Virginia imposes no inheritance tax, nor should any be paid by her before receiving this legacy. The clerk of the court is correct when he makes this statement.

I know of no form for any waiver and consent which is necessary to be used in a case of this kind.

I am enclosing you a copy of a letter which I have written to the Bankers Trust Company. I would also suggest that you get a certificate or statement in writing from the clerk to the effect that, under the law, he is the proper person to collect the inheritance tax, and that no such tax is imposed upon this amount, due to the fact that it is less than \$10,000. I feel sure that this certificate or statement along with my letter will relieve the situation. If you have any further difficulty in this matter, however, please advise me and I assure you it will be a great pleasure for me to assist you.

Sincerely,

JNO. R. SAUNDERS.

Attorney General.

TAXATION—INHERITANCE TAX—DUTIES AND POWER OF CLERK.

RICHMOND, VA., December 3, 1920.

E. R. COMBS, Esq., *Clerk.*
Lebanon, Virginia.

DEAR SIR:

Acknowledgment is made of your letter of November 22, 1920, in which you say:

"Some question has arisen in this county as to the powers and duties of the clerks of courts with reference to determining inheritance tax, and I am writing this letter to request an opinion from you on the questions raised. The first question raised is as to whether or not the law requires the commissioner appointed by the court to report upon the value of the estate of the decedent, to give notice of the time and place of his sittings for the purpose of determining the value of said estates; and the second question is, whether or not the clerk has a right to hear evidence as to the value of the estate and change the valuation fixed by the commissioner (if in his opinion a change should be made), at the time he enters the order fixing the tax.

"It appears from forms gotten out by the Auditor of Public Accounts that the commissioner should give notice of the time and place of his sittings, and it further appears from said forms that it is merely the duty of the clerk to ascertain from the report of the commissioner the amount of taxes to be assessed, and that the clerk is not presumed to hear evidence as to the value of the estate."

It is provided by sub-section 5 of section 44 of the Virginia Tax Bill, as amended (Virginia Tax Laws, pages 118, 119), as follows:

"The corporation or hustings court of a city, or the circuit court of a county or city, the chancery court of the city of Richmond, the law and chancery court of the city of Norfolk, or the clerk of the circuit court of a county or city, or the clerk of the corporation or hustings court of the city, before whom the will is probated or ad-

ministration is granted, shall determine the amount of the tax provided for by this act to be imposed upon the transfer of such property as passes by such will, or as comes into the hands of such administrator. For the purposes of ascertaining the taxes due under this act, the court of every city and county having jurisdiction to admit wills to probate and to grant letters of administration shall designate one of its commissioners whose duty it shall be, except where the estate is administered in a suit, to investigate and report to the court or clerk, as the case may be, the value of the estate of every decedent whose gross estate amounts to more than one thousand dollars and of those whose gross estate amounts to less than one thousand dollars if so directed by the court, and the probate of whose will or letters of administration on whose estate is had in said court or clerk's office, and also report the net amount of said estate after deducting debts and costs of administration and the kinds thereof and the persons who are entitled to the same; and the said commissioner shall be allowed for his services for making said appraisement and report one-tenth of one per centum of said gross estate so investigated and reported, payable out of said estate as part of the costs of administration; provided, however, that said compensation shall in no case be less than five nor more than fifty dollars, except that for special services rendered the court may allow greater compensation. Upon the report of the said commissioner the said court, or the clerk of any court clothed with probate powers and in the exercise thereof, shall determine the inheritance taxes, if any, to be paid on the estate passing by will or administration, and shall enter of record in the order book of the court or clerk, as the case may be, an order fixing the amount of the taxes to be paid and by whom. The clerk of the court shall certify a copy of said order to the treasurer of his county or city and a copy to the Auditor of Public Accounts, for which services such clerk shall be paid a fee of two dollars and fifty cents by the personal representative of such decedent. The Auditor of Public Accounts shall charge the treasurer with the tax and the treasurer shall pay the same into the treasury as collected, less a commission of five per centum. And no estate of any decedent subject to investigation under this act shall be distributed unless and until such investigation shall have been made and the tax, if any be proper, has been assessed thereon as provided by this act."

From an examination of this section, I am of the opinion that it is the duty of the clerk merely to ascertain from the report of the commissioner the amount of the taxes to be assessed, and that the clerk is neither required nor authorized to hear evidence as to the value of the estate. He merely determines the inheritance tax, if any is to be paid on the estate, from the report of the commissioner.

In response to your question as to whether or not the commissioner is required to give notice, I refer you to the opinions of the Court of Appeals of Virginia in the following cases:

Commonwealth et als. v. Carter's Executrix, et als., 19 Va. App. 444, *Heth v. Commonwealth*, 19 Va. App. 462, and *Withers et als v. Jones' Executrix et al.* 19 Va. App. 468.

In these cases the Court of Appeals held that a statute which authorizes the assessment of an inheritance tax without providing for notice to the parties to be affected by the same is valid since the parties affected by the assessment had the right to contest the assessment in a subsequent proceeding.

Very truly yours,

JNO. R. SAUNDERS,

Attorney General.

• TAXATION—INHERITANCE TAX.

RICHMOND, VA., December 23, 1920.

MR. JNO. Q. RHODES, JR.,
Attorney-at-Law,
Louisa, Va.

DEAR SIR:

Acknowledgment is made of your letter of December 10th. in which you call my attention to the question submitted in your previous letter to which I did not reply. I did not overlook this question but did not reply at the time I answered the other question for the reason that I did not at that time have the opportunity to investigate your second question.

The question upon which you desire my opinion is whether the commuted dower interest of a widow in her deceased's husband's real estate which had been sold would be subject to the inheritance tax provided for by section 44 of the Virginia Tax Bill, as amended. This section, so far as is applicable to the question here under consideration provides:

"All property within the jurisdiction of the Commonwealth, real, personal and mixed, and any interest therein whether belonging to inhabitants of the Commonwealth or not, which shall pass by will, or by the laws regulating descents and distributions, or grant or gift (except in case of a bona fide purchase for full consideration in money or money's worth) made or intended to take effect in possession or enjoyment after the death of the grantor, whether absolutely or in trust. * * *"

According to the weight of authority and the best reasoned cases the wife's dower interest in her husband's real estate is not subject to the inheritance tax law. The wife's right to dower in her husband's real estate is not a right which passes to her either by will or by the laws regulating descents and distributions or by grant or gift. It is a right which attaches to the husband's real estate then owned or subsequently acquired at the time of marriage and is consummated by the husband's death. In passing to the widow by will or by the laws of descents and distributions, it is not subject to the inheritance tax provided for by section 44 of the Virginia Tax Bill as amended.

In 26 R. C. L. Title Taxation, section 191, page 221, it is said:

"It is held by the weight of authority that an inheritance tax imposed by statute upon the passing of property by will or by the laws regulating intestate succession does not extend to a widow's dower, since dower is a right existing in an inchoate condition from the time of marriage and is merely consummated on the husband's death. Upon the same principle an estate by curtesy is not subject to an inheritance tax. * * *"

In Gleason & Otis on Inheritance Taxation, page 118, it is said:

"Transfers pursuant to the provisions of the common law are generally held not taxable under the usual language of the statutes taxing inheritances and must be specified in the act if they are not to escape taxation.

"A widow does not take dower as heir of her husband and it does not pass by intestate law.

"*Matter of Weiler*, 122 Supp. 608; aff. 139 App. Div. 905; 124 Supp. 1133. *Matter of Church*, 80 Misc. 447; 142 Supp. 284. *McDaniel*

v. Burkett, 120 Ark. 295; 179 S. W. 491. *Estate of Sanford*, 91 Neb. 752; 137 N. W. 864. *Matter of Bullen* (Utah), 151 Pac. 533. *Sanford v. Jackson*, 10 Paige 266. *Konratinka v. Schlegel*, 104 N. Y. 125; 9 N. E. 868. *Gray v. Gray*, 5 App. Div. 132; 39 Supp. 57. *Kimbel v. Kimbel*, 14 App. Div. 570; 43 Supp. 900."

See also *Crenshaw, et al. v. Moore, et al.* 124. Tenn. 528; 137 S. W. 924 Ann. Cas. 1913-a, 165 (1911).

Yours very truly,

JNO: R. SAUNDERS,
Attorney General.

TAXATION—INHERITANCE TAX—INSURANCE POLICY.

RICHMOND, VA., December 9, 1920.

JOHN Q. RHODES, JR., Esq.,
Louisa, Virginia.

DEAR SIR:

Acknowledgment is made of your letter of November 30, 1920, in which, as commissioner appointed by the court to determine the proper amount of inheritance tax to be paid on estates which pass by will, descent and gift, etc., you desire my opinion on the following question:

"Would a life insurance policy payable direct to the wife be considered in arriving at the amount which she receives?"

It is provided by section 44 of the Virginia Tax Bill, as amended, Virginia Tax Laws, page 116, that:

"All property within the jurisdiction of the Commonwealth, real, personal and mixed, and any interest therein whether belonging to inhabitants of the Commonwealth or not, which shall pass by will, or by the laws regulating descents and distributions, or grant or gift (except in case of a bona fide purchase for full consideration in money or money's worth) made or intended to take effect in possession or enjoyment after the death of the grantor whether absolutely or in trust,"

shall be subject to the tax herein provided.

According to the weight of authority, it appears that where insurance policies are payable to designated beneficiaries or assigned absolutely, they are not a part of the insured's estate, and are not liable to inheritance tax unless the statute expressly covers such cases. Note L. R. A. 1917-D, page 656.

In the case of *Tyler v. Treasurer and Receiver General*, 115 N. E. (Mass.) 300, L. R. A. 1917-D, 633 (1917), it was held by the Supreme Court of Massachusetts that the beneficiary in a life insurance policy does not take the proceeds of the policy by "grant or gift upon the death of the insured within the meaning of a statute imposing a succession tax upon all

property which shall pass by deed, grant, or gift made or intended to take effect in possession or enjoyment after the death of the grantor."

See also *Estate of Bullen*, 143 Wis. 512, 128 N. W. 109, 103 A. S. R. 1114 (1910); and 26 R. C. L., page 222, Title Taxation, section 192.

These authorities appear to me to be sound, and I am of the opinion that a life insurance policy payable directly to the wife of a decedent is not subject to an inheritance tax within the meaning of section 44 of the Virginia Tax Bill.

Very truly yours,

JNO. R. SAUNDERS,

Attorney General.

TAXATION—COLLECTION OF TAXES.

RICHMOND, VA., November 27, 1920.

MR. W. C. BIBB,

Commonwealth's Attorney,

Louisa, Virginia.

DEAR SIR:

I am in receipt of your letter of November 23rd, with which you enclosed a letter from Mr. V. R. Shackelford, of Orange, Virginia, and also a tax bill for the year 1920, against Mr. George H. Brown. You desire to be advised as to what course should be pursued in collecting these taxes.

I would refer you to section 2439 of the Tax Laws of 1920, page 372, and also to chapter 561 of the Acts of 1918, page 374. Of course, it would depend upon circumstances as to which is the better method to follow in collecting these taxes.

I take it for granted from your letter that no effort has been made by Mr. Brown to have the court correct this assessment as being erroneous. Unless he does so, the only thing to do is to proceed to collect the taxes. Of course, if he has the assessment corrected on the ground that he is not a resident of Virginia, that settles the case. However, I see no reason why he cannot be asked, when he appears in court, for papers to prove that he pays taxes elsewhere.

I am returning Mr. Shackelford's letter and the tax bill.

Very truly yours,

JNO. R. SAUNDERS,

Attorney General.

TAXATION—CITIES AND TOWNS.

RICHMOND, VA., July 13, 1920.

DR. C. U. GRAVATT,

Port Royal, Va.

DEAR SIR:

In your letter, you ask to be informed what tax an incorporated town may impose on merchants for local purposes.

If you will examine sections 2205, 2206 and 2209 of the Code of 1919, you will find the law applicable to your question. You will observe that the last sentence in section 2206 reads as follows:

"the capital of merchants shall not be subject to State taxation, but may be taxed locally, as provided by the preceding section."

Section 3073 of the Code provides that:

"the council of every city and town shall cause to be made up and entered on their journals an account of all sums lawfully chargeable on the city or town, which ought to be done within one year, and order a city or town levy of so much as in their opinion is necessary to be raised in that way in addition to what may be received for licenses and from other sources."

This section further provides that the levy so ordered may be made upon any property therein subject to local taxation, and not expressly segregated to the State for the purposes of State taxation only.

You will therefore see from the reading of this section and the preceding sections quoted above, that a town has the right to levy a tax on the capital of merchants.

Now, as to the rate, I should say that the rate on this class of property should be the same as that levied on any other class of property by the town.

Trusting this will give you the information desired, I am

Sincerely yours,

JNO. R. SAUNDERS,
Attorney General.

TAXATION—EXEMPTION OF BONDS FROM.

RICHMOND, VA., *March 5, 1920.*

ALEX. T. BROWNING, Esq.,
Orange, Va.

MY DEAR SIR:

I beg leave to acknowledge receipt of your letter of recent date in which you ask whether bonds issued under section 2302 of the Code of 1919 and exempted from local taxation, are subject to State taxes.

In reply, I will state that such bonds are subject to State taxes. If you will examine section 183 of the Constitution, you will see that only such property as is mentioned in sub-section A thereof, is exempt from taxation on the part of the State. The later part of the section, however, provides "that obligations issued by counties, cities or towns may be exempted by the authorities of such localities, from local taxation."

I am of the opinion that this section does not give the localities issuing such obligations, authority to exempt them from State taxes.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

TAXATION—DEDUCTIONS.

RICHMOND, VA., *June 1, 1920.*

MR. JOHN M. MILLER,
City.

MY DEAR MR. MILLER:

I am of the opinion that the loss sustained by Capt. McCabe in the sale of Liberty Bonds, cannot, under our tax laws, be allowed as a deduction in making his returns to the State for taxation. I am frank to say that this seems to be a hardship, still I have to construe the law as it is written.

Before writing this letter, I discussed this matter with counsel for the State Tax Board, and they concur in this opinion. Whenever I can be of service to you, do not hesitate to call on me, as it will be a pleasure for me to respond.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

TAXATION—OF STATE PROPERTY.

RICHMOND, VA., *November 16, 1920.*

DR. E. G. WILLIAMS, *State Health Commissioner,*
State Board of Health,
Richmond, Virginia.

MY DEAR DR. WILLIAMS:

Acknowledgment is made of your letter of November 9, 1920, in which you enclosed a letter from Perkins, Perkins & Walker, attorneys-at-law, addressed to Dr. Harry T. Marshall, which letter is as follows:

"I understood from you yesterday that you expected to go to Richmond next week to attend the meeting of the State Board of Health, and I am going to ask that if it is possible for you to do so you will present the following situation to the board:

"You will recall that the Moores Brook purchase was closed, which was in May, 1919, that in consideration of previous extensions of time given by Mrs. Trice to the board in its option on the property, all adjustments of insurance, interest, taxes, etc., were made as of February 1, 1919. We paid Mrs. Trice for the unearned premiums on her insurance policies, we assumed the payment of interest on her debt of \$18,000.00 to the University of Virginia from February 1st, and paid to Mrs. Trice interest on \$32,000.00 of purchase money at six per cent from February 1, 1919, to date of payment.

"Mr. G. Stuart Hamm, treasurer of Albemarle county, has recently called our attention to the fact that taxes on Moores Brook for 1919 have not been paid. Of course these taxes came in the name of Mrs. Trice; the amount of this tax is \$250.24.

"In discussing the matter with your board, I would suggest that you refer the question to some member of your board who can discuss it with Mr. Lee Moore, the Auditor. You see, the situation is simply that one department, or rather one agency, of the State thus becomes indebted to the State itself. Frankly, I don't see any way that your board can avoid the payment, but it does seem rather absurd to have

the State appropriate funds for a definite purpose, and then require a portion of these funds to be returned to it for an entirely different purpose.

"The situation, of course, arises by reason of the fact that taxes are charged in the name of Mrs. Trice. This could not have been otherwise, as the deed to the State was not recorded until after the transfer for 1919 was made.

"Of course, the question will never arise in future years."

You request my opinion upon this matter.

It appears from the above that the Commonwealth was the equitable owner of the property as of February 1, 1920, and would have been the legal owner but for the fact that it suited the convenience of the Commonwealth to settle for the same in May instead of in February, the Commonwealth paying interest on the purchase price from February 1, to May 1, 1920. Under these circumstances, the tax has been imposed upon State property, and I am of the opinion that the proper procedure is to move the circuit or corporation court having jurisdiction to have the assessment stricken off of the assessment books.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

TAXATION—TAX DEEDS, LIABILITY OF COMMONWEALTH.

RICHMOND, VA., May 18, 1920.

HON. JNO. T. SALE,

*Acting Auditor of Public Accounts,
City.*

DEAR SIR:

Acknowledgment is made of your letter of May 18th, with which you enclosed certain papers in connection with the claim of Rudolph L. Seelbach, 921 Mutual Life building, Buffalo, N. Y. Among these papers is a claim filed by Mr. Seelbach against the Commonwealth of Virginia, for \$5,000,793.00. This claim, it appears from the petition, is based upon the following facts:

On July 25, 1900, the clerk of Buchanan county, in a tax deed, conveyed to one Freeman Lane, 289,650 acres of ground. It seems that the taxes on this property became delinquent and that Lane purchased same at a tax sale, or made application therefor, and in the due course of time, obtained a tax deed from the clerk. Lane subsequently sold the property to Mr. Seelbach, the claimant.

Upon investigation, it has developed, according to the allegations of the petition, that the tract of land purported to have been conveyed, was in Buchanan county, or that only a small part thereof was in Buchanan county, and that the bulk of the tract of land was in other counties and in the State of Kentucky. Under these circumstances, Mr. Seelbach, who finds that he has no title to the land, has called upon the Commonwealth to

reimburse him for what he thinks is a fair value of the land he would have had if the tax deed had conveyed him a good title to the same.

There is no authority in law which entitles Mr. Seelbach to make any such claim against the Commonwealth. The Commonwealth does not warrant the title except specially as to property conveyed by tax deed, and it is the misfortune of the tax purchaser or his grantees if the title is defective to the property conveyed under the tax deed.

Yours very truly,

LEON M. BAZILE,

Second Assistant Attorney General.

TAXATION—INSURANCE—WORKMENS COMPENSATION LAW.

RICHMOND, VA., May 12, 1920.

COL. JOSEPH BUTTON,

*Commissioner of Insurance,
City.*

MY DEAR COL. BUTTON:

I beg leave to acknowledge receipt of yours of May 12th, which is as follows:

"Section 75, sub-section J, Workmen's Compensation Act, provides that the Commissioner of Insurance shall assess tax of four per cent against self-insurers. The industrial commission forwards to this department the payroll statement of various self-insurers, and I find, upon figuring the tax, that on some of the State departments, and especially against the public schools, the tax will amount to from one cent all the way up to ninety-five cents, the majority being five cents to fifteen cents. We took this matter up with the industrial commission and told them that it would cost practically as much to collect these small items as the commission would receive in the tax. The commission stated verbally that they thought it well to omit all assessments on State and municipal self-insurers that amounted to less than one dollar, but upon asking for written authority, they forwarded letter under date of May 10th, calling attention to the law and suggesting that we take the matter up and get an opinion from you as to whether or not this department could omit assessments less than one dollar, which would be entirely satisfactory to the commission.

"I would like to have your opinion regarding this matter."

I have carefully read your letter and also the one of Major Richard F. Beirne, chairman of the industrial commission, in connection with this matter. Taking into consideration the costs incident to collecting these small amounts, and the fact that they are really paid by one branch of the State government to another branch of the government, I think it would be proper to omit their collection where they are less than one dollar.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

TAXATION—LOCAL BOARDS OF REVIEW, POWERS OF.

RICHMOND, VA., *June 18, 1920.*

MR. C. CONWAY BAKER.
Montross, Virginia.

DEAR SIR:

I have your favor of the 15th inst., in which you ask the following questions:

"1. Has the local board of review power to review and correct assessments made by the land assessors as well as assessments made by the commissioner of revenue; and

"2. If the local board of review has this power, may it lower such assessments by its own motion, without notice to the land assessors and the land owners?"

In reply, I beg to advise you that, after a careful consideration of the paragraphs of Code section 2227, quoted by you, as well as the other paragraphs of this section dealing with local boards of review, I am of the opinion that the power conferred upon a board of review by sub-section (m), which allows the board to direct the commissioner to correct any entry found to be erroneous upon the land or property books, or *other tax books*, is broad enough to cover the re-assessment books prepared by the land assessors. The right of the board to correct these assessments is further emphasized when we consider the scope of the act creating local boards of review, and the policy underlying this legislative action. The fundamental purpose for which local boards of review were created is that of equalizing assessments within their respective counties.

You will observe that, in sub-section (p), the local board is required to devote especial attention to grievances and complaints with regard to the assessment of real estate during the year of the quinquennial assessment of real estate and during the year immediately following such assessment; and during these years, the board is authorized to direct such corrections on the land books, with reference to these assessments, as may be determined necessary. If the activities of the boards are restricted to the correction of assessments about which complaint is made, numerous tax payers might fail to bring to the attention of the boards the inequalities of their assessments, and thus these inequalities would become fixed for the five-year period, the chief purpose for which local boards of review were created being thus defeated. .

I am, therefore, of the opinion that your first question should be answered in the affirmative.

While the local board of review has questioned power to correct assessments of real estate, either as to over-or under-valuation, sub-section (1) of section 2227 of the Code of 1919, provides that:

"* * * In all such hearings, the officers who made the assessments shall, if possible, be present and testify; provided, that no taxpayer who has failed, refused, or neglected, without cause shown, to file with the commissioner of the revenue a sworn statement of his property, shall be entitled to be heard, nor shall such valuation or assessment be reduced."

I am of the opinion that all the parts of section 2227 of the Code should be read together, and that the provisions of sub-section (1), quoted above, apply with equal force to any action taken by the board under sub-sections (m), (n), (o) and (p). Therefore, if the local board of review intends, on its own motion to reduce assessments made by the land assessors, I am of the opinion that the land assessors should be given reasonable notice and should be present if possible.

I desire to call your attention to the provision of sub-section (1) of section 2227 of the Code of 1919, that the attorney for the Commonwealth or the attorney for the county, city or town, or the tax payer aggrieved by any order entered by the local board of review, may apply to the circuit or corporation court of the county or city for the correction of any erroneous order entered by the board. Therefore, if the local board of review of your county reduced assessments below what you consider a fair valuation, you have the right and duty to apply to the court for the correction of any such erroneous order.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

TRADE MARKS AND NAMES—DAIRY AND FOOD COMMISSIONER NOT REQUIRED
TO REDRESS INFRINGEMENT OF.

RICHMOND, VA., *September 2, 1920.*

HON. A. B. THORNHILL, *Dairy and Food Commissioner,*
Library Building,
Richmond, Virginia.

DEAR SIR:

Acknowledgment is made of your letter of September 1, 1920, with which you enclosed correspondence of the Adam-Christian Company, of this State, with reference to the use of crowns bearing the name of this company's product on a ginger ale put on the market by the Coca-Cola Bottling Company at Newport News.

From this correspondence it appears that, prior to April, 1919, the Coca-Cola Bottling Company, of Newport News, Virginia, was the licensed bottler for Indian Rock Ginger Ale, which is a product manufactured by the Adam-Christian Company. After that date, the license to the Coca-Cola Bottling Company was discontinued and was transferred to another bottling company. Since that time, the Coca-Cola Bottling Company has been putting on the market a ginger ale not manufactured by the Adam-Christian Company, but using on the bottles thereof crowns bearing the trade-mark of the ginger ale manufactured by the Adam-Christian Company.

You have been requested to proceed under the misbranding law for the purpose of stopping the Coca-Cola Bottling Company from using crowns bearing the trade-mark of the product of the Adam-Christian Company, and in your letter you say

"It not being quite clear in my mind as to what the duty of this office is, I am writing to request your written opinion in the matter."

Your further inform me that an analysis of the product of the Coca-Cola Bottling Company shows it to be a ginger ale which compiles with the law in all respects except as to the crown bearing the trade-name of the Adam-Christian Company's product.

While it would appear from the provisions of section 1182 of the Code of Virginia, 1919, that the act complained of is a technical violation of that section, it seems to me that the proper method of procedure would be for the Adam-Christian Company to employ counsel to take steps against the Coca-Cola Bottling Company in the civil courts for a redress of its grievance.

Very truly yours,

JNO. R. SAUNDERS,

Attorney General.

TAXATION—OMITTED TAXES.

RICHMOND, VA., *December 8, 1920.*

A. B. CARNEY, Esq., *Attorney at Law,*
Norfolk, Virginia.

MY DEAR CARNEY:

Acknowledgment is made of your letter in which you ask the right of the board of supervisors to contract with Mr. McMurren, assessor for the first district of Norfolk county, to discover and put upon the books omitted property and receive as his compensation therefor twenty per cent of the taxes such work shall yield.

Sections 2332 and 2334 of the Code of Virginia, 1919, as amended by Acts of Assembly, 1920, page 95, provide for the report by the quinquennial assessor of any property which he has found omitted. This, of course, does not go on the land books for the years for which the taxes were omitted, but on the form provided for under section 2333.

Section 2250 of the Code of 1919, as amended by Acts of Assembly, 1920, page 68, provides that the board of supervisors can pay to the assessor above mentioned such compensation in addition to that expressly provided for therein as they deem right and proper.

I am, therefore, of the opinion that the board of supervisors has the authority to pay Mr. McMurren for any extra work done by him in discovering, reporting and causing to be assessed with taxes omitted property which has for prior years escaped taxation.

Any further information I can give you on this subject will be gladly furnished.

Yours truly,

J. D. HANK, JR.,

Assistant Attorney General.

TREASURER, COUNTY—COMPENSATION OF.

RICHMOND, VA., March 8, 1920.

HON. S. G. PROFFIT,
House of Delegates,
Richmond, Virginia.

DEAR SIR:

Acknowledgment is made of your request that I advise you what compensation a county treasurer would receive for the collection of levies or taxes imposed by the board of supervisors for the purpose of paying the interest and principal on a debt created for the construction of roads and represented by bonds issued under a special act of the General Assembly.

Section 2431 of the Code of Virginia, 1919, provides for the compensation of county treasurers for receiving and disbursing county school district and magisterial district funds. As no specific compensation is provided in the case mentioned, I am of the opinion that the treasurer's compensation would be governed by the last paragraph of the act entitled, "Miscellaneous Items," and which, so far as is applicable to the question under consideration, provides as follows:

"On all funds other than those specified in the foregoing paragraphs the treasurer shall receive as compensation for his services, in receiving and disbursing such funds, one per centum of the amount of such funds. * * *"

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

TREASURER, COUNTY—COMPENSATION PAID BY OUTGOING TREASURER TO HIS SUCCESSOR.

RICHMOND, VA., May 21, 1920.

MR. THOS. A. WEBB,
Treasurer of Halifax County,
Houston, Virginia.

DEAR SIR:

Acknowledgment is made of your letter, in which you ask who is to pay the commission provided by law to an incoming treasurer because of the turning over to him of county funds by an outgoing treasurer. You call my attention to section 2431, Acts of Assembly, 1920, page 351, which reads in part as follows:

"For receiving and disbursing the money turned over to him by the outgoing treasurer, the treasurer shall receive as compensation for his services two per cent of the amount of such money turned over to him, to be paid by the outgoing treasurer."

In this provision, it will be seen that the two per cent called for therein must be paid by the outgoing treasurer. The clause, "to be paid by the outgoing treasurer," is placed in the statute for the purpose of showing by

whom the compensation provided for therein shall be paid. This changed the law on the subject, and was evidently for the purpose of preventing the funds from bearing a double expense: that is to say, the section in question, in the previous paragraphs, provides a per centum to a treasurer for his services in receiving and disbursing levies. Where the term of the treasurer receiving the levies expires prior to the time they are disbursed, the law provides that he shall pay to the incoming treasurer, to whom he turns over the unexpended balance in the treasury, two per cent for the services of the incoming treasurer with respect thereto.

You, of course, understand that, as the section in question is not an emergency act, does not go into effect until ninety days after the adjournment of the last legislature.

Any further information I can give you will be gladly furnished.

Yours truly,

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

TREASURER, COUNTY—COMPENSATION PAID BY OUTGOING TREASURER TO HIS SUCCESSOR.

RICHMOND, VA., May 27, 1920.

MR. THOMAS A. WEBB,

*Treasurer of Halifax County,
Houston, Virginia.*

DEAR SIR:

Acknowledgment is made of your letter, in which you ask whether, under section 2431 of the Code of Virginia, as amended by the legislature of 1920, an outgoing treasurer must pay to his successor two per cent on the sums appropriated by the legislature for road purposes and covered by a like amount from county funds.

The only money upon which the outgoing treasurer has to pay two per cent is the actual amount of money which he turns over to the incoming treasurer. The statute is very broad in saying that the outgoing treasurer shall pay two per cent on the amount of money turned over to the incoming treasurer. It is true that the outgoing treasurer only receives one fourth of one per cent for receiving and disbursing joint road funds, yet it would seem that, by an inadvertence, the legislature has provided for him to pay to the incoming treasurer two per cent on these funds.

I am frank to say that I do not believe it was ever the intention of the legislature to cause such a result, but have been unable to arrive at any other interpretation of the statute.

Yours truly,

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

TREASURER, COUNTY—ENTITLED TO INTEREST ON COUNTY FUNDS.

RICHMOND, VA., *May* 27, 1920.

T. K. LEAKE,

*Treasurer of Goochland County,
Goochland, Virginia.*

DEAR SIR:

Acknowledgment is made of your letter, asking who is entitled to the interest accruing from county funds which the treasurer places in bank under an agreement with the bank that the average balance shall bear interest.

Of course, I do not know whether any specific arrangements have been made by the supervisors of Goochland county with its treasurer with reference to the deposit of funds, but usually no arrangement is made, nor is any depository chosen by the supervisors, and the treasurer has the selection of where he will place the money and under what terms. I take for granted this situation exists in Goochland county.

Under these circumstances, the county treasurer is held to strict account for the public funds entrusted to his care and he assumes all risk of loss. If he deposits the funds in a bank which he believes, and which is generally regarded, solvent, and the funds are lost by the insolvency of the bank, the loss falls on the treasurer and his sureties, and not on the county. The deposit in the bank is his voluntary act, made for his own convenience, and is not required by law. *County of Mecklenburg v. Beales*, 111 Va. 691.

As the treasurer is liable for the money, and selects his own bank, and is under no obligation to place the money in a bank, I am of the opinion that, if he does place it in a bank under an agreement by which the bank promises to pay interest on the average balance, that interest belongs to the treasurer and not to the county.

Any further information I can give you will be gladly furnished.

Yours truly,

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

TREASURER, COUNTY—INTEREST ON COUNTY FUNDS.

RICHMOND, VA., *April* 21, 1920.

J. G. HIXEN, ESQ.,

*Attorney-at-Law,
Culpeper, Va.*

MY DEAR MR. HIXEN:

I am in receipt of your letter of April 15th, in which you state that at the last session of the legislature, a bill was passed directing the treasurer of Culpeper county to deposit the county funds in some bank to draw interest, which interest is to go to the general fund of the county.

You further state that this law only applies to the county of Culpeper and that your treasurer desires to be advised whether or not this law is constitutional.

As you know, this is not a matter which comes within the jurisdiction of this office. At the same time, as a matter of courtesy to you, I am very glad to give you my views.

Section 63 of the Constitution, with which you are familiar, provides what local, special and private laws the legislature shall not enact. I have examined this section very carefully and I do not find that the law referred to in your letter comes within the prohibited cases mentioned therein. The courts have decided time and again that the legislature has full power and authority to pass any law which is not prohibited by the Constitution, and unless the act referred to by you contravenes some provision of the Constitution (and I am frank to say I know of none), it would look as if the legislature had authority to enact the same.

Due to the fact that I have had so many things to occupy my attention for the past few days, I have not had an opportunity to give this matter as careful consideration as I would like to do, and you might go into the matter more thoroughly before accepting this opinion.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

TREASURER, COUNTY—LIST OF WARRANTS PAID BY.

RICHMOND, VA., April 8, 1920.

MR. B. B. ROANE,
Clerk of Circuit Court,
Gloucester, Virginia.

MY DEAR MR. ROANE:

In regard to the duty of the treasurer to make out a list of warrants such as referred to in your letter, section 2780 is very specific and places upon the treasurer the absolute duty of making a list of all warrants paid by him during the next preceding two months, showing the number of each warrant, and to whom paid, and of returning this, with his statement provided for by the section, to the board of supervisors. His failure to do so imposes upon you the duty to certify this fact to the grand jury.

The wording of the section is so plain that I am at loss to know how any question can arise as to the duty of the treasurer in this respect. I would be very glad to know his position in regard thereto.

Yours truly,

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

TREASURER, CITY—SCHOOL FUNDS.

RICHMOND, VA., May 4, 1920.

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

MY DEAR MR. HART:

I beg leave to acknowledge receipt of your favor of recent date, in which you enclose a letter from Senator Robert M. Ward, chairman of the city school board of Winchester, Va.

Mr. Ward desires to know in this letter whether or not the city treasurer of Winchester is the proper custodian for handling the funds which will be turned over to the public schools of Winchester by the Handley board of trustees, or whether the school board of Winchester should designate some other person by resolution of the board for this purpose.

In reply, I will state that in my judgment the city treasurer of Winchester, by virtue of his office, is the proper person for the handling and disbursing of these funds. I see no reason why the school board of Winchester should not require of him an additional bond for this purpose should they so desire, and there is no reason why he should not be required to keep a separate account of the funds which come into his hands from this source.

If the question asked by Mr. Ward related to county funds instead of city funds, there would be no trouble about the question as section 739 of the Code of 1919, by its second and third paragraphs makes donations and the income arising therefrom, a part of the county and district school funds, respectively. There seems, however, to be no similar provision with reference to the public schools for cities, and for this reason, I have reached the conclusion above stated. While I think that the treasurer of the city is the proper officer to handle and disburse these funds, nevertheless, in view of the fact that the law specifically makes it a part of the city school funds, I am of the opinion that he should be required to give an additional bond to cover the handling and disbursement of this money, as there is some question as to his official bond covering a transaction of this kind.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

TREASURER, STATE—DEPOSITORY BONDS, DUTY AS TO.

RICHMOND, VA., June 25, 1920

HON. C. A. JOHNSTON,
Treasurer of Virginia,
Richmond, Virginia.

DEAR SIR:

Acknowledgment is made of your letter of June 24, 1920, which is as follows:

"On October 29, 1919, the Merchants National Bank of Richmond, Virginia, one of the State depositories, in accordance with the law, executed a bond to the Commonwealth in the sum of \$500,000, which

bond contained no stipulation with reference to its expiration, and, in accordance with its provisions, would run indefinitely.

"The surety on this bond is the New Amsterdam Casualty Company. By the laws of this State, a surety company can only become surety on a bond whose penalty does not exceed ten per cent of the paid-up capital plus the surplus and undivided profits of said company. The capital plus the surplus and undivided profits of the New Amsterdam Casualty Company, according to the affidavit of its attorney in fact, amounts to only \$1,300,000. The liability of the New Amsterdam Casualty Company on said bond was underwritten by various other surety companies, each company underwriting a certain portion of the liability, so that the New Amsterdam Casualty Company was guaranteed by other companies the payment of all the amount for which it was liable on the bond in excess of one-tenth of its paid-up capital plus the surplus and undivided profits.

"The various agreements of re-insurance entered into between the underwriting companies and the New Amsterdam Casualty Company only re-insure the portion assumed by each of the underwriters for one year, and provide for renewal upon the express condition that a certain premium shall be paid and a new certificate issued, the failure to pay the premium or issue the renewal certificate relieving the underwriting companies from further liability.

"You will remember that hitherto I called your attention to bonds containing the provision that the surety would be released at the end of one year unless a renewal premium were paid, and you advised me not to accept bonds with such a condition, because it would place the responsibility upon me to see that the renewal bonds were paid. Will you kindly advise me what responsibility would be placed on me by accepting the underwriters' agreements as above set out?"

Your responsibility to see that the renewal premiums are paid and the renewal certificates are issued by the underwriters of the liability of the New Amsterdam Casualty Company on the bond in question will be just as necessary as if the original bond given to the Commonwealth had contained such a provision. That is to say, if the year elapsed and the New Amsterdam Casualty Company did not secure a renewal of the agreements with all or any of the underwriters, under their agreements, such underwriters as have not issued renewal certificates will be relieved of further liability on the bond, and, therefor, you would have this condition confronting you: a bond in which the surety company has exceeded the amount for which it could become liable, and the amount in excess of which it could become liable by law is not protected by re-insurance.

I am, therefore, of the opinion that it would be safer and more in accord with the intention of the law for you to refuse hereafter to accept bonds similar to the one above described. The legislature fixed the limitation of the amount of the penalty of a bond which a surety company can execute to insure the payment of the bond in case there is default, and I doubt the propriety of your accepting a bond whose continuing liability to the full amount thereof is dependent upon a condition subsequent.

Yours truly,

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

TREASURER, STATE—DEPOSITORY BONDS.

RICHMOND, VA., *January 22, 1920.*

HON. CHAS. A. JOHNSTON,
Treasurer of Virginia,
Richmond, Virginia.

MY DEAR SIR:

I beg leave to acknowledge receipt of your letter, in which you advise me that, at the meeting of the finance board held on January 20, 1920, a resolution was adopted by said board which continued certain banks as State depositories, such banks having heretofore been qualified as such under the act of General Assembly of 1916, chapter 47. You request an opinion as to whether new bonds should be required of these banks, or whether the bonds heretofore given by them will be sufficient.

You also quote, in your letter, section 2160 of the Code of 1919, which provides when a new bond shall be required of the State depositories.

I am of the opinion that this section would only apply where the finance board deems the bonds heretofore given by these banks insufficient. Presuming, of course, that the bonds given by the banks which qualified under the act of the General Assembly of 1916 are in proper form and amply sufficient, these bonds will hold, and there is no need to require of these banks any new bond or additional security.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

TREASURER, STATE—SECURITIES DEPOSITED WITH—LIABILITY FOR.

RICHMOND, VA., *December 2, 1920.*

HON. C. A. JOHNSTON,
State Treasurer,
Richmond, Virginia.

DEAR SIR:

Acknowledgment is made of your letter of November 30, 1920, in which you say:

"1. I wish to know if the Treasurer of Virginia, under section 4211, Code of 1919, can designate the class of securities required to be deposited by insurance companies; that is, can he refuse to accept bonds and require the deposit to be made in registered bonds. And can the Treasurer require the coupon bonds now on deposit to be exchanged for registered bonds.

"2. In case the vault in the Treasurer's office should be robbed by some party other than an attache of the office of the Treasurer, by safe blowing or otherwise, after the State officials had taken every precaution at their disposal, that is properly closing the vault and locking it at the close of each business day, would the State be liable to the owners of these securities for the amount thereof?"

Section 4211 of the Code of Virginia, 1919, reads as follows:

"Unless otherwise provided, every insurance company except a company doing exclusively a marine insurance business, and every guaranty, indemnity, fidelity, security, or other like company, whether

incorporated by the laws of this State or not, shall, by an agent employed to superintend or manage the business of such company in this State, or through some authorized officer, deliver to the Treasurer of this State a statement, under oath, of the amount of the actual unimpaired capital of such company, and deposit with him bonds of the United States, the State of Virginia, or of the cities, towns, or counties of this State, to an amount to be fixed by the Commissioner of Insurance and approved by him, of the actual cash value of not less than ten thousand dollars nor more than fifty thousand dollars, but no single bond so deposited shall exceed in amount the sum of ten thousand dollars. The Treasurer shall receipt to the company for the bonds so delivered to him. Upon the face value of such deposits the Treasurer of the Commonwealth shall be authorized to make an annual assessment of one-twentieth of one per centum, to be by him collected of the general agent of such company for this State, or if there be no general agent, then of any local agent doing business for said company in this State, to defray the expenses of his office in the safekeeping and handling of such securities; and after the payment of said expenses, whatever remains shall be retained as a compensation to himself for his care and labor in connection with said securities, a detailed statement of which shall be furnished by him to each session of the General Assembly. The Treasurer shall collect such assessment annually in the month of January. If the bonds so deposited be registered bonds, the company shall at the same time deliver to the Treasurer a power of attorney authorizing him to transfer said bonds, or any part thereof, for the purpose of paying any of the liabilities provided for in this title. The Treasurer shall, in the month of December in every year, examine all securities so deposited with him for the purpose of ascertaining whether any of them have depreciated or been reduced in value, and shall forthwith require any such company to make good any depreciation or reduction in value of the said securities, and he shall immediately notify the Commissioner of Insurance in writing of such action, together with a full description of the bonds so deposited to make good said depreciation. The State shall be responsible for the safekeeping of all bonds or other securities deposited with the Treasurer of the State, and if said bonds or any part thereof shall be lost, destroyed or misappropriated, the State shall make good such loss to the company making the deposit. Bonds or other securities deposited with the State Treasurer under this section shall not be subject to taxation. This section shall not apply to, nor shall any deposit of bonds be required of, any mutual fire insurance company conducting business exclusively in this State, and on a strictly mutual plan, which pays its losses wholly from assessments upon its members, and makes no division or distribution of its earnings or profits among its members, or to fraternal benefit companies, societies, or orders, nor to insurance companies doing exclusively a marine business in this State."

From an examination of this section, particularly in view of the language, "if the bonds so deposited be registered bonds, the company shall, at the same time, deliver to the treasurer the power of attorney authorizing him to transfer bonds, or any part thereof, for the purpose of paying any of the liabilities provided for in this title," I am of the opinion that you cannot refuse to accept coupon bonds and require the deposit to be made in registered bonds. It follows from this that you cannot require the coupon bonds now on deposit to be exchanged for registered bonds.

Replying to your second question, I call your attention to the following sentence found in section 4211 above quoted:

"The State shall be responsible for the safekeeping of all bonds or other securities deposited with the Treasurer of the State, and if

said bonds or any part thereof shall be lost, destroyed or misappropriated, the State shall make good such loss to the company making the deposit."

In my opinion, the words "lost, destroyed or misappropriated," do not cover the case presented by you. These words clearly contemplate the loss, destruction or misappropriation of the bonds by you or your employees while in the custody of the State. I would suggest however, that every possible precaution be taken, in the way of providing alarms, etc., to prevent the robbery of the vault in your office.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

TREASURER—DUTIES, BONDS OF EXPRESS COMPANIES.

RICHMOND, VA., *June 21, 1920.*

HON. C. A. JOHNSTON,
Treasurer of Virginia,
Richmond, Virginia.

DEAR SIR:

Acknowledgment is made of your letter of June 17, 1920, in which you call my attention to section 4028 of the Code of Virginia, 1919, and then say:

"Now that the transportation systems of the country have been restored to private ownership by the government, I desire your advice as to how I should act in this matter."

Section 4028 of the Code of Virginia reads as follows:

"Every such corporation, association, partnership, or person, before exercising any such right or privilege of carriage, as aforesaid, shall deposit with the Treasurer of the State, bonds of the State of Virginia, or of the United States, or of the cities of Richmond, Norfolk, Roanoke, Newport News, Petersburg, Lynchburg, Alexandria, or Danville, the cash value of which shall not, at any time, be less than fifty thousand dollars, and no one of which bonds so deposited shall exceed in amount the sum of ten thousand dollars. The Treasurer shall require any such corporation, company, association, partnership or person, to make good any depreciation or reduction in the value of said securities, and he shall, in the month of December, of every year, examine all the securities so deposited with him, for the purposes of ascertaining whether any of them have depreciated, or been reduced in value. If the bonds deposited with the Treasurer as aforesaid are registered bonds, the corporation, association, partnership or person depositing the same shall, at the time of deposit, deliver to the Treasurer a power of attorney, authorizing him to transfer the said bonds, or any part of them, for the purpose of paying any of the liabilities herein provided for. The Treasurer, at the time of receiving the bonds, shall give to the depositor authority to draw the interest thereon as the same may become due and payable, which authority shall continue in force until said depositor shall fail to pay any of the liabilities incurred in carrying articles as aforesaid, for any citizen or inhabitant

of this State, in which case the party charged with the payment of such interest shall be forthwith notified of such failure, and thereafter such interest shall be payable to said Treasurer, to be applied, if necessary, to the payment of such liabilities."

This section refers to section 4027 of the Code of Virginia, 1919, which section relates to foreign express companies.

The language of section 4028 of the Code of 1919, is clear that every foreign express company, whether a corporation, association, partnership or person shall, before exercising any right or privilege of carriage, shall deposit with the Treasurer of the State bonds, the cash value of which shall not at any time be less than \$50,000.

I am, therefore, of the opinion that you should call upon all foreign express companies doing business in this State to deposit such bonds with you at once.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

WAR MEMORIAL COMMISSION.

RICHMOND, VA., August 25, 1920.

HON. MORGAN R. MILLS,
*War Memorial Commission,
Richmond, Virginia.*

DEAR SIR:

Acknowledgment is made of your letter of August 23, 1920, in which you say:

"At a meeting of the War Memorial Commission, created by the General Assembly at the 1920 session held August 15th last, the following motion was adopted:

"That the chairman of the commission respectfully request from the Attorney General's office a written opinion as to the true meaning and intent of section 1 of chapter 510, Acts of 1920, which is in the following language: '*and shall be erected under the joint supervision and direction of said library board and a war memorial commission*'; particularly as to whether said library board and war memorial commission should act jointly under a chairman elected in joint meeting, or concurrently under their respective chairmen."

"I would appreciate it very much if you will let me have your opinion, as requested by the commission, at your earliest convenience."

It is provided by the 11th paragraph of chapter 510 of the Acts of 1920 as follows:

"The plans for said building or buildings shall be first approved by the art commission of Virginia, and shall be erected under the joint supervision and direction of said library board and a war memorial commission, two to be appointed by the Governor, two members of the Senate and two members of the House of Delegates to be appointed by the presiding officers thereof, respectively."

You will see from the above-quoted provision of this act that the building or buildings authorized to be constructed must be "*erected under*

the joint supervision and direction" of the library board and the war memorial commission authorized by the act.

The word "joint" has been judicially defined as "united; combined; done by or between two or more unitedly; shared by or between two or more." *Kansas City v. File*, 60 Kan. 157, 161, 55 Pac. 877; 4 words and Phrases 3813. This word implies unity as distinguished from the word "separate," which implies division and distribution.

The act clearly recognizes two separate and distinct bodies, namely: **The Library Board** and the **War Memorial Commission**, the latter being **created** by the said act. It likewise contemplates that whatever is done in **connection** with the construction of this building, must finally be passed upon and approved by these two organizations or bodies, acting jointly. Nowhere in the act is it contemplated that these two organizations or bodies shall be merged into one body, but each organization or body is to retain its separate and distinct identity, and when acting jointly, a majority of the two bodies controls.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

WORDS AND PHRASES—"PARTIALLY PROVED" DEEDS.

RICHMOND, VA., *June 5, 1920.*

H. S. SURFACE, ESQ.,
Clerk, Tazewell County,
Tazewell, Virginia.

DEAR SIR:

Acknowledgment is made of your letter in which you call attention to the provision in chapter 218, page 313 of the Acts of Assembly, 1920, which provides that:

"All deeds and other instruments which have been only partially proved, shall be recorded in a separate book known as 'Writings Partially Proved.'"

You ask what the words "Writings Partially Proved" mean.

I am of the opinion that the reference of these words is to papers which, when filed with the county clerk for recordation, are not proved as to all the parties whose signatures were necessary to the deed; that is to say, if the deed is filed for record, in which there are two grantors, and it is only acknowledged as to one, then it should be recorded in the book to be known as "Writings Partially Proved."

The same would be true if the paper were proved before the clerk by one witness instead of two.

Any further information I can give you will be gladly furnished.

Yours truly,

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

WORDS AND PHRASES.

MR. A. L. I. WINNE, *Secretary*, RICHMOND, VA., *January 14, 1920.*
Board of Pharmacy of Virginia,
Richmond, Va.

DEAR SIR:

Acknowledgment is made of your letter of January 12, 1920, which is in the following language:

"Some little time back the Board of Pharmacy requested of you opinions on several obscure sections of the Pharmacy and Drug Act, particularly the passing upon the definition of the word 'druggist' within the meaning of this act, inasmuch as we have but two recognized forms of licensing, those as registered pharmacist and registered assistant pharmacist. The word appears in the different sections of the act, and we are anxious to have an opinion defining its meaning before starting a prosecution in which this point will most certainly be raised.

"Will you not be kind enough to favor us with this opinion at your earliest convenience? We are very anxious to be in a position to take this matter up in the near future."

Your letter, while not particularly clear as to the specific case upon which you desire my opinion, I understand, refers to the use of the word "druggist" in section 19 of chapter 2 and section 1 of chapter 3 of chapter 291 of the Acts of 1908, as amended, being commonly known as the Pharmacy and Drugs Act.

While it is impossible for me to express in advance an opinion as to any specific case, it seems clear from the authorities that the business of pharmacist, apothecary and druggist is all one—that they are synonymous terms.

In *State v. Donaldson*, 41 Minn. 74, 77-S (1889), it is said in discussing an act similar to the Virginia Pharmacy and Drugs Act:

"The first point made against this act is that the provisions regulating or prohibiting the sale of drugs or medicines (not poisons) are invalid, because not expressed in the title. The line of argument by which this contention is supported is that the subject expressed in the last division of the title is the sale of poisons, and that the only subjects expressed in the first two divisions are 'regulating the practice of pharmacy,' and 'the licensing of persons to carry on such practice.' We are then referred to the etymological definition of 'pharmacy' as the science or art of preparing and compounding medicines,' as distinguished from their sale. But this is altogether too technical. It will not do to apply strict etymological definitions to the language of the enactments of a popular legislature. As a matter of fact, in this country the business of pharmacist or apothecary and druggist is all one; and the same person who prepares and compounds medicines also sells them; so that, in popular speech, all three are used interchangeably, as practically synonymous. It was with the regulation of pharmacy as an occupation or business, in its relations to the public, that the legislature had to do; and the term 'practice of pharmacy' as used in the title to this act, is intelligible only as it includes the sale to the public of drugs and medicines."

If you will write me the facts in the specific case upon which you desire to be advised, I shall be glad to give you my opinion.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

Statement

*Showing the Current Expenses of the Office of the Attorney General from
January 1, 1920, to January 1, 1921.*

Telegrams	\$ 27 51
Telephone service and tolls.....	380 52
Subscriptions to and purchase of law books.....	131 60
Postage stamps	150 00
Towels, drinking water, furniture, office supplies, repairs, etc.....	428 07
Total	\$1,117 70

Statement

*Showing Amounts Expended from the Appropriation for Traveling Expenses
from January 1, 1920, to January 1, 1921.*

1920.			
March	20.	J. D. Hank, Jr., expenses to Washington, United States Supreme Court	\$ 24 02
	23.	J. D. Hank, Jr., expenses to Washington, United States Supreme Court	24 12
June	4.	J. D. Hank, Jr., expenses to Wytheville, Virginia Supreme Court	38 92
Sept.	7.	J. R. Saunders, expenses to Staunton, Virginia Supreme Court	16 73
	7.	J. D. Hank, Jr., expenses to Staunton, Virginia Supreme Court	29 97
Oct.	1.	J. D. Hank, Jr., expenses to Washington, Gallion will case..	28 68
Nov.	13.	Leon M. Bazile, expenses to Washington, Gallion will case	33 79
	23.	Leon M. Bazile, expenses to Washington, Gallion will case	25 79
	30.	J. D. Hank, Jr., expenses to Farmville, Gallion will case....	22 29
	30.	J. R. Saunders, expenses to Farmville, Gallion will case....	24 78
Total			\$269 05

Statement

*Showing Amounts Expended from Appropriation for Additional Clerical
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1920.			
Nov.	25.	Mrs. L. G. Phillips, taking depositions in Gallion will case..	\$10 00
Nov.	25.	E. S. Fitzwilson, taking depositions in Gallion will case.....	5 00
Total			\$15 00

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