

ANNUAL REPORT  
OF THE  
ATTORNEY GENERAL  
TO THE  
GOVERNOR OF VIRGINIA  
FOR THE  
YEAR 1921

---

RICHMOND:  
DAVIS BOTTOM, SUPERINTENDENT OF PUBLIC PRINTING  
1922



## ATTORNEYS GENERAL OF VIRGINIA

*From 1776 to 1922*

---

EDMUND RANDOLPH.....	1776-1786
JAMES INNES.....	1786-1796
ROBERT BROOKE.....	1796-1799
PHILIP NORBORNE NICHOLAS .....	1799-1819
JOHN ROBERTSON.....	1819-1834
SIDNEY S. BAXTER.....	1834-1852
WILLIS P. BOCOCK.....	1852-1857
JOHN RANDOLPH TUCKER.....	1857-1865
THOMAS RUSSELL BOWDEN.....	1865-1869
CHARLES WHITTLESEY (military appointee).....	1869-1870
JAMES C. TAYLOR.....	1870-1874
RALEIGH T. DANIEL.....	1874-1877
JAMES G. FIELD.....	1877-1882
FRANK S. BLAIR.....	1882-1886
RUFUS A. AYERS.....	1886-1890
R. TAYLOR SCOTT.....	1890-1897
R. CARTER SCOTT.....	1897-1898
A. J. MONTAGUE.....	1898-1902
WILLIAM A. ANDERSON.....	1902-1910
SAMUEL W. WILLIAMS.....	1910-1914
JNO. GARLAND POLLARD.....	1914-1918
*J. D. HANK, JR.....	1918
JNO. R. SAUNDERS.....	1918-1922
JNO. R. SAUNDERS.....	1922

### 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>

---

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

## TABLE OF CONTENTS

	Page
Attorneys General of Virginia (1776–1922) .....	3
Cases Handled by Office of the Attorney General:	
In the Supreme Court of Appeals of Virginia .....	5
In the Hustings Court of the City of Richmond .....	11
In the Circuit Court of the City of Richmond .....	11
In the Chancery Court of the City of Richmond .....	11
Consecutive List of Statutes Referred to in Opinions:	
Acts of Assembly .....	267
Constitution of Virginia .....	270
Code of Virginia .....	268
Virginia Tax Bill .....	270
General Index .....	249
Letter of Transmittal .....	5
List of Portraits of Former Attorneys General now in office .....	12
Office of Attorney General .....	3
Opinions .....	21
Statements of expenditures made by office .....	248
Table of Cases Cited .....	270
Table of Opinions .....	13

# REPORT

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., February 7, 1922.

*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, 1921.

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 Appeals of Virginia.

1. *Allen, Edw. v. Commonwealth.* Violation of prohibition law. From the corporation court of Newport News. Affirmed.
2. *Alls v. Commonwealth.* Violation of prohibition law. From the circuit court of Montgomery county. Affirmed.
3. *Ambrose v. Commonwealth.* Larceny. From the corporation court of Portsmouth. Affirmed.
4. *Atkins v. Commonwealth.* Seduction. From the circuit court of Halifax county. Affirmed.
5. *Beverley v. Commonwealth.* Murder. From the circuit court of Alleghany county. Confessed error.
6. *Bibbs v. Commonwealth.* Contributing to moral delinquency of an infant. From the circuit court of Orange county. Affirmed.
7. *Bridgman v. Commonwealth.* Malicious wounding. From the circuit court of Wise county. Error confessed.
8. *Bowen v. Commonwealth.* Taxation. From the circuit court of Clarke county. Affirmed.
9. *Bowling v. Commonwealth.* Felony. From the corporation court of Roanoke. Error confessed.
10. *Brown, Flynn v. Commonwealth.* Malicious wounding. From the corporation court of Roanoke. Affirmed.
11. *Bryan v. Commonwealth.* Murder. From the circuit court of Botetourt county. Affirmed.
12. *Bunkley, et als. v. Commonwealth.* Criminal case. From the corporation court of Newport News. Affirmed.
13. *Burford v. Commonwealth.* Larceny. From the circuit court of Campbell county. Affirmed.
14. *Campbell, Tood and Elijah v. Commonwealth.* Murder. From the circuit court of Lee county. Affirmed.

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

16. *Corvin v. Commonwealth*. Bigamy. From the circuit court of Wythe county. Affirmed.

17. *Crosby v. Commonwealth*. Violation of Mapp act. From corporation court of Norfolk. Affirmed.

18. *Davis, Annie v. Commonwealth*. Larceny. From the corporation court of Newport News. Reversed.

19. *Davis, Curtis v. Commonwealth*. Violation of prohibition law. From circuit court of Williamsburg and James City county. Affirmed.

20. *Davis v. Commonwealth*. Violation of Mapp act. From corporation court of Norfolk. Confessed error.

21. *Dill v. Commonwealth*. Murder. From the circuit court of Alleghany county. Error confessed.

22. *Ellett v. Commonwealth*. Taxation. From the hustings court of Richmond. Affirmed.

23. *Elliott v. Commonwealth*. Violation of prohibition law. From the circuit court of Halifax county. Error confessed.

24. *Ellison v. Commonwealth*. Larceny. From circuit court of Arlington county. Reversed.

25. *Elmoe v. Commonwealth*. Murder. From hustings court, part II, Richmond. Affirmed.

26. *Fields v. Commonwealth*. Murder. From the circuit court of York county. Affirmed.

27. *Freeman v. Commonwealth*. Murder. From the circuit court of Wise county. Affirmed.

28. *Goode v. Commonwealth*. Violation of Mapp act. From the circuit court of Halifax county. Error confessed.

29. *Hale, Harrison v. Commonwealth*. Voluntary manslaughter. From the circuit court of Dickinson county. Error confessed.

30. *Hall v. Commonwealth*. Forgery. From the circuit court of Fauquier county. Error confessed.

31. *Hall, L. H. v. Commonwealth*. Violation of speed laws. From the circuit court of Loudoun county. Affirmed.

32. *Harding, Jr., v. Commonwealth*. Seduction. From the circuit court of Fluvanna county. Affirmed.

33. *Harley v. Commonwealth*. Disorderly conduct on street car. From hustings court of Richmond. Affirmed.

34. *Harris v. Commonwealth*. Robbery. From the circuit court of Prince William county. Affirmed.

35. *Hart v. Commonwealth*. Rape. From the circuit court of Augusta county. Affirmed.

36. *Henderson v. Commonwealth*. Felony. From the hustings court of Richmond. Reversed.

37. *Hitt v. Commonwealth*. Misdemeanor. From the circuit court of Rockingham county. Reversed.

38. *Jarrell v. Commonwealth*. Murder. From the circuit court of Madison county. Affirmed.

39. *Kernochan, Committee for Marie Marshall adv. Commonwealth*. Taxation. From the corporation court of Williamsburg. Affirmed.

40. *Lynch, Frank v. Commonwealth.* Housebreaking. From the circuit court of Montgomery county. Affirmed.
41. *Lynch, Zeigler v. Commonwealth.* Violation of prohibition law. From the corporation court of Radford. Affirmed.
42. *Lowry v. Commonwealth.* Violation of prohibition law. From the circuit court of Norfolk county. Affirmed.
43. *Mann v. City of Lynchburg.* Workman's compensation case. From Industrial Commission. Liability placed on city of Lynchburg.
44. *Minton v. Commonwealth.* Murder. From the circuit court of Russell county. Error confessed.
45. *Muter v. Commonwealth.* Violation of prohibition law. From the corporation court of Norfolk. Dismissed.
46. *Oliver v. Commonwealth.* Violation of prohibition law. From the hustings court of Richmond. Reversed.
47. *Osborne v. Commonwealth.* Murder. From the circuit court of Wise county. Dismissed.
48. *Pearson v. Commonwealth.* Murder. From the circuit court of Clarke county. Error confessed.
49. *Pendleton v. Commonwealth.* Seduction. From the circuit court of Buckingham county. Affirmed.
50. *Pettigrew v. Commonwealth.* Murder. From the circuit court of Rockbridge county. Error confessed.
51. *Pollard, J. E. v. Commonwealth.* Violation of prohibition law. From the corporation court of Norfolk. Affirmed.
52. *Pope v. Commonwealth.* Maintenance of nuisance. From corporation court of Norfolk. Affirmed.
53. *Price v. Commonwealth.* Violation of prohibition law. From the circuit court of Brunswick county. Reversed.
54. *Purnell v. Commonwealth.* Rape. From the circuit court of Northampton county. Affirmed.
55. *Richardson v. Commonwealth.* Violation of prohibition law. From the corporation court of Radford. Reversed.
56. *Simpson v. Commonwealth.* Violation of prohibition law. From the circuit court of Campbell county. Error confessed.
57. *Snarr v. Commonwealth.* Violation of prohibition law. From the circuit court of Rockingham county. Reversed.
58. *Standard Oil Company v. Commonwealth.* Violation of road laws. From the circuit court of Rockbridge county. Affirmed.
59. *Stallard, alias Cox v. Commonwealth.* Housebreaking. From the circuit court of Scott county. Affirmed.
60. *Staton v. Commonwealth.* Violation of prohibition law. From corporation court of Newport News. Error confessed.
61. *Tackett v. Commonwealth.* Involuntary manslaughter. From the circuit court of Russell county. Error confessed.
62. *Thacker v. Commonwealth.* Violation of prohibition law. From the circuit court of Alleghany county. Affirmed.
63. *Thompson v. Commonwealth.* Murder. From the circuit court of Botetourt county. Affirmed.
64. *Walker, Cain & Thos. v. Commonwealth.* Violation of prohibition law. From the circuit court of Charlotte county. Affirmed.

65. *Watts v. Commonwealth*. Violation of prohibition law. From the corporation court of Hopewell. Affirmed.

66. *Webb v. Commonwealth*. Larceny. From the circuit court of Giles county. Affirmed.

67. *West v. Commonwealth*. Seduction. From the circuit court of Gloucester county. Error confessed.

68. *Williams v. Commonwealth*. Murder. From the hustings court of Richmond. Reversed.

69. *Willoughby v. Commonwealth*. Murder. From the circuit court of Culpeper county. Error confessed.

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

1. *A. C. L. Rwy. Co., et al. v. Commonwealth*.

2. *Bowen v. Commonwealth*. Larceny. From the corporation court of Buena Vista. Submitted.

3. *Bragy v. Commonwealth*. Violation of prohibition law. From the circuit court of Alleghany county.

4. *Brown, alias Fern v. Commonwealth*. Murder. From the circuit court of Orange county. Argued and submitted.

5. *Burford v. Commonwealth*. Assault. From the circuit court of Campbell county. Submitted.

6. *Buller v. Commonwealth*. Misdemeanor. From the corporation court of Danville.

7. *Butler, L. C. v. Commonwealth*. Desertion. From the corporation court of Norfolk. Submitted.

8. *Buzzard v. Commonwealth*. Record not received.

9. *Christian, J. T. v. Commonwealth*. Prohibition. From circuit court of Mathews county.

10. *City of Richmond v. Governor, et al.* From the law and equity court of Richmond. Injunction proceedings.

11. *Daley v. Commonwealth*. Violation of prohibition law. From the hustings court of Portsmouth. Submitted.

12. *Davis v. Commonwealth*. Violation of prohibition law. From the circuit court of Williamsburg.

13. *Day v. Commonwealth*. Felony. From the circuit court of Halifax county. Record not received.

14. *Dickerson v. Commonwealth*. Murder. From the circuit court of Halifax county. Argued and submitted.

15. *Draper v. Commonwealth*. Murder. From the circuit court of Halifax county. Argued and submitted.

16. *Evans v. Commonwealth*. Violation of prohibition law. From the circuit court of Halifax county. Submitted.

17. *Fitzgerald v. Commonwealth*. Record not received.

18. *Fortune v. Commonwealth*. Murder. From the corporation court of Norfolk.

19. *Fowlkes v. Commonwealth*. Assault. From the circuit court of Lunenburg county.

20. *Foy v. Commonwealth*. Violation of prohibition law. From the hustings court of Portsmouth. Submitted.

21. *Gardner v. Commonwealth*. From circuit court of Wise county. Record not received.
22. *Gibbons v. Commonwealth*. Housebreaking. From the circuit court of Halifax county. Record not received.
23. *Gibson, et al. v. Commonwealth*. Violation of prohibition law. From the corporation court of Charlottesville. Passed.
24. *Gilliam adv. Commonwealth*. From circuit court of Wise county. Record not received.
25. *Gray v. Commonwealth*. Violation of prohibition law. From the hustings court of Portsmouth. Argued and submitted.
26. *Green, Chas. v. Commonwealth*. Felony. From the circuit court of Chesterfield county.
27. *Groety v. Commonwealth*. Violation of prohibition law. From the corporation court of Norfolk.
28. *Hale v. Commonwealth*. Violation of prohibition law. From the circuit court of Madison county. Submitted.
29. *Hall v. Commonwealth*. Record not received.
30. *Harris, Chas. v. Commonwealth*. Larceny. From the corporation court of Norfolk.
31. *Harris, J. C. v. Commonwealth*. From the circuit court of Nelson county. Record not received.
32. *Hosier v. Commonwealth*. Violation of prohibition law. From circuit court of Norfolk county.
33. *Jacobs v. Commonwealth*. Unlawful shooting. From the circuit court of Northampton county. Argued and submitted.
34. *James v. Commonwealth*. Felony. From the circuit court of York county. Record not received.
35. *Jenkins v. Commonwealth*. Murder. From the circuit court of Rappahannock county. Submitted.
36. *Jones v. Commonwealth*. Felony. From the circuit court of Charles City county.
37. *Lindsay v. Commonwealth*. Felony. From the circuit court of Madison county.
38. *Males v. Commonwealth*. Violation of prohibition law. From the corporation court of Portsmouth. Submitted.
39. *Mealy v. Commonwealth*. Record not received.
40. *Melton v. Commonwealth*. Rape. From circuit court of Campbell county. Argued and submitted.
41. *Miller v. Commonwealth*. Record not received.
42. *Mohler v. Commonwealth*. Murder. From the circuit court of Rockbridge county. Argued and submitted.
43. *Mosby v. Commonwealth*. Felony. From the circuit court of Henrico county. Record not received.
44. *Moore, Edw. v. Commonwealth*. Violation of prohibition law. From the corporation court of Norfolk. Argued and submitted.
45. *Moore, Robt. v. Commonwealth*. Violation of prohibition law. From the circuit court of Scott county.
46. *Myers, et als. v. Commonwealth*. Larceny. From the corporation court of Norfolk. Argued and submitted.
47. *Neal, et al. adv. Commonwealth*. From the circuit court of Wise county. Record not received.

48. *Owens v. Commonwealth.* Violation of prohibition law. From the circuit court of Dickinson county. Argued and submitted.
49. *Ozur v. Commonwealth.* Violation of the prohibition law. From the hustings court of Portsmouth. Submitted.
50. *Pitchford v. Commonwealth.* Record not received.
51. *Porter v. Commonwealth.* From the circuit court of Wise county. Record not received.
52. *Powell v. Commonwealth.* Murder. From the circuit court of Norfolk county.
53. *Rea v. Commonwealth.* Record not received.
54. *Reynolds v. Commonwealth.* Murder. From the circuit court of Patrick county.
55. *Rogers v. Commonwealth.* Assault and battery. From the hustings court of Portsmouth. Argued and submitted.
56. *Rudd v. Commonwealth.* Violation of prohibition law. From the hustings court of Portsmouth. Argued and submitted.
57. *Sager, Thos. v. Commonwealth.* From the circuit court of Rockingham county. Record not received.
58. *Seay v. Commonwealth.* Felony. From the circuit court of Halifax county. Record not received.
59. *Scruggs, J. T. v. Commonwealth.* Violation of prohibition law. From the circuit court of Appomattox county.
60. *Seymour v. Commonwealth.* Murder. From the corporation court of Norfolk.
61. *Siklek v. Commonwealth.* Felony. From the corporation court of Newport News. Record not received.
62. *Sorros v. Commonwealth.* Larceny. From the circuit court of Wise county.
63. *Sparks v. Commonwealth.* Felony. From the circuit court of Madison county.
64. *Thacker, John v. Commonwealth.* Felony. From the Circuit court of Alleghany county. Record not received.
65. *Thaniel v. Commonwealth.* Murder. From the circuit court of Hanover county. Argued and submitted.
66. *Thrift v. Commonwealth.* Violation of prohibition law. From the circuit court of Arlington county. Record not received.
67. *Trent v. Commonwealth.* Larceny. From the corporation court of Roanoke. Argued and submitted.
68. *Vaughan v. Commonwealth.* Violation of prohibition law. From the circuit court of Appomattox county. Record not received.
69. *Walker, Wm. v. Commonwealth.* Violation of prohibition law. From the hustings court of Portsmouth. Argued and submitted.
70. *Washington & Old Dominion Rwy. v. Corporation Commission.* Violation of corporation law. From the State Corporation Commission.
71. *Wilson v. Commonwealth.* Maintenance of nuisance. From the corporation court of Norfolk. Submitted.

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

1. *Arrington & Rose v. Commonwealth*. Taxation.
2. *Tredegear 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. De Mott Robertson.* Official bond.
6. *Commonwealth ex rel Attorney General v. Virginia Railway & Power Co.* Taxation.
7. *Commonwealth ex rel Auditor v. A. M. Brown, Jr., et als.* Official bond.
8. *Commonwealth v. Chesapeake & Ohio Railway Co.* Taxation.
9. *Commonwealth v. R., F. & P. Railroad Co.* Taxation.
10. *Commonwealth v. Southern Railway Co.* Taxation.
11. *Commonwealth v. A. C. L. Railway Co.* Taxation.
12. *Commonwealth v. S. A. L. Railway Co.* Taxation.
13. *Commonwealth v. J. F. Richmond* (settled).
14. *Commonwealth v. Bowman, et als.,* examiners of records. Official bond.
15. *County of Westmoreland v. Md., Del. & Va. Ry. Co.* Taxation.
16. *Seaboard Air Line Railroad Co. v. State Corporation Commission.* Taxation.

### IN CHANCERY

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

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

1. *Commonwealth v. Philpotts, former Commissioner of Revenue.* Recovery of excess fees. Judgment for the Commonwealth satisfied.
  2. *Commonwealth v. Jas. V. Trehy.* Recovery of excess fees. Judgment for the Commonwealth satisfied.
  3. *Commonwealth v. Doran, former Commissioner of Revenue.* Recovery of excess fees. Judgment for the Commonwealth satisfied.
  4. *Commonwealth v. W. B. Hamilton, Clerk of Wise County.* Recovery of excess fees. Judgment for the Commonwealth satisfied.
  5. *Commonwealth v. E. Thompson.* Recovery of excess fees. Judgment for Commonwealth satisfied.
  6. *Commonwealth v. R. E. Glover, Sergeant of Portsmouth.* Recovery of excess fees. Judgment for Commonwealth satisfied.
- 

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

- Portrait of EDMUND RANDOLPH, first Attorney General of Virginia, 1776-1786.  
A copy made and loaned the office by Miss Emma Whitfield, artist, Richmond, Va.
- Portrait of JOHN ROBERTSON, Attorney General, June 1819-1834. Loaned the Attorney General's office by the State Library Board.
- Portrait of JOHN RANDOLPH TUCKER, Attorney General, 1857-1865. Presented by his son, Hon. Harry St. George Tucker.
- Portrait of RALEIGH T. DANIEL, Attorney General, 1874-1877. Presented by his family.
- Portrait of RUFUS A. AYRES, Attorney General, 1886-1890. Presented by his family.

# TABLE OF OPINIONS

---

	PAGE
ADAMS, J. W.—Use of adhesive stamp by notary on papers to go out of State.	229
Counting figures as words.	159
ALLEN, L. B.—Taxation of incomes.	222
ANDERSON, GEORGE WAYNE—Erection of buildings on State property by the Military Board.	214
ANDERSON, JOS. B.—Construction of West fee bill.	237
BAILEY, L. B.—Validity of solid shot ballot.	37
BARNES, MANLY H.—As to whose duty to list dogs.	115
BAUSERMAN, J. M.—Sitting of registrars in county.	74
BECK, JNO. R.—Maximum levy for maintenance of public schools.	231
BERKELEY, CHAS. C.—Penalty for use of wrong number plate on automobile.	23
BERRY, A. W.—Method of registering voters.	78
BEVERLY, CLAUDE F.—Right of officer to search automobile without search warrant.	197
BEVERLY, W. W.—Local levies and when made.	227
BIBB, W. C.—Reimbursement of individuals, etc., for funds expended for road improvement.	184
Reimbursement of individuals, etc., for funds expended for road im- provement.	183
Who can vote in primary election.	66
BILISOLY, F. NASH—Application for hunting licenses from unnaturalized citizens.	118
Appointment of game wardens.	116
As to turning over dogs to medical college for experimental purposes.	112
Can a justice of one district try violators of the law in another district.	169
Construction of laws.	216
Pollution of streams.	118
Law governing fines imposed for violation of dog laws.	111
Regarding legality of sale of black bass shipped into Virginia.	107
Taxing fees as part of costs in favor of persons other than officers.	108
BLACK, THOS.—West fee bill, fees of county officers.	241
BOGGESE, W. P.—Election for bond issue.	96
BOOTON, JOHN H.—Whether road overseer can be chosen as a district school trustee.	162
BOTTOM, DAVIS—Duties of the Public Printer in relation to the penitentiary shop.	178
Who should pay cost of printing for Banking Division.	179
BRADFORD, J. H.—In re eligibility of applicant to take certified public accountant's examination.	105
BRADSHAW, B. O.—Law concerning circus advertising.	218
BRENT, J. H.—Election of member of school board.	210
BROWN, G. A.—Time for payment of capitation tax.	58
BURGWIN, J. H. K.—Eligibility of women to vote.	44

	PAGE
BURKE, R. F.—Whether county officer can be appointed a notary public....	163
BURKS, E. C.—Fixing of date for opening of hunting season other than fixed by statute.....	120
BURNETT, H. PRINCE—Peddler's license tax.....	229
BURT, WM. STANLEY—Law governing hunting on posted lands.....	119
BUTTON, JOSEPH—Construction of statutes in regard to insurance.....	127
Regarding tax laws as to insurance.....	124
Tax laws as to insurance.....	125
CABANISS, ROBERT—Fees of officers in reporting automobiles with wrong number plate.....	173
CAMP, P. D.—Assessment for school purposes, and exemption of bonds and bank stock.....	233
CAMPBELL, HUGH—Eligibility of women to vote.....	97
CARLETON, J. G.—Qualification of women to vote in primary.....	54
CARNER, C. A.—As to the duty of sheriff to summon witnesses.....	161
CARROLL, J. H.—Eligibility of public officers to hold post of district school trustee.....	164
CHANDLER, A. B., JR.—Legality of maintaining practice schools at normals	208
CHAPMAN, G. T.—Duties of registrar regarding person applying for regis- tration.....	72
CHILES, J. H.—Commonwealth's attorney as legal advisor of school boards.	199
CHRISTIAN, MRS. E. T.—Widows of Confederate soldiers must pay poll tax..	62
CLEMENT, J. T.—Jurisdiction of courts over territory within three miles of corporate limits of city.....	132
Workman's compensation law; who is bound for settlement in case of accident in county where there is no insurance.....	246
COLEMAN, GEO. P.—Damage to roads due to failure of officers to enforce speed laws.....	160
Change of location of roadways.....	180
COLLIE, J. W.—Whether U. S. mail contractor can be justice of the peace...	162
CONNER, CECIL—Payment for damage done by dogs.....	109
CONNER, E. L.—Payment of poll tax of young man coming of age.....	62
Right of resident of another State to vote in Virginia.....	92
COOK, ROLAND E.—Concerning disagreement over location of school building	207
COPP, GEO. A.—When a motion is lost on a tie vote.....	174
CRISMOND, A. H.—Damage claims against county for expense of rehabili- tating the telephone line.....	188
Pay of judges, clerks, registrars, etc.....	70
CRONIE, JOHN L.—Right of resident of another State to vote in Virginia....	95
CROUCH, DR. J. H.—Eligibility of women to vote due to change of residence.	94
CRUTE, J. M.—Registration and voting of women.....	77
DAVIDSON, W. L.—Construction of law providing for payment of rewards for capture of stills.....	135
DAVIS, LAWRENCE S.—Last day for payment of capitation tax.....	60
Signatures required for declarations of candidacy.....	39
DAVIS, QUINTON C., JR.—Councilmen in cities and towns.....	41
Election of officers of town of South Norfolk.....	41
DAVIS, WESTMORELAND—Concerning portion of Capitol Square dedicated to city.....	151
Whether convict can be carried outside of State to serve as witness....	140
West fee bill.....	236

	PAGE
DEANS, PARKE P.—Concerning loans from Literary Fund for school purposes	202
DESHAZO, REV. J. E.—Transfer for voting from one precinct to another	87
DODSON, E. GRIFFITH—As to deductions from State income tax	223
Whether a legislator can be a notary public	170
DODSON, RICHARD C.—Whether permit is necessary to bring whiskey from another State into Virginia	137
DOLYNS, S. G.—Whether registrar may assist in registering physically disabled person	77
DUKE, R. T. W., JR.—Inheritance tax	224
DUKE, WALTER G.—Sitting of registrars at polling places	71
DURHAM, MRS. JAS. WARE—Use of woman's name on ballot	39
DUTROW, D. A.—Power of school board to condemn property for school purposes outside corporate limits	201
EANES, HOWARD—Right to vote due to change of residence	90
EARMAN, D. WAMPLER—Right of justice to hold preliminary hearing	143
EASLEY, JAMES S.—Compensation of owners for fowls killed by dogs	110
Levy for local school taxes	233
EDWARDS, R. A., ESQ.—Special act for protection of squirrels	121
EGGLESTON, J. D.—Whether property owned by Hampden Sidney is taxable	219
ELDRIDGE, D. W.—Registration of woman coming of age	79
ELEY, HENRY S.—Qualification to vote, payment of tax, etc.	51
Killing of dogs with no tags by game warden	113
EMERICK, O. L.—Eligibility of women to vote in special election	50
Payment of poll tax by women	52
ESKRIDGE, A. A.—Tax laws pertaining to advertising of circus	145
FATHERLY, DUNTON J.—Closing of registration books in cities and towns	83
FERGUSON, S. L.—Carnival license	217
FLOOD, JOEL W.—Fees of a sheriff	172
FOLTZ, G. H.—Fees for recording fines, etc.	101
FORD, CHAS. E.—Transfer of name from one voting district to another	79
GAINES, WM. H.—When women can register and vote	76
GINTHER, B. F.—Whether officer has right to go upon privately owned land with search warrant	195
GLASCOCK, MISS EMILY—Eligibility of women to vote	97
GUIGON, A. B.—Payment of poll tax by Chinese residents	45
HALL, J. WALTON—Law relating to registration of district school board warrants	212
HAMILTON, A. H.—Last day for registration to vote in primary	82
HAMM, G. STUART—Assessment of capitation tax; residence	94
Listing of women on voting list for primaries	100
Question of legal residence in voting	85
HARGRAVE, MILTON I.—Eligibility of soldier to vote	64
HARLOW, GEO. A.—Remedy for wrongly marking ballot	37
HARRISON, MRS. E. J.—First poll tax assessable against women	52
HARRIS, F. J.—Eligibility of candidate for office of city treasurer	40
HARRIS, HERMAN L.—Workman's compensation act	243
HART, HARRIS—Form of clerk's certificate to application for loans from Literary Fund	203
Amending of clerk's certificate on application form for loan from Literary Fund	204

	PAGE
HART, HARRIS—Whether increase of school levies was illegal.....	231
Whether seal should be placed upon bonds issued by school board.....	199
HAYDEN, L. O.—Eligibility of man moving into State to vote.....	91
HEADLEY, ARTHUR L.—Killing of black bass, when legal.....	107
HILL, A. H.—Change of residence of school trustee, his eligibility.....	209
Residence of school trustee.....	171
HILLARY, R. W.—Registration of women voters.....	80
HILLMAN, J. N.—Whether local division superintendents of schools may claim exemption from war tax on railroad transportation.....	222
HOGUE, MRS. HOWARD M.—Questions concerning elections .....	33
HOLLOWAY, FLOYD—Whether a clerk can issue his own marriage license... ..	146
HOLLOWELL, THOS. C.—When registrars shall sit for registering voters... ..	75
HOOKE, MRS. RICHARD—Eligibility of woman of short residence in Virginia to vote.....	92
HOOKE & HOOKE—Ouster proceedings and costs of.....	175
HORGAN, WM.—Who can vote in regular June election .....	63
HUDGINS, FRED—Commissions due treasurers on money borrowed by school boards .....	168
HUTCHESON, C. G.—In regard to license tax on interstate business.....	226
JAMES, B. O.—Costs incidental to distribution of Virginia Code.....	31
Registration of women voters who married since registering.....	75
JENNINGS, S.—First poll tax assessable against women .....	59
JONES, GEO. B.—Whether a citizen can hold more than one public office at the same time.....	163
JONES, R. CHAPIN—Whether Governor is required to approve traveling expenses of State officials.....	175
JORDAN, P. A.—Registration necessary to vote in primary.....	83
JUDD, MRS. B. E.—Date for payment of poll tax by women.....	46
KAISER, E. C.—Method of voting by mail.....	36
KAISER, E. C., JR.—Closing of registration books for general election.....	79
Right to register female voter whose husband is in army.....	92
KELLY, J. M.—In regard to writ tax.....	235
KISER, C. G.—Workman's compensation act; funds of Industrial Commis- sion .....	244
KOINER, G. W.—Authority of Commissioner of Agriculture to lease property for chemical laboratory.....	22
Fines against fertilizer companies.....	23
Taking of property without due process of law.....	31
LACY, J. T., JR.—Illegal registration of persons for voting.....	80
Right of women to vote in June election.....	82
LAMB, GEO. O.—Time of residence required to vote in Virginia. ....	57
LEE, ELIZA A.—License for coon hunting.....	117
LEE, HENRY E.—Merchants' license tax. ....	228
LEE, JNO. P.—Whether insurance paid by federal government is taxable....	225
Tax on wills and administrations.....	235
LEIGH, BENJ. WATKINS—Authority of district school board to make short time loans .....	205
LEWIS, HERBERT I.—Regarding fees for collection of delinquent tax bills....	152
LIGHT, A. H.—Whether Commonwealth's attorney prosecuting a case in a justice's court can collect fee.....	154

	PAGE
LIGHT, A. H.—Law as to county prisoners being confined in city jails....	141
Regarding the satisfying of fines .....	103
LION, THOMAS H.—Regarding prosecution of jail prisoner who escaped from road force, and recaptured.....	141
LIPSCOMB, H. A.—Time in which deer may be killed or hunted.....	109
LONG, JOSEPH R.—Who is eligible to vote in primary election .....	66
MARTIN, ISAAC—Right to vote in election due to change of residence.....	90
MARTIN, WILLIAM M.—Fees of game wardens.....	115
MASON, LUCY—Right to vote by mail.....	34
MASSIE, WADE H.—Whether decision in relocating roadway is subject to appeal.....	182
MASTIN, J. T.—As to whether a justice has right to parole inmate of State institution.....	144
Confinement of boys in jail in default of payment of fines.....	123
MCGINNIS, T. H.—Whether legacy is taxable as income.....	224
McHUGH, C. A.—Sums retained for expenses by Industrial Commission under workman's compensation act .....	242
McHUGH, C. A.—Workman's compensation act; what moneys to be paid into treasury.....	242
McMILLAN, MRS. MAGGIE—Payment of capitation tax by Canadian.....	43
MEREDITH, C. V.—Concerning power of Library Board.....	148
MICHAUX, W. W.—Compensation allowable to commissioner of election carrying returns.....	44
MILLS, MORGAN R.—Legality of resolution adopted by War Memorial Com- mission .....	147
Whether "bulk sales law" is applicable to business of repairing shoes ..	191
MINOR, MRS. E. C.—Refusal of treasurer to accept poll tax.....	86
MINTER, W. M.—Assessment of women with poll taxes.....	49
MONTAGUE, S. T.—Who can take advantage of absent voter's law.....	35
MOODY, J. R.—Who may register voters in absence of regular registrar.....	76
MOORE, C. LEE—Escheating of personal property.....	101
Fees of justice of the peace acting for police justice.....	166
Payment of fines to justices of the peace.....	165
Regarding affixing of seal of surety companies to bonds.....	158
Slot machines, as to violation of gambling and lottery laws, etc.....	104
Tax for recordation of certain deeds.....	219
Voting with regard to residence.....	88
West fee bill, compensation to be paid treasurer.....	240
West fee bill, determining excess fees .....	239
West fee bill, suit for excess fees.....	238
Whether convicts can draw pay as witnesses.....	139
NELMS, W. J.—Tax for recording deeds.....	220
NEWTON, BLAKE T.—Construction of law as to approval of plans, etc., of school buildings by division superintendent.....	200
NEWTON, ELIJAH—Fee for a sheriff or constable.....	166
NORFOLK COUNTY GAS COMPANY—Do stock salesmen have to take out license to sell?.....	25
NOTTINGHAM, THOMAS H.—Authority of school trustees to use different plans and specification from those decided on before bond issue election..	188
OGDEN, J. ED.—Payment of capitation tax.....	50

	PAGE
PAGE, ROSEWELL—Authority of Second Auditor to pay for lost bond coupons	25
PARKS, R. S.—Forfeiture of automobile and authority to place proceeds in town treasury	131
PARROT, J. E.—Whether Commonwealth's attorney prosecuting a case in a justice's court can collect fee, and against whom is the fee assessed	155
PEED, R. A.—Assessing dogs for taxation and compensation for such	110
PENCE, GILBERT E—Power of supervisors in regard to district levy	174
PERKINS, M. W.—Right of clerk to demand deposit fee before issuing process	158
Qualification of women to vote in August primary	58
PLECKER, W. A.—Penalty for failure of clerk to report divorces granted	159
Who may be lawfully appointed registrar of vital statistics	169
POOL, F. P.—Law as to expense of board of prisoner while confined in jail	142
POWELL, S. P.—Special law concerning salaries of school trustees	201
PRICE, S. R.—Slot machines, as to violation of the law	105
PRIDDY, A. S.—Legality of marriage license obtained on fraudulent representations	146
PUGH, G. L.—Qualification to vote in June election	61
RANEY, GEO. M.—Fees of justices of the peace	165
REARDON, JAS. P.—Date of holding primary election	68
REID, R. J. N.—Disqualification of those voting other than straight Democratic ticket in general election	69
Eligibility of persons to vote in November election	99
RICHARDS, LLOYD M.—Residence in wards; redistricting of same	89
RICHMOND, H. C. L.—Regarding fish laws of Scott county	120
RICKS, J. HOGE—Whether a merchant selling cigarettes to a minor violates the law	193
RITTER, WM. C.—Concerning new schools for deaf and blind children of State and separation of races	208
RITTER, W. W.—Eligibility of person to register and vote	47
Payment of capitation tax, etc.	60
ROBINETTE, J. C.—Registering and voting	65
ROBINETTE, L. M.—With reference to fees of a bail commissioner	157
ROWE, CARROLL J.—Listing of women on voting list for primaries	100
RUFF, ROBERT R.—Workman's compensation law; who are employees within meaning of law	245
SANDERS, WM. B.—Fee for Commonwealth's attorney prosecuting a misdemeanor case before a justice	156
SCHOENE, W. J.—Effect of amendment to cedar rust law	26
SEWARD, HATCHER S.—Funds due Virginia Normal and Industrial Institute	211
Virginia Normal and Industrial Institute	210
SHACKLEFORD, O. L.—Filing of declaration of candidacy of State officers	38
SHANKS, G. W.—Authority to issue search warrants in anticipation of the commission of a criminal offense	197
SHEPHERD, B. MORGAN—Concerning type used in contracts for advertising	192
Who can vote in primary elections	67
SIBERT, J. W.—Notice necessary to vote by mail	36
SINGLETON, A. L.—Use of dollar stamp and seal by notary	230
SIPE, W. H.—Liability of directors of bank for excess loans	24
SLATE, W. C.—Residence necessary to qualify to vote	84

	PAGE
SMITH, H. B.—Law governing registering of stills.....	134
Law governing the use of malt.....	133
Right of officer to search fields, etc., for illicit distilling without search warrant.....	198
SNIDOW, F. E.—Has mayor of town authority to take acknowledgment to deeds, etc.....	21
SNIDOW, W. B.—Right of person to vote on tax receipts.....	98
SOUTHALL, S. V.—Levies for district school purposes.....	232
SPENCE, E. LESLIE, & Son—Law regarding operators of elevators.....	28
STERN, JO LANE—Regarding the eligibility of army officers to hold office....	161
Right of professor of V. M. I. to wear uniform after his dismissal from institution.....	151
Jurisdiction of city in matter of erection of warehouses by the Military Board.....	214
STERNE, W. POTTER—Regarding paying of fines collected for violation of speed laws to informers.....	102
As to claim for killing of rabbits by dogs.....	114
STUART, FRANK—Declaration of candidacy of State officers.....	38
Election laws; determining whether offices are State or city.....	171
SULLIVAN, B. J.—Qualification to vote.....	53
TAYLOR, J. R.—Laws applicable to rivers, streams, etc.....	215
TAYLOR, TAZEWELL—Legal requirements in the transportation of intoxicating liquors.....	137
THOMPSON, W. B.—Counting of ballots by judges, laws regarding.....	40
THORNHILL, A. B.—Authority to adopt ordinance requiring permits from persons selling milk.....	122
Injuries to persons, etc., by State-owned machines.....	213
TINSLEY, C. H.—Listing of dogs.....	111
TOPPING, J. WARREN—Law governing tax deeds.....	234
TOWLES, C. S.—Criminality of notary taking acknowledgment under certain conditions.....	32
TREHY, JAS. V.—Absent voters' law.....	34
TRICE, HAZEL—Territorial limits of cities and towns.....	30
TUCKER, JOHN RANDOLPH—Assessment of real estate.....	216
TUNSTALL, B. GRAY—Last day for payment of poll tax to vote in August primary.....	47
TURNER, E. PEYTON—Bond issue by town for road improvement.....	29
TURNER, W. E.—Whether osteopaths are allowed to use drugs in their practice.....	177
TYLER, LYON G.—Concerning power of Library Board.....	148
VASS, I. G.—Whether farmers are required to pay license tax on meat raised by them.....	145
WALL, HIRAM—Qualifications of voters at special election.....	96
WALTON, M. L.—Payment of municipal capitation taxes.....	65
WATKINS, A. D.—Detecting crime; lack of co-operation.....	130
WATSON, R. J.—Construction of law in regard to granting licenses to drug- gists handling intoxicating liquor, etc.....	134
WATSON, ROBT.—Taxation on deeds of trust.....	220
WEBB, D. E.—Registration of women to vote in June election.....	81

	PAGE
WEBB, T. A.—Eligibility of persons to vote in town elections.....	93
WILBORN, JAS. B.—Residence requirements for voting.....	85
WILLIAMS, ENNION G.—Concerning the practice of chiropractic.....	176
WILLIAMS, WM. C.—Who can vote in Democratic primary.....	68
WILLIAMS & MULLIN—Fine for operating car without proper license.....	167
WINNE, A. L. I.—As to fixing the status of a defunct pharmacy.....	176
WOOD, J. B.—Regarding expense of physical examination of prisoners....	142
Time allowance for prisoners on account of good behavior .....	138
WOODRUM, C. A.—Power of court to permit children under age to work....	27
WOODS, SAMUEL B.—Concerning refund to counties, individuals, etc.; money expended for road improvement.....	190
Whether the State is legally bound to refund money expended for road improvement.....	189
WOODSON, C. W.—Right of board of supervisors to borrow money for road improvement.....	191
WOODSON, WM. S.—Who can take advantage of absent voters' law.....	35
WRAY, R. P.—Law governing removal of sand from non-navigable streams..	194
WRIGHT, WM. E.—Who is disqualified from voting in Democratic primary..	69
WYSOR, J. F.—First tax assessable against women.....	48

# OPINIONS

---

## ACKNOWLEDGMENTS—MAYORS

RICHMOND, VA., *March 22, 1921.*

F. E. SNIDOW, ESQ., *Clerk,*  
*Circuit Court of Giles County,*  
*Pearisburg, Va.*

DEAR SIR:

Acknowledgment is made of your letter of March 11th, in which you request me to advise you whether the mayor of a town has authority to take acknowledgments to deeds and whether or not a clerk of a court should admit to record any writing acknowledged before a mayor who signs his name followed by "Mayor, ex-officio J. P."

It is provided by section 3011 of the Code of Virginia, 1919, so far as is applicable to the question here under consideration, as follows:

"The mayors of towns shall be clothed with all the powers and authority of a justice in civil and criminal matters within the county where such town is situated."

In a note to this section, the revisors state with reference to mayors:

"As to these officers, however, the revised section provides that they shall be clothed with all the powers and authority of a justice in civil and criminal matters *within the county where such town is situated*, thus extending their jurisdiction through the county and not confining it merely to the corporate limits in civil matters, or to the corporate limits and one mile beyond the same in criminal matters."

It is true, as you say, that section 5205 of the Code of Virginia, 1919, which designates the officers who may take and certify acknowledgments within the United States or its dependents upon writings which are to be admitted to record, does not designate a mayor as one of the officers before whom such acknowledgments may be taken. It does, however, designate a justice as one of such officers.

In the case of *Gate City v. Richmond*, 97 Va. 337-9 (1899), it was contended that deputy clerks were not authorized to take acknowledgments at the time the deed in question had been executed. The Court of Appeals said, however (p. 339):

"The Code of 1873, which contains the law applicable at the time this deed of trust was acknowledged, provides (sec. 8, chap. 159, p. 1068) that '*the clerk of any county, corporation, or circuit court, may, with the consent of the court, or of the judge in vacation (the said consent in vacation being given in writing) appoint a deputy, who, during the continuance in office of said principal, may discharge any of the duties of said clerk unless otherwise provided by law.*' One of the duties the clerk is authorized by law to discharge is taking the acknowledgment to deeds; and, it being nowhere provided by law that his deputy shall not perform that duty, it follows that he can perform it by the express terms of the section quoted."

It would seem to follow from this decision as one of the duties that a justice is authorized by law to discharge is the taking of an acknowledgment to deeds that the mayor of a city or town would have like authority.

However, the matter is not free from doubt and some of the best title examiners in this city have refused to pass deeds acknowledged before the mayor of a city or town, and I would suggest that as a matter of protection to the grantees, that mayors of cities and towns refrain from taking certified acknowledgments to deeds until the matter has been definitely settled by the Court of Appeals.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

---

AGRICULTURE—CHEMICAL LABORATORY

RICHMOND, VA., March 26, 1921.

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

DEAR SIR:

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

“Is the Commissioner of Agriculture, with the approval of the State Board of Agriculture, authorized and empowered to enter into a lease of property for a period of five or ten years, to be used as a chemical laboratory for the conduct of work incident and necessary in the performance of his duties as laid down in the statutes?”

You state that the property in which your chemical laboratory is now located has been sold, and it is necessary for you to move out, and you must take some action by Monday of next week.

The provisions of the law with reference to the duties of the Department of Agriculture and Immigration provide for the maintenance of a chemical laboratory, which necessarily carries with it the necessity of securing rooms in which such laboratory should be conducted.

As the State has provided no specific room or rooms in which such laboratory is to be located, but has made appropriations so as to enable the Board of Agriculture to lease their own quarters for such purposes, it was evidently the intent of the legislature to delegate to you and your board the authority to secure rooms in which to conduct your laboratory.

I am therefore of the opinion that you, with the approval of the State Board of Agriculture, are authorized to enter into a lease of property to be used as a chemical laboratory for five or ten years, if you deem it necessary, but I am also of the opinion that there should be some proviso in the lease, relieving you from further liability on the lease when the present appropriation provided by the legislature has been consumed, unless the next legislature makes further provision therefor; that is to say, the lease should secure you against liability in case the succeeding legislature does not in its appropriation for the Department of Agriculture make such provision as to enable the Department to continue to pay the rent provided for in the lease.

Yours truly,

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

## AGRICULTURE—FERTILIZER FINES

RICHMOND, VA., May 11, 1921.

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

DEAR SIR:

Acknowledgment is made of your communications of recent date, with reference to the fines assessed against the Franklin Phosphate Company, Newberry, Fla., and the Seminole Phosphate Company, Goldsboro, N. C., and Croom, Fla., for a deficiency in certain fertilizer material shipped by these companies to dealers in Virginia, and sold in this State.

You state in your letter that you are unable to find within the State any property of either of these companies, and it further appears from your letter that both of these concerns are in a bad financial condition, making it extremely doubtful whether these fines could be collected, even if suits were instituted against these parties in North Carolina and Florida. It seems, therefore, that there is small chance of collecting anything out of the manufacturer at the present time. In view of this fact, you ask whether the dealers of the State, who sold the fertilizer in question, can be held responsible for such deficiency.

If you will examine the provision of section 1120 of the Code of Virginia, 1919, you will see that that section expressly authorizes you to assess twice the value of the deficiency mentioned, in the section against "the manufacturer, dealer or agent" who sold such fertilizer, or five times the value of such deficiency against "the manufacturer, dealer or agent" who sold such fertilizer as the case may be.

It would, therefore, seem that you could look to the dealers or agents in Virginia who sold the fertilizer in question.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

---

AUTOMOBILES

RICHMOND, VA., February 18, 1921.

CHARLES C. BERKELEY, ESQ.,  
*Commonwealth's Attorney,*  
*Newport News, Va.*

MY DEAR SIR:

I am in receipt of your letter of the 11th instant, in which you state that there is a dispute concerning the interpretation of section 2133 of the Code of 1919, which section applies to the using of a wrong number plate on a machine, and prescribes a penalty for so doing.

Since receiving your letter, I have discussed this matter with the Secretary of the Commonwealth. He states that he has written a letter to the chief of police of your city and also to the chiefs of police in other cities, in which letter he has construed this section of the law. It is not his contention that when a runabout or touring car has the part behind the front seat so converted as to carry a drummer's samples, that it becomes a truck. He makes an exception in a case of this kind but holds that where a truck body is attached to

the car for the purpose of holding goods, wares and merchandise, either for hire, or where a merchant is using it for his own convenience, then the owners should obtain a truck license.

He also tells me that where a party has obtained a license for a Ford touring car, which license fee is \$13.20, if the owner of the car desires to convert this into a truck, he will allow him a credit for this \$13.20 and upon payment of \$1.80 additional, a truck license will be issued, as the fee for this is \$15.00. He also thinks that the chief of police should notify automobile owners as to this rule and give them an opportunity to comply with the law, rather than to proceed at once with a criminal prosecution. It strikes me that the latter suggestion on his part is a very fair one.

The law does not clearly define a line of demarcation, as stated in your letter, but its construction should be left to common sense and good judgment. I am satisfied that you, as Commonwealth's attorney, will know what to do under the circumstances.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

---

BANKS—DIRECTORS, LIABILITY OF

RICHMOND, VA., *March 22, 1921.*

MR. W. H. SIPE, *President,*  
*The Planters Bank,*  
*Bridgewater, Va.*

DEAR SIR:

I am in receipt of your letter of March 19, 1921, which is as follows:

"There has been a question raised among the board of directors of this bank in regard to the personal responsibility of the board in permitting excess loans. We have understood when the excess was passed in a regular meeting by a majority of the board and a minute made of same (of course where good business judgment and discretion is used) that there is not a personal responsibility.

"Will you kindly give us your construction of section 1164, banking laws of Virginia; also, is there any statute of more recent date claiming same?"

The section to which you refer is 4115 of the Code of Virginia, 1919. This was amended by the last legislature, which amendment is found on page 820 of the Acts of 1920.

The question contained in your letter is a broad one, and cannot be answered definitely either in the affirmative or the negative. The personal liability of the directors in making any loan would depend largely upon the circumstances connected with the particular transaction. The object of this statute, I take it, is to guard and protect a bank against excessive loans made by its directors, and to insure extraordinary care in making loans which exceed twenty-five per centum of the capital and surplus.

I take it also that the purpose of the law is to relieve the directors from personal liability where a loan is made in accordance with the provisions of the law, but it would be impossible to lay down any fixed rule as to when a director would be personally liable in making such a loan.

However, where the directors of an institution, in making a loan in accordance with the provisions of this section, exercise their best business judgment and discretion, I doubt very much if a court would hold them personally liable.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

---

BLUE SKY LAW

NORFOLK COUNTY GAS COMPANY,  
*Haddington Building,*  
*Norfolk, Va.*

RICHMOND, VA., *May 9, 1921.*

GENTLEMEN:

Acknowledgment is made of your letter of April 16th, which has been returned to me from the Corporation Commission. In your letter you say:

"We have a charter and franchise to erect a gas plant at Ocean View, Va. We have qualified before the State Corporation Commission, Securities Division, and have had our meeting, elected officers, and have sold some stock. Am writing to know if we do not come under the head of Public Utilities, and if so, whether or not our salesmen have to take out a license to sell stock."

Chapter 359 of the Acts of 1918, as amended, which is known as the Virginia blue sky law, provides in section 9, sub-section B thereof:

"The provisions of this act shall not apply to \* \* \*

"(b) Securities of public service or utility corporations after organization, which are regulated by the commission or by the public service commission, or board of similar authority of any State or territory of the United States; or securities senior thereto."

When taken in connection with the words immediately following the words "after organization," used in sub-section B, of section 9 of the act above quoted I am of the opinion that it was the intention of the legislature to exempt only issues of operating utilities which are under the control and supervision of the State Corporation Commission, and therefore, that securities issued by a public utility corporation prior to operation, are not excepted from the provisions of the act by sub-section B, of section 9 thereof.

Until the company is fully organized and in operation, it is not regulated by the State Corporation Commission, as until that time the commission has no supervision over the rates and services of the company.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

---

BONDS—LOST

RICHMOND, VA., *April 7, 1921.*

HON. ROSEWELL PAGE,  
*Second Auditor,*  
*Richmond, Va.*

MY DEAR MR. PAGE:

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

"Messrs. Bertschmann & Maloy, attorneys, of 53 Beaver street, New York City, representing the Switzerland General Insurance Company of Zurich, have forwarded to me an indemnifying bond duly executed by the Fidelity and Deposit Company of Maryland, in the penalty of \$150.00, to cover loss of ten Virginia Century Coupons maturing January 1, 1918, for seventy-five dollars (\$75.00) cut from ten Virginia Century Bonds of \$500.00 each, numbered 6096, 5922, 5912, 5913, 5914, 5915, 5916, 5917, 5918 and 5919, which coupons are testified to as having been lost aboard the steamer *Andania* which was sunk January 28, 1918, as shown by affidavits duly filed. These coupons on the 8th day of January, 1918, appear to have been handed the post office at Amsterdam, Holland, addressed to Brown Brothers & Co., 59 Wall Street, New York City.

"The question that I am submitting to you is whether, under section 2639 of the Code of 1919, I am authorized to pay for these coupons or whether I will be authorized to issue new coupon bonds for the bonds and coupons so lost."

Section 2639 of the Code of Virginia, 1919, reads 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 circumstances 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."

This section, in my opinion, is limited to any bond or certificate which has been lost or destroyed. As the bonds in the case under consideration have not been lost or destroyed, but merely some of the coupons which have been detached therefrom, I am of the opinion that this section is not applicable and will not permit you to issue a new bond or pay for the coupons which have been lost. I know of no other statute under which relief could be afforded the owner of the lost coupons, and am of the opinion that an act of the legislature would be necessary to authorize you to pay for the same.

If the owner of the lost coupons is unwilling to wait until the legislature convenes and desires to test the matter in court, I refer him to sections 2173 and 2578 of the Code of Virginia, 1919, although I believe that they are inapplicable to his case.

Very truly yours,

JNO. R. SAUNDERS,

*Attorney General.*

---

#### CEDAR RUST LAW—ADOPTION OF

RICHMOND, VA., January 6, 1921.

HON. W. O. SCHOENE,  
State Entomologist,  
Blacksburg, Va

MY DEAR MR. SCHOENE:

I am in receipt of your letter of January 3rd, in which you ask my opinion regarding the effect of an amendment enacted by the last session of the legislature to the so-called orange or cedar rust law, which is contained in section 885 of the Code of 1919.

As stated in your letter, the only change made by this amendment for the elimination of one mile and the insertion of two miles. While it is true that the law provides that the act shall not be in force in any county until adopted by the Board of Supervisors, and their adoption not to become operative unless the circuit court of said county, by order duly entered, ratifies and approves the action of the board, I am of the opinion that where the board of supervisors and the circuit court have complied with the provisions of the act in reference to its adoption and ratification, that such action is sufficient to make the law operative as amended, even though the action of the board and the court was taken prior to the amendment of the law.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

---

CHILD LABOR

RICHMOND, VA., *July 22, 1921.*

JUDGE C. A. WOODRUM,  
*Corporation Court,*  
*Roanoke, Va.*

MY DEAR JUDGE:

Acknowledgment is made of your letter of July 12th, which reads as follows:

"Section 1816 of the Code of 1920 apparently gives the court the power for good cause shown, to issue permit to child to work who otherwise could not get permit on account of age being below the limit therein provided. Was this provision of the law repealed by the act of March 14, 1918, Acts of 1918, page 347?"

"The act of March 25, 1920 (Acts of 1920, p. 840) gives children between the ages of twelve and sixteen the right to work in vegetable and fruit factories eight hours in any one day when school is not in session, and children of the same ages the right to receive employment in running errands and delivering parcels. Do such children desiring to receive such employment have to have a permit?"

In reply to your first question, I am of the opinion that section 1816 of the Code of Virginia, 1920, was not repealed by chapter 204 of the Acts of 1918, page 347, for the reason that the said act seems to have no reference whatever to section 1816 of the Code but simply amends in certain particulars the several sections preceding said section.

While it is true that section 7 of the act approved March 14, 1918, repeals all acts or parts of acts that may be in conflict with the operation of this act after July 1, 1918, I am of the opinion that section 1816 is not in conflict with any part of said act. This conclusion is strengthened by the provisions of section 6568 of the Code of Virginia, 1919, which provides that while acts passed by the General Assembly on and after January 9, 1918, shall not be affected by the Code, but that "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."

While the effect of the Act of 1918 was to amend and re-enact certain portions of the law from which the seven sections preceding section 1816 of the Code of Virginia, 1919, were taken, and by reason of section 6568 of the Code of Virginia, 1919, to repeal those sections, so far as the act of 1918 varies from

or conflicts with the same, it does not touch or purport to affect the provisions of section 1816 of the Code of Virginia, 1919, and I am of the opinion, therefore, that section 1816 of the Code is still in full force and effect.

In response to your second question as to whether it is necessary for children between the ages of twelve and sixteen who work in vegetable and fruit factories and who run errands, to obtain a permit before so doing, I am frank to say that the language of the statute is so ambiguous that I do not know just what it means. However, I would say that it is advisable for them to obtain a permit for the reason that it would save a great deal of trouble and unnecessary labor on the part of the inspector when he inspects the places of their employment, and this has been the construction placed upon it by the Labor Commissioner.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

---

CHILD LABOR

RICHMOND, VA., *November 15, 1921.*

MESSRS. E. LESLIE SPENCE & SON,

*General Agents,*

*Richmond, Va.*

GENTLEMEN:

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

"We are in receipt of a letter from our home office reading as follows:

" 'Occasionally we have an elevator accident and we find that the operator is employed contrary to the State requirements, and as I am particularly anxious to see that all of our safety engineers are properly instructed as to the age of the operator in accordance with your State requirements, I would appreciate your forwarding me the necessary information as to the legal age of employment in the States under your supervision.'

"Will you be good enough to advise us, that we may reply to this letter?"

There is no law in this State specifically relating to the operators of elevators, but the general statutes relating to the employment of infants, prohibit a child under the age of fourteen years from operating an elevator, and if below the age of sixteen but above fourteen, it is necessary to obtain a permit. Even then, such child is not permitted to work more than six days in any one week, nor more than ten hours in any one day, nor before the hour of six o'clock in the morning, nor after the hour of seven in the evening (chaps. 204 and 414 of the Acts of 1918). Any violation of the law should be reported to the Commissioner of Labor.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

## CITIES AND TOWNS—BOND ISSUES

RICHMOND, VA., *August 16, 1921.*HON. E. PEYTON TURNER,  
*Emporia, Va.*

DEAR SIR:

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

"I submit the following statement of the matter: The purpose of said bond issue is to raise funds for permanent street improvement.

"The charter of said town (Acts of General Assembly of Virginia approved March 5, 1908) contains no particular provisions, the sole powers of the town, under its charter, being those conferred upon the towns of this Commonwealth under the general laws of the State. The portion of the charter pertinent to this discussion is in the following language: ' \* \* \* shall be a town corporate by the name of Emporia, and by that name shall have and exercise all the powers conferred upon towns by, and be subject to the provisions of chapter forty-four of the Code of Virginia, and all general laws now in force, or that hereafter may be enacted, for the government of towns so far as the same are not inconsistent with the provisions of this act.'

"In view of the foregoing, it would seem that the power and authority of the town of Emporia, in the matter of bond issues, is conferred by and limited by chapter 122 of the Code of 1919. Section 3079 of the Code of 1919 confers upon towns the right to issue bonds for various purposes, among them for the purpose of improving streets. Sections 3082, *et seq.*, prescribe the procedure. An act, approved March 22, 1920, amends and re-enacts section 3082 of the Code and only applies to bonds contemplated by clause "B," section 127 of the Constitution; that is to say, bonds for specific undertakings which produce a revenue. The bonds in question—bonds for street improvements—are not bonds contemplated by clause "B," section 127 of the Constitution. How, then, can the town proceed? Having no authority or power with reference to bond issues, save such as the general laws confer, and the statute failing to prescribe any procedure in the matter of bonds of the kind proposed, what remedy, if any, has the town in the premises?

"Section 3079 of the Code gives the town the right to issue such bonds, and it would seem that there ought to be some way out of the difficulty, but my personal opinion is that the failure of the act above mentioned (the act amending and re-enacting section 3082), to prescribe any procedure for any bond issues except those contemplated by clause "B," section 127 of the Constitution, will be apt to cast doubt upon the validity of the bonds the town of Emporia desires to issue at this time."

As you say, section 3079 of the Code of Virginia, 1919, expressly authorizes a town to issue bonds, among other purposes, for grading, paving, re-paving, curbing or otherwise improving any one or more streets or alleys or widening existing ones in such town. The machinery by which such bonds were to be issued was provided for by section 3082, *et seq.*, of the Code of 1919.

For some unimaginable reason, however, the legislature of 1920, amended section 3082 of the Code of Virginia, 1919, so that now the only bonds provided for by that section are the bonds mentioned in clause "B," section 127 of the Constitution of Virginia, therefore leaving the method by which other bonds authorized by section 3079 of the Code of 1919, are to be issued, unprovided for.

Section 3079 of the Code of Virginia, 1919, you will observe, is a general grant of power to cities and towns in the State, and the provision of section 3082 of the Code of Virginia, 1919, prior to its amendment, and the succeeding sections, are a limitation upon that power. With the amendment and re-enact-

ment of section 3082 of the Code of Virginia, 1919, in which amended statute bonds of the class mentioned in your letter, are not provided for, it would seem that your town having the authority to issue such bonds under section 3079 of the Code of 1919, would have the right to follow any reasonable method in making the proposed bond issue.

The method provided for by section 3082 of the Code of 1919, prior to its amendment, and the succeeding sections, which latter sections are still in force, appears to provide a clear and reasonable method. I would therefore suggest that the method provided by section 3082 of the Code of 1919, prior to its amendment, be followed.

Of course, you will realize that anything I may say with reference to this matter, is not binding, and the validity of a bond issue made under such circumstances, could only be finally determined by a decision of the court of last resort. Therefore, in view of the importance of the matter, while I believe a bond issue can be validly made, I think the matter should be tested in the courts.

Trusting this gives you the desired information, I am

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

---

#### CITIES AND TOWNS

RICHMOND, VA., *April 29, 1921.*

MISS HAZEL TRICE,  
*Richmond, Va.*

MY DEAR MADAM:

Acknowledgment is made of your letter of April 25, 1921, addressed to the Attorney General, which has been referred to me for attention.

The city of Richmond is established within the territorial limits of the counties of Henrico and Chesterfield, the north side of the city being within the territorial limits of the county of Henrico and the south side of the city being within the territorial limits of the county of Chesterfield. From a political standpoint, however, the city of Richmond and the counties of Henrico and Chesterfield are absolutely separate and distinct.

Henrico courthouse, while located within the physical limits of the city of Richmond, is authorized to be located there by reason of the fact that that portion of the city of Richmond in which it is located is, to use the words of the Court of Appeals in *Supervisors v. Cox*, 98 Va., 270, 274 (1900) "within the territorial limits" of the county of Henrico. In that case, the court said:

"\* \* \* The courthouse and clerk's office, although situated within the limits of the city and the jurisdiction of its court, are, nevertheless, also within the territorial limits of the county. The fact that a city is established within the territorial limits of a county does not alter the boundaries of the county, nor curtail its territorial limits, although its court, by the incorporation of the city, is deprived of civil and criminal jurisdiction within the limits of the city."

It would appear, however, from what was said in *Supervisors v. Cox*, *supra*, and by the court in *Chahoon's Case*, 61 Va. (20 Gratt.) 733, 799 (1871) and in *Fitch's Case*, 92 Va. 824, 827-8 (1896), that an offense committed at Henrico

courthouse would have to be tried in the criminal courts of the city which have jurisdiction over offenses committed in the city, and that the county courts would be without jurisdiction in such case.

Trusting that this gives you the desired information, I am

Very truly yours,

L. M. BAZILE,  
*Second Assistant Attorney General.*

---

CODE OF VIRGINIA—COSTS INCIDENTAL TO DISTRIBUTION OF

RICHMOND, VA., *January 21, 1921.*

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

DEAR SIR:

I am in receipt of your letter of January 19th, in which you call my attention to chapter 266 of the Acts of 1920, page 388, which provides for the completion of the publication, binding and distribution of the Code of Virginia.

You state in this letter that it has been necessary for you to have built in the attic of the capitol, shelving and storage room to properly take care of the Codes you have on hand. You then ask if this is such an expense as is provided for in the Act referred to above. I am of the opinion that the scope of the act is sufficiently broad to include this expense.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

---

CONSTITUTIONAL LAW

RICHMOND, VA., *August 18, 1921.*

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

DEAR SIR:

Acknowledgment is made of your letter of recent date, in which you state that your botanist informs you that some question has been raised by someone as to the constitutionality of section 1151 of the Code of Virginia, 1919, which reads as follows:

"It shall be unlawful for any person, firm or corporation, to sell, offer or expose for sale, or have on hand for distribution any lot of agricultural seed, as defined in this chapter, not properly tagged or labeled as provided herein. The Commissioner of Agriculture and Immigration may cause to be seized and held any lot of agricultural seeds found to violate any of the provisions of this chapter until the law has been complied with or said violation otherwise disposed of."

The contention is made in the letter of Mr. French, the botanist, enclosed with your letter, that this statute provides for the taking of one's property without due process of law, and therefore, the same is in conflict with both the State and Federal Constitution.

From an examination of this statute, it will be seen that the seed are not

confiscated, but are to be held only until the owner has complied with the law, or the violation has been otherwise disposed of. This statute unquestionably contemplates the return of the seed to the owner when the law has been complied with by him, or the disposition of the same in the judicial proceeding to be instituted against the owner as provided for by section 1150 of the Code. In either event, the owner of the seed seized under this section of the Code, has an opportunity to be heard and contest the seizure before his property is finally disposed of. This affords the owner due process of law, and in my opinion section 1151 of the Code of 1919 is constitutional and valid. *Commonwealth v. Carter's Executrix, et als*, 19 Va. App. 441; *Heth v. Commonwealth*, 19 Va. App. 462; *Withers, et als, v. Jones Executrix, et al*, 19 Va. App. 468.

In *King v. Portland*, 184 U. S. 61, it was said:

"The manner of contest and the specific period of time in the proceedings when he may be heard, are not very material, so that reasonable opportunity is afforded before he has been deprived of his property or the lien thereon is irrevocably fixed. \* \* \*"

While it is true that the cases cited were tax cases, the principle is the same, and where a statute affords one a reasonable opportunity to be heard before he has been deprived of his property, he has been afforded due process of law and the constitutional provision has been complied with.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

---

#### CRIMES

RICHMOND, VA., May 5, 1921.

HON. C. S. TOWLES,  
*Commonwealth's Attorney,*  
*Reedville, Va.*

MY DEAR CLARENCE:

Acknowledgment is made of your letter of May 3, in which you say:

"Please enlighten me in the following case: A borrows money from a bank (not the Commonwealth National of Reedville) in December, 1920, and gives security satisfactory to the bank at that time. In February, 1921, A has had a considerable loss by fire and the president and cashier of the bank come to him (A), bring a deed of trust on real estate, securing the payment of the note, the deed of trust being dated on the same day as the note, December, 1920, and demand that A and his wife sign same. A and his wife sign the deed of trust acknowledging the same before the cashier of the bank, who is a notary public. The notary public signs a certificate of acknowledgment certifying that A and his wife had personally appeared before him and acknowledged the writing and dates his acknowledgment the same date as the deed and the note (December, 1920). The president and cashier of the bank then take the deed of trust to the clerk's office and has same recorded. Has either of these men committed a crime, and if so, what is it?"

I do not know of any crime that has been committed by the action of the parties in question, as narrated above. It appears that the grantors in the deed of trust voluntarily signed and acknowledged the same, and certainly there is no law which makes it a criminal offense for the owner of real estate

to execute a deed of trust on the same, nor could it be any criminal offense for a notary to take the acknowledgment of the grantors in a deed of trust, who voluntarily acknowledged the same.

I do not think that there is anything criminal in the action of the notary in ante-dating the acknowledgment. Of course, there might be other circumstances in connection with this matter, which you have not stated in your letter, which might justify the removal of the notary under section 2850 of the Code of Virginia, 1919, but on the facts as contained in your letter, I cannot see where any crime has been committed.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

---

#### ELECTIONS

RICHMOND, VA., *July 14, 1921.*

MRS. HOWARD M. HOGE, *President,*  
*Virginia W. C. T. U.,*  
*Lincoln, Va.*

MY DEAR MRS. HOGE:

Acknowledgment is made of your letter of July 12, 1921, in which you submit to me several questions. Your first question is

"How, when we have the Australian ballot, has anyone the right to ask how one voted?"

The answer to this question is found in section 174 of the Code, which you find in the Virginia election laws, and which reads as follows:

"Any elector may, and it shall be the duty of the judges of election to challenge the vote of any person who may be known or suspected not to be a duly qualified voter."

Also, to the last paragraph of section 228 of the Code, being found on page 51 of the Virginia election laws.

Your second question is as follows:

"If one voted last November for the Democratic nominee for Congress and for the Republican electors for President, or *vice versa*, is he or she not eligible under the primary plan as given on page 68 of election laws to vote in the primary August 2d?"

In response to this question, I am sending you a copy of the opinion given by my assistant, Mr. Hank, last fall to Hon. D. Lawrence Groner, of Norfolk.

Your third question is as follows:

"What are the regulations concerning having watchers present during the period of voting, and during the counting of the ballots when judges are all known to favor one candidate?"

In response to this question, I call your attention to sections 161, 172, 173 and 177 of the Code of Virginia of 1919, all of which you will find in the Virginia election laws, a copy of which you state you have.

Your fourth question is as follows:

"Has any county or local committee the right to nullify the State primary plan?"

I do not understand what you mean by this question. If you will write me

more fully as to the specific matters you have in view, I shall be glad to advise you. I shall also be glad to give you any further information that you may desire.

Respectfully yours,

JNO. R. SAUNDERS,

*Attorney General.*

---

ELECTIONS—ABSENT VOTERS

RICHMOND, VA., *July 5, 1921.*

MISS LUCY MASON,  
829 West Grace Street,  
City.

DEAR MISS MASON:

Acknowledgment is made of your request that you be advised whether you are entitled to vote as an absent voter if you leave the city and accompany your father on his trip to the country, where he will be engaged in preaching on certain Sundays during the summer.

In view of the fact that it is necessary for someone to accompany your father, and that your principal duty is the care of your father, I am of the opinion that you will be entitled to vote as an absent voter in the August primary.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

---

ELECTIONS—ABSENT VOTERS

RICHMOND, VA., *July 12, 1921.*

JAMES V. TREHY, ESQ., *Clerk,*  
*Norfolk, Va.*

MY DEAR SIR:

Acknowledgment is made of your letter of recent date, one paragraph of which reads as follows:

"I would like your view of the status of voters who are leaving Norfolk on July 30th, and will not, after reaching their destination, have the time to mail ballot if same is to reach their voting place on or before August 2d, the date of the primary. Can such voters meet the requirements of the absent voter's act before leaving the city?"

Since reading your letter, I have carefully examined the absent voter's law, and am of the opinion that the class of voters referred to in your letter will not be able to vote by mail.

The law, in my judgment, clearly contemplates that at the time the absent voter marks his ballot, he must be at some place other than that in which he has the right to regularly vote.

I can see no objection to a voter, who expects to be absent from Norfolk, notifying the registrar fifteen days before the primary that he will be absent on the 2d day of August, and requesting a ballot to be forwarded him; but in my judgment, the ballot cannot be marked before the elector leaves Norfolk.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

## ELECTIONS—ABSENT VOTERS

RICHMOND, VA., May 17, 1921.

HON. WM. S. WOODSON, *General Registrar,*  
*City Hall,*  
*Richmond, Va.*

MY DEAR MR. WOODSON:

Acknowledgment is made of your letter of recent date, in which you request me to advise you whether or not absentees, other than business men and women, are entitled to vote as absent voters under the provision of chapter 14 of the Code of Virginia, 1919, as amended, when absent from their homes.

Section 202 of the Code of Virginia, 1919, reads as follows:

"Any voter, only when required by his regular business and habitual duties to be absent from the city or county and precinct in which he is registered may vote \* \* \*"

Section 220 of the Code of Virginia, 1919, the last section found in chapter 14 of the Code of Virginia, 1919, reads as follows:

"The provisions of this chapter shall be liberally construed in favor of the absent voter."

The object of this law was to encourage the exercise of the right of suffrage by those entitled thereto, and extended this privilege to persons who could not be personally present in their precincts to cast their ballots in person. This chapter is a remedial statute, and the legislature has expressly provided that the provisions thereof shall be liberally construed in favor of the absent voter.

The word "business" is one of large and indefinite import, 1 Bouvier's Law Dictionary (Rawle's third revision) 406. "Habitual" is generally defined as "pertaining to or constituting a habit; done or recurring constantly, frequently, or as if by habit; following usual practice."

Certainly the regular business and habitual duties of a married woman ought to be the care of her home and children, and if, in the performance of such duties, she goes with her children to the country or other place in the interest of her children, I am of the opinion that she would be entitled to vote under the absent voter's law.

I believe that this would be equally applicable to any voter who was absent from his home on account of business or habitual duty, but from the nature of the matter, it would be impossible to lay down any rule which would cover every possible case which might arise.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## ELECTIONS—ABSENT VOTERS

S. T. MONTAGUE, ESQ.,  
*Post Office,*  
*Portsmouth, Va.*

RICHMOND, VA., June 15, 1921.

MY DEAR SIR:

Acknowledgment is made of your letter of June 14, 1921, in which you say:

"I am writing in the interest of a great many of our lady teachers in the public schools who are very anxious to know whether they can vote

in the coming primary by mail, as they will be in Farmville attending summer school at that time. If they can vote, please answer as early as possible, and the method they will have to pursue."

The statute section 202 of the Code of Virginia, 1904, provides that "any voter only when required by his regular business and habitual duties to be absent from the city or town and precinct in which he is registered, may vote" as an absent voter. I am unquestionably of the opinion that public school teachers, who are away from their homes attending school, are absent on account of their regular business and habitual duties, and are, therefore, entitled to vote as absent voters.

Yours truly,

JNO. R. SAUNDERS,  
*Attorney General.*

---

#### ELECTIONS—ABSENT VOTERS

RICHMOND, VA., *June 9, 1921.*

MR. E. C. KAISER, JR.,  
*Phoebus, Va.*

DEAR MR. KAISER:

Acknowledgment is made of your letter of June 7, 1921, in which you say:

"I wish you would give me your opinion on the following questions:  
"If a voter make application in writing to the registrar thirty days before the election, and pursuit of his regular business and habitual duties require him to be absent from the county on the day of the election, can a registrar give him the blank ballot in person so he could mark it in the presence of a notary, justice or clerk, or does the registrar have to mail him his blank ballot?"

The law does not permit the registrar to deliver the ballot to the applicant in person; it requires it to be sent by registered mail (Va. Code, sec. 208), and requires the applicant to open the same in the presence of the postmaster or his assistant, who must register the letter in return (Va. Code, sec. 210).

Trusting that this gives you the desired information, I am,

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

---

#### ELECTIONS—ABSENT VOTERS

RICHMOND, VA., *October 28, 1921.*

MR. J. W. SIBERT,  
*Winchester, Va.*

DEAR SIR:

Acknowledgment is made of your letter of October 27th, in which you say:

"An inquiry to construe absent voter's law, section 2 of Virginia election laws. In what time should the registrar consider expiration of fifteen days before elections in receiving application to vote? Should it be from the time of post-mark at mailing point, or when registrar receives the application?"

It is provided by section 203 of the Code of Virginia, 1919, as amended, as follows:

*"Notice of intention to be given.—He shall give notice in writing of such intention, 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, if he be within the confines of the United States.*  
\* \* \*"

While it is true that it is provided by section 220 of the Code of 1919, as amended, that the provisions of the absent voter's law shall be liberally construed in favor of the absent voter, I am nevertheless of the opinion that the plain terms of section 203 require the notice to be in the hands of the registrar not less than fifteen days nor more than sixty days prior to the election.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

---

#### ELECTIONS—BALLOTS

RICHMOND, VA., *July 29, 1921.*

MR. GEO. A. HARLOW, *Registrar Second Ward,*  
*Alexandria, Va.*

MY DEAR MR. HARLOW:

I am just in receipt of your letter of the 27th, in which you enclose copy of letter from a lady who unfortunately marked her ballot wrong, and who wishes you to send her another.

Under the law you have no right to do this. Of course this is very unfortunate, but in the case of the absent voter, I would say that as soon as the ballot is marked and deposited in the mail that is equivalent to having voted, so far as the elector is concerned.

I am requesting the Secretary of the Commonwealth to mail you at once two copies of the election laws.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

---

#### ELECTIONS—BALLOTS—SOLID SHOT

RICHMOND, VA., *July 1, 1921.*

MR. L. B. BAILEY,  
*Rice, Va.*

DEAR SIR:

Acknowledgment is made of your letter in which you state that three candidates in your county are running for the House of Delegates, and only two can be elected. You ask whether a ballot is valid in case only one of the candidates is voted for thereon; that is to say, two are scratched out, leaving only one on the ballot.

I presume the election to which you refer is the Democratic primary. The primary law provides that the general election laws of the State shall govern such primaries.

The general election law provides, in section 179, that no ballot shall be void for containing a less number of names than is authorized to be inserted therein.

It is manifest, therefore, that a ballot on which two candidates are scratched out, leaving only one name, is a valid ballot and should be counted for the person whose name remains unscratched.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

---

ELECTIONS—CANDIDATES' PETITIONS

RICHMOND, VA., May 18, 1921.

FRANK STUART, ESQ.,  
109 South Fairfax Street,  
Alexandria, Va.

MY DEAR SIR:

In response to your letter of May 16, 1921, I am of the opinion that the State officers referred to in section 229 of the Code of Virginia, 1919, as being required to file, with their declaration of candidacy, petitions signed by 250 qualified voters are those who are elected by the State at large, and not to those State officers who are elected by localities.

The fact cannot be contested that a member of the General Assembly is a State officer. You will observe that the candidates for the General Assembly are required to file a petition for only fifty voters, and I am of the opinion that the civil and police justice referred to in your letter is required to file a petition for only fifty qualified voters.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

---

ELECTIONS—CANDIDATES' PETITIONS

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

RICHMOND, VA., May 19, 1921.

DEAR SIR:

Your letter has been received in which you call attention to the fact that Mr. Pollard, on April 15, 1915, advised the Secretary of the Commonwealth that the term "State officers," as used in the primary law, was not intended to include Commonwealth's attorneys, members of the House of Delegates or Senate of Virginia, so far as requiring a petition of 250 voters. You ask whether there has been any ruling to the contrary.

I have before me the letter written by Mr. Pollard to the secretary, but cannot find therein any opinion as stated by you. I am of the opinion, however, that section 229 of the Code of 1919, with reference to filing with a declaration of candidacy a petition of 250 names, does not apply to Commonwealth's attorneys or other officers who will be voted upon only by the electorate of the city.

You will note that the provision, requiring a petition signed by 250 qualified voters, designates these voters as being from the *State at large*. The legislature never intended that a candidate, who would be voted on by the electorate of the city alone, should be compelled to file, with his declaration of candidacy, a petition signed by 250 voters from the State at large.

I think, therefore, that any candidates for the city offices to be filled in the August primary will have fulfilled the requisites necessary under the primary law to have his name printed upon the official ballots used at the primary, if he files with his declaration of candidacy a petition of fifty qualified voters of his city, witnessed as provided in section 229 of the Code, and with an affidavit as provided for therein.

I would be very glad to give you any further information on the subject, if I can.

Yours truly,

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

---

#### ELECTIONS—CANDIDATES' PETITIONS

RICHMOND, VA., *April 15, 1921.*

HON. LAWRENCE S. DAVIS,  
*Treasurer,*  
*Roanoke, Va.*

MY DEAR MR. DAVIS:

I am just in receipt of your letter of the 14th, in which you state that you are getting up a list of voters to file with your notice of candidacy for treasurer of the city of Roanoke. You desire to be advised whether it is necessary to have 250 or fifty signatures.

The last paragraph of section 9 of the State primary law provides as follows:

“\* \* \* Nor shall the name of any candidate for the General Assembly, or for any city or county office, be printed upon any official ballot used at any primary unless he filed along with his declaration of candidacy a petition therefor signed by fifty qualified voters of his city or county, witnessed as aforesaid and with like affidavit attached thereto.”

A portion of this section also provides that any candidate for a State office shall file, along with his declaration, a petition therefor signed by 250 qualified voters.

Former Attorney General Pollard decided that a city treasurer was a State officer, which decision was rendered in connection with the draft law. I do not believe, however, that it was intended that a candidate for any city office should be required to have his petition signed by more than fifty qualified voters, and I am of the opinion that that number is ample. However, it is a very easy matter for you to obtain the signatures of 250 voters, and I would suggest that you do this.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

---

#### ELECTIONS—CANDIDATES' NAMES ON BALLOT

RICHMOND, VA., *April 21, 1921.*

MRS. JAMES WARE DURHAM,  
*Richmond, Va.*

MY DEAR MRS. DURHAM:

I am just in receipt of your letter of the 20th, in which you desire to be advised whether it is legal for you to use your married name on the official ballot in the August primary.

Since seeing you on yesterday, I have carefully considered the matter, and am of the opinion that your name on the official ballot should be as you registered, namely, Mrs. Janet Stuart Durham.

Very truly yours,

JNO. R. SAUNDERS,

*Attorney General.*

---

ELECTIONS—ELIGIBILITY OF CANDIDATES

RICHMOND, VA., *August 24, 1921.*

MR. F. J. HARRIS,  
*East Radford, Va.*

DEAR SIR:

I beg leave to acknowledge receipt of your second letter of recent date. In this you state that you are contemplating becoming a candidate for the office of city treasurer, to be elected at the coming November election. You further state that you will not be qualified to vote in the November election, due to the fact that you will not have been a resident of Radford for a sufficient length of time. As stated in my former letter, section 32 of the Constitution of Virginia provides as follows:

“Every person qualified to vote shall be eligible to any office of the State, or of any county, city or 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.”

While this section of the Constitution provides that every person qualified to vote shall be eligible to office, etc., I think the converse of the proposition is true, namely: That every person who is not qualified to vote could not be elected to the office of city treasurer at an election at which he would not be qualified to vote. *29 Cyc. 1376.*

I am giving this opinion as a matter of courtesy to you, and not in an official capacity, and I would advise you before reaching a conclusion in the matter to consult private counsel.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

---

ELECTIONS—CANVASSING BALLOTS

RICHMOND, VA., *November 23, 1921.*

MR. W. B. THOMPSON,  
*Ferrum, Va.*

DEAR SIR:

I beg leave to acknowledge receipt of your letter of recent date, in which you ask to be advised whether the judges and clerks of an election, after the close of the polls, have a right to take the ballots to the home of one of the judges some miles distant from the precinct and there count the ballots and make entries in the books of the results of the counting.

If you will examine sections 176 and 177 of the Code of Virginia, 1919, which sections provide as to how the polls shall be closed and the votes canvassed, you will see that it is contemplated by the statute that the ballots shall be canvassed at the precinct, and it is not contemplated that they shall be carried away before being canvassed.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

---

ELECTIONS—CITIES AND TOWNS

HON. QUINTON C. DAVIS, JR.,  
*South Norfolk, Va.*

RICHMOND, VA., *April 28, 1921.*

DEAR SIR:

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

“whether the councilmen to be voted upon at this coming June election are each voted upon by the whole city of South Norfolk, being a city of the second class, as is the case in a town, or that only the qualified voters of each ward can vote for the candidates for council from their wards only. In South Norfolk there are three (3) wards. The common council of the city of South Norfolk is composed of nine (9) councilmen, three councilmen from each of the three wards. The question, in other words, is this: Do the qualified voters of the first ward vote *only* for the three councilmen from the first ward, and so on, or are the nine councilmen from the three wards of the city voted upon at large in the whole city?”

You did not state the population of South Norfolk, but, being a city of the second class, its population must be 5,000 or more and less than 10,000. Sections 2886 and 2910 of the Code of 1919.

Section 2979 of the Code of Virginia, 1919, provides in part as follows:

“\* \* \* In cities of under 10,000 population the council shall consist of one branch, which shall be called its common council, and be composed of not less than eight nor more than forty members. The members of the council of each city, and of each branch thereof, when the council consists of two branches, shall be residents of their respective wards and qualified voters therein, and shall be elected by the *qualified voters of such wards* \* \* \*.”

I am of the opinion, therefore, that the qualified voters of each ward vote only for the councilmen of that ward.

Yours truly,

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

---

ELECTIONS—CITIES AND TOWNS

HON. Q. C. DAVIS,  
*City Attorney,*  
*South Norfolk, Va.*

RICHMOND, VA., *March 12, 1921.*

DEAR SIR:

Acknowledgment is made of your letter of recent date, in which you state that on January 5, 1921, the town of South Norfolk became a city of the second class, its population having been ascertained to be over 5,000. You further state that at that time, pursuant to sections 2890 and 2897 of the Code of Virginia, Judge Coleman appointed a commissioner of the revenue and one justice of the peace for the city of South Norfolk, there being no such town officers.

You state also that the amended charter of the town of South Norfolk, chapter 455 of the Acts of 1920, in section 5 thereof, provides that the mayor, councilman and town sergeant shall be elected for a term of two years; that they shall be elected on the second Tuesday in June immediately preceding the expiration of the terms of their predecessors, and shall enter upon their duties the first day of September next succeeding their election, and that section 19 of said act provides that the mayor shall be elected by the qualified electors of the town for the term of two years.

You also state that the town of South Norfolk had a town sergeant and town treasurer, whose terms of office expired the 31st day of August of this year, pursuant to an act of incorporation (Acts of Assembly 1919). You then say:

"The present mayor and nine councilmen of South Norfolk were elected for a term of two years at the town election held on the second Tuesday in June, 1920. Their terms of office began on the 1st day of September, 1920.

"There being some question as to what municipal and city officers, if any, are to be elected this coming second Tuesday in June, and Tuesday after the first Monday in November, will the Attorney General's office kindly render me an opinion as to what municipal and city offices are to be filled by election, if any, at the election to be held on the second Tuesday in June and the Tuesday after the first Monday in November, 1921?"

It is provided by section 2892 of the Code of Virginia, 1919, with reference to towns becoming cities of the second class, as follows:

"At the next general election of city officers, to be held on the second Tuesday in June after the city is declared to be such, a mayor and common council shall be elected for the city, whose term of office shall begin on the first day of September succeeding their election, and shall continue, that of the mayor for four years, that of one-half of the council for two years, and the other half of the council for four years."

You will see from an examination of this section that the mayor and the common council of South Norfolk are to be elected at the next general election of city officers to be held on the second Tuesday in June after the city was declared to be a city of the second class, namely: The general city election to be held in June, 1921.

The time at which the other city officers are to be elected is governed by the provisions of section 2893 of the Code of Virginia, 1919, and the section numbered 8 of chapter 368 of the Acts of 1918, Pollard's Code Biennial, 1920, pages 529, 530, in which it is provided, so far as is applicable to the question here under consideration, that—

*"at the next general election of State officers after the municipality is declared to be a city of the second class, and succeeding the expiration of the regular term of office of the existing municipal officers to be held on the Tuesday after the first Monday in November when similar officers are elected for other cities, there shall be elected in such city, a city treasurer, commissioner of the revenue (as elected by general law), a justice of the peace for each ward, a city sergeant and other officers elective by the qualified voters whose election is not otherwise provided for by law, whose term of office shall begin on the first day of January next succeeding their election, and continue for four years and until their respective successors have been elected and qualified; provided, however, that the commissioner of the revenue shall be elected or appointed as the general law may direct."*

The words "and succeeding the expiration of the regular term of office of the existing municipal officers," used in this statute, refer, in my opinion, to

sections 2889, 2890 and 2891 of the Code of Virginia, 1919, and to sections 4, 5, and 6 of chapter 159 of the Acts of 1916, of which chapter 368 of the Acts of 1918 was an amendment. These sections, you will find from an examination of the same, provide that the treasurer of the town, the commissioner of the revenue or assessor of the town, and the sergeant of the town, if there be one at the time that it becomes a city of the second class, shall continue in office and "shall serve until their successors are elected and qualified," and therefore such city officers other than the mayor and council are to be elected at the next general election of State officers to be held on the Tuesday after the first Monday in November after the municipality is declared to be a city of the second class, and succeeding the expiration of the regular term of office of such officers, other than the mayor and council, which includes the treasurer.

The regular term of office of the town sergeant and the treasurer of South Norfolk expiring on the 31st day of August, 1921, they should be elected at the 1921 November election, as that is the next general election after the municipality was declared to be a city of the second class, and succeeding the expiration of their regular terms of office as municipal officers.

The commissioner of the revenue and the justice of the peace, you state, were appointed by the judge of the circuit court of Norfolk county. Section 2897 of the Code of 1919 provides that—

"The terms of all officers appointed by the circuit court or judge thereof shall expire when their successors are elected, or appointed, and qualify."

Section 2893 of the Code of 1919 provides that the commissioner of the revenue and justice of the peace shall be elected at the same time as the city sergeant and other city officers. I am of the opinion, therefore, that all these officers should be elected at the November election, 1921, and that the term of the present commissioner of the revenue and the justice of the peace will expire when their successors are elected and qualify.

Trusting that this may give you the desired information, I am,

Yours truly,

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

---

#### ELECTIONS—CITIZENSHIP—CAPITATION TAX

RICHMOND, VA., *September 14, 1921.*

MRS. MAGGIE McMILLAN,  
*Pine View, Va.*

DEAR MADAM:

Your letter of September 12th, addressed to the Attorney General, has been referred to me for attention. In your letter you ask three questions, which are as follows:

"1. I am Canadian born, having moved to the United States after becoming of age (more than forty years ago), and am the wife of an American citizen. Would it be necessary for me to take out naturalization papers before I can vote? If so, how must I proceed?

"2. Is the capitation tax for women compulsory on the part of native born Americans, even though they are not desirous of voting? Is it necessary on my part?

"3. Is it necessary for a person being Canadian born and having become a resident of the United States before becoming of age to take out naturalization papers?"

In response to your first question, I am of the opinion that upon your marriage to an American citizen, that you likewise became an American citizen, although you were an alien prior to your marriage, and that naturalization is unnecessary.

In response to your second question, the capitation tax assessed against the women of Virginia is compulsory and must be paid whether the women of Virginia desire to vote or not, and whether the right of suffrage is exercised or not. However, this tax, like the capitation tax on the male citizens of the State, cannot be enforced by legal means until it is three years past due. After that time, the collection can be enforced by legal means.

Responding to your third question, a person born in Canada is an alien when he comes to the United States and must become naturalized in order to become a citizen of the United States. This is true of all male citizens of Canada and its female citizens who come to America, unless the latter class become American citizens by reason of marriage to a citizen of America. Trusting this gives you the desired information, I am,

Yours very truly,

LEON M. BAZILE,

*Second Assistant Attorney General.*

---

#### ELECTIONS—COMMISSIONERS OF

MR. W. W. MICHAUX,  
*Michaux, Va.*

RICHMOND, VA., *September 2, 1921.*

MY DEAR MR. MICHAUX:

I am just in receipt of your letter of September 1st, in which you ask to be informed what compensation should be allowed a commissioner of election who carries the returns of an election to the courthouse.

In reply to your inquiry, I would refer you to chapter 265 of the Acts of 1920, page 387. This provides a compensation of \$3.00 a day for judges, clerks, registrars, members of electoral boards, and commissioners of any election.

It further provides that the judge carrying the returns and tickets to and from his voting place to the county clerk's office, and the commissioners of elections, shall receive the pay and mileage now allowed to jurors for each mile necessarily traveled.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

---

#### ELECTIONS—CAPITATION TAX

MR. J. H. K. BURGWIN,  
*328 Mountain Avenue,  
Roanoke, Va.*

RICHMOND, VA., *December 16, 1921.*

DEAR SIR:

Acknowledgment is made of your letter, in which you ask whether a woman who has paid her poll tax for 1921 will be entitled to vote in the June and November elections of 1922 without the further payment of poll taxes.

The Constitution of Virginia provides that, as a prerequisite to voting, a person must pay all taxes assessed or assessable against him during the three years next preceding that in which he offers to vote. Constitution of Virginia, section 21.

Prior to 1921, women were not assessable with a poll tax, but under an act of the legislature of 1920, women became assessable with a poll tax for the year 1921 and subsequent years, and provision was made for paying the same in 1920. Therefore, any woman who has paid her 1921 poll tax is entitled, so far as the payment of poll taxes is concerned, to vote in all the elections held in 1922.

It is manifest that she can vote in all elections in 1922 because the only requisite, so far as poll taxes is concerned, is that she must have paid all taxes assessable against her for the three years preceding that in which she offers to vote. There being no taxes assessable against her until 1921, and having paid the 1921 tax, she can vote in all elections held in 1922 without paying any further tax, because she has paid all taxes assessable against her for the three years next preceding that in which she offers to vote.

I shall be very glad to give you any further information on the subject I can.

Yours truly,

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

---

#### ELECTIONS—CAPITATION TAX

RICHMOND, VA., *December 12, 1921.*

A. B. GUIGON, ESQ.,  
*Attorney at Law,*  
*Richmond, Va.*

MY DEAR CAPTAIN:

Acknowledgment is made of your letter of the 10th, with which you send me a letter to you from Miss Lillie M. Thacker, and desire me to answer the inquiry submitted to you by her. Miss Thacker writes with reference to the payment of poll taxes by the Chinese residents of the city of Richmond, and says in part:

"Several of them state that they have been paying this tax for years, and they do not feel that they have been treated quite fairly to be so taxed, when they are not allowed to vote.

"Another question arises: One of the men has married a woman who was born in California. She is also assessed a poll tax. I do not question their right to so tax her, but would she be entitled to vote as any other American citizen?"

Sections 4 and 5 of the Virginia tax bill, schedule A, reads as follows:

"Sec. 4. The classification under schedule A shall be as follows, to-wit: First. The number of white male inhabitants who have attained the age of twenty-one years, except those pensioned by this State for military services. Second. The number of colored male inhabitants who have attained the age of twenty-one years, except those pensioned by this State for military services.

"Sec. 5. Upon every male person, classified in schedule A, there shall be a tax of one dollar and fifty cents, of which one dollar shall be for aid of the public free schools, and fifty cents shall be returned and paid into the treasury of the county or city in which it shall have been collected."

You will see from this, that the poll tax is imposed upon every male inhabitant of the State, regardless of his right to vote. ~~These~~ Chinese men, being male inhabitants of the State, are therefore subject to the payment of the capitation tax, and are not discriminated against, as all male inhabitants of the State, regardless of whether or not they have the right to vote, are required to pay the same.

Under the provisions of chapter 400 of the Acts of 1920, a similar tax is imposed by section 4 thereof on every female resident of the State, not less than twenty-one years of age.

In answer to Miss Thacker's second question, it is provided by article 14, section 1, of the Federal Constitution, that all persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States, and of the State wherein they reside. Therefore, the woman who was born in California was, up to the time of her marriage, a citizen of the United States, but upon her marriage to an alien, there is some question as to whether or not her American citizenship has been retained. 7 Cyc. 141, No. 29.

Trusting this gives you the desired information, I am,

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

---

#### ELECTIONS—CAPITATION TAX

RICHMOND, VA., *December 7, 1921.*

MRS. BERTHA EVANS JUDD, *Chairman,*  
*Richmond League of Women Voters,*  
*City.*

DEAR MADAM:

Acknowledgement is made of your letter of the 30th ultimo, in which you say:

"As some doubt exists in the minds of the women as well as the general public regarding the payment of the female poll tax for the year 1922, will you kindly let this office have a ruling as to the date due and the time allowed in which to pay same?"

The 1922 capitation tax will be due on or after November, 1922, and must be paid at least six months prior to any election at which a person offers to vote during the year 1923. This tax does not have to be paid as a prerequisite to the right to vote during the year 1922.

The only tax which the women of Virginia have to pay six months prior to any election at which they offer to vote during the year 1922, is the capitation tax for the year 1921.

Trusting this gives you the desired information, I am

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

## ELECTIONS—CAPITATION TAX

RICHMOND, VA., *March 16, 1921.*

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

MY DEAR MR. TUNSTALL:

Your letter has been received and I thank you for the information contained therein.

You ask the last day for the payment of poll taxes in order to qualify to vote in the coming August primary. Of course, you are familiar with the law that, so far as the payment of poll taxes is concerned, only those persons will be qualified to vote in the August primary, who are qualified to vote in the election to be held the Tuesday after the first Monday in November, that is to say, November 8th.

Persons qualified to vote at this time must have paid their poll taxes six months prior thereto. Six months prior to the 8th day of November, 1921, falls on May 8, 1921, which is Sunday. Therefore, the last day upon which poll taxes can be paid in order to qualify a person to vote in the November election and therefore in the August primary, will be Saturday, May 7th.

Yours truly,

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

## ELECTIONS—CAPITATION TAX—RESIDENCE

RICHMOND, VA., *March 28, 1921.*

MR. W. W. RITTER,  
*General Registrar,*  
*Norfolk, Va.*

DEAR SIR:

Acknowledgment is made of your letter in which you state that a person has been residing in the State two years, and ask what poll tax he is required to pay in order to register and vote in the next election. You state that this question is asked because of the fact that some have maintained that a person would have to pay three years' taxes in order to be eligible to register and vote, even though they have been in the State for only two years.

Section 18 of the Constitution of Virginia provides, as far as poll taxes are concerned, that every citizen who has been a resident of the State two years, and has paid State poll taxes as hereinafter required, shall have a right to vote.

Section 20 of the Constitution provides that in order for a person to register, so far as poll taxes are concerned, he shall have personally paid all State poll taxes assessed or assessable against him for three years next preceding that in which he offers to register.

You will note that, for the purpose of registering, and also for the purpose of voting, it is only necessary for a person to pay the taxes assessed or assessable against him for the three years next preceding that in which he offers to register or vote. Only two years' taxes are assessable against a person who has lived in this State but two years, and therefore, in order for him to register and vote, it is only necessary for him to pay taxes for the two years in which he

has lived in the State, and for which two years only, he should be assessed. Prior to the two years, not being a resident of Virginia, he was not assessable in this State, and therefore, the payment of poll taxes prior to that time is not a prerequisite to the right to register or vote.

That this is a proper interpretation of the law, becomes obvious when it is noted that it is only necessary for any resident to have lived in this State for two years in order to qualify to register and vote.

Yours truly,

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

---

#### ELECTIONS—CAPITATION TAX—WOMEN

RICHMOND, VA., *March 3, 1921.*

HON. J. F. WYSOR, *County Treasurer,*  
*Pulaski, Va.*

DEAR SIR:

Acknowledgment is made of your letter of February 22, 1921, in which you say:

"As I understand the law the first tax to be assessed against the women is for the year 1921. The qualification for voters in the Democratic primary to be held in the summer and for the general election in the fall is the payment of the 1920 capitation tax by the first of May. Therefore such women as desire to vote in the primary or general election can do so by the payment of the tax any time up to thirty days before the general election.

"I wish you would write me if I am correct in this interpretation of the law?"

Since the taking effect of the 19th Amendment to the Federal Constitution, the women of Virginia enjoy the same election privileges as those enjoyed by men of this State.

It is provided by section 21 of the Virginia Constitution as follows:

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

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

Under this section of the Constitution, any man or woman in this State, unless exempted by section 22 of the Constitution, is required, as a prerequisite to the right to vote after the first day of January, 1904, to personally pay, at least six months prior to the election, all State poll taxes assessed or assessable against him or her under the Constitution, or the laws of this State, during the three years next preceding that in which he or she offers to vote.

A provision similar to that in the Constitution is found in the second paragraph of section 3 of chapter 400 of the Acts of 1920, which, so far as applicable to the question here under consideration, is as follows:

"That she shall as a prerequisite to the right to vote after this act becomes effective personally pay at least six months prior to the election, all State poll taxes assessed or assessable against her under this act during the three years next preceding that in which she offers to vote,  
\* \* \*"

You will note that the only taxes which a person is required to pay as a prerequisite to voting are the taxes assessed or assessable against the person during the three years next preceding that in which he or she offers to vote.

So far as the women of Virginia are concerned, there was no State poll tax assessed or assessable against them for any year prior to 1921, the first poll tax assessable against them being for the year 1921. Therefore, as a prerequisite to the right to vote in any election during the year 1921, the women of Virginia are not required to pay the poll tax assessable against them for the year 1921 six months prior to the election in which they offer to vote. All that they are required to do is to pay the capitation tax for the year 1921 prior to the closing of the registration books. If otherwise qualified, they are then entitled to vote.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

---

ELECTIONS—CAPITATION TAX

RICHMOND, VA., *April 7, 1921.*

MR. W. M. MINTER,  
*Mathews, Va.*

MY DEAR MARVIN:

I am just in receipt of your letter of April 5th, to which I will reply at once. You state that the Commissioner of the Revenue of your county has received instructions from the Auditor to assess all women with poll taxes. This, of course, is a proper instruction.

You then ask to be advised whether the women who are so assessed will have to wait for the tax bills to come through the regular channels in order to pay their capitation taxes, or whether they may have themselves assessed and pay their capitation taxes to the treasurer without awaiting this regular course.

I am of the opinion that any women who did not have themselves assessed last fall and pay their capitation taxes, can do so without waiting for the tax bills to come into the hands of the treasurer in the regular course, which, of course, will enable them to qualify as electors in the coming primary and general election.

In other words, they proceed as young men who had recently come of age, or who are about to come of age.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## ELECTIONS—CAPITATION TAX

RICHMOND, VA., *May 9, 1921.*

MR. O. L. EMERICK,  
*Superintendent of Schools,  
Purcellville, Va.*

DEAR SIR:

Acknowledgment is made of your letter in which you state that a special bond election will be held early in July of this year, and you ask whether women, who did not vote at the last general election, can pay their poll taxes for 1921 and vote in this election.

Section 83 of the Code of Virginia provides among other things, that "at any special election held on or 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."

You will thus observe that any woman who qualifies herself to vote in the November election of this year regardless of whether she voted or had qualified to vote in November of last year can vote in the special election referred to by you. That is to say, any time up to your special election, a woman can pay the poll tax for 1921, register and qualify herself to vote in the special election referred to by you. She is practically in the position of a young man just becoming of age, because there were no poll taxes assessable against her until this year, and she, therefore, does not have to pay her taxes six months prior to the election in order to qualify to vote.

Yours truly,

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

## ELECTIONS—CAPITATION TAX

RICHMOND, VA., *May 9, 1921.*

MR. J. ED. OGDEN, *Treasurer,  
Berryville, Va.*

DEAR SIR:

Acknowledgment is made of your letter of May 7, 1921, in which you state that a resident of your town, after having lived in one of the western states for a number of years where he paid his taxes, and enlisted in the marines and served twenty-two months in France, after which he returned to Virginia in August, 1919, became a resident of Berryville, where he has continued to reside with the intention of becoming a resident of Virginia. You then ask what capitation taxes this man will have to pay in order to register and vote, and when he will be able to vote in this State. Assuming that he is otherwise qualified to register and vote, with the exception of the payment of his capitation tax and as to the length of his residence, he would be entitled to vote in the November election 1921, provided he has paid at least six months prior thereto his capitation tax for the year 1920.

In order to register and vote, it is necessary for a person to 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 at which he offers to vote. (Va. Const. sec. 18.)

Section 26 of the Virginia Constitution provides that any person, who in respect to age or residence, would be qualified to vote at the next election, shall be admitted to registration, notwithstanding that, at the time thereof, he is not so qualified and shall be entitled to vote at said election, if then qualified under the provisions of the Constitution.

Section 21 of the Virginia Constitution provides that as a prerequisite to vote, the person desiring to vote, unless exempt, must "personally pay, at least six months prior to the election, all State poll taxes assessed or assessable against him under this Constitution, during the three years next preceding that in which he offers to vote \* \* \*."

The capitation tax is assessed as of the 1st of February of each year. The man in question not having become a resident of Virginia until August, 1919, was, therefore, not assessable with a capitation tax for the year 1919. The first year with which he was assessable was the year 1920. If he has paid his capitation tax for the year 1920, that being the only year for which he is assessable with the capitation tax, next preceding that with which he offers to vote, he will be entitled to vote at the November 1921 election, if otherwise qualified, since at that time he will have been a resident of the State two years.

Yours truly,

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

---

ELECTIONS—CAPITATION TAX

RICHMOND, VA., May 9, 1921.

MR. HENRY S. ELEY, *Treasurer,*  
*City of Suffolk,*  
*Suffolk, Va.*

DEAR SIR:

Acknowledgment is made of your letter stating that next month a party will have lived in the State of Virginia two years, having come to your city from Baltimore, Md.; that he has presented himself at your office to pay poll taxes in order that he may register and vote in November, 1921.

You ask for what years he must pay his poll taxes in order to qualify himself to vote in Virginia in November of this year.

Having come to Virginia and made it his home after the first of February, 1919, he was not assessable for poll taxes in this State until February, 1920. The law provides that in order for a person to vote in any election, he must pay at least six months prior to the election, all State taxes assessed or assessable against him during the three years next preceding that in which he offers to vote. In the instant case, the only years preceding this year in which he was assessable with the poll tax in this State, was the year 1920, therefore, in order to vote in our fall election 1921, he must pay six months prior thereto his poll tax for 1920.

Yours truly,

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

## ELECTIONS—CAPITATION TAX

MRS. E. J. HARRISON,  
*Cartersville, Va.*

RICHMOND, VA., *April 30, 1921.*

MY DEAR MRS. HARRISON:

I am just in receipt of your letter of the 28th, to which I will reply at once. The last paragraph of your letter closes as follows:

“An early reply will be appreciated as the limit of time for paying capitation tax is near at hand.”

I judge from this paragraph in your letter that you are under the impression that ladies who desire to vote in the general election this fall and in the August primary are required to pay capitation taxes six months prior to the general election, which is the 8th of November. If such be your opinion, you are in error.

Any lady who desires to vote in the August primary can pay her capitation tax up to and including the second day of August, which is the date of the primary. She is not required to pay her capitation tax six months prior to the election. Of course, the ladies who had themselves assessed and paid their capitation taxes in order to vote in last fall's election, do not have to pay another capitation tax in order to vote in this year's election, as the capitation taxes which were paid by the women last year were for 1921.

The Court of Appeals decided in *Smith, Treasurer, v. Bell, et al.*, 113 Va., that it was the duty of the treasurer to accept capitation taxes whether the party offering to pay the same, has been assessed or not.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

## ELECTIONS—CAPITATION TAX

MR. O. L. EMERICK,  
*Superintendent of Schools,  
Purcellville, Va.*

RICHMOND, VA., *June 29, 1921.*

DEAR SIR:

Acknowledgment is made of your letter, in which you state that a special election for school bonds will be held early in July of this year, and you ask whether women, who did not vote at the last general election, can pay their poll taxes for 1921 and vote in this election.

Section 83 of the Code of Virginia provides, among other things, that “at any special election held on or 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.”

You will thus observe that any woman who qualifies herself to vote in the November election of this year regardless of whether she voted or had qualified to vote in November of last year, can vote in the special election referred to by you. That is to say, any time up to your special election, a woman can pay the poll tax for 1921, register and qualify herself to vote in the special election referred to by you. She is practically in the position of a young man just becoming of age, because there were no poll taxes assessable against

her until this year, and she, therefore, does not have to pay her taxes six months prior to the election in order to qualify to vote.

You call my attention to a provision in the latter part of section 3 of chapter 400 of the Acts of 1920, known as the "Woman's Suffrage Act," which provides for the payment by a woman of her poll tax "at any time before thirty days preceding such election held in the year in which this act becomes effective."

There is nothing in this clause which in any way affects what has been said above. You will note that the thirty days therein referred to has reference to the year 1920 alone, and this was due to the fact that under the law, the registration books close thirty days before any *general election*, but there is nothing in the Woman's Suffrage Act or elsewhere, which requires the registration books to close thirty days before a special election.

I would be very glad to give you any further information in this matter that I can.

Yours truly,

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

---

ELECTIONS—CAPITATION TAX

MR. B. J. SULLIVAN,  
*Expo, Va.*

RICHMOND, VA., *June 29, 1921.*

DEAR SIR:

Sickness and absence from the city have prevented my replying sooner to your letter, in which you state that a certain person moved to the State of Virginia after April, 1919, but prior to November, 1919, and has paid one year's poll tax.

You further state that the registrar has ruled that he can register, but cannot vote at the coming election, because he has not paid three years poll tax. You ask whether this ruling is correct.

Section 21 of the Constitution of Virginia provides that a person, as a condition to voting, must pay six months prior to an election, all State poll taxes assessed or assessable against him during the three years next preceding that in which he offers to vote. It is manifest, therefore, that in order for the person, referred to by you, to vote in any elections to be held in this year, it is only necessary for him to have paid six months prior thereto, all poll taxes assessed or assessable against him for the years 1918, 1919 and 1920.

Having come to Virginia after February 1, 1919, the only poll tax assessable against him for the three years above mentioned, is for the year 1921. Therefore, if he has registered and paid six months prior to the November election of 1921, his poll tax for 1920, he is qualified to vote in any elections held this year.

Of course, I am not passing upon his qualifications to vote in a party primary, as that depends upon party affiliations. For instance, if he is a Democrat, qualified as above outlined, to vote in the November election 1921, he is qualified to vote in the Democratic primary to be held in August of this year. However, if he is a Republican, he will not be qualified to vote in the Democratic primary, but is qualified to vote in any primary which the Republican party may hold.

Yours truly,

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

## ELECTIONS—CAPITATION TAX

MR. J. G. CARLETON,  
Toano, Va.

RICHMOND, VA., July 27, 1921.

MY DEAR MR. CARLETON:

Acknowledgment is made of your letter of the 26th, in which you say:

"Doubtless you saw the ruling of Judge Mullen in the *News Leader* of July 25th, page 3, column 1, about voters who paid their poll taxes August, 1920, and for that reason after the November election, the requisite for voting in this August 2nd primary, the poll tax must be paid before May 2, 1921, which reversed your opinion. If you have not seen the article, will you please get a copy, read it carefully, and tell me exactly what it means, as I am the commissioned judge of election in my precinct, and of course wish to do what is perfectly right and lawful. There seems to be a good deal of confusion about Judge Mullen's ruling and will appreciate it if you will tell me exactly what to do in the premises."

I have seen the article referred to by you in the *News Leader* of July 25, 1921. This does not affect the opinion of the Attorney General. I cannot agree with the construction placed upon the law by Judge Mullen.

Under the Constitution of Virginia, section 21, the only capitation taxes required to be paid by a voter six months prior to the election are—"the State poll taxes assessed or assessable against him under this Constitution during the *three years next preceding that in which he offers to vote*."

The effect of the nineteenth amendment to the Federal Constitution was to make this provision of the Virginia Constitution applicable to the women of Virginia upon the same terms and conditions as it applied to the men of this State. *Neal v. Delaware*, 103 U. S. 370, 389 (1880); *Quinn v. U. S.* 238 U. S. 347, 361-2-3 (1915); *Wood v. Fitzgerald*, 3 Ore 568 (1870); *Opinion of the Attorney General* 1920 pages 53, 55, 56 and 57.

In my opinion the language of chapter 400 of the Acts 1920 cannot be employed so as to require the payment of a capitation tax by the women of Virginia six months prior to any election, unless such tax was assessed or assessable against her for one of the *three years next preceding* that in which she offers to vote. Any other construction of chapter 400 of the Acts of 1920 would discriminate against the women of Virginia and bring the act in conflict with the plain and unmistakable terms of section 21 of the Virginia Constitution, and therefore be invalid. The passage of chapter 400 of Acts of 1920 was not necessary as a prerequisite to the right of the women of this State to vote in the elections held therein subsequent to the taking effect of the nineteenth amendment of the Federal Constitution, as the adoption of that amendment under the decisions of the Supreme Court of the United States unquestionably had the effect to remove from the said Constitution and render inoperative, those provisions which restricted the right of suffrage to male citizens of the State. *Neal v. Delaware*, 103 U. S. 370, 389 (1880), *Supra.*; *Quinn v. United States*, 238, U. S. 347, 361-2-3 (1915), *Supra.*

Therefore as no legislation was needed to entitle the women of Virginia to vote, upon the taking effect of the nineteenth amendment to the Federal Constitution, it was manifestly beyond the power of the legislature of Virginia to prescribe or impose upon the women of Virginia any condition as a prerequisite to the right to vote, which was not imposed by the Constitution upon the male citizens of this State. The Constitution of Virginia only requiring the payment of capitation taxes by the male citizens of this State six months prior to the

election at which they offer to vote, which were assessed or assessable against such voters during the *three years next preceding* that in which they offer to vote, it is manifestly beyond the power of the legislature of this State to impose any condition upon the women of this State eligible to vote in conflict with this provision of the Constitution.

An examination of chapter 400 of the Acts of 1920 shows that the only capitation taxes levied by that act against the women of Virginia is a capitation tax for the "*year succeeding the year in which this act becomes effective and for every year thereafter.*" (Chap. 400, Acts 1920, sec. 4.)

Now it is a matter of judicial knowledge that the year succeeding the year in which chapter 400, Acts 1920, became effective is the year 1921, as chapter 400 of the Acts of 1920 became effective in 1920, subsequent to the taking effect of the nineteenth amendment to the Federal Constitution. It therefore follows that the first year for which a capitation tax is assessed or assessable against the female residents of this State twenty-one years of age, is the year 1921.

Now the year 1921 by no construction can be treated as any one of the three years preceding the year 1921. The irresistible conclusion therefore is that any construction given chapter 400 of the Acts of 1920 which would require the female residents of this city to pay their capitation taxes six months prior to any election held during the year 1921 as a prerequisite to the right to vote therein, would render chapter 400 of the Acts of 1920 in conflict with section 21 of the Virginia Constitution, and therefore invalid so far as such conflict exists. Therefore even if the construction placed upon this act by Judge Mullen was correct, the female residents of Virginia would nevertheless have a right to vote in the August 1921 primary and the November 1921 election provided in the first instance they pay the capitation taxes for the year 1921 before the primary and register on or before that date, and any time up to the closing of the registration books prior to November 1921 election if otherwise qualified, since, as I have said, it is beyond the power of the legislature to pass any legislation placing a condition upon persons eligible to vote in this State with reference to the payment of their capitation taxes, which would be in conflict with the provisions of the Constitution of Virginia.

Aside from this however, I am of the opinion that chapter 400 of the Acts of 1920 is not susceptible to the construction placed upon it by Judge Mullen. There is no rule of law which is more firmly established than that every law enacted by the legislature is presumed to be in conformity with the Constitution, and that wherever an act of the legislature can be so construed and applied as to avoid a conflict with the Constitution where the meaning of the latter is clear, and give it the force of law, such construction will be adopted by the courts. *Martin v. South Salem Land Co.*, 97 Va. 349 (1889); *Harrison v. Thompson*, 103 Va. 333, 336 (1905); *Brown v. Epps*, 91 Va. 726, 738 (1895).

As I have heretofore pointed out, and has been pointed out in the opinion of the Attorney General given on March 3, 1921 to the Hon. G. F. Wysor, copy of which I am sending you herewith, the Constitutional provision contained in section 21 is clear and free from doubt. Therefore it is the duty of the courts to so construe chapter 400 of the Acts of 1920 as to conform with the provisions of the Virginia Constitution.

It is provided by section 3 of chapter 400 of the Acts of 1920, as follows:

"Any person registered under the foregoing provisions of this act shall have the right to vote for members of the General Assembly and all officers elective by the people, subject to the following conditions:

"That she shall as a prerequisite to the right to vote after this act becomes effective personally pay at least six months prior to the election, *all State taxes assessed or assessable against her under this act during the three years next preceding that in which she offers to vote*, provided that she shall, unless physically unable, prepare and deposit her ballot without aid, on such printed form as the law may prescribe; and provided further, that the requirement that poll taxes shall have been personally paid at least six months prior to the election shall not apply to any election which may be held in the year in which this act becomes effective, for which year no poll tax is levied but the payment of the poll tax for the year next succeeding the year in which this act becomes effective at any time before thirty days next preceding such election held in the year in which this act becomes effective shall entitle her to vote in such election, if otherwise qualified." (Italics supplied.)

Section 4 of the act so far as is applicable to the question here under consideration provides as follows:

"There is hereby levied, for the *year succeeding the year in which this act becomes effective*, and for every year thereafter, a State capitation tax of one dollar and fifty cents on every female resident of the State not less than twenty-one years of age." (Italics supplied.)

It seems to me from the plain terms of the act that the only poll taxes which are to be paid six months prior to the election at which such person offers to vote, are the State poll taxes assessed or assessable against females "*during the three years next preceding that in which she offers to vote.*"

When we look at section 4 of the act it will be seen that the first tax assessed or assessable against the female residents of the State is "*for the year succeeding the year in which this act becomes effective.*" As I have said the act becomes effective in 1920. The year succeeding the year 1920 is therefore 1921. From this it will be seen that the first capitation tax assessed or assessable against female residents of Virginia is for the year 1921. Manifestly the tax which is assessed or assessable for the year 1921 is not assessed or assessable for any one of the three years preceding that in which females offer to vote when the offer to vote is made at the primary or general election to be held in the year 1921.

The fact that it is stated in the latter part of section 3 of the act "that the requirement that poll taxes shall have been paid at least six months prior to the election shall not apply to any election which may be held in the year in which this act becomes effective, for which year no poll tax is levied, but the payment of the poll tax for the year next succeeding the year in which this act becomes effective at any time before thirty days next preceding such election held in the year in which this act becomes effective shall entitle her to vote in such election, if otherwise qualified" does not in my opinion affect the result previously reached.

The fact that the legislature provided that the six months provision should not apply to any election held in the year in which the act became effective, cannot have the effect, in my opinion of conflicting with the plain terms of the act, which only requires the payment of the tax six months in advance for the three years next preceding that in which the person offers to vote, and the thirty day provision was merely placed in the statute so as to conform with the law which requires the registration books to be closed thirty days prior to the regular November election.

I call your attention to the fact that the only capitation tax which is at present assessed or assessable against the women of Virginia will not be due

until this fall, when the other 1921 taxes are paid, and that every capitation tax paid by female residents of Virginia for the year 1921 prior to that time will be paid in advance. It never could have been the intention of the legislature of Virginia to provide that unless all taxes were paid more than six months prior to the time they were due, that the persons would be disfranchised.

The opinion of Judge Mullen to which you refer in your letter, I have ascertained this morning is not a judicial opinion, but merely a personal opinion, and therefore the same is no more binding upon the election officials of the State than the expression of the opinion of any other citizen of the State, except for the deference to be paid to the personal opinion of the eminent jurist expressing the same. I have the utmost deference for his opinion, but in view of the authorities and what I have said, I cannot agree with the conclusion reached by him.

I am therefore of the opinion that any woman who has paid her capitation taxes and registered on or before the August 1921 primary will be entitled to vote therein, if otherwise qualified, and that any woman who has not qualified up to that time will be entitled, upon paying her taxes and registering prior to the closing of the registration books for the November 1921 election to vote therein, if otherwise qualified.

Yours truly,

JNO. R. SAUNDERS,  
*Attorney General.*

ELECTIONS—CAPITATION TAX

RICHMOND, VA., *October 9, 1921.*

MR. GEO. O. LAMB,  
*Burnleys, Va.*

DEAR SIR:

I am just in receipt of your letter of October 15th, in which you enclose a letter from Mr. O. B. Watson, the treasurer of Orange county. In your letter you state that for a number of years you have been a non-resident of the State of Virginia, but came back to Virginia, the first of September, 1919. Therefore, the first of last September (1921) you had been a resident of the State of Virginia two years, which is the time of residence required under the Constitution before a person can vote in Virginia.

You do not state in your letter when you paid your capitation taxes for 1920, but Mr. Watson, in his letter to you, states that you claim to have paid the capitation tax for 1920 on April 25, 1921. Such being the case, you have therefore paid all capitation taxes which were assessed or assessable against you under the Constitution. You were not required to pay three years capitation taxes because you have not been a resident of the State of Virginia for the last three years.

There was no tax assessable against you for the year 1919, due to the fact that you were not a resident of the State on the first day of February of that year. I am therefore of the opinion that Mr. Watson is correct in the view expressed in his letter, namely: that you were entitled to register and vote in this fall's election, provided, of course, you paid your capitation tax for the year 1920 six months prior to the general election this fall.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## REPORT OF THE ATTORNEY GENERAL

## ELECTIONS—CAPITATION TAX

RICHMOND, VA., *September 7, 1921.*

G. A. BROWN, Esq., *Registrar,*  
*Buena Vista, Va.*

DEAR SIR:

Acknowledgment is made of your letter of September 5th, in which you request me to advise you whether one is required to pay his capitation taxes six months prior to the next succeeding election as a prerequisite to his right to register.

If you will examine section 20 of the Virginia Constitution, you will see that such a person is entitled to register if all his capitation taxes assessed against him for the three years preceding the election in which he offers to vote, are paid at the time he offers to register, if otherwise qualified.

One does not have to pay his capitation taxes so as to vote in the next succeeding election as a prerequisite to his right to register.

In an opinion given Hon. D. Q. Eggleston, Secretary of the Commonwealth, on September 29, 1904 (report of the Attorney General 1904, p. 12), Hon. Wm. A. Anderson, the Attorney General, expressed a similar view.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## ELECTIONS—CAPITATION TAX

RICHMOND, VA., *June 2, 1921.*

MR. M. W. PERKINS, *Clerk,*  
*Circuit Court,*  
*Palmyra, Va.*

DEAR SIR:

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

“\* \* \*can a woman who did not pay one year's capitation tax six months prior to the next general election, now be assessed, pay her tax, register and vote in the August primary? If so, what is the latest day upon which she may pay her tax in order to qualify herself to vote in the primary?”

In section 228 of the Code of 1919, it is provided so far as the payment of poll tax is concerned, that persons are qualified to vote who are qualified to vote at the election for which the primary is held. It is manifest, therefore, that, eliminating the question of party regulations, any one is qualified to vote in the August primary of this year, who, on that day, is qualified to vote in the November election of this year.

All persons are qualified to vote in the November election of this year who are registered and have paid six months prior to that election, all taxes assessed or assessable against them for the three preceding years, that is to say, the years of 1918, 1919 and 1920. (Va. Const. sec. 21.)

Section 3 of chapter 400 of the Acts of the Assembly of 1920, page 589, provides that, in order for a woman to vote, she shall, as a prerequisite, pay at least six months prior to the election, all State poll taxes assessed or assessable against her under the act, during the three years next preceding that in which she offers to vote.

It is obvious from these two sections that, as a prerequisite to vote, a woman must pay six months prior to the November election of this year, only those poll taxes assessable against her for the years 1918, 1919 and 1920. As there were no poll taxes assessable against her for those years, of course there are no poll taxes which she must pay six months prior to the November election in order to vote therein.

It is provided, however, by section 20 of the Constitution and section 2 of the Acts of the Assembly above mentioned, that no taxes having been heretofore assessable against her, a woman must pay her poll tax for 1921 in order to register.

The sections referred to do not require her to pay this poll tax at any specific time, except that she must pay it before she registers.

It is obvious, therefore, that a woman may qualify to vote in the August primary, even though she did not pay her 1921 poll tax six months prior to the November election of this year. That is to say, a woman may qualify herself to vote in the August primary at any time up to the date of the primary, by paying her 1921 poll tax and registering, for by so doing, she qualifies herself to vote in November.

If there is any further information you desire on the subject, I trust you will call on me.

Yours truly,

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

---

ELECTIONS—CAPITATION TAX

RICHMOND, VA., *May 19, 1921.*

MR. S. JENNINGS,  
*Registrar,*  
*Horton Summit, Va.*

DEAR SIR:

In response to your letter of the 18th instant, the only tax that any woman is required to pay as a prerequisite to the right to register and vote during the year 1921, regardless of her age, is the capitation tax for the year 1921.

Before you register a woman she must have paid her capitation tax for the year 1921. It is not necessary that this tax be paid six months prior to the election at which she offers to vote, as the year 1921 is the first year for which women can be assessed for the payment of a capitation tax, and under the provisions of section 21 of the Constitution, only those taxes have to be paid, which have been assessed or are assessable during the three preceding years. As no tax was assessed or assessable against women in Virginia prior to 1921, they do not fall within the six months provision of the Constitution so far as the year 1921 is concerned.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## REPORT OF THE ATTORNEY GENERAL

## ELECTIONS—CAPITATION TAX

RICHMOND, VA., *May 16, 1921.*

HON. LAWRENCE S. DAVIS, *Treasurer,*  
*Roanoke, Va.*

DEAR SIR:

Acknowledgment is made of your letter of May 13, 1921, in which you say:

“Will you kindly advise me whether or not a person who paid his poll tax on May 9th should be included in the voting list, the 8th falling on Sunday?”

The Constitution, section 21, provides that the capitation tax must be paid at least six months prior to the election. May 9th is, therefore, *not* at least six months prior to the election to be held on November 8, 1921, and, therefore, the name of a person paying his tax on May 9th should not be included on the voting list.

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

## ELECTIONS—CAPITATION TAX

RICHMOND, VA., *June 17, 1921.*

MR. W. W. RITTER,  
*General Registrar,*  
*Norfolk, Va.*

MY DEAR MR. RITTER:

Absence from the city has delayed my sooner answering your letter seeking information with reference to the qualification of voters. You ask:

“1. How many years' capitation tax is necessary to be paid by a voter who came into the State in 1919, after February 1st?

“2. Can women otherwise qualified pay poll taxes and register after May 7th?

“3. Can men or women vote on tax receipts if their names do not appear in the qualified list of voters as issued by the Treasurer?

“4. Should foreign born citizens be assessed poll taxes for a period before they became citizens in order to vote?”

These questions will be answered in their order.

With reference to the payment of poll taxes as a requisite to voting, the Constitution of Virginia, section 21, provides that a person must pay at least six months prior to the election, all State poll taxes assessed or assessable against him during the three years next preceding that in which he offers to vote. Taxes are assessable as of the first day of February of each year. It is manifest, therefore, that a person coming to Virginia after the 1st day of February, 1919, is not assessable with taxes until February 1, 1920. In order for him to vote in 1921, it will be necessary, therefore, for him to have paid, six months prior to the 1921 election in which he offers to vote, his poll taxes for 1920, as that is the only year for which he was assessable.

Your second question must be answered in the affirmative. This same question has been presented several times, and I am enclosing a copy of an opinion given Mr. M. W. Perkins, clerk of the circuit court of Fluvanna county, which sets forth my reason for answering this question in the affirmative.

As to your third question, the Constitution of Virginia, section 38, and section 111 of the Code of Virginia, 1919, provide that the clerk of the court shall deliver to one of the judges of election of each precinct in his county or city, a certified copy of the list of all persons in his county or city who have paid, not later than six months prior to the election, the State poll taxes required by the Constitution during the three years next preceding that in which such election is to be held, and also provide that this copy shall be conclusive evidence of the fact therein stated for the purpose of voting.

It is apparent, therefore, that persons whose names should appear upon the certified list cannot vote on tax receipts, especially when section 38 of the Constitution of Virginia and section 110 of the Code, provide a way in which they can have their names placed upon the certified list. Thus, if his name does not appear upon the certified list as having paid his capitation tax for the required number of years, he is not entitled to vote, though he has paid his taxes within the proper time.

Of course, what has been said above with reference to the conclusiveness of the tax list does not apply to young men just becoming of age, and persons who have been transferred from one city or county to another city or county. Such persons are provided for by section 115 and 116 of the Code.

As to your fourth question, schedule A, section 4 and section 5 (omitting the exceptions contained therein) provide that every male person of twenty-one years of age, and an inhabitant of the State, shall pay a poll tax, therefore, even though a person is not a citizen of Virginia, if he was an inhabitant of the State on the 1st day of February of any year, he is assessable and should be assessed with a poll tax for that year.

Of course, section 18 of the Constitution forbids his voting unless he is a citizen of the United States, and 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.

It is manifest, therefore, that he cannot vote in Virginia until he has become a citizen of the United States, though that citizenship may have begun subsequent to the time he became a resident of Virginia.

I shall be very glad to give you any further information that I can on the subject.

Yours truly,

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

---

#### ELECTIONS—CAPITATION TAX

RICHMOND, VA., June 6, 1921.

G. L. PUGH, Esq., *Chairman,*  
*Town Council,*  
*St. Paul, Va.*

MY DEAR SIR:

In response to your letter of June 3, 1921, it is necessary for one's tax to have been paid six months prior to the regular June election, in order to be qualified to vote in that election. Therefore, the fact that such person has paid his tax, so as to be qualified to vote in the regular November election, is not sufficient to qualify him to vote in the regular June election.

The first capitation tax assessable against women in Virginia is for the year 1921. Those women who paid their taxes in 1920, prepaid their capitation tax for the year 1921, and therefore do not have to pay a new capitation tax this year.

The next capitation tax assessed against them being for the year 1922, therefore, all women who qualified to vote in the November, 1920, election, are eligible to vote in the regular June election, 1921, so far as the payment of their capitation tax is concerned.

In addition to this, any woman who has paid her capitation tax in 1921, and registered prior to the closing of the registration books for the June election, if otherwise qualified, can vote in the regular June election.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

---

ELECTIONS—CAPITATION TAX

RICHMOND, VA., *June 4, 1921.*

MRS. E. T. CHRISTIAN,  
*Cuckoo, Va.*

MY DEAR MADAM:

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

Replying to your question, no exception is made as to widows of confederate soldiers with reference to the payment of the capitation tax required to be assessed against every woman twenty-one years of age, and a resident of this State. This tax is assessed against the women of Virginia as well as men, regardless of whether they desire to vote or not. Under the provisions of the Constitution, the tax cannot be enforced until it is three years past due, but as soon as it becomes three years past due under the laws of this State, it may be collected by levy, garnishment or otherwise.

Yours very respectfully,

LEON M. BAZILE,  
*Second Assistant Attorney General.*

---

ELECTIONS—CAPITATION TAX

RICHMOND, VA., *June 22, 1921.*

E. L. CONNER, Esq.,  
*Postoffice Box 796,*  
*Lexington, Va.*

DEAR MR. CONNER:

Acknowledgment is made of your letter of June 21, 1921, in which you ask the following questions:

"Is it not necessary for all male voters to pay their poll taxes six months before the election before they have a legal right to vote? For instance, a young man arriving at the age of twenty-one on or before election must pay all poll tax six months before the election and register thirty days before election.

"In the case of a woman, all she is required to pay is 1921, prior to thirty days before election."

The Constitution of Virginia, section 21, provides, so far as is applicable to the subject of your inquiry, as follows:

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

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

All men who have been residents of Virginia for three years preceding this year and more than twenty-one years of age during that time are required, under the provisions of this section of the Constitution, to pay their capitation taxes for the years 1918, 1919 and 1920 at least six months prior to the election to be held in 1921, at which they offer to vote. A young man who came of age after February 1, 1920, would not be assessed or assessable with taxes for any of the three preceding years. The first year he would be assessed or assessable, under the Constitution, with a capitation tax would be for the year 1921. As the year 1921 is the year in which he offers to vote, his tax does not have to be paid six months in advance, because a tax for the year 1921 is, so far as the election to be held in 1921 is concerned, not a tax for any of the three years next preceding that in which he offers to vote. The only thing that he is required to do is to pay his capitation tax, and register prior to the closing of the registration books.

The same thing is true of a woman in Virginia at elections held during the year 1921, the first capitation tax assessed or assessable against her being for the year 1921. There was no capitation tax assessed or assessable against the women of Virginia for any of the three years next preceding the year 1921. Therefore, she can pay her tax for the year 1921 and register at any time prior to the closing of the registration books. So far as the primary to be held next August is concerned, a woman can pay her capitation tax on the day of the primary, and register on that day and vote, provided she is otherwise eligible.

Trusting this gives you the desired information, I am,

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

---

#### ELECTIONS—CAPITATION TAX

RICHMOND, VA., *June 13, 1921.*

MR. WM. HORGAN,  
Warrenton, Va.

DEAR SIR:

You called this morning over long distance telephone and stated that a general election would be held in the town of Warrenton on June 14th, and asked how long before such election a person must have paid his poll taxes in order to vote at such election.

Section 21 of the Constitution of Virginia provides that, in order for a person to vote in any election, he must 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.

I am of the opinion, therefore, that, in order for a person to vote in the election to be held in your town on June 14, 1921, he must have paid all poll taxes assessed or assessable against him for the years 1918, 1919 and 1920, not less than six months prior to June 14, 1921.

It is true that section 2997 of the Code of Virginia provides that the electors of a town shall be the actual residents thereof and qualified to vote for members of the General Assembly. This section, fixing the qualification of the electors of a town, evidently has no reference to the payment of poll taxes, which is made, under the Constitution, a *condition* and not a qualification for voters. Section 18 of the Constitution fixes the qualification of those who are entitled to vote for members of the General Assembly, but that section is silent as to how long prior to an election a person must pay his poll taxes in order to vote. But section 21 of the Constitution makes, as a *condition* to voting, that certain taxes must be paid six months prior to the election.

Thus, persons who have paid their poll taxes for the three years mentioned, six months prior to the November election, will have fulfilled the conditions entitling them to vote for members of the General Assembly in the fall election; but it is manifest that section 2997 does not contemplate that persons who have paid their poll taxes subsequent to six months prior to the November election have fulfilled the condition entitling them to vote in the June election. If this were not so, section 2997 of the Code would be obviously unconstitutional, because it would contravene section 21 of the Constitution above mentioned.

Yours very truly,

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

---

#### ELECTIONS—CAPITATION TAX

RICHMOND, VA., *August 3, 1921.*

MR. MILTON I. HARGRAVE,  
*Dinwiddie, Va.*

DEAR SIR:

Your letter of July 30th did not reach me until this morning, too late for me to give you the desired information requested therein; however, I will reply now.

You desire to be advised whether a person twenty-six years of age, who has been voting and paying his poll tax, but did not pay his poll tax for the year 1918 due to the fact that he was over seas, was eligible to vote on yesterday.

In reply, I will state that this party was not eligible to vote in the primary. The Constitution required in his case that he should have paid his capitation tax for three years next preceding the year in which he offers to vote, which years, of course, would be 1918, 1919 and 1920. The mere fact that he was in the war during the year 1918 did not exempt him from paying his capitation tax. Exemption from paying poll taxes only applies to those who were in the war between the States.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## ELECTIONS—CAPITATION TAX

MR. J. C. ROBINETTE,  
*Blackwater, Va.*

RICHMOND, VA., *October 28, 1921.*

DEAR SIR:

I am just in receipt of your letter of the 26th, in which you state the following case, and ask to be advised concerning the same:

You state that Mr. J. H. Miller moved to your precinct two years ago from the State of Tennessee; that he was not assessed or assessable with his capitation tax for the year 1919 as he was not a resident of Virginia on February 1, 1919, but that he was assessed with his poll tax for the year 1920; that he has paid the same and was properly registered by the registrar prior to the closing of the books for the election next month.

I am of the opinion that, under the above statement of facts, Mr. Miller is eligible to vote in the coming election. (See *Va. Const.*, secs. 20, 26.)

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

## ELECTIONS—MUNICIPAL CAPITATION TAXES

M. L. WALTON, ESQ.,  
*Attorney at Law,*  
*Woodstock, Va.*

RICHMOND, VA., *October 15, 1921.*

DEAR SIR:

Acknowledgment is made of your letter of October 13th, addressed to the Attorney General, in which you ask him to advise you whether an incorporated town has the power to require the women to pay capitation taxes whether they vote in municipal elections or not, which letter has been referred to me for attention.

No city or town in Virginia has the right to require a capitation tax of any person as a prerequisite to the right to vote, as the qualifications and conditions for voting which are prescribed by the Virginia Constitution are the sole and only conditions that a person can be required to comply with as a prerequisite to the right to vote. (Report of the Attorney General, 1906, p. 71.)

I am not very familiar with the laws relating to municipalities, but so far as I have been able to find from a limited examination of the statutes with reference thereto, section 3073 of the Code of Virginia, 1919, is the section which authorizes cities and towns to levy a capitation tax upon persons in such cities and towns. If this is the only statute upon the subject, neither a city nor a town would have authority to levy a city or town capitation tax upon female inhabitants of the said city, since this statute provides, so far as applicable to the question here under consideration, as follows:

“\* \* \* The levy so ordered may be upon the male persons in the said city or town, above the age of twenty-one years, not exempt by law from the payment of the capitation tax. \* \* \*”

Nor do I think there is anything in chapter 400 of the Acts of 1920 prescribing the conditions upon which the right of suffrage shall be exercised by the women of Virginia, permitting a city or town to levy a capitation tax upon the female inhabitants thereof.

Yours very truly,

LEON M. BAZILE,

*Second Assistant Attorney General.*

## ELECTIONS—PRIMARY LAW

RICHMOND, VA., *July 20, 1921.*

HON. WM. C. BIBB,  
*Commonwealth's Attorney,*  
*Louisa, Va.*

MY DEAR MR. BIBB:

Acknowledgment is made of your letter of July 18th. In this you ask to be advised as to who is eligible to vote in the coming primary to be held on August 2d next. As you know, Mr. Hank wrote an opinion to Hon. D. Lawrence Groner, now Judge Groner, last fall, in which he very carefully considered this question. I am therefore referring your letter to him for reply.

I would further add that I have carefully considered this matter and am of opinion that the views expressed by Mr. Hank in both letters are correct, and are in keeping with the spirit and intention of the primary law.

If the word "or" is to be construed as meaning that a man who simply voted last fall for a member of Congress and at the same time voted for the Republican electors renders such a one eligible to vote in the coming primary, then it would follow that a life-long Republican who voted in the general election last fall for the Republican electors, and happened to vote at that time for a Democratic candidate for Congress who had no opposition, would be eligible to vote in the coming Democratic primary. Surely that cannot be the intention or interpretation of the law.

You and I both know that frequently Republicans in a general election vote for Democratic nominees where their party has not a candidate in opposition. I do not think, therefore, that any Democrat who voted for the Republican electors last fall, even though he may have voted for the nominee for Congress, is eligible to vote in the coming primary.

To illustrate further: I doubt if very many Republicans voted for Pollard against Senator Glass last fall. Can it be possible that the Republicans, then, who voted for Senator Glass in last fall's election, and against the negro, Pollard, his opponent, would be eligible to vote in the coming Democratic primary?

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## ELECTIONS—PRIMARY

RICHMOND, VA., *April 4, 1921.*

JOSEPH R. LONG, ESQ., *Dean,*  
*School of Law,*  
*Lexington, Va.*

DEAR SIR:

Your letter addressed to the Attorney General with reference to an opinion given by me as to the qualification of voters for the coming Democratic primary has been referred to me for answer.

In the opinion referred to, I did not take the position that no one could vote in the Democratic primary who did not vote the entire Democratic ticket in the November election of 1920; but I did hold that no one is eligible to vote in the August primary of the Democratic party who voted for any Republican

at the November, 1920, election. That is to say, in order to vote in the August primary of 1921, it is not necessary that one should have voted the entire Democratic ticket in 1920, but it is necessary that he should not have voted for any Republican at said November election.

The test of a person's party affiliations is determined, not by whether he voted for all the party nominees at the last general election, but whether he voted against any of the nominees of the party holding the primary.

I will be glad to give you any further information you may desire.

Yours truly,

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

---

#### ELECTIONS—PRIMARY

RICHMOND, VA., *April 4, 1921.*

MR. B. MORGAN SHEPHERD, *Editor,*  
*Southern Planter,*  
*Richmond, Va.*

DEAR SIR:

You call my attention to an opinion given by me some time ago, in which I held that a person who voted for one or more of the Republican candidates in the November election, 1920, is disqualified to vote in the Democratic primary to be held in August, 1921, and you ask whether such person can, in the future, qualify himself to vote in the Democratic primaries.

The test of qualification to vote in a primary, so far as party affiliation is concerned, is the vote of such person in the last general election preceding the primary. A vote in any other general election has no bearing upon his qualification; it is confined by law to his vote in the general election last preceding the primary in which the question of his right to vote arises. That is to say, though a person voted in November, 1920, for a part or all of the Republican ticket and thus disqualified himself to vote in the Democratic primary of August, 1921, yet if such person, in the general election of 1921, votes only for Democrats, he would have a right to vote in the Democratic primary of 1922.

Again, if such person does not vote at all in the general election of 1921, he would have a right to vote in the Democratic primary of 1922 upon his declaration that he will support, at the ensuing election, the nominees of the party in whose primary he offers to vote.

The effect of the law is only to prevent a person from voting in a party primary who has, in the last preceding general election, voted *against* any nominee of that party voted for in that general election.

In this connection I might say that the failure to vote for all of the nominees of the Democratic party in the general election of November, 1920, would not disqualify a person from voting in the Democratic primary of 1921, but what disqualifies such person is voting against the nominees of the party in the last general election by voting for the nominees of the other party.

Yours truly,

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

## REPORT OF THE ATTORNEY GENERAL

## ELECTIONS—PRIMARY, DATE OF HOLDING

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

RICHMOND, VA., *March 26, 1921.*

DEAR SIR:

Acknowledgment is made of your letter in which you ask whether the Democratic party in the city of Winchester is authorized, under section 227 of the primary law, to call a primary at any other time than that provided for in the law.

You call attention to the fact that section 227 provides that each party shall have the power to make its own rules and regulations, to provide in any manner it sees fit for the nomination of its candidates, etc.

No legalized primary can be held except on the days provided for in the primary law, and the section referred to by you does not give to a party the right to change the date of a legalized primary.

While a party is not compelled to nominate candidates by a primary but may nominate by convention or by some other method, at the same time, if it nominates by a legalized primary, such primary must be held on the date provided for in the statute.

Yours very truly,

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

---

ELECTIONS—PRIMARY, VOTERS IN

MR. WM. C. WILLIAMS,  
*Orange, Va.*

RICHMOND, VA., *March 25, 1921.*

DEAR SIR:

Acknowledgment is made of your letter in which you ask whether a person voting in the November, 1920, election, for the Republican electors, but for the Democratic nominees of Congress, can vote in the coming Democratic primary. In reply, I am enclosing you copy of a letter written Hon. D. Lawrence Groner, in which this question is answered in the negative.

If it were true that a person could vote in a Democratic primary because he voted for some, but not all, of the nominees of the Democratic party in the November election, then manifestly he could also vote in any primary that the Republican party held because he voted for some of the nominees of that party in the last preceding general election.

It is obvious that the legislature never intended to provide that a person could vote in two primaries of opposite parties held for the purpose of selecting nominees who should oppose each other in the general election for which the primary was held. The primary law provides that no person shall vote for the candidates of more than one party.

You further ask whether a person who voted for the Republican presidential electors in the 1920 November election will be eligible as a candidate in the Democratic primary to be held in August, 1921.

From the above, you will observe that such a person is not eligible to vote in the August Democratic primary, and as he is not eligible to vote, I am of the opinion he is not eligible to be a candidate.

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

## ELECTIONS—PRIMARY

RICHMOND, VA., July 7, 1921.

R. J. N. REID, ESQ., *Secretary,*  
*Democratic Executive Committee,*  
*Purcellville, Va.*

MY DEAR SIR:

Acknowledgment is made of your letter of July 6th, in which you enclose a resolution of your committee, which provides, in part, as follows:

“Resolved, That the Democratic committee of Loudoun county doth hereby approve of the ruling of allowing only those who supported the straight Democratic ticket in the last general election to participate in the primary to be held August 2, 1921, and doth request the judges at the several precincts to see that the ruling is observed.”

You request me to advise you whether or not this resolution is in accordance with the law. As there has been some complaint with reference thereto from persons who did not vote the Democratic ticket in the last general election, I am of the opinion that the resolution is all right as far as it goes with reference to persons who voted the Republican, a split or any other ticket than the straight Democratic ticket in the last general election, but I am of the opinion that it should be amended so as to permit persons who did not vote in the last general election, and who will, as provided by law, promise to support the Democratic nominees to vote in the primary, also that it be amended so as to permit a person who voted in the last general election for any one or more of the Democratic candidates, and who did not vote for any opponent of the Democratic candidate.

In other words, I am of the opinion that a Democrat had the right in the last general election to scratch the name of one or more of the Democratic nominees, if he desired to do so, provided in so doing he also scratched the names of any opponent that such Democratic nominee had, so that as to the particular office for which he scratched the Democratic nominee, he did not vote for anyone.

Trusting that this gives you the desired information, I am,

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

## ELECTIONS—PRIMARY

RICHMOND, VA., July 13, 1921.

MR. WM. E. WRIGHT, *Chairman,*  
*Electoral Board,*  
*Tappahannock, Va.*

MY DEAR SIR:

I am just in receipt of your letter of recent date, in which you say:

“I am writing to ascertain from you the best plan to carry out your ruling regarding those who voted for Mr. Harding for president last November, and who offer to vote in the Democratic primary election on August 2d. Would it be legal or advisable to instruct the judges of election to challenge each and every voter who applies, by asking them the direct question as to how he or she voted last November, or just those that are suspected of voting the Republican ticket?”

In reply I will state that the primary law provides that all primary elections shall be held and conducted as general elections are held and conducted. Section 174 of the Code of 1919, which you will find in the Virginia election laws issued by the Secretary of the Commonwealth in June, 1920 (a copy of which no doubt you have), provides that—

“Any elector may, and it shall be the duty of the judges of election to, challenge the vote of any person who may be known or suspected not to be a duly qualified voter.”

The last paragraph of section 228 of the same laws (which section pertains to the primary law), provides as follows:

“Any person offering to vote at a primary, upon challenge, shall be sworn by one of the judges of the primary, and if he knowingly makes any false statement as to any matter material to his right to vote, he shall be deemed guilty of perjury, and, upon conviction, shall be punished accordingly.”

I have examined the law which pertains to the duties of the electoral board, but nowhere in its provisions do I find that it is the duty of the electoral board to give any instructions to the judges of election as to who is permitted to vote.

I do not think the law contemplates that it is the duty of the judges of election to challenge every voter, but it is their duty to challenge the vote of every person who may be known or suspected not to be a duly qualified voter.

To undertake to challenge every vote at an election would be in the nature of an inquisition, and it would be impossible to conduct an election at a precinct where many votes are cast.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

---

#### ELECTIONS—PAY OF JUDGES, ETC.

RICHMOND, VA., *November 10, 1921.*

HON. A. H. CRISMOND, *Clerk,*  
*Spotsylvania, Va.*

MY DEAR MR. CRISMOND:

I am just in receipt of your letter of the 9th, in which you call my attention to chapter 265 of the Acts of 1920, amending section 220 of the Code of 1919, which provides for the pay of judges, clerks, registrars, etc. This section, as amended, reads as follows:

“The judges, clerks, registrars, members of electoral board, and commissioners of any election shall receive as compensation for their services the sum of three dollars each for each day's service rendered, and the judge carrying the returns and tickets to and from his voting place and to the county clerk's office and the commissioners of election shall receive the pay and mileage now allowed to jurors for each mile necessarily traveled, to be paid out of the treasury of the county, city or town in which the election is held.”

I fully agree with you that the statute is by no means clear. However, you will observe by this amendment that the pay of such officers is changed from \$2.00 to \$3.00 a day. The statute further provides that the judge carrying the returns and tickets to and from his voting place to the county clerk's office shall receive the pay and mileage now allowed jurors.

I do not think that the statute means that the judge who carries these returns shall receive the sum of \$3.00 per day, which is the pay allowed a judge, and in addition the \$1.50, the compensation allowed a juror; but I am of the opinion that it was intended that he should receive as compensation for carrying these returns \$1.50 per day, and in addition, the same mileage allowed a juror. However, as you know, whatever is allowed the judge is to be paid out of the county treasury. I would therefore suggest that you talk with the Commonwealth's attorney of Spotsylvania and see what his views are in connection with this matter.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

---

ELECTIONS—REGISTRARS

RICHMOND, VA., May 5, 1921.

WALTER G. DUKE, ESQ., *Secretary,*  
*City Electoral Board,*  
*City.*

DEAR SIR:

I beg leave to acknowledge receipt of your letter of recent date. In this you call my attention to the law which was passed by the last legislature of Virginia providing for a general registrar in cities having a population of 100,000 or more. You further state that the council of the city of Richmond has availed itself of the provisions of the said law and has elected a general registrar who is now fulfilling the duties of this office.

You then ask to be advised whether the other registrars in the city of Richmond will be required to sit at the polling places on the third Tuesday in May to register the names of all qualified voters not previously registered, as is required under section 78 of the election laws.

I am of the opinion that the provisions of section 78 must be complied with by said registrars. If you will examine chapter 389 of the Acts of 1920, found on page 578, which act created the office of general registrar, you will find in the first paragraph the following language:

“\* \* \* 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.”

This language clearly implies that the registrars already in existence should continue to fulfill the duties required under section 78 of the Virginia election laws.

Your other question is whether the law regulating the employment of women and children, and which specifies the number of hours of work each day for women and children, prevents the employment of women acting as judges or clerks of election.

It is my opinion that the labor law is not applicable to this class of work, and women can act as judges and clerks of election, even though the time so employed may exceed ten hours in any one day.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

## ELECTIONS—REGISTRATION

RICHMOND, VA., *September 29, 1921.*

G. T. CHAPMAN, ESQ.,  
*Registrar,*  
*Luray, Va.*

MY DEAR SIR:

Acknowledgment is made of your letter of September 17th, which came to the office in my absence while attending the session of the Court of Appeals at Staunton. In this letter you ask a number of questions, which I shall answer in their order. Your first question is:

“Is a registrar an instructor or a judge of the qualification of a person applying for registration?”

Under the Constitution a registrar is not an instructor. The second paragraph of section 20 of the Constitution expressly provides that unless physically unable, the applicant shall make application to register in his own handwriting, without aid, suggestion or memorandum, in the presence of the registration officers. He is, however, a judge of the qualification of the person applying to register.

Your second question is as follows:

“What aid, suggestion, or assistance may a registrar give to a person applying for registration?”

The only aid, suggestion or assistance that a registrar can legally give to one applying to register is to furnish him with a copy of the Constitution or of the Code. One applying to register, in my opinion, has the right to have before him the law under which he is registering, and the registrar has the right to furnish the voter with a copy of the same.

Your third question is as follows:

“Is it necessary to conduct the registration of a voter privately?”

It is provided by the latter part of section 93 of the Code of Virginia, 1919, in part, as follows:

“\* \* \* It shall be the duty of the registrar to furnish a suitable and convenient place, with necessary table, chairs, paper and ink or pencil to be used by persons desiring to register in writing their applications for registration, the costs of the same to be paid out of the county or city treasury. \* \* \*”

It does not appear from this that it is necessary for the registrar to conduct the registration of the voter privately, nor do I find anything in the Constitution or the election laws which requires the registration to be conducted at any other than a suitable and convenient place.

Your fourth question is as follows:

“Is a person applying for registration allowed to use any written or printed memorandum that he may have brought with him to the place of registration for the purpose of assisting him in making his application?”

As I have said before, the second paragraph of section 20 of the Constitution requires the applicant to make application to register in his own handwriting unless physically unable, “without aid, suggestion or memorandum,” in the presence of the registration officers. Therefore, I am of the opinion that one applying to register is entitled to bring with him only a copy of the Constitution

or of the election laws, which may be used by him in filling out his application, since it was never the intention of the Constitution that one applying to register could not have before him a copy of the Constitution or laws under which his application was being made. Aside from this, however, I am of the opinion that an applicant cannot legally be permitted to use any written or printed memorandum that he may have brought with him to the place of registration for the purpose of assisting him in making out his application.

Your fifth question is as follows :

“Is a registrar allowed to do more than to conduct the person applying for registration to a private place, provide him with paper and pencil or pen and ink, with the request that he fill out his application?”

If you mean by this question, can the registrar give the applicant any aid, suggestion or memorandum, he cannot, other than as I have said, except to furnish the applicant with a copy of the Constitution or the election laws if he so desires.

Your sixth question is as follows :

“Will you please inform me in detail the essential information that an application must contain to entitle the person applying to register?”

The applicant must state in his application, as provided by section 20 of the Constitution, his name, age, the date and place of birth, his 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.

Your seventh question is as follows :

“If the application is lacking in any one of the essential points you mention as necessary, is it the duty of the registrar to deny the applicant the right to register for the time?”

It is.

Your eighth question is as follows :

“Do the laws in regard to registering voters apply with equal force to women as to men?”

They do.

Your ninth question is as follows :

“If a person has been registered without making proper application, can his or her vote be called in question unless his or her name be stricken from the registration list in accordance with the proceedings prescribed in section 107 of the Code of 1919?”

It would appear from the decision of the Court of Appeals in *Spiller v. Guy*, 107 Va. 811 (1907) that the only remedy in such case is that provided by section 107 of the Code of Virginia, 1919, which was formerly section 86 of the Code of Virginia, 1904.

You further say :

“In conclusion, please give me any other information you may deem necessary to the proper discharge of the duties of my office as registrar not covered in the nine questions and answers.”

I desire to call your special attention to article 2 of the Virginia Constitution, especially sections 18 to 26, inclusive, and to chapter 10 of the Code of Virginia, 1919, and especially the third paragraph of section 20 of the Constitution of Virginia, 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 eighteen, shall be entitled to register, provided:

"First. That he personally paid to the proper officer all State poll taxes assessed or assessable against him, under this or the former Constitution, for the three years next preceding that in which he offers to register; or, if he come of age at such time that no poll tax shall have been assessable against him for the year preceding the year in which he offers to register, has paid one dollar and fifty cents, in satisfaction of the first year's poll tax assessable against him; and,

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

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

By examining the sections 18 to 25 of the Constitution, you will see what the qualifications of an elector are, and you have the right to require one applying for registration to answer on oath any and all questions affecting his qualifications as an elector which may be submitted to him by you.

Trusting this gives you the desired information, I am,

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

#### ELECTIONS—REGISTRATION OF VOTERS

MR. J. M. BAUSERMAN,  
*Attorney at Law,*  
*Woodstock, Va.*

RICHMOND, VA., *December 5, 1921.*

DEAR SIR:

In the absence of the Attorney General, I have taken the liberty of replying to your letter of the 3rd instant, in which you say:

"Our registrars have been sitting two days in each year, spring and fall. Our board of supervisors has refused to pay for but one of those days. I have examined the law and find no authority for the registrar to sit in the spring. Therefore I will appreciate it if you will advise me just how often the registrars must sit during the year, when, and what pay they are to receive for such service. This is important so far as the local conditions are concerned, and I am anxious to be right in the premise."

You are entirely correct in your conclusion that the registrars in the counties are not required to sit for the purpose of registering voters at any time except thirty days previous to the November election. The matter is governed by section 98 of the Code of Virginia, 1919, which expressly provides that the registrars who are required to sit on the third Tuesday in May are registrars in the cities and towns of the State.

Trusting this gives you the desired information, I am,

Yours very truly,

LEON M. BAZILE,  
*Second Assistant Attorney General.*

## ELECTIONS—REGISTRATION OF VOTERS

RICHMOND, VA., *March 16, 1921.*

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

MY DEAR SIR:

I am in receipt of your letter of March 14th, in which you enclose a letter from Mr. Clifford D. Grim, secretary of the electoral board of Winchester, Va., requesting a ruling as to the registration of women voters, registered in their maiden names and desiring to change to their married names.

As you know, at the time of the passage of our registration laws in Virginia, women were not eligible to vote, and no provision therefore is made in the law which fits a case of this kind. It will consequently be necessary to regard this matter in the light of common sense and good judgment.

I am therefore of the opinion that it will be entirely proper where a woman has been registered in her maiden name, and afterwards marries, for the registrar to make a notation of this fact on the registration books when his attention has been called thereto by the woman marrying.

I presume the legislature, at its next session, will enact a law to remedy cases of this kind. In the meantime, I see no reason why this cannot be done as suggested above.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## ELECTIONS—REGISTRATION

RICHMOND, VA., *April 27, 1921.*

MR. THOS. C. HOLLOWELL, *Secretary,*  
*South Norfolk Electoral Board,*  
*South Norfolk, Va.*

DEAR SIR:

I am just in receipt of your letter of April 26th, to which I will reply at once. If you will examine section 98 of the Code of Virginia, 1919 (to which section you refer in your letter), you will observe that the third Tuesday in May is fixed by the statute as the time when the registrar shall sit for the purpose of registering all qualified voters not previously registered.

Section 122 of the Constitution provides that mayors and councils of cities shall be elected the second Tuesday in June. I presume the election which is to be held in your city on the 14th day of June, which is the second Tuesday, is for the purpose of electing these officers.

You will observe from a reading of section 98 of the election laws that the law does not require that the registration books shall be closed thirty days previous to the June election, but they are to be closed thirty days previous to the November election. Therefore, it makes no difference that from the third Tuesday in May, namely, May 17th, to the second Tuesday in June, June 14th, is only twenty-nine days, inclusive.

I am of the opinion that in order for a woman to qualify to vote in your election to be held June 14th, she should pay her capitation tax and register before the registration books are closed on the third Tuesday in May. Of

course, this is not true as to her eligibility to vote in the primary election to be held on the second day in August. She could register and pay her capitation tax up to and including the second day of August in order to qualify for voting in the primary.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

---

ELECTIONS—REGISTRATION

RICHMOND, VA., May 5, 1921.

WM. H. GAINES, ESQ.,  
*Attorney at Law,*  
*Warrenton, Va.*

DEAR SIR:

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

“Will you advise me at your very earliest convenience if women, who have never registered, can now register, be assessed and pay their taxes and vote at the municipal election here on the second Tuesday in June, 1921, provided that they so register, be assessed and pay their taxes thirty days before such election?”

The women who are assessed and pay their taxes for the year 1921 any time prior to the closing of the registration books, if otherwise qualified, are entitled to vote in the municipal election to be held in your town on the second Tuesday in June, 1921.

If you will examine section 98 of the Code of Virginia, 1919, you will see that for such election the registration books close after the third Tuesday in May of this year. The thirty-day provision with reference to the closing of the registration books only relates to the regular November elections, as is provided by the above mentioned section of the Code.

Trusting this gives you the desired information, I am,

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

---

ELECTIONS—REGISTRATION

RICHMOND, VA., August 1, 1921.

MR. J. R. MOODY,  
*Chester, Va.*

MY DEAR MR. MOODY:

Acknowledgment is made of your request that you be advised on the following statement of facts:

“The registrar of my precinct has been called away on account of illness in his family, and will not be present on the day of the primary. There will be a number of persons who will apply for registration on that day, who will be entitled to register and vote. Please advise me what we are to do under these circumstances.”

The law seems to be silent as to this specific matter, although in section 173 of the Code, it is provided that a judge of election may register a voter on his transfer when the registrar is not present.

I am informed by the chairman of the city Democratic committee of Richmond that it is the custom in Richmond, when the registrar is absent, for the election officials to swear an additional officer of the election, as provided for by the Code, and that by implication of law from the necessity, the city Democratic committee has construed the law to confer upon such additional election officer the duties of the registrar, which duties have been performed by such additional election officer.

Yours very truly,

LEON M. BAZILE,  
*Second Assistant Attorney General.*

---

ELECTIONS—REGISTRATION

RICHMOND, VA., *October 11, 1921.*

JUDGE J. M. CRUTE,  
*Farmville, Va.*

DEAR SIR:

Acknowledgment is made of your letter, asking whether a woman who paid her capitation tax previous to October 8th, can register after that day and vote in the election to be held November 8, 1921.

Section 98 of the Code of Virginia provides that thirty days previous to the November election, each registrar in this State shall sit one day for amending and correcting the registration list, at which time any qualified voter applying, and not previously registered, may be added.

This section further provides that the registrar shall, at any time previous to the regular days of registration, register any voter entitled to vote at the next succeeding election who may apply to him to be registered.

It is manifest, therefore, that the registration books must be closed thirty days before the November election, and no person can register between October 8th and November 8th; that is to say, between the day provided by law for the registrar to sit and the election, no person can be registered.

Yours truly,

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

---

ELECTIONS—REGISTRATION

RICHMOND, VA., *August 20, 1921.*

S. G. DOLYNS, ESQ., *Secretary,*  
*Electoral Board,*  
*Claudville, Va.*

DEAR SIR:

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

“Can a person who, from rheumatism or other causes, is physically unable to write an application to register, but can sign name and is otherwise competent to register, be admitted to registration? If so, how?”

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 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 this that, where one is physically unable to do so, he is not required to make application to register in his own handwriting. It will be necessary, however, for the man in question to have the registrar or someone in the presence of the registrar make out his application upon his furnishing such person with the information required by section 20 of the Constitution as a prerequisite to the right to register, and that such information be furnished by the afflicted person to the person making out his application, without aid, suggestion or memorandum.

Yours very truly,

LEON M. BAZILE,  
*Second Assistant Attorney General.*

---

#### ELECTIONS—REGISTRATION

RICHMOND, VA., *August 20, 1921.*

MR. A. W. BERRY,  
*Criglersville, Va.*

DEAR SIR:

Acknowledgment is made of your letter of recent date to the Attorney General, which I am answering in his absence from the city. In this you state that an applicant to register, who was rejected, made application to the registrar in the following words:

"I, John William Jones, desire to register. I was born June 13, 1890, near Criglersville, Va., and have lived in the said State all my life. Occupation, farming. I will vote at Criglersville.—John William Jones."

You state that the reason the applicant was rejected was that he failed to give his age, and that you are of the opinion that the giving of the date of birth was the same thing as stating his age.

The second paragraph of section 20 of the Virginia Constitution provides 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 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 reading this section, that the applicant is required not only to give his age, but the date and place of birth. He must therefore state his age as well as the date and place of his birth.

Yours very truly,

LEON M. BAZILE,  
*Second Assistant Attorney General.*

## ELECTIONS—REGISTRATION

RICHMOND, VA., *August 16, 1921.*

D. W. ELDRIDGE, ESQ.,  
*Buckingham, Va.*

MY DEAR SIR:

Acknowledgment is made of your letter of August 12th, in which you say:

"I registered a young woman in July who will come of age next September. She has paid one year's capitation. She voted in the recent primary, and I write to inquire whether I did the right thing in allowing her to register before the primary."

If the young lady was otherwise qualified, she was entitled to register upon the payment of her capitation tax at any time up to and including the day of the primary, and to vote therein. Therefore, you did right in registering her if she was otherwise qualified in addition to the payment of her capitation tax.

The registration books are not closed before the primary. They are closed only before regular elections held in cities and towns in June and before the regular election held in November.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## ELECTIONS—REGISTRATION

RICHMOND, VA., *May 17, 1921.*

MR. E. C. KAISER, JR.,  
*Phoebus, Va.*

DEAR SIR:

Acknowledgment is made of your letter of May 14th, in which you request me to advise you whether a registrar can register a voter up to the day of the general election of a town, or whether the books must be closed a certain number of days before such election.

If you will examine section 98 of the Code of Virginia, 1919, you will see that the registration books in cities and towns must be closed on the third Tuesday in May until after the general city or town election.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## ELECTIONS—REGISTRATION

RICHMOND, VA., *May 20, 1921.*

CHAS. E. FORD, ESQ., *Chairman,*  
*Electoral Board,*  
*Newport News, Va.*

MY DEAR MR. FORD:

Acknowledgment is made of your letter of the 12th, in which you say:

"A voter formerly living in this city, but now residing in Richmond, desires a transfer from the registrar of his voting district to the registrar of his voting district in Richmond. Upon applying here it was discovered that his name did not appear upon the registration books of his former

voting district, but his name does appear on the permanent rolls in the clerk's office. It is presumed that when the lists were purged for some reason it was not included on the permanent roll books of the registrar in his voting district.

"It would appear that this voter is entitled to his transfer, but as to the method of obtaining the same I am not advised, and would thank you to let me have your views as soon as convenient."

As the man's name appears as registered on the permanent rolls in the clerk's office, it would appear that his name has been left off or removed from the registration books of his former voting district through mistake.

I would therefore suggest that the registrar place his name on the book in his possession and grant a transfer thereon.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

---

#### ELECTIONS—REGISTRATION

RICHMOND, VA., *June 13, 1921.*

MR. J. T. LACY, JR.,  
*South Boston, Va.*

DEAR SIR:

You state that a registrar in your city failed to close his registration book after the third Tuesday in May, but registered persons thereafter, and you desire to know whether persons so registered are qualified to vote in the election to be held in your city on tomorrow.

Under section 98, as construed time and again, a registrar is not authorized to register anyone between the third Tuesday in May and the regular election occurring on the 14th of June following.

I am, therefore, of the opinion that the registration of persons between these dates is illegal, and such persons are not qualified to vote in the said election. There is an exception to the above, however, contained in section 2995 of the Code of Virginia, which provides that the electoral board of the county, within which a town is situated, shall, not less than fifteen days before any town election therein, appoint one registrar, who shall, before any election, register all voters who are residents of such town, and who shall have previously registered as voters in the county of either of them in which said town is situated, and none others.

Yours truly,

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

---

#### ELECTIONS—REGISTRATION

RICHMOND, VA., *June 3, 1921.*

MR. R. W. HILLARY,  
*Warrenton, Va.*

DEAR SIR:

Acknowledgment is made of your letter of May 24, 1921, in which you say:

"Can the county electoral board direct the registrar of the town of Warrenton to copy, on the town registration book, all women who are

inhabitants of the town, and who are registered on the county registration book, or must each woman appear in person to be registered in said town?"

This matter is covered by the provision of section 2995 of the Code of Virginia, 1919, which reads as follows:

"The electoral board of the county within which such town, or the greater part thereof, is situated, shall, not less than fifteen days before any town election therein, appoint one registrar and three judges of election, who shall also act as commissioners of election. 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. The said registrar shall be governed, as to his qualifications and powers, and in the performance of his duties, by the general laws of this Commonwealth, so far as the same may be applicable."

This section was formerly section 1022 of the Code of Virginia, 1904. In construing this section, Maj. Wm. A. Anderson, then Attorney General, in a letter dated May 30, 1906, to H. G. Gilmer, Esq., Norton, Va., report of the Attorney General, 1906, page 76, passed upon this section with the conclusions in which I agree. I am sending herewith a copy of that opinion.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

---

#### ELECTIONS—REGISTRATION

RICHMOND, VA., *June 6, 1921.*

D. E. WEBB,  
*Registrar,*  
*Gretna, Va.*

DEAR SIR:

Acknowledgment is made of your telegram of June 5, 1921, which is as follows:

"Can a woman of age, who has never registered or voted, pay her capitation tax now and register on county and town books and vote in town election to be held second Tuesday, June, 1921? Advise quickly."

If you will examine section 98 of the Code of Virginia, 1919, you will see that the registration books closed on the third Tuesday in May for the regular election held in cities and towns on the second Tuesday in June. Therefore, it is too late for a woman to register so as to vote in the June election, as the registration books have already closed. There is nothing to prevent her, however, from paying her capitation tax and registering after the June election, so as to vote in the August primary and the regular November election, 1921.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## ELECTIONS—REGISTRATION

RICHMOND, VA., *June 10, 1921.*

MR. J. T. LACY, JR.,  
*South Boston, Va.*

MY DEAR MR. LACY:

Your letter of the 9th just received, to which I will reply at once. You state that a regular town election is to be held in South Boston on the second Tuesday in June of this year, and ask to be advised whether or not the women who register up to the day of said election have the right to participate in the same.

If you will examine section 98 of the Code of Virginia, 1919, you will see that the registration books should have been closed on the third Tuesday in May for the regular election held in cities and towns on the second Tuesday in June, and also thirty days previous to the general election to be held in November. I therefore do not understand how the women can continue to register during this interim, as the books should have been closed on the third Tuesday in May.

There is nothing, however, to prevent the women from paying their capita-tion taxes and registering after the June election so as to vote in the August primary, and they can continue to do this until thirty days prior to the election to be held in November.

Section 18 of the Constitution of Virginia provides that only those persons are eligible to vote who have been residents of the State two years, of the county, city or town one year, and of the precinct in which they offer to vote, thirty days next preceding the election in which they offer to vote, have been registered and have paid their State poll taxes, etc.

You will, therefore, see from this provision of the Constitution that a woman who has not been a resident of the State for two years cannot register and vote.

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

## ELECTIONS—REGISTRATION

RICHMOND, VA., *July 25, 1921.*

A. H. HAMILTON, ESQ., *Registrar,*  
*Harvey's Store Precinct,*  
*Madisonville, Va.*

DEAR SIR:

Responding to your letter of July 23, 1921, any person, legally qualified to vote, may register up to and on the day of the primary. The books are closed only before the regular June election in cities and towns, and the regular November election. They are open at all other times.

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

## ELECTIONS—REGISTRATION

P. A. JORDAN, ESQ.,  
*Registrar,*  
*Suffolk, Va.*

RICHMOND, VA., *July 25, 1921.*

DEAR SIR:

Responding to your letter of July 23, 1921, a person, if otherwise qualified, may register at any time up to and including the day of the primary.

Immediately after the June election was held in your city, the registration books were again opened for registration, and will remain open until thirty days prior to the regular November election; therefore, the man in question can be registered at the present time or on the day of the primary.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## ELECTIONS—REGISTRATION

RICHMOND, VA., *June 14, 1921.*

DUNTON J. FATHERLY, ESQ.,  
*Attorney at Law,*  
*Eastville, Va.*

DEAR SIR:

Acknowledgment is made of your letter of June 13th, addressed to the Attorney General, which has been referred to me for attention. In your letter you say:

"I beg to request your opinion on the following question of suffrage. Section 98 of the Code provides:

"Each registrar in the cities and towns of this State shall annually on the third Tuesday in May, at his voting place, proceed to register the names of all qualified voters within his election district not previously registered in said district, in accordance with the provisions of this chapter, who shall apply to be registered, commencing at sunrise and closing at sunset, and shall complete such registration on the third Tuesday in May," etc.

"Now, under section 116 of the Constitution, cities are defined as incorporated communities having over 5,000 inhabitants; and towns as all other incorporated communities having less than that number. It would seem, under the constitutional definition, that the above time of registration would refer only to these incorporated communities.

"Of course, section 228 of the Code provides that all those qualified to vote in the general election, for which the primary is held, are qualified to vote in such primary, subject to certain restrictions.

"Now my question is this: Can one male, who has complied with the requirement in regard to payment of poll taxes and who does not reside in an incorporated community, register now in order to vote in the August primary?

"A registrar in one of the precincts of this county refuses to allow registration on the ground that his books were closed on the third Tuesday in May."

The above portion of section 98 of the Code of Virginia, 1919, quoted by you, was unquestionably placed in the statute for the purpose of closing the registration books in cities and towns prior to the regular June election held in the cities and towns of the State on the second Tuesday in June, as provided by section 122 of the Constitution of Virginia.

No regular election is held in the counties of the State in the month of June, the only regular election in the counties being the November election. There is, of course, no reason why the registration books in any counties should be closed until thirty days prior to the November election.

The provision of section 98, referred to by you, is manifestly limited to the cities and towns of the State, and has no application whatever to the counties. The registration books in the counties are open at all times until the period between the regular registration day prior to the November election, and the holding of the November election.

Trusting this gives you the desired information, I am,

Yours very truly,

LEON M. BAZILE,  
*Second Assistant Attorney General.*

---

#### ELECTIONS—RESIDENCE

MR. W. C. SLATE,  
*South Boston, Va.*

RICHMOND, VA., *April 15, 1921.*

MY DEAR SIR:

I beg leave to acknowledge receipt of your letter of April 9th, the substance of which is as follows:

You state that you are a resident of Halifax county and have been for fifty years; that for the past thirty years your voting precinct has been Hyco precinct, in said county; that in September, 1919, you bought a residence in South Boston, Halifax county, moving to that town in December, 1919, where you resided until about the middle of April, 1920; that you then took your family back to the country, spent the summer, and returned to South Boston September 1, 1920.

You further state that when you moved back to the country, you did not take your furniture, but had both homes furnished; that you moved your transfer to South Boston in the fall of 1920, and wish to be advised whether or not you can vote in the town of South Boston in the coming election.

The question of residence has been held by our Court of Appeals to be largely a question of intention. If, when you moved to South Boston in December, 1919, you moved with the intention of making that town your permanent residence, I am of the opinion that you have a right to vote in the coming election in South Boston. The mere fact that you went to the country in the summer of 1920 for the purpose of spending your summer does not change your legal residence. For your convenience, I quote an extract from the decision of 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. 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."

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## ELECTIONS—RESIDENCE

RICHMOND, VA., *May 6, 1921.*

HON. G. STUART HAMM, *Treasurer,*  
*Albemarle County,*  
*Charlottesville, Va.*

DEAR SIR:

I am just in receipt of your letter of the 5th, to which I will reply at once. In this you state that a man who has been residing in the State of Virginia for over four years, working with a construction company but shifting from place to place, has never been assessed with poll taxes.

You further state that he is now in Albemarle county, where he has been residing for the past fourteen months.

If the party referred to has resided in the county of Albemarle for fourteen months, he has a right to claim Albemarle as his residence. He can pay his poll taxes for the years 1918, 1919 and 1920, register and vote. These, of course, will have to be paid tomorrow, as that is the last day, being six months before the November election.

In reply to your second question, as to whether a young man coming of age in July of this year can vote in the August primary, I would state that he can do this by having himself assessed and paying one year's capitation tax for 1922. His name, of course, would not appear on the voting list, as it is provided that he will be permitted to vote on his tax receipt.

Trusting this is the information you desire, I am,

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

## ELECTIONS—RESIDENCE

JAS. B. WILBORN, ESQ.,  
*South Boston, Va.*

RICHMOND, VA., *May 5, 1921.*

MY DEAR MR. WILBORN:

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

"1. How long does a man have to live in a town, moving from same State, before he is eligible to vote? And how long does he have to register before voting in a town election?

"2. How long does a man have to live in this State, moving from another State, before he can vote in a town election?

"3. How long does a man have before an election to move his transfer from one district to another, in order to vote in the town election?

"4. How long does a lady have to live in this State, moving from another State, before she can vote, and how long does she have to register before voting in a town election?

"5. How long does a lady have to live in town before she can vote in a town election, moving from one district to another?"

The Constitution of Virginia (section 18) provides that as a prerequisite to the right to vote, among other things, one otherwise qualified to vote 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.

It therefore follows that one moving into a town from the same State in which the town is located, even from the same county, must be a resident of that town one year preceding the election at which he offers to vote. The only provision as to the length of time one must be registered is that provided for by section 98 of the Code of Virginia, 1919, which provides that persons must register before the registration books are closed.

The registration books, before the spring election in cities and towns, close at sunset on the third Tuesday in May. The registration books are closed thirty days previous to the November elections.

In response to your second question, such person must have resided in Virginia two years (section 18 of the Constitution).

In response to your third question, the transfer may be made at any time except in cities and towns which have a population of over 2,500 inhabitants (section 100, Code of 1919).

In reply to your fourth and fifth questions, exactly the same period of residence is required of a woman eligible to vote by reason of the Nineteenth Amendment to the Federal Constitution as is required of a man, and the same thing is true as to the time within which he must register.

Trusting this gives you the desired information, I am,

Sincerely yours,

JNO. R. SAUNDERS,

*Attorney General.*

---

#### ELECTIONS—RESIDENCE

MRS. E. C. MINOR,  
*Richmond, Va.*

RICHMOND, VA., *June 29, 1921.*

DEAR MRS. MINOR:

Acknowledgment is made of your request that you be advised with reference to the following statement of facts:

Mr. Richard S. Eley and his wife, who had been residents of Virginia since May, 1919, moved to the county of Fairfax on June 6, 1920. In June, 1921, Mr. Eley offered to pay his capitation tax for 1920 to the treasurer of Fairfax county, but the treasurer refused to accept the tax, and the registrar has refused to permit Mr. Eley to register without the production of his tax receipt. At present his capitation tax for 1920 remains unpaid. You desire to know whether or not Mr. Eley can do anything which will enable him to vote in the August primary and the general election this year. Also what are Mrs. Eley's rights with reference to registering at the present time and voting in the August primary and the general election.

Having become a resident of Virginia in May, 1919, the first capitation tax with which Mr. Eley was assessable was for the year 1920. Under the provisions of section 21 of the Constitution of Virginia, it was necessary that this tax be paid at least six months prior to the November, 1921, election, in order to entitle Mr. Eley to register and vote in the August primary and the general election to be held this year. Not having tendered his capitation tax for the year 1920 until June, 1921, it was not tendered within the proper time and, therefore, there is nothing that he can do which would enable him to vote in the primary and general election to be held in the year 1921. There is no reason, however, why the treasurer should refuse to accept the capitation tax

of Mr. Eley for the year 1920, as he has a right to pay the same so that he may fulfill the condition required of him to vote in elections subsequent to the year 1921.

As to Mrs. Eley, the case is different. The first year with which a woman in Virginia is assessed or assessable with capitation taxes is for the year 1921. This tax, I have repeatedly held, being for the year 1921, does not have to be paid six months prior to elections held in the year 1921, at which a woman may offer to vote. She may pay her capitation tax at any time up to the day of the primary and register at any time up to that day and vote therein, if otherwise qualified. If she does not desire to participate in the primary, her tax must be paid before the registration books close for the general election in November, if she desires to register and vote in said election.

Trusting this gives you the desired information, I am,

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

---

#### ELECTIONS—RESIDENCE

RICHMOND, VA., *July 14, 1921.*

REV. J. E. DESHAZO,  
*Hayes Store, Va.*

DEAR SIR:

Acknowledgment is made of your letter of July 8th, in which you say:

"My wife and I are registered and legally qualified voters at Sanford, Accomac county, Va. I am an itinerant Methodist preacher of the Virginia conference. My conference moved us from Sanford, Va., to Gloucester Point last November. My residence here for the past seven months has been in Achilles precinct, Gloucester county. Are we entitled to transfer our voting privilege to this precinct in the coming primary, or can we, and must we, vote by mail at the Sanford precinct?"

The Constitution of Virginia, section 18, requires as a qualification for voting, that 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 at which he offers to vote.

Section 26 of the Constitution reads as follows:

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

Your right to vote in Gloucester county, therefore, would depend upon whether you and your wife moved your residence from Accomac county, Va., prior to November 8, 1920, since, if you moved your residence to Gloucester county subsequent to that date, you would not have been residents of Gloucester county for one year, as required by the Constitution, on the day on which the November, 1921, election is held, and therefore you will not be eligible to vote in Gloucester county in the Democratic primary to be held in August of this year.

As to whether or not you will be entitled to vote as an absent voter in your former precinct in Accomac county, it would depend upon whether or not you

left Accomac county in 1920 with the intention of retaining your legal residence there, or with the intention of moving your legal residence to Gloucester county.

If, when you left Accomac county, it was your intention to retain your legal residence in that county, and you have not subsequently formed any intention of making Gloucester county or any other place the place of your legal residence, and if otherwise qualified, you would be entitled to vote as an absent voter at the precinct where you are registered in Accomac county. If, on the other hand, when you left Accomac county, it was done with the intention of abandoning that county as the place of your legal residence, and acquiring a new legal residence in the county of Gloucester, then I am of the opinion that you would not be eligible to vote as an absent voter in Accomac county.

You will therefore see that the question as to your right to vote and the place where you can vote will depend upon facts which do not appear in your letter to me.

I further call your attention to the fact that, if qualified to vote in Accomac county as an absent voter, you and your wife desire to vote in that county, that your application for a ballot must be made at least fifteen days prior to the date of the primary.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

---

#### ELECTIONS—RESIDENCE

REV. L. C. MOORE,  
*Dillwyn, Va.*

RICHMOND, VA., *July 13, 1921.*

MY DEAR SIR:

Acknowledgment is made of your letter, addressed apparently through mistake to my brother, in which you say that you registered in Petersburg, but that you paid your taxes in 1918 and 1919 in Northampton county, but in 1920 in Buckingham county. You ask if you can vote this year in Petersburg.

You have the right to retain your residence in Petersburg for the purpose of voting, but the fact that you did not pay your capitation taxes there for the last three years, but rather paid them in some other place, would tend to show that you had changed your residence. Moreover, if your residence was still in Petersburg, in order to vote this year, it is necessary for you to have paid not less than six months prior to the November election, three years poll taxes in that city.

In order not to lose your vote. I would suggest that you write to the registrar in Petersburg, in whose book you are registered, and have him send you at once your transfer to the precinct in Buckingham where you now reside, and that you have the registrar in Buckingham register you there on this transfer. This will enable you to vote in August and in November.

So far as your capitation taxes are concerned, the law provides that, as a transferred voter, you can vote by producing receipts for the two years you paid in Northampton (Va. Code 1919 sec. 115).

If there is any further assistance I can give you on this matter, I hope you will feel free to call on me.

Yours truly,

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

## ELECTIONS—RESIDENCE

RICHMOND, VA., July 30, 1921.

MR. LLOYD M. RICHARDS,  
*Attorney at Law,*  
*Richmond, Va.*

MY DEAR SIR:

Acknowledgment is made of your letter of July 23, 1921, in which you state that you have been a resident of the fifth precinct, Lee ward, Richmond, Va., for the past ten years. You further state that while you have not actually occupied a house the whole of the time in the fifth precinct in Lee ward, that you have had your house in Lee ward during all that time, until the first of March, this year, and that during the whole time, and up to the present time you have claimed and continue to claim that you are a legal resident of the fifth precinct of Lee ward, Richmond, Va., and that when you moved out of said precinct you did not intend to remove your legal residence from that precinct. You further state that on the first of March of this year, three of the wards in the city of Richmond were re-districted, and in so doing, the block in which your house is located, was put in another ward, but that your name was not removed from the registration book at the fifth precinct, Lee ward. You also state that it was your intention to retain your legal residence in Lee ward and that as soon as your lease expires on the house which was taken out of Lee ward and placed in another ward, that it is your intention to move into Lee ward.

You ask me to advise you if, under these circumstances, you are a legal resident of Lee ward and entitled to hold office therein if elected.

Under the decision of the Supreme Court of Appeals of this city in *Williams v. Commonwealth*, 116 Va. 272, decided in 1914, I am of the opinion that you, on the above statement of facts, are a legal resident of Lee ward, Richmond, Va., although at the present time you are temporarily outside of the limits thereof, and therefore, if nominated in the primary, you will be eligible to hold office as justice of the peace for Lee ward in the city of Richmond.

In the case of *Williams v. Commonwealth*, the Court of Appeals held that for the purpose of voting and holding office "a man could not have more than one legal residence. \* \* \* When he acquires a new residence, he loses the old, but to affect 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 by removal therefrom, unless in addition to such removal, he has also legal intent required to change his voting residence. I think the facts in your case are sufficient to show that you are a legal resident of Lee ward in the city of Richmond.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

## ELECTIONS—RESIDENCE

RICHMOND, VA., *October 26, 1921.*

MR. HOWARD EANES,  
*16 B Center Hill,  
 Petersburg, Va.*

DEAR SIR:

Acknowledgment is made of your letter of the 25th, addressed to the Attorney General, which came to the office in his absence. I am therefore taking the liberty of replying to the same. In your letter you say:

"I would be obliged if you would advise me whether or not I am entitled to a vote in the November election under the following circumstances, and if so, at what place.

"First. I have been a regular voter for a number of years at Ettrick, Va., and have paid all taxes which have become due.

"Second. On October 19, 1920, I removed my residence to the city of Petersburg and thinking that I had to be a resident of Petersburg for one year before being transferred as a voter, I waited until October 20, 1921, to apply for a transfer. Upon applying, the registrar informed me that the registration books were closed on October 8th and therefore, he was unable to give me a transfer.

"Third. I was then informed that I would be disqualified to vote at Ettrick, Va., not having lived there during the past twelve months. From this you will see that I would be deprived of a vote in the coming election, although I have been in the State all the time.

"In view of the fact that I applied for a transfer promptly after having lived in Petersburg one year, it seems to me I should be entitled to a vote either in Ettrick or Petersburg. As it does not seem within the law to give me a transfer at this time, it would appear to me that I should be allowed to vote at Ettrick and if this is the case, I would certainly appreciate your advising me under what section of the law this would come."

Of course, it was too late to obtain a transfer after the registration books had closed. As to whether or not you are entitled to vote in Ettrick this fall, it would depend upon whether you moved your residence from Ettrick to Petersburg when you lived there. If you did so, and it would appear that you have, owing to the fact that you sought to obtain a transfer, then you will not be entitled to vote at Ettrick as you are no longer a resident of that place. If, however, you have maintained your legal residence at Ettrick and still claim that as your place of legal residence, you would be entitled to vote there.

Yours very truly,

LEON M. BAZILE.

*Second Assistant Attorney General.*

## ELECTIONS—RESIDENCE

RICHMOND, VA., *September 29, 1921.*

MR. ISAAC MARTIN,  
*Snake Creek, Va.*

DEAR SIR:

Your letter of September 20th, addressed to the Attorney General, has been referred to me for attention. In your letter you say:

"I have been a voter at Snake Creek precinct, Carroll county, for the past thirty years until 1919, and then moved to Grayson county,

Galax, Va., and stayed there eleven months and then moved back to Snake Creek, the same place first mentioned. I have kept my **taxes** all paid and have been back here ten months. I **wish** to know if I have a right to vote in the coming **election**."

Your right to vote at Snake Creek depends upon whether or not when you moved to Galax, you moved to the latter place with the intention of abandoning your legal residence at Snake Creek. If you did so, you will not be eligible to vote in Snake Creek in the November, 1921, election. "

If, on the other hand, when you moved to Galax, it was your intention to retain Snake Creek as your home, the fact that you were away from Snake Creek for eleven months would not be sufficient to make you lose your legal residence at that place. The fact that you paid your capitation tax in Carroll county would indicate that you intended to retain your legal residence there. However, you have not stated in your letter sufficient facts for me to determine just what your intent was, but I think you will have no difficulty in reaching the proper solution with this letter before you.

Yours very truly,

LEON M. BAZILE,  
*Second Assistant Attorney General.*

---

ELECTIONS—RESIDENCE—CAPITATION TAX

L. O. HAYDEN, ESQ.,

RICHMOND, VA., *October 3, 1921.*

*Palmyra, Va.*

MY DEAR SIR:

Your letter of October 1, 1921, addressed to the Attorney General, has been referred by him to me for attention.

In your letter you say:

"Will you please advise me if a man moving into the State during the late summer of 1919, who could not be assessed for that year and who has just been assessed and paid his 1921 tax, paid the same October 1, 1921, is eligible to vote in the election November 8th.

"I would be very glad if you advise me what such person would be required under the law to do in order to be eligible."

Having become a resident of Virginia after February 1, 1919, the man in question was not assessable with a capitation tax for that year. Having come to Virginia, however, prior to February, 1920, he was assessable with a capitation tax for the year 1920 (Va. Tax bill secs. 1, 4 and 5). This tax, under the provisions of section 21 of the Virginia Constitution, must have been paid at least six months prior to the election at which he offers to vote, as this is a capitation tax which was assessed or assessable against him under the Constitution during the three years next preceding 1921.

The man in question not having paid his tax for 1920 is, therefore, not entitled to vote in the November, 1921, election. If he will pay his tax for 1920, if assessed, or, if not assessed, have himself assessed, and pay his tax for 1920, he will then, if otherwise eligible, be entitled to vote in the elections to be held in 1922, provided he registers, etc.

Trusting that this gives you the desired information, I am,

Yours very truly,

LEON M. BAZILE,  
*Second Assistant Attorney General.*

## ELECTIONS—RESIDENCE

MRS. RICHARD HOOKER,  
*Alexandria, Va.*

RICHMOND, VA., *August 23, 1921.*

DEAR MADAM:

Acknowledgment is made of your letter of August 19th, in which you ask to be advised whether or not a woman who had been living in Virginia only a few months prior to September, 1920, is eligible to vote in the November election, 1921.

In reply, I will state that our Constitution requires that before a person is eligible to vote in Virginia, such person must have been a resident of the State for at least two years; of the county, city or town one year, and of the precinct in which he offers to vote, thirty days preceding the election in which he offers to vote. It therefore follows that the person in question is not eligible to vote.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## ELECTIONS—RESIDENCE

RICHMOND, VA., *May 11, 1921.*

MR. E. C. KAISER, JR.,  
*Phoebus, Va.*

DEAR SIR:

Acknowledgment is made of your letter of the 6th, in which you say:

"Will you give me your opinion on the following question, as I am registrar for the town of Phoebus, and I would like to know if I have the right to register a female voter if her husband is in the army or navy who does not claim this his residence, or if he does claim this his residence, can I register her?"

If the man in question is a resident of Virginia, the fact that he is in the army or navy will not deprive him of such residence, and his wife will be entitled to register at the place of which he is a resident. If, on the other hand, the husband is not a resident of Virginia, and he and his wife are not separated, she would not be entitled to register and vote in Virginia, but must register and vote in that State of which her husband is a resident.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## ELECTIONS—RESIDENCE

MR. E. L. CONNER,  
*Box 769, Lexington, Va.*

RICHMOND, VA., *June 2, 1921.*

DEAR SIR:

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

"Has a voter whose poll tax is paid in Lexington and officially certified by the treasurer, a right to vote in the approaching municipal election on June 14, 1921, who lives in another State, and has for more than two years a right to vote? The voter is married to a lady in the State where he now resides and has no legal residence here."

Section 18 of the Constitution of Virginia prescribes the qualifications as a prerequisite to the right to vote, which are as follows: That a person must be a citizen of the United States; must be twenty-one years of age; 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; must have been registered and paid his State poll taxes.

The question of residence is largely one of intention. If the party referred to in your letter has resided out of the State of Virginia for two years and has abandoned Virginia as his legal residence, of course, the mere fact that he has paid his capitation taxes here, would not entitle him to vote. If, on the other hand, he is temporarily residing elsewhere and still claims Virginia as his residence, he would be entitled to vote. It is impossible to lay down any fixed rule in a matter of this kind.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

---

ELECTIONS—RESIDENCE

RICHMOND, VA., *June 13, 1921.*

T. A. WEBB, ESQ.,

*South Boston, Va.*

DEAR SIR:

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

“Please give me your opinion in the following matter: A party who has been engaged in business in the town of South Boston for the last eight or ten years has maintained his residence in one of the outlying magisterial districts, in which his capitation tax for a number of years, including 1920, has been assessed and paid, transferred in September, 1920, to this voting precinct and now desires to participate in the town election. I will thank you to state if, in your opinion, his residence should date from the time he actually transferred, or if sometime prior thereto, can be claimed in order that his residence for twelve months past should be considered here as required by the election laws of our State.”

The right of this person to vote in the town election to be held in June, 1921, will depend upon when the voter in question formed his intention of transferring his legal residence from the county to your town.

The Constitution provides that one must have been a resident of the city or town one year prior to the election. This, of course, means that he has been a legal resident of the town for that length of time. It appears from the facts, as stated in your letter, that the man in question was not a legal resident of the town on the first day of February, 1920, but a legal resident of the outlying magisterial district, as he had himself assessed in that district with his capitation tax for the year 1920.

He certainly formed an intention to become a legal resident of the town from the time he made application for his transfer, but he may have formed the necessary intention to transfer his legal residence to the town prior to the time application was made for his transfer. However, there is nothing that appears in your statement of facts to indicate just when this intention was formed.

I have tried to give you generally the rules applicable to the matter so as

to enable you to determine whether or not the man in question has been a legal resident of your town sufficiently long to be entitled to vote in the June election, when you have obtained the necessary facts upon which to base your conclusion, which facts do not appear in your letter.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

---

ELECTIONS—RESIDENCE

RICHMOND, VA., *August 3, 1921.*

DR. J. H. CROUCH,  
*R. F. D. No. 2,*  
*Smithfield, Va.*

MY DEAR SIR:

I am in receipt of your letter of August 2nd, to which I will reply at once.

You state that you have a sister twenty-four years of age, who, until last January, was a resident of Richmond city, when she moved to the county of Isle of Wight; that in June she married a resident of Isle of Wight; that she applied for registration in her husband's precinct, and was refused on the ground that she had not been a resident of the county for one year.

I am of the opinion, from the statement of facts contained in your letter, that she was not entitled to register. While it is true that the legal residence of a married woman is the same as that of her husband, this could not affect the situation of your sister, due to the fact that she was not married until last June, but of course her residence in Isle of Wight would date from last January when she moved to the county.

The Constitution requires that before one can vote, he or she must have been a resident of this State at least two years, of the county, city or town one year and of the precinct thirty days.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

---

ELECTIONS—RESIDENCE

RICHMOND, VA., *July 22, 1921.*

MR. G. STUART HAMM,  
*Treasurer,*  
*Locust Grove, Va.*

MY DEAR SIR:

I am just in receipt of your undated letter. In this you state that you sold your home in Scottsville precinct, Scottsville district, and took up a temporary residence in Charlottesville. You state also that you have not moved your legal residence and do not expect to be under the necessity of doing so. You say you are registered in Scottsville precinct and do not expect to transfer, and ask to be informed whether the ladies of your family can be registered there and vote in the coming election.

The question of residence has been held by our Court of Appeals to be largely a question of intention. If, when you left Scottsville district, you left

with the intention of not returning, but intended to make Charlottesville your permanent home, of course your residence in Scottsville district has been abandoned, but if your residence in Albemarle was only temporary and you intended to retain your legal residence in Scottsville district, you are still a resident of that district, and of course would have a right to vote in the district. This is equally applicable to the ladies of your family. The Court of Appeals decided this principle in the case of *Williams v. Commonwealth*, 116 Va. 272.

Now, as to the refusal of the commissioner of the revenue to assess the ladies of your family: If you will examine the case of *Smith, Treasurer, v. Bell*, decided by our Court of Appeals and reported in 113 Va. 667, you will find that the court holds that it is the duty of the treasurer to accept capitation taxes from a party whether the party offering to pay the same has been assessed or not.

Trusting this is the information you desire, and with regards, I am,

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

---

#### ELECTIONS—RESIDENCE

RICHMOND, VA., *September 29, 1921.*

JOHN L. CRONIE, ESQ.,

*Washington, D. C.*

DEAR SIR:

Your letter of recent date, addressed to Hon. A. J. Montague, Washington, D. C., has been referred by him to this office for attention. In your letter, you say, in part:

"My parents, John W. Cronie and Cornelia E. Cronie, nee Lipscomb, were born in Virginia but have resided in the District of Columbia for the past twenty-five years. My mother, together with her brother and sisters, own the old home of about 313 acres, about fourteen miles from Richmond and pay taxes on same. I would like to know if my father retains a vote in Virginia, and whether my mother, sister and myself are entitled to vote."

It is provided by section 18 of the Virginia Constitution that 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 paid his poll taxes as required by the Constitution, shall be entitled to vote.

In your letter I note you state that your parents have resided in the District of Columbia for the past twenty-five years. Obviously, they could not be residents of Virginia during that time if they have been residents of the District of Columbia. You do not state, but I assume that you likewise, have been a resident of the District of Columbia during that, or the greater part of that time. This being so, I do not think you would be eligible to vote in this State so far as residence is concerned.

I do not mean by this, that it is necessary for one to actually physically live within the bounds of Virginia in order to be a legal resident of the State and as such entitled to vote, but before one can be a legal resident of the State,

he must have acquired such residence in some way and when he goes out of the State it must be with the intention of retaining his legal residence therein.

It does not appear from your letter that you have ever been a resident of this State and your parents appear, from your statement, to have abandoned their residence in Virginia. Since the Court of Appeals has said that one could not have two legal residences—the fact that your parents own real estate in Virginia and pay taxes on the same would not make them residents of this State if they had abandoned their residence and acquired a new residence elsewhere.

Yours very truly,

LEON M. BAZILE,  
*Second Assistant Attorney General.*

---

ELECTIONS—SPECIAL ELECTIONS

MR. W. P. BOGGESS,  
*Richlands, Va.*

RICHMOND, VA., *May 31, 1921.*

MY DEAR SIR:

Your letter of May 24th received. In this you state that there will be held on the 5th day of July, 1921, in Richlands, an election for a bond issue.

You ask to be advised whether those who were qualified to vote in the November election, 1920, are qualified to vote in this election. If you will examine section 83 of the Code of 1919, you will observe that where special election is held after the second Tuesday in June of any year, only those persons are qualified to vote in said election, who will be eligible to vote in the fall election of that year.

Inasmuch as your election comes on the 5th day of July, the only persons eligible to vote in this election are those who are qualified to vote in the November election, 1921.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

---

ELECTIONS—SPECIAL ELECTIONS

MR. HIRAM WALL,  
*Attorney at Law,  
South Hill, Va.*

RICHMOND, VA., *May 28, 1921.*

DEAR SIR:

I am just in receipt of your letter of May 26th. If you will examine section 83 of the Code of 1919, which deals with the qualifications of voters at special elections, you will see that where a special election is held after the second Tuesday in June in any year, any person is qualified to vote therein, who is or was qualified to vote in the regular election held on the Tuesday after the first Monday in November of that year.

From this you will see that in order for one to vote in said election, it is necessary for such person to have personally paid his poll taxes at least six months prior to said election.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## ELECTIONS—VOTERS

RICHMOND, VA., *October 3, 1921.*

MISS EMILY GLASCOCK,  
*Upperville, Va.*

MY DEAR MISS GLASCOCK:

It has always been my opinion that a person who voted in a Democratic primary assumed the moral obligation to support the nominees of that primary, and that such person could not vote against a nominee of that primary without committing a gross breach of faith. However, I know of no law which prevents one who voted in a Democratic primary from voting for a Republican in the general election, and this fact alone would not authorize the judges of election to refuse to permit such person to vote, or to throw his ballot out.

In answer to your question, "Can an American born woman who has married an Englishman vote in State elections?" I am of the opinion that unless her husband has become naturalized, she is not entitled to vote in Virginia, since the citizenship of a woman follows that of her husband. If she is a resident of Virginia, it will be necessary for her to pay a capitation tax, as the capitation tax is imposed not alone upon citizens, but upon all residents of the State twenty-one years of age or more.

Trusting this gives you the desired information, I am,

Yours very truly,

LEON M. BAZILE,  
*Second Assistant Attorney General.*

## ELECTIONS—VOTERS

RICHMOND, VA., *March 25, 1921.*

MR. HUGH CAMPBELL, *Registrar,*  
*Doswell, Va.*

DEAR SIR:

Acknowledgment is made of your letter in which you ask:

"Can anyone coming of age the day of the November election, register for the August primary?"

"Does everyone coming of age between May 8th and November 8th have to pay a poll tax before registering?"

"Do women over twenty-two have to pay more than one year's tax to register this year?"

"If Miss Annie Smith marries Mr. Arthur Jones, must her name be changed on the books to Mrs. Annie Smith Jones?"

Taking the questions in their order, no one can register without paying a State poll tax. Section 20 of the Constitution of Virginia and section 93 of the Code of 1919, each provide that, in order for a person to register, who comes of age at such time that no poll tax shall be assessable against him for the year preceding the year in which he offers to register, he must pay \$1.50 in satisfaction of the first year's poll tax assessable against him. Thus, any person coming of age between May 8 and November 8, 1921, must, in order to register, be assessed and pay a capitation tax for the year 1922.

With reference to a person coming of age in November voting in the August primary, the primary law provides (Code of 1919, sec. 228) that all persons qualified to vote in the election for which the primary is held, and not dis-

qualified by reasons of other requirements in the law of the party to which he belongs, may vote at the primary.

I am of the opinion, therefore, that a person coming of age the day of the November election, would be qualified to vote at that time, provided he had fulfilled the requirements of the law as to paying \$1.50 in satisfaction of his first year's poll tax assessable against him, and registered.

With reference to the third question, the act extending the right of suffrage to women (Acts of Assembly, 1920, p. 588) expressly provides that, in order to register in the year succeeding the year in which the act became effective, she must have personally paid the State poll tax assessed or assessable against her for that year. The act became effective in 1920, therefore, a woman can register by paying the poll tax for the year 1921.

I know of no provision for changing the name of a woman on the registration book, but I am of the opinion that even though a woman is registered as Miss Annie Smith, and before the election she marries and therefore her name is changed to Mrs. Annie Smith Jones, she has the right to vote under the registered name of Miss Annie Smith. If any question is raised, it would only be necessary to prove that she was the person who registered as Annie Smith and that was her name at the time, but that it had been changed by marriage since that time.

While the registrar cannot, in my judgment, change the name, I am of the opinion that it would be entirely proper for him to make a notation on the registration book opposite the name of Miss Annie Smith, that she had married and that her name was now Mrs. Annie Smith Jones, his attention being called to this fact by Mrs. Jones. This is in accord with an opinion rendered Hon. B. O. James on March 16, 1921, by Hon. John R. Saunders, Attorney General.

I will be glad to give you any further information you may desire in this matter.

Yours truly,

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

---

#### ELECTIONS—VOTING LIST

RICHMOND, VA., *October 17, 1921.*

MR. W. B. SNIDOW,  
*Harrisonburg, Va.*

MY DEAR SNIDOW:

Your letter, asking a copy of the opinion which I rendered with reference to the right of a person, whose name is not on the certified list, to vote on his tax receipts, has been received.

Enclosed you will find two copies of laws on the subject—one to Mr. J. C. Drake and the other to Mr. E. E. Rawlings, which I have cut from the report of the Attorney General for the year 1919.

From this you will see that a person, whose name does not appear on the certified list, cannot vote. This is due to the fact that the Constitution and statute provide that the certified list shall be conclusive evidence of the facts therein stated for the purpose of voting, and the facts stated in the certified list is that it is a list of those who have paid their capitation taxes for the three preceding years not less than six months prior to the election.

Of course there is an exception of young men becoming of age, or young

women, because they were not assessable for the three preceding years, and there is also an exception provided for in section 86 B, with reference to a voter who is transferred.

With kindest personal regards, I am

Yours,

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

---

ELECTIONS—VOTING LIST

R. J. N. REID, ESQ.,

RICHMOND, VA., *October 12, 1921.*

*Care The Enterprise,  
Purcellville, Va.*

MY DEAR MR. REID:

Your letter of October 7, 1921, came to the office in my necessary absence, and this is the first opportunity I have had to reply to the same.

I note that the newspaper clipping from the *Washington Evening Star*, sent me with your letter, states that the Court of Appeals of this State has decided "that any man who has paid his poll taxes for either 1918, 1919 or 1920, is eligible to vote in the November election. Heretofore county treasurers have refused to list a man as a qualified voter unless he could show poll tax receipts for three consecutive years. The court has held that a receipt dated within three years of a general election is eligible to vote."

It is hard to understand how a responsible newspaper can carry such an obviously false and misleading statement of the decision of the court. In *Zigler v. Sprinkel, Treasurer*, decided at Staunton September 29, 1921, the Constitution of Virginia, section 21, provides that as a prerequisite to the right to vote, unless exempted by section 22, one must personally pay at least six months prior to the election "all State poll taxes assessed or assessable against him under this Constitution during the three years next preceding that in which he offers to vote."

There is absolutely nothing in the decision of the Court of Appeals in *Zigler v. Sprinkel, supra.*, in conflict with this provision of the Constitution. This office has repeatedly held that the only tax which one is required to pay as a prerequisite to the right to vote, is the capitation tax which was assessed or assessable against him during the three years next preceding that in which he offers to vote, and, therefore, where a man became of age so that only one or two years' taxes were assessable against him, during the three years next preceding that in which he offers to vote, that if those taxes have been paid, he is entitled to go on the voting list and to vote, if otherwise qualified.

The same thing has been held with reference to a man becoming a resident of Virginia so that three years' capitation taxes were not assessable against him during the three years next preceding that in which he offers to vote. If any person in this State was assessed or assessable with capitation taxes during all, or any one, of the three years next preceding that in which he offers to vote, he is not entitled to be placed on the voting list nor to vote, unless he has paid all of his capitation taxes assessed or assessable against him during the three years next preceding that in which he offers to vote.

There is nothing in the decision of the Court of Appeals in conflict with this.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## ELECTIONS—VOTING LIST

RICHMOND, VA., *June 6, 1921.*

HON. G. STUART HAMM, *Treasurer,*  
*Charlottesville, Va.*

DEAR SIR:

Acknowledgment is made of your letter of June 3, 1921, in which you say:

“Kindly let me know whether I should put the ladies who qualified themselves to vote last fall, and also those who have paid their taxes up to the present time, on the voting list to be used in the coming primary.”

You can put the women voters who have paid their capitation taxes on the voting list, if you desire. However, it is not necessary to place their names on the voting list for the year 1921, as the first capitation tax assessed or assessable against a woman in Virginia, is for the year 1921, and therefore, all taxes paid at the present time, have been paid in advance, just as is the case where a young man coming of age after February 1st, pays his capitation tax for the succeeding year, in advance, so as to vote.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## ELECTIONS—VOTING LIST

RICHMOND, VA., *May 19, 1921.*

MR. CARROLL J. ROWE,  
*Treasurer,*  
*Heathsville, Va.*

MY DEAR SIR:

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

“Should the names of the women who paid their poll taxes prior to May 8, 1921, be put on the voting list which the law required treasurers to make five months prior to the November election?”

The women of Virginia, for the year 1921, stand on practically the same footing as a young man just coming of age in that year. The only capitation tax which they are required to pay as a prerequisite to the right to vote in the 1921 elections is the tax for the year 1921, which, under the provisions of section 21 of the Virginia Constitution, may be paid by them at any time up to the time that the primary is held for the purpose of voting therein, or up to the time the registration books for the November election are closed.

Therefore, while it is not necessary to place the names of women voters who paid their capitation tax prior to May 8, 1921, on the tax list, I am nevertheless of the opinion that it would be proper for you to do so and that it would materially aid the election officers in the performance of their duty on election day.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## FINES—COSTS IN CRIMINAL CASES

RICHMOND, VA., *March 19, 1921.*

MR. G. H. FOLTZ, J. P.,  
*Stanley, Va.*

DEAR SIR:

Acknowledgment is made of your letter, stating that upon fining a person, you have been instructed to add \$1.25 as a fee for the clerk of court for recording the fine, and you ask the authority for this instruction.

Section 2550 of the Code of Virginia, 1919, provides that the justice shall certify to the clerk of the circuit court of his county, or the corporation court of his city, the amount of every fine imposed by him, together with the costs, and whether the same has been paid.

Section 2552 of the Code provides that the clerk shall enter such certificates and receive a fee of twenty-five cents for entering such certificate.

Section 2563 provides that the clerk shall return to the Auditor of Public Accounts a list of fines imposed by the justices and recorded in his office.

Section 2566 provides that, for his services, the clerk, under sections 2563, *et. seq.*, shall receive a fee of \$1.00 on every fine, which fee shall be included in the execution for costs or retained by him when collected.

It is, therefore, obligatory upon you, in collecting the fines and costs, to include in the costs the sum of \$1.25 to be paid to the clerk.

Yours truly,

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

## ESCHEATS—DESCENT AND DISTRIBUTION

RICHMOND, VA., *March 8, 1921.*

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

DEAR SIR:

Acknowledgment is made of your communication of recent date, in which you enclose a letter from Mr. Albert Stuart, clerk of Westmoreland county, which is in the following terms:

"I am writing you for some information. A man died in this county last fall, an administrator qualified on the estate the 3d of December, 1920, and the appraisement was filed a few days ago, showing cash in bank \$8,485.81, and other personal property \$2.50.

"This man left no known heirs. I understand he was a Hungarian, and came to this country about forty years ago.

"The majority of this money was in a New York bank at the time of his death, but has since been brought here by the administrator.

"The statutes regarding the escheating of real estate are very plain, but very little is said regarding personal property, except to state that same does escheat.

"Thinking that you may be familiar with such cases, I am anxious to know what procedure I must go through and the proper time to act. Ordinarily an administrator has one year or one year and six months in which to settle his account, but I was thinking that under the circumstances it may be different in this case.

"I would appreciate a letter from you as to your idea of the procedure and the proper time for me to begin same."

It is provided by section 5275 of the Code of Virginia, 1919, as follows:

"To the Commonwealth shall accrue all the personal estate of each decedent, of which there is no other distributee."

Under this section of the Code the personal property of the man in question would pass to the Commonwealth if there is no other distributee of his estate, as provided for by section 5273 of the Code of Virginia, 1919, and not under the statutes relating to escheats.

I am of the opinion that the administrator, if unable to find a distributee of the estate, should submit the matter to the circuit court of the county, who will enter an order directing the payment of this money to the Commonwealth as distributee under the provisions of section 5275 of the Code of Virginia quoted above.

Yours very truly,

LEON M. BAZILE,  
*Second Assistant Attorney General.*

---

FINES—INFORMERS

RICHMOND, VA., *August 16, 1921.*

HON. W. POTTER STERNE,  
*Attorney for the Commonwealth,  
Dinwiddie, Va.*

DEAR SIR:

Acknowledgment is made of your letter of August 12th, in which you state that a justice of your county has the idea that half of the fine assessed against persons who violate the speed laws of this State should be paid to the officer making the arrest, as an informer.

The only provision in the automobile laws which permits a part of the fine to be paid to the informer is found in section 2163 of the Code of Virginia, 1919, which reads as follows:

"If any person shall use a number plate on any other machine than that for which it was issued, or if he shall use such plate on a machine for which it was issued, knowing that it is of a higher horse power than that indicated by the license, in either case he shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than ten nor more than fifty dollars, one-half of which shall be paid to the informer, if he be not an officer of this Commonwealth. If he be such officer there shall be taxed in the costs in his favor the sum of five dollars."

You will see from this section that half of the fine can be paid only where the informer is not an officer. Moreover, this section does not apply to prosecutions for a violation of the speed law, but is limited only to two cases:

1. Where one has used a number plate on a machine other than that for which it was issued; and
2. 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, can half of the fine be paid to the informer, provided he has complied with the law which requires his name to be written on the warrant prior to its service, so that he is subjected to the payment of the cost in case the charge is dismissed, and, moreover, the informer must not be an officer in order to obtain half of the fine.

In the two cases provided for by section 2133 of the Code of 1919, if the informer is an officer, then there is to be taxed in the costs in his favor, the sum of \$5.00. However, if not entitled to such taxed fee except for prosecutions under this section, and where a person is arrested and convicted merely for speeding, the justice of the peace has no right to tax such fee for the officer making the arrest, and the officer making the arrest has no right to receive the same.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

#### FINES—SATISFACTION OF

RICHMOND, VA., May 24, 1921.

HON. ALEXANDER H. LIGHT,  
*Commonwealth's Attorney,*  
*Rustburg, Va.*

MY DEAR MR. LIGHT:

Acknowledgment is made of your letter of recent date, addressed to the Attorney General, in whose absence from the office I am taking the liberty of answering. In your letter you say:

"At the May term of the court which ended on the 14th, E. H. Mitchell and Henry DePriest pleaded guilty to manufacturing whiskey without a license, and Judge Wm. R. Barksdale, presiding, gave them sixty days on the road each, and fined them \$200 each and in addition thereto required them to pay \$50 expenses incurred by the deputy sheriff and the officers of the Gladys law enforcement league running down, capturing and destroying the still and outfit. Each of the parties is a son of a well-to-do family and have some property in their own names. They have already begun their term of service on the road, and they say they are going to work out the sixty days, also the fine and cost and the \$50 allowed the deputy sheriff and the law enforcement league of Gladys.

"We desire your opinion as to their right, when they have property out of which the fine and cost and \$50 can be made, for them to work these matters out on the county road instead of paying them.

"My opinion is that they can work out the sixty days and that we can issue an execution for the fine, cost and \$50 just like any other execution for a judgment, and have it levied on any property that they own, and that they cannot claim any exemption as to the fine and cost, and so on, because it is due the State of Virginia."

It is provided by section 2559 of the Code of Virginia, 1919, in part, that—

"\* \* \* The clerk shall, immediately after the term is ended, issue a writ of *feri facias*, returnable within ninety days, on every judgment for a fine rendered at such term or the court may, for good cause shown, direct a writ of *feri facias* to be issued during the term, on any such judgment."

Section 4953 of the Code of Virginia, 1919, provides that where a person is confined in jail until his fine and costs, or the costs where there is no fine, are paid, shall be imprisoned for the time specified in the statute, dependent upon the amount of the fine or costs, after which such person shall not thereafter be imprisoned for failure to pay the fine and costs, or costs, in the case. The statute concludes, however, "but nothing herein or in the preceding section shall prevent the issue of a writ of *feri facias* after such release from jail."

The Court of Appeals of Virginia, in *Quillin v. Commonwealth*, 105 Va. 874

(1906) in construing section 4075 of the Code of Virginia, 1904, the section from which section 4953 of the Code of Virginia, 1919, was taken, said with reference to the above-quoted language from that statute (p. 881):

"This shows that the fine and costs are not satisfied by the imprisonment, which is but a means of enforcing payment and the punishment is not complete until the judgment of the court has been fully discharged."

It would therefore clearly appear that the fine and costs in a criminal case can be collected by a *feri facias*, even after the person convicted has been imprisoned for the non-payment thereof, and has been discharged after serving the time prescribed by section 4953 of the Code as a further penalty for the nonpayment of such fine and costs.

I am therefore clearly of the opinion that you have reached the right conclusion in this matter, and that such fines and costs may be collected by *feri facias* if the parties convicted have any property out of which the same may be made.

Yours very truly,

LEON M. BAZILE,  
*Second Assistant Attorney General.*

---

#### GAMBLING—SLOT MACHINES

RICHMOND, VA., October 3, 1921.

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

MY DEAR SIR:

Acknowledgment is made of your letter of October 1, 1921, with which you refer to me for attention, a letter from D. R. Hunt, Esq., a commissioner of the revenue of the city of Roanoke, and a letter to the latter from S. F. Small.

It appears that Mr. Small has made application to the commissioner of revenue for a license to operate a slot machine. This machine, it is stated, is operated with nickels deposited by the customer, in return for which he receives a five-cent package of gum in each and every instance. In addition to this, an indicator on the face of the machine specifies before the coin is deposited the number of trade checks to be received by the purchaser of the gum, such checks to be redeemable for merchandise at the value of five cents each. There are no blanks, and a standard five-cent package of gum is delivered for each nickel deposited, and the indicator in the window shows in advance just how many premium trade checks the customer will get.

It will be seen from the above statement of facts that no element of chance enters into this transaction. The purchaser buys from the machine rather than an individual a package of chewing gum for which, in addition to the gum, he receives a certain number of trade checks, always the same number indicated before the purchase is made.

This is a transaction upon the same principle as one where trading stamps are given with the purchase of goods, which the Court of Appeals decided, in *Commonwealth v. Young*, 101 Va. 853; 45 S. E. 327, to be a legal transaction. The fact that the number of trade checks given with each purchase varies from day to day is immaterial, as the purchaser is always informed what amount of checks he will receive for his purchase before the same is made.

There are unquestionably a number of machines on the market which can be and no doubt are used in violation of the law, but certainly the machine in question, if operated as stated in the communication to Mr. Hunt, is legitimate and does not violate the gambling and lottery laws.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

---

GAMBLING—SLOT MACHINES

HON. S. R. PRICE,  
*Commonwealth's Attorney,*  
*Roanoke, Va.*

RICHMOND, VA., *November 22, 1921.*

DEAR SIR:

Acknowledgment is made of your letter of the 21st regarding the matter of slot machines now being operated in your city. Since its receipt, I have examined the letter of Hon. C. Lee Moore, Auditor of Public Accounts, to me, dated October 1, 1921, and my reply of October 3d, in connection with the above matter.

I would state in this connection that Mr. Hunt, the commissioner of revenue, of your city, happened to be in the office the day I wrote this letter to Mr. Moore, and we discussed it very fully. I am still of the belief that the opinion I expressed on the facts furnished me is correct.

I note you say in your letter that there is this additional fact in connection with the operation of these machines, which was not presented to me for consideration at the time my opinion was written, namely: That while the purchaser knows exactly what he will get the first time he drops a nickel in the slot that he further knows that if he drops another nickel in the slot after the first play is made, he will receive from two to twenty trade checks. I assume, however, that before the second play is made, the window indicates exactly how many trade checks will be delivered to him before the second nickel is deposited; *i. e.*, that before each play is made, the man depositing the nickel in the slot knows exactly what he will receive. If this is so, I cannot see that there is any violation in the law, since no element of chance enters into each individual play.

However, if you are still of the opinion that these machines violate the law, I would suggest that the matter be tested in court, where it can be finally passed upon and determined.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

---

ACCOUNTANTS—WHO ELIGIBLE FOR EXAMINATION

MR. J. H. BRADFORD, *Statistician,*  
*Governor's Office,*  
*Richmond, Va.*

RICHMOND, VA., *November 4, 1921.*

MY DEAR MR. BRADFORD:

Acknowledgment is made of your letter of November 3d, which I found on my desk on my return to the office this morning. In your letter you state that you filed your application with the Virginia State Board of Accountancy for permission to take the certified public accountants' examination.

You further state that, in your application to take the examination, you set out the fact that you were employed for three years by the Federal Trade Commission as auditor, and that during this period you were engaged in independent auditing work and conducting independent audits in the paper manufacturing industry and the lumber industry. You also say that you stated in your application that you had previously been employed in auditing work for the United States Tariff Board and the United States Census Bureau.

I am further informed by you that this work involved the auditing and checking of books of account, etc.

With your letter you enclose a copy of a letter from Hon. A. T. Henderson, Secretary of the State Board of Accountancy, in which your application is rejected on the ground that your auditing work does not bring you within the provisions of section 568 of the Code of Virginia, 1919, which provides, in part, as follows:

“No person shall be permitted to take such examination unless he shall have been practicing on his own account as a public accountant for at least one year; or shall have been employed in the office of a public accountant, as an assistant, for at least two years; or shall have been employed as a bookkeeper for at least three years.”

The term “audit” has been judicially defined by the New York court in *People v. Green*, 5 Daly 194, 200, as follows:

“ ‘Audit’ means to examine, settle, and adjust accounts; to verify the accuracy of the statements submitted to the auditing officer or body. The term is confined to the investigation of ‘accounts,’ the examination and allowance of which is termed ‘auditing.’ ”

In *People v. Gilroy*, 31 N. Y. Supp. 776, 82 Hun. 500, the court held that—

“to audit an account is to examine and ascertain whether it is accurate, and such is its use, as amended, providing that the board of estimate and apportionment was authorized to audit and allow claims for advertising notices, etc.”

In *Machias River Co. v. Pope*, 35 Me. 22, it is said:

“To audit is to examine an account; compare it with the voucher, adjust the same and to state the balance by persons legally authorized for the purpose.”

The work of an auditor is equivalent to that of a bookkeeper. Indeed, in many respects, it requires greater skill and therefore, being engaged as auditor is equivalent to being engaged as bookkeeper for that length of time. I am therefore of the opinion that you are eligible to take the examination in question.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

## GAME AND FISH—BLACK BASS

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

RICHMOND, VA., *December 2, 1921.*

DEAR SIR:

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

"We are asked, 'If a dealer in this State can handle chub or black bass caught in season and shipped into Virginia from North Carolina.' We would like to have your opinion on this question."

Under the provisions of section 3195 of the Code of Virginia, 1919, subsection 3, black bass may be bought and sold in Virginia at certain times of the year. Also, black bass caught with nets may be sold at certain seasons of the year under the provisions of chapter 64 of the Acts of 1919, found on page 75 of the game laws relating to the taking of fish from Back Bay in Princess Anne county.

Inasmuch as black bass caught in Virginia may be lawfully bought or sold at certain seasons of the year, I am of the opinion that black bass caught in North Carolina and shipped into Virginia may be legally sold in this State under the same regulations prescribed for the sale of black bass caught in Virginia.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## GAME AND FISH—BASS

MR. ARTHUR L. HEADLEY,  
*Callao, Va.*

RICHMOND, VA., *September 8, 1921.*

DEAR SIR:

Acknowledgment is made of your letter of September 5th. In reply thereto, I would refer you to chapter 324 of the Acts of 1918, page 497, and chapter 433 of the Acts of 1920, page 633.

By reference to chapter 324, you will see that the second paragraph provides that it is unlawful to kill or capture a river bass, commonly called black bass or black perch, or pond bass, commonly called southern chub, between the 15th day of March and the 15th day of June of each year, or to shoot, spear, trap or net the same at any time; provided, that in the waters of the Piankatank river in the counties of Middlesex and Mathews, said fish may be caught at any time except between the 1st day of April and the 15th day of June of each year.

Chapter 433 of the Acts of 1920 amended this law in the following particular, and provided that it was lawful for the owner, lessees or sublessees of ponds in Middlesex or any other county to capture pond bass (commonly called southern chub), not for sale, in such ponds as may be stocked by such owners or lessees at any time.

I do not think, however, that under the law as quoted, and the amendment thereto, that it is lawful to spear, trap or net black bass, even though they may be in private ponds.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## GAME AND FISH—COSTS`

RICHMOND, VA., *January 21, 1921.*

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

DEAR SIR:

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

"The department desires from your office a ruling as to whether, under the provisions of section 3343 of the Code of 1919, a person who causes a warrant to be issued charging a party with violation of the game laws, and a conviction is obtained, is entitled to the fee of \$2.50 to be taxed as costs in favor of the person making the arrest or instigating the prosecution.

"A case has arisen, under the jurisdiction of this department, in which a farmer caused warrants to be issued against parties for unlawful hunting. These warrants were placed in the hands of a special warden, and by him served. The question now arises, is the farmer or the game warden entitled to the fee of \$2.50? The farmer claims that inasmuch as he instigated the prosecution, he is entitled to the fee."

It is provided by section 3343 of the Code of Virginia, 1919, as follows:

"When an arrest or a prosecution for a violation of the game and fish laws by the Commissioner, or by any warden or other officer is had or instigated, and the defendant is convicted, there shall be taxed as costs in favor of the person making the arrest or instigating the prosecution, a fee of two dollars and fifty cents. No such fee shall be allowed in cases of acquittal. And in addition any special warden or other officer or other person shall receive one-half or fifty per centum of the actual cash fines collected from the defendant, upon a conviction, to be paid by the officer making the collection at the time of payment, in each prosecution instigated by said warden, officer or other person, and in addition thereto such warden or officer shall be paid the same fees as other officers are paid for serving warrants, making arrests, and serving subpoenas and summons, said fees to be included in the costs taxed against the defendants and shall be paid out of the game fund in the event of failure to convict or if they cannot be collected from the defendant."

I am of the opinion that the fee of \$2.50 allowed by this section must be taxed in favor of the commissioner or game warden, or other officer making the arrest or instigating the prosecution, and that it cannot be taxed in favor of one who does not occupy such position.

In the case suggested by you, however, if the farmer had his name written on the warrant as the prosecutor before the warrant was served on the accused, one-half of the fine should be paid to him.

It is not the policy of the law to permit fees to be taxed as a part of the costs in favor of persons other than officers, and I am of the opinion that section 3343 of the Code, in spite of the somewhat ambiguous language, cannot be construed as to permit the taxing of a fee in favor of one other than an officer.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

## GAME AND FISH—DEER

RICHMOND, VA., *January 6, 1921.*

MR. H. A. LIPSCOMB,  
*Chase City, Va.*

DEAR SIR:

I am in receipt of your telegram of the 6th, which is as follows:

“According to 1919 Code you can kill deer until February 1st. Is that correct?”

In reply, I will state that you have quoted the law correctly, but the same section which prescribes the time in which deer may be killed or hunted, also prescribes that the board of supervisors of any county shall have the power to shorten the season. Of course, if the board of supervisors of your county has shortened the season, deer cannot be killed as late as up to February 1st.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## GAME AND FISH—DOG LAW

RICHMOND, VA., *May 9, 1921.*

HON. CECIL CONNOR,  
*Commonwealth's Attorney,  
Leesburg, Va.*

DEAR SIR:

Acknowledgment is made of your letter of May 5th, in which you say, in part:

“I would be glad to have your opinion as to whether section 2319 of the Code of 1920 has been repealed by ‘The Dog Law’ approved March 20, 1918, and as amended by the act approved March 20, 1920, or whether this section of the Code should be applied in construing section 5 of said dog law.

“You will observe that there is no method prescribed by the act of March 20, 1920, as to how a claimant shall establish his claim or what degree of proof shall be required by the treasurer as a prerequisite to payment.”

As you say, section 5 of chapter 390 of the Acts of 1918, as amended, does not provide any machinery for the payment for damage done by dogs. The act, therefore, is not in conflict with section 2319 of the Code of Virginia, 1919, which does prescribe the method by which such damage may be ascertained and assessed.

I am therefore of the opinion that section 2319 of the Code of Virginia, 1919, not being in conflict with section 5 of chapter 390 of the Acts of 1919, as amended, is still in force and must be followed by those seeking to obtain payment out of the county treasury for injuries inflicted by dogs.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## GAME AND FISH—DOG LAW

RICHMOND, VA., January 10, 1921.

MR. R. A. PEED,  
*Commissioner of the Revenue,*  
*Owens, Va.*

DEAR SIR:

Acknowledgment is made of your letter asking whether it is the duty of the commissioners of the revenue of Virginia to assess dogs in this State for taxation, and whether they are entitled to compensation for such service.

The law with reference to dogs enacted in 1918, Acts of Assembly 1918, page 622, providing that the commissioners of the revenue shall list dogs for taxation, was changed by an act approved March 22, 1920, Acts of Assembly 1920, page 602, which eliminated the provision for assessing dogs by the various commissioners of the revenue. The second section of this latter act provides that each person shall pay, on his dog, a license tax to the treasurer, which shall 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."

It is thus manifest that the commissioners of the revenue are no longer required to assess or list dogs for taxation, and it follows from this that there is no provision for compensation to them if they do list or assess dogs.

Yours truly,

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

## GAME AND FISH—DOG LAW

RICHMOND, VA., January 4, 1921.

JAS. S. EASLEY, ESQ.,  
*Attorney at Law,*  
*Houston, Va.*

MY DEAR MR. EASLEY:

Acknowledgment is made of your letter of January 3d, in which you request me to advise you whether or not, under section 5 of chapter 390 of the Acts of 1918, the owner of fowls killed by dogs is entitled to the compensation therein provided for, such fowls not being assessed for taxation in this State.

It was my opinion that, under section 5 of chapter 390 of the Acts of 1918, the owners of fowls killed by dogs was not entitled to the compensation provided for in the act, since such fowls are not assessed for taxation. The legislature, however, amended chapter 390 of the Acts of 1918, and among the amendments thereto was an amendment to section 5 thereof (Pollard's Supplement, 1920, p. 601), which section, as amended, reads as follows:

"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."

In its amended form, I am of the opinion that the owner of fowls killed or injured by a dog is entitled to receive compensation therefor at the fair value of such fowl out of the fund derived from dog licenses.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

---

GAME AND FISH—DOG LAW

MR. C. H. TINSLEY,  
*Commissioner of the Revenue,  
Rapidan, Va.*

RICHMOND, VA., *March 28, 1921.*

DEAR SIR:

Acknowledgment is made of your letter in which you state that in accordance with a letter received by you, you listed in March or April of 1920, all dogs which you could find in your district. You ask whether or not you were correct in so doing.

Under an act of the legislature, approved March 20, 1918 (Acts of Assembly 1918, p. 622, as amended by an act approved September 5, 1919, p. 41), you were authorized, and it was your duty, to list all dogs. This act was further amended by an act approved March 22, 1920 (Acts of 1920, p. 602) relieving the commissioner of the revenue from thereafter listing dogs. The act, as amended, went into effect June 19, 1920, and after that time, there was no duty or authority imposed on you to list dogs.

You state that the circular letter referred to by you had been mislaid, and ask that we send you a copy. The letter did not emanate from this office, and we have no copy of it. We called up the Department of Game and Inland Fisheries, which has charge of the dog law of Virginia, and they stated that they did not send out the letter and had no copy of it. We then took the matter up with the Auditor of Public Accounts, and he advised us that in accordance with a request of like nature received by him from you, if he could find a copy of the letter he would send it to you as soon as possible.

Yours truly,

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

---

GAME AND FISH—DOG LAW FINES

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

RICHMOND, VA., *April 25, 1921.*

DEAR SIR:

Acknowledgment is made of your letter of the 22d instant, in which you say:

"I am enclosing a letter received from Game Warden Johnson in Scott county, with the request that you advise me as to the law governing the points raised by Johnson.

"The trouble in Scott county seems to be that fines imposed by magistrates for violations of the dog law are never collected. This, of course, makes it difficult for an efficient enforcement, and I would be glad to have you advise me as to how the department should proceed when confronted with a situation of this kind."

It is provided by section 2550 of the Code of Virginia, 1919, that within thirty days after every trial, the justice shall, among other things, certify to the clerk of the circuit court of his county, or the corporation court of his city, the amount of every fine imposed by him, together with the costs and whether the same has been paid.

The clerk is required to make a report of these fines to the court under the provisions of section 2551 of the Code of Virginia, 1919, as amended, and by section 2552 of the Code of Virginia, 1919, the clerk is required to enter all such certificates in a suitable book, and if the fine and costs have not been paid, as required, to forthwith issue a writ of *feri facias* therefor and afterwards, such other process from time to time as may be proper, in the same manner as if such fine had been imposed by the court of his county or city.

By the provisions of section 2554 of the Code of Virginia, 1919, the Commonwealth's attorney is required, at the terms of the circuit and corporation court held on or next succeeding the first day in January and July in each year, to examine the book required to be kept by section 2552, and whenever it appears that a writ of *feri facias* or *capias profine* has been delivered to an officer for ninety days and has not been returned, or if returned satisfied it does not appear that the fine and costs have been paid to the clerk of the court as required, to apply to the court for a rule against the officer and his sureties on his official bond.

The reason given by Mr. Johnson in his letter to you, dated April 19, 1921, which is enclosed with your letter, for the non-collection of these fines, is that "the sheriff is bitter against the law and will not collect them."

I assume from this that it is the charge of the game warden that the sheriff is deliberately neglecting the duties imposed upon him by the law. If this be so, ample remedy is afforded by the provisions of section 2705 of the Code of 1919, commonly known as the "Ouster Law," which gives to the circuit courts of the counties and the corporation courts of cities the power to remove from office all State, county, city, town and district officers, elected or appointed, except such officers as are by the Constitution removable only and exclusively by methods other than those provided for by this and the following section for malfeasance, misfeasance, incompetency, gross neglect of official duty, or who shall knowingly or willfully neglect to perform any duty enjoined upon such officer by any law of this State, etc.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

---

#### GAME AND FISH—DOG LAW

RICHMOND, VA., July 27, 1921.

HON. F. NASH BILISOLY,

*Commissioner of Game and Inland Fisheries,*

*Richmond, Va.*

DEAR SIR:

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

"The city of Richmond has petitioned the Game Department to turn over to the Medical College of Virginia, for experimental purposes, a number of dogs of no known ownership taken up by game wardens in the city.

"The law requires game wardens to destroy all unlicensed dogs of no known ownership, and I am writing to ask whether in your opinion dogs destroyed in the manner indicated at the Medical College of Virginia would be disposed of according to law.

"It has been customary, I am advised by the city, in years past for the city to turn over a number of dogs to the college, and this department is not averse in continuing the practice if the same in your opinion be lenient."

Chapter 413 of the Acts of 1920, section 4, provides in part as follows:

"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."

While the language of the act is sweeping in its terms, nevertheless I am of the opinion that the object of the law is to obtain the destruction of such dogs and, therefore, it would not be a violation of the law for some of these dogs to be turned over to the Medical College for experimental purposes, the result of which would be the destruction of the dogs.

Yours truly,

JNO. R. SAUNDERS,  
*Attorney General.*

---

GAME AND FISH—DOG LAW

RICHMOND, VA., *August 3, 1921.*

MR. HENRY S. ELEY,  
*Treasurer,*  
*Suffolk, Va.*

MY DEAR SIR:

Your letter of July 30th, which is as follows, was received today:

"The county game warden is here at the present time looking after the dogs that have no tags, and we have been called upon several times regarding the right of the game warden to kill dogs with no tags on at sight. The question arose from the killing here a day or two ago of a valuable bird dog. The owner of the dog had purchased a tag just a few days prior to the killing, the dog having recently come into the country, but for some reason had not put the tag on the dog. It seems the warden killed the dog without apparently making any effort to ascertain the ownership. Is it not the duty of the warden first to ascertain the ownership of the dog before killing him, especially so if it is the first time he had caught him running at large without a tag? In a lot of cases the owners of dogs buy tags and they lose them, and they do not notice that the tag is gone. Please advise me as early as possible."

The first part of section 4 of the dog law which is found in the Acts of 1920, page 605, provides as follows:

"It shall be the duty of any game warden, regular, special or ex-officer, or the privilege of any person, who may find or know of a dog running 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 running at large contrary to the provisions of this act, 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. \* \* \*

The 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 be killed, the game warden is required to notify the owner if the dog be found killing, injuring or chasing sheep, etc.

I am therefore of the opinion that it is the duty of the game warden to notify the owner of the dog if such owner be known before proceeding to kill him, and if not known, in my judgment, he should use a reasonable effort to ascertain the ownership.

I would be glad if you would submit this question to your Commonwealth's Attorney, as he is your legal advisor.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

---

#### GAME AND FISH—DOG LAW

RICHMOND, VA., *July 9, 1921.*

HON. W. POTTER STERNE,  
*Commonwealth's Attorney,*  
*Dinwiddie, Va.*

DEAR SIR:

Acknowledgment is made of your letter of July 8, 1921, addressed to the Attorney General in whose necessary absence from the office, I am taking the liberty of answering.

In your letter you state that a claim has been filed with the Board of Supervisors for two rabbits, called New Zealand rabbits, killed by dogs, which dogs did not belong to the parties owning the rabbits and making the claim.

The law governing the matter in section 5 of chapter 413 of the Acts of 1920, reads as follows:

“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 be seen from this, as suggested in your letter, that the only question to be determined is whether or not a rabbit is to be regarded as being either stock or fowl. Obviously, a rabbit is not a fowl. According to the common understanding, I do not see how a rabbit could be regarded as stock, although I have been unable to find any authorities on this question.

In *Selma Street and Suburban Railway Company v. Martin*, 2 Ala. Appeals 537, 543. 1911, it was held that the word “stock” did not include within its meaning a dog. On the other hand, you will see from examination on the subject in words and phrases, that “stock” has been held to include the ordinary domestic animals, such as cattle, horses, sheep and hogs.

In the Standard dictionary, I find that a rabbit has been defined as "a rodent of the genus *Lepus*." From this it would not appear that a rodent has generally been regarded as stock.

Trusting that this will be an aid to you in arriving at a correct determination of the matter, I am,

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

---

GAME AND FISH—DOG LAW

RICHMOND, VA., *April 18, 1921.*

MANLY H. BARNES, ESQ.,  
*Commonwealth's Attorney,*  
*Providence Forge, Va.*

DEAR MR. BARNES:

Acknowledgment is made of your letter of April 7th, in which you request me to advise you whether it is the duty of the Commissioner of the Revenue, under section 2316 of the Code of Virginia, 1919, to list dogs.

On January 10th of this year, my Assistant gave an opinion on the subject of your inquiry to R. A. Peed, Esq., Commissioner of the Revenue, Owens, Va., in which I concur, and copy of which I enclose.

As stated in that letter, the dog law of 1918 made special provision for the assessment of dogs by the Commissioner of the Revenue and for the fees to be paid him for the work provided for. This law was amended and re-enacted by chapter 413 of the Acts of 1920, in which law the provision with reference to the assessment of dogs by the Commissioner of the Revenue, was omitted. I am therefore of the opinion that it was the intention of the legislature in amending this law, to relieve the Commissioner of the Revenue of the duty of assessing dogs.

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

---

GAME AND FISH—FEES OF GAME WARDENS

RICHMOND, VA., *July 9, 1921.*

WM. M. MARTIN,  
*Justice of the Peace,*  
*Sweet Hall, Va.*

DEAR SIR:

Acknowledgment is made of your letter of July 8, 1921, addressed to the Attorney General, which came to this office in his necessary absence, to which I am replying.

In your letter you say:

"Please advise me of your opinion relative to the game laws where a warden serves a warrant on a party to appear for trial but does not take the body of the person in possession, whether said warden is entitled to fifty (.50) cents or one (\$1.00) dollar for such service."

You are entirely correct in your view of the law. Where the party is merely summoned to appear, the officer summoning him is entitled to only fifty cents'

The \$1.00 is paid only where the body is taken and the person arrested is brought before a proper officer, and required to give bail for his appearance.

Yours very truly,

LEON M. BAZILE,  
*Second Assistant Attorney General.*

---

GAME AND FISH—GAME WARDENS

RICHMOND, VA., *June 30, 1921.*

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

MY DEAR SIR:

I beg leave to acknowledge receipt of your letter of recent date, together with certain correspondence enclosed therewith. Your letter and correspondence reveal the fact that in the county of Prince Edward, Va., the board of supervisors of that county has appointed a game warden who is now undertaking to enforce the dog law in said county. You desire to be advised—first, whether the board of supervisors in any county in this State has authority to appoint game wardens, and such appointee authority to arrest for violation of the game, inland fish and dog laws.

In response to your inquiry, I beg leave to state the following: That section 3319 of chapter 130 of the Code of Virginia, 1919, which chapter deals with the law pertaining to hunting, provides as follows:

“The Commissioner shall appoint from a list of ten suitable persons to be furnished to him by the board of supervisors of each county or the council or similar governing body of each city, such regular and special game wardens in each county and city of this State as he may deem necessary to enforce the laws, which appointment shall be based upon a practical knowledge of the animal, bird and fish life and game laws of this State, and such persons so appointed shall be known as game wardens, and shall hold office during the pleasure of the Commissioner appointing them, and until their successors are duly appointed. There shall not be less than one regular warden in each county.”

You will observe from a reading of this section, that no one has the authority to appoint any game warden in any county, except the Commissioner of Game and Inland Fisheries. Of course, you understand that certain officers in the State, by virtue of the office which they hold, are made ex-officio game wardens.

Section 3321 of the Code of Virginia provides that all regular and special game wardens shall be subject to the supervision and direction of the Commissioner, and subject to removal by him, in his discretion.

Section 3322 of the Code of Virginia provides that before any game warden shall enter upon the discharge of his official duties, he shall be required to give bond before the clerk of the circuit court of his county or the corporation court of his city, in the penalty of \$1,000.00 conditioned that he will faithfully discharge the duties incident to the office and account for all money coming into his hands, etc.

The legislature of Virginia, at its session in 1918, passed a statute which is found in chapter 390 of the Acts of 1918, commonly known as the dog law. This statute was amended by the legislature at its session in 1920, which is

found in chapter 413 of the Acts of 1920, page 602. Section 8 of this statute, found on page 607 of the Acts of 1920, provides as follows:

"The department of game and inland fisheries is specially charged with the enforcement of this law, and to that end is authorized to use so much of the funds herein above directed to be paid out of the dog license fund of each county, city, and town to the auditor of public accounts to the credit of said department of game and inland fisheries, as it may deem advisable. All acts or parts of acts, local or general, in conflict with this act are hereby repealed."

I have therefore reached the following conclusion in connection with this matter:

First, that the board of supervisors of a county in this State has no authority whatever to appoint a game warden, and inasmuch as the boards of supervisors have no authority to make such appointment, is without authority in law.

Second, that no justice of the peace before whom a party is brought charged with a violation of the game or dog law has authority to collect from said party any money for costs unless said party is convicted and when convicted, the justice of the peace has no authority to remit the fine.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

---

#### GAME AND FISH—HUNTING LICENSES

MISS ELIZA A. LEE,  
*Gloucester, Va.*

RICHMOND, VA., *October 29, 1921.*

MY DEAR MISS LEE:

Acknowledgment is made of your letter, asking whether it will be necessary for men and women to obtain a hunting license to follow dogs for a coon hunt.

Section 3333 of the Code of 1919 provides that no person shall hunt outside of the limits of his own or adjoining property except as provided in section 3334, without first obtaining a license permitting him to do so.

Section 3334 provides that all owners and landlords and members of their families and tenants and renters residing thereon, with the consent of the land owners, may hunt upon their own or adjoining lands without licenses.

I shall be very glad to give you any further information in my power in regard to this matter.

Yours truly,

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

---

#### GAME AND FISH—HUNTING LICENSES

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

RICHMOND, VA., *November 22, 1921.*

DEAR SIR:

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

"We have a request from Hon. J. W. Adams, clerk of the corporation court, Fredericksburg, Va., stating that he has application for hunting

licenses from foreigners who have been residents in Virginia for several years, but who are not yet naturalized.

"Mr. Adams wishes to know whether they are considered aliens or does the fact of their accredited residence entitle them to a resident hunting license. You will note that the game laws provide for a higher fee for aliens than they do for residents and non-residents hunting in this State."

If you will examine section 3328 of the Code of Virginia, 1919, you will find it provides in part as follows:

"Any person who has been a bona fide resident of this State for six months next preceding the date of application may procure a county hunter's license for himself. \* \* \*"

Section 3329 of the Code of Virginia, 1919, provides, in part, that

"Any person who has been a bona fide resident of this State for six months next preceding the date of application may procure a State hunter's license for himself. \* \* \*"

Section 3331 of the Code of Virginia, 1919, which is the section which relates to hunting licenses for aliens, provides as follows:

"Any non-resident person not a citizen of the United States shall pay the sum of twenty dollars for a State license; but any person not a citizen of the United States who owns real estate in this State and who has actually resided in this State for a period of at least five years, shall, for the purposes of this chapter, be considered a citizen of this State, and shall pay the tax required of citizens of this State."

You will see from an examination of the foregoing Code sections, that any person, whether citizen or alien, who has been a bona fide resident of this State for six months next preceding the date of application, may procure a county license. The language used in section 3331 of the Code with reference to a residence of five years in Virginia by an alien, in my opinion, is limited to those aliens who seek a State license, and not to those who apply for a county license.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

---

#### GAME AND FISH—POLLUTION OF STREAMS

RICHMOND, VA., July 25, 1921.

HON. F. NASH BILISOLY,

*Commissioner of Game and Inland Fisheries,  
Richmond, Va.*

DEAR SIR:

Acknowledgment is made of your letter of July 19, 1921, with reference to the pollution of streams in this State by paper mills, in which you ask whether there is any method by which this pollution can be stopped, as the effect thereof is to destroy the fish life in the water.

In response thereto, I call your attention to the provisions of section 3195 of the Code of Virginia, 1919, paragraph 4, which was formerly section 108 of the Code of 1904.

I also call your attention to the opinion of the Hon. John Garland Pollard, Attorney General, to the Commissioner of Game and Inland Fisheries, on

December 12, 1916, found in the report of the Attorney General for 1917, pages 112 and 113, in which the authorities on this subject are collected.

Trusting that this gives you the desired information, I am,

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

---

GAME AND FISH—POSTED LANDS

RICHMOND, VA., *October 26, 1921.*

HON. WM. STANLEY BURT,  
*Commonwealth's Attorney,*  
*Claremont, Va.*

DEAR SIR:

Acknowledgment is made of your letter of the 25th, in which you say:

"Section 3338 of the Code prohibits the hunting on the lands of another (when proper notices have been posted) without written permission of the land owner.

"The final clause of this section specifically excepts from its operation 'coon, opossum, beaver, skunk, fox or deer hunters.'

"I have not been able to find any other statute making this class of hunters amenable, as are all others, and it would seem, therefore, that they can be proceeded against only for statutory trespass, and that the fine of from \$5.00 to \$25.00 as provided by section 3338 cannot be imposed for hunting on the lands of another."

Section 3338 of the Code of Virginia, 1919, reads 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. \* \* \*"

It seems clear from the language used in the last sentence of section 3338 that it was not intended to apply to coon, opossum, beaver, skunk or deer hunters and therefore such hunters cannot be proceeded against for a violation of this section when they do no more than hunt on lands posted in accordance therewith.

You also say:

"The question has also arisen concerning the right of hunters to follow their dogs in the chase on the land of another, properly posted, when the game is flushed on land on which they were legally hunting."

I am clearly of the opinion that a hunter has no right to follow his dogs on posted land without first obtaining the consent of the owner so to do, even though the game is flushed on land on which the hunter is legally entitled to hunt. The fact that the game takes refuge on the land of another does not authorize a hunter to violate the plain mandate of the law.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

## GAME AND FISH—POWER OF BOARDS OF SUPERVISORS

RICHMOND, VA., *December 21, 1921.*

MR. E. C. BURKS,  
*Attorney at Law,*  
*Bedford, Va.*

MY DEAR MR. BURKS:

Acknowledgment is made of your letter of December 19th, to which I will reply at once. You state that the question has arisen in your county as to the right of the board of supervisors to fix the date for the opening of the hunting season at a later date than that fixed by statute.

The fifth paragraph of section 3356 of the Code of Virginia, 1919, provides that

"The board of supervisors of any county shall have the power to shorten the open season in their said county, and by regulations not inconsistent with the provisions of this section may further protect the game within their said county, and may include in such protection other game not specifically mentioned in this section."

From a reading of this paragraph, you will see that it was clearly the intention of the legislature to vest in the boards of supervisors for the further protection of game, the power to *shorten* the season which was fixed by the statute.

I am of the opinion that the law clearly provides and fully contemplates that the board of supervisors of any county shall have a right to say that the hunting season shall not open on the first of November as fixed by statute, but may provide that it shall open at a later date. In other words, having been given the express authority to shorten the season, the board would have the right to fix the time for the opening of the season at a later date than that fixed by the statute, or closing it at an earlier date.

I would further state that this has been done by a good many boards of supervisors throughout the State. I am not familiar with any decision of a circuit court judge in reference to this matter, but I cannot see how any other construction can be placed upon the statute than the one expressed herein.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## GAME AND FISH—SCOTT COUNTY FISH LAWS

RICHMOND, VA., *March 30, 1921.*

HON. H. C. L. RICHMOND,  
*Commonwealth's Attorney,*  
*Gate City, Va.*

MY DEAR SIR:

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

"Please permit me to ask your opinion as to whether the Act of Assembly approved March 16, 1918, page 537, *repeals* the Act of Assembly approved March 24, 1914, page 420.

"Both of these Acts are special for Scott county. The question I want your opinion on is whether it is unlawful for one to fish within 'five hundred yards' of the mill dam at Speer's Ferry as forbidden by the Acts of 1914, or does the said Act of 1918 repeal the Act of 1914 as

to catching fish within five hundred yards of the mill dam across the river at Speer's Ferry?

"I have been of opinion that the said last Act repeals the first Act."

Chapter 243 of the Acts of 1914, page 420, prohibits fishing within five hundred yards of the mill dam across the Clinch river at Speer's Ferry, Scott county, Va., and requires the board of supervisors to have fish ladders put on said dam.

Chapter 359 of the Acts of 1918, page 537, is entitled, "An Act to regulate the taking of fish from the streams in Scott county and providing penalties for the violation of same and repealing all acts or parts of acts in conflict therewith." While no mention is made in this act of chapter 243 of the Acts of 1914, it nevertheless appears from an examination of chapter 359 of the Acts of 1918 that it is a statute which revises the whole subject matter of the fish laws in Scott county, and was evidently intended as a substitute for other laws relating to fishing in that county.

While it is true that repeals by implication are not favored, it is nevertheless settled that a subsequent statute revising the whole subject matter of a former one and evidently intended as a substitute for it, though it contains no express words to that effect, must on principles of law as well as in reason and common sense operate a repeal of the former law. *Somers v. Commonwealth*, 97 Va. 759; *Davies v. Creighton*, 33 Gratt. 696; *Hagan v. Guigon*, 29 Gratt. 705; *Conley v. Supervisors*, 2 W. Va. 416.

Therefore, I am inclined to the belief that you are correct in your opinion that chapter 359 of the Acts of 1918 repeals chapter 243 of the Acts of 1914.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

---

#### GAME AND FISH—SQUIRRELS

RICHMOND, VA., August 23, 1921.

R. A. EDWARDS, ESQ., *Clerk,*  
*Isle of Wight, Va.*

MY DEAR MR. EDWARDS:

I am just in receipt of your letter of August 22nd, in which you call my attention to chapter 178, page 299, of the Acts of 1904, which is a special act for protecting squirrels in the counties of Southampton and Isle of Wight. You ask to be advised whether this law is repealed by section 3356 of the Code of Virginia, 1919, which section provides a different time for the killing of squirrels.

In reply, I will state that I agree with you that this section does not repeal the Act of 1904. I would call your attention to section 3365 of the Code of Virginia, 1919, which 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 fowls, 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."

You will see from the provisions of this section that section 3356 of the Code of 1919 does not repeal the special act of 1904.

I would state that Mr. M. D. Hart, Secretary of the Department of Game and Inland Fisheries, happens to be in my office at this time and fully concurs in this construction of the law, and will notify the game wardens.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

---

HEALTH, PUBLIC—SALE OF MILK

RICHMOND, VA., April 25, 1921.

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

DEAR SIR:

Acknowledgment is made of your letter of April 21st, in which you request me to advise you whether or not a town has the authority to adopt an ordinance requiring persons selling milk or its products within the town to first procure a permit from the Board of Health of the said town, showing that their cow or cows have been subjected to the tuberculin test and their stables are in a sanitary condition, which ordinance provides a fine for violation thereof.

This question was settled by our Court of Appeals in *Norfolk v. Flynn*, 101 Va. 473 (1903), in which it was held that the police power of the State, so far as was necessary to protect the health of the inhabitants of the city of Norfolk had been delegated to that city, and that the city had power to enact reasonable ordinances to protect its citizens from the sale of impure, adulterated or diluted milk. In so holding, Keith, P., in speaking for the court, said:

"It is manifest upon the face of the ordinance in question that it was passed in the exercise of the police power of the city, and that its sole object was to secure to the people of Norfolk pure and unadulterated milk. It is a matter of common knowledge that milk is a necessary food of the sick and of the infirm, of the old and of the young; that through the agency of impure milk the germs of many diseases are disseminated; and even where there is the absence of any deleterious impurity or the germs of specific diseases, adulterated or diluted milk is not wholesome and nutritious, and its sale in its least injurious aspect is a fraud upon the community. Against such practices it is the duty of the constituted authorities to protect the communities under their control. The ordinance in question is not extra-territorial in its effect. It is not intended to operate beyond the limits of the city of Norfolk. It only touches those who come within the limits of the city to dispose of their milk."

The court also referred to the case of *State v. Nelson*, 66 Minn. 166-68 N. W. 1066; 34 L. R. A. 318; 61 Am. St. Rep. 399, in which case almost the identical question submitted in your letter was passed upon by the Supreme Court of Minnesota.

To the same effect is 19 *Cyc.* 1090-1.

From what was said by the court in *Norfolk v. Flynn*, *supra.*, it clearly appears that the testing of cows for tuberculin is a most reasonable precaution against the spread of disease through the sale of milk, and I am therefore of the opinion that an ordinance requiring persons offering milk for sale within the corporate limits of a town possessing police powers, to first obtain a certificate from the Board of Health of the town, showing that their cows had been subjected to the tuberculin test and found free of disease and that their stables were in a sanitary condition, is valid.

I have examined section 1224 of the Code of Virginia, 1919, which reads as follows:

"Under the direction of the Live Stock Sanitary Board and the State Dairy and Food Commissioner, the State Veterinarian shall from time to time apply the tuberculin test to such breeding or dairy cows as may be directed by the said State Live Stock Sanitary Board and the State Dairy and Food Commissioner, for the purpose of controlling in the herds of the State the disease known as tuberculosis, and under such rules and regulations as may be prescribed from time to time by said board and commissioner; but no tuberculin test or tests shall be applied to any animal or animals in this State unless requested by the owner or owners thereof, and unless such owner or owners shall further agree to meet such requirements as may be made by the said live stock board and commissioner, as to the animals submitted to such tests."

This section relates to an entirely different subject matter from that under consideration. The question in the instant case is as to the police power of a town to prevent the sale of diseased, spoiled and unwholesome food within its limits, a matter never contemplated by section 1224 of the Code, the primary object of that statute being the eradication of tuberculosis from breeding or dairy cows.

Moreover, I call your attention to ~~the fact that~~ the ordinance in question does not compel the owners of cows to have their cows subjected to the tuberculin test. It only prohibits them from selling products from such cows until they have been tested. If these people do not wish to comply with the ordinance of the town, they do not have to do so, as there is no law which compels them to sell their products in the town in question. They can go somewhere else. But if they do wish to sell their products in the town, they must comply with the ordinance.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

---

#### INFANTS—CONFINEMENT IN JAIL

RICHMOND, VA., *September 15, 1921.*

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

MY DEAR DR. MASTIN:

Acknowledgment is made of your letter of September 14, 1921, in which you say:

"The justices of the peace in a number of counties of this State are in the habit of committing to jails, in default of payment of fine, under sections 4469-4470-4471 of the Code, boys under seventeen years of age.

"Should not such children, 'unless the offense is aggravated,' be disposed of in accordance with section 1908 of the Code instead of being committed to jail?"

Section 1908 of the Code of Virginia, 1919, reads as follows:

"No court or justice, unless the offense is aggravated, or the ends of justice demand otherwise, shall sentence or commit a child under eighteen years of age charged with or proven to have been guilty of any crime to a jail, workhouse or police station, or send such a child on to the grand jury, nor sentence such child to the penitentiary; but such child may be committed after hearing is had, as is hereafter provided,

to the State Board of Charities and Corrections or any society or association formed for the purpose specified in section nineteen hundred and five; or the court or the judge may commit such a child to a reformatory under the laws now or hereinafter provided for such commitment. Nothing herein shall prevent the imposition of such punishment as is prescribed by the laws of the State of Virginia for the offense with which such child is charged, when no society or association or reformatory will accept such child."

In my opinion, under the provisions of this section, the legislature used the word "commit" after the word "sentence" with the intention of prohibiting the commitment of children under eighteen years of age to jails for the non-payment of a fine, as provided by section 2559 of the Code of Virginia, 1919, unless the State Board of Charities, the societies, associations or reformatories mentioned in the act refused to accept such child, or unless the offense was an aggravated offense.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

---

#### INSURANCE—STATUTES, CONSTRUCTION OF

COL. JOSEPH BUTTON,  
*Commissioner of Insurance,*  
*City.*

RICHMOND, VA., *March 17, 1921.*

DEAR SIR:

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

"Referring to the tax laws (sec. 23), approved March 11, 1915, you will note that insurance companies are allowed to deduct from premiums collected in this State, premiums returned upon cancelled policies and premiums paid for reinsurance in companies authorized to do business in this State, but no deduction for dividends, provided further that nothing herein shall be construed to apply to mutual fire insurance companies chartered in this State and doing local business in this State.

"Chapter 396, approved March 20, 1918, authorizing and regulating reciprocals and inter-insurance contracts, etc., section 11, provides that a tax shall be paid on the gross premiums, decreased by all returns for cancellations, and all amounts returned to the subscribers or credited to their accounts as savings.

"Chapter 259, approved March 16, 1920, provided for the organization or admission of mutual insurance companies. Section 19 provides for the taxation of the gross premium receipts, less amounts paid for reinsurance in admitted companies, cancelled policies and any refund or returns made to policyholders other than for losses. Section 22 provides for the repeal of all laws or parts of laws in conflict with the provisions of this act.

"The Virginia Workmen's Compensation Act passed at the 1920 session (chap. 176) effective July 1, 1920, section 75-c, provides a tax of 3% on premiums, less cancelled policies or return premiums and reinsurance. Section 79 provides for the repeal of all acts and parts of acts inconsistent with the provisions of this act.

"I would like to have you advise whether or not the last law will apply for taxation or whether the old tax law will apply.

"You will also note that under section 22, chapter 259, approved March 16, 1920, that any such company or association may qualify under this act."

The rule is well settled that a subsequent act of the legislature repeals by implication, if it does not expressly repeal, all prior laws necessarily in conflict therewith.

The only statute to which you refer which is subsequent in date to chapter 176 of the Acts of 1920 amending the Workmen's Compensation Act, is chapter 259 of the Acts of 1920, which was approved one day later than chapter 176 of the Acts of 1920.

An examination of section 19 of chapter 259 of the Acts of 1920, shows that tax rate on incorporate mutual insurance companies other than life is not fixed by this act. There is, therefore, nothing in this act in conflict with the provisions of section 75-c of chapter 176 of the Acts of 1920 amending the Workmen's Compensation Act.

Section 75-c of chapter 176 of the Acts of 1920, amending the Workmen's Compensation Act, provides as follows:

"(c) For the purpose of paying the salaries and necessary expenses of the commission and its assistants and employees in administering and carrying out the provisions of this act an administrative fund shall be created and maintained in the following manner:

"Every person, partnership, association, corporation, whether organized under the laws of this or any other State or country, company, mutual company or association, the parties to any inter-indemnity contract or reciprocal plan or scheme, and every other insurance carrier, insuring employers in this State against liability for personal injuries to their employees, or death caused thereby, under the provisions of this act, shall, as hereinafter provided, pay a tax upon the premiums received whether in cash or notes, in this State or on account of business done in this State, for such insurance in this State, at the rate of three per cent. of the amount of such premium, which tax shall be in lieu of all other taxes on such premiums, which tax shall be assessed and collected as hereinafter provided. Provided, however, that such insurance carriers shall be credited with all cancelled or return premiums, actually refunded during the year on such insurance, and with premiums on re-insurance with companies authorized and licensed to transact business in Virginia, which re-insurance shall be reported by the re-insurer; but no credit shall be allowed for re-insurance in companies not licensed to transact business in Virginia."

This act being the last act upon this subject therefore controls the rate of tax to be paid by persons, partnerships, associations and corporations and every other insurance carrier insuring employers in this State against liability for personal injuries to their employees or death caused thereby under the provisions of the Workmen's Compensation Act on the premium received, whether in cash or notes, on account of business done in this State.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

---

#### INSURANCE

RICHMOND, VA., *January 11, 1921.*

HON. JOS. BUTTON,  
*Commissioner of Insurance,*  
*Richmond, Va.*

DEAR SIR:

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

"Chapter 112, Acts of 1906, provides for levying of taxes against insurance companies (Code, sec. 4233, effective January, 1920).

"Chapter 77, Acts of 1915, tax laws, in reference to taxing insurance companies and segregating said taxes to the State. You will note said taxes are in lieu of all other taxes, fees, etc., with certain exceptions named in said section.

"I would like to have your opinion whether or not, under the retaliatory law of this State, I can require companies of other States to pay into the treasury of Virginia such taxes as are charged against Virginia companies in the respective States in which Virginia companies are transacting business, also where Virginia companies are not licensed in said States, but companies of such States are transacting business in Virginia, would I have a right to enforce the retaliatory law?

"Chapter 181, Acts of 1920, provides that companies must have specified paid in capital, etc., but does not mention anything about taxes, fees, etc. If chapter 77, Acts of 1915, does not nullify the retaliatory law, could the law be enforced against the class of companies referred to in chapter 181, Acts of 1920?"

Chapter 77 of the Acts of 1915, amended and re-enacted sections 23, 24 and 26 of the Virginia tax bill, which was continued in force by section 2398 of the Code of Virginia, 1919, and has not been amended since 1915. Section 4233 of the Code of Virginia, 1919, reads as follows:

"If, by the existing or future laws of any State an insurance corporation of this State having agencies in such other State, or the agents thereof, shall be required to make any deposit of securities in such other States for the protection of policyholders or otherwise, or to make payment for taxes, fines, penalties, certificates of authority, license fees or otherwise, greater than the amount required by this State from similar corporations of such other State by the then existing laws of this State, then and in every such case, all insurance corporations of such State established or heretofore having established an agency or agencies in this State, shall be, and they are hereby, required to make the like deposits for the purposes with the Treasurer of this State, and to pay the Commissioner of Insurance for taxes, fines, penalties, certificates of authority, license fees and otherwise, an amount equal to the amount of such charges and payments imposed by the laws of such other State upon the insurance corporations of this State and the agents thereof."

This section, being part of the Code of Virginia, 1919, was re-enacted into law subsequent to the amendment of sections 23, 24 and 26 of the Virginia tax bill, and is therefore in full force and effect, since nothing in the amendments of 1915 to the tax bill in conflict therewith could control section 4233 of the Code of 1919.

Answering your second question, you will see that the provisions of section 4233 of the Code of Virginia, 1919, limits the retaliatory powers of the Commissioner of Insurance to corporations of those States in which an insurance company of this State has agencies.

It therefore follows that you cannot impose the provisions of section 4233 of the Code of Virginia, 1919, against foreign insurance companies doing business in this State, unless insurance companies of Virginia have agencies in such foreign domicile.

Replying to your third question, I am of the opinion that the insurance companies mentioned in chapter 181 of the Acts of 1920 are subject to the provisions of section 4233 of the Code of Virginia, 1919.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

## INSURANCE—TAXATION

HON. JOSEPH BUTTON,  
*Commissioner of Insurance,*  
*Richmond, Va.*

RICHMOND, VA., *April 28, 1921.*

DEAR SIR:

Acknowledgment is made of your letter of recent date, in which you refer to chapter 396 of the Acts of 1918, chapter 312 of the Acts of 1920 amending this act, which is commonly known as the "Reciprocal Act," chapter 259 of the Acts of 1920, known as the "Mutual Act," and to chapter 400 of the Acts of 1918 as amended by chapter 176 of the Acts of 1920, known as the Workmen's Compensation Act.

You then submit for my consideration a number of questions with reference to the deductions that insurance companies operating under the reciprocal act and the mutual act, respectively, are entitled to make with reference to receipts from business written under the provisions of chapter 400 of the Acts of 1918, as amended; and also as to the rate of tax to be paid by such companies on their business written under the provisions of chapter 400 of the Acts of 1918, as amended. Your first and second questions are as follows:

"1. Whether reciprocals licensed under the old act can deduct, in addition to return premiums on cancelled policies and reinsurance, savings returned to policyholders or credited to their accounts.

"2. Whether mutuals licensed under the general insurance laws prior to the enactment of chapter 259 can, in addition to return premiums on cancelled policies and reinsurance, deduct savings returned to policyholders or credited to their accounts."

With reference to reciprocals, it is provided by section 11 of chapter 396 of the Acts of 1918, as amended, as follows:

"There shall be paid with the initial certificate of authority the sum of \$200.00, which shall cover the license tax for the first year if the period be one year. Otherwise such license tax shall be such proportion of \$200.00 as the space of time between the issuance of the license and the 30th day of April following bears to the whole year. Thereafter there shall be paid on or before the first day of April of each year a tax of two and three-fourths per centum of the gross premium or deposit income collected from and credited to the accounts of subscribers in Virginia during the year ending the 31st day of December next preceding, decreased by all returns for cancellations, and all amounts returned to subscribers or credited to their accounts as savings. The license tax on premiums or deposits as provided in this section shall be in lieu of all other license fees, taxes and levies whatsoever for State, county, municipal or local purposes."

The first section of this act, as amended, so far as is necessary to the question here under consideration, provides that reciprocal insurance contracts shall be regulated only by this act, and no other law relating to insurance—

"\* \* \* except that act known as the Virginia Workmen's Compensation Act, and laws relating to workmen's compensation insurance, enacted subsequent thereto, etc."

Chapter 259 of the Acts of 1920, known as the mutual insurance act, by section 19 thereof, provides:

"The taxable premiums or premium receipts of any mutual insurance company organized in or admitted to this State, for the purpose of taxation under any law of this State, shall be the gross premiums received for direct insurance upon property or risks in this State, deducting amounts

paid for reinsurance upon which a tax has been or is to be paid in this State, and deducting premiums upon policies not taken, *premiums returned or cancelled policies*, and any refund or return made to policyholders other than for losses. The taxes paid by mutual insurance companies, into the State treasury through the auditor of public accounts shall be in lieu of all fees, licenses, and taxes, State, county and municipal, except such taxes on real estate and tangible personal property as may be levied under other provisions of law and except such fees as are specifically directed to be levied on corporations generally by section one hundred and fifty-seven of article twelve of the Constitution."

It will be seen, from an examination of the above-quoted statutes, that reciprocals are required to pay the tax provided for, "decreased by all returns for cancellations and all amounts returned to subscribers or credited to their accounts as savings," and that mutual insurance companies are entitled to deduct "premiums upon policies not taken; premiums returned or cancelled policies and any refund or return made to policyholders other than for losses."

The word "or" underscored in the preceding quotation, is, no doubt, a clerical error, as the word "on" was evidently intended in its place, since the word "or," used where it is, is meaningless. The fact that this part of the act is immediately followed by a provision allowing as a deduction any refund or return made to policyholders other than for losses, shows that it was not the intention of the legislature to include such provision in the preceding part of the sentence by the use of the word "or."

From the foregoing, it follows that companies operating under the reciprocal and mutual acts are entitled to the deductions respectively provided, unless there is something in the workmen's compensation law in conflict with this.

This act was amended by chapter 176 of the Acts of 1920 by sub-section (c) of section 75 thereof, which provides:

"(c) For the purpose of paying the salaries and necessary expenses of the commission and its assistants and employees in administering and carrying out the provisions of this act an administrative fund shall be created and maintained in the following manner:

"Every person, partnership, association, corporation, whether organized under the laws of this or any other State or country, company, mutual company or association, the parties to any inter-indemnity contract or reciprocal plan or scheme, and every other insurance carrier, insuring employers in this State against liability for personal injuries to their employees, or death caused thereby, under the provisions of this act, shall, as hereinafter provided, pay a tax upon the premiums received whether in cash or notes, in this State or on account of business done in this State, for such insurance in this State, at the rate of three per cent. of the amount of such premium, which tax shall be in lieu of all other taxes on such premiums, which tax shall be assessed and collected as hereinafter provided. Provided, however, that such insurance carriers shall be credited with all cancelled or *return* premiums, actually refunded during the year on such insurance, and with premiums on re-insurance with companies authorized and licensed to transact business in Virginia, which re-insurance shall be reported by the re-insurer; but no credit shall be allowed for re-insurance in companies not licensed to transact business in Virginia."

You will observe from an examination of this section that it permits the deduction of "all cancelled or return premiums actually refunded during the year on such insurance, in addition to premiums on re-insurance with companies authorized and licensed to transact business in Virginia."

I do not think that the word "return," used in this section, was employed by the legislature as being synonymous with the word "cancelled," also used in

this section. If this construction were given it, a necessary conflict would be created between this section and chapter 259 of the Acts of 1920, which was passed by the General Assembly at practically the same time, and approved but one day later than the amended section of the Workmen's Compensation Law.

It is elementary law that repeals by implication are not favored, and that where two acts are passed at or about the same time, they must be reconciled so far as possible, and given a construction which gives effect to both acts, as far as possible.

I have, therefore, reached the conclusion that the word "return," as used in the above-quoted provision from section 75 of chapter 400 of the Acts of 1918, as amended, was intended to permit companies operating under the reciprocal and mutual acts to make the deductions from their returns of the items authorized in the respective acts under which these companies are licensed to do business in Virginia.

Your third and fourth questions are as follows:

"3. Are reciprocals taxable in accordance with the general tax law at the rate of 2½%, or are they taxable at the rate provided under the Workmen's Compensation Act on the workmen's compensation premiums of 4%, for the first six months of 1920, and 3% for the last six months of 1920?"

"4. Are mutuals taxable in accordance with the general tax law at the rate of 2½% or are they taxable at the rate provided under the Workmen's Compensation Act on the workmen's compensation premiums at the rate of 4%, for the first six months of 1920, and 3% for the last six months of 1920?"

I am clearly of the opinion that both the companies operating under the mutual act and under the reciprocal act are taxable on their business resulting from the writing of policies under the Workmen's Compensation law in accordance with the provisions of sub-section (c) of section 75 of chapter 400 of the Acts of 1918, as amended, and not under the provisions of the acts under which they are licensed or taxed with reference to other business done in Virginia.

Your fifth question is as follows:

"5. Can a reciprocal which was refused license by this department, but allowed to write business by the Industrial Commission in 1919 in accordance with section 68 of chapter 400, and which was licensed by this department in July, 1920, deduct savings returned to policyholders or credited to their accounts in 1919 in its tax returns for the year 1920?"

These companies, not being licensed under the reciprocal act for the year 1919, were clearly not entitled to deductions permitted to reciprocals licensed under the provisions of chapter 396 of the Acts of 1918.

Moreover, you will observe that even had these companies been licensed under the provisions of that act for the year 1919, they would not be entitled to make any deduction in the year ending December 31, 1920, for return premiums credited to the account of subscribers during the year ending December 31, 1919, as the only deductions for returned premiums authorized by that act are those premiums which are returned and credited to the accounts of subscribers as savings during the particular year.

These credits, not having been deducted during the year 1919, I am of the opinion that such companies are not entitled to make such deductions from their 1920 report for items which they may have been entitled to deduct from their 1919 report.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

## INTOXICATING LIQUORS—DETECTION OF CRIMES

HON. A. D. WATKINS,  
*Attorney at Law,*  
*Farmville, Va.*

RICHMOND, VA., *March 30, 1921.*

MY DEAR JUDGE WATKINS:

Acknowledgment is made of your letter which came to my office during my absence while engaged in attending the sessions of the State Board of Education, hence my seeming delay in giving the same attention. In your letter you say:

"The conditions that confront us now are briefly sketched: The citizens will not aid the officers in detecting crime. Is there any way under the law of this State whereby justice of the peace can have summoned any citizen in the community if necessary, and force him to testify as to where, when and how he got ardent spirits, and the name of the person who sold, gave, or procured for him ardent spirits?"

"I take it to be true that a grand jury can compel a man to disclose his knowledge of crime where there is a general and not a specified or known person suspected of crime. Can a justice of the peace have the same right? Can a party refusing to testify be dealt with for contempt? Of course, I know the law permits such procedure under section 4649 of the Code when the party is of intemperate habits or habitually a drunkard."

It is provided by section 4824 of the Code of Virginia, 1919, so far as is applicable to the question here under consideration, as follows:

"On complaint of a criminal offense to any such officer, he shall examine, on oath, the complainant and any other witnesses, or when such officer shall suspect that an offense, punishable otherwise than by a fine, has been committed, he may, without formal complaint, issue a summons for witnesses, and shall examine such witnesses; and if he sees good reason to believe that an offense has been committed, shall issue his warrant reciting the offense and requiring the person accused to be arrested and brought before a justice of the county or corporation, and in the same warrant, require the officer to whom it is directed to summon such witnesses as shall be therein named, to appear and give evidence on the examination. \* \* \*"

You will see, from the above-quoted provisions of section 4824 of the Code of 1919, that when a judge or a justice shall suspect that an offense, punishable otherwise than by fine, has been committed, he may, without formal complaint, issue a summons for witnesses, and shall examine such witnesses.

Section 73 of chapter 388 of the Acts of 1918, which is similar to section 4674 of the Code of Virginia, 1919, provides as follows:

"No person shall be excused from testifying for the Commonwealth as to any offense committed by another under this act by reason of his testimony tending to incriminate himself, but the testimony given by such person on behalf of the Commonwealth shall in no case be used against him, nor shall he be prosecuted as to the offense as to which he testified."

Therefore, it would appear that under the authority of section 4824 of the Code, a justice of the peace would have the right to summon witnesses and examine them without formal complaint, where he suspects that an offense, punishable otherwise than by fine, has been committed, and from the provisions of section 73 of chapter 388 of the Acts of 1918, that such witnesses would not be excused from testifying because such testimony might tend to incriminate them, as by testifying they would receive the benefits of that section, which relieves them from prosecution as to the offense with reference to which they testify.

From an examination of section 5 of chapter 388 of the Acts of 1918, which is similar to section 4585 of the Code of Virginia, 1919, you will see that practically all the violations of the provisions of the Virginia prohibition law are punished by fine and imprisonment. Such cases as are punished by imprisonment in addition to a fine would, in my opinion, be offenses punishable otherwise than by fine.

I can see that it might be contended, in view of the provisions of section 4640 of the Code of Virginia, 1919, similar to the provisions of section 41 of chapter 388 of the Acts of 1918, that it was the intention of the legislature to limit this power, in prohibition cases, to persons of intemperate habits or addicted to the use of narcotic drugs, but it is well settled that repeals of a statute by implication are never favored, and one statute will not be construed as repealing another by implication unless their provisions cannot be reconciled.

Therefore, I cannot believe that the fact that the General Assembly expressly mentioned persons of intemperate habits, or those addicted to the use of narcotic drugs in section 4640 of the Code of 1919, intended to repeal any portion of section 4824 of the Code of Virginia 1919, which is a general statute applicable to all crimes punishable otherwise than by fine.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

---

#### INTOXICATING LIQUORS—FORFEITURE OF AUTOMOBILES

HON. R. S. PARKS,  
*Commonwealth's Attorney,*  
*Luray, Va.*

RICHMOND, VA., *August 10, 1921.*

MY DEAR SENATOR:

I am just in receipt of a letter which is dated July 6th, but which was evidently intended for August 6th, as it did not reach the office until Monday.

In your letter you call my attention to a certain case which has arisen in the town of Stanley. You state that a traveling salesman came into Stanley (an incorporated town) very drunk, and apparently crazy from intoxicating liquors; that he was traveling in an automobile in which was found a quantity of whiskey, and perhaps some brandy, and that the liquor and automobile both were seized by the officer of the town.

You further state that the town of Stanley has an ordinance, section 27 of which provides that the town may seize and sell any automobile, team, etc., in which ardent spirits may be found, and place the proceeds from sale in the town treasury. You then call my attention to section 57 of the prohibition act, which section provides for the search of vehicles, automobiles, etc., in which ardent spirits are transported, and what disposition is to be made of the automobile or vehicle, etc.

I have carefully read section 57 of the prohibition act, which, as you know, was amended by the last legislature, and fully agree with you that the automobile in question should be forfeited to the Commonwealth and that the proceeds arising from the sale thereof cannot be paid into the treasury of the town of Stanley.

While it is true that sections 24, 25 and 27 of the prohibition act give to the cities and towns of Virginia certain powers of arrest and prosecution, and authority

to pass all ordinances embracing such provisions of the prohibition act as are applicable and further to prohibit the manufacture, transportation, sale, keeping or storing for sale, advertising or exposing for sale, receiving, giving away or dispensing ardent spirits, and to provide adequate penalties therefor, I find that there is no provision in the act which gives any town the authority to sell an automobile and deposit the proceeds from the sale in its treasury, but the law expressly provides that the automobile should be forfeited to the Commonwealth. Such being the case, of course the proceeds from sale must necessarily go into the State treasury. I am therefore of the opinion that your duty as Commonwealth's Attorney is to proceed according to the provisions of section 57 of the prohibition act.

Yours very sincerely,

JNO. R. SAUNDERS,  
*Attorney General.*

---

#### INTOXICATING LIQUORS—JURISDICTION OF COURTS

RICHMOND, VA., *March 2, 1921.*

J. T. CLEMENT, ESQ.,  
*Commonwealth's Attorney,*  
*Chatham, Va.*

MY DEAR SIR:

Acknowledgment is made of your letter of February 22, 1921, in which you say:

"Please advise the proper construction of section 4615, Code of Virginia, section 25 of the Mapp bill, with reference to offenses arising within three miles of the corporate limits of cities and towns, and advise whether or not the fines in such cases will go to the city or town, or to the State. These cases arise within three miles of the city of Danville and town of Chatham. In other words, can the ordinance of a city or town be effective three miles beyond the corporate limits, so that the town or city is entitled to the fine? You will also note section 4617."

Section 4615 of the Code of Virginia, 1919, reads as follows:

"(Nothing in this chapter shall be construed as conflicting with the jurisdiction of any mayor or police justice in the enforcement of city ordinances, prohibiting the manufacture, sale or distribution of ardent spirits. For the enforcement of such ordinances, the mayor or police justice shall have jurisdiction over the territory contiguous to the city within three miles of the city limits, provided said three-mile limit does not interfere with the jurisdiction of the mayor or police justice of any other city or town, and where there is less than six miles between any city or town and another city or town, the jurisdiction of the mayor or police justice of either city or town shall extend to one-half the distance between said cities and towns.

"In any prosecution before a mayor or police justice, the Commissioner of Prohibition shall be notified by the said mayor or justice, in time to attend said trial, and the commissioner, his deputies and inspectors, shall have the same power in respect to such cases that he has in cases before the circuit court."

Section 25 of chapter 388 of the Acts of 1918 is in the same words as this section of the Code, with one immaterial exception.

Under this section of the Code, I am of the opinion that the mayor of a city or town, or the police justice, has jurisdiction over the territory contiguous to the city within three miles of the city limits for the enforcement of such city ordinances.

In view, however, of the decision of the Court of Appeals in the case of *Bryan v. Commonwealth*, 126 Va. 749 (1919), in which case it was held that a conviction under a city ordinance was a bar to a prosecution under the State law for the same act, I am of the opinion that all fines collected in a prosecution for a violation of a city ordinance relating to matters covered by the Virginia prohibition law and made an offense under the State law, must be paid into the State treasury, as, on account of this decision, such a prosecution is to all practical purposes a prosecution for an offense committed against the State, and under the provisions of section 134 of the Virginia Constitution, all fines collected for offenses against the State must be paid into the literary fund.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

---

INTOXICATING LIQUORS—MALT

HON. H. B. SMITH,  
*Commissioner of Prohibition,*  
*Richmond, Va.*

RICHMOND, VA., *January 6, 1921.*

DEAR MR. SMITH:

I beg leave to acknowledge receipt of your letter of recent date, in which you call my attention to an act of the last legislature of Virginia, chapter 13, approved March 4, 1920 (p. 111), which act adds a new section to the prohibition law approved March 19, 1908, and designated as section 8-f. You then ask the following question in connection with this law:

"Would it be legal, therefore, for a Virginia manufacturer to bring into the State malt, use the same in the manufacture of a beverage containing not in excess of one-half of one per cent. of alcohol, and place it on sale in this State? If legal, would the Prohibition Department have the constitutional right to prohibit the transportation into Virginia for sale of a like beverage manufactured outside of the State; that is, one in which malt is used in its manufacture, but not containing in excess of one-half of one per cent. of alcohol?"

A part of section 8-f of the act referred to above reads as follows:

"Nothing in this act shall be construed to prevent the transportation into the State of Virginia in interstate commerce of liquids such as wines, fruit juices or other materials permitted to be used and transported under the provisions of the National Prohibition Act and its use in the manufacture of beverages containing less than one-half of one per centum of alcohol of volume under restrictions and provisions as follows: \* \* \*"

You will observe that the amended law permits the transportation into the State of wines, fruit juices and other materials. I am of the opinion that the language, "other materials," is sufficiently broad to include malt. If it be not contrary to the law to transport malt into the State to be used in the manufacture of beverages containing less than one-half of one per centum of alcohol of volume, surely it would not be contrary to the law to permit the transportation into Virginia, for sale, a beverage manufactured outside of the State in which malt is used for its manufacture, if such beverage does not contain in excess of one-half of one per centum of alcohol.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## INTOXICATING LIQUORS—SOFT DRINKS

RICHMOND, VA., *April 19, 1921.*

R. J. WATSON, ESQ., *Clerk,*  
*Circuit Court,*  
*Roanoke, Va.*

MY DEAR MR. WATSON:

I am just in receipt of your letter of April 18th, in which you state that Judge C. A. Woodrum desires my construction of the second paragraph of section 14 of chapter 484 of the Acts of 1920.

The particular question involved in this construction is whether or not it is necessary for a druggist who has obtained a license under this section for the year 1920, and whose license expires on the 30th day of April, 1921, to again comply with the provisions contained in this paragraph before the court or judge thereof in vacation can grant a license for the year 1921. I am of the opinion that the statute clearly contemplates that these provisions should be complied with for each successive year before a license can be granted.

The object of the law is to give notice to the public of the intention of the druggist to do this class of business. To illustrate: It may be that some druggist, who had obtained such a license from a court for the year 1920, had not conducted his business in a proper and legitimate way. Unless he is required to give such notice, the public would have no opportunity to contest the granting of such a license.

The statute clearly means this when it states that "before making application for such license, notice must be posted, etc.," and the matter comes up *de novo* each succeeding year.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## INTOXICATING LIQUORS—STILLS

RICHMOND, VA., *June 29, 1921.*

HON. HARRY B. SMITH,  
*Commissioner of Prohibition,*  
*Richmond, Va.*

DEAR SIR:

Acknowledgment is made of your letter of June 28th, with which you send me a letter dated June 13th, written to you by James S. Robinson, Esq., of Hampton, Va., in which Mr. Robinson says:

"Years ago I was engaged in the distilling business in this county, and while so engaged I acquired for my own use in the manufacture of brandy four copper stills, four caps and two worms which I still have on hand, and which I desire registered under the provisions of section 21½ of the prohibition act. Whether they will ever be of any use to me as they are, or to any other person, is doubtful, but I do not care to junk them, nor do I care to be bothered with court proceedings touching their possession. The capacity of the stills is as follows: One 150 gallons, one 140 gallons, another 90 gallons, and still another of 80 gallons. For your information I will say that I am neither a blockader nor a drinker."

With this letter you also send me your letter of June 18th to Mr. Robinson, in which you state that you do not think you have the authority to issue a permit for Mr. Robinson's still, and also the letter of Charles A. Hammer, Esq., of Harrisonburg, Va., in which he calls your attention to the first paragraph of section 21½ of chapter 388 of the Acts of 1918, and insist that Mr. Robinson is entitled to register his still under the provisions of that section of the prohibition law. It is true that it is provided in the first paragraph of section 21½ of chapter 388 of the Acts of 1918, as follows:

*"Requiring stills to be registered and declaring all unregistered stills contraband; proceedings upon seizure; providing for the registration of certain stills and issuance of a permit from the commissioner.—It shall be unlawful for any person except duly licensed druggists, hospitals and laboratories, in this State to own or have in his possession any still, still cap, worm, tub, fermenter, or any of them or any other appliances connected with a still and used, or mash or other substances, capable of being used in the manufacture of ardent spirits, unless such owner shall be registered with the commissioner and obtain from him a permit to own such still, which permit shall be kept conspicuously posted at the place where such still is located. All stills in this State not registered under a permit as herein required and all mash or other products used in the operation of such a still are hereby declared contraband and shall be subject to seizure by any officer charged with the enforcement of the law, which officer shall destroy all mash and other like products found at such still and used in the operation thereof and shall forthwith notify the commissioner and turn over to him all stillcaps, worms, tubes, fermenters and other appliances to be disposed of as required by this act."*

When, however, the whole section is read, it will be seen that the next to the last paragraph of this section provides how and to whom you shall issue permits for the keeping of stills. This paragraph reads as follows:

*"Provided the commissioner shall upon the application of any chemist, superintendent of a laboratory or hospital, physician or other person permitted by law to practice his profession or conduct his business in this State register such person, and issue to him a permit to own or have in his possession a still, not to be used contrary to the provisions of this act, which permit shall be granted subject to suspension and revocation for cause, for which permit the applicant shall pay a fee of fifty cents."*

In view of this provision of section 21½ of chapter 388 of the Acts of 1918, I am of the opinion that you cannot register Mr. Richardson's stills unless he falls within the class of persons mentioned in said paragraph.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

---

#### INTOXICATING LIQUORS—STILLS

RICHMOND, VA., June 22, 1921.

W. L. DAVIDSON, Esq.,

*Attorney at Law,*

*Jonesville, Va.*

MY DEAR SIR:

I beg leave to acknowledge receipt of your letter of recent date, in which you ask for a construction of chapter 393 of the Acts of 1920 with reference to the provisions of section 1 thereof, providing for the payment of a reward by the

boards of supervisors of the counties for the capture of illicit stills and apparatus used in connection therewith. In your letter you state the conclusion reached by you in construing this section of the act, in the following terms:

"After my attention was called to the matter, I read the statute very carefully, and I advised the board that I thought there were two things necessary before they would be called upon to pay the one-third of said reward and these were the capturing of the still and some party who was at the time operating it or who had been operating same, then if the party accused and arrested were tried and convicted, they would be authorized to pay the balance of said reward. On reading this statute it appears to me that there are two things necessary before any part of the reward is due. First: Finding the still or apparatus. Second: The apprehension of someone at the time operating same or someone who has been operating same. Then upon the conviction of the party or parties the rest of reward is due and payable."

You then ask for my views as to the matter. I call your attention to chapter 370 of the Acts of 1918, which the title of chapter 393 of the Acts of 1920 purports to amend, although nothing is said in the enacting clause of chapter 393 of the Acts of 1920 as to the amendment of chapter 370 of the Acts of 1918. Some question has been raised as to the constitutionality of chapter 393 of the Acts of 1918 because of section 52 of the Virginia Constitution; but inasmuch as section 1 of chapter 393 of the Acts of 1920 is exactly the same as chapter 370 of the Acts of 1918, that question is not material to the matter here under consideration. *36 Cyc.* 1056.

Section 1 of chapter 393 of the Acts of 1920, reads as follows:

"Be it enacted by the general assembly of Virginia, That the boards of supervisors of the respective counties of the Commonwealth be, and the same are hereby, authorized to pay rewards out of the county levies to any person, including officers, for the capture of any illicit still and apparatus used in connection therewith in operation at the time of such capture, in such county, or which has recently theretofore been operated in said county, in the manufacture of ardent spirits, and delivery of the same to the sheriff of the county, at the county seat, and for the conviction of the person, or persons, guilty of unlawfully operating the same; such reward not to exceed the sum of fifty dollars in connection with any one still, one-third of which reward shall be payable as soon as the still and apparatus therewith are captured and delivered to the sheriff as aforesaid and proof thereof duly made to the board of supervisors of such county, and the remaining two-thirds thereof shall be payable upon the conviction of the person, or persons, guilty of operating the same."

As I have said before, chapter 370 of the Acts of 1918 is in the same terms as section 1 of chapter 393 of the Acts of 1920.

It will be noted that this statute does not impose a mandatory duty upon the boards of supervisors, but leaves the matter of giving the reward authorized by the statute, discretionary with the boards of supervisors. Upon the exercise of such discretion, however, I am of the opinion that you are clearly right in the interpretation reached by you and hereinabove set out.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

## INTOXICATING LIQUORS—TRANSPORTATION OF

TAZEWELL TAYLOR, ESQ.,  
*Attorney at Law,*  
*Norfolk, Va.*

RICHMOND, VA., *November 15, 1921.*

DEAR SIR:

Acknowledgment is made of your letter of November 9th, with which you send me a copy of your letter of October 13th, addressed to the Commissioner of Prohibition, in which latter letter you say:

"I represent a steamship line engaged in interstate traffic, and from time to time it has offered it for transportation in its interstate business shipments of intoxicating liquor intended for medicinal, mechanical, sacramental and scientific purposes.

"This company has complied strictly with the rules and regulations of the Federal Government covering the transportation of such liquors, and the question that has been placed before me is whether, under these circumstances, there is any requirement of the State law or any ruling of your department requiring further action on its part.

"I would appreciate your advising me fully on this subject and giving me such literature as may be available covering the subject."

In your letter to me you state that you have had no reply from the Commissioner of Prohibition, and request me to give you such information as I may be able to give.

The only State law which relates to the subject of your inquiry is found in chapter 388 of the Acts of 1918 and chapter 184 of the Code of Virginia, 1919. The Code sections, however, have been largely superseded by chapter 388 of the Acts of 1918, sections 3, 4, 6, 8-f, 15, 21, 39, 39½, 40, 40-a and 62 of chapter 388 of the Acts of 1918 all bear more or less upon the subject of your inquiry.

You will see, from an examination of these sections, that it would appear that there are certain things to be done by a common carrier which, in my opinion, are required in addition to the compliance with the Federal laws relating to the transportation of ardent spirits.

Upon an examination of the sections above referred to, you will ascertain what these requirements are. I do not think that the adoption of the Eighteenth Amendment and the Volstead Act have in any way lessened the necessity for a carrier's complying with the provisions of the Virginia law. See *Allen v. Commonwealth*, 21 Va. App. 615.

Yours very sincerely,

JNO. R. SAUNDERS,

*Attorney General.*

## INTOXICATING LIQUORS—TRANSPORTATION OF

HON. RICHARD C. DODSON,  
*Federal Prohibition Director,*  
*Baltimore, Md.*

RICHMOND, VA., *February 28, 1921.*

DEAR MR. DODSON:

On February 11th I received a letter from you, which is as follows:

"This office is in receipt of a permit to transport from an individual who is desirous of removing some whiskey from a city which comes under my jurisdiction, into the State of Virginia.

"An opinion from you as to whether or not it is permissible, according to your State laws, to ship liquors into Virginia for beverage purposes,

will be much appreciated. My understanding of the Reed Amendment is that such shipments are prohibited."

On February 12th, in response to the above, I stated that it was not permissible, under our laws, to ship liquor into the State for beverage purposes, "in larger quantities than one quart per month." Since the receipt of your letter and my reply thereto, I have discussed this matter with Hon. Lewis H. Machen, Federal Prohibition Director of the State of Virginia, and Hon. Harry B. Smith, State Prohibition Commissioner. They have called my attention to section 62 of the prohibition law of the State of Virginia, found on page 615 of the Acts of Assembly, 1918, a portion of which reads as follows:

"\* \* \* The Commissioner, whenever, in his discretion it shall be deemed necessary to do so, or when he shall be thereto required by any section of this act, may give permits in triplicate for the purchase, use or transportation of ardent spirits. \* \* \*"

It did not occur to me at the time I answered your letter that this permit was for the removal of liquor lawfully acquired. You will observe that under the provisions of the section as quoted above, the Prohibition Commissioner for the State of Virginia, whenever in his discretion he deems it necessary so to do, has the authority to grant permits for the purchase, use or transportation of ardent spirits into the State of Virginia.

Inasmuch, therefore, as you have such a permit from the Prohibition Commissioner of Virginia, as stated in your letter, I am of the opinion that the shipment of liquor in pursuance of said permit, is legal and not contrary to the laws of the State of Virginia. I therefore see no reason why you should not permit the transportation of this whiskey in pursuance of said permit.

I regret very much that I did not make myself clear in my former letter, but it was due to a misunderstanding of the facts, as stated above.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

---

#### JAILS AND PRISONERS—CREDITS

HON. J. B. WOOD, *Superintendent,*  
*Virginia State Penitentiary,*  
*Richmond, Va.*

RICHMOND, VA., *March 30, 1921.*

MY DEAR MAJOR WOOD:

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

"On September 21, 1917, Leonard Wise was given a jail sentence in Accomac county, of ten years, to be served on the roads. He is writing me to know whether, under section 2094, page 12, Acts of 1920, he is entitled to ten days off of each month for good conduct. We have not, where a man has received a sentence, as in this instance, before the act referred to was passed, given him the benefit of the ten days. We have allowed him the four days, as the law provided for at the time of his sentence.

"I would appreciate it very much if you would give me your ruling on this particular case, so that I may have it not only for this case, but for any similar one."

It is provided by section 2094 of the Code of Virginia, 1919, as amended, as follows:

"All persons sentenced by any of the courts of this Commonwealth, or by a justice of the peace, to work on public roads, or quarry force, in lieu of jail sentence, 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 now provided for convicts in the penitentiary, and any person who is sentenced or works on the public roads until costs or fine be paid shall be allowed a credit upon such fine or costs of fifty cents per day, for such days as he shall labor on such public roads or quarries; but no jail prisoner shall be required to work in any case a longer period than six months solely on account of his failure to pay such fine or costs.

"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 to immediately notify the superintendent of the penitentiary of such sentence in each case."

Section 5017 of the Code of Virginia, 1919, provides, with reference to convicts in the penitentiary, that for every month that a convict faithfully observes the rules and requirements of the prison and is not subjected to punishment there shall, with the consent of Governor, be deducted from the term of service of such convict, ten days. It is provided by the first paragraph of chapter 301 of the Acts of 1918, as follows:

"Be it enacted by the general assembly of Virginia, That every man sentenced to the penitentiary shall be allowed a commutation of his sentence of ten days out of every calendar month, and shall be allowed ten cents per day for each day he works, to be paid out of the appropriation hereinafter provided for so long as the same is sufficient."

You will therefore see that the credit allowed convicts in the penitentiary for good behavior is ten days in each month, as section 2094 of the Code of Virginia, 1919, as amended, provides that all persons sentenced to work on the public road or quarry force, in lieu of jail sentence, and all persons confined in jail who are worked on said road or quarry force, shall be allowed a credit for good behavior on their sentences, to the same extent and upon the same terms as are provided for the convicts in the penitentiary.

I am therefore of the opinion that the man in question is entitled to an allowance of ten days a month for good behavior. The fact that he was convicted before the law was changed does not prevent him from receiving the benefits of the credits provided for.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

---

#### JAILS AND PRISONERS—CONVICTS AS WITNESSES

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

RICHMOND, VA., April 4, 1921.

DEAR SIR:

Acknowledgment is made of your communication of today with which you refer to this office the following letter from J. W. Browning, Deputy Clerk of Orange county:

"At this term of the court we had the testimony of several convicts in escape and murder cases. I cannot find any law which prohibits their drawing pay as such witnesses.

"Please let me know about this as I would like for them to get the pay if possible, as they came back to the camp without guards when a great many escaped."

It is provided by section 4779 of the Code of Virginia, 1919, as follows:

"Conviction of felony or perjury shall not render the convict incompetent to testify, but the fact of conviction may be shown in evidence to affect his credit."

You will therefore see that a convict is competent to testify as a witness, his conviction affecting only his credit and not his right to testify.

Section 3512 of the Code of Virginia, 1919, so far as is applicable to the question here under consideration, provides:

"All witnesses summoned for the Commonwealth, shall be entitled to receive for each day's attendance, fifty cents and ferrriage and tolls, and five cents per mile over five miles going and returning to place of trial or before the grand jury.\* \* \*"

You will see from an examination of this section that it provides generally for the payment of all witnesses summoned for the Commonwealth and makes no exception for convicts.

Convicts being eligible as witnesses under the provisions of section 4779 are included within the meaning of "all witnesses" as used in section 3512 of the Code, and are entitled to the compensation therein provided for.

Yours very truly,

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

---

#### JAILS AND PRISONERS—CONVICT AS WITNESSES

RICHMOND, VA., June 2, 1921.

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

MY DEAR GOVERNOR:

Acknowledgment is made of your letter of June 1st with which you enclose a letter from Hon. H. B. Lee, Prosecuting Attorney for Mercer county, West Virginia. You desire me to advise you as to Mr. Lee's request. In his letter, Mr. Lee says:

"In April of this year, one Connor Buress was sentenced to the penitentiary of Virginia for one year by the Circuit Court of Tazewell County.

"Buress is a very material witness on behalf of the State in a murder trial in Mercer county, West Virginia, which will in all probability come up for trial at the July term of our Criminal Court and the State will be called upon to vote a trial without the presence of this witness, and I am writing to know if it is at all possible to secure the attendance of Buress at this term of the court, providing we agree and bind ourselves to keep him in custody in the jail of this county during the trial and return him to the Virginia penitentiary when the trial is concluded.

"The defendant in this case is Buress's brother-in-law, who, in a fit of drunken rage, shot and killed his wife, the sister of Buress, and also shot Buress through the arm and neck. There was no one present when this tragedy occurred except the defendant, his wife, and Buress. and Buress therefore is the only witness which the State can rely upon to prove the material facts to sustain the position of the State."

In view of the facts set out in Mr. Lee's letter, I am of the opinion that the man in question should be sent to him provided the authorities of West Virginia obligate themselves to keep him in custody during his stay in West Virginia and to safely return him to the custody of the authorities of the Virginia penitentiary in this State, and also provided the authorities of West Virginia make provision as to the cost of carrying this man to West Virginia and bringing him back.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

---

JAILS AND PRISONERS—CONVICTS

RICHMOND, VA., *February 16, 1921.*

THOMAS H. LION, ESQ.,  
*Commonwealth's Attorney,*  
*Manassas, Va.*

MY DEAR MR. LION:

I am in receipt of your letter of the 12th instant, to which I will reply at once. You state that one John Brooks was convicted of murder in the second degree in the Hustings Court of the city of Richmond on the 18th day of September, 1913, and was sentenced to eighteen years in the penitentiary; that during May of last year while he was with the convict road force in Prince William county, he escaped and was afterwards re-captured in Prince William county. You then ask to be advised whether he should be prosecuted under section 2079 or section 5049 of the Code of 1919.

I am of the opinion that section 2079 of the Code does not apply for the reason that it provides for the prosecution of any *jail* prisoner who shall escape from the convict road force and be re-captured.

Section 5049 in my judgment is the one under which he should be prosecuted. If you will read the extract from the decision in *Ruffin's* case, 21 Grat. which is cited at the bottom of this section, you will see that a convict, in contemplation of the law, is still deemed to be in the penitentiary though he be hired out to work. Of course, there will have to be an indictment before the party you mention can be prosecuted. Section 5053 of the Code provides where he should be tried.

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

Yours very sincerely,

JNO. R. SAUNDERS,  
*Attorney General.*

---

JAILS AND PRISONERS—COUNTY PRISONERS IN CITY JAILS

RICHMOND, VA., *October 25, 1921.*

HON. ALEXANDER H. LIGHT,  
*Attorney at Law,*  
*Rustburg, Va.*

MY DEAR MR. LIGHT:

The Attorney General has referred to me for attention, your letter of recent date, in which you ask to be advised if there is any law which would permit Campbell county prisoners to be confined in the Lynchburg jail. You state that

Judge Christian has instructed the Lynchburg jailor that the county cannot do this, and that you have been unable to find any law to the contrary.

I have been very much engaged since your letter reached the office, preparing Commonwealth cases for the Court of Appeals, and therefore have not had an opportunity to examine the matter until in the last few days. I have also been unable to find any law to the contrary and am therefore inclined to the opinion that Judge Christian is right.

The legislature will be in session, as you know, within the next few months, and I would suggest that the matter be cured by an act authorizing county prisoners to be confined in the city jails where the accommodations are sufficient and it involves considerable expense to carry the prisoners to the county jail as in the case of the Campbell county jail at Rustburg.

Yours very truly,

LEON M. BAZILE,

*Second Assistant Attorney General.*

---

JAILS AND PRISONERS—EXPENSE OF BOARD OF

MR. F. P. POOL, *Mayor,*  
*Stanley, Va.,*

RICHMOND, VA., *December 13, 1921.*

MY DEAR SIR:

Acknowledgment is made of your letter of recent date, in which you state that a party was tried by you as Mayor in Stanley, and sentenced to sixty days on the public roads. It so happened that the accused was sent to the county jail there to await being sent for by the State penitentiary authorities.

You also state that the convicted party was not sent for but served the sixty days in jail. You then ask to be advised whether or not the town of Stanley should pay the board of the prisoner while in the county jail.

I do not know whether Stanley is an incorporated town or not. If so, and the party was tried for a violation of the town ordinance, then the town should be liable for his board while maintained in the county jail.

If, on the other hand, you tried him for a violation of a State law, then the Commonwealth would be liable for the board of the prisoner while in the county jail. Trusting this may give you the desired information, I am

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

---

JAILS AND PRISONERS—EXPENSE OF PHYSICAL EXAMINATION OF PRISONERS

MAJOR J. B. WOOD,  
*Superintendent of the Penitentiary,*  
*City.*

RICHMOND, VA., *December 23, 1921.*

MY DEAR MAJOR:

I beg leave to acknowledge receipt of yours of recent date, in which you enclose a letter from Judge James H. Fletcher, of Accomac, Va. In the letter, Judge Fletcher asks the question whether the State or county should pay for the physical examination of prisoners who are sentenced to the convict road force prior to the acceptance of such prisoner by you at the State penitentiary.

I am of the opinion that this is an expense that should be borne by the State. Should the prisoners remain in jail, the State, as you know, pays for their maintenance. When they go to work on the public roads, the State still derives a benefit from their services.

I think, however, that some arrangement should be made with the physician who makes this examination, and a minimum charge made for each prisoner, in order that the Commonwealth of Virginia may know just what these expenses will be.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

---

JUSTICES OF THE PEACE—JURISDICTION OF

HON. D. WAMPLER EARMAN,  
*Harrisonburg, Va.*

RICHMOND, VA., *February 10, 1921.*

MY DEAR MR. EARMAN:

Acknowledgment is made of your letter of February 4, 1921, in which you request me to advise you whether or not a justice of the peace has jurisdiction to give a preliminary hearing to a person charged with non-support.

It is provided by sections 2 and 3 of chapter 416 of the Acts of Assembly, 1918, as follows:

"2. Proceedings under this act may be instituted upon complaint made under oath or affirmation by the wife or child, or by any probation officer upon information received, or by any other person having knowledge of the facts, against any person accused of either of the above named offences. It shall be the duty of the chief of police, sheriff or of the probation officer hereinafter provided for in any city, town or county of the State when, in his opinion, a person in his jurisdiction is guilty of failure to support his family, to bring such person before the court charged with failure to support his wife or children.

"3. Proceedings under this act shall be had in the circuit courts of the counties, and before police justices or corporation courts of the cities; provided, however, that in cities where such courts shall be established, the juvenile and domestic relations court shall have exclusive original jurisdiction in all cases arising under this act. The person accused shall have the same right of appeal as provided by law in other similar cases; provided, however, that any order of court requiring support of wife or children shall remain in full force and effect until reversed or modified by judgment of a superior court. In such interim said order shall be enforceable by the court entering same."

While I am of the opinion that a justice of the peace in a county is without jurisdiction to try a non-support case on its merits, and dispose of the same, such jurisdiction being, by section 3 of the act, vested exclusively in the circuit courts of the counties, I am nevertheless of the opinion that a justice has the right to give a preliminary hearing to a person charged with non-support just as he does to one charged with a violation of the prohibition law, the jurisdiction to dispose of which is vested exclusively in the circuit and corporation courts.

"Exclusive original jurisdiction," as used in chapter 416 of the Acts of 1918, means the jurisdiction to try and dispose of a case on its merits, the term "original jurisdiction" having been defined in certain cases as the jurisdiction to entertain cases in the first instance as distinguished from appellate jurisdiction. *Costner v. Chandler*, 2. Minn., 86, 88 (Gil. 68, 71); *Read v. McCormick*,

4 Cal. 342, 343; *Burks v. Walker*, 109 Pac. 544, 545, 25 Okl. 353; *In re Burnett*, 85 Pac. 575, 577, 73 Kan., 609.

In the last cited case, it was held that the jurisdiction to consider causes *de novo* on appeal and to decide them on the law and evidence according to the right of the case, independent of the rules and judgment of the lower court, is original and not appellant jurisdiction.

Therefore, while a justice has no jurisdiction in a non-support case to determine the merits thereof, I am of the opinion that he has the right to hold a preliminary hearing in such case.

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

#### JUSTICES OF THE PEACE—POWER OF

RICHMOND, VA., *January 5, 1921.*

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

MY DEAR DR. MASTIN:

Acknowledgment is made of your letter in which you state that a girl over twenty years of age was in June, 1920, convicted of being a prostitute, and committed for a term of twelve months to the Ivakota Farms, in accordance with the Acts of Assembly, 1918, chapter 404; that on December 21, 1920, the justice who committed the girl sent by mail an order to the superintendent of the Farms as follows:

“As the arresting officer of the Bureau of Social Hygiene has petitioned me to have this young woman paroled to her father....., I....., Judge of the police court of the.....do hereby order that the said.....be paroled to her father.....for such time as he may deem necessary.”

You ask whether or not this proceeding is legal.

In the case of *Ex Parte Hazel Smith*, 124 Va. 791, our Supreme Court held that after the expiration of the date on which an order of conviction and commitment of a prisoner is entered, the police justice entering it no longer has jurisdiction of the case for any purpose, except, of course, the entrance of an allowance of an appeal at any time within ten days from the date of the order.

In that case, Hazel Smith was committed to the Virginia Home Industrial School for Girls by an order of the police justice of the city of Petersburg, entered on the 22nd of May, 1918. On June 1 or 2, 1918, an order was entered by the same justice discharging her from custody. The Supreme Court held that the order entered on May 22, 1918 was a final order, and any subsequent order by the justice purporting to reopen the case and discharge the prisoner was *ultra vires*, and therefore, void.

It is manifest, therefore, that after the day in June on which the order of commitment in the case to which you refer was entered, the justice no longer had jurisdiction of the case and could not thereafter enter an order. Furthermore, there is no law giving a court a right to parole a prisoner after he has been convicted and imprisoned.

Yours truly,

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

## LICENSES—CIRCUS

MR. A. A. ESKRIDGE,  
*Commissioner of Revenue,  
Staunton, Va.*

RICHMOND, VA., *August 3, 1921.*

DEAR SIR:

I beg leave to acknowledge receipt of your letter of recent date, in which you ask for the construction of the tax laws which pertain to the advertising of a circus thirty days prior to the holding of a county fair.

You further state that Robinson's Circus has been advertised to give an exhibition in your town on August 11, 1921, and that the Staunton fair will begin on September 5th. You then ask to be advised whether this company shall be required to pay the \$2,000.00 which is prescribed as a penalty in the second paragraph of section 109½ of the Virginia tax law.

If you will examine section 109½ of the Virginia tax laws, found on page 177, you will see that the second paragraph of said section provides as follows:

"It shall be unlawful for any such circus, carnival, or show to publish or post in any way in such county or city at any time within thirty days prior to the holding of such regular annual fair, advertising of the exhibition of any such circus, carnival or show. \* \* \*"

The latter part of this section provides a penalty of \$2,000.00 for a violation of this provision. You will observe from the reading of this paragraph that a violation of the law in this respect consists in the publishing or posting within thirty days prior to the holding of such regular annual fair, advertising of the exhibition of any such circus, carnival or show. Therefore, I doubt very much if there is any violation of the law where such notices are posted or published thirty days prior to the holding of such fair.

However, as this is a matter which comes under the supervision of your city attorney, it might be well for you to consult him in reference to this matter.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

---

LICENSES—FAMILY SUPPLIES OF A PERISHABLE NATURE

MR. I. G. VASS,  
*Galax, Va.*

RICHMOND, VA., *December 13, 1921.*

DEAR SIR:

Acknowledgment is made of your letter of the 12th, in which you ask to be advised whether farmers are required to pay a license tax on meat raised and butchered by them, and sold in towns from their wagons.

I presume you have a copy of the Virginia tax laws for 1920. If not, you can easily obtain copy from some attorney in your town. If you will examine sections 50 and 51 of the Virginia tax laws, found on page 129, you will see that farmers are not required to pay any license on meats and other family supplies of a perishable nature, grown or produced by them, and not purchased by them for sale. If these commodities are not grown or produced by them, then the license tax shall be \$25.00 for each vehicle used in peddling such provisions.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## MARRIAGE—LICENSE

RICHMOND, VA., *May 25, 1921.*

FLOYD HOLLOWAY, Esq.,  
*Clerk York County,*  
*Yorktown, Va.*

MY DEAR MR. HOLLOWAY:

Acknowledgment is made of your letter of May 25, 1921, in which you say:

“Will you please advise me whether or not a clerk can issue his own marriage license?”

Section 5072 of the Code of Virginia, 1919, provides as follows:

“Every license for a marriage shall be issued by the clerk of the Circuit Court of the county or of the Corporation Court of the city in which the female to be married usually resides, or his deputy; and in case she is not a resident of the State, then by the clerk of the circuit court of the county or of the corporation court of the city in which the marriage is to be solemnized, or his deputy; or, if the office of the clerk be vacant, or if from any cause neither the clerk nor his deputy is able to issue the license, it may be issued by the judge of the circuit court of such county, or of the corporation court of such city, who shall make return thereof to the clerk as soon as there may be one.”

I understand that you have no deputy.

While there is no prohibition contained in this section against a clerk issuing his own marriage license, and I am inclined to believe there would be no impropriety in his so doing, nevertheless, I am of the opinion that such a contingency would justify you in requesting the judge of the circuit court of your county to issue the license, in accordance with the provisions of section 5072 of the Code of Virginia, 1919, above quoted, and under such circumstances the judge would be authorized to issue the license.

Yours very truly,

LEON M. BAZILE,  
*Second Assistant Attorney General.*

## MARRIAGE—VALIDITY OF

RICHMOND, VA., *August 23, 1921.*

DR. A. S. PRIDDY, *Superintendent,*  
*Colony for Epileptics and Feeble-minded,*  
*Colony P. O., near Lynchburg, Va.*

MY DEAR MR. PRIDDY:

Acknowledgment is made of your letter of August 15th, in which you state that an inmate of your hospital who had been paroled to her mother after escaping in violation of her parole bond, went to North Carolina on a tour of immorality and was confined in the county jail for treatment; that subsequently a distant relative of her mother obtained her release and took her to his home, where she inveigled his eighteen-year old son into marrying her; that the marriage license was obtained by her on fraudulent representations as to age, and that she concealed from the boy the fact that she had a loathesome and contagious disease, and that she was a legally committed patient under the custody of your institution. The boy was in ignorance of the fact that she was an inmate of your institution.

You request me to advise you whether, under the provisions of chapter 157 of the Acts of 1920, such marriage is null and void. This act makes it a criminal offense for any man or woman to knowingly marry a person lawfully adjudged to be insane, epileptic or feeble-minded and duly admitted as a patient or inmate in any State hospital or colony for the insane, epileptic or feeble-minded, whether such person be actually confined or in the custody of some person, or at large. It is further provided that:

“\* \* \* Any such marriage, if knowingly attempted to be entered into, shall be absolutely void without any decree of divorce or other legal process. \* \* \*”

The word “knowingly” as used in this act, refers to the man or woman contracting the marriage with the inmate of the hospital or colony for the insane, epileptic or feeble-minded, and not to such inmate. I am therefore of the opinion that the marriage in question is not void *ab initio*, if the young man did not know his wife was an inmate of your institution, but under the provisions of section 5103 of the Code of Virginia, 1919, he would be entitled to obtain a divorce upon the ground that prior to the marriage, the wife, without the knowledge of her husband, had been and was, a prostitute.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

---

#### MEMORIAL LIBRARY

RICHMOND, VA., *March 18, 1921.*

HON. MORGAN R. MILLS,  
*Richmond, Va.*

DEAR SIR:

Acknowledgment is made of your letter in which you advise me that on October 7, 1920, the War Memorial Commission adopted the following resolution:

“*Be it resolved* that a committee of three be appointed, consisting of the chairman and two other members to be named by the chairman, who shall prepare instructions and regulations of a competition for the selection of an Architect or Architects, for the proposed Memorial Library and Auditorium Building and investigate and report on any and all other matters in connection with the plans, specifications and construction of this building.

“*Be it resolved* further that the Board of Directors of Virginia State Library be requested to appoint a similar committee to act jointly with the committee from the War Memorial Commission, and that these two committees acting jointly shall make such reports and recommendations to a joint meeting of the Board of Directors of the Virginia State Library and the War Memorial Commission as by them may be deemed advisable. No concluded action to be taken until approved by the Board of Directors of the Virginia State Library and the War Memorial Commission in joint meeting.”

You ask whether this action on the part of the Commission was legal. The act creating the War Memorial Commission (Acts of Assembly, 1920, p. 843) provides in the eleventh paragraph, page 845, that the plan for the building or buildings shall be first approved by the Art Commission of Virginia and erected under the joint supervision and direction of the Library Board and the War

Memorial Commission. It is manifest that the purport of the resolution is to carry out the provisions above mentioned with reference to the erection of the buildings provided for in the act. I am of the opinion, therefore, that the resolution is legal and proper.

Your letter further asks whether or not this Act provides for the consolidation or organization of the State Library Board and the War Memorial Commission into one body with new and additional officers, or whether the action of these two bodies should be concurrent, requiring a majority of both bodies to determine all matters which may arise for their consideration.

By referring to a letter of the Attorney General, dated August 25, 1920, and addressed to you, you will observe that the act in question recognizes two separate and distinct bodies, namely: the Library Board and the War Memorial Commission, the latter being created by the said act. I have examined the act very carefully and I can find nothing from which it can be concluded that the legislature intended that these two bodies should be merged. The act itself creating the War Memorial Commission obviously intended that its entity should not be submerged into any other body, and the mere fact that it is provided that the building shall be erected under the joint supervision of the Commission and the Library Board, does not justify the conclusion that the two bodies may be merged into one, but to the contrary, fully sustains the conclusion that each body must retain its separate entity, and as two separate bodies, shall co-operate one with the other. I find in the act no provision for the creation of a new body by the merger of the two bodies above mentioned.

Yours truly,

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

---

#### MEMORIAL LIBRARY

HON. C. V. MEREDITH,  
DR. LYON G. TYLER,

*Members State Library Board,  
Richmond, Va.*

RICHMOND, VA., *April 21, 1921.*

GENTLEMEN:

Acknowledgment is made of your letter of April 8th. in which you submit for my opinion a number of questions with reference to the construction of chapter 510 of the Acts of 1920. Your first question is as follows:

"1. Does the Library Board have sole charge and control of raising money by the issuance and sale of the bonds authorized by the act?"

The act so provides.

The second paragraph of section 3 thereof, reads:

"The library board is hereby empowered and authorized to borrow money to an amount not exceeding one million, five hundred thousand (\$1,500,000.00) dollars, to make and issue its bonds therefor in such amounts and at such rate of interest not to exceed the legal rate as the library board may determine, and to secure the same by mortgage or deed of trust on said lot or square and any building or buildings which may be hereafter erected thereon, the proceeds thereof to be paid out according to the conditions of section three hundred and fifty-nine of the Code of nineteen hundred and nineteen, and used exclusively for the building of said library and auditorium and the equipment, furnishing and books thereof."

Your fourth question is as follows :

"4. Is it not the duty and is not the Library Board alone empowered to take all steps needed to secure plans and specifications of the proposed Memorial Building, for the purpose of submitting said plans for approval to the Art Commission as required by the act?"

The third paragraph of section 3 of chapter 510 of the Acts of 1920, reads 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."

I am of the opinion that inasmuch as the act has expressly given to the War Memorial Commission joint supervision and direction over the erection of the building or buildings provided for by the act, this Commission has an equal power with the Library Board in the selection of the plans and specifications for said building or buildings to be submitted to the Art Commission of Virginia, as required by the act.

The securing of the plans and specifications for the building or buildings to be erected under the provisions of the act, are an essential step in the erection of the same, and it was never the intention of the legislature, which created the War Memorial Commission with equal powers with the Library Board as to the erection of the same, to give to one the right to select the plans and specifications, to the exclusion of the other.

It follows from this that the plans and specifications, after having been selected by the Library Board and the War Memorial Commission, must be submitted by these bodies to the Art Commission of Virginia, whose approval, by the provisions of the act, is a prerequisite to the right to begin the construction of the building or buildings.

What I have said with reference to your fourth and fifth questions, also answers the eighth question submitted by you, and I deem it unnecessary to enlarge upon the foregoing reply thereto.

Your second question is as follows :

"2. Does the Board, prior to the approval of the plans by the Art Commission, have sole control over, and power of expenditure of, all moneys appropriated by the act required in the preparation of the plans and specifications for said building, and other proper expenses incurred in securing said plans?"

I am of the opinion that in view of what I have said with reference to your fourth question, that the Library Board and the War Memorial Commission occupy the same position as to the control over and power of expenditure of funds required in the preparation of the plans and specifications of the building and the other expenses incurred in securing said plans, that they would have over the expenses connected with the physical construction of the building or buildings.

Your third question is as follows :

"3. After the plans have been approved by the Art Commission, and there has been a joint meeting of the Library Board and the War Memorial Commission, are all sums ordered to be paid at such joint

meeting or meetings to be paid out upon the warrant of the Library Board, in accordance with the provisions of section 359 of the Code of 1919?"

In response thereto, I am of the opinion that all sums ordered to be paid by the Library Board and the War Memorial Commission for necessary and proper expenditures, under the provisions of the act, are to be paid out upon the warrant of the Library Board in accordance with the provisions of section 359 of the Code of Virginia, 1919.

Your sixth and seventh questions are as follows:

"6. After such approval is it the duty of the members of the War Memorial Commission to meet in joint session with the members of the Library Board of the supervision and erection of the proposed building, and in such joint session act as one body and not separately, nor concurrently?"

"7. At such joint session does each person present have one vote, and do all measures passed only require a majority vote of the individuals present in such joint session, and not a majority of each of the two bodies?"

Chapter 510 of the Acts of 1920 provides that the Memorial building and a suitable auditorium for the meeting of the soldiers, sailors, marines and women who served in the world war, and where other public meetings of citizens may be held, shall be erected "under the joint supervision and direction" of the Library Board and the War Memorial Commission.

While the supervision of the erection of the Memorial Library building and auditorium must be joint by the Library Board and the War Memorial Commission, that is, each occupies a position of equal dignity with the other therein, it is nowhere provided in the act that these two independent bodies shall hold joint sessions or act as one body. On the other hand, there is nothing to prevent the Library Board and the War Memorial Commission from meeting together and discussing the matters connected with the erection of the Memorial Library and auditorium. At such meetings, however, the identities of the two bodies would not be merged into a greater, and therefore a majority vote of the whole could not control the decisions of the two bodies.

In my opinion, the legislature of Virginia, in creating the War Memorial Commission as a body with equal powers over the supervision and direction of the building or buildings provided for by chapter 510 of the Acts of 1920, with the Library Board, intended that this body should be a distinct and separate unit from the Library Board, and did not intend that its identity should become merged with that of the Library Board, or that the identity of the Library Board should become merged with that of the War Memorial Commission.

The very object in creating the War Memorial Commission as a separate body, negatives the idea that the two bodies were to become merged into one when passing upon the objects for which the War Memorial Commission was created.

If it had been intended that one body should have control of the same, the object could have been secured by enlarging the powers of the Library Board or by delegating the exclusive control to an enlarged War Memorial Commission. Instead of doing this, the legislature delegated certain duties to the Library Board and created another body, or commission, with equal powers in the supervision and direction of the erection of the building or buildings provided for by the act.

.

I am therefore of the opinion that while anything which is done with reference to the supervision or erection of the building or buildings provided for by the act, must have the joint approval of the Library Board and the War Memorial Commission, that, as said in my letter of August 25, 1920, to Hon. Morgan R. Mills:

"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."

That is, in the exercise of such joint supervision and direction, a majority of the Library Board and a majority of the War Memorial Commission, must approve the matters over which they are given control by said act.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

---

MEMORIAL LIBRARY

RICHMOND, VA., *April 1, 1921.*

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

MY DEAR GOVERNOR:

I am herewith returning deed from the city of Richmond to the State Library Board for what is known as the Ford lot. I have carefully examined the same and find that it is in proper form and complies with the conditions of the act under which it is drawn.

As the conveyance is made to the Library Board, I presume the deed should be turned over to that body and same should be recorded. I know of no action to be taken by you as to the dedication of a part of the Capitol Square which by virtue of the act in question, is dedicated to the city of Richmond, but I would suggest that you advise the city of Richmond that the deed for the Ford lot has been received and is satisfactory.

Of course, when the city of Richmond proceeds to utilize that part of the Capitol Square which is dedicated to it by the State, care should be taken to see that no greater portion is used than that conveyed by the act.

I am enclosing copy of my letter, as requested, to the State Library Board.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

---

MILITARY LAW—REVOCATION OF COMMISSION

RICHMOND, VA., *November 21, 1921.*

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

DEAR SIR:

I beg leave to acknowledge receipt of yours of the 17th, in which you enclose a letter from Gen. E. W. Nichols, Superintendent of the Virginia Military

Institute, and in which he desires to be advised if, when a professor of the Virginia Military Institute is dismissed by the Board of Visitors of that institution, the dismissal *ipso facto* cancels his commission.

He further desires to be advised if such dismissal cancels his commission, has the individual so dismissed the right to wear the uniform with the insignia of rank prescribed by the Virginia Military Institute.

In this connection, I beg leave to quote section 843 of the Code of Virginia of 1919, which contains the law applicable to the case in question:

"The officers of the Virginia Military Institute shall be commissioned officers of the Virginia volunteers, subject to orders of the Governor and the same rules and regulations as to discipline provided for other commissioned officers of the military organization of the State, and the Governor is authorized and directed to issue commissions to the professors, assistant professors, and other officers of the institution, according to the rank prescribed by the Virginia Military Institute. Such commissions shall not entitle any person holding the same to any pay or emolument by reason thereof unless he be assigned to duty by order of the Governor with the Virginia volunteers, and in such event the rank of such officer shall be relatively inferior to that of all other officers of the same grade in the Virginia volunteers."

You will observe from a reading of this section that the governor is authorized and directed to issue commissions to the professors, assistant professors and other officers of the Virginia Military Institute, according to the rank prescribed by the Institute.

You will see from a reading of this section that it is by virtue of the fact that one is a professor, or an assistant professor, or an officer of the military institute, and that he is entitled to have a commission issued to him by the Governor of Virginia, and further, that his rank is prescribed by the Virginia Military Institute.

I am, therefore, of the opinion, after a careful reading of this section, that, if the Board of Visitors of the Military Institute dismisses one of its professors that such dismissal *ipso facto* cancels his commission. It certainly follows that when his commission is cancelled, the individual so dismissed has no right to wear the uniform with the insignia of rank prescribed by the Virginia Military Institute.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

---

#### OFFICERS—FEES OF ATTORNEY FOR COMMONWEALTH

RICHMOND, VA., November 14, 1921.

HERBERT I. LEWIS, ESQ.,  
West Point, Va.

MY DEAR MR. LEWIS:

Colonel Saunders has referred to me your letter written to him with reference to the collection of tax bills of King William county for the year 1919.

Your letter reads as follows:

"When last in your office, we called in consultation your Mr. Hank relative to fees of attorney for the Commonwealth in the collection of tax bills delinquent for the year 1919, which were turned over to me under the provisions of chapter 374, Acts of the Assembly 1918, and you will recall that it was Mr. Hank's opinion that I was entitled to a fee.

"I have received a letter from the Auditor of Public Accounts, in which he states that you gave him an opinion August 7, 1918, relative to this question as the same was provided for under chapter 473, Acts 1916, but that this act last mentioned has been amended by the Acts of 1918, and that in his opinion we should be compensated, but that there is no authority at the present time allowing him to agree upon any compensation."

I am still of the opinion that you are entitled to fees for the collection of delinquent bills turned over to you under the provision of chapter 384 of the Acts of the Assembly, 1918.

Mr. Moore has shown me a copy of the letter which you state you received from him. There is a conflict, as to the facts, between your letter above quoted and his letter, in that your letter states that the tax bills turned over to you were delinquent bills. That being true, I am still of the opinion that you have a right to a fee for collecting the same. Mr. Moore's letter, however, states that they were turned over to you by the treasurer of King William county, and *were not delinquent* at the time they were turned over. This being true, there is no provision for the payment to Commonwealth's attorneys for collecting the same. In other words, chapter 374, Acts of 1918, provides that the payment of any taxes, State, county or municipal, may be enforced by court proceedings.

The statute further provides that such proceedings shall be instituted and conducted by the attorney for the Commonwealth of the county, city or town where they were assessed, upon the request of the treasurer of such county, city or town, or of his deputy, or of the Auditor of Public Accounts, or of the Attorney General.

It is manifest that this act authorizes tax bills to be turned over to the attorneys for the Commonwealth *even prior to the time they are delinquent*, and places upon them the duty to collect the same by proper court proceedings.

I find no provision in the law for compensation to the Commonwealth's attorneys for their services where the taxes are turned over to them for collection before becoming delinquent.

If the taxes in question were turned over to you before becoming delinquent, Mr. Moore is correct in his view that there is no provision for compensation for the collection thereof.

When you were in the office with reference to this matter, my examination and opinion were based upon the fact that I understood you to advise me that the taxes were turned over to you after becoming delinquent, and your letter to Colonel Saunders states that there were turned over to you for collection tax bills delinquent for the year 1919. If these bills were turned over to you after becoming delinquent, then there is authority to compensate you for your services, under chapter 473 of the Acts of 1916 (p. 805), because that chapter authorizes the Auditor of Public Accounts to employ attorneys for the Commonwealth to take steps and institute legal proceedings for the recovery of delinquent taxes.

When we discussed this matter here, I was under the impression that the taxes were delinquent when turned over to you by the Auditor. If this is true, you undoubtedly have a right to compensation. If, however, they were turned over to you by the treasurer of the county before being delinquent, then, as demonstrated above, there is no provision for compensation.

I am frank to say that, while I have been forced to the above conclusions, I

do not think the legislature should make any distinction between compensating the attorney for the Commonwealth for his services in collecting taxes not delinquent when turned over to him, and in collecting taxes which are delinquent when turned over to him, and I believe if the attention of the legislature is called to this anomaly when it meets, it will correct the seemingly inexplicable irregularities and, I may say, the possible injustice to the Commonwealth's attorneys.

I am further of the opinion that an act providing for compensation to the attorneys for the Commonwealth who have collected, under chapter 374 of the Acts of 1918, tax bills which were not delinquent when turned over to them, would be legal, although it would be retrospective.

Yours truly,

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

---

OFFICERS—FEES OF COMMONWEALTH'S ATTORNEYS

RICHMOND, VA., *April 6, 1921.*

HON. ALEXANDER H. LIGHT,  
*Commonwealth's Attorney,*  
*Rustburg, Va.*

MY DEAR MR. LIGHT:

The Attorney General has referred to me for attention your letter of March 30th. As I understand your letter, the question upon which you desire to be specifically advised is whether or not you are entitled to a taxed attorney's fee of \$5.00 to be recovered out of every person convicted of a misdemeanor before a justice of the peace where you have appeared as Commonwealth's attorney in the justice's court and prosecuted the case.

In an opinion given Hon. C. Lee Moore, Auditor of Public Accounts, on July 2, 1918, by the Attorney General (report of Attorney General, 1918, pp. 33, 34), the Attorney General held that while the fee of \$5.00, provided for by chapter 185 of the Acts of 1918, could not be paid to the Commonwealth's attorney out of the public treasury where he had failed or was unable to collect the fee out of the defendant, that the Commonwealth's attorney was entitled to have the fee of \$5.00 taxed as a part of the costs against the defendant convicted of a misdemeanor in a justice's court. In so holding, the Attorney General said:

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

We are still of this opinion, and I think it clear that it was the intention of the legislature to provide by this act that the Commonwealth's attorney was to receive a fee of \$5.00 for each person tried for a misdemeanor before a justice of the peace and convicted where the case was prosecuted by him, such fee to be taxed in the costs and recovered against the defendant. With the exception of those duties required of the Commonwealth's attorney by section 548 of the

Code of Virginia, 1919, which unquestionably requires him to prosecute violations of the forestry laws before justices of the peace, I have been unable to find any statute which requires the Commonwealth's attorney to appear in a justice's court to prosecute a misdemeanor so as to bring him within the meaning of that provision of chapter 385 of the Acts of 1918, which allows him a fee of \$5.00 to be paid out of the public treasury for each person prosecuted by him before a justice for a misdemeanor which he is required by law to prosecute.

It is true that the prohibition act does require the Commonwealth's attorney to faithfully prosecute all cases and complaints arising under the provisions of the prohibition law, but if you will examine section 4614 of the Code of Virginia, 1919, and section 24 of chapter 388 of the Acts of 1918, you will see that the circuit, corporation and hustings courts having jurisdiction for the trial of criminal cases are given exclusive original jurisdiction in practically all cases arising under the provisions of the prohibition law.

With reference to your duties under section 4864 of the Code of 1919, I have not had the opportunity to go into the matter very deeply, but inasmuch as section 5890 of the Code provides that circuit courts shall have original jurisdiction of presentments, informations and indictments for misdemeanors, I am of the opinion that the duties required of you by section 4864 of the Code can be effectively discharged in the circuit court, and I do not see how this section could be construed as requiring you either to institute prosecutions or to appear in prosecutions already pending before a justice of the peace.

However, as I have said, I am of the opinion that you are clearly entitled to the taxed attorney's fee of \$5.00 to be recovered out of the defendant, where you prosecute a misdemeanor case before a justice of the peace and obtain a conviction.

Trusting this gives you the desired information, and with my best wishes, I am,

Sincerely yours,

LEON M. BAZILE,  
*Second Assistant Attorney General.*

---

OFFICERS—FEES OF COMMONWEALTH'S ATTORNEYS

RICHMOND, VA., *April 16, 1921.*

J. E. PARROTT, ESQ.,  
*Commonwealth's Attorney,  
Stanardsville, Va.*

DEAR SIR:

Your letter of April 7th has been referred to me by the Attorney General for attention. On April 6th of this year, I wrote an opinion, at the direction of the Attorney General, to Hon. Alexander H. Light, Commonwealth's attorney of Campbell county, which covers the principal subject of your inquiry, copy of which I am enclosing.

As was stated in the letter to Mr. Light, I know of no case except for a prosecution under section 548 of the Code of Virginia, 1919, relating to the enforcement of the forestry laws, which requires a Commonwealth's attorney to appear and prosecute a case in a justice's court within the meaning of that provision of chapter 385 of the Acts of 1918, authorizing the payment of a fee to the Commonwealth's attorney for his appearance in prosecutions before justices of

the peace in cases which he is required by law to prosecute in such courts. Therefore, I am of the opinion that you are not entitled to the payment out of the treasury, of a fee in those cases which were dismissed by the justice.

You are entitled, however, to a fee of \$5.00 to be assessed in the costs and recovered out of the defendant in cases prosecuted by you before a justice of the peace where a conviction is obtained, but such fee cannot be paid out of the treasury. It must be collected out of the defendant.

You also ask the question whether you are entitled to have your fee assessed in the costs against the prosecutor (prosecutor's name being endorsed as such on the warrant), where you are called in the case by the justice and where the prosecutor appears as the case is called for trial and asks for a dismissal of the warrant against the accused.

It is provided by section 4991 of the Code of 1919 that "in each case of acquittal by a justice, if he believe the charge was made maliciously and without probable cause, he may render judgment for the costs against the prosecutor." This would depend upon the facts in each particular case. If the justice is of the opinion that the charge was made maliciously and without probable cause, he could assess the costs against the prosecutor and include therein the fee of \$5.00 provided for by chapter 385 of the Acts of 1918, as this is such a misdemeanor fee as could be taxed in the costs if judgment had been recovered against the accused. I do not think that the provisions of section 4868 of the Code of Virginia, 1919, would be applicable to such a case.

Trusting this gives you the desired information, I am,

Yours very truly,

LEON M. BAZILE.

*Second Assistant Attorney General.*

---

OFFICERS—FEES OF

RICHMOND, VA., *December 30, 1920.*

WM. B. SANDERS, ESQ.,  
*Attorney at Law,*  
*White Stone, Va.*

MY DEAR SANDERS:

Absence from my office almost continually for the last month in the line of duty explains my failure to answer your letter earlier.

You asked me for a construction of that provision of section 3505 (which is 3528, old Code) as amended by the Acts of 1918, page 573, which, as amended, reads as follows:

"For each person tried for a misdemeanor in his circuit or corporation court five dollars, and for each person prosecuted by him before any court or justice of his county or city for a misdemeanor, which he is required by law to prosecute, or upon an indictment found by a grand jury, he shall be paid five dollars, unless the costs, including such fee, are paid by the defendant; and in every misdemeanor case so prosecuted the court or justice shall tax in the costs and enter judgment for such misdemeanor fees."

You ask whether, by virtue of the above provision, you are entitled to a fee of \$5.00 to be taxed against the defendant, when asked to prosecute a misdemeanor case before a justice of the peace.

The only authority for the taxing of such fee in the costs is that portion of the above excerpt which provides for such a fee when the Commonwealth's attorney "is required by law to prosecute, or upon an indictment found by a grand jury."

It is manifest, therefore, that the only time when a fee of \$5.00 to the Commonwealth's attorney can be taxed against the defendant in a misdemeanor case is when the law requires him to prosecute, or when the proceedings are upon an indictment found by a grand jury. The fact that the Commonwealth's attorney is requested by the board of supervisors or other authority of the county to take part in the prosecution of a misdemeanor case before a justice of the peace, does not warrant the taxing of the fee either against the defendant or against the State. Of course, the board of supervisors or such other county authorities as request your services before the justice of the peace may pay you therefor.

There are very few misdemeanors which the Commonwealth's attorney is required by law to prosecute before a justice of the peace, but such cases are the only ones in which the fee can be taxed against the defendant.

Yours truly,

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

---

OFFICERS—FEES OF BAIL COMMISSIONER

RICHMOND, VA., August 23, 1921.

HON. L. M. ROBINETTE,  
*Commonwealth's Attorney,*  
*Jonesville, Va.*

MY DEAR SIR:

I beg leave to acknowledge receipt of your letter of August 19th, in reference to the fees of a bail commissioner.

The Auditor of Public Accounts is correct in stating that he is entitled to a fee of \$4.00 for each bond taken before him. If you will read section 4835 of the Code of Virginia, 1919, you will see that it provides that his fees shall be double those of a justice of the peace for the trial of a criminal case and shall be paid out of the treasury. The fee of a justice of the peace for the trial of a criminal case is \$2.00, which, of course, makes a bail commissioner's fee \$4.00.

You further ask whether his fees are properly taxable against the defendant upon conviction or confession of an offense charged. There can be no doubt but that these fees are taxable against the defendant upon conviction either when the Commonwealth has to prove its case, or when the accused pleads guilty.

If you will read section 4964 of the Code of 1919, and the citation of authorities thereunder, you will see that in every criminal case the accused is required to pay all the expenses incident to the prosecution when convicted. Necessarily, the bail commissioner's fee is a part of the cost or expense incident to the prosecution.

Trusting you are well, I am,

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

## OFFICERS—BONDS OF

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

RICHMOND, VA., December 21, 1921.

DEAR SIR:

I beg leave to acknowledge receipt of your letter of the 17th, which is as follows:

"Recently I returned to the clerk of the corporation court of the city of Lynchburg, bonds executed by some of the officers of that city, who gave as security surety company, because the seal of the surety company was not affixed to the bond; and the clerk of that court brings to my attention the provisions of section 4349 of the Code of Virginia. Please advise me whether or not the seal of the surety company should be attached to the bonds. I take it that section 4349 of the Code of Virginia is only a validating or remedial statute."

In reply, I will state that I am of the opinion that all bonds executed by officers who give surety companies as security should have the seal of the surety company affixed to the bond. If you will examine the printed forms of the bonds used by the surety companies, you will observe that there is a circle in the right hand corner of all of them, and printed within the circle are the words, "Put the seal of the company here."

I have read the provisions of section 4349 of the Code of 1919, to which you call my attention, but am of the opinion that this is only a validating or remedial statute, as stated by you in your letter, and is not intended to do away with the use of the seal of the surety company, but is only to apply in cases where it happens to be left off.

Yours very truly,

JNO. R. SAUNDERS,  
Attorney General.

## OFFICERS—FEES OF CLERKS

RICHMOND, VA., December 28, 1921.

M. W. PERKINS, ESQ., Clerk,  
Fluvanna Circuit Court,  
Palmyra, Va.

MY DEAR MR. PERKINS:

Your letter received this morning as to the right of the clerk to demand a deposit fee upon the institution of a suit before he issues process commencing the suit. Section 3495 of the Code, among other things, provides:

"\* \* \* Nor shall such officer be compelled to perform any services unless his fees, if demanded, be paid or tendered or otherwise satisfactorily secured him, except in criminal cases, and the case of a person suing as provided by section 3538."

Section 3538 of the Code provides for persons suing *informa pauperis*.

I am of the opinion, under the plain words of section 3495 quoted above, that the clerks of courts may require the deposit on account of fees before issuing process commencing suit. This is especially true since the fees of the clerks of court must be accounted for to the Commonwealth of Virginia under the West fee bill.

My experience with the various clerks has led me to believe that it is the universal practice, not only for clerks, but for sheriffs and other officers, to require the deposit of fees before performing their services.

I find that in the report of the Attorney General for 1907, Hon. Leslie C. Garnett, Assistant Attorney General, on May 5, 1917, wrote a letter to Mr. W. F. Smyth, Secretary of the State Fee Commission, in which Mr. Garnett took the same position that I have taken above.

Yours truly,

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

---

OFFICERS—FEES OF

RICHMOND, VA., *May 12, 1921.*

J. W. ADAMS, ESQ.,  
*Clerk,*  
*Fredericksburg, Va.*

DEAR SIR:

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

“I am under the impression there has been a decision of the court as to proper charge for ‘figures’ in making up bill of costs. I would be glad to have you give me that decision if I am correct.

“What I want to know is whether clerk in ‘counting figures as words’ is to count *every figure* as a word, for example, is \$5,620.00 seven words?”

I have been unable to find any decision on this point, nor do I find anything indexed in the Code determining your question. I have ascertained, however, from inquiry among the clerks of courts of this city, that their custom is to count the total number as one word, instead of counting each figure thereof as a separate word.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

---

OFFICERS—CLERKS OF COURTS—LISTS OF DIVORCES

RICHMOND, VA., *September 14, 1921.*

DR. W. A. PLECKER,  
*Registrar of Vital Statistics,*  
*Richmond, Va.*

DEAR SIR:

Acknowledgment is made of your request that you be advised as to what steps can be taken by you where the clerk of a county or city fails or refuses to report to you the list of divorces granted in his court, as well as those instituted and refused in accordance with the provisions of chapter 220 of the Acts of 1918.

From an examination of this act I find that no penalty is provided by the act for a violation of the same, nor do I find anything in the general laws which would impose a penalty upon the clerks. A failure to discharge his duty in such particular, however, if willfully persisted in, would, in my opinion, be a fit cause for the removal of a clerk.

I would therefore suggest that you notify the clerk in question that unless

a list is furnished you, you will request the court to remove him and appoint somebody in his place who will discharge the duties imposed upon him by law.

As to the failure of clerks to comply with the provisions of section 5090 of the Code of Virginia, 1919, requiring them to furnish your department with a copy of the register of marriages, the penalty for a violation of the same is provided by section 5094 of the Code of Virginia, 1919, which reads as follows:

"If any clerk of a court or county clerk fail to perform any duty required of him under this chapter, he shall forfeit ten dollars for every such offense."

Yours very truly,

LEON M. BAZILE,  
*Second Assistant Attorney General.*

---

OFFICERS—DUTY AS TO SPEED LAWS

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

RICHMOND, VA., *November 18, 1921.*

DEAR SIR:

Acknowledgment is made of your letter of November 16th, addressed to the Attorney General, in whose absence I am taking the liberty of answering.

In your letter you quote a letter from your resident engineer in charge of the work in the vicinity of Suffolk on project 64. In his letter, your engineer states that the county officers are refusing to enforce the speed laws on this road, with the result that damage is being done to the road, and the lives and property of travelers endangered by reckless and disorderly driving by persons who are constantly violating the law.

You then state that you desire to be advised if it is not the duty of the sheriff and the other police officers of the county to enforce the traffic laws. It is provided by section 2144 of the Code of Virginia, 1919, as follows:

"The Highway Commissioner and his assistants are vested with the powers of a sheriff for the purpose of enforcing the provisions of this chapter, and it shall be the duty of said commissioner and his assistants, and of every sheriff, constable, commissioner of the revenue, and police officer of the Commonwealth to aid and assist in enforcing the provisions of this chapter. It shall be the duty of the Secretary of the Commonwealth to bring before the proper officers, any violation of this chapter which may come to his attention."

This section is found in chapter 90, of the Code, relating to automobiles, and in which chapter the various speed laws are found. From a reading of this section, you will see that it is the duty of the sheriff of the county and of every constable, commissioner of the revenue and police officer, in addition to your own officers, to enforce the law.

In this connection, I call your attention to section 2705 of the Code of Virginia, 1919, commonly known as the Virginia ouster law, which provides for the removal of any officer for "malfeasance, misfeasance, incompetency, gross neglect of official duty, and who shall knowingly or wilfully neglect to perform any duty enjoined upon such officer by any law of this State."

Yours very truly,

LEON M. BAZILE,  
*Second Assistant Attorney General.*

## OFFICERS—DUTY OF SHERIFF TO SUMMON WITNESSES

RICHMOND, VA., *March 22, 1921.*

MR. C. A. CARNER,  
*Sheriff,*  
*Spotsylvania, Va.*

DEAR SIR:

I am in receipt of your letter of March 21st, in which you ask to be advised whether a sheriff is required by law to summon witnesses for the defendant in criminal cases without being paid therefor by the defendant.

In reply, I will state that I know of no law which requires a party tried for the commission of any criminal offense to pay the sheriff for summoning witnesses in his behalf unless he is convicted. Of course, after he is convicted, the sheriff's fees would be a part of the cost and he would be required to pay this along with the other costs.

A portion of section 8 of the bill of rights provides that "in all criminal prosecutions a man has the right to demand the cause and nature of his accusation, to be confronted with his accusers and witnesses and to call for evidence in his favor."

Trusting this is the information you desire, and with regards, I am,

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## OFFICERS—ELIGIBILITY OF

RICHMOND, VA., *November 18, 1921.*

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

MY DEAR COLONEL STERN:

Acknowledgment is made of your communication of November 7th, with which you enclose a letter from James B. Haywood, First Lieutenant, Infantry, Virginia National Guard, under date of November 16, 1921, in which he says:

"I was elected to the office of city sergeant at the general election here on November 8, 1921. There has been some discussion among the local lawyers as to whether or not I am eligible to qualify, in view of the fact of holding a commission in the Virginia National Guard. Will thank you very much to rule on the above."

I have carefully examined the index to the Code and the supplements, and the statutes relating to this matter, especially section 291 of the Code, and fully agree with you when you say that you do not think there is any doubt whatever that Lieutenant Haywood can hold the position of city sergeant without interfering with his position as First Lieutenant in the National Guard.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## OFFICERS—INCOMPATIBILITY OF OFFICES

RICHMOND, VA., *August 20, 1921*

HON. JOHN H. BOOTON,  
*Division Superintendent,  
Luray, Va.*

MY DEAR SIR:

Acknowledgment is made of your request that I advise you as to whether or not a road overseer of your county could be chosen as a district school trustee. Section 637 of the Code of Virginia, 1919, reads 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.”

I have examined with care section 3, chapter 263 of the Acts of 1906, which amends and re-enacts certain sections of the special road law for Page county.

This section provides for the appointment of a commissioner of roads for the county of Page, who, in my opinion, is a county officer, and therefore ineligible to hold the office of school trustee. It further provides that the road commissioner shall appoint as many overseers of roads in each district as the supervisor of such district shall notify him are required, and these road overseers may be removed for cause by the road commissioner.

Chapter 199 of the Acts of 1898, the original special road law for Page county, by section 4 thereof, provides that the road overseers shall receive a compensation of \$1.50 per day for each day engaged in working on the roads and bridges in their respective districts. I do not think that this act makes the road overseers of Page county either county or district officers. They are, in my opinion, merely employees, and therefore, not being officers, they would not be prevented from occupying the office of district school trustee.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## OFFICERS—INCOMPATIBILITY OF OFFICES

RICHMOND, VA., *July 12, 1921.*

J. W. COLLIE, Esq.,  
*First National Bank,  
Chatham, Va.*

DEAR MR. COLLIE:

Acknowledgment is made of your letter of the 14th, in which you say:

“Will you kindly inform me if, under the laws of Virginia, a United States mail contractor can hold the office of justice of the peace?”

Section 290 of the Code of Virginia, 1919, reads as follows:

“No person shall be capable of holding any office or post mentioned in the preceding section, who holds any office or post of profit, trust, or emolument, civil or military, legislative, executive, or judicial, under the government of the United States, or who is in the employment of such government, or who receives from it in any way any emolument whatever; and the acceptance of any such office, post, trust, or emolument, or the

acceptance of any emolument whatever under such government, shall, *ipso facto*, vacate any office or post of profit, trust or emolument under the government of this Commonwealth or under any county, city or town thereof."

The office or post mentioned in the preceding section, namely, 289, is "any office of honor, profit or trust under the Constitution of Virginia."

Section 291 of the Code of Virginia, 1919, as amended, contains certain exceptions to the sweeping provisions of section 290, but I do not find an exception as to the case mentioned by you. However, if the man has been elected and is filling the office of justice of the peace, the matter is one for the courts to determine, and I would not undertake to express an opinion thereon, as it is the general rule of this office not to express an opinion upon election matters after the election has been held, since the matter then becomes a question for the courts to decide.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

---

OFFICERS—INCOMPATIBILITY OF OFFICES

RICHMOND, VA., *March 11, 1921.*

HON. R. F. BURKE,  
*Treasurer,*  
*Appomattox, Va.*

DEAR MR. BURKE:

Acknowledgment is made of your letter of March 8th to the Attorney General, which I am answering in his absence. You request him to advise you whether a county officer can be appointed a notary public.

Under the provisions of section 2702 of the Code of Virginia, 1919, certain county officers were prevented from being commissioned as notaries public while holding their respective county offices. There was no reason for such a provision, and the legislature at its 1920 session, by chapter 203 of the Acts thereof, amended this section so as to permit certain county officers, among them being county treasurers, to be appointed notaries public without forfeiting their respective offices.

Yours very truly,

LEON M. BAZILE,  
*Second Assistant Attorney General.*

---

OFFICERS—INCOMPATIBILITY OF OFFICES

RICHMOND, VA., *March 21, 1921.*

MR. GEO. B. JONES,  
*Massaponax, Va.*

MY DEAR MR. JONES:

Your letter of March 21st, in which you enclose a copy of a former letter to me, dated February 26th, just received. Please pardon my delay in replying to your former letter, but for the past three weeks I have done nothing practically, except to receive numerous delegations who were interested in electing superintendents of schools, and last week the State Board of Education was in session

the entire week; hence it has been impossible for me to keep up with my correspondence. I feel sure that under the circumstances you will pardon what may appear as indifference on my part.

You ask in your letter if any citizen of the State can hold the following offices at the same time, namely: U. S. postmaster, registrar, member of electoral board, and member of the school board. In reply, I will state that he cannot.

The latter part of section 84 of the Code of 1919, volume 1, provides as follows:

"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."

I also find the following sentence in section 86 of the Code:

"The acceptance of any office, elective or appointive by such registrar during his term of office shall, *ipso facto*, vacate the office of registrar."

You will therefore see, under the provisions of the law as quoted above, no citizen can hold, at the same time, the offices mentioned in your letter.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

---

#### OFFICERS—INCOMPATIBILITY OF OFFICES

RICHMOND, VA., May 24, 1921.

MR. J. H. CARROLL,  
Box 5, Oceana, Va.

DEAR SIR:

Acknowledgment is made of your letter of the 21st, addressed to the Attorney General, in which you request me to advise you if a member of the House of Representatives, a game warden and a special officer are eligible to hold the post of 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."

You will see, from reading this section, that it generally prohibits all State and county officers and their deputies acting as district school trustees. The only exception made is as to fourth-class postmasters, county superintendents of the poor, commissioners in chancery, commissioners of accounts and notaries public. These exceptions exclude all others.

Therefore, in my opinion, the persons holding the positions referred to in your letter are not eligible to hold the post of district school trustee.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

## OFFICERS—FEES, JUSTICES OF THE PEACE

GEORGE M. RANEY, ESQ.,  
*Attorney at Law,*  
*Lawrenceville, Va.*

RICHMOND, VA., *January 4, 1921.*

DEAR SIR:

Acknowledgment is made of your letter of December 22, 1920, in which you say:

"Section 3481 of the Code provides that a justice of the peace is entitled to a fee of \$1.00 'for issuing any warrant in which the Commonwealth is not plaintiff, including the issuing of subpoenas.'

"Some of our justices are charging a fee of \$1.00 for issuing the warrant alone and a fee of fifty cents for each notice issued in civil cases.

"Please advise me if the fee of \$1.00 provided for in this section of the Code covers the entire fee to which the justice is entitled for issuing the warrant and notices, and whether 'subpoenas' as used in this section is intended to cover notices or summons to answer civil warrants for judgment on notes, bonds, accounts, etc."

Section 3481 of the Code of Virginia, 1919, as amended, provides, by subdivision 5 thereof, that the compensation of a justice of the peace "for issuing any warrant in which the Commonwealth is not plaintiff, including the issuing of subpoenas," shall be \$1.00.

I am of the opinion that the fee of \$1.00 provided for by this sub-section of section 3481 of the Code, covers not only the issuance of the warrant, but the process necessary to bring the defendants into court and the subpoenas for the witnesses required by the party in making out his case, and that a justice is not entitled to exact any additional fee for the notices or process by which the defendants are brought into court.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## OFFICERS—JUSTICES OF THE PEACE, FEES OF

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

RICHMOND, VA., *December 8, 1921.*

MY DEAR SIR:

Acknowledgment is made of your communication of recent date with reference to the payment out of the treasury to Hon. Frank P. Burton, mayor of Stuart, Va., of his fees for issuing warrants and trying certain misdemeanor cases which have been appealed from his decision, and which are now pending undetermined in the circuit court of Patrick county.

Mr. Burton contends that he is entitled to his fees in these cases immediately upon determination of the same, while it is your contention that he is not entitled to payment out of the treasury until final adjudication of the cases.

From an examination of the statutes relating to the payment of fees out of the public treasury, I am of the opinion that a justice of the peace is not entitled to an allowance for fees in misdemeanor cases until the same have been finally adjudicated in the court of last resort.

I have examined section 2550 of the Code of Virginia, 1919, and the amendment to section 3504 of the Code of Virginia, 1904, as amended by the Acts of

1918, page 627, and I am of the opinion that the fees, which the State is required to pay, after the certificate provided for has been filed by the justice, are fees in those cases in which a final disposition has been made.

Of course, it is very clear that, where the accused has been dismissed, the case is finally disposed of, and the fee is due from the time the certificate is filed, but in a case where an appeal is taken, the matter is not finally disposed of, and it cannot be determined whether or not the Commonwealth will be liable for the costs, and, therefore, I am of the opinion that fees should not be paid out of the treasury for the trial of misdemeanor cases by justices of the peace until the same have been finally disposed of and the liability fixed.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

---

OFFICERS—FEES OF JUSTICES OF THE PEACE

RICHMOND, VA., *November 17, 1921.*

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

MY DEAR SIR:

Acknowledgment is made of your communication of recent date, in which you enclose a file relating to the claim of Mr. C. G. Pleasants, a justice of the peace for the city of Petersburg, for certain fees earned by him in the trial of certain criminal cases in that city while acting in the place of the police justice of Petersburg, who was unable to sit in these matters, due to sickness or for some other reason.

Under the law, the police justice of the city of Petersburg is entitled to no fee from the State for the trial or hearing of criminal cases. As Mr. Pleasants was acting as a substitute for the police justice, I am of the opinion that he should look to the city of Petersburg for his compensation, and not to the State, as he was, in fact, the police justice when these cases were tried.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

---

OFFICERS—FEES OF

MR. ELIJAH NEWTON,  
*Justice of the Peace,*  
*Allens Level, Va.*

RICHMOND, VA., *May 21, 1921.*

DEAR SIR:

Replying to your letter of the 19th instant, the fee for a sheriff or constable for serving a civil warrant is fifty cents.

There is no fee allowed for returning the same, as the service of a warrant necessarily includes its return and there is no additional fee for this. See section 3487 of the Code of Virginia, 1919, as amended.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## OFFICERS—FEES OF

MESSRS. WILLIAMS & MULLEN,  
Attorneys at Law,  
Richmond, Va.

RICHMOND, VA., *March 30, 1921.*

GENTLEMEN:

Acknowledgment is made of your letter of the 7th instant, addressed to the Attorney General, in which you say:

"A New York client of ours advises us that its car, bearing a 1920 New York license, was stopped at Harrisonburg, Va., for being operated without a proper license. The explanation for having a 1920 license is that it had been unable to secure and have sent to it the 1921 license, and the magistrate imposed a fine of \$2.50.

"It is not our purpose to raise the question of the propriety of this fine, but we are writing you to ask your investigation of the costs imposed in addition to the fine, which were as follows:

"Justice of the Peace.....	\$ 3.00
Commonwealth's Attorney.....	5.00
Officer making arrest.....	6.00
Clerk.....	1.25
Fine.....	2.50
Total.....	<u>\$17.75</u>

"Of course the man could not appeal without losing some time, but as this would have involved even greater costs, it becomes all the more important that only proper costs should be assessed in the first instance. If you will kindly advise us whether or not these costs are legal, we will greatly appreciate it."

Of course, you will realize that this is not a matter which comes under the jurisdiction of this office. However, as a matter of courtesy to you, I am writing you my personal views as to the subject of your inquiry.

The justice of the peace was entitled to a fee of \$3.00. (Section 3507, Code of Virginia, 1919, as amended).

As to the fee of the attorney for the Commonwealth, see chapter 385 of the Acts of 1918 amending section 3528 of the Code of Virginia, 1904.

The clerk's fee of \$1.25 is correct. See sections 2550, 2552, 2563 and 2566 of the Code of Virginia, 1919. I assume, of course, there is no objection as to the amount of the fine.

As to the \$6.00 allowed the officer making the arrest, I doubt very much if this is correct. He would, of course, be entitled to a fee for making the arrest and for summoning witnesses, etc., but it is probable, although it does not appear from the statement in your letter, that he was allowed the fee of \$5.00 provided for by section 2133 of the Code of Virginia, 1919, under the erroneous assumption that the informer, if he be an officer, is entitled to a fee of \$5.00 to be taxed in the costs.

If this be true, the officer would not be entitled to a fee of \$5.00 in the case under consideration if the facts are as stated in your letter, for the reason that the fee can be taxed under section 2133 of the Code only in a prosecution for the use of a number plate on a machine other than that for which it was issued, or the use of a plate on a machine for which it was issued, knowing that the machine was of a higher horse power than that indicated by the license.

Trusting this gives you the desired information, I am

Yours very truly,

LEON M. BAZILE,  
*Second Assistant Attorney General.*

## OFFICERS—FEES OF

RICHMOND, VA., August 16, 1921.

FRED HUDGINS, ESQ., *Clerk,*  
*District School Board,*  
*Culpeper, Va.*

DEAR SIR:

Acknowledgment is made of your letter of August 10th, in which you say:

"About twice during each year, with the present inadequate revenue for school purposes, the district school board, of which I am a member, has to procure a temporary loan from some bank to meet current expenses.

"These loans are secured by note given by the district school board, usually for sixty or ninety days, until revenue is available and then curtailed or paid off according to the amount of funds which may be used for that purpose.

"Will you please advise me what commission the county treasurer is entitled to on the loans so procured?

"The school board has protested to the county treasurer against charging more than one quarter of one per cent. He, however, claims three and one-half per cent. and states that the State Accountant approves such commission.

"On May 15th, our board borrowed \$2,500.00 for two months, hoping to be able to pay off the whole amount, or at least a part of it, at the end of that time. The county treasurer states that he *has not collected* the taxes which he reported on June 30th, consequently we are unable to take up the loan and had to renew note referred to above. Upon each loan the treasurer has taken credit for three and one-half per cent. commission."

It would appear from the last paragraph of section 2431 of the Code of Virginia, 1919, as amended by the Acts of 1920, that the treasurer is entitled to a commission of three and one-half per centum on funds which are borrowed by the school board. This paragraph of section 2431 of the Code of 1919, as amended, reads 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, three and one-half per centum of the amount of such funds, but on the proportion of capital on taxes returned to counties and cities by the State, and donations to county, city or district for any purpose the compensation shall be not exceeding one per centum."

The second paragraph of this section of the Code, which provides a compensation of one quarter of one per centum of the amount of the proceeds of the sale of district road, bridge or school bonds, does not, in my opinion, apply to money which is borrowed by the district school board. However, I am clearly of the opinion that the treasurer is entitled to no compensation where the note is renewed. In other words, he is entitled to compensation only where the money is actually borrowed.

When the note is renewed, you merely obtain an extension of credit and not funds which go into the hands of the treasurer on such credit. He is, of course, therefore, entitled to no compensation.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## OFFICERS—JUSTICES OF THE PEACE—DUTIES OF

RICHMOND, VA., May 11, 1921.

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

DEAR SIR:

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

"The game warden of Bland county advises this office that there is only one justice of the peace in Seddon Magisterial District, and that this magistrate refuses to issue warrants for violation of the dog law.

"The warden wishes to know if he can call in a justice from one district to try alleged violators of the dog law in another district."

Section 4824 Code of Virginia, 1919, provides that in cases of misdemeanor where the warrant is issued by a justice or other person authorized to issue same, in the county wherein the offense has been committed, the warrant "shall be made returnable and tried in the magisterial district in which the offense was committed, by a justice of the said district, unless for good cause shown by affidavit of the defendant, the justice, to whom the said warrant is made returnable, shall, in his discretion, remove the trial to some point in another magisterial district of the said county."

You will see from the above that while the warrant might be issued by some other justice of the peace, it would have to be made returnable to the justice of the peace mentioned in your letters, as he is the only justice in his district.

No justice of the peace has a right to refuse to issue a warrant for the violation of the law committed in his district, that being one of the duties imposed upon him by law, and it is his duty to try the offender and to convict him, if the evidence shows a violation of the law, regardless of what his sympathies may be, or what view he may take as to the policy of the law, for a violation of which the accused is tried. If, on the other hand, the evidence should show that no crime has been committed, he should be acquitted. If the justice in question, after having this explained to him, still refuses to do his duty in the matter, your only remedy is to take the matter up with the judge of the circuit court of his county, and ask for his removal, or have some additional justice appointed who will do his duty.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## OFFICERS—LOCAL REGISTRARS OF VITAL STATISTICS

RICHMOND, VA., May 24, 1921.

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

MY DEAR DR. PLECKER:

Acknowledgment is made of your request that you be advised as to who may lawfully be appointed a local registrar of vital statistics. This matter is governed by the provisions of section 1564 of the Code of Virginia, 1919, which reads as follows:

"In cities and towns the principal executive officer of the local board of health shall be the local registrar of vital statistics, and in magisterial districts justices of the peace shall be local registrars of vital statistics for such portions of the districts as the State Registrar shall designate; but if any justice of the peace refuses to act as local registrar, or if there is no acting justice of the peace, the State Registrar shall appoint a suitable and proper person to be the local registrar for such district, or portion of such district as said registrar may designate. Any local registrar who fails or neglects to discharge efficiently the duties of his office, as laid down in this chapter, or who fails to make prompt and complete returns of births and deaths, as required thereby, shall be forthwith removed from his office of registrar by the State Registrar, in addition to any further penalties that may be imposed under other sections of this chapter for failure or neglect to perform his duty."

You will see that this section provides that in magisterial districts, justices of the peace shall be local registrars of vital statistics for such portions of the district as the State Registrar shall designate. If, however, any justice of the peace refuses to act as local registrar, or if there is no acting justice of the peace, the State Registrar is directed to appoint a suitable and proper person to be the local registrar for such district or any portion of such district, as the State Registrar may designate.

Where you have appointed such registrar, when there was no acting justice of the peace in such district, or when such appointment was made after the justice had refused to act as local registrar, the fact that a subsequent justice of the peace is elected or appointed for such district, would not in my opinion vacate the appointment previously made by you.

Trusting that this gives you the desired information, I am,

Yours very truly,

LEON M. BAZILE,

*Second Assistant Attorney General.*

---

#### OFFICERS—NOTARIES PUBLIC

RICHMOND, VA., *June 6, 1921.*

HON. E. GRIFFITH DODSON,  
*Attorney at Law,*  
*Norfolk, Va.*

DEAR SIR:

Absence from the office has prevented my answering sooner your letter, asking whether a legislator can be a notary public. I can find no law prohibiting a legislator from being a notary public.

The fact that section 44 of the Constitution prohibits a legislator from holding any other salaried office, or other offices enumerated in that section, would seem to imply that he could hold an office as notary public, which is not a salaried office nor one of the offices enumerated by the section.

Yours truly,

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

## OFFICERS—SCHOOL TRUSTEES

RICHMOND, VA., November 28, 1921.

MR. A. H. HILL,  
*Division Superintendent of Schools,*  
*Richmond, Va.*

DEAR SIR:

You call my attention to section 638 of the Code of 1919, which provides in part as follows:

“Every school trustee shall, at the time of his appointment, be a resident of the school district from which he is appointed, and if he shall cease to be a resident thereof, his office shall be deemed vacant.”

You state that a trustee from one of the school districts of Richmond has left the district for which he was appointed and become a resident and registered in another district. You ask whether he shall be deemed to have ceased to be a resident of the district for which he was appointed as school trustee. This question must be answered in the affirmative. He could hardly more completely cease to be a resident of the district for which he was appointed.

You further ask whether he is eligible to appointment as school trustee to fill a vacancy in the district in which he now resides. This question must also be answered in the affirmative.

The fact that the gentleman in question has become ineligible to hold the office of school trustee, for a certain district, due to the fact that he is no longer a resident of that district, does not, in my opinion, preclude him from being appointed as school trustee for the district in which he now resides.

With kindest regards, I remain

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

## OFFICERS—STATE AND LOCAL

RICHMOND, VA., May 13, 1921.

FRANK STUART, ESQ.,  
*Attorney at Law,*  
*Alexandria, Va.*

MY DEAR SIR:

Acknowledgment is made of your letter of May 11, 1921, in which you request me to advise you whether, in my opinion, the office of civil and police justice in cities of less than 45,000, is a State or city office, with reference to whether or not the candidates for such office should enter the State primary or the city primary.

Civil and police justices in cities of less than 45,000, are provided for by section 3097 of the Code of Virginia, 1919, which reads as follows:

“In each city containing ten thousand inhabitants and less than forty-five thousand inhabitants, as determined by the last United States census, there shall be elected by the qualified voters of such city, on the Tuesday after the first Monday in November, nineteen hundred and twenty-one, and every four years thereafter, a special justice of the peace, to be known as the civil and police justice, who shall hold office for a term of four years, and whose term of office shall begin on the first day of January succeeding his election.”

In my opinion, such justices are State officers within the meaning of the election laws, and should enter the State primary. You will see from the above quoted section that they are elected on the Tuesday after the first Monday in November, which is the regular election day for State officers. The regular city election is held on the second Tuesday of June, and if it had been the intention of the legislature that these candidates should be required to enter the city primary rather than the State primary, I am of the opinion that the date of their election would not have been fixed for the Tuesday after the first Monday in November, the regular election day for State officers.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

---

OFFICERS—FEES OF SHERIFF

RICHMOND, VA., *April 27, 1921.*

HON. JOEL W. FLOOD,

*Attorney at Law,*

*Appomattox, Va.*

MY DEAR MR. FLOOD:

I am in receipt of your letter of April 22nd. In this you state that the judge of your circuit court made an allowance of \$10.00 for the sheriff of your county for serving a capias on a witness in Campbell county who failed to appear as a witness in a criminal prosecution in your circuit court. You further state that the Auditor refused to pay this account on account of section 3514 of the Code of 1919.

I regret very much to say that under the provisions of the section just referred to, the Auditor had to refuse to pay the account. You will observe that this section provides that:

“No officer shall be entitled to payment out of the treasury for services rendered in a proceeding against any person for disobedience of the process of the court.”

While it is true that section 4960 provides that a sheriff, for traveling out of his county or corporation to execute process in a criminal case for which no other compensation is provided, shall receive such compensation as the court may certify to be reasonable, etc., at the same time the service rendered by your sheriff in the case in question was a proceeding against a person for disobedience of the process of your court. Such being the case, he could not receive compensation therefor.

However, I presume that the judge entered judgment against the party upon whom this capias was served, together with costs, which, of course, should include the \$10.00 for the sheriff.

The application of this law in this particular instance certainly works a hardship, but is one of those unfortunate instances which cannot be helped.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

## OFFICERS—FEES OF

RICHMOND, VA., *March 23, 1921.*

ROBERT CABANISS, ESQ., *President,*  
*Petersburg Rim and Veneer Company,*  
*Petersburg, Va.,*

DEAR SIR:

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

"Please let me know what fee should go to a constable or deputy of the Highway Commissioner for summoning the driver of an automobile under the following conditions:

"The owner had a Ford car in 1920 for which he procured a license and attached the proper license tags both front and rear. He afterwards bought a new Ford car, for which he obtained a license for the year 1921, and left the old car in the barn, intending to sell it, but in February, 1921, he decided that he might sometimes use the old car, so paid for and obtained a license for the old car for the year 1921. About two weeks after obtaining this license for the old car, he used the old car with the 1920 license attached, which was issued for that car, so the only violation of the law was the technical violation in not attaching the 1921 license tag, which was exhibited to the justice together with the cards for the years 1920 and 1921, showing that the car was properly designated.

"I am aware that the justice is entitled to \$1.50 for issuing a warrant and \$1.50 for hearing the case but the justice does not agree with me in that he claims that the deputy of the Highway Commissioner or State traffic officer of the county is entitled to a fee for costs of \$5.00. As I understand it, that fee to the officer is in case when the license tag was intended for some other car or for a car of higher horse power and I do not think that this officer is entitled to any fee, other than the usual fee for serving the warrant or summoning some one before the justice of peace."

It is provided by section 2133 of the Code of Virginia, 1919, as follows:

"If any person shall use a number plate on any other machine than that for which it was issued, or if he shall use such plate on a machine for which it was issued, knowing that it is of a higher horse power than that indicated by the license, in either case he shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than ten nor more than fifty dollars, one-half of which shall be paid to the informer, if he be not an officer of this Commonwealth. If he be such officer there shall be taxed in the costs in his favor the sum of five dollars."

You will see from a reading of this section that the officer is not entitled to the taxed fee of five dollars except in a prosecution for the use of a number plate on a machine other than that for which it was issued, or using a plate on a machine for which it was issued knowing that the machine was of a higher horse power than that indicated by the license.

Under the facts narrated in your letter, the officer is not entitled to the five dollar fee provided for by this section.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

## OFFICERS—BOARDS OF SUPERVISORS

RICHMOND, VA., November 25, 1921.

MR. GEO. A. COPP,  
*Chairman Board of Supervisors,  
Strasburg, Va.*

MY DEAR SIR:

I beg leave to acknowledge receipt of your letter of November 22nd, in which you submit the following question:

“Kindly advise me in case of a tie vote for an appropriation if the motion is lost. I am of the opinion that it requires a majority vote to make an appropriation of funds. When is a motion lost on a tie vote?”

If you will examine chapter 109 of the Code of 1919, you will find that this chapter contains the law governing the boards of supervisors. If you would read section 2717, you will ascertain that all questions submitted to the board for decision, under the proceedings of the chapter above referred to, shall be determined by a *viva voce* vote of the majority of the supervisors present.

It further provides that in any case in which there shall be a tie vote upon any question, when all of the members of the board are not present, the question shall be passed by until the first meeting at which all the members are present, when it shall again be voted upon. And in any case in which there is a tie vote on any question, and *all the members* of the board being present, the clerk shall record the vote and immediately notify the Commissioner in Chancery designated by the court to give the casting vote, in case of a tie, and request his presence at the present meeting of the board. If he cannot be present at that meeting, the board may adjourn, as fixed by the board, in order that the State Commissioner may attend. After he is fully advised as to the matter upon which he is to vote, he shall cast the tie vote, provided he is prepared to do so, and if not prepared, the board can adjourn from time to time, not exceeding thirty days, in order that he may be prepared to vote.

You will, therefore, see from the reading of this section that, where there is a tie vote, it is the duty of a Commissioner in Chancery, designated by the court, to give the casting vote or break the tie.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## OFFICERS—SUPERVISORS—POWERS OF

HON. GILBERT E. PENCE,  
*Commonwealth's Attorney,  
Woodstock, Va.*

RICHMOND, VA., May 5, 1921.

MY DEAR MR. PENCE:

You state in your letter of recent date, that the board of supervisors of your county held their regular meeting for the purpose of laying the levy on April 11, 1921. You further state that later on, one or two of the supervisors raised their district levy and you ruled that the increase was illegal. I am of the opinion that you are correct as to this.

You ask also whether or not your board can re-open the levy which was made at its regular meeting on April 11, 1921, and increase the district levy.

If the board of supervisors at their regular meeting above mentioned, formally adjourned, I do not think they would have the authority to meet again and re-open the matter. If, on the other hand, they had adjourned to some other date without completing the laying of the levy, of course the board could then meet and change the levy. I agree with you in your construction of the statute.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

---

OFFICERS—TRAVELING EXPENSES OF

HON. R. CHAPIN JONES,  
*State Forester,*  
*Charlottesville, Va.*

RICHMOND, VA., *January 24, 1921.*

MY DEAR MR. JONES:

Acknowledgment is made of your letter of the 22nd instant.

In response thereto, the only statute I know of which requires the governor to approve the traveling expenses of any official of the State, is section 322 of the Code of Virginia, 1919, which provides that he shall approve the traveling expenses of commissioners for the promotion of uniformity of legislation in the United States, etc.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

---

OUSTER PROCEEDINGS—COSTS OF

MESSRS. HOOKER & HOOKER,  
*Attorneys at Law,*  
*Stuart, Va.*

RICHMOND, VA., *December 9, 1921.*

GENTLEMEN:

I am just in receipt of your letter of the 8th. You state that a petition was filed by a party in your court to oust a justice of the peace under section 2705 of the Code of 1919. You further state that the petition was dismissed, and you then ask to be advised whether the petitioner or the Commonwealth pays the cost.

I have carefully read section 2705 of the Code and there seems to be no provision for costs in this section. I do not think the cost can be placed upon the Commonwealth, nor should it be placed upon the justice of the peace if the petition was dismissed. You failed to state for what cause the petition was dismissed, but I presume it was due to the fact that the petitioner learned he could not prevail.

I am inclined to the opinion that the costs in a case of this nature should be paid by the petitioner, inasmuch as he brought the defendant into court, and after he did so, found he could not prevail.

I would further add that I talked with Mr. Moore, the Auditor, about the matter, and he is of the opinion that the cost should be paid by the petitioner, as no cost can be placed upon the Commonwealth except in cases especially provided for by statute.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## PHARMACY LAW

RICHMOND, VA., *March 19, 1921.*

HON. A. L. I. WINNE, *Secretary,*  
*Board of Pharmacy,*  
*City.*

DEAR SIR:

The Attorney General has requested me to answer your letter enclosing a letter from Mr. Elmer R. Deffenbaugh, of Newport News, with reference to fixing the status of a defunct pharmacy.

Mr. Deffenbaugh states that the drug store disposed of its drug stock but retained the prescriptions which it had filled while operating as a drug store. He requests information as to the ownership of these prescriptions under such circumstances.

It appears to me that this is a matter in which your department has no interest because of the fact that it is purely a question of the ownership of the prescriptions, that is to say, whether or not, upon the closing of its business the drug store should turn them over to the persons who had filed them to be filled. The title to such prescriptions must be determined by litigation, if necessary, between the proprietor of the store and the persons owning the prescriptions.

Of course, if there is any proof that this store is actually doing the business of a pharmacist as defined by the laws of Virginia, without complying with the law, proceedings should be taken against it by the Commonwealth's Attorney, but I doubt that the mere furnishing of copies of these prescriptions is a violation of the law with reference to doing the business of pharmacist.

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

Yours truly,

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

---

PHYSICIANS AND SURGEONS—CHIROPRACTERSRICHMOND, VA., *December 14, 1921.*

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

MY DEAR DOCTOR:

Acknowledgment is made of your letter, asking whether a person can practice chiropractic in the State of Virginia without securing a certificate from the Board of Medical Examiners in this State.

Chapter 84 of the Acts of Assembly 1916, regulating the practice of medicine in Virginia, provides that practitioners of medicine must receive a certificate so to do from the Board of Medical Examiners of the State.

Section 12 defines practicing of medicine, as within the meaning of the Act, as any person who opens an office for such purposes or announces to the public a readiness to prescribe for, or give surgical assistance, heals, cures, or relieves those suffering from injury or deformity, or disease of mind or body, or announces to the public in any manner a readiness or ability to cure, heal, or relieve those who may be suffering from injury or deformity, or disease of

mind or body for compensation; or who shall use in connection with his name the words or letters "Dr.," "Doctor," "Professor," "M. D." or "Healer," or any other title, word, letter or designation intending to imply or designate him as a practitioner of medicine in any of its branches, or of being able to heal, cure or relieve those who may be suffering from injury or deformity or disease of mind or body.

I am of the opinion that the definition of practice of medicine, as contained in this paragraph, is broad enough to include chiropractic. This becomes manifest when it is observed that section 11 of the act exempts therefrom any person who commenced the practice of chiropractic in the State prior to January 1, 1913.

I am, therefore, of the opinion that any one who began the practice of chiropractic in this State subsequent to the date last mentioned, must secure from the Board of Medical Examiners a certificate as provided for in the Act in question, and register the same with the Clerk of the circuit court of the county or the corporation court of the city where any such practice is to be carried on.

My attention has been called to section 114 of the tax bill of Virginia providing for the licensing of physicians, but this section only relates to the payment of a license tax to be paid by physicians and has been abrogated, so far as physicians are concerned, by the fact that they have been exempted by a subsequent act of the legislature from the payment of a license tax.

My attention has further been called to a newspaper clipping, stating that the judge of the corporation court of the city of Danville held that a person could practice chiropractic in Virginia without complying with the act in question. I have been advised that this clipping is in error as to the position of the court; that the court, in fact, held that any person practises chiropractic unlawfully, who does not comply with the act in question, by securing a certificate from the Board of Medical Examiners, and registering it in the proper clerk's office.

I would be very glad to give you any further information in my power on this subject.

Yours truly,

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

---

PHYSICIANS AND SURGEONS—OSTEOPATHS

RICHMOND, VA., *September 12, 1921.*

W. E. TURNER,  
*Room 423, Post Office Building,  
City.*

DEAR SIR:

Acknowledgment is made of your request that you be advised if an osteopath, registered under the law of the State of Virginia, is allowed to use narcotic drugs, or any other drugs, in his practice.

It is provided by section 1618 of the Code of Virginia, 1919, in part:

"\* \* \* It is further provided that graduates of any sectarian school of medicine who profess to practise medicine according to the tenets of said school shall fulfill all the conditions of the board and of the

State Board of Education, save that they may be exempted from taking the examination of the regulars on the practice of medicine, materia medica and therapeutics. *A license to practise such sectarian school of medicine shall not permit the holder thereof to administer drugs or practise surgery unless he has qualified himself so to do by examination before the board, nor shall it permit members of such sectarian schools now practising in this State to perform surgery with the use of instruments unless they satisfy the board that they have had adequate clinical facilities at their respective colleges of graduation, or by hospital work, to enable them to perform such operations."*

You will see from a reading of the above quoted portion of section 1618 of the Code of Virginia, 1919, that an osteopath is not permitted to use drugs of any kind in the practice of his profession, unless he has qualified himself so to do by examination before the board.

In an opinion given Dr. J. M. Barney, then Secretary and Treasurer of the Virginia State Board of Medical Examiners, on September 21, 1915, Hon. Christopher B. Garnett, then Assistant Attorney General, held that if an osteopath who had not received a special license to administer drugs registers under the Harrison act and dispenses opium and cocaine preparations, he was guilty of a misdemeanor and punishable as provided by law. This opinion was based upon the provision of section 11 of chapter 237 of the Acts of 1912, from which the above quoted portion of section 1618 of the Code of Virginia, 1919, was taken.

I am enclosing you herewith a copy of this opinion, which is found in the report of the Attorney General for 1915, page 105, which correctly expresses the law of Virginia with reference to this subject at the present time.

Yours very truly,

LEON M. BAZILE,  
*Second Assistant Attorney General.*

---

PRINTING, PUBLIC

RICHMOND, VA., *February 3, 1921.*

HON. DAVIS BOTTOM,  
*Superintendent of Public Printing,  
City.*

MY DEAR MR. BOTTOM:

I beg leave to acknowledge receipt of your favor of February 1st, in which you call my attention to the fact that there has been recently established, at the State penitentiary, a print shop. You refer to certain sections of the Code of Virginia, 1919, and acts of Assembly, which deal with the Department of Public Printing, and which prescribe your duties as Superintendent. You then ask to be advised as to what are the proper relations existing between your office and that of the penitentiary print shop, and what changes, if any, the establishment of said shop makes in the law which prescribes your duties as public printer.

In reply I would advise that, under the provisions of section 384 of the Code of Virginia, 1919, all departments therein referred to, with the exception of the hospitals for the insane, the Virginia State Epileptic Colony and Catawba Sanatorium, are required to order their printing through your department, and the establishment of the print shop at the penitentiary does not change the provisions of this section.

So far as the hospitals for the insane, the Virginia State Epileptic Colony and the Catawba Sanatorium are concerned, these institutions have a right, under the provisions of this section, to have their printing done wherever they desire.

Sections 382 and 383 of the Code of Virginia, 1919, provide how contracts for printing shall be awarded by you as Superintendent of Public Printing, and under the provisions of these sections, the penitentiary print shop may bid for your work just as any other printing establishment would do, and your awards on such proposals should be made in accordance with the provisions of these two sections. Of course, any contracts or specific agreements now existing between you and any printing firm for the fiscal year must be adhered to.

You also ask in your letter if it is still your duty, since the establishment of the penitentiary print shop, to continue to have printed the annual report of the penitentiary board and superintendent. In reply I will state that it is still your duty to do this.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

---

PRINTING, PUBLIC

RICHMOND, VA., *January 11, 1921.*

HON. DAVIS BOTTOM,  
*Superintendent of Public Printing,  
City.*

MY DEAR MR. BOTTOM:

Acknowledgment is made of your letter of December 28, 1920, and of your previous letters in which you refer to the opinion given by me to the Chief Examiner of Banks, dated July 20, 1920, in which I held that, under the provisions of section 385 of the Code of Virginia, 1919, the cost of printing, etc., should be paid out of the treasury.

In your letter you call my attention to sections 4120, 4121 and 4122 of the Code of 1919, as amended, especially to section 4122 of the Code as amended, and state that it is the unquestionable intention of these sections that all the expenses for the maintenance and operation of the Banking Division should be chargeable against the banks.

I have examined these sections with care, especially that portion of section 4122 of the Code as amended, which, after providing the fees that shall be paid by the banks, reads:

“\* \* \* and shall be paid into the State Treasury to the credit of the ‘banking fund—State Corporation Commission’ on or before the 31st day of July following, to be used in the carrying out the provisions of this chapter.”

This language would be sufficiently broad to justify the use of the funds thus accruing to the Banking Division for printing, if it were not for the express provision of section 385 of the Code of Virginia, 1919, which provides:

“\* \* \* Each officer, board, department or institution, except the Governor, General Assembly, Secretary of the Commonwealth, Auditor, Second Auditor, Treasurer, Attorney General, Registrar 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 board into the treasurer 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."

The law is well settled that repeals by implication are not favored, and no statute is to be construed as repealing by implication the express terms of another statute if that can be avoided.

While I feel that, as a matter of justice, the cost of the printing of the Banking Division should, by law, be required to be paid out of the funds collected for the support of that division from the banks, I am nevertheless constrained to hold that section 4122 of the Code of Virginia, 1919, as amended, and the other sections to which you have referred me, cannot be construed as repealing by implication the express provisions of section 385 of the Code of Virginia, 1919, requiring the cost of printing, etc., of the Banking Division to be paid out of the treasury.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

---

#### ROADS AND HIGHWAYS—ALTERATION

RICHMOND, VA., *September 30, 1921.*

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

DEAR SIR:

Acknowledgment is made of your letter of recent date, which reads in part as follows:

"Under provisions of chapter 10, Acts of 1918, I located and established, as a part of the State highway system, a route theretofore endorsed by the Commission of the Senate and House of Delegates, appointed pursuant to joint resolution of the General Assembly in 1916, said route being from Williamsburg, James City county, via Springfield and Halstead's Point, in York county, to Lebanon Church, and constructed a concrete road on a part thereof from the corporate limits of Williamsburg to Springfield.

"Subsequent to this location and establishment, the Federal Government, by presidential proclamation, took title to and directed the Secretary of the Navy to take possession of over 11,000 acres of land in York county, a description of the land in said proclamation showing that it included and entirely surrounded said road as located and established, for a distance of over five miles, no mention of said road being made in the proclamation. Considerable agitation was then started by property owners on a parallel route, seeking to have the road constructed on a route spoken of as the Grove road, instead of upon the route as designated by me, which construction would have necessitated the abandonment of the former route, and a part thereof already constructed."

You further state that the State Highway Commission, after a hearing the request of certain persons, determined that you had located and established the section from Williamsburg to Springfield and that the commission was without jurisdiction between those points. You then say:

"You will, therefore, see that this route from Springfield to Halstead's Point is incorporated in the State highway system under provisions of acts of the General Assembly of Virginia, and a part thereof has actually been constructed.

"I wish to know whether or not I have authority to abandon the above section of road located and established as a part of the State highway system, a part thereof constructed, and am authorized to expend money from highway construction funds on any other route than that as located and established."

It appears from the facts in connection with this matter that a part of the route over which the road in question would run, if you followed the line of original location, would be over a Federal reservation, which the Court of Appeals has held in *Bank of Phoebus v. Byrum*, 110 Va. 708 (1910) is no longer a part of the State, nor subject to the jurisdiction of its courts. The matter is at present in litigation in the circuit court of the city of Richmond, where a temporary injunction has been issued restraining the construction of this road over the Federal reservation in question.

Whether the legislature would have the power to authorize the expenditure of public funds in the construction of a road over territory which is no longer a part of the State, nor subject to the jurisdiction of its courts, is not necessary to be decided here. However, I am of the opinion, as I intimated to the Highway Commission in my letter of September 14, 1920, to Hon. Wade H. Massie, its Chairman, in which the selection of this particular road was discussed (report of Attorney General, 1920, pp. 233, 236), that, in the absence of any specific legislative authority, you would have no right to expend any part of the public funds in the construction of a road through a Federal reservation.

Being of this opinion, I think that the act of the Federal Government in taking over the territory through which the road in question was laid out pursuant to the powers vested in it, has the effect of preventing any expenditure upon that part of the road which is located through the Federal reservation.

Ordinarily, as I informed you in my opinion to you of May 3, 1920 (report of the Attorney General, 1920, p. 243), you would have no right to re-locate a route which had been selected after expenditures had been made and obligations incurred in connection with the route as established. However, an extraordinary situation has arisen, over which you have no control, which precludes you from proceeding with the further construction of the original route. In such case, I cannot believe that it was the intention of the legislature that such an important link in the highway system of the State should remain indefinitely unconstructed merely because by the operation of something over which you have no control, it has become illegal or impossible to construct the highway over the route originally selected. I am therefore of the opinion that the necessity of the matter implies authority in you and the Highway Commission to re-locate the link in question over a route where the road can be legally constructed without an act of the legislature authorizing you to do so.

It was clearly the intention of the legislature, by chapter 10 of the Acts of 1918 (sub-sec. 9), to establish as a branch of the highway system a road from Newport News to Williamsburg, vesting in you the authority to locate the exact routes to be followed by said road.

This being true, and circumstances having arisen which make it impossible for you to construct the road over the route so selected by you, I am of the opinion that you should carry out the intention of the legislature by selecting some other route which would make possible the construction of the road connecting the above points, as intended by the legislature.

As I have said, it was never the intention of the law, in my judgment, to prevent you from re-locating the road where it became illegal or impossible to construct the same over the route as originally designated.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

#### ROADS AND HIGHWAYS—ALTERATION OF ROUTE

RICHMOND, VA., *November 29, 1921.*

HON. WADE H. MASSIE, *Chairman,*  
*State Highway Commission,*  
*Washington, Va.*

DEAR SIR:

Acknowledgment is made of your letter of November 16th, in which you state that Hon. Geo. P. Coleman, State Highway Commissioner, has re-located a part of the State Highway between Williamsburg and Newport News under authority of my letter to him of September 30th.

You then ask whether or not his decision in re-locating this route is subject to appeal, as provided by section 4 of chapter 31 of the Acts of 1919. This section, so far as is applicable to the matter here under consideration, provides as follows:

"The commissioner shall have power to locate and establish the routes to be followed by the roads comprising the State highway system between points designated in the act establishing said system, but the right of appeal to the commission from the decision of the commissioner is hereby given to the constituted local road authorities or to the citizens on petition of fifty or more freeholders in the district, county, city or town affected by any particular decision of the commissioner involving the location of routes to be followed. It shall be the duty of said Commissioner upon the establishment and location of such route, whether heretofore or hereafter made, to file a report of the same with the clerk of the circuit court or corporation court of the county or city in which such road is located, showing the location of said road, and the appeal hereinbefore provided for shall be taken within thirty days from the filing of such notice with such clerk. Immediately upon receipt of such notice the clerk shall notify the local road authorities of such city, county or district. Such appeal shall be heard forthwith and decided by the commission, and in case of such appeal the commission may hear such evidence as shall be properly brought before it and may view the routes and shall determine which route will, in its judgment, best serve the interests of the State, and its decision shall be final; provided, that notice at the time and place when the said commission will hear such appeal shall be given by said commission at least ten days prior to such hearing, which notice shall be sent by registered mail to the clerk of the circuit court of the county or corporation court of the city from which said appeal was taken, and by any additional notice said commission shall consider proper; and provided that, where the route has already been located and established by the commissioner, under the authority conferred upon him by an act approved January thirty-first, nineteen hundred and eighteen, entitled 'an act to establish the State highway system' no change shall be made in such route by the commission. \* \* \*

You will see from the above quoted provisions of section 4 of chapter 31, Acts of 1919, that, where the Commissioner locates and establishes the routes to be followed by the roads comprising the State highway system between points designated in the act establishing said system, the right of appeal to the commission from the decision of the Commissioner is given with the exception of those routes which have already been located and established by the Commissioner under the authority conferred upon him by the act approved January 31, 1918.

In this case, an old route has been abandoned because it was illegal to construct the State highway over the route as originally designated, and, under necessity of law, the Commissioner, I held, was authorized to designate a new route over which the State highway could be constructed without violating the law. He has now done this, and, in my opinion, the designation of the new route to be followed by the State highway system is such a designation as will entitle the proper parties to an appeal.

However, I call your attention to the fact that, in passing upon any appeal made from the decision of the Highway Commission, in no event has your Commission the authority to re-designate the old route which was abandoned in this case, as its abandonment was caused by its being illegal to construct said road in accordance with the original designation.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

ROADS AND HIGHWAYS—BOND ISSUES

MR. W. C. BIBB,  
*Commonwealth's Attorney,*  
*Louisa, Va.*

RICHMOND, VA., *March 2, 1921.*

MY DEAR SIR:

Acknowledgment is made of your letter of February 25th, with reference to the constitutionality of chapters 184 and 213 of the Acts of 1920, with reference to which I wrote you on January 7, 1921.

Without committing myself, I am not sure that the objections raised by you, as to the constitutionality of these sections, would be without merit, if these acts created any binding obligation upon the State.

However, as I said in my letter of January 7th, I am of the opinion that neither of these acts imposes any legal obligation upon the State whatsoever, to reimburse any county, district, private corporation or person for funds expended by them in the improvement, construction or reconstruction of sections of the State highway system. The only construction that can be placed upon these statutes is that the Highway Commissioner is authorized to enter into a contract with counties, districts, private corporations or persons who desire 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 to finance the construction or reconstruction of said highways or sections thereof, in which contract the Highway Commission can only promise that it will make repayment of the funds expended in such work without interest annually, only in the event that the funds are later made available and are appropriated and apportioned by the General Assembly for such construction or reconstruction until the amount so advanced has been repaid.

In other words, these statutes impose no legal obligation whatsoever on the part of the State or the Highway Commission to reimburse any county, district, private corporation or individual, and specifically the county of Louisa, for funds expended by them in the construction of any part of the State highway system. The money is expended entirely at the risk of the county, district, corporation or individual who advances the same on the chance that the State may, at some future time, reimburse such person for the expenditure. When that money will be repaid, no one can say. It rests in the discretion of the General Assembly; and, certainly, although there may be a moral obligation on the part of the Commonwealth to later make provision for the repayment of money so expended, at the present time there is certainly no legal obligation upon the Commonwealth to reimburse counties, districts and persons so advancing funds for the construction of portions of the State highway system in accordance with the provisions of chapters 184 and 213 of the Acts of 1920. There being absolutely no legal obligation upon the part of the State to pay for the construction of portions of the State highway system constructed in accordance with these acts, there, of course, is no lending of the credit of the State to such counties, districts or persons; and I cannot see, in view of this construction of these statutes, how any provision of the Constitution referred to by you can be violated thereby; and I am of the opinion that these acts are not in conflict with those provisions of the Constitution.

Trusting that I have made myself clear, and assuring you of my appreciation of the interest you have taken in this matter and the suggestions that you have made in your letters, I am,

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

---

#### ROADS AND HIGHWAYS—BOND ISSUE LAW

W. C. BIBB, ESQ.,  
*Commonwealth's Attorney,*  
*Louisa, Va.*

RICHMOND, VA., *January 7, 1921.*

DEAR SIR:

Acknowledgment is made of your letter of January 6th, and of your previous communication enclosing correspondence with Hon. G. P. Coleman, State Highway Commissioner, with reference to the constitutionality of chapters 184 and 213 of the Acts of 1920. The former act relates generally to the building of sections of the State highway system by counties in anticipation of the construction of the same by the State, in which event it is conditionally provided that the county shall be reimbursed by the State for such expenditure when the State funds are available. The latter act relates to a bond issue by the county of Louisa for a sum not exceeding \$200,000 for the purpose of constructing a section of the State highway system. In your letter you say, in part:

"It occurs to me that the constitutionality of this act (March 16, 1920, for Louisa County) may be questioned, in view of the fact that it seems to contemplate that the State will refund to the county the amount of money borrowed by the county on its bonds issued under the provisions thereof. I refer to section 184 of the Constitution of Virginia, prohibiting the State from incurring debt except for certain purposes. It may be

objected that the scheme proposed by chapter 213 of the laws of 1920 is merely a device to evade this constitutional prohibition.

"I also refer to section 185 of the Constitution which provides that the State shall not 'assume any indebtedness of any county, city or town, nor loan its credit to the same.' This act may be subject to criticism on the ground that the credit of the State is loaned to the county inasmuch as it is provided therein that the State will reimburse the county for such money as may be expended upon the roads to be constructed out of the proceeds of the bonds issued."

The State highway system was established by chapter 10 of the Acts of 1918, by which act the general location of the roads of that system was designated. A careful examination of chapter 213 of the Acts of 1920, which act is the special act authorizing the county of Louisa to issue bonds, fails to disclose any assumption of any indebtedness of the county of Louisa by the State, or any lending of the credit of the State to the county of Louisa. Indeed, if we except the whereas clauses of chapter 213 of the Acts of 1920, which are mere recitals as to the reasons for authorizing the bond issue, there is no reference to reimbursing the county for any part of such bond issue, and the "whereas" clauses of the act, in my opinion, cannot be construed as any assumption of "any indebtedness" of the county of Louisa, nor a lending "of its credit to the same." I therefore cannot see any violation of section 185 of the Constitution by the provisions of chapter 213 of the Acts of 1920.

You have also raised the question that this act may possibly conflict with the provisions of section 184 of the Constitution. This section of the Constitution, as it existed at the time the act was passed, reads as follows:

"No debt shall be contracted by the State except to meet casual deficits in the revenue, to redeem a previous liability of the State, to suppress insurrection, repel invasion, or defend the State in time of war. No scrip, certificate, or other evidence of State indebtedness, shall be issued except for the transfer or redemption of stock previously issued, or for such debts as are expressly authorized in this Constitution."

What I have heretofore said, with reference to chapter 213 of the Acts of 1920, applies with equal force to this objection, since by that act the Commonwealth does not contract any debt, since in no portion of the body of the act is there any assumption on the part of the State of the debt to be contracted by the county of Louisa, and even if it be conceded that the State had assumed any obligation in this act to reimburse the county of Louisa for the funds expended in the construction of this portion of the State highway system, the act was passed in anticipation of the amendment to section 184 of the Virginia Constitution, which was ratified at the last November election. This section, as amended, reads as follows:

"No debt shall be contracted by the State except to construct, or reconstruct, public roads, to meet casual deficits in the revenue, to redeem a previous liability of the State, to suppress insurrection, repel invasion, or defend the State in time of war. No scrip, certificate or other evidence of State indebtedness, shall be issued except for the transfer or redemption of stock previously issued, or for such debts as are expressly authorized in this Constitution."

You will see that, in its amended form, this section of the Constitution authorizes the State, by inference, at least to contract debts for the purpose of constructing or reconstructing public roads. It is well settled that the legislature has the power to enact a law in anticipation of an expected amendment to the Constitution.

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, with references; *Brig Aurora v. U. S.*, 7 Cr. ch., 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 *Coquenhaw v. Avoca 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. 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. \* \* \*"

Chapter 184 of the Acts of 1920, so far as is applicable to the question here under consideration, reads 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."

What I have said, with reference to the right of the legislature to pass a statute in anticipation of an amendment to the Constitution, applies with equal force to this chapter of the Acts of 1920, and I am of the opinion that it does not violate the provisions of section 184 of the Virginia Constitution, as amended.

The language of section 185 of the Constitution, which by any construction could be made to apply to the facts here under consideration, is that the State shall not "assume any indebtedness of any county, city or town, nor lend its credit to the same."

By the provisions of chapter 184 of the Acts of 1920, in my opinion, the State does not assume any indebtedness of any county, nor does it by this act lend its credit to the same. The provisions of chapter 184 of the Acts of 1920 create no definite nor enforceable obligation upon the Commonwealth to repay to a county any money expended by it in the construction of a portion of the State highway system. It merely authorizes counties and certain other designated persons to construct portions of the State highway system at their own expense, and provides that the State Highway Commission shall be authorized to make repayment to such counties or parties annually *when the funds are available and are apportioned* for such construction or reconstruction, until the cost thereof has been paid.

This is no definite undertaking or obligation on the part of the State to reimburse counties or persons constructing portions of a highway system. It is a mere conditional authority extended to the Highway Commission to make payment for the same only in the event that such funds in the future are made available and are apportioned by action of the legislature.

I am therefore of the opinion that there is nothing in this act from which anyone can draw any assumption of any indebtedness on the part of the State or any lending of its credit. It therefore follows that these acts are not in conflict with section 184 of the Constitution, as amended, and section 185 thereof.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

## ROADS AND HIGHWAYS—TELEPHONE POLES IN ROAD

RICHMOND, VA., *April 20, 1921.*

A. H. CRISMOND, ESQ., *Clerk,*  
*Spotsylvania County,*  
*Spotsylvania, Va.*

MY DEAR MR. CRISMOND:

Please pardon my delay in replying to your letter of recent date, but owing to absence in court a good deal, I have been unable to keep up my correspondence.

I have carefully noted the contents of your letter. You state therein that some years ago the board of supervisors of your county gave the Spotsylvania Telephone Company the right to place its poles along certain highways of the county; that now, since it has become necessary to improve these highways according to State specifications, the poles of this company interfere with so doing, and it therefore becomes necessary to remove them.

You further state that the telephone company claims damages against the county for the expense of rehabilitating the line, claiming the road people failed to properly replace the line "after removing same from the borders of the county road." You wish to be advised whose duty it is to remove these poles and whether or not your board of supervisors is liable to the telephone company for any damages.

Unquestionably, it is the duty of the telephone company to remove the said poles when notified by the board of supervisors that they interfere with the public highway. If you will examine sections 4035, 4037 and 4038 of the Code of 1919, you will find the law applicable to the questions contained in your letter.

We have a local telephone company which does business in my county and several adjoining counties. It has become necessary in many instances to remove the poles when we were widening our roads. The company was notified and they promptly did this without complaint. In no case, so far as I know, were these poles removed by the road authorities.

I have a letter from Mr. Powell, your Commonwealth's attorney, in reference to the same matter, so I will be obliged if you will show him this letter.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## ROADS AND HIGHWAYS—BOND ISSUES

RICHMOND, VA., *May 5, 1921.*

HON. THOMAS H. NOTTINGHAM,  
*Commonwealth's Attorney,*  
*Eastville, Va.*

MY DEAR SIR:

I beg leave to acknowledge receipt of your letter of recent date, the substance of which is as follows:

You state that an election was held in Eastville magisterial district for the purpose of issuing bonds to erect a schoolhouse and furnish the same. You further state that the provisions contained in sections 765 and 769 were complied with before said election was held.

You then ask to be advised whether the school trustees of the Eastville district, who are still desirous of building the schoolhouse, have the authority to use plans and specifications different from those which were filed prior to the holding of said election, and erect a different school from the proposed school authorized.

I am of the opinion that this cannot be done. The election was ordered upon the representation that these plans and specifications would be used in the erection of the building; the bond issue was carried upon the same representation, and, in my opinion, it is beyond the power of the school board to use money obtained upon these representations in the erection of a building which does not accord with the plans and specifications upon which the erection was ordered and the bond issue carried. Of course, I do not mean to say that there could not be some minor changes in the plans.

The only remedy, in my judgment, for the situation, would be to hold another election. I admit that this works a hardship. At the same time, I know of no other alternative. I think Mr. Hillman, the Secretary of the State Board of Education, in his letter to Superintendent Tankard, has properly construed the statute.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

---

#### ROADS AND HIGHWAYS—BOND ISSUES

RICHMOND, VA., *October 7, 1921.*

SAMUEL B. WOODS, ESQ.,  
*Arrowhead Farm,*  
*Farmville, Va.*

DEAR SIR:

Acknowledgment is made of your letter of September 30th, in which you request me to state my reasons why I expressed the opinion that the Commonwealth of Virginia assumes no legal responsibility to refund to counties, districts, private corporations or persons, who advance funds under chapter 184 of the Acts of 1920 for the construction of parts of the State highway system, the money so expended. This act reads 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.*" (Italics supplied.)

You will see from reading this act that there is no promise or obligation imposed upon the State to refund the money. It is true that the act does say that the Highway Commission shall be authorized to make repayments as the funds are available. No funds were made available, however, nor is there any expressed promise made by the legislature to make such funds available, and while there may be a moral obligation upon the State to reimburse counties,

and others, who construct parts of the State highway system, under the provisions of this act, there is certainly no legal liability imposed upon the State so to do.

The matter was taken up at length with this office by Hon. Wm. C. Bibb, Commonwealth's attorney of Louisa county last year, especially with reference to chapter 184 of the Acts of 1920, and the special law passed for the county of Louisa for the year 1920 authorized it to issue bonds, which is similar to the act relating to the county of Albemarle, referred to in your previous letter. He was given the same advice in the matter that I have given you; but it seems that he did not agree with the construction of the acts expressed by this office, being of the opinion that a legal liability was imposed upon the State, so he took the matter to court, and in *Bibb v. Supervisors*, decided this spring by the Court of Appeals at Richmond, the court reached the same conclusion expressed by this office, namely, that no legal liability was imposed upon the State, and therefore the act was not in conflict with the Constitution as it existed at the time of the passage of the same.

Trusting that this gives you the desired information, I am,

Very truly yours,

LEON M. BAZILE,

*Second Assistant Attorney General.*

---

#### ROADS AND HIGHWAYS—BOND ISSUES

RICHMOND, VA., *September 13, 1921.*

SAMUEL B. WOODS, ESQ.,  
*Charlottesville, Va.*

DEAR SIR:

Your letter of September 10th, addressed to the Attorney General, has been referred by him to me for attention. In this letter you ask to be advised whether the State of Virginia is legally bound to repay the county of Albemarle for advances made to the State authorities for building a part of the State highway system, which advances were made under the provisions of chapter 429 of the Acts of 1920.

In response thereto, I would state that the Attorney General has held that neither chapter 184 nor chapter 213 of the Acts of 1920, which are similar to chapter 429 of the Acts of 1920, imposes any legal obligation whatsoever on the part of the State or of the State Highway Commission to reimburse any county, district, private corporation or individual for funds expended by them in the construction of any part of the State highway system. In the opinion given by the Attorney General to Hon. W. C. Bibb, Commonwealth's attorney of Louisa county, on March 2, 1921, he said, in part:

"\* \* \* The money is expended entirely at the risk of the county, district, corporation or individual who advances the same on the chance that the State may, at some future time, reimburse such person for the expenditure. When that money will be repaid, no one can say. It rests in the discretion of the General Assembly and certainly, although there may be a moral obligation on the part of the Commonwealth to later make provision for the repayment of money so expended, at the present time, there is certainly no legal obligation upon the Commonwealth to reimburse counties, districts and persons so advancing funds for the construction of portions of the State highway system. \* \* \*

I am of the opinion that the same is true of chapter 429 of the Acts of 1920, and that the Commonwealth of Virginia is under no legal obligation whatever to the county of Albemarle for money advanced by that county for the construction of portions of the State highway system in accordance with chapter 429 of the Acts of 1920.

Yours very truly,

LEON M. BAZILE,  
*Second Assistant Attorney General.*

---

ROADS AND HIGHWAYS—SUPERVISORS, POWERS OF

C. W. WOODSON, Esq., *Clerk,*  
*Campbell County,*  
*Rustburg, Va.*

RICHMOND, VA., *October 25, 1921.*

MY DEAR MR. WOODSON:

I beg leave to acknowledge receipt of your letter of recent date, in which you request my opinion as to whether or not the board of supervisors of your county have a right to borrow the sum of \$30,000, which amount is to be turned over to the State Highway Commission and expended by said commission in the construction of a State highway in the county of Campbell.

You further state that the State Highway Commission has agreed to anticipate the construction of about seven miles of State highway in the county before State road funds are available through the regular channels upon condition that the counties shall finance the amount for the purpose, which the State (I presume you mean the commission) agrees to pay back to the county when the funds are available as provided by chapter 184 of the Acts of 1920.

In reply to your inquiry, I am of the opinion that the board of supervisors of your county has not the authority to borrow money upon these conditions.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

---

SALES—BULK SALE ACT

HON. MORGAN R. MILLS,  
*City.*

RICHMOND, VA., *June 3, 1921.*

MY DEAR SENATOR MILLS:

Acknowledgment is made of your letter of May 24th, in which you enclosed a communication from H. Rohm & Co., and make the request that you be advised whether the Virginia statute, commonly known as the "Bulk Sales Law," is applicable to sales of their business made by persons engaged in the business of repairing shoes.

The Virginia statute relating to this subject is 5187 of the Code of Virginia, 1919, and reads, so far as is applicable to the question here under consideration, as follows:

"The sale, transfer or assignment in bulk of any part or the whole of a stock of merchandise, or the fixtures pertaining to the conduct of said business, otherwise than in the ordinary course of trade, and in the regular and usual prosecution of the seller's business, shall be void as against creditors of the seller \* \* \*"

From the above language you will see that this statute is applicable to

stocks of merchandise, or the fixtures pertaining to the conduct of such business. I am inclined to believe that a person engaged in the business of repairing shoes is not engaged in selling merchandise. The fact that he adds certain material to the shoes repaired by him, in the course of repairing same, does not operate as a selling of such material within the meaning of section 5187 of the Code of Virginia, 1919.

Trusting that this gives you the desired information, I am,

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

---

SALES—CONDITIONAL SALES CONTRACTS

COL. B. MORGAN SHEPPARD,  
*Southern Planter,*  
*Richmond, Va.*

RICHMOND, VA., *February 10, 1921.*

MY DEAR COLONEL SHEPPARD:

I beg leave to acknowledge receipt of your letter of the 9th instant, to which I will reply at once.

In your letter you enclose a "standard order blank," which the publishers of the country wish to adopt as a matter of uniformity. You also enclose one of the forms of the Standard Advertising Agency of New York, properly filled out and addressed to the *Southern Planter*. You then call my attention to a law which was passed by the legislature at its session of 1920, chapter 257, page 362. This law prescribes the sizes of type to be used in certain contracts, and prescribes also the effect of the uses of sizes of type other than those required.

The first portion of this act reads as follows:

"That no contract in writing, entered into between a citizen of this State and any person, firm, company or corporation, domestic or foreign, doing business in this State, *for the sale and future delivery of any goods or chattels, machinery or mechanical devices*, or personal property of any kind or sort whatsoever, shall be binding upon the purchaser, where the form is printed and furnished by the person, firm, company or corporation, unless all the provisions of such contract are clearly and plainly printed or written; and, where printed, such provisions and covenants and all stipulations as to the rights of the vendor, shall be in type of not less than the size known as ten-point."

You will observe, from the reading of the above language, that it was the intention of the legislature to make this law applicable only to contracts for the sale and future delivery of any goods or chattels, machinery or mechanical devices or personal property of any kind or sort whatsoever. In fact, I am of the opinion that it is only applicable to a contract of this nature and is not applicable to newspaper advertisements. I do not think, therefore, that a contract for advertisements in newspapers or periodicals comes within the scope of this law.

You refer in your letter to the fact that perhaps you have no right to ask my opinion concerning this matter, as it is one which does not come under the supervision of my office. At the same time, I assure you that I am glad to give you my views in connection therewith.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

## SALES—TO INFANTS—CRIMES

RICHMOND, VA., April 29, 1921.

HON. J. HOGE RICKS, *Justice,*  
*Juvenile and Domestic Relations Court,*  
*Richmond, Va.*

MY DEAR JUDGE RICKS:

Acknowledgment is made of your letter of April 25, 1921, in which you quote section 4695 of the Code of Virginia, 1919, and then say:

"The question has arisen in two cases now pending before me as to whether or not a merchant who sells cigarettes to a minor under the age of sixteen years, not for his own use, but for his father or some other adult, is guilty of a violation of this statute. In one instance now pending before this court the police officer, in order to definitely establish that a certain person was selling cigarettes to a minor, gave the boy a quarter and told him to purchase a package of cigarettes and bring them back to him. This the boy did. The attorney for the accused now contends that the sale was made to the officer, and not to the boy, since the boy was acting simply as agent for the officer. As you are doubtless aware, it is quite a common practice for a police officer, in order to catch a person who is selling whiskey to use a 'stool pigeon' in a manner similar to that employed in the above case.

"In the other case, a police officer saw the boy go in a store, purchase a package of cigarettes and come out. It seems that the boy was sent to the store by his father on this errand. In some instances the parents send a note, but very often, they do not."

Section 4695 of the Code of Virginia, 1919, provides as follows:

"If any person sell, barter, give or furnish, or cause to be sold, bartered, given or furnished to any minor under sixteen years of age cigarettes or tobacco in any form, or pistols or dirks or bowie-knives, having good cause to believe him or her to be a minor under sixteen years of age, said person shall be fined not less than ten nor more than one hundred dollars."

The undoubted object of the statute was to prohibit the selling, trading, giving or furnishing to a minor under sixteen years of age, in any manner, the articles prohibited by that section. The question which you have submitted, however, is whether or not the article was actually sold to the infant under sixteen years of age, or was merely delivered to him as an agent for some one who could lawfully purchase the property in question.

There have been a number of cases involving almost the identical question with reference to the sale of intoxicating liquors under statutes containing provisions similar to those of section 4695 of our Code with reference to cigarettes, or tobacco, etc. The great weight of authority lays down the rule that where the prohibited article is delivered to a minor under the belief, however induced, that the minor is buying as agent for another whose identity is unknown and is not disclosed, such act constitutes a sale to the minor. *State v. Nichols*, 67 W. Va. 659 (1910).

As was said by the court in *Siceluff v. State*, 63 Ark. 56, and quoted with approval in *State v. Nichols*, *supra*:

"Although a minor acts as the agent of his parents in purchasing liquor, if that fact be not disclosed to the seller at the time of the purchase, and the sale is made without the parents' written consent or order, it is unlawful and a subsequent disclosure of the agency will not avoid a conviction."

On the other hand, it has been held by the great weight of authority that a delivery of ardent spirits to an infant, and the acceptance of the price therefor from the infant, where the fact is disclosed to the seller that such liquor is for the parent's use, and in fact the liquor is for the parent's use and is actually delivered to the parent by the infant, is a sale to the parent and not to the infant, and, therefore, not a violation of the statute. *Commonwealth v. Lattinville*, 120 Mass. 385, 386 (1876); *O'Connell v. O'Leary*, 145 Mass. 311, 313 (1887); *State v. McNeal*, 66 W. Va. 411 (1909); 23 *Cyc.* 195 and authorities there cited.

These last cited authorities are based upon the principle of agency. The court, in *State v. McNeal*, *supra.*, page 413, said:

"\* \* \* We cannot extend the terms of a criminal statute beyond its clear legal meaning. We cannot construe the word *sell* in the statute to mean something different from its ordinary legal import. Undoubtedly, a minor may be an agent or lawfully go on errands for an adult, and a person may buy through an agent, and in such case, there being no question of the fact of agency, although the dealing is with the agent, and the delivery is to him, in legal effect the sale is to be the principal. The law is, that where a person contracts as agent, or he is known to be such, the contract is with the principal, and not with the agent; but where the agent deals in his own name, and the principal is not disclosed or known, the contract is with the agent, and he is liable. \* \* \*

Where, however, the infant represents to the seller that he is acting on behalf of a disclosed principal, when, in fact, he is not so acting, or even in those cases where the infant acts on behalf of a disclosed principal and after obtaining the prohibited articles fails to deliver them to his principal, but uses a part or the whole himself, the seller has violated the statute. See authorities referred to above and the cases cited in the note to 23 *Cyc.*, page 195.

Turning now to the specific cases submitted by you, I am of the opinion that, if the infant in the first case told the seller that he was purchasing the cigarettes for the officer, disclosing the officer's name to the seller, and in fact delivering the cigarettes to the officer, the seller has not violated the law. If, on the other hand, the infant failed to disclose to the seller the name of his principal, or, after disclosing it to the seller, failed to deliver the cigarettes to his principal, the seller has violated the law. Of course, it is no defense that the officer set a trap for the seller. 23 *Cyc.*, page 184.

The second case would likewise depend upon the same rule.

Trusting that this gives you the desired information, I am,

Very truly yours,

JNO. R. SAUNDERS,

*Attorney General.*

---

SAND AND GRAVEL

RICHMOND, VA., November 29, 1921.

MR. R. P. WRAY,

*Justice of the Peace,*

*Martinsville, Va.*

DEAR SIR:

Your letter of November 27th, addressed to the Attorney General, has been referred by him to me for attention. In your letter you refer to chapter 207 of the Acts of 1920, relating to the taking and carrying away of sand or

gravel from the fast land, beach or bluff abutting upon any of the streams or other waters within the Commonwealth, or from the beds of any such land, etc.

This office has already held that this act applies to all of the waters in the Commonwealth, except in the counties of Princess Anne and Pulaski, which are expressly excepted by the last clause of the act, from the operation thereof.

As I understand your letter, the specific question which you desire to have answered, is *whether* or not, where one owns land abutting a non-navigable stream, he has the right to remove all of the sand and gravel in the bed of that stream over the protest of the owner of the land on the other side of the stream. Under the terms of the act, he unquestionably has no such right. The act, in general terms, prohibits all persons from removing sand or gravel or a mixture of either, from any of the fast land or beach or bluff abutting upon any of the rivers, streams or waters within the jurisdiction of the Commonwealth, or from any part of the bed of such rivers, streams or other waters between high and low water marks. The fifth paragraph of that act provides as follows:

"The prohibitions of this act shall not apply to any *owner* of any fast land, bluff, beach or bed of stream, upon or in front of which such deposits may lie, nor to any person or corporation acting under written permission from, or contract with such owner, nor to any person or corporation, acting under the authority of the United States, necessarily removing such deposit in the lawful improvement or regulation of navigation of any such waters subject to the authority of the United States."

You will observe that the act permits the owner of any fast land, bluff, beach or bed of stream, upon or in front of which such deposits may lie, to remove or authorize the removal of the same.

The law is well settled that persons who own lands adjoining non-navigable waters, own to the center of the stream only, and no further. Therefore, in the case suggested by you, the man in question owning only to the center of the stream, has no right to remove sand or gravel from any part of the stream beyond the center.

Yours very truly,

LEON M. BAZILE,  
*Second Assistant Attorney General.*

---

#### SEARCH WARRANTS

HON. B. F. GINTHER, *Mayor,*  
*Brookneal, Va.*

RICHMOND, VA., *May 11, 1921.*

DEAR SIR:

Acknowledgment is made of your letter of May 10, 1921, in which you say in part:

"Please do me the kindness to refer to chapter 345 of the Acts of Assembly 1920, section 4, and tell me what construction, in your opinion, should be put upon the word 'place,' as used therein.\* \* \*

"Is an officer liable to prosecution under this act for merely going upon land where he has reason to believe a still is located? Is an officer liable even for prosecution for common trespass for venturing upon privately owned land in search of crime which he has reason to believe is being committed? \* \* \*

"I shall await your opinion with much interest, especially as our Commonwealth's attorney for this county states that there is a serious doubt in his mind if an officer has a right to go upon any privately owned land looking for whiskey or a moonshine still without a search warrant, even though he does not enter any buildings or other private enclosures."

Section 4 of chapter 345 of the Acts of 1920 reads 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 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 and shall be fined not less than fifty dollars nor more than five hundred dollars or be confined in jail not less than one month nor more than six months, or both, in the discretion of the justice, jury or court trying the same. Any officer or person violating the provisions of this section shall be liable to any person aggrieved thereby in both compensatory and punitive damages. Any officer found guilty of a second offense under this section shall, upon conviction thereof, in addition to the penalty hereinbefore provided, immediately forfeit his office, and such conviction shall be deemed to create a vacancy in such office to be filled according to law.

"Provided, however, any officer empowered to enforce the game laws and 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 an baggage, bag, trunk, box or other closed container without a search warrant."

You will see that a place as well as a house is mentioned in this section of the act. One's farm or land falls within the meaning of the word "place" as defined by the dictionaries, and I am of the opinion that the legislature intended to include the land attached to one's house within the meaning of chapter 345 of the Acts of 1920, when the word "place" was used. The last paragraph of section 4 of 345 confirms me in this opinion. You will see that the legislature there provided that officers, charged with the enforcement of the game laws and laws with reference to intoxicating liquors, could, without a search warrant, enter for the purpose 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." In this exception the legislature did not include one's house or place, but expressly excepted the same from the provisions of this proviso permitting entry for the purpose of police inspection, which means, as I have held, an inspection such as would be obtained by entry of the permitted places and the discovery of what was contained therein, without any search being made of the place entered or its contents.

It appears to me that the legislature was careful to grant the right of police inspection only as to places of a public nature or as to vehicles used by the public, or such as are used on the public highways. This being so, I am of the opinion that the Commonwealth's attorney of your county is right when he says that he believes that section 4 of chapter 345 of the 1920 Acts applies to the search of one's farm without a search warrant.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

## SEARCH WARRANTS

RICHMOND, VA., *April 25, 1921.*

HON. CLAUDE F. BEVERLY,  
*Coeburn, Va.*

DEAR SIR:

Acknowledgment is made of your letter of April 23rd, in which you say:

"Please advise me whether or not under the Mapp Prohibition Law officers have a legal right to stop an automobile on a public highway and search car for whiskey without a search warrant for the particular automobile searched, and whether or not a conviction can be, or will be, sustained where a car is searched without a search warrant and whiskey found in the car in violation of the State law."

In searching an automobile for liquor without a search warrant, you would be engaged in a violation of the provisions of chapter 345 of the Acts of 1920, for which you would subject yourself to a criminal prosecution.

However, evidence thus illegally obtained would be admissible as evidence in the State courts for the purpose of convicting the operators of the automobile. *Lucchesi v. Commonwealth*, 122 Va. 872.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## SEARCH WARRANTS

RICHMOND, VA., *April 5, 1921.*

MR. G. W. SHANKS, *Sergeant,*  
*Covington, Va.*

DEAR SIR:

Acknowledgment is made of your letter of April 2nd, which the Attorney General has referred to me for attention. In your letter you say:

"Asking your opinion in regard to an officer securing a search warrant to search an automobile, or dwelling or any other place, as the case might be, for ardent spirits, would he have the right to secure the said warrant and hold a reasonable length of time until he is certain that said ardent spirits are stored in said place.

"In other words, is an officer compelled to use a search warrant for ardent spirits as soon as issued?"

I am of the opinion that under the provisions of section 10 of the Virginia Constitution and chapter 345 of the Acts of 1920, that you are not authorized to have search warrants issued in anticipation of the commission of a criminal offense so that you could use them as the cases arose. Section 10 of the Virginia Constitution provides as follows:

"That general warrants, whereby an officer or messenger may be commanded to search suspected places without evidence of a fact committed, or to seize any person or persons not named, or whose offense is not particularly described and supported by evidence, are grievous and oppressive, and ought not to be granted."

You will see from an examination of this section that its clear intent is that a search warrant shall not be issued without evidence of a fact committed and that it would violate the spirit of this section of the Constitution to obtain the issuance of a search warrant, except upon evidence of a fact committed in

the manner provided by law. This being so, I am of the opinion that a search warrant which was applied and obtained for the purpose of being withheld until some future time suitable to the person obtaining such warrant, would clearly violate the plain intent of section 10 of the Virginia Constitution and the provisions of section 345 of the Acts of 1920.

Yours very truly,

LEON M. BAZILE,

*Second Assistant Attorney General.*

---

#### SEARCH WARRANTS

RICHMOND, VA., August 20, 1921.

HON. H. B. SMITH,

*Commissioner of Prohibition,*

*Richmond, Va.*

DEAR SIR:

Acknowledgment is made of your letter of August 15th, in which you ask the following question: Has a justice of the peace the right under the law, to search old fields and woodlands anywhere in his country for illicit distilling outfits, and to catch anyone found operating such a distillery, without first procuring a search warrant?

It is provided by section 4, 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 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 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 and be fined not less than fifty dollars nor more than five hundred dollars or be confined in jail not less than one month nor more than six months, or both, in the discretion of the justice, jury or court trying the same. \* \*\*"

I am of the opinion that under this section of chapter 345 of the Acts of 1920, it is unlawful for an officer to search without a search warrant, the fields and woodlands of one's place. The word "place" is a word of large and variable meaning, and in my opinion, as used in chapter 345 of the Acts of 1920, prohibits the search of one's fields and forests without a search warrant. *Axford v. Meeks*, 36 Atl. 1036; 59 N. J. L. 502.

Replying to the second part of your question, even though such illegal search be made, if a still is discovered, the officers making such search have the right and should place under arrest any person found operating such still, since the illegality of the act of the officers would not relieve the persons operating the still from the violation of the law in which they are participating. *Lucchesi v. Commonwealth*, 122 Va. 872 (1918).

That the legislature intended one's fields and forests to be included within the meaning of the word "place," is indicated by section 1 of chapter 345 of the Acts of 1920, which provides that no search warrant shall be issued "until there is filed with the officers now authorized to issue the same on affidavit of some person reasonably describing the house, place, vehicle or baggage to be searched," etc.

If it had been intended to require a description of the house or buildings to be searched only, it would not have been necessary to use the word "place," and considering the ordinary meaning of the word, I am of the opinion, as I have said, that this word was intended to cover one's fields and forests, as well as his curtilage.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

---

SCHOOLS—ATTORNEYS FOR THE COMMONWEALTH

RICHMOND, VA., *August 23, 1921.*

MR. J. H. CHILES,  
*Superintendent of Schools,  
Fredericksburg, Va.*

MY DEAR SIR:

I beg leave to acknowledge receipt of your letter of August 16th, which is as follows:

"Kindly advise me to what extent is the Commonwealth's Attorney the legal advisor of school boards in securing deeds, titles, etc. to school property and in securing the court's permission to sell school property. Should he do their services free or is he entitled to charge for them as any other attorney?"

I have examined the Code and cannot find any law which makes the Commonwealth's Attorney of a county the legal advisor of the school boards in securing deeds, titles, etc. to property, or acting in the capacity as counsel in the sale of the same.

I am, therefore, of the opinion that the several school boards in a county have a right either to employ the Commonwealth's Attorney to render such services or to select any other attorney which they may prefer. Should they select the Commonwealth's Attorney to represent them in such matters, I am of the opinion that he should be compensated for his services.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

---

SCHOOLS—BONDS OF

RICHMOND, VA., *December 6, 1921.*

HON. HARRIS HART,  
*Superintendent of Public Instruction,  
Richmond, Va.*

MY DEAR MR. HART:

I beg leave to acknowledge receipt of yours of recent date, in which you enclose a letter from Mr. L. N. Savedge, Superintendent of schools for Surry county. In his letter, he asks to be advised whether or not the District School Board should have a seal placed upon the bonds proposed to be issued by the school board.

I presume these bonds are to be issued in pursuance of the Act approved February 18, 1920, chapter 3, Acts of 1920, which act authorizes the school

board of Cobham District No. 4, to borrow money and issue bonds for the purpose of erecting school houses, etc. I have carefully read the provisions of this act but find it silent as to whether or not a seal shall be put upon these bonds.

Section 766 of the Code of Virginia, 1919, which contains the general provisions for issuing school bonds, etc., likewise does not provide for any seal upon school bonds. However, it has been decided by the courts that it is the sealing, together with the delivery, that makes an instrument a bond and gives effect to the same. *Board of Supervisors v. Dunn*, 27 Gratt. 608; *State v. Purcell*, 31 W. Va. 44.

I am, therefore, of the opinion that the safest and wisest method to be pursued in issuing these bonds, is to let the latter clause of the bond read as follows: "Witness my hand and seal this.....day of.....19....;" and a scroll should be affixed to the signature of the chairman. This could be done of course, and then the bonds printed.

I would further state that this is purely a local matter and the superintendent should be governed by the advice of the Commonwealth's Attorney of Surry county, who by virtue of his office, is made legal advisor of the school boards; and the matter, in my judgment should be referred to him before any final action is taken thereon.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

#### SCHOOLS—BUILDINGS

RICHMOND, VA., *June 24, 1921.*

HON. BLAKE T. NEWTON,  
*Superintendent of Schools,*  
*Hague, Va.*

MY DEAR MR. NEWTON:

Acknowledgment is made of your letter of June 20, 1921, in which you say:

"Please construe for me section 673 of Virginia Code, where it has reference to the approval of plans and specifications of school buildings by the division superintendent.

"I have a problem on my hands like this: the patrons at a certain place want the board to help them put up a four room school building when a two room building is all that is needed. Do I have to approve the plans for this house, if in my judgment, it will not be to the best interests of the schools of this district to do so?"

It is provided by section 673 of the Code of Virginia, 1919, so far as is applicable, as follows:

"No school 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. \* \*"

Under the above quoted provisions of this section of the Code, before the school house in question can be contracted for or erected, the site, location, plans and specifications therefor must have been submitted to and approved in writing by you.

As to whether or not you will approve the site, location, plans and specifications in any given case, is a matter for the exercise of your best judgment and discretion, the control of which I cannot undertake to advise you.

Yours sincerely,

JNO. R. SAUNDERS,  
*Attorney General.*

---

SCHOOLS—COMPENSATION OF TRUSTEES

RICHMOND, VA., *August 18, 1921.*

HON. S. P. POWELL,  
*Commonwealth's Attorney,*  
*Spotsylvania, Va.*

DEAR SIR:

Acknowledgment is made of your letter of recent date. You request my opinion on the following statement:

"Certain members of the district school trustees of Spotsylvania county have for several years been paying themselves a salary of \$20.00 per year and certain other fees and expenses and the clerk of each district board, in addition, draws \$3.00 for each school in his district, postage, stationery, etc.

"It is claimed by some of them there is a special law for Spotsylvania allowing them to draw this \$20.00, although the general law allows them to draw only, or not exceeding \$10.00 per year. See section 646 Code of 1919. Is it \$10.00 or \$20.00 they may legally pay themselves?"

If you will examine chapter 448, Acts of 1895-6, you will see that by this special law the school trustees of Spotsylvania county, other than the clerks, are authorized to receive not more than \$20.00 in one year for services rendered on district account, and by the second section, that they may receive not "more than \$4.00 in any one year for services rendered on county school board."

This act is a private act and under the provisions of section 6567 of the Code of 1919, was not repealed by the enactment of the Code.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

---

SCHOOLS—CONDEMNATION FOR

RICHMOND, VA., *January 28, 1921.*

D. A. DUTROW, Esq.,  
*Division Superintendent of Schools,*  
*Newport News, Va.*

DEAR MR. DUTROW:

Acknowledgment is made of your letter of the 27th instant, in which you request me to advise you whether the school board of the city of Newport News can condemn for school purposes, property which is located outside of the corporate limits.

It is provided by the last paragraph of section 786 of the Code of Virginia, 1919, as amended, as follows:

"City school boards shall in general have the same power in relation to the condemnation or purchase of land and to the vesting of the title

thereof, and also in relation to the title to and management of property of any kind applicable to school purposes, whether heretofore or hereafter set apart therefor, and however set apart, whether by gift, grant, devise, or any other conveyance and from whatever source, as county and district school boards have in the counties. They shall also have a clerk, who may or may not be a member of the board and who shall be charged with the same duties as the clerk of district school board, and whose salary shall be fixed by the board."

The authority of district school boards in counties is provided for by section 672 of the Code of Virginia, 1919, which, so far as is applicable to the question here under consideration, reads as follows:

"If, in the judgment of the district school board, the public interests demand that a school house be located on a particular spot and no equitable arrangements for its purchase prove to be practicable, the board of trustees shall be authorized, and it shall be its duty, to cause the desired parcel of land to be surveyed by the county or other competent surveyor, and a plat of the same to be filed, together with a general statement of the case, with the clerk of the circuit court; and thereupon, an application of the district school board, the same proceedings shall be had as are prescribed by the laws relating to the exercise of the right of eminent domain; but no parcel of land thus condemned shall exceed one acre in a town or five acres in the country. \* \* \*"

You will see from this that district school boards have no authority to condemn property outside of their jurisdiction. I am therefore of the opinion that the school board of your city has no authority to condemn land for school purposes, outside of the limits of the city.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

---

#### SCHOOLS—LOANS

RICHMOND, VA., June 7, 1921.

HON. PARKE P. DEANS,  
*Windsor, Va.*

DEAR SIR:

Acknowledgment is made of your letter of May 28th, in which you say:

"I wish you would advise what steps to take in the following case:

"The school board of Smithfield district No. 4, of the county of Isle of Wight, purchased two lots of land, obtaining the deeds therefor and without any approval of an attorney or the judge of court, recorded the deeds. They now wish to obtain a loan from the Literary Fund and title must be certified to by proper authorities.

"First: Have they legal title and is it properly vested in the said board? If not, what steps can be taken to cure the defect?

"Second: In obtaining this loan, should the certificate be made by the judge of the court as was done prior to the new Code or should a new certificate be required by you as to the approval of the attorney?"

\* \* \* \* \*

"In the light of the above, has this school board title to this property? If not, where is it? How can they get it?

"I would like to get this cleared first. Would it be possible for the attorney to now examine the title and re-record these school deeds with his approval? I know that the titles are good."

Section 2709 of the Code of Virginia, 1919, provides in part, as follows:

"Whenever it shall be necessary for any county or district school board, or other public officers of the county, having authority for the purpose, to purchase real estate, or acquire title thereto for public uses, the contract therefor shall be in writing, and the title thereto shall be examined and approved by a competent and discreet attorney at law, who shall be designated by the judge of the circuit court for the circuit wherein the real estate is located, and such approval shall be recorded along with the deed or other papers by which the title is conveyed. *No such contract shall be valid unless and until the title to such real estate be thus approved.* \* \* \* \*"

You will notice that the language of the statute is "*no such contract shall be valid unless and until the title to such real estate be thus approved.*" In my opinion, this means that the school board or other public officers of the county having the authority to purchase real estate or acquire title thereto for public purposes, cannot be compelled to comply with the terms of such contract until the title to such real estate has been approved in the method prescribed by the statute, and cannot be construed to defeat the title to property acquired by the school board where the deeds have been passed and recorded without being approved as provided in the statute.

In other words, the fact that the school board waives this provision and accepts and records a deed to property without first having the title approved, will not prevent the school board from acquiring a good and valid title to such property.

However, I am of the opinion that before any loan can be made upon this property from the Literary Fund, that the title will first have to be examined and approved by a competent and discreet attorney at law who shall be designated by the judge of the circuit court, and that such approval must be recorded in the regular deed book in the clerk's office.

In response to your question as to the certificate, I am of the opinion, as I have informed the Superintendent of Public Instruction in a letter written him today, that the judge of the circuit courts is no longer required to sign the certificate printed on the back of the application for a loan from the Literary Fund.

I am of the opinion, however, that such information must be furnished before a loan can be made and have accordingly suggested an amended certificate to be signed by the clerk of the circuit court, a copy of which I send you herewith.

Trusting this gives you the desired information, I am

Sincerely yours,

JNO. R. SAUNDERS,

*Attorney General.*

---

SCHOOLS—LOANS

RICHMOND, VA., June 7, 1921.

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

DEAR SIR:

Acknowledgment is made of your letter of recent date, with which you enclose a letter from Judge T. N. Haas to Supt. John C. Myers, in which Judge Haas takes the position that section 2209 of the Code of Virginia, 1919, which

prior to its revision, was section 824 of the Code of 1904, as amended, does not require a judge to now sign a certificate printed on the back of your application for a loan from the Literary Fund.

Section 2709 of the Code of Virginia, 1919, reads as follows :

"Whenever it shall be necessary for any county or district school board, or other public officers of the county, having authority for the purpose, to purchase real estate or acquire title thereto for public uses, the contract therefor shall be in writing, and the title thereto shall be examined and approved in writing by a competent and discreet attorney at law, who shall be designated by the judge of the circuit court for the circuit wherein the real estate is located, and such approval shall be recorded along with the deed, or other papers by which the title is conveyed. No such contract shall be valid unless and until the title to such real estate be thus approved; and if the attorney who has been designated by the court refuses to approve the same, the disapproval shall be in writing and filed with the clerk of the county. The supervisors of the county, or any five citizens thereof, may, by motion, appeal of right from the decision of the attorney to the circuit court of the county, or to the judge thereof in vacation, submitting with said motion their petition, accompanied with the evidences of title. Ten days' notice of such motion shall be given to the said attorney, and from the decision of the said court, or the judge thereof in vacation, upon said motion, an appeal of right may be taken by the petitioners to the Supreme Court of Appeals.

"The district school trustees, or other public officers of the county, purchasing real estate, or acquiring title thereto for public uses, shall pay to the attorney designated by the court a reasonable compensation for his services to be fixed by court."

You will see from an examination of this section, that the law now requires the contract for the purchase of real estate for school purposes, to be in writing and the title thereto to be examined and approved in writing by a competent and discreet attorney at law, who must be designated by the judge of the circuit court for the circuit in which the real estate is located, and that such approval must be recorded along with the deed or other papers by which the title is conveyed.

It is no longer required that the evidence of title be submitted to the circuit court or the judge thereof in vacation for approval. Judge Haas is therefore right in his contention. Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

---

#### SCHOOLS—LOAN FORMS

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

RICHMOND, VA., *June 7, 1921.*

MY DEAR MR. HART:

In accordance with the enclosed opinion, I have amended the certificate of the court printed on the back of your application form for a loan from the Literary Fund, so as to comply with the provisions of section 2709 and section 672 of the Code of Virginia, 1919.

This certificate should be made by the clerk of the circuit court having jurisdiction over the territory in which the school property upon which the loan is desired, is located. As re-drafted, section 4 of the old certificate should be entirely omitted. Section 2, you will see, has been amended.

I would suggest that the form of the certificate be as follows:

CERTIFICATE OF THE CLERK OF COURT

Whereas, The school board of..... district,.....division, has purchased.....acres of real estate at....., Virginia, on which to erect the school building described in this application.

I hereby certify:

- (1) That the contract therefor is in writing.
- (2) That the title to the said real estate has been examined and approved in writing by a competent and discreet attorney at law designated by the judge of the circuit court of.....county wherein said real estate is located.
- (3) That such approval has been recorded along with the deed or other papers by which the title was conveyed.
- (4) That the certificate of the attorney examining the title shows that the school board has a good and sufficient title in fee to said real estate and that the same is free from incumbrances.

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

.....  
Clerk of the circuit court of

.....  
County or city.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

SCHOOLS—SHORT TERM LOANS

RICHMOND, VA., September 2, 1921.

BENJ. WATKINS LEIGH, ESQ.,  
*Attorney at Law,*  
*Halifax, Va.*

DEAR SIR:

Acknowledgment is made of your letter of September 1st, in which you say, in part:

"We have a practical question in this county as to the authority of the district school board to make short time loans. They are doing this. Whenever they need any money they will issue a warrant payable at from one to twelve months after date, and in some instances at longer times, discount them and use the money, and if, after making a loan, they find that they need further funds, they will, from time to time, issue and negotiate their warrants without regard to the amount of their revenues."

You then request me to advise you whether or not the school districts have the power to make an unlimited number of temporary loans, or a subsequent temporary loan when a prior one is still outstanding and unpaid.

I have examined sections 614, 681, 757, 758, 760, 765 and 773 the Code of Virginia, 1919, and am of the opinion that none of these sections authorize

school districts to make temporary loans. The only law that I have been able to find authorizing the same, is chapter 352 of the Acts of 1918, which reads as follows:

"An ACT authorizing district or city school boards to borrow money on short time loans. Approved March 16, 1918.

"Whereas, some of the school districts of the State find it necessary to make temporary loans; therefore

"1. Be it enacted by the general assembly of Virginia, That the several district or city school boards of the State, desiring to borrow money of the purpose aforesaid, be, and the same are hereby, authorized to borrow a sum of money which shall not exceed the amount of the district levy for the year in which the loan is negotiated, such loans to be repaid at such time or times within the space of five years as may seem best to the respective school boards and to bear interest at a rate not exceeding six per centum per annum; provided that a second loan shall not be negotiated until all preceding temporary loans negotiated under this act have been paid."

Aside from the specific authorization by law, I do not think that a school district would have the right to make loans or incur liabilities.

In 11 *Cyc.* 502 (note), it is said:

"\* \* \* The weight of authority from the adjudged cases is that counties, being the creatures of statute, have no powers except those granted by statute, and that the power to borrow money and issue bonds, will not be implied, but must be expressly granted to authorize its exercise."

See also 35 *Cyc.* 987 where it is said:

"As a general rule, a school district has no power to make and issue, or endorse, commercial paper, unless authority to do so is expressly or impliedly granted by statute. \* \* \*"

However this may be, certainly where the legislature has especially declared as it has in chapter 352 of the Acts of 1918, what the powers of the school boards of the various districts shall be, as to borrowing money for temporary purposes, the powers of the school boards are necessarily limited by the provisions of the legislative act.

From an examination of chapter 352 of the Acts of 1918, it will be seen that temporary loans may be negotiated by the district school boards which shall not exceed the amount of the district levy for the year in which the loan is negotiated, and that such loans must be repaid within the period of five years.

This power is then limited by the express provision of the act that "a second loan shall not be negotiated until all preceding temporary loans negotiated under this act, have been paid."

It therefore follows that once a temporary loan has been negotiated by the district school board, a new loan of similar type cannot be made until the previous loan has been paid in full.

Trusting this gives you the desired information, I am

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

## SCHOOLS—LOCATION OF

RICHMOND, VA., *January 11, 1921.*

MR. ROLAND E. COOK,  
*Division Superintendent of Schools,*  
*Salem, Va.*

DEAR SIR:

Acknowledgment is made of your letter of December 28, 1920, and of your previous letter with reference to Glenvar school.

It appears from the facts stated in your letter that the people living in the vicinity of Glenvar petitioned the district board to erect a school building at that place, which was declined. From this decision, an appeal was taken to the school trustee electoral board, which heard the appeal on June 15, 1918, and decided that the Central district should erect and maintain at or near the immediate vicinity of Glenvar, a public school. Due to matters over which the school board has no control, the school has not as yet been erected, although land has been acquired for the erection of the same.

You further state that citizens of another place in the vicinity of Glenvar have petitioned the district school board to erect the schoolhouse at a different point from that selected by the school trustee electoral board, and that the district school board has taken the position that the matter, having been passed on by the trustee electoral board, is now *res judicata*. You also state that the citizens making the last application desire an appeal to the school trustee electoral board from this last decision of the district school board, and you request me to advise you whether they have such an appeal. It is provided by section 666 of the Code of Virginia, 1919, as follows:

“Any five interested heads of families, residents of the district, who may feel themselves aggrieved by the action of any district school board may, within thirty days after such action, state their complaint in writing to the division superintendent of schools, who, if he cannot within ten days after the receipt of the said complaint satisfactorily adjust the same, shall grant an appeal to the school trustee electoral board, which shall meet in the district where such complaint originated, and shall summon witnesses and *decide finally all questions at issue*. Any action taken or had by this board shall be recorded in its minutes and also in the record book of the district board whose action is reviewed.”

You will observe from this section that this provision, which is similar to section 1487 of the Code of Virginia, 1904, expressly provides that on an appeal heard under this section, the trustee electoral board shall “*decide finally all questions at issue*.”

I am of the opinion that the first decision of the trustee electoral board in selecting the location determined upon, was the final decision in the matter, and that the district school board rightly decided that it could not erect a school at a different location from that determined upon by the trustee electoral board, and that no appeal lies from the decision of the district school board as to this matter, as it had heretofore been finally decided.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

## SCHOOLS—MIXED SCHOOLS

MR. WM. C. RITTER,

RICHMOND, VA., *March 19, 1921.**Newport News, Va.*

DEAR SIR:

Acknowledgment is made of your letter in which you state that it is proposed that the State of Virginia provide a new school for the blind children of the State and also a separate school for the deaf children of the State, and that the "two races are to be in every way separate, but for purposes of economy to be under the same administrative management—one superintendent, one steward, one central heating plant, etc." You ask whether or not this will be repugnant to any of the provisions of the State Constitution.

Section 140 of the Constitution provides that "white and colored children shall not be taught in the same school."

I am of the opinion that, though the two races were kept separate, the fact that they were taught within the confines of the same enclosure and under one administrative management, would be a manifest violation of the intention of the Constitutional section above referred to.

Yours truly,

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

## SCHOOLS—NORMAL SCHOOLS

DR. A. B. CHANDLER, JR., *President,*  
*State Normal School for Women,*  
*Fredericksburg, Va.*

RICHMOND, VA., *March 30, 1921.*

MY DEAR MR. CHANDLER:

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

"I have been informed of your recent ruling in regard to the legality of the Normal schools accepting high school students for next session. I am writing to say that it is absolutely necessary in the prosecution of our professional work for us to maintain a small training school at the Normal for the group of seniors preparing to teach high school work. They necessarily have to have practice teaching in high school subjects. It is both advisable and economical for us to maintain a practice school of some twenty-five or thirty students in the first and second year high school work. We could take these students without using any of the State appropriation for their board, tuition or care, since the two teachers we would have for this work would be critic teachers and the type of work they would be doing would be of a professional character.

"I cannot conceive that either the legislature or anyone having at heart the best interests of teacher training in Virginia, would by any possibility seek to prevent the Normal schools from the exercise of the very function for which they were created. I am writing, therefore, to ask, if under these circumstances, this institution would not be permitted to maintain the training school such as I have mentioned above."

By the general appropriation bill, Acts of 1920, page 185, there is appropriated to the State Normal School at Fredericksburg for the year ending February 28, 1922, for maintenance and operation of the school, the sum of \$68,520.00. This limitation is placed upon the appropriation, however:

"It is further provided, however, that no part of this appropriation of \$68,520.00 shall be used for *boarding, lodging, tuition or care of students taking high school courses at this school.*"

As I advised Colonel Hodges on January 5, 1921, the wording of the appropriation bill is perfectly plain, and is not open to construction. Therefore, no part of your appropriation can be used for boarding, lodging, tuition or care of students taking high school courses at your school

However, I am of the opinion that there is no prohibition in the law against your furnishing instruction to high school students, who, as you say, are essential in the conduct of your school for the purpose of furnishing "practice teaching" in high school subjects for the group of seniors preparing to teach high school work.

Yours truly,

JNO. R. SAUNDERS,  
*Attorney General.*

---

SCHOOLS—TRUSTEES

MR. A. H. HILL,  
*Division Superintendent of Schools,  
Richmond, Va.*

RICHMOND, VA., *November 28, 1921.*

DEAR SIR:

You call my attention to section 638 of the Code of 1919, which provides in part as follows:

"Every school trustee shall, at the time of his appointment, be a resident of the school district from which he is appointed, and if he shall cease to be a resident thereof, his office shall be deemed vacant."

You state that a trustee from one of the school districts of Richmond has left the district for which he was appointed and become a resident and registered in another district. You ask whether he shall be deemed to have ceased to be a resident of the district for which he was appointed as school trustee. This question must be answered in the affirmative. He could hardly more completely cease to be a resident of the district for which he was appointed.

You further ask whether he is eligible to appointment as school trustee to fill a vacancy in the district in which he now resides. This question must also be answered in the affirmative.

The fact that the gentlemen in question has become ineligible to hold the office of school trustee, for a certain district, due to the fact that he is no longer a resident of that district, does not, in my opinion, preclude him from being appointed as school trustee for the district in which he now resides.

Yours truly,

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

---

SCHOOLS—TRUSTEES

RICHMOND, VA., *November 15, 1921.*

HON. J. H. BRENT,  
*Division Superintendent of Schools,  
Hampton, Va.*

DEAR SIR:

Acknowledgment is made of your letter of November 14, 1921, addressed to the Attorney General, in whose absence I have taken the liberty of answering.

In your letter you say :

“What is the status of a school board member whose term has expired but who has not been re-elected through oversight and for whom no successor has been elected? Is he legally still a member of the school board?

“Also, what is the status of a school board member who has served a good many terms, has been duly re-elected, but who has failed to re-qualify for office upon successive re-elections, although he originally qualified for office according to law? Is he legally a member of the school board?

Both of your questions are answered by the provisions of section 33 of the Constitution of Virginia, which, so far as is applicable to the subject of your inquiry, provides as follows :

“All officers elected or appointed shall continue to discharge the duties of their offices after their terms of service have expired until their successors have qualified.”

However, I desire to call your attention to sections 631 and 632 of the Code of Virginia, 1919.

Yours very truly,

LEON M. BAZILE,

*Second Assistant Attorney General.*

---

SCHOOLS—VIRGINIA NORMAL AND INDUSTRIAL INSTITUTE

RICHMOND, VA., *December 22, 1920.*

HATCHER S. SEWARD, *Rector,*  
*Board of Visitors,*  
*Petersburg, Va.*

MY DEAR MR. SEWARD :

I beg leave to acknowledge receipt of your letter of recent date in connection with the Virginia Normal and Industrial Institute of Petersburg, Va., which letter is as follows :

“I am advised that there is some misunderstanding as to revenue from Morrill Funds anticipated in this Institution's budget for fiscal year beginning July 1, 1920 and ending June 30, 1921. I am asking, therefore, that you advise us fully on the following :

“Chapter 324 at page 492, Acts of Assembly, 1920, provides that beginning December 1, 1920, money (approximately \$16,600) received annually from the United States Government by the Auditor of Public Accounts and an amount (approximately \$10.00) received annually from interest on certain bonds by the Second Auditor formerly paid to the Hampton Normal and Agricultural Institute be paid to the Virginia Normal and Industrial Institute. Our understanding is that the amount coming directly from the Government through the Auditor of Public Accounts during July, 1920 has been turned over to Hampton Institute and that this money covers the period beginning July 1, 1920, and ending June 30, 1921. We are further advised that of the annual interest on bonds transferred to this Institution through act effective December 1, 1920, the Second Auditor is to pay Hampton Institute (5-12) five-twelfths and to this Institution (7-12) seven-twelfths.

“Our impression is that either all of the interest payment in January is due this Institution or else the principal governing the division of interest for the fiscal year should also govern the distribution of money received from the Government by the Auditor of Public Accounts. In other words, if for a fiscal period beginning July 1, 1920, we are due under

the law effective December 1, 1920 only (7-12) seven-twelfths of the interest found, are we not entitled to (7-12) seven-twelfths of the July distribution through the Auditor of Public Accounts?

I have just discussed this matter with the Auditor and Second Auditor of the State. You will observe from a reading of the act of the legislature, 1920, chapter 324, page 492, that the act which bears upon the question contained in your letter, did not become effective until December 1, 1920.

The amount of money which the Auditor received in connection with this matter, came into his hands in July, 1920, which amount, he informs me, he at once turned over to the Hampton Normal and Agricultural Institute as is provided by section 2 of the Morrill Act of 1890, a copy of which act you enclosed with your letter.

Unquestionably, if any portion of said amount is due your institution, the Hampton School should refund it. This is a matter, however, which should be adjusted between the two institutions.

I have before me a letter from Professor James E. Gregg, Principal of the Hampton Normal and Industrial School, to Hon. Rosewell Page, Second Auditor, which said letter is dated November 17, 1920. In this letter, Professor Gregg expresses a willingness to return to the Virginia Normal and Industrial Institute its proportionate part of this fund, so this question, as stated above, can be easily adjusted between the two institutions.

Now as to the payment of interest: Mr. Page has proportioned this amount between the two institutions, giving Hampton five-sixths and your Institution one-sixth, which proportion represents a payment of the semi-annual interest and which is likewise in accord with your idea of distribution, you in your letter taking the whole year into consideration rather than the semi-annual payment.

I am satisfied if you will take this matter up with Dr. Gregg, you will have no difficulty in making a satisfactory settlement.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

---

SCHOOLS—VIRGINIA NORMAL AND INDUSTRIAL INSTITUTE

RICHMOND, VA., *January 11, 1921.*

HON. HATCHER S. SEWARD, *Rector,*  
*Virginia Normal and Industrial Institute,*  
*Petersburg, Va.*

MY DEAR MR. SEWARD:

Acknowledgment is made of your letter of January 4th, in which you inform me that you have taken up the matter of the apportionment of the Morrill-Nelson funds appropriated for the year ending July 1, 1921, with Dr. Gregg, of the Hampton Institute, and that he has declined to refund to the Virginia Normal and Industrial Institute that portion of said fund which represents the period from December 1, 1920, the date on which chapter 324 of the Acts of 1920 became effective, and July 1, 1921, until the matter had been definitely passed upon by us.

It appears from the facts in the matter that the so-called Morrill-Nelson fund appropriated for the year beginning July 1, 1920, and ending June 30, 1921, was paid over to the Auditor of Public Accounts in the usual course and was by him paid to the Hampton Institute. This fund, which amounted to \$16,666.66, as I have said, was appropriated for the period of time elapsing between July 1, 1920 and July 1, 1921.

It is the contention of the Virginia Normal and Industrial Institute that this fund, having been appropriated for the year, that upon the taking of effect of chapter 324 of the Acts of 1920 on December 1, 1920, that the same should be apportioned and paid over to the Virginia Normal and Industrial Institute for that period of time covered from December 1, 1920 to July 1, 1921.

In the matter of the semi-annual interest paid January 1, 1921 for the preceding six months, I held that under the provisions of chapter 324 of the Acts of 1920, that Hampton Institute was entitled to five-sixths of said fund representing the period from July to December 1, 1920, and that the Virginia Normal and Industrial Institute was entitled to one-sixth of the same, representing the period from December 1, 1920 to January 1, 1921, at which time it was provided by chapter 324 of the Acts of 1920, that the funds which had been previously appropriated to Hampton Institute should be paid to the Virginia Normal and Industrial Institute.

It follows from this that the Morrill-Nelson fund should also be apportioned, as it was appropriated for a period not only prior to December 1, 1921, but for a period subsequent to that time. I am therefore of the opinion that this fund should be apportioned, and I am sure that the Hampton Institute will refund the same.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

---

#### SCHOOLS—WARRANTS

RICHMOND, VA., *June 7, 1921.*

MR. J. WALTON HALL,  
*Ashland, Va.*

MY DEAR MR. HALL:

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

"I shall be pleased to have from you a statement of the law of our State relating to the registration of district school board warrants by the treasurer of the county when the said district school board issues said warrants on tax money due them as reported to them by the treasurer on December 1st, but not collected till May 1st of the following year.

"We have this session as in previous years, issued warrants on this uncollected money and the treasurer has heretofore paid them, but now we are told that he must register these warrants and pay them to the payees in the order in which he receives the warrants and out of the funds as he collects them."

You, no doubt, refer to sections 2781 and 2782 of the Code of 1919. Section 2782 reads as follows:

"No county treasurer shall refuse to pay any warrant legally drawn upon him and presented for payment, for the reason that warrants of

prior presentation have not been paid, when there shall be money in the treasury belonging to the fund drawn upon sufficient to pay such warrants and also the warrant so presented; but such treasurer shall, as he may receive money into the treasury belonging to the fund so drawn upon, set the same apart for the payment of warrants previously presented and in the order presented. He shall receive in payment of the county levy any county warrant drawn in favor of any taxpayer, whether such warrant has been entered in the treasurer's book or not, but if the warrant has been transferred, it shall be subject to any county levy owing by the taxpayer in whose favor the same was issued. When the warrant is for a larger sum than the county levy due from the payee or transferee of the warrant, the treasurer shall endorse on the warrant a credit for the amount of the county levy so due, and such payee or transferee shall execute to the treasurer a receipt for the said amount, specifying the number and date of the warrant on which it was credited; and the residue of the warrant shall be paid according to the order of its entry in the treasurer's book."

You will see from an examination of this section that it is limited to warrants drawn by the board of supervisors and presented to the treasurer for payment. This section, in my opinion, does not apply to school funds which are handled entirely separate from those upon which warrants are drawn by the board of supervisors.

The collection and disbursement of school funds is governed by chapter 33 of the Code of Virginia, 1919, sections 726, *et seq.*

I find no provision with reference to school warrants similar to section 2781 of the Code of Virginia, 1919.

Trusting this gives you the desired information, I am

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

---

#### STATE—LIABILITY FOR TORTS OF EMPLOYEES

RICHMOND, VA., May 5, 1921.

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

DEAR SIR:

Acknowledgment is made of your letter of May 3rd, in which you request me to advise you whether the State can be sued for any destruction of property or injury to individuals that may be caused by the improper driving of State owned machines by the inspectors of your Department.

The State would not be liable for either injuries to property or to persons, resulting from the operation of State owned machines by inspectors of your Department. If negligent, the operator of the car would be personally liable for any injury resulting from negligence, but there would be no liability on the State for the torts of its employees.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## STATE PROPERTY—ERECTION OF BUILDINGS ON

RICHMOND, VA., *August 10, 1921.*

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

DEAR SIR:

Acknowledgment is made of your letter of August 10th, in which you say:

"It is the intention of the Military Board to erect suitable warehouses to store government and State military property at once. These buildings will contain approximately 7,654 feet of corrugated iron and 21,082 feet of lumber each.

"Could you let us have your written opinion as to what jurisdiction, if any, the building inspector or city government of Richmond, Va., will have in this matter if we erect these buildings on the property or adjoining the State penitentiary and owned by the State of Virginia?

"Should it be your opinion that they have no jurisdiction, it is our intention to begin immediately to erect these buildings."

The property in question, I understand, is a part of the ground owned by the Commonwealth and used in connection with the State penitentiary. While located within the physical limits of the city of Richmond, this property is not a part of the city of Richmond, nor is it subject to the jurisdiction or control of that city. I am, therefore, of the opinion that the building inspector of the city of Richmond, has no jurisdiction or control over the use to which this property is put, or over the class or kind of buildings constructed thereon.

I have examined section 3032 of the Code of Virginia, 1919, which gives to cities and towns, among other things, the right to regulate the erection of buildings therein. In my opinion, however, this is limited to the regulation of buildings erected by persons other than the Commonwealth. It was never intended to apply to the Commonwealth or to the regulation of buildings by the Commonwealth on ground owned by it, which, strictly speaking, is not a part of the city although located within the physical bounds thereof.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## STATE PROPERTY—ERECTION OF BUILDINGS ON

RICHMOND, VA., *September 7, 1921.*

COL. GEORGE WAYNE ANDERSON,  
*Assistant City Attorney,*  
*Richmond, Va.*

DEAR SIR:

I beg leave to acknowledge receipt of your very courteous letter of recent date with reference to the erection of certain buildings on the property of the State, known as the penitentiary property, by the military board. My delay in replying to your letter is due to absence from my office, for which I trust you will pardon me.

Before the military board undertook to erect the buildings in question, a conference was held by the Governor, the Adjutant General and others connected with the military board, at which I was present. It was determined at this conference, before proceeding to erect the buildings in question, that

an expert engineer of experience and ability should be engaged, who would inspect the proposed location of the buildings, the character of the same, and report whether or not their erection would be a menace or fire hazard to property of the citizens of the city of Richmond in that locality. This was done, and the engineer reported that he did not regard the character of the buildings or their location in any manner a menace or fire hazard.

I would further add that the building inspector of your city has repeatedly stated to General Stern that the erection of these buildings of the character proposed, is not regarded by him as a menace or fire hazard.

While the State does not conceive the right of the city of Richmond, through its building inspector, to require any permit to erect these buildings, at the same time it was not the purpose or intention of the military board to erect any buildings which would be hazardous or a menace to property located within the city of Richmond, hence the reason for first obtaining the opinion of an expert engineer before undertaking to erect these buildings.

I have carefully noted the decisions referred to by you in your letter, but I cannot agree with you that they are authority for the proposition that the State has delegated to the city of Richmond, which is a mere creature of the State, the police power to control the State in the exercise of its governmental functions.

As stated in my former letter to the Adjutant General, I am still of the opinion that it is not necessary that a permit should be obtained from the inspector of the city of Richmond in order to erect these buildings.

These buildings are being erected by the military board upon authority of the legislature for the good of the military, and being paid for out of State funds appropriated for that purpose, the military board being granted the authority under which they are acting, by the very act creating it.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

---

STATUTES—CONSTRUCTION OF

RICHMOND, VA., *November 14, 1921.*

HON. J. R. TAYLOR,  
*Commonwealth's Attorney,*  
*Martinsville, Va.*

DEAR SIR:

Acknowledgment is made of your letter of the 11th, which the Attorney General has referred to me for attention. In your letter you say:

"Please give me your opinion as to whether or not chapter 207, page 284 of the Acts of 1920, is applicable to other streams and rivers in the State as well as tidewater streams. Some lawyers seem to doubt its application to streams except on tidewaters; but I think it includes all streams except in the two counties excepted in the Act."

From an examination of chapter 207 of the Acts of 1920, I am of the opinion that it is applicable to any of the rivers, streams or other waters within the jurisdiction of this Commonwealth. There is nothing in the Acts to indicate that it is limited in its application to Tidewater streams. Indeed, the last

paragraph of the Acts, which reads: "The provisions of this act shall not apply to Princess Anne County, nor to Pulaski County or any river therein," clearly indicated that the act is not limited to Tidewater streams.

Yours very truly,

LEON M. BAZILE,

*Second Assistant Attorney General.*

---

STATUTES—CONFLICT AND REPEAL OF

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

RICHMOND, VA., *April 5, 1921.*

DEAR SIR:

Acknowledgment is made of your letter of April 2nd, in which you say:

"We would like to have your opinion as to whether paragraph 8, chapter 178, Acts of 1914, is to be construed as annulling the provisions of section 3195 in so far as Augusta county is concerned."

Section 3195 of the Code of Virginia, 1919, and chapter 324 of the Acts of 1918, amending section 2108 of the Code of 1904, having been enacted subsequent to chapter 178 of the Acts of 1914, any provision of the last cited law which is in conflict with section 3195 of the Code of 1919 and chapter 324 of the Acts of 1918, would necessarily be repealed by implication.

No prior enacted law can ever have the effect of annulling any portion of a subsequent act of the General Assembly.

Yours very truly,

LEON M. BAZILE,

*Second Assistant Attorney General.*

---

TAXATION—ASSESSMENT OF REAL ESTATE

RICHMOND, VA., *September 16, 1921.*

HON. JOHN RANDOLPH TUCKER, *Counsel,*  
*State Corporation Commission,*  
*Richmond, Va.*

MY DEAR MR. TUCKER:

Acknowledgment is made of your letter of September 9th, which would have been answered earlier but for the fact that I have been absent from my office attending the session of the Supreme Court of Appeals at Staunton. In your letter you say:

"The State Corporation Commission has, during the past week, been engaged in making annual assessment for taxation of the property of the various public service corporations of this State. At the hearing this morning, the Commission had under consideration the reassessment of the property of the Albemarle Steam Navigation Company, which appeared by counsel and made the point that under the provisions of sections 171 and 176 of the Constitution of 1902, the power of the Commission to make annual reassessments of the real estate of public service corporations was confined to railway and canal companies, and that as to all other classes of public utilities the assessing power of the Commission was limited by the provisions of section 171 to making quinquennial assessments in the year 1905 and each five years thereafter. Since, there-

fore, the real property of this company was assessed in 1920 by the Commission, it is contended that the figures so fixed are conclusive and that no re-valuation is possible until the year 1925.

"This contention, if well-founded, will have a rather far-reaching effect on the revenues of the State, since the rule will apply to all classes of public service corporations other than railroads, street railways and canals, and in view of the possible effect on the revenues of the State by a ruling of the Commission sustaining the contention of the Albemarle Stream Navigation Company, it was deemed proper by the Commission to submit this question to you for your opinion before acting upon it. The Commission would be pleased to have an expression of your views in the premises."

Section 171 of the Constitution of Virginia reads as follows:

"The General Assembly shall provide for a reassessment of real estate, in the year nineteen hundred and five, and every fifth year thereafter, except that of railway and canal corporations, which, after January the first, nineteen hundred and thirteen, may be assessed as the General Assembly may provide."

It will be seen from an examination of section 171 of the Constitution being general and the only exception contained therein being the real estate of railway and canal corporations, I am of the opinion that the position of Counsel for the Albemarle Steam Navigation Company is correct, and that under the Constitution, the real estate of steamboat companies cannot be re-assessed until the year 1925, its real estate having been re-assessed in the year 1920.

Before answering your letter, I went over the same with Hon. C. Lee Moore, Auditor of Public Accounts, and he concurs in the view expressed herein.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

---

#### TAXATION—CARNIVALS

HON. S. L. FERGUSON,  
*Appomattox, Va.*

RICHMOND, VA., *March 5, 1921.*

MY DEAR MR. FERGUSON:

Your letter with the enclosure from J. Lawrence Wright, which, at your request, I am returning, has been received.

The question involved is whether or not Mr. Wright is running a carnival and, therefore, must pay a carnival license, as provided by section 109 of the Virginia tax laws of 1920, page 176.

A carnival, under the Virginia law, is any aggregation of shows as distinguished from a circus. Mr. Wright does not state the nature of his entertainment, but I notice on his letter-heads it is stated that there are six high-class shows, a \$10,000 carousel, mammoth ferris wheel and twenty-five concessions. If this is true, he is undoubtedly running a carnival.

Mr. Wright states that he only has two cars, but the number of cars has no bearing upon the question except in the case of the amount of license required for a circus. If he has an aggregation of shows, as would appear from his letter-heads, regardless of the number, he is doing a carnival business, and must pay the carnival license.

Yours truly,

J. D. HANK, JR.,

*Assistant Attorney General.*

## TAXATION—CIRCUS

RICHMOND, VA., *July 19, 1921.*

B. O. BRADSHAW, ESQ.,  
*Secretary,*  
*Harrisonburg, Va.*

DEAR SIR:

Acknowledgment is made of your telegram of July 18th, in which you say:

"Our county fair August 13th. What's the law concerning Robinson's circus advertising for August 9th? This comes within the thirty-day limit."

Section 109½ of the Virginia tax bill, as amended, reads as follows:

"Every traveling circus, carnival or show giving performances in the open air or tents in any county or city in this State, wherein there is held an agricultural fair, for one week previous to, or during the week of, or one week after the time of holding such regular annual fair, shall pay a State license tax of one thousand (\$1,000) dollars for each performance in addition to the license tax now required by law of a circus, carnival or like show, the State license tax provided for in this section and the State license tax now required by law, to be assessed by the commissioner of the revenue and these license taxes to be paid to the county or city treasurer before any performance is permitted to be held.

"It shall be unlawful for any such circus, carnival or show to publish or post in any way in such county or city at any time within thirty days prior to the holding of such regular annual fair, advertising of the exhibition of any such circus, carnival or show. Any person, firm, company, or corporation violating any provision of this section shall be fined two thousand (\$2,000) dollars for each offense by the justice of peace or court trying the case. The provisions of this section shall not apply to circuses, carnivals or shows inside the grounds of any agricultural fair held in any county or city."

You will see, from the first paragraph thereof, that the giving of performances by traveling circuses is prohibited without the payment of an additional license for one week previous to or during the week of, or one week after the time of holding such regular annual agricultural fair.

August 9th, as you will see, is more than one week previous to August 30th, and, therefore, performances may be given by the circuses on August 9th without being required to pay the additional license tax provided by section 109½ of the Virginia tax bill, as amended.

From the last paragraph of section 109½ of the Virginia tax bill, as amended, you will notice that it is unlawful for such circuses to publish or post in any way at any time, within thirty days prior to the holding of such regular annual fair, advertising or the exhibition of such circus, carnival or show.

Therefore, while the circus in question cannot be permitted to post or publish notices in your county after August 1st, it may do so up to that time, as up to August 1st would not be within thirty days of August 30th.

Trusting this gives you the desired information, I am,

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## TAXATION—COLLEGE PROPERTY

DR. J. D. EGGLESTON,  
*Hampden-Sidney, Va.*

RICHMOND, VA., *December 7, 1921.*

MY DEAR SIR:

I beg leave to acknowledge receipt of your letter of November 28th, in which you ask to be advised whether certain property which is owned by the College of Hampden-Sidney is taxable.

In this connection you give two concrete cases: First, you state that the college owns property in Richmond from which it receives rentals; and, second, it owns a piece of property which at present is not used by the college for commercial purposes, but is held until such time as the college is able to build a preparatory school thereon, the college deriving no income or revenue from the latter piece of property.

I am of the opinion that the property from which the college receives rentals or derives revenue is taxable.

The other piece of property from which it receives no rentals or revenue, but upon which it is proposed to erect a preparatory school, should not be assessed for taxation.

I would add that I have discussed your letter with the Auditor of Public Accounts, and in this opinion he concurs. Absence from my office has prevented an earlier reply to your letter.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

---

TAXATION—DEEDS

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

RICHMOND, VA., *July 31, 1919.*

DEAR SIR:

Acknowledgment is made of your request as to what tax should be paid for the recordation of certain deeds offered for record in Henry County, Va.

You state that these deeds set out that, while the grantor holds the title to the property, he has never had any beneficial interest in the same, but has held the property for the benefit of the grantee, and it is the purpose of the deeds to convey the legal title to said property to the grantee. You state that the deeds do not set forth the consideration.

The tax for the recordation of these deeds should be based on the present actual value of the property conveyed, in accordance with the law of Virginia for taxing deeds. I am of the opinion that the fact that the deeds recite that the grantee has always owned a beneficial interest in the property does not affect the question of the tax for the recordation of the same, but that the tax should be fixed just as the tax on any other ordinary deed admitted to record.

You state that, upon the purchase of the property by the grantor, the grantee immediately entered into possession, and has had possession of the property ever since, and has made certain improvements, for which the grantee himself paid, with the right to remove them if the property was not finally conveyed to the grantee. You also state that these improvements have been assessed for taxation in the name of the grantee, who has paid the tax from year to year.

I am of the opinion that, under such circumstances, these improvements should not be considered in fixing the present valuation of the property, but that all improvements on the property at the time the grantee took possession should enter into the valuation of the property conveyed.

Yours truly,

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

---

TAXATION—DEEDS OF ASSIGNMENT

MR. W. J. NELMS,  
*Newport News, Va.*

RICHMOND, VA., *February 21, 1921.*

DEAR SIR:

I have carefully noted the contents of your letter of the 12th, in which you state that you have been made trustee in a general deed of assignment from one A. Hamborg, which deed of assignment conveys to you, as trustee, certain property for the purpose of securing creditors of the said A. Hamborg.

You further state that the value of the property conveyed in said deed of trust is between \$4,000.00 and \$4,500.00, but that the indebtedness of Mr. Hamborg will probably reach \$24,000.00. You then ask to be advised whether the tax to be charged by the clerk for recording this deed should be based upon the value of the property conveyed to you, or whether such tax is based upon the amount of indebtedness of Hamborg.

I am of the opinion that the tax should be based upon the value of the property embraced in the deed of assignment rather than upon the amount of indebtedness of the debtor. While it is true that a deed of assignment, strictly speaking, is not a deed of trust, at the same time the amount secured in said deed certainly can be no more than the value of the property which is conveyed by said deed, regardless of the amount the debtor may owe, and certainly in a deed of bargain and sale the tax is based upon the value of the property conveyed, and the only property upon which there can be a fixed value in a deed of assignment is the property which is conveyed to the trustee.

I am therefore of the opinion that the amount of tax on the deed in question should be based upon the value of the property which comes into your hands as trustee. I have just gone over this matter again with Mr. Moore, the Auditor, and he concurs in this view.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

---

TAXATION—ON DEEDS OF TRUST

RICHMOND, VA., *September 13, 1921.*

HON. ROBT. WATSON, *President,*  
*United States Housing Corporation,*  
*Washington, D. C.*

MY DEAR SIR:

Acknowledgment is made of your letters of recent date with reference to the recordation of the deeds of trust held by the United States Government as security on certain property in Henrico county, sold by the United States

Housing Corporation to the Richmond-Fairfield Railway Company, which deeds of trust have been offered for recordation in the clerk's office of the circuit court of Henrico county.

In your letter you state that the trust deeds in question are given for the purpose of securing certain sums of money which are due to the Federal Government, and that said deeds of trust are offered for recordation by the Federal Government for the purpose of protecting money which is due from the Richmond-Fairfield Railway Company to the United States Government.

It is your contention that, the deeds of trust having been given to secure the payment of notes which are the property of the Federal Government, as such, the deeds of trust are a means and instrumentality of the Federal Government, and, therefore, are not subject to tax.

While it is true that the tax imposed by section 13 of the Virginia tax bill on the recordation of deeds of trust, etc., is not a tax on property, it is nevertheless a tax on the civil privilege of being allowed to avail one's self of the benefits and advantages of the registration laws of the State. *Pocahontas Collieries Company v. Commonwealth*, 113 Va. 108; 73 S. E. 446; *Saville v. Va. Ry. & Power Co.*, 114 Va. 446; 76 S. E. 954. Being a true tax, I agree with the Attorney General of New York in his opinion in a similar matter, that the Federal Government cannot be subjected to it by the State of Virginia (*McCulloch v. Md.* 4 Wheat. 316, 341), and, therefore, that the deeds of trust in question are entitled to be admitted to record without the tax imposed by section 13 of the Virginia tax bill being paid.

In an opinion given by the Attorney General on November 7, 1919, to the clerk of the hustings court, part II, of the city of Richmond, report of the Attorney General, 1919, page 267, it was held that no tax could be required of the United States Government as a prerequisite to the filing and recordation of the papers filed by the Alien Property Custodian for the seizure of the property of an alien enemy of the United States.

It is one of the constitutional rights of the Federal Government to acquire, own and dispose of property, and, in the disposition of the same, it is the exercise of one of the powers of the Federal Government to secure the unpaid purchase price by mortgage or deed of trust which is, therefore, one of the constitutional means employed by the Federal Government to execute its constitutional powers, and, under the decision of *McCulloch v. Maryland*, *supra*, no tax can be required by the State of Virginia of the Federal Government for the recordation of the same.

The letter which was written by me, with reference to this matter in June of this year to Hon. Thomas W. O'Brien, Vice-President of the United States Housing Corporation, was based upon the information that the Federal Government was not the holder of the notes secured by the deeds of trust in question.

Yours very truly,

LEON M. BAZILE,

*Second Assistant Attorney General.*

## TAXATION—FEDERAL TAX ON TRANSPORTATION

RICHMOND, VA., *January 28, 1921.*

HON. J. N. HILLMAN, *Secretary,*  
*State Board of Education,*  
*City.*

DEAR SIR:

Acknowledgment is made of your letter of the 24th, in which you say:

"I am enclosing herewith the tax exemption blank which is used by State and government officials to secure exemption from war tax on railroad transportation. Will you be good enough to advise me if, in your opinion, district supervisors and local division superintendents of schools may under the law claim exemption from war tax on railroad transportation?"

This matter is governed by the provisions of section 502 of the war revenue act, 1917, U. S. State at large, 65th Congress, 1917-19, vol. 40, part 1, p. 315, which provides as follows:

"That no tax shall be imposed under section five hundred upon any payment received for services rendered to the United States, or any State, territory, or the District of Columbia. The right to exemption under this section shall be evidenced in such manner as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulation prescribe."

You will see, from an examination of this statute, that its provisions are limited, so far as we are concerned, to persons rendering service to a State. Therefore, such exemption is not applicable to county and district officers.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

---

TAXATION—INCOMERICHMOND, VA., *July 5, 1921.*

HON. L. B. ALLEN, *Chairman,*  
*Local Board of Review of Roanoke County,*  
*Salem, Va.*

DEAR SIR:

Acknowledgment is made of your letter of July 1st, in which you request my opinion on the following statement of facts:

"This situation arises. A and B are married and living together. A has an income derived chiefly from profession. His wife, B, has independent property from which she receives an income and which is not derived from her husband or his property in any manner, or in which he has an interest. A and B each filed a separate income return, showing the income derived from his and her separate property, each claiming an exemption of \$1,200.00, contending that they had the right to file their returns as individuals, independent of the provisions of section (b), which provides that they shall have a joint exemption of \$1,800.00."

It is true that under the exemption clauses of section 10, schedule (d) of the Virginia tax bill, relating to incomes, it is provided that there shall be exempt from taxation under this schedule, incomes as follows:

"(a) To an individual income up to and including the sum of twelve hundred dollars.

“(b) To husband and wife living together income up to and including the sum of eighteen hundred dollars.”

It is further provided by clause (d) of the exemptions, as follows:

“(d) In computing said exemptions and the amounts of taxes payable by persons together as members of a family, the income of the wife and the income of each child under twenty-one years of age shall be added to that of the husband or father, or if he be not living, to that of the head of the family, and assessed to him. The taxes levied thereon shall be payable by such husband or head of the family, but if not paid by him may be enforced against any person whose income is included in the assessment.”

You will see from a reading of clause (d) of the exemptions that a return must be filed as one income, and that a husband and wife are not entitled to individual exemptions.

Trusting that this gives you the desired information, I am,

Yours very truly,

LEON M. BAZILE,

*Second Assistant Attorney General.*

---

TAXATION—INCOME TAX

RICHMOND, VA., *March 14, 1921.*

HON. E. GRIFFITH DODSON,

*Norfolk, Va.*

MY DEAR SIR:

Upon my return to the city I found your letter in reference to the deductions that can be made from the State income tax. You state that you do not see why other deductions should not be made in addition to those that are contained in the instructions of tax return sheet, as set out by the Auditor of Public Accounts.

I call your attention to the fact that the deductions contained on these sheets are entirely in accordance with the law as laid down by the legislature in amending the income tax law on March 14, 1918 (sec. 10, Va. tax laws 1920, p. 53).

You will realize that the Auditor has no right to allow any deductions not specified in the tax law in regard to income, and while it may seem proper that a deduction of taxes paid and donations made should be deducted from the income return, and also that gifts exceeding in value \$1,000.00 should be allowed to be deducted, at the same time, the legislature evidently thought differently, and until the act is changed so as to allow these deductions to be made, such items cannot be taken into consideration in making the income tax returns.

With reference to the amount of surplus in the treasury, if you will examine the Auditor's report made last October, copy of which I presume is in your hands, you will find that it was estimated that on March 1, 1922, there will be a balance in the treasury of \$178,000, which is, of course, *de minimis*. Furthermore, the least emergency would wipe off that balance, which, after all, is a mere book balance.

I would be glad to give you any further information on this matter that I can.

Yours very truly,

J. D. HANK, JR.,

*Assistant Attorney General.*

## TAXATION—INCOME

RICHMOND, VA., *August 3, 1921.*

MR. T. H. MCGINNIS,  
*Shipman, Va.*

MY DEAR SIR:

I am just in receipt of your letter of August 1st, to which I will reply at once.

You desire to be advised whether the sum of \$61,670.00, which was received by Mr. M. J. Copps during the year 1920, the said amount being a legacy from the estate of D. J. Carroll of New York City, is taxable as income.

In reply I will state that this amount is taxable as an income. The income tax law provides that "income" shall include all gains and profits derived from any source whatever (Va. tax laws 1920, p. 54).

An inheritance is unquestionably a gain, and is included under this provision of the law. The law further provides, on the same page referred to, that all devises and bequests, received during the year, which are subject to the inheritance tax laws of this State and have actually been assessed under such a law, shall be exempt from taxation. If, however, a person residing in Virginia receives an inheritance of personal property and money from a decedent, who, at the time of his death resided in New York City, such an inheritance is not subject to the inheritance tax laws of this State, but is, therefore, taxable as income. There can be no doubt then but that Mr. Copps should pay an income tax on the legacy received by him.

Trusting this is the desired information, I am,

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

## TAXATION—INHERITANCE AND INCOME

RICHMOND, VA., *August 25, 1921.*

JUDGE R. T. W. DUKE, JR.,  
*Charlottesville, Va.*

MY DEAR JUDGE DUKE:

I regret that absence from the city has prevented earlier attention to your letter of August 5th. In reply thereto I beg to advise that under the Virginia law an inheritance which is *not* subject to the Virginia inheritance tax law, and has not actually been assessed under such law, is taxable as income. (See Va. tax bill, sec. 10, sub-sec. 1, under exemptions.)

In addition, so much of the inheritance as the taxpayer actually has on hand on February 1st must also be reported for property taxation under the proper classification. This is not double taxation, for there is a well recognized distinction between a tax upon property and a tax upon income or the acquisition of property. For example, if an attorney receives a fee of \$500.00 during the year 1920, he must report that amount as income in 1921. If with the \$500.00 he purchases a horse, and he owns the horse on February 1, 1921, he must also report the horse for taxation as tangible property. Likewise, if his client, instead of paying him a fee of \$500.00, gives him a horse, he would be required to report the value of the horse as income; and if he had the horse on

February 1st, also report the horse for property taxation. The same would be true if the property were intangible, such as stocks, bonds, notes, etc.; the value of the property would have to be reported as a part of the income of the taxpayer during the year which it was received, and the property itself reported for property taxation if held by the taxpayer on February 1st.

With reference to the definition of the word "gains" which I have adopted, I submit the following quotation from Black on income taxes, which is a recognized authority (sec. 33, p. 80).

"\* \* \* But it may probably be said that when a tax law employs the phrase 'gains, profits, and income,' to describe what is taxable, the term 'gains' is inserted out of abundant caution, and intended to include an acquisition of the taxpayer which is not to be described as a 'profit,' and which might not be included in the term 'income' if that word were taken in a narrow sense. Properly speaking, 'gain' means that which is acquired or comes as a benefit, and in a statute laying an income tax it may mean money received within the year which is not the fruit of a business transaction nor of the labor or exertion of the individual, but something arising from fortuitous circumstances or conditions which he does not control. In this signification, the term would include money received as a legacy or money won on a wager."

If I have not made myself absolutely clear, or if there is any further information which you desire in regard to the matter, I trust that you will not hesitate to call upon me.

Sincerely yours,

JNO. R. SAUNDERS,  
*Attorney General.*

---

TAXATION—INSURANCE

RICHMOND, VA., *March 10, 1921.*

HON. JNO. P. LEE,  
*Attorney at Law,*  
*Rocky Mount, Va.*

DEAR SIR:

Acknowledgment is made of your letter of the 3d, in which you request my opinion on the following statement of facts:

"A question has arisen in regard to the taxation of money collected by the guardian of a minor, who is receiving money under an insurance policy taken out under the Federal war risk insurance act by a soldier who was killed.

"In the particular case a soldier took out a policy for \$10,000 for the benefit of his sister. He was killed, and the government is paying her \$57.50 per month. She being a minor, her father qualified as guardian.

"Counsel for the guardian contends that the fund is not taxable at all. The next point that will arise is if it is taxable, what amount it should be taxed. The girl is going to school in Roanoke, and it may take the amount, or nearly the amount, going to her to pay her expenses, board, tuition, etc., each month.

"The guardian in this case is putting the money in bank, paying some of it out for the expenses of his ward, and has a balance in money in bank on the first of each February. I think that he should pay tax on the amount of money in bank on each first day of February. How about an inheritance tax?"

I am of the opinion that insurance payments received by the guardian mentioned in your letter are obligations of the Federal Government and hence are

not taxable as property, and that the income received is income from the United States Government and hence not taxable as income. If, however, on February 1st, the guardian had on hand any money received from this source, he would be taxable upon such money, or if he had converted it into property, it would be taxable under its proper classification.

In response to your last question, I am of the opinion that if the proceeds of the policy in question were payable to a designated beneficiary, they do not become a part of the estate of the deceased, and do not pass by will or by the laws regulating descents and distributions, but are transferred to the beneficiary by the terms of the contract. (26. R. C. L., sec. 192.)

If, on the other hand, the policy was payable to the insured or his personal representative or the estate, it becomes a part of the estate and passes by will or by the laws regulating descents and distributions, and is therefore taxable under the inheritance tax law. It would therefore depend upon who was the beneficiary in the policy in question as to whether or not the proceeds are subject to an inheritance tax.

Trusting this gives you the desired information, I am,

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

---

#### TAXATION—INTERSTATE COMMERCE

RICHMOND, VA., *July 9, 1921.*

MR. C. G. HUTCHESON,

*General Delivery,*

*Richmond, Va.*

DEAR SIR:

Acknowledgment is made of your request that you be advised as to whether or not you are subject to a license tax in this State for doing the following business:

You are the agent of The Success Portrait Company of Chattanooga, Tenn. This company is engaged in the enlarging of portraits and the manufacturing and selling of frames for the same. As agent for this company, you go through the State soliciting orders for the enlargement of portraits and the sale of frames for the same. The portraits are enlarged in Tennessee, and the frames are in Tennessee at the time the orders for the same are taken by you. None of the property is in Virginia at the time the orders are given, except the photos which are to be enlarged, which are delivered to you for the purpose of being sent to The Success Portrait Company for enlargement.

After the orders have been given you for the enlargement of the portraits and for the frames to accompany the same, the photos and the orders are sent by you to The Success Portrait Company at Chattanooga, Tenn. The photos are enlarged in Tennessee and shipped, with the frames ordered, to you in Virginia, where you subsequently deliver the same to the purchasers and collect the amount agreed to be paid on delivery.

The contracts between you and the persons giving the orders for the enlargement of the portraits and the frames are signed by the persons giving the orders, who become bound on these contracts for the enlarged portraits and the frames.

The Supreme Court of Appeals of this State, in *Roselle v. Commonwealth*, 110 Va. 235 (1909), affirmed by the Supreme Court of the United States in 223 U. S. 716; 56 L. Ed. 627, said:

"The test which seems to determine whether the transaction is to be regarded as belonging to interstate or to intrastate commerce is whether the property which is the subject matter of the sale is within the jurisdiction of the State at the time the sale is made."

As it appears from the statement of facts furnished by you that when the enlarged portraits and frames are shipped to Virginia from Tennessee, the persons ordering the same at that time are obligated to receive and pay for the same, and that at the time the orders were given the enlarged portraits were not in existence and the frames, if in existence, were in the State of Tennessee, I am of the opinion that you do not come within the decision of the court in *Roselle v. Commonwealth*, *supra*, in which case it was held that the contract there in question did not obligate the person ordering the portrait to purchase a frame, and that any sale of the same was made after same had been shipped to Virginia, and, for that reason, that the defendant in that case was subject to the license tax.

In your case, it appears that your transactions are wholly interstate, and I am therefore of the opinion that you are not subject to any license tax in this State on such interstate business.

Yours very truly,

LEON M. BAZILE,  
*Second Assistant Attorney General.*

---

TAXATION—LOCAL LEVIES—WHEN LAID

RICHMOND, VA., April 7, 1921.

HON. W. W. BEVERLEY,  
*Richmond, Va.*

MY DEAR MR. BEVERLEY:

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

"I would like very much for you to let me have your opinion as to the construction of chapter 352 of the Acts of 1918, page 533.

"As you know, under the law, boards of supervisors must lay their levy by April of each year. The Varina school board desires to obtain money, and wants to know whether it should be governed for this school session on the levy laid last April or the levy laid April, 1921. From the statute it appears that they can lay a levy not exceeding the amount of the district levy for the year in which the loan is negotiated. I have advised them that if the levy was laid in April of this year they could borrow money in the amount not exceeding the levy.

"I would be very glad, therefore, if you will let me have your opinion on this point as soon as possible, as this district desires to borrow money and they have already nearly reached their limit on the levy laid in 1920, but I understand the levy for 1921 will be larger, and they want to borrow money for the present school term, as otherwise they will have to close the school."

It is provided by chapter 352 of the Acts of 1918, so far as is applicable to the question here under consideration, as follows:

"Be it enacted by the general assembly of Virginia, That the several district or city school boards of the State, desiring to borrow money of

the purpose aforesaid, be, and the same are hereby authorized to borrow a sum of money which shall not exceed the amount of the district levy for the year in which the loan is negotiated, such loans to be repaid at such time or times within the space of five years as may seem best to the respective school boards, and to bear interest at a rate not exceeding six per centum per annum; provided that a second loan shall not be negotiated until all preceding temporary loans negotiated under this act have been paid."

The levy to be laid by the board of supervisors of Henrico county in April of this year will be paid for the year 1921, the same being payable in November, 1921. As the money is to be borrowed by the school board in the year 1921, it cannot exceed the amount of the district levy for the year 1921.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

---

TAXATION—OPTOMETRIST—MERCHANTS

RICHMOND, VA., *June 27, 1921.*

HON. HENRY E. LEE,  
*Commonwealth's Attorney,  
Crewe, Va.*

DEAR SIR:

Acknowledgment is made of your letter of June 23, 1921, in which you say:

"I understand a man named Green is going around through this section of Nottoway county peddling eye glasses. He claims that he has a right to make examinations, and sell spectacles, under a license issued his firm. Please give me your opinion in regard to this matter, and advise if I should prosecute him for doing business without license; and if so, please let me know under what statute I must proceed. I have looked over the Code and I do not find any specific law bearing upon this case, and I am, therefore, writing to you for your opinion in regard to this matter, and I will send a copy of my letter to the Auditor of Public Accounts."

I happen to know Mr. Green, who is a licensed optometrist of this city, and he informs me that the method by which he does business in Nottoway is to make the necessary examinations in Nottoway county, take the orders for the needed glasses and return to Richmond, where the glasses are fitted and completed and then later delivered to the persons who gave the orders.

Mr. Green pays a merchant's license tax in the city of Richmond upon his business, and pays the prescribed license or fee as an optometrist, and informs me that he has also had his certificate registered in Nottoway county. Under these circumstances, Mr. Green is within the law, and so long as he confines his operations to examining people's eyes, taking their orders, and later delivering the glasses, which are fitted here in Richmond, he is not subject to prosecution.

The Auditor, Hon. C. Lee Moore, agrees with me as to the views expressed in this letter.

I shall be very glad to give you any further information with reference to this matter.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

## TAXATION—PEDDLERS

RICHMOND, VA., *May 20, 1921.*

HON. H. PRINCE BURNETT,  
*Commonwealth's Attorney,  
Independence, Va.*

MY DEAR SIR:

Acknowledgment is made of your letter of March 14, 1921, in which you say:

"I have a man indicted in my court for failure to take out license as a peddler in produce. The facts of the case are as follows: 'A' buys up produce through the county, such as butter, eggs, etc., and then takes them to a merchant in the county and sells them. What license should 'A' pay, if any?"

Under the statement of facts submitted by you, the man in question would not come within the meaning of section 50 of the Virginia tax bill, which relates to peddlers, as this section of the tax bill defines a peddler as "any person who shall carry from place to place any goods, wares or merchandise and offer to sell or barter the same, or actually sell or barter the same."

The only section of the tax bill under which his case could fall would be sections 45 and 46 of the tax bill, which relate to merchandise. Even then, the man in question would not be subject to a license tax as a merchant, unless he keeps a place of business for the purpose of selling such articles in, or within, half a mile of a city or town in the State.

In view of the proviso contained in the last paragraph of section 46 of the Virginia tax bill, it does not appear from your letter that the man is subject to a license tax as a merchant. This proviso reads as follows:

"But nothing in this section shall be so construed as to require a license of any person who may canvass any county or corporation to buy lands, pigs, calves, fowls, eggs, butter and such like small matters of subsistence designed as food for man, but any person who shall keep a place of business for the purpose of selling such articles in, or within a half mile of any city or town in the State, shall take out license therefor, as hereinbefore prescribed \* \* \*."

Trusting that this gives you the desired information, I am,

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## TAXATION—ON SEALS

RICHMOND, VA., *December 13, 1921.*

J. W. ADAMS, ESQ.,  
*Corporation Court,  
Fredericksburg, Va.*

MY DEAR SIR:

Acknowledgment is made of your letter of December 8, 1921, in which you ask the following question:

"When notary takes affidavit to go out of the State, and the paper requires the clerk to certify that notary is a notary, is the clerk compelled to put adhesive stamp on paper before he can use his seal?"

Under section 16 of the Virginia tax bill, the State seal is required as the

certificate required is not exempted by section 2402 of the Code of Virginia, 1919.

You also request me to advise you if a certificate of official character, like the one mentioned in your first question, under the seal of the court but to be used within the State, would require the tax stamp. It would, as section 16 of the tax bill provides that "When the seal of the State, of a court, or notary public is affixed to any paper, except in the cases exempted by law," the tax prescribed by that section must be paid. Such a certificate, not being excepted by the provisions of section 2402 of the Code of Virginia, 1919, must, therefore, bear the tax stamp for the seal of the court as attached, regardless of where the paper is to be used.

I might also add for your information that, whenever a notary attaches his seal to an acknowledgment to a deed or other paper to be recorded in the State, the tax stamp must be used. Indeed, whenever a seal is attached to an instrument, regardless of the place where it is to be used, the tax stamp must be attached to the instrument, except in those cases specifically mentioned by section 2402 of the Code of Virginia, 1919.

Trusting that this gives you the desired information, I am,

Yours truly,

JNO. R. SAUNDERS,  
*Attorney General.*

---

#### TAXATION—ON SEALS

RICHMOND, VA., *September 29, 1921.*

MR. A. L. SINGLETON,  
*905 Mutual Building,  
City.*

DEAR SIR:

Acknowledgment is made of your letter. enclosing a form of acknowledgment to be executed by a notary providing for the affixing of the seal to the acknowledgment, and you ask whether or not the dollar stamp must be used when the seal is affixed to an acknowledgment in the form presented.

Section 16 of the tax bill provides that whenever a notary public affixes his seal to any paper, except cases exempted by law, the adhesive stamp must be used. The only exemptions to the use of the adhesive stamp is contained in section 2402 of the Code of Virginia, which provides as follows:

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

The form of the acknowledgment is immaterial, and it is also immaterial where the paper acknowledged is to be used. If it is an acknowledgment, the notary is prohibited by law in affixing his seal without also affixing the adhesive stamp.

Yours truly,

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

## TAXATION—SCHOOL TAXES

RICHMOND, VA., April 16, 1921.

MR. JNO. R. BECK, *Chairman,*  
*Board of Supervisors of Dinwiddie County,*  
*Butterworth, Va.*

DEAR SIR:

Acknowledgment is made of your letter of April 15th, addressed to the Attorney General, in whose absence I am answering.

In your letter you ask to be advised as to the maximum levy that can be made by the board of supervisors of Dinwiddie county for the operation and maintenance of the public schools of said county.

Section 136 of the Constitution of Virginia was amended by the vote of the people in the November, 1920, election, and in anticipation of the adoption of the proposed amendment, submitted to the people, the legislature of Virginia, by chapter 398 of the Acts of 1920, authorized and required a tax on property of not less than fifty cents nor more than \$1.00 in the aggregate on the \$100.00 assessed value of property in any one year, which tax is to be levied by the boards of supervisors of the several counties and councils of the several cities and towns.

Trusting this gives you the desired information, I am,

Yours very truly,

LEON M. BAZILE,  
*Second Assistant Attorney General.*

## TAXATION—SCHOOLS

RICHMOND, VA., April 25, 1921.

HON. HARRIS HART,  
*Superintendent of Public Instruction,*  
*Richmond, Va.*

MY DEAR MR. HART:

Acknowledgment is made of your letter of April 22d, in which you state that you have received a letter from one of the superintendents of schools, who stated that, after the regular meeting of the board of supervisors of his county on April 11th when the county levies were laid, two members of the board raised their district school levies, and the third member desired to do so, but that the Commonwealth's attorney ruled that these increases were illegal.

I am of the opinion that the Commonwealth's attorney is entirely correct. The board of supervisors, as a board, at its regular meeting in the month of January in each year, or as soon thereafter as practicable, not later than their meeting in April, are authorized to fix the county levies for the current year, and by the provisions of section 2 of chapter 398 of the Acts of 1920, it is the duty of the board of supervisors of the several counties, and not the individual members of the board, who are authorized to provide for the levy and collection of local school taxes.

Therefore, the action of individual members of the board of supervisors in attempting to increase the levy fixed by the board is a mere nullity and void.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## TAXATION—SCHOOLS

S. V. SOUTHALL, ESQ.,  
*Attorney at Law,*

*North Emporia, Va.*

RICHMOND, VA., *April 26, 1921.*

DEAR SIR:

Acknowledgment is made of your letter of April 22d, in which you say:

“At a meeting of the board of supervisors yesterday, for the purpose of laying the levy for 1921, I advised them that, in compliance with an act of the General Assembly, approved March 20, 1920, and which became a law the 1st day of January, 1921 (see Acts 1920, pp. 587, 588), they would have to lay a levy of not less than fifty cents on each \$100.00, for county school purposes, and a levy of not less than fifty cents on each \$100.00, for district school purposes, making a total (minimum levy) for county and district school purposes of \$1.00 on each \$100.00.”

You further state that this minimum levy of \$1.00 for the county and district is more than is needed by your county, and you write to ask me whether I agree with your views or not. It has always been my understanding of the provisions of chapter 398 of the Acts of 1920 that the total county and district tax could not be less than fifty cents nor more than \$1.00.

I note what you say, with reference to the provisions of section 740 of the Code of 1919. It has been held a number of times by this office that, prior to the amendment to section 136 of the Constitution, section 740 of the Code was invalid, because in conflict with the provisions of this section of the Constitution, which limited the tax to five mills on the \$100.00.

I have carefully noted what you say in your letter, but, nevertheless, am of the opinion that you are in error in your construction of chapter 398 of the Acts of 1920, as requiring the boards of supervisors to impose a minimum levy of fifty cents for county and a minimum levy of fifty cents for district purposes on each \$100.00 assessed value of property.

I am of the opinion that this chapter of the Acts of 1920 only requires a minimum tax of fifty cents for the county and district, and limits the maximum to \$1.00 for the county and district, and not \$2.00, which would be the limit if your construction were correct.

I would add that Hon. Harris Hart, Superintendent of Public Instruction, has sent me a copy of the letter which he wrote you in reference to this matter, and I observe that he places a similar construction upon the statute in question.

I will be very glad to hear from you after you have read these letters.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

## TAXATION—SCHOOLS

HON. JAMES S. EASLEY,  
*Commonwealth's Attorney,*  
*Houston, Va.*

RICHMOND, VA., *March 10, 1921.*

DEAR SIR:

Acknowledgment is made of your letter of March 8, 1921, in which you say:

“I would like to have your construction of chapter 398 of the Acts of 1920, on page 587 of said acts. This chapter provides for a levy for local

school taxes by the board of supervisors of the respective counties, and the levy is to be not less than fifty cents nor more than \$1.00, in the aggregate, on the hundred dollars on the assessed value of property. It also provides that these taxes are to be apportioned and expended by the local school authorities. This act repeals section 740 and section 2721 of the Code. It seems plain, from the provisions of section 740 and section 2721, that the board of supervisors were under no compulsion to levy a tax sufficient to cover the demands made by the school authorities, but the language of chapter 398 seems doubtful on this point.

"The question that I wish to have your opinion on is this: Suppose the local school authorities submit an estimate to the board of supervisors, setting out the needs of the schools for the coming year, is the board of supervisors compelled by this section to make a levy to yield this amount, or is the discretion still left to the board of supervisors to determine what levy they shall make?"

It is provided by section 1 of chapter 398 of the Acts of 1920 (the section which is applicable to the question asked by you) as follows:

"Be it enacted by the general assembly of Virginia, That each county, city, town, if the same be a separate school district, and school district, is authorized and required to raise sums by a tax on property of not less than fifty cents nor more than one dollar in the aggregate on the hundred dollars of the assessed value of property in any one year 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."

You will see from a reading of this section that it requires a tax of not less than fifty cents nor more than \$1.00 in the aggregate on the \$100.00 of assessed value of property in any one year. The tax which is levied, therefore, cannot be less than fifty cents nor more than \$1.00. Fixing the tax at a rate between these amounts is a matter which rests within the discretion of the board of supervisors.

Very truly yours,

LEON M. BAZILE,  
*Second Assistant Attorney General.*

---

TAXATION—RATE OF

RICHMOND, VA., *January 6, 1921.*

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

MY DEAR MR. CAMP:

I beg leave to acknowledge receipt of your letter of January 5th, which is as follows:

"I am writing to you for information, and I hope that you can give same to me. Last year they put an extra assessment in our county for school purposes, and as I understand did not tax bonds or bank stock. Isn't that a discrimination against the property owners?"

I presume you mean when you say "they put an extra assessment," etc., that the board of supervisors did this. Of course you understand that this, being an assessment or levy made by the board of supervisors, is a local matter, and one which comes under the supervision of your Commonwealth's attorney.

However, I will state that in my judgment it is legal for the board of supervisors to increase the assessment on one class of property without increasing it on another class. In other words, if the board thinks that the rate of taxation

on real estate is not sufficiently high for school purposes, that could be increased provided they did not go beyond the limit prescribed by the Constitution, and it would not be necessary to increase the rate of assessment on stocks and bonds or bank stock in order to do this.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

---

TAXATION—TAX DEEDS

RICHMOND, VA., *July 11, 1921.*

J. WARREN TOPPING, Esq.,

*Cape Charles, Va.*

MY DEAR WARREN:

Acknowledgment is made of your letter of July 9th, in which you call my attention to your previous letter which, in some way, I had overlooked. In your letter you say:

"Section 2482, authorizing the clerk of the court for the county in which a delinquent tax sale is made to execute a deed to the purchaser, requires that the purchaser give notice to all parties in interest, etc., and the point as to which there is considerable difference of opinion is whether or not these notices should emanate from the clerk's office or from the purchaser himself. For your information, in so far as the case in which I am interested is concerned, I would say that there are many parties in interest, and some of them are non-residents, as to whom, of course, an order of publication would be necessary; and I have instructed the clerk to issue the notices both by order of publication and otherwise, and the only other attorney with whom he has conferred concurs with me in the opinion that all such notices should issue from the clerk's office; but as he has had no other similar cases since the adoption of the new Code, and as there are no authorities furnishing a precedent, he desires that I procure some opinion on the subject, and is himself inclined to the opinion that the purchaser of his attorney should prepare the notices. The note to this section in Pollard's Code cites *Kelley v. Gwatkins*, 108 Va. 6, as authorizing the service of notice under this section in the manner prescribed in section 6041, but this section together with section 6043 does not help us, because it does not say by whom the notice shall be issued. For these reasons I am writing to ask for your assistance, for which I assure you I am deeply grateful."

Section 2482 of the Code provides when and how a tax deed shall be made to the purchaser. It provides, so far as applicable to the subject of your inquiry, as follows:

"\* \* \* but in no case shall a deed be made to any such purchaser of any such real estate until after such purchaser has given to the person in whose name the real estate so sold stood at the time of said sale, and the person or persons to whom said real estate so sold has been conveyed of record subsequently to the time of said sale, or, if any of said persons be dead, then to his or their personal representatives, heirs and devisees, and to the trustees, mortgagees and beneficiaries as shown by the records in any deed of trust or mortgage on said real estate, or their personal representatives, four months' notice of his said purchase: provided, that no notice may be given to any trustee, mortgagee or beneficiary, in any deed of trust or mortgage which has been recorded, or the lien thereof renewed, more than twenty years prior to the date of such sale. \* \* \*

You will see from the foregoing that the statute provides that the purchaser

shall give four months' notice of his said purchase to the persons in interest enumerated in the statute, and until this is done, that no deed shall be made to him.

This section of the Code certainly does not impose upon the clerk any duty to issue the notices provided for by this section, and inasmuch as I find no other provision of law requiring the clerk to issue such notice, I am of the opinion that the notice will have to be prepared by or at the instance of the purchaser, and served at his direction.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

---

TAXATION—WILLS AND ADMINISTRATIONS

HON. JOHN P. LEE,  
*Commonwealth's Attorney,  
Rocky Mount, Va.*

RICHMOND, VA., *February 10, 1921.*

DEAR SIR:

Acknowledgment is made of your letter of January 21, 1921, in which you state that it has been the custom in your county for a number of years, upon a grant of administration in a case of intestacy, to charge the tax imposed by section 12 of the Virginia tax bill upon the personal property alone. You then request me to advise you whether this is correct.

I am of the opinion that it is not. Section 12 of the Virginia tax bill, as amended, so far as is applicable to the question here under consideration, provides:

"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; \* \* \*"

You will see from the above quoted provision of this section that the tax is to be based upon the estate of the decedent, real, personal or mixed, passing by will or by intestacy. This construction has been placed upon the statute by the Auditor of Public Accounts of Virginia for a great many years, and on April 15, 1919, he sent out a letter of instruction to all of the clerks of courts and commissioners of accounts in this State, calling attention to the fact that the tax was to be based upon the entire estate of the decedent, real, personal and mixed. Enclosed you will find a copy of the Auditor's letter.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

---

TAXATION—WRIT TAX

MR. J. M. KELLY, *Clerk,  
Supreme Court of Appeals,  
Wytheville Va.*

RICHMOND, VA., *December 29, 1920.*

MY DEAR MR. KELLY:

Acknowledgment is made of your letter in which you call attention to the fact that the tax bill, section 14, requires a tax of \$6.00 on every appeal or writ of error, to be paid within thirty days from the time the appeal is granted or

the writ of error is allowed. You state that your practice has been not to collect this in felony cases whether or not an affidavit of inability to pay the same is made, but that it has been collected in cases of judgments imposing fines. You ask whether or not the tax should be collected in any Commonwealth cases.

There are only two statutes, so far as I can discover, exempting persons from paying costs in suits because of financial inability. The first is section 3517 of the Code of 1919 (which is section 3538 of the Code of 1904), which provides that any person who, on account of poverty, is unable to pay fees or costs may be allowed *by a court* to sue or defend a suit therein without paying fees or costs. It is very probable that the term "costs" as used in this statute includes the writ tax. But, in the case of *Tyler v. Garrison*, 120 Va. 697, our Supreme Court held that that section does not apply to appellate proceedings.

We are forced, therefore, to look to section 4938 of the Code of 1919 (which is section 4059 of the Code of 1904) with reference to costs in appellate proceedings. This section makes section 6356, with reference to reinstatement of a writ of error dismissed for failure to pay the writ tax within thirty days from the granting of the appeal, apply to criminal cases, but provides that if the plaintiff in error in a felony case is unable to pay or secure to be paid the costs of *printing the record*, such printing shall be done as if the costs had been paid.

It is manifest, therefore, that in the Supreme Court a person unable to pay the costs in a felony case is exempted only from the costs of printing the record, but he must in all criminal cases, even though it be a felony, pay the writ tax or secure it to be paid within thirty days after the appeal is granted; otherwise the appeal or writ of error, as the case may be, must be dismissed.

I call your attention to the fact that the exemption as to printing the record applies only to felony cases, and not to misdemeanor and civil cases. In case the law as it stands works a hardship, an appeal should be made to the legislature to change it, as that body alone can make the law.

I would be very glad to give you any further information that I can on this subject.

Yours truly,

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

---

WEST FEE BILL

RICHMOND, VA., *January 14, 1921.*

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

MY DEAR GOVERNOR:

I beg leave to acknowledge receipt of your letter of January 13th, which is as follows:

"Under Acts of 1914, Chapter 352, p. 707, it is provided as to the compensation of officers referred to in paragraph 3, as follows: 'and each of said officers shall retain as his compensation out of said fees, allowances, commissions and salaries, an amount not in excess of the same herein before named, and may also deduct all sums actually paid out by him for necessary office expenses.'

"Be good enough to advise me, as Chairman of the Fee Commission, whether the words 'for necessary office expenses,' should or may be considered to mean and include necessary office equipment such as labor saving machines, typewriters, desks, adding machines and equipment of this character."

I am of the opinion that the language used in the section referred to above, namely: "for necessary office expenses," is sufficiently broad to mean and include necessary office equipment such as labor saving machines, typewriters, desks, adding machines and equipment of this character. The question as to whether these are necessary or not, is one which addresses itself to the judgment and discretion of the Fee Commission according to the facts in any special case.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

---

WEST FEE BILL

RICHMOND, VA., *January 4, 1921.*

JOS. B. ANDERSON, ESQ.,  
*Commissioner of Revenue,*  
*Danville, Va.*

DEAR SIR:

Acknowledgment is made of your letter of December 27, 1920, in which you say:

"In a short time, I shall be making to the Auditor of Public Accounts, my report of commissions, fees and allowances received during the year ending December 31, 1920.

"Under the West Bill, Acts 1920, p. 827, it is provided that any compensation allowed city officers by city councils other than commissions allowed by State laws, shall be disregarded in determining compensation of such officers.

"Now I understand this means that fees allowed by city council on city license issued by me and collected by the city collector and paid to me monthly and commissions on the total amount of city licenses so issued, allowed and paid to me by the city, are to be disregarded in making up my report; but that the commissions paid me by the city under section 2337, Acts 1920, page 530, must be included in my report of compensations received, because these are 'commissions allowed by State law' to be paid in by the city.

"I shall be glad to have your construction of the West bill as to these particulars."

It is provided by chapter 493 of the Acts of 1920, which amends and reenacts section 1 of the West Fee Bill, that the fees of "no court clerk, commissioner of the revenue, sheriff, high constable or city sergeant, shall receive, directly or indirectly as compensation for his services, including all his salaries, allowances, commissions and fees, whether derived from the State or any political sub-division thereof, or from any person or corporation, an amount in excess of the sums" thereafter provided. Following the above-quoted provisions of chapter 493 of the Acts of 1920, is this proviso:

"\* \* \* and provided that in determining the compensation allowed to such city or county officers hereunder, *any compensation allowed to such city or county officers by the respective city councils or county board of supervisors, other than commissions allowed by State law for col-*

*lecting, disbursing or in any way handling taxes or levies, or for the discharge of any other duties imposed upon such officers by the councils of such cities, boards of supervisors of the counties, or laws of this State, shall be disregarded. \* \* \**

This proviso expressly exempts the above-named officers from accounting for any compensation allowed by the respective city councils or county boards of supervisors for the discharge of any duties imposed upon such officers by the councils of such cities, boards of supervisors of the counties, or laws of this State, other than commissions allowed by the State law for collecting, disbursing or in any way handling taxes or levies.

The proviso is badly worded, but I am of the opinion that this is the intent of the statute. It therefore follows that you are not required to account for any fees or commissions paid to you by the city of Danville for services performed by you in the assessment of its license taxes, unless such fees or commissions are allowed by State law.

In response to your second question, an examination of section 2337 of the Code of Virginia, 1919, as amended, shows that the fees or commissions allowed the commissioner of the revenue for the services required by that section, are allowed by State law, and I am therefore of the opinion that the fees received for services rendered under this last statute, must be accounted for in your report.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

---

#### WEST FEE BILL

RICHMOND, VA., *March 18, 1921.*

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

DEAR SIR:

I beg to acknowledge receipt of your letter of the 17th instant, which is as follows:

"I hand you an account for suit against Mr. G. Tayloe Gwathmey, clerk of Norfolk county, for excess fees, etc., for the year ending December 31, 1920.

"The statement shows excess fees to be paid into the treasury \$4,824.76. On January 21, 1921, Mr. Gwathmey paid into the treasury \$4,027.76 which leaves the balance due \$797.00. This amount Mr. Gwathmey did not pay but contended that he should not be required to pay this amount because in settling with the State for excess fees for the year ending December 31, 1918, he did not take credit for \$797.00 salary paid him as county clerk by the board of supervisors of Norfolk, which according to an opinion which you gave me under date of May 13, 1920, he had a right to deduct, and he is claiming he now has the right, it being the first opportunity he has had to adjust the matter, to deduct this amount from the fees, etc. received by him during the year ending December 31, 1920.

"I take the position if Mr. Gwathmey did pay into the treasury \$797.00, which, according to your opinion rendered after the payment was made into the State treasury, he was not re uire to t at is a laim against t e Comron ealt to e presented and prosecuted in accordance with chapter 103 of the Code of Virginia, and that he has no right to take into his own hands, in view of the existence of such a law, adjustment

between himself and the Commonwealth, which he thinks equitable and proper, and that he cannot deduct this money from the fees for the year ending December 31, 1920, and for that reason I am asking you to institute suit upon his official bond, copy of which I enclose for recovery of this balance of \$797.00 due the Commonwealth."

After a careful consideration of all circumstances connected with this matter, I see no reason why you, as Auditor, should not permit Mr. Gwathmey to deduct the \$797.00 inasmuch as that amount was improperly paid by him into the State Treasury when he settled his account for the year ending December 31, 1918. This amount, as you know, represents compensation paid him by the board of supervisors of Norfolk county for his services as county clerk and he should not be charged therewith in his settlement with the State, which opinion I expressed in a letter written you under date of May 13, 1920.

It would seem to be a useless thing for Mr. Gwathmey to pay this money into the Treasury and then apply to the legislature of Virginia to have it refunded him, inasmuch as he has the money in hand at present and can deduct it now.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

---

WEST FEE BILL

RICHMOND, VA., March 9, 1921.

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

DEAR SIR:

Acknowledgment is made of your letter with reference to the amount to be turned over to the State of Virginia as excess fees collected by the treasurer of the city of Newport News, the question involved being whether the treasurer must remit to the State compensation, commissions and salary allowed him by the city of Newport News out of its treasury for the years 1918, 1919 and 1920.

In regard to the compensation so collected for the years 1918 and 1919, the West Fee Bill, as amended and re-enacted in 1918 (Acts of Assembly, 1918, p. 220), contains the following language:

"\* \* \* and provided that in determining the compensation of such officers hereunder, any additional compensation allowed city treasurers by the respective city councils for the collection and disbursement of city levies and licenses, or for the discharge of any other duties imposed upon such treasurers by the councils of such cities, shall be disregarded. \* \* \*"

I am of the opinion, therefore, that, under the provisions of the above quoted clause, the said treasurer is not required to remit to you any of the compensation, commissions or salary received by him from the city of Newport News for the years 1918 and 1919.

In 1920, the West Fee Bill was further amended so as to contain the following provision:

"\* \* \* and provided that in determining the compensation allowed to city or county officers hereunder, any compensation allowed to suc

city or county officers by the respective city councils or county boards of supervisors, other than commissions allowed by State law for collecting, disbursing or in any way handling taxes or levies or for the discharge of any other duties imposed upon such officers by the councils of such cities, boards of supervisors of the counties, or laws of this State, shall be disregarded. \* \* \*

I am advised by your letter that the commissions received by the treasurer of the city of Newport News for the year 1920 did not follow the rate of commission fixed by the general law. I am, therefore, of the opinion that the compensation allowed him and paid out of the treasury of the city of Newport News for the year 1920 is not such a fund as is contemplated by the West Fee Bill; that is to say, the law does not require this treasurer to remit to the State any part of the compensation, commissions and salary obtained from the city of Newport News for this year. Nor should such compensation be taken into consideration by your commission in the allowance of the said treasurer's compensation under the West Fee Bill.

You call my attention to section 71 of the charter of Newport News, found in the Acts of Assembly, 1895-96, page 74 to page 88, which provides:

"The treasurer shall receive such compensation as is provided by law in the case of city treasurer for receiving and disbursing the revenue, city and school levies, and other funds."

You ask whether or not this compels the city council of Newport News to fix the compensation of its treasurer at the rate provided by the general laws of the State.

I am of the opinion that the words, "provided by law," in this section of the charter of Newport News refer to ordinances passed by the city council of Newport News and not to the general laws of the State.

It is especially pertinent in this connection to state that the method adopted by the city of Newport News in fixing the compensation to be paid by it to its treasurer for the years in question is the same that has been followed for many years previous.

I am, therefore, of the opinion that you are authorized to disregard the amounts of money paid this officer out of the city fund on the warrant of the city Auditor of Newport News in arriving at the excess compensation, commissions and salary provided for by what is known as the West Fee Bill.

Yours truly,

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

---

#### WEST FEE BILL

RICHMOND, VA., April 19, 1921.

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

DEAR SIR.

I beg leave to acknowledge receipt of your letter which is as follows:

"Included in the reports made to me under the West Fee Bill by some of the city treasurers are amounts paid them by the cities out of city funds for handling State school funds, the payment being made under provisions of section 2431 of the Code as amended, which of course is a

State law; also amounts paid them by the cities out of city funds they are authorized to receive under the Dog Law enacted March 22, 1920, which, of course, is a State law; also included are commissions under the Segregation Act, which of course, is a State law.

"Please advise me if it is your opinion that in determining excess, if any, to be paid into the State treasury I must take into consideration amounts paid the treasurer on any or all of these funds, they being paid under State law in view of the amendment of section 1 of the West Fee Bill by the General Assembly in 1920."

After a careful consideration of your question and the law pertaining thereto, I am of the opinion that, in determining excess, if any, to be paid into the State Treasury, you should take into consideration the amount paid the treasurer on any or all funds mentioned in the first paragraph of your letter.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

---

WEST FEE BILL

RICHMOND, VA., May 25, 1921.

MR. THOS. BLACK,

*South Norfolk, Va.*

DEAR SIR:

Your letter with reference to the fees of county officers has been received.

The Acts of 1920, page 827 amended the West Fee Bill by providing in the first section:

"\* \* \* That in determining the compensation allowed to city or county officers hereunder, any compensation allowed to such city or county officers by the respective city councils or county boards of supervisors, other than commissions allowed by State law for collecting, disbursing or in any way handling taxes or levies; or for the discharge of any other duties imposed upon such officers by the councils of such cities, boards of supervisors of the counties, or laws of this State, shall be disregarded, and such compensation allowed the city or county officers by the respective city councils or boards of supervisors as is to be disregarded by the foregoing provisions in determining the compensation of such officers, may be increased, reduced, or changed by the respective city councils or boards of supervisors, as and when they deem proper.\* \* \*"

Under this amendment it is manifest that the compensation allowed to a county officer by your board of supervisors, other than such commissions as are allowed by the State for collecting, disbursing or in any way handling taxes or levies, is not considered by the fee commission in determining whether or not such officer has received excess fee. That is to say, any extra compensation provided by the board of supervisors, and not required by State law, is not considered a part of the maximum salary allowed by the West Fee Bill.

In regard to the right of the board of supervisors to reduce the extra compensation allowed to an officer of the county, you will note that the provision above quoted especially allows your board to reduce the same, whenever the board deems it proper. I imagine the claim that you cannot reduce the extra compensation to be paid next year below that allowed this year, is based on section 63, sub-section 14 of the Constitution, but that provision only states that the General Assembly shall not enact any local, special or private law increasing or decreasing the salary or allowance during the term for which they are elected.

You will note, however, that the authority granted you to decrease the allowance hitherto made by you to a county officer, was not by any local, special or private law, but was by an amendment to the West Fee Bill, which our Supreme Court, in the case of *Martin's Ezors. v. Commonwealth*, held to be a general, and not a local, special and private law. You will probably remember that the whole contention of the unconstitutionality of the West Fee Bill was based on the ground that it was a local, special or private law, but the court sustained my position that the act was a general act affecting the whole State.

Any further information I can give you on this matter, will be gladly furnished.

Yours truly,

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

---

WORKMEN'S COMPENSATION

RICHMOND, VA., August 5, 1921.

HON. C. A. McHUGH,  
Chairman Industrial Commission,  
Richmond, Va.

MY DEAR CAPTAIN McHUGH:

Acknowledgment is made of your letter with further reference to the funds to be retained by you under paragraph "K" of section 75 of chapter 400 of the Acts of 1918, as amended, in which letter you state that you have received my former letter upon this subject, but desire to be advised more specifically as to the amount to be retained by you and not paid into the treasury.

I am of the opinion that the statute, directing you to turn into the treasury all monies collected by you "over and above such sums as are necessary to pay expenses," means that you should retain a sufficient sum for paying all salaries and all other expenses of your commission, pending the incoming of the taxes for the year 1921. It was intended in my original letter upon this subject to so state.

Yours truly,

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

---

WORKMEN'S COMPENSATION

RICHMOND, VA., July 30, 1921.

HON. C. A. McHUGH, Chairman,  
Industrial Commission,  
City.

DEAR SIR:

Acknowledgment is made of your letter of July 16, 1921, addressed to the Attorney General, and referred by him to me for attention, in which you quoted paragraph K of section 75 of chapter 400 of the Acts of 1918, as amended.

In your letter, you say in part:

"You will observe that this section requires the payment into the State Treasury on or before the first of August, 1921, of certain moneys, but does not, in terms, state whether the payment so made shall be the

balance remaining in hand of collections for the year 1920, or whether it shall also include those received for the year 1921. If the latter was intended it would leave the commission without any funds to operate upon for the residue of the year 1921 and until collections are made for the succeeding year. These payments in actual practice begin to come in in February and down to the end of March."

Paragraph "K" of section 75 of chapter 400 of the Acts of 1918, as amended, reads as follows:

"The commission shall not be authorized to incur expenses or indebtedness during any period, chargeable against the maintenance fund, in excess of the premium tax payable to such fund for the same period. If it be ascertained that the tax collected for a given period exceeds the total chargeable against maintenance fund under the provisions of this act, the commission may authorize a corresponding credit upon collections for the succeeding period after the payment of expenses for the year nineteen hundred and twenty the commission shall pay into the State treasury on or before August first, nineteen hundred and twenty-one, and annually thereafter on or before August first, all moneys collected under this act over and above such sums as are necessary to pay expenses and to pay such amounts as may be otherwise appropriated by the general assembly."

I am of the opinion that the payment to be made into the treasury on or before August 1, 1921, is the balance of all moneys collected for the year 1920, over and above such sums as are necessary to pay expenses, and to pay such amounts as have been otherwise appropriated by the General Assembly.

You further say:

"In the same connection we would call your attention to the Rehabilitation Act passed at the same session of the legislature (Acts 1920, p. 583) in which an annual appropriation of \$10,000.00 is made out of this fund."

You then ask if this amount would come within the meaning of the concluding lines of paragraph "K" of section 75 of chapter 400 of the Acts of 1918, as amended, and above quoted. I am of the opinion that it would.

Yours very truly,

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

---

#### WORKMEN'S COMPENSATION

RICHMOND, VA., *March 3, 1921.*

HON. HERMAN L. HARRIS,  
*Toano, Va.*

DEAR SIR:

Acknowledgment is made of your letter of February 21, 1921, in which you say:

"A number of district school boards have requested that I ask for your ruling on the matter of their obligation to submit to the Industrial Commission of Virginia Form No. 26, 'Semi-annual Report of Self-Insurers' Pay Roll. The employees of course are the teachers of the various districts."

I do not know the nature of Form 26 of the Virginia Industrial Commission. It is provided, however, by section 8 of chapter 400 of the Acts of 1918, the Workmen's Compensation Law of this State, as follows:

"Neither the State, nor any municipal corporation within the State, nor any political sub-division thereof, nor any employee of the State or of any such corporation or sub-division shall have the right to reject the provisions of this act relative to payment and acceptance of compensation; and the provisions of sections five, six, sixteen, seventeen and eighteen shall not apply to them."

You will see from this that no political sub-division of the State is entitled to reject the provisions of this act. I, therefore, suggest that your school boards comply with the request of the Industrial Commission in this matter.

Very truly yours,

JNO. R. SAUNDERS,

*Attorney General.*

---

WORKMEN'S COMPENSATION—FUNDS OF INDUSTRIAL COMMISSION

RICHMOND, VA., *February 16, 1921.*

MAJOR C. G. KIZER,

*Industrial Commission,*

*City.*

MY DEAR MAJOR KIZER,

I beg leave to acknowledge receipt of your favor of the 25th ultimo, in which you enclose a copy of a resolution introduced in the senate and adopted by both branches of the legislature at its last session, which resolution directs the Industrial Commission to ascertain certain information with relation to steam boilers and the inspection of the same, located throughout the State. You desire to be advised whether or not the Industrial Commission is empowered to divert and expend the funds provided for the maintenance of this Commission in order to acquire the information desired by this resolution.

In reply, I will state that all revenues received by the Industrial Commission are derived from an assessment upon insurance companies writing compensation insurance in Virginia, or from those parties who are self-insurers and do not carry protection in a casualty company. Inasmuch, therefore, as the legislature, by sub-section (d) of section 74 of the Workmen's Compensation Act, expressly provides that the funds obtained by the Industrial Commission, shall be expended in the administration of the Workmen's Compensation Act, and such funds being derived solely from the two sources mentioned above, I do not think that your Commission would have the authority to divert said funds for any other purpose.

Of course, it will be all right for the Industrial Commission to obtain, as far as possible, the information desired under this resolution by correspondence or in any other manner in which the expenses for so doing would be negligible but it would have no authority under this resolution to employ inspectors to travel through the country for the purpose of obtaining it.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

## WORKMEN'S COMPENSATION LAW

RICHMOND, VA., January 21, 1921.

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

DEAR SIR:

Acknowledgment is made of your letter of recent date, which, due to the pressure of work in court, I have been prevented from answering heretofore.

The first question submitted by you is whether or not officers of a county, such as the treasurer, clerk, Commonwealth's attorney, sheriff, etc., who are elected by the people, are employees within the meaning of sub-section (b), section 2 of chapter 400 of the Acts of 1918.

The Industrial Commission has held that such officers are not employees within the meaning of the law. This seems to be supported by authority. *Sibley v. The State*, 89 Conn. 682 (1915), (a sheriff); *Blynn v. City of Pontiac*, 185 Mich. 35 (1915), (a policeman). See also the pamphlet on Workmen's Compensation Acts issued as a supplement to *Corpus Juris*, Section 39, page 48, and the notes to this section.

The Industrial Commission has taken the view, however, that all appointive officers, including policemen, are employees within the meaning of chapter 400 of the Acts of 1918. The question, so far as it relates to police officers, is now before the Court of Appeals in the case of *Mann v. City of Lynchburg*. and in a case from the city of Newport News, the style of which I do not recall. An opinion will probably be handed down before the present term of the court adjourns, which will doubtless throw much light on the question of who are employees within the meaning of the law. I fully agree with you that the janitor at the county hitching yard, the janitor at the court house and the school teachers of the county are employees within the meaning of the act.

You also say:

"For instance—the county road commissioner employs a road force in each magisterial district of the county, which force may be composed of a number of men anywhere from five to twenty-five; but suppose that the road commissioner in district number one has in his employment five and the commissioner in district number two has in his employment ten—then, as I take it, the county of Rockbridge would have to insure these men if there were no other employees in the county, am I right?"

This is unquestionably true. If you will examine section 15 of chapter 400 of the Acts of 1918, you will see that neither the State, municipal corporations, or political sub-divisions of the State are excepted from the provisions of the act. Therefore, a county would be subject to the provisions of the act even though it had but one or two employees, as the provision exempting certain employees from the provisions of the act, by reason of employing regularly in service less than eleven operatives in the same business within the State, is limited to persons, firm or private corporation, none of which terms can be construed to include a political sub-division of the State.

You state that it has occurred to you "that this act might not be compulsory, even if it covers all of the employees of the county, which might include all of the elective officers, but would be only optional with the county."

I cannot agree with you as to this. It is provided by section 8 of chapter 400 of the Acts of 1918, as follows:

"Neither the State, nor any municipal corporation within the State, nor any political sub-division thereof, nor any employee of the State or of any such corporation or sub-division shall have the right to reject the provisions of this act relative to payment and acceptance of compensation; and the provisions of sections five, six, sixteen, seventeen and eighteen shall not apply to them."

You will see from this that the county has no option with reference to the acceptance or rejection of the provisions of the act.

You also say:

"One other question which I wish to submit to you is, whether or not the school teachers of the counties are employees of the county, of the county school board, or the district school board. If they are employees of the district school board and they are to be insured, then the insurance should be paid out of the district school fund. But I believe they are employees of the county, and, therefore, should be paid out of the county school fund."

While school teachers are employed by the district school boards from a list of eligibles furnished by the division superintendent, both the power to appoint and the power to dismiss as given to the district trustees is subject to review by the school trustee electoral board, which is a county board.

In view of this I am inclined to believe that a teacher is the employee of both the district and the county, and therefore, that the insurance should be apportioned between the county and the district. Section 659, Code of Virginia, 1919, as amended, and section 632 of the Code of Virginia, 1919.

Very truly yours,

JNO. R. SAUNDERS,

*Attorney General.*

#### WORKMEN'S COMPENSATION LAW—COUNTIES

RICHMOND, VA., May 11, 1921.

HON. J. T. CLEMENT,

*Attorney for the Commonwealth,  
Chatham, Va.*

MY DEAR SIR:

Acknowledgment is made of your letter of May 5, 1921, in which you say:

"The board of supervisors of Pittsylvania county are hesitating on taking action under the Workmen's Compensation law, that is, whether they will take out insurance, or become self insurers under this act, or not take any action at all.

"If they should decline to take out insurance or become self insurers, in other words, take no action at all, what would the effect be in case of accident to an employee? At common law the State and its sub-divisions were not liable for torts, but counties are excluded from the right to waive the provisions of the Workmen's Compensation law, though I do not see that the act states in express language, that counties are liable for such torts. The law does, however, provide that in case of waiver of the provisions of the said law, the common law defenses of assumption of risk, contributory negligence and negligence of a fellow servant, cannot be set up.

"If the board of supervisors should not take any action at all and ignore the Workmen's Compensation law, and an accident occur, could a suit be maintained against this county for this tort, without the right on the part of the county to set up these common law defenses?"

It is provided by section 2 (a) chapter 400 of the Acts, 1918 as amended, that employers within the meaning of that law, shall include "the state and any municipal corporation within the state, and any political division thereof." This definition, of course, includes a county.

Section 8 of the same act reads as follows:

"Neither the State, nor any municipal corporation within the State, nor any political sub-division thereof, nor any employee of the State or of any such corporation or sub-division shall have the right to reject the provisions of this act relative to payment and acceptance of compensation; and the provisions of sections five, six, sixteen, seventeen and eighteen shall not apply to them."

You will see that by this section a county is prohibited from rejecting the provisions of the act, and is absolutely bound by this law. Your county, therefore, has no option in the matter, and if it does not take out insurance, it is bound to compensate out of its funds, employees as defined by the act who are injured out of and in the course of their employment [section 2(d) chap. 400 Acts 1918 as amended].

It follows from what I have said that, in the case of an accident resulting in injury to an employee of the county, within the meaning of the Workmen's Compensation Law, that both the county and employee would be bound by the provisions of that law in settling the matter. The employee could not maintain a tort action against the county, and the county could not be heard to defend a proceeding of the Workmen's Compensation Law on the ground that it had not accepted the provisions of that law.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

**Statement.**

*Showing the Current Expenses of the Office of the Attorney General from January 1, 1921, to January 1, 1922*

---



---

Telegrams.....	\$	30.00
Telephone service and tolls.....		255.40
Subscriptions to and purchase of law books, etc.....		89.67
Postage stamps.....		145.00
Towels, drinking water, furniture, office supplies, repairs, etc.....		295.93
Additional clerical services.....		118.00
		<hr/>
Total.....	\$	934.00

---

**Statement.**

*Showing Amounts Expended from the Appropriation for Traveling Expenses from January 1, 1921, to January 1, 1922*

---



---

1921		
Jan.	12.—J. R. Saunders, expenses to Washington <i>re</i> claim of <i>Virginia v. United States</i> .....	\$ 20.00
	17.—J. D. Hank, Jr., expenses to Washington, United States Supreme Court.....	25.48
Feb.	5.—J. D. Hank, Jr., expenses to Washington, United States Supreme Court.....	2.63
	11.—L. M. Bazile, expenses to Washington <i>re</i> Oriental University Matter.....	15.34
Apr.	20.—J. R. Saunders, expenses to Washington <i>re</i> claim of <i>Virginia v. United States</i> .....	14.00
June	11.—J. D. Hank, Jr., expenses to Wytheville, Court of Appeals..	41.17
Sept.	16.—J. R. Saunders, expenses to Staunton, Court of Appeals....	29.00
	20.—J. D. Hank, Jr., expenses to Staunton, Court of Appeals....	41.56
	20.—L. M. Bazile, expenses to Staunton, Court of Appeals.....	20.32
Dec.	6.—J. D. Hank, Jr., expenses to Norfolk <i>re</i> Harbor Commissioners case.....	9.25
	6.—J. R. Saunders, expenses to Norfolk <i>re</i> Harbor Commissioners case.....	8.00
	22.—L. M. Bazile, expenses to Washington <i>re</i> Oriental University matter.....	15.60
		<hr/>
Total.....		\$ 237.35

---

# GENERAL SUBJECT INDEX

---

	PAGE
<b>ABSENT VOTER'S LAW,</b>	
who may vote under; requirements for.....	34, 35
can teachers absent at summer school vote under?.....	35
procedure necessary to vote under.....	36
notice necessary to entitle one to vote under.....	36
<i>see Elections.</i>	
<b>ACCIDENTS,</b>	
<i>see Workmen's Compensation Law.</i>	
<b>ACCOUNTANTS,</b>	
eligibility of J. H. Bradford to take C. P. A. examination.....	105
<b>ACKNOWLEDGMENTS,</b>	
has mayor of town authority to acknowledge deeds?.....	21
<i>see Notaries Public.</i>	
<b>ACTS OF ASSEMBLY,</b>	
constitutionality of act re building highway system; bond issues, etc....	184, 183, 189, 190
construction of law regarding streams, rivers, etc.....	215
construction chapter 178, Acts 1914—does it annul Code provision? .....	216
<i>see Constitutional Law.</i>	
<b>ADMINISTRATORS,</b>	
source of personal property of deceased person without heirs .....	101
<i>see Wills and Administrators.</i>	
<b>ADVERTISING,</b>	
time for advertising traveling circus; license tax, etc .....	218
<i>see Carnivals.</i>	
<b>AFFIDAVITS,</b>	
State seal required on clerk's certificate of notary's affidavit .....	223, 230
<b>AGRICULTURE,</b>	
is Commissioner of, authorized to lease property for laboratory?.....	22
responsibility of foreign phosphate companies for fines for deficiency in fertilizer.....	23
constitutionality of botanical law, section 1151, Code 1919.....	31
<b>ALIENS,</b>	
necessity for aliens to become naturalized in order to vote.....	44
marriage of American woman to Chinese; right to vote.....	45
payment of capitation taxes by; assessment, etc.....	60
is woman married to Englishman eligible to vote? .....	97
are aliens entitled to hunting licenses?.....	117
<b>APPEALS,</b>	
is decision of Highway Commissioner in relocating route subject to appeal?.....	182
to school trustee electoral board re erection of school.....	207
tax on appeal or writ of error; time payable; duty of clerks.....	235

**APPROPRIATIONS,**

boards of supervisors; is motion lost in tie vote for.....	174
revenue due Virginia Normal and Industrial Institute from Morrill funds.....	210, 211

**ASSESSMENTS,**

*see Taxes.*

**AUTOMOBILES,**

penalty for use of wrong number plate on machines.....	23
half of fine against speed law violators—who entitled to.....	102
law re seizure of automobile conveying liquor.....	131
refusal of county officers to enforce speed laws.....	160
finer and costs against New York car having old license—correctness of.....	167
who is entitled to fee for summoning automobile law violator.....	173
can officer search for liquor without search warrant.....	197

**BAIL COMMISSIONER,**

fees of, for bonds.....	157
-------------------------	-----

**BALLOTS,**

*see Elections.*

**BANKS,**

personal responsibility of directors in permitting excess loans.....	24
--	----

**BANKING DIVISION,**

who pays cost of printing of.....	179
-----------------------------------	-----

**BASS, BLACK,**

can dealer handle bass shipped here from North Carolina.....	107
season for capturing of, in Virginia counties.....	107

**BLUE SKY LAW,**

license of salesmen of stock of gas company.....	25
--	----

**BOARDS OF SUPERVISORS,**

effect of action of, on Cedar Rust Law.....	26
has board authority to appoint game wardens.....	116
has game warden authority to arrest for game, fish and dog law violations.....	116
has board power to fix date for hunting season later than fixed by statute.....	120
payment of reward by county for capture of still.....	136
increase of levy by; can board reopen levy and increase.....	174
is motion lost in tie vote for appropriation.....	174
liability of, to remove poles on county highways for road widening.....	188
authority of, to borrow funds for county roads.....	191
legality of increase of school levy by individual members of.....	231
maximum levy which board can lay for operation of schools.....	231
minimum levy for operation of schools.....	232, 233
increase of taxes by supervisors in one class of property and not in another.....	233
should supervisors insure employees under Workmen's Compensation Law.....	246

**BONDS,**

authority of Second Auditor to pay for coupons of lost bonds.....	25
issuance of, for permanent street improvement in towns.....	29
can women vote in bond elections by paying 1921 taxes.....	50
necessity for officers' bonds to have surety company seal.....	158
power of school trustees to change plans after election for issuing of.....	188

**BONDS—Continued.**

- issue of, by county for building highway system; reimbursement by State for..... 184, 183, 189, 190
- should district school board have seal on bonds proposed to be issued... 199
- see Elections.*
- see Capitation Taxes.*
- see Women.*

**BUILDING,**

- jurisdiction of city building inspector to inspect government property.. 214

**BULK SALES ACT,**

- applicability of, to shoe repairing business..... 191

**CANDIDATES,**

- should civil and police justice candidates enter State or city primary... 171
- see Elections.*

**CAPITATION TAX,**

- is capitation tax for women compulsory..... 43
- eligibility of women who paid tax for 1921 to vote in June and November, 1922..... 44
- payment of, by unnaturalized Chinese who are barred from voting..... 45
- time for payment of tax by women as prerequisite to vote..... 46
- last day for payment of tax to vote in August primary..... 47
- payment of, with regard to residence; residence requirements..... 47
- first tax assessable against women..... 48
- do women assessed with, have to wait for tax bills..... 49
- limit of time for paying of, to vote in general election..... 52
- payment of, by women to vote in November election..... 58
- time for payment of, by women to vote in August, 1921, election..... 54
- first tax assessable against women..... 62
- widows of Confederate soldiers not exempt from..... 62
- assessment of foreign born citizens with..... 60
- qualification of voter as prerequisite to vote..... 53, 54, 57, 58, 60, 61, 65
- payment of, to qualify women to vote in school bond election..... 52
- time for payment of, by women as prerequisite to vote during 1921..... 59, 60
- can women qualify to vote in bond election by paying 1921 tax..... 50
- payment of, by young man just coming of age..... 62
- qualification of young man to qualify to vote..... 50, 51
- soldiers in World War not exempt from payment of..... 64
- has incorporated town power to require women to pay..... 65
- time for payment of capitation tax..... 63
- assessability of voter just moving to Virginia..... 91
- decision of court re payment of capitation tax..... 99
- how late women may register to vote in June election..... 75
- see Elections.*

**CARNIVALS,**

- license for running of; carnival as distinguished from circus..... 217
- advertisement of, prior to holding of county fair..... 145

**CEDAR RUST LAW,**

- amendment of, by legislature of 1920..... 26

**CERTIFICATES,**

- authority of Second Auditor to pay for coupons of lost bonds..... 25

**CHARITIES AND CORRECTIONS,**

- jurisdiction of justice to parole girl after commitment to farm.. 144
- see Justices.*
- see Children.*

	PAGE
<b>CHILD LABOR,</b>	
legal age for operators of elevators.....	28
permit of children below age limit to work.....	27
<b>CHILDREN,</b>	
authority of justice to commit to jail in default of payment of fine.....	123
sale of cigarettes to.....	193
white and colored cannot be taught in same school.....	208
<b>CHIROPRACTORS,</b>	
practice by; necessity to secure certificate from medical examiners.....	176
<b>CIRCUS,</b>	
advertisement of, prior to holding of county fair.....	145
carnival as distinguished from circus—license for.....	217
time for advertising traveling circus; license tax for running, etc.....	218
<b>CITIES AND TOWNS,</b>	
issuance of bonds for permanent street improvement.....	29
territorial limits of Richmond city.....	30
voting for councilmen in South Norfolk, city of second class.....	41
what municipal offices to be filled by June and November elections in city of second class.....	41
has incorporated town power to require women to pay poll tax.....	65
time for closing registration books in, for primaries.....	83
authority to adopt ordinance regarding sale of milk.....	122
laws re seizure of automobiles conveying liquor.....	131
source of fines from offenses arising within three miles of corporate limits of.....	132
can city school board condemn land outside corporate limits.....	201
<b>CITIZENSHIP,</b>	
necessity for aliens to become naturalized in order to vote.....	44
effect of marriage of American women to Chinese—re voting.....	45
<b>CIVIL JUSTICES,</b>	
is office of civil justice a State or city office.....	171
<b>CLERKS,</b>	
should clerk record deed acknowledged by mayor of town.....	21
is clerk authorized to issue hunting license to alien.....	117
right of, to demand fee upon institution of suit.....	158
proper charge for figures in bill of costs.....	159
remedy for refusal of, to report list of divorces granted.....	159
can clerk issue his own marriage license.....	146
fee of, for recording fine imposed by justice.....	101
fee of, for fine on foreign automobile for wrong license.....	167
certificate of, on application for loan from literary fund.....	204
State seal required on certificate of, certifying notary's affidavit.....	229, 230
duty of supreme court clerks: tax on appeal or writ; time payable.....	235
tax on tax deed; notice of purchase; duty of clerk, etc.....	235
overpayment of excess fees to Auditor; law regarding.....	238
<b>CODE OF VIRGINIA,</b>	
costs incidental to distribution of.....	31
<b>COLLEGES,</b>	
taxability of college property.....	219
<b>COMMISSIONS,</b>	
of county treasurer for securing school loan.....	168
does dismissal of V. M. I. professor cancel his commission.....	151

**COMMISSIONER OF AGRICULTURE,**

*see Agriculture.*

**COMMISSIONER OF ELECTIONS,**

compensation allowed for carrying returns to courthouse..... 44

**COMMISSIONERS OF REVENUE,**

reports of, under West Fee Bill; accountability for compensation..... 237  
is it duty of, to assess dogs for taxation ..... 110  
is it duty of, to list all dogs in district..... 111, 115  
*see Dog Law.*

**COMMONWEALTH'S ATTORNEYS,**

ruling of—increase of school levy by individual supervisors..... 231  
to what extent is Commonwealth's attorney advisor of school board;  
compensation of ..... 199  
when entitled to fee from prosecutor when dismissal is asked after call-  
ing of case..... 155  
fees of, in collection of delinquent tax bills..... 152  
when entitled to taxed attorney's fee in misdemeanor cases.... 154, 155, 156  
ruling of illegality re raising of district levy by supervisors..... 174  
fee of, for fine on foreign automobile for wrong license..... 167

**COMPATIBILITY OF OFFICES,**

can city sergeant be lieutenant in National Guard..... 161  
can road overseer of county be district school trustee..... 162  
can U. S. mail contractor be justice of the peace..... 162  
can county officer be notary public..... 163  
can any citizen hold following: U. S. postmaster, registrar, member of  
electoral board and school board..... 164  
can game warden and special officer be district school trustee..... 164  
can member of house of representatives be district school trustee..... 164  
can legislator be notary public..... 170

**COMPENSATION,**

of convicts used as witnesses in criminal cases..... 139  
are owners of fowls killed by dogs entitled to compensation..... 110  
of school trustees of Spotsylvania..... 201  
from what source should justice sitting for police justice receive fee..... 166  
of Commonwealth's attorneys for collecting delinquent tax bills..... 152  
compensation allowed county officer not fee under West Fee Bill ..... 241  
deduction of credit by clerk under West Fee Bill—law governing..... 238  
of Commonwealth's attorney for advising school board..... 199  
of county treasurer for securing school loans..... 168  
report of Treasurer under West Fee Bill—when applicable..... 239  
of judges, clerks, registrars of election, etc..... 70  
how often registrars must sit, and compensation for service..... 74  
accountability for compensation of officers under West Fee Bill..... 237  
of sheriff serving capias on witness who failed to appear..... 172  
compensation of commissioner of election for carrying returns to court-  
house..... 44  
*see Fees.*  
*see Commissions.*  
*see Officers.*

**COURTS,**

jurisdiction of; source of fines from offenses arising within three miles  
of corporate limits..... 132

**CRIMES,**

acknowledgment of trust deed by notary..... 32

	PAGE
<b>DAIRY AND FOOD DEPARTMENT,</b>	
authority of town to adopt ordinance in re sale of milk.....	122
<b>DEEDS,</b>	
tax for recordation of trust deeds held by government.....	220
tax for recordation of deeds offered for record in Henry county.....	219
acknowledgment of, by notary who ante dates same.....	32
has town mayor authority to take acknowledgments to.....	21
taxes on tax deeds; notice of purchase; duty of clerk, etc.....	235
basis for tax for recording deed of assignment.....	220
<b>DEER,</b>	
season for killing of.....	109
<b>DESCENT AND DISTRIBUTION,</b>	
source of personal property of deceased person with no heirs.....	101
<b>DIVORCE,</b>	
<i>see Marriage and Divorce.</i>	
<b>DOG LAW,</b>	
right of game wardens to give dogs to Medical College for experimental purposes.....	112
should commissioner of revenue list all dogs in district.....	111, 115
has game warden authority to arrest for violations of game, fish and dog laws.....	116
are owners of fowls killed by dogs entitled to compensation for.....	110
right of game warden to kill on sight dogs without tags.....	113
is it duty of commissioners of revenue to assess dogs for taxes.....	110
payment for damages done by dogs.....	109
failure of justice to issue warrants for violation of; remedy.....	169
<b>DRUG STORES,</b>	
title to prescriptions where drug store disposed of stock.....	179
<b>DRUGGISTS,</b>	
necessity for renewal of soft drink license each year.....	134
<b>ELECTIONS,</b>	
voting for councilmen in South Norfolk, city of second class.....	41
right of judges of election to challenge vote.....	33
right of voter to vote in Democratic primary who voted for Republican President.....	33
requirements for voting by mail.....	34
validity of solid shot ballot.....	37
absent voter who marked ballot wrong and wishes another.....	37
regulations regarding watchers present during voting.....	33
who may take advantage of absent voter's law.....	35
can teachers absent at school vote under absent voter's law.....	35
procedure necessary to vote under absent voter's law.....	36
notice necessary to entitle one to vote under absent voter's law.....	36
petitions of candidates for local State offices.....	38
is Canadian wife of American citizen eligible to vote.....	43
petitions of candidates for offices elected by State at large.....	38
petition signatures for office of city treasurer.....	39
eligibility of candidate for city treasurer.....	40
woman candidate—use of name on ballot.....	39
right of election judges to take ballots home and count.....	40
payment of taxes as prerequisite to voting.....	49
what municipal offices to be filled by elections in June and November in South Norfolk.....	41
compensation of judges, clerks, registrars of election, etc.....	70

## ELECTIONS—Continued.

PAGE

re registrars required to sit in Richmond .....	71
acts disqualifying voter from voting in Democratic primaries.....	66, 67
can local Democratic party call primary at other time than provided for by law .....	68
are persons voting split ticket eligible to vote at general elections.....	69
legality of resolution of local Democratic committee.....	69
re challenging vote of persons suspected of voting split ticket.....	69
what aid may registrar give applicant for registration.....	72
necessity for conducting registration of voter privately.....	72
is applicant for registration permitted to use memorandum.....	72
duties and requirements of registrar of.....	73
can name of improperly registered voter be stricken from list.....	73
how often registrars must sit, and compensation for service .....	74
is registrar instructor or judge of qualification of person applying for registration .....	72
qualification of young man to qualify to vote.....	50, 51
limit of time for paying capitation tax for general election .....	52
transfer from one district to another when name is omitted by mistake from registration books of former district.....	79
are persons registered after books should be closed eligible.....	80
limit of time for women to register to vote in June election.....	81
can women act as judges and clerks of election under labor law.....	71
eligibility of women to vote in municipal election; how late they may qualify .....	76
registration of women to vote in November election.....	77
widows of Confederate soldiers not exempt from poll tax.....	62
qualification of women to vote in special school bond election.....	52
time for payment of capitation tax to vote in August, 1921.....	54
assessment of foreign born citizens with poll tax.....	60
questions as to residence for purpose of voting, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95	85
prerequisites to right to vote in town election.....	85
time required before election to transfer from one district to another in town election.....	85
are women eligible to vote in town election in June, 1921.....	82
time for closing registration books before primaries.....	82, 83
time for closing registration books in cities and towns for primaries.....	83
question as to residence in wards and precincts in city.....	89
closing of registration books for general election in cities.....	79
are persons voting national Republican ticket eligible to vote in Demo- cratic primary.....	66, 68
does time of residence date from date of transfer.....	93
residence of woman dates from time of marriage.....	94
can one coming of age on day of November election register for August primary .....	97
tax assessable against women for year 1921.....	97
who is qualified to vote in special bond election.....	96
does law prevent one voting in Democratic primary from voting for Republican in general election.....	97
is American woman married to Englishman eligible to vote.....	97
assessability of voter just moving to Virginia.....	91
constitutional requirements as to residence.....	92
married women must vote at place of residence of husband.....	92
can person disqualified to vote in Democratic primary qualify to vote in future primaries.....	67
names of ladies to be put on voting list for primary.....	100
right of one to vote on tax receipts.....	60, 98
decision of court re payment of capitation tax.....	99
has incorporated town power to require women to pay poll tax.....	65
qualification of voter as prerequisite to right to vote 53, 54, 57, 58, 60, 61, 65	65
compensation of commissioner of, for carrying returns to courthouse....	44

**ELECTIONS—Continued.**

women registered in maiden name desiring to change to married name ..	75
time for registrar to sit for registering voters .....	75
can physically disabled person register and vote .....	77
method of registration—information necessary, etc. ....	78
registration in July of women coming of age in September. ....	79
<i>see Capitation Tax.</i>	
<i>see Compensation.</i>	

**EMPLOYEES,**

effect of accident to employee where county does not take out Workmen's Compensation Insurance .....	246
are officers of county employees—Workmen's Compensation Law .....	245
State not liable for destruction of property by .....	213

**ESCHEATS,**

what becomes of personal property of deceased without heirs .....	101
---	-----

**ESTATES,**

source of personal property of deceased without heirs .....	101
basis for tax upon estate passing by will or intestacy .....	235

**FAIRS,**

advertisement of circus prior to holding of county fair .....	145
---	-----

**FARMERS,**

license on home raised meat sold from wagons .....	145
--	-----

**FEE COMMISSION,**

scope of "for necessary office expenses"—expenses of Commission .....	236
<i>see West Fee Bill.</i>	

**FEES,**

of bail commissioner—how taxable .....	157
right of clerk to demand fee upon institution of suit .....	158
is person causing issuance of warrant for game law violation entitled to ..	108
of clerk for recording fine imposed by justice .....	101
are Commonwealth's attorneys entitled to taxed attorney's fee in misdemeanor cases .....	154, 155, 156
time for payment of, to justices for issuing misdemeanor warrants .....	165
substitute by justice for police justice—is he entitled to fees .....	166
of game wardens for summoning party to appear at trial .....	115
of game wardens for bringing party to trial .....	115
duty of sheriff to summon witnesses in criminal cases—fee for .....	161
of Commonwealth's attorney in collection of delinquent tax bills .....	152
is Commonwealth's attorney entitled to fee from prosecutor in case of dismissal of case .....	155
of sheriff or constable for serving civil warrant .....	166
of sheriff serving capias on person who failed to appear .....	172
who is entitled to fee for summoning automobile driver .....	173
<i>see Commissions.</i>	

**FINES,**

fee of clerk for recording fine imposed by justice .....	101
fine and costs against New York having old license—correctness of .....	167
source of fines from offenses arising within three miles of corporate limits	132
half of fine against violators of speed laws—who entitled to .....	102
failure of justices to collect fines imposed for dog law violations .....	111
responsibility of phosphate companies for fines for deficiency in fertilizer	23
can law violator work out fines when able to pay same .....	103

**FISHING,**

construction of act in re fishing at mill dam in Scott county .....	120
<i>see Game and Fish.</i>	

**FORESTRY LAWS,**

Commonwealth's attorneys required to prosecute cases under; fee... 154, 155

**FUNDS,**

revenue due Virginia Normal and Industrial Institute for Morrill funds..... 210, 211  
 expenditure of funds provided Industrial Commission for special purpose..... 244  
 authority of supervisors to borrow funds for county roads..... 191  
 funds payable into treasury under Workmen's Compensation Law..... 242  
 expenditure of county funds for highways; reimbursement by State, 183, 184, 189, 190

**GAMBLING,**

license for operation of slot machine..... 104, 105

**GAME AND FISH,**

season for capturing black bass in Virginia counties..... 107  
 is person causing warrant to be issued for violation of game laws entitled to fee taxed as costs..... 108  
 season for killing of deer..... 109  
 duty of Department of, with regard to game and fish laws..... 117  
 necessity to obtain hunting license for coon hunt..... 117  
 construction of act in re fishing at mill dam in Scott county..... 120  
 hunting on posted land without permission..... 119  
 law regarding pollution of streams..... 118  
 law protecting squirrels..... 121  
 are aliens entitled to hunting licenses..... 117  
 can dealer handle black bass shipped here from North Carolina..... 107  
 right of hunters to follow dogs in chase on another's land..... 119  
 have supervisors power to fix date for hunting season later than fixed by statute..... 120  
*see Game Wardens.*  
*see Fees.*  
*see Costs.*  
*see Dog Law.*

**GAME WARDENS,**

right of, to kill on sight dogs without tags..... 113  
 should owner of rabbits killed by dogs be compensated..... 113  
 fee for summoning party to appear at trial..... 115  
 fee for bringing party to trial..... 115  
 has board of supervisors authority to appoint..... 116  
 has warden authority to arrest for game, fish and dog law violations.... 116  
 failure of justice to issue warrants for dog law violations..... 169  
 right of, to give dogs to Medical College for experiment..... 113  
*see Compatibility of Offices.*  
*see Dog Law.*

**GOVERNOR,**

not duty of, to approve traveling expenses of State officers..... 175

**GRAVEL,**

law regarding removal of..... 194

**HEALTH LAWS,**

authority of town to adopt ordinance in re sale of milk..... 122

**HIGHWAY COMMISSIONER,**

power of, to relocate and re-establish roads..... 180  
 is decision of, in relocating road route subject to appeal..... 182  
*see Roads and Highways.*

	PAGE
<b>HUNTING,</b>	
hunting on posted lands without permission.....	119
right of hunters to follow dogs in chase on another's land.....	119
power of supervisors; rights in fixing date for hunting season.....	120
are aliens entitled to hunting licenses.....	117
<b>INCOME,</b>	
can husband and wife living together file separate tax return.....	222
deductions from income tax return.....	223
is amount of legacy from estate taxable as income.....	224
is property subject to income and inheritance tax.....	224
<b>INDUSTRIAL COMMISSION,</b>	
funds payable into treasury under Workmen's Compensation Law.....	242
do school boards have to insure under Workmen's Compensation Law..	243
expenditure of funds provided for specific purpose.....	244
<b>INFANTS,</b>	
<i>see Children.</i>	
<b>INFORMERS,</b>	
half of fine against speed law violators goes to.....	102
<b>INHERITANCES,</b>	
is amount of legacy from estate taxable as income.....	224
is property subject to income and also inheritance tax.....	224
<b>INSANE ASYLUMS,</b>	
legality of fraudulent marriage of escaped patient of.....	146
<b>INSURANCE,</b>	
taxing of insurance companies; reinsurance, etc.....	124
tax on war risk insurance money; is it subject to inheritance tax.....	225
deductions due companies under reciprocal and mutual acts.....	127
<b>INTERSTATE COMMERCE,</b>	
tax on; soliciting orders for portrait enlargements.....	226
<b>INTOXICATING LIQUORS,</b>	
can justice force one to tell where and how he got liquor.....	130
transportation of, by common carriers in interstate traffic.....	137
legality of bringing malt into State for manufacturing.....	133
payment of reward by county for capture of still.....	136
law re seizure of automobile conveying liquor.....	131
source of fines from offenses arising within three miles of corporate	
limits of towns.....	132
permit to individual to transport from another State into this.....	137
necessity for search warrant in search for still.....	195, 198
can officer search automobile for liquor without warrant.....	197
registration of still acquired before prohibition.....	134
necessity for druggist to renew soft drink license each year.....	134
<i>see Stills.</i>	
<b>JAILS AND PRISONERS,</b>	
pay of convict used as witness in criminal case.....	139
sending of convict to another State as witness in murder case.....	140
payment for physical examination of prisoners on road force.....	142
credit due jail prisoner for good behavior.....	138
board expense of penitentiary prisoner serving time in jail.....	142
prosecution of escaped convict.....	141
authority of justice to commit to jail boys in default of payment of fine	123

**JUDGES,**

- signature of, not required on certificate for application for loan..... 202, 203
- judges of elections,  
see *Elections*.

**JUSTICES OF THE PEACE,**

- are Commonwealth's attorneys entitled to taxed attorney's fee in mis-  
demeanor cases..... 154, 155, 156
- failure of, to collect fines imposed for dog law violations..... 111
- substitute for police justice; is he entitled to justice's fees..... 166
- jurisdiction of, to parole prisoner (infant girl) after commitment..... 144
- failure of, to issue warrants for violations of; remedy..... 169
- authority of, to commit boys to jail in default of payment of fine..... 123
- time for payment of fees to for issuing warrants in misdemeanor case... 165
- fee of clerk for recording fine imposed by..... 101
- fee for fine on foreign automobile for wrong license..... 167
- jurisdiction of, to give preliminary hearing to person charged with non-  
support..... 143
- ouster proceedings against; who pays costs if petition is dismissed..... 175
- has town mayor authority to take acknowledgments to deeds..... 21
- can justices force one to tell where and how he got liquor..... 130
- see *Compatibility of Offices*.

**JURISDICTION,**

- territorial limits of Richmond city from political standpoint..... 30

**LABOR LAW,**

- permit of children below age limit to work..... 27
- legal age for operators of elevators..... 28
- can women act as judges and clerks in election under..... 71

**LEVIES,**

- increase of district levy by supervisors; can board reopen..... 174
- increase of taxes by supervisors on one class of property and not  
ano her..... 233
- legality of increase of school levy by individual supervisors..... 231
- maximum levy for operation of county public schools..... 231
- minimum levy for operation of county public schools..... 232, 233
- time for laying of county levies; school board desiring loan..... 227

**LIBRARY,**

- powers and duties of Library Board in re war memorial..... 147
- recording deed conveying lot for war memorial library..... 151
- legality of action of War Memorial Commission regarding..... 147

**LICENSES,**

- can clerk issue his own marriage license..... 146
- tax for optometrist peddling glasses through country..... 228
- license for running carnival..... 217
- license for traveling circus..... 218
- penalty for use of wrong number plate on automobiles..... 23
- farmer's license on home raised meat sold from wagons..... 145
- of salesmen of stock of gas company; regulation of, etc..... 25
- necessity for druggist to renew soft drink license each year..... 134
- meaning of "peddler" and license tax on..... 229
- fine and costs against New York having old license—correctness of..... 167
- tax on interstate commerce business; enlarging portraits..... 226
- see *Dog Law*.

**LITERARY FUND,**

- see *Loans*.

	PAGE
<b>LOANS,</b>	
from Literary Fund; steps necessary to obtain, in specific case.....	202
commission of county treasurer for securing school loan.....	168
judge not required to sign certificate of application for.....	202, 203
certificate of clerk on application for school loan.....	204
personal responsibility of bank directors in permitting excess loans.....	24
authority of district school board to make short time loans.....	205
time for laying of county levies; school board desiring loan.....	227
<b>MAGISTRATES,</b>	
failure of, to collect fines imposed for dog law violations.....	111
<i>see Justices of the Peace.</i>	
<b>MALT,</b>	
<i>see Intoxicating Liquor.</i>	
<b>MARRIAGE AND DIVORCE,</b>	
remedy for clerk's refusal to report list of divorces granted.....	159
legality of marriage of escaped patient of State institution.....	146
can clerk issue his own marriage license.....	146
<b>MAYOR,</b>	
has mayor authority to acknowledge deeds.....	21
<b>MEDICAL EXAMINERS,</b>	
chiropractors; necessity to secure certificate to practice from .....	176
<i>see Physicians and Surgeons.</i>	
<b>MEMORIAL LIBRARY,</b>	
<i>see War Memorial Commission.</i>	
<b>MERCHANTS,</b>	
selling cigarettes to minors.....	193
<i>see Licenses.</i>	
<b>MILITARY,</b>	
does dismissal of V. M. I. professor cancel his commission.....	151
jurisdiction of city building inspector to inspect property of Military Board.....	214
<b>MILK,</b>	
authority of town to adopt ordinance in re sale of.....	122
<b>MISDEMEANORS,</b>	
are Commonwealth's attorneys entitled to taxed attorney's fee in,	154, 155, 156
time for payment of fees to justices for issuing warrants in.....	165
<b>MORRILL FUNDS,</b>	
revenue due Virginia Normal and Industrial Institute from .....	210, 211
<b>MUNICIPALITIES,</b>	
<i>see Cities and Towns.</i>	
<b>NAMES,</b>	
changing name of women to married name on registration books.....	97
proper name for married woman candidate to use on ballot.....	39
names of women to be put on voting list for primary.....	100
<b>NORMAL SCHOOLS,</b>	
practice teaching by seniors in; high school students used.....	208
<i>see Schools.</i>	

	PAGE
<b>NOTARIES PUBLIC,</b>	
can legislator act as .....	170
State seal required on clerk's certificate of notary's affidavit.....	229, 230
status of notary who antedates acknowledgment to deed.....	32
can county officer be notary .....	163
<i>see Compatibility of Offices.</i>	
<b>OFFICERS,</b>	
boards of supervisors; is motion lost in tie vote for appropriation.....	174
necessity for search warrant in search for still.....	195, 198
can officer search automobile for liquor without search warrant.....	197
are county officers employees within meaning of Workmen's Compensation Law .....	245
is office of civil and police justice State or city office.....	171
residence requirements of district school trustees.....	209
compensation allowed county officers not fee under West Fee Bill.....	241
who is entitled to fee for summoning automobile law violator.....	173
increase of district levy by supervisors; can board reopen levy.....	174
Governor not required to approve traveling expense of .....	175
fee of sheriff and constable for serving civil warrant.....	166
can city sergeant be lieutenant in National Guard.....	161
refusal of county officers to Enforce speed laws.....	160
duty of justice of peace to issue warrant for dog law violations.....	169
who may be appointed local registrar of vital statistics.....	169
costs in addition to fine for wrong automobile license—correctness of .....	167
no part of fine against speed law violators goes to.....	102
<i>see Bonds.</i>	
<i>see Clerks.</i>	
<i>see Compatibility of Offices.</i>	
<i>see Commonwealth's Attorneys.</i>	
<i>see Bail Commissioner.</i>	
<i>see Sheriffs.</i>	
<b>OFFICIALS,</b>	
are State and government officials exempt from railroad war tax.....	222
<b>OPTOMETRIST,</b>	
license tax on; proper tax for peddling glasses through country.....	228
<b>OSTEOPATHS,</b>	
are osteopaths permitted use of drugs in practice.....	177
<b>OUSTER PROCEEDINGS,</b>	
costs in—does petitioner or Commonwealth pay.....	175
<b>PEDDLERS,</b>	
license tax on.....	229
<b>PENITENTIARY,</b>	
relations between public printer and penitentiary print shop.....	178
prosecution of recaptured escaped convict.....	141
permissibility of confining county prisoner in city jail.....	141
board expense of penitentiary prisoner serving time in jail.....	142
payment for physical examination of prisoners on road force.....	142
credits due prisoners for good behavior.....	138
<i>see Jails and Prisoners.</i>	
<b>PERMITS,</b>	
for shipment of liquor into this State from another.....	137
<b>PETITIONS,</b>	
petitions of candidate for local State offices.....	38
petitions of candidates for officers elected by State at large.....	38
signatures necessary for city treasurer.....	39

	PAGE
<b>PHARMACY LAW,</b>	
title to prescriptions where drug store disposed of stock.....	176
<b>PHYSICIANS AND SURGEONS,</b>	
chiropractors; necessity to secure certificate from Medical Examiners...	176
are osteopaths permitted use of drugs in practice.....	177
<b>POLICE JUSTICES,</b>	
substitute by justice of peace; is he entitled to fees.....	166
is office of police justice State or city office.....	171
<b>POLL TAXES,</b>	
<i>see Capitation Taxes.</i>	
<b>PORTRAITS,</b>	
tax on soliciting orders for enlargements of.....	226
<b>PRESCRIPTIONS,</b>	
title to where drug store disposed of stock.....	176
<b>PRIMARY ELECTIONS,</b>	
<i>see Elections.</i>	
<b>PRINTING, PUBLIC,</b>	
who pays cost of printing of Banking Division.....	179
relations between office of, and penitentiary print shop.....	178
<b>PRISONERS,</b>	
<i>see Jail and Prisoners.</i>	
<b>PRIMARIES,</b>	
<i>see Elections.</i>	
<b>PROHIBITION,</b>	
<i>see Intoxicating Liquors.</i>	
<b>RABBITS,</b>	
should owner of rabbits killed by dogs be compensated.....	113
<b>REAL ESTATE,</b>	
tax on tax deed; notice of purchase; duty of clerk, etc.....	235
<b>REGISTRARS,</b>	
who may be appointed local registrar of vital statistics.....	169
<i>see Compatibility of Offices.</i>	
<i>see Elections.</i>	
<b>REWARDS,</b>	
payment of, by county for capture of still.....	136
<b>ROADS AND HIGHWAYS,</b>	
power of school trustees to change plans after election for issuing bonds.	188
reimbursements by State to county for funds expended for building of	
highway system.....	183, 184, 189, 190
is decision of Commissioner in relocating route subject to appeal.....	182
State not liable for funds advanced by county for roads.....	189
authority of supervisors to borrow funds for roads in county.....	191
whose duty is it to remove telephone poles on county highways.....	188
power of Highway Commissioner to relocate and reestablish road.....	180
<b>SAND,</b>	
law regarding removal of.....	194

	PAGE
<b>SALES ACT,</b>	
applicability of Bulk Sales Law to shoe repairing business .....	191
<b>SALES,</b>	
status of merchant selling cigarettes to minors .....	193
size of type to be used in conditional sales contracts .....	192
<b>SCHOOLS,</b>	
qualification of women to vote in election for bonds for .....	52
should district school board have seal on bonds proposed to be issued ...	199
can city school board condemn land outside of corporate limits .....	201
loans from Literary Fund—steps necessary to obtain, in specific case ...	202
duty of superintendent of, to approve plans for buildings .....	200
to what extent is Commonwealth's attorney advisor of school board; compensation of .....	199
appeals re erection of school to trustee electoral board .....	207
certificate of clerk on application for loan for .....	204
revenue due Virginia Normal and Industrial Institute from Morrill funds .....	210, 211
status of school board member not re-elected at end of term .....	209, 210
should re-elected school board member requalify for office .....	209, 210
practice teaching by normal school seniors—high school students .....	208
judge not required to sign certificate of application for loan .....	202, 203
authority of district school board to make short time loans .....	205
white and colored children cannot be taught in same school .....	208
registration of school board warrants by county treasurer .....	212
do school boards have to insure under Workmen's Compensation Law ...	243
maximum levy for operation of county schools .....	231
minimum levy for .....	232, 233
legality of increase of school levy by individual supervisors .....	231
time for laying of county levies by supervisors .....	227
commission of county treasurer for securing school loans .....	168
<i>see School Trustees.</i>	
<b>SCHOOL TRUSTEES,</b>	
residence requirements of district school trustees .....	209
compensation of Spotsylvania trustees .....	201
appeals re erection of school to trustee electoral board .....	207
power of, to change plans after election for issuing bonds to erect schoolhouse .....	188
<i>see Compatibility of Offices.</i>	
<i>see Schools.</i>	
<b>SEALS,</b>	
tax on; seal required on clerk's certificate of notary's affidavit .....	229, 230
<b>SEARCH WARRANTS,</b>	
<i>see Warrants.</i>	
<b>SEED,</b>	
<i>see Agriculture.</i>	
<b>SHERIFFS,</b>	
fee of, for serving civil warrant .....	166
compensation of, for serving capias on witness failing to appear .....	172
duty of, to summon witnesses in criminal cases; fee for .....	161
<i>see Magistrates.</i>	
<i>see Justices of the Peace.</i>	
<b>SHOE REPAIRING,</b>	
applicability of Bulk Sales Law to business of .....	191
<b>SLOT MACHINES,</b>	
license for operation of .....	104, 105

	PAGE
<b>SOFT DRINKS,</b>	
necessity for renewal of license each year by druggists .....	134
<b>SOLID SHOT BALLOT,</b>	
validity of .....	37
<b>SPEED LAWS,</b>	
refusal of county officers to enforce; remedy for .....	160
<b>SQUIRRELS,</b>	
laws for protection of .....	121
<b>STATE,</b>	
liability of, for destruction of property by employees .....	213
<b>STATE HOSPITALS,</b>	
legality of fraudulent marriage of escaped patient of .....	146
<b>STATE PROPERTY,</b>	
jurisdiction of city building inspector to inspect government property ..	214
<b>STATUTES,</b>	
<i>see Acts of Assembly.</i>	
<b>STILLS,</b>	
registration of still acquired before prohibition .....	134
payment of reward by county for capture of .....	136
law regarding search warrants in search for .....	195, 198
<i>see Intoxicating Liquor.</i>	
<b>STOCK,</b>	
license for salesman of stock of gas company .....	25
<b>STREAMS,</b>	
law regarding pollution of .....	118
<i>see Game and Fish.</i>	
<b>SUITS,</b>	
right of clerk to demand fee upon institution of .....	158
<b>SUPERINTENDENTS OF SCHOOLS,</b>	
duty with regard to approval of plans for school buildings .....	200
<b>SUPERVISORS,</b>	
<i>see Board of Supervisors.</i>	
<b>SURGEONS AND PHYSICIANS,</b>	
<i>see Physicians and Surgeons.</i>	
<b>TAXES,</b>	
license tax for running carnival .....	217
increase of taxes by supervisors on one class of property without	
increase on another class .....	233
basis for tax upon estate passing by will or intestacy .....	235
tax on appeal or writ of error; time payable; duty of clerks .....	235
on tax deeds; notice of purchase; duty of clerk, etc. ....	235
assessment of real estate of public service corporation—time for .....	216
tax for traveling circus .....	218
advertisement of circus prior to holding of county fair .....	145
tax laws regarding insurance companies .....	124
deductions due insurance companies under reciprocal and mutual acts ..	127
are State and government officials exempt from railroad war tax .....	222
tax for recordation of deeds of trust held by government .....	220
can husband and wife living together file separate income tax returns ..	222
meaning of "peddler" and license tax on .....	229
is property taxable as income and also as inheritance .....	224

	PAGE
<b>TAXES—Continued.</b>	
tax on war risk insurance money; is it subject to inheritance tax.....	225
license tax for optometrist peddling glasses through country.....	228
time for laying of county levies; school loans.....	227
deductions from income tax return.....	223
is amount of legacy from estate taxable as income.....	224
basis for tax for recording deed of assignment.....	220
minimum levy for schools.....	232, 233
license tax on interstate commerce business; enlarging portraits.....	226
State seal required on certificate of clerk certifying notary's affidavit.....	229, 230
legality of increase of school levy by individual supervisors.....	231
taxability of college property.....	219
maximum levy for operation of public schools of county.....	231
fees of Commonwealth's attorneys for collecting delinquent tax bills....	152
for recordation of deeds offered for record in Henry county.....	219
farmer's license on home raised meat sold from wagons.....	145
<i>see Licenses.</i>	
<i>see Dog Law.</i>	
<i>see Capitation Taxes.</i>	
<b>TOWNS AND CITIES,</b>	
<i>see Cities and Towns.</i>	
<b>TREASURERS,</b>	
report of, under West Fee Bill—when applicable.....	239
funds to be considered in determining excess fees of.....	240
registration of school board warrants by county treasurer.....	212
commission of county treasurer for securing school loan.....	168
<b>TRANSFERS,</b>	
<i>see Elections.</i>	
<b>TYPE,</b>	
size of type to be used in conditional sales contracts.....	192
<b>VIRGINIA MILITARY INSTITUTE,</b>	
does dismissal of professor of, cancel his commission.....	151
<b>VIRGINIA NORMAL AND INDUSTRIAL INSTITUTE,</b>	
revenue from Morrill funds due.....	210, 211
<b>VITAL STATISTICS,</b>	
remedy for clerk's refusal to report list of divorces granted.....	159
who may be appointed local registrar of.....	169
<b>WAR MEMORIAL COMMISSION,</b>	
legality of action on part of, in re library building.....	147
powers and duties of Library Board in re library building.....	147
recording deed conveying lot for war memorial library.....	151
<b>WARRANTS,</b>	
can officer search automobiles for liquor without search warrant.....	197
fee of sheriff or constable for serving civil warrant.....	166
time for payment of fees to justices for issuing.....	165
is person causing issuance of, for game law violation entitled to fee taxed as costs.....	108
failure of justice to issue, for dog law violations; remedy.....	169
registration of school board warrants by county treasurer.....	212
law regarding search warrant for seizure of still.....	195, 198
<i>see Automobiles.</i>	
<i>see Fines.</i>	
<i>see Costs.</i>	
<i>see Fees.</i>	

	PAGE
<b>WEST FEE BILL,</b>	
scope of "for necessary office expenses"; expenses of Fee Commission....	236
compensation allowed county officer not fee under.....	241
funds to be considered in determining excess fees of officers.....	240
reports of Commissioner of Revenue under; accountability for compen- sation.....	237
report of city treasurer under West Fee Bill—when applicable.....	239
overpayment of excess fees to Auditor—law governing.....	238
<b>WILLS AND ADMINISTRATORS,</b>	
basis for tax upon estate passing by will or intestacy.....	235
<b>WITNESSES,</b>	
compensation of sheriff serving capias on person failing to appear.....	172
can witness be forced to testify as to offense which might incriminate him.....	130
pay of convict used as witness in criminal case.....	139
sending of convict to another State to be used as witness.....	140
duty of sheriff to summon in criminal cases; fee for.....	161
<b>WOMEN,</b>	
time for payment of poll tax to qualify for August, 1921, election.....	54
prerequisite to vote in November election.....	58
first poll tax assessable against.....	48
can women have themselves assessed before tax bills come in.....	49
limit of time for paying poll tax to vote in general election.....	52
limit of time for women to register to vote in June election.....	81
are women eligible to vote in town election in June, 1921.....	82
payment of tax as prerequisite to vote during 1921.....	59, 60
has incorporated town power to require women to pay poll tax.....	65
qualification of, to vote in November election.....	77
can women act as judges and clerks of election under labor law.....	71
registration in July of women coming of age in September.....	79
eligibility of, to vote in municipal election; how late they may qualify.....	76
residence of woman voting, dates from time of marriage for.....	94
how late women may register to vote in June election.....	75
registration of, in maiden names desiring to change to married names.....	75
can women vote in special bond election by paying 1921 taxes.....	50
qualification of, to vote in special school bond election.....	52
first tax assessable against women.....	62
is woman married to Englishman eligible to vote.....	97
poll tax assessable against women for 1921.....	97
married women must vote at legal residence of husband.....	92
names of women to be put on voting list for primary.....	100
proper name for married woman candidate to use on ballot.....	39
changing name of women to married name on registration books.....	97
is capitation tax for women compulsory.....	43
<i>see Capitation Tax.</i>	
<b>WORKMEN'S COMPENSATION LAW,</b>	
should county supervisors insure employees under; effect of no action.....	246
expenditure of funds provided Industrial Commission for specific purpose.....	244
tax on premiums less cancelled policies, etc.....	124
deductions due insurance companies under reciprocal and mutual acts.....	127
funds payable into treasury under.....	242
do school boards have to insure under.....	243
are officers of county employees within meaning of.....	245

## Consecutive List of Statutes Referred to in Opinions.

## ACTS OF ASSEMBLY

	PAGE		PAGE
Acts of 1895-96:		Acts of 1918—Continued	
Chapter 448.....	201	Chapter 388, section 5.....	131
Acts of 1898:		388, section 21.....	137
Chapter 199, section 4.....	162	388, section 21½.....	135
Acts of 1904:		388, section 24.....	155
Chapter 178.....	121	388, section 25.....	132
Acts of 1906:		388, section 73.....	130
Chapter 112.....	125	390, section 5.....	109, 110
263, section 3.....	162	390.....	111, 116
Acts of 1910:		392.....	165
Chapter 197.....	186	396, section 11.....	127
317, section 9.....	186	396.....	129
317, section 23.....	186	400, section 2 (d).....	247
317, section 27.....	186	400, section 8.....	243, 245
Acts of 1912:		400, section 15.....	245
Chapter 237, section 11.....	178	400, sec. 74, subsec. (d).....	244
Acts of 1914:		400, section 75.....	129, 242
Chapter 178.....	216	400.....	127
243.....	121	404.....	144
352, paragraph 3.....	236	414.....	28
Acts of 1915:		416, section 2.....	153
Chapter 77.....	126	416, section 3.....	153
Acts of 1916:		Acts of 1919:	
Chapter 12.....	176	Chapter 31, section 4.....	182, 183
84.....	176	64.....	107
159, section 4.....	43	390, section.....	109
159, section 5.....	43	Acts of 1920:	
159, section 6.....	43	Chapter 3.....	199
473.....	153	157.....	147
Acts of 1918:		176, section 75-c.....	124, 128
Chapter 10.....	180, 185	176.....	127
110.....	220	181.....	126
185.....	154	184.....	183, 184, 187, 189, 190, 191
204.....	27, 28	203.....	163
220.....	159	207.....	194, 215
301.....	139	213.....	183, 184, 190
324.....	107, 216	257.....	192
352.....	206, 227	259.....	127, 129
359, sec. 9, subsec. b... 25		259, section 19.....	125, 127
359.....	121	265.....	44, 70
368.....	42, 43	266.....	31
370.....	136	292.....	136
374.....	152	312.....	127
384.....	153	324.....	210
385.....	155, 156, 167	345, section 1.....	198
		345, section 4.....	195
		345.....	197
		355.....	237
		389.....	71
		393.....	135, 136
		398.....	231, 232, 233
		400.....	54, 65, 98

ACTS OF ASSEMBLY—*Continued*

	PAGE		PAGE
Acts of 1920—Continued		Acts of 1920—Continued	
Chapter 400, section 2.....	59	Chapter 455, section 5.....	42
400, section 3.....	49, 53, 55, 58	484, section 14.....	134
400, .....	46	491.....	24
413, .....	110, 111, 115, 117	493.....	237, 240, 241
413, section 4.....	112	507.....	27
413, section 5.....	114	510, 11th paragraph.....	147, 148
429.....	190	510, section 3.....	140
433.....	107	510.....	159

## CODE OF VIRGINIA, 1873

Section 8, chapter 159.....	21
-----------------------------	----

## CODE OF VIRGINIA, 1904

Section 86.....	73	Section 2108.....	216
108.....	118	3504.....	165
202.....	36	3528.....	167
824.....	204	3538.....	236
1022.....	81	4059.....	236
1487.....	207	4075.....	104

## CODE OF VIRGINIA, 1919

Section 83.....	50, 52, 96	Section 614.....	205
84.....	164	631.....	210
86.....	164	632.....	210, 246
90.....	160	637.....	162, 164
93.....	72, 97	638.....	171, 209
98.....	74, 75, 76, 77, 78,	646.....	201
	80, 81, 82, 83, 86	659.....	246
100.....	86	666.....	207
107.....	73	672.....	202, 204
110.....	61	673.....	200
111.....	61	681.....	205
115.....	61, 88	740.....	232, 233
116.....	61	757.....	205
161.....	33	758.....	205
172.....	33	760.....	205
173.....	33, 76	765.....	188, 205
174.....	33, 70	766.....	200
176.....	41	769.....	188
177.....	33, 41	773.....	205
184.....	137	786.....	201
202.....	35	843.....	152
203.....	36, 37	885.....	26
208.....	36	1120.....	23
210.....	36	1150.....	32
220.....	35, 70	1151.....	31, 32
228.....	33, 58, 83, 97	1224.....	123
229.....	38	1564.....	169
289.....	163	1618.....	177
290.....	162	1816.....	27
291.....	161, 163	1908.....	123
322.....	175	2079.....	141
359.....	150	2094.....	138
382.....	179	2133.....	23, 103, 167, 173
383.....	179	2144.....	160
384.....	178	2163.....	102
385.....	179	2173.....	26
548.....	154, 155	2209.....	203
568.....	106	2316.....	115

## CODE OF VIRGINIA, 1919—Continued

	PAGE		PAGE
Section 2319	109	Section 3512	140
2337	238	3514	172
2398	126	3517	236
2402	230	3538	158
2431	168, 240	4035	188
2482	234	4037	188
2550	101, 112, 165, 167	4038	188
2551	112	4115	24
2552	101, 112, 167	4120	179
2554	112	4121	179
2559	103, 124	4122	179
2563	101, 167	4233	125, 216
2566	101, 167	4349	158
2578	26	4469	123
2639	26	4470	123
2702	163	4471	123
2705	112, 160, 175	4585	131
2709	202, 204	4614	155
2717	174	4615	132
2721	233	4640	131
2781	212	4674	130
2782	212	4695	193
2850	33	4779	140
2886	41	4824	130, 169
2889	43	4835	157
2890	41, 43	4864	155
2891	43	4868	156
2892	42	4938	236
2893	42, 43	4953	103, 104
2897	41, 43	4960	172
2910	41	4964	157
2979	41	4991	156
2995	80	5017	139
2997	64	5049	141
3011	21	5053	141
3032	214	5072	146
3073	65	5090	160
3079	29	5094	160
3082	29	5103	147
3097	171	5187	191
3195	107, 118, 216	5205	21
3321	116	5273	102
3322	116	5275	102
3328	118	5890	155
3329	118	6041	234
3331	118	6043	234
3333	117	6356	236
3334	117	6567	201
3338	119	6568	27
3343	108	Chapter 10	73
3356	120, 121	14	35
3365	121	33, section 726	213
3481, subdivision 5	165	103	238
3487	166	109	174
3495	158	122	29
3507	167	130, section 3319	116

## CONSTITUTION OF VIRGINIA

	PAGE		PAGE
Section 10.....	197	Section 33.....	210
18.....	47, 50, 61, 64, 73,	38.....	61
	74, 82, 85, 87, 93, 95	44.....	170
19.....	73, 74	52.....	136
20.....	47, 58, 59, 65, 72,	63, subsection 14.....	241
	73, 74, 78, 97	116.....	83
21.....	45, 48, 51, 53, 54,	122.....	75, 83
	55, 58, 59, 60, 63,	127, clause "B".....	29
	64, 73, 74, 99, 100	134.....	133
22.....	48, 73, 74, 99	136.....	231, 232
23.....	73, 74	140.....	208
24.....	73, 74	171.....	216
25.....	73, 74	176.....	216
26.....	51, 65, 73, 87	184.....	184, 187
32.....	40	185.....	187

## VIRGINIA ELECTION LAWS

Section 2.....	36	Section 179.....	37
9.....	39	227.....	68
78.....	71	228.....	70
98.....	75		

## VIRGINIA TAX BILL

Section 1.....	91	Section 26.....	126
4, schedule A.....	45, 91	50.....	145, 229
5, schedule A.....	45, 91	51.....	145
10, subsection 1.....	224	109.....	217
12.....	235	109½.....	145, 218
13.....	221	114.....	177
14.....	235		
16.....	229	Chapter 259, section 19.....	124
23.....	124, 126	259, section 22.....	124
24.....	126	396, section 11.....	124

## UNITED STATES STATUTES

Morrill Act of 1890, section 2.....	211	War Revenue Act, 1917, section	
		502.....	222

## Table of Cases Cited

	PAGE
<i>Allen v. Commonwealth</i> , 21 Va. App., 615.....	137
<i>Axford v. Meeks</i> , 36 Atl., 1036.....	198
<i>Bank of Phoebus v. Byrum</i> , 110 Va., 708.....	181
<i>Bibb v. Supervisors</i> , 22 Va. App., 579.....	190
<i>Blynn v. City of Pontiac</i> , 185 Mich., 35.....	245
<i>Board of Supervisors v. Dunn</i> , 27 Gratt., 608.....	200
<i>Brig "Aurora" v. U. S.</i> , 7 Cranch, 382.....	186
<i>Brown v. Epps</i> , 91 Va., 726, 738.....	55
<i>Bryan v. Commonwealth</i> , 126 Va., 749.....	133
<i>Bull v. Read</i> , 13 Gratt, 78.....	186
<i>Burks v. Walker</i> , 109 Pac., 544, 545.....	144
<i>Burnett, in re</i> , 85 Pac., 575, 577.....	144
<i>Cahoon's Case</i> , 61 Va. (20 Gratt), 733, 799.....	30
<i>Commonwealth v. Carter's Executrix, et als.</i> , 19 Va. App. 444.....	32
<i>Commonwealth v. Lattinville</i> , 120 Mass., 385, 386.....	194
<i>Commonwealth v. Young</i> , 101 Va., 853.....	104
<i>Coney v. Supervisors</i> , 2 W. Va., 416.....	121

	PAGE
<i>Coquenhan v. Avoca Drainage District, et al</i> , 130 La., 323, 326-7.....	186
<i>Costner v. Chandler</i> , 2 Minn., 86, 88.....	143
<i>Davies v. Crighton</i> , 33 Gratt., 696.....	121
<i>Fitch's Case</i> , 92 Va., 824, 827-8.....	30
<i>Gate City v. Richmond</i> , 97 Va., 337-9.....	21
<i>G. B. &amp; C. N. G. Ry. Co. v. Gross</i> , 47 Tex., 428.....	186
<i>Hagan v. Guigon</i> , 29 Gratt., 705.....	121
<i>Harrison v. Thompson</i> , 103 Va., 333, 336.....	55
<i>Heth v. Commonwealth</i> , 19 Va. App., 462.....	32
<i>Kelley v. Gwatkins</i> , 108 Va., 6.....	234
<i>Lucchesi v. Commonwealth</i> , 122 Va., 872.....	197, 198
<i>Machias River Co. v. Pope</i> , 35 Me., 22.....	106
<i>Mann v. City of Lynchburg</i> , 22 Va. App., 382.....	245
<i>Martin v. South Salem Land Co.</i> , 97 Va., 349.....	55
<i>Martin's Exors. v. Commonwealth</i> , 126 Va., 603.....	242
<i>McCulloch v. Md.</i> , 4 Wheat., 316, 341.....	221
<i>Neal v. Delaware</i> , 103 U. S., 370, 389.....	54
<i>Norfolk v. Flynn</i> , 101 Va., 473.....	122
<i>O'Connell v. O'Leary</i> , 145 Mass., 311, 313.....	194
<i>Peck v. Weddell</i> , 17 Ohio, N. S., 271.....	186
<i>People v. Gilroy</i> , N. Y., Supp. 776, 780.....	106
<i>People v. Green</i> , 5 Daly, 194, 200.....	106
<i>Pocahontas Collieries Co. v. Commonwealth</i> , 113 Va., 108.....	221
<i>Pratt v. Allen</i> , 13 Conn., 119.....	186
<i>Quillen v. Commonwealth</i> , 105 Va., 874.....	103
<i>Quinn v. U. S.</i> , 238 U. S., 347, 361-2-3.....	54
<i>Read v. McCormick</i> , 4 Cal. 342, 343.....	144
<i>Roselle v. Commonwealth</i> , 110 Va. 235.....	227
<i>Ruffin's Case</i> , 21 Gratt., 790.....	141
<i>Saville v. Va. Ry. &amp; Power Co.</i> , 114 Va., 446.....	221
<i>Selma Street and Suburban Railway Co. v. Martin</i> , 2 Ala. App., 537, 543.....	114
<i>Sibley v. The State</i> , 89 Conn., 682.....	245
<i>Siceluff v. State</i> , 63 Ark., 56.....	193
<i>Smith, Treasurer, v. Bell, et al.</i> , 113 Va., 667.....	52, 95
<i>Smith, Hazel, Case of Ex Parte</i> , 124 Va., 791.....	144
<i>Somers v. Commonwealth</i> , 97 Va., 759.....	121
<i>Spiliter v. Guy</i> , 107 Va., 811.....	73
<i>State v. Kirkley</i> , 29 Md., 85.....	186
<i>State v. McNeal</i> , 66 W. Va.....	411
<i>State v. Nelson</i> , 66 Minn., 166-68.....	122
<i>State v. Nichols</i> , 67 W. Va., 659.....	193
<i>State v. Parker</i> , 26 Vt., 357.....	186
<i>State v. Purcell</i> , 31 W. Va., 44.....	200
<i>Supervisors v. Cox</i> , 98 Va., 270, 274.....	30
<i>Tyler v. Garrison</i> , 120 Va., 697.....	236
<i>Williams v. Commonwealth</i> , 116 Va., 272.....	84, 89, 95
<i>Withers et al. v. Jones, Executrix, et al.</i> , 19 Va. App., 468.....	32
<i>Wood v. Fitzgerald</i> , 3 Ore., 568.....	54
<i>Zeigler v. Sprinkle, Treasurer</i> , 24 Va. App.....	99

